

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
NOVEMBER 15, 2007**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, November 15, 2007, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro Tem Lynne Mason, Rennie Brantz, Janet Pepin, Bunk Spann, and Dempsey Wilcox. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Deputy Town Clerk Kimberly Tester, Special Assistant to the Town Manager Jim Byrne, Police Captain Curtis Main, Fire Chief Reggie Hassler, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, Human Resources Director Peri Moretz, and Development Services Director John Spear. Also present were Council Members-Elect Stephen Phillips and Liz Aycok.

ANNOUNCEMENTS

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

Mayor Clawson announced that a special meeting of the Boone Town Council will be held on Monday, November 19, 2007, from 4:00 p.m. until 6:00 p.m. at the Broyhill Inn & Conference Center in order for members to attend a public information presentation on the ASU College of Education.

TENTATIVE AGENDA ADOPTION

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

1. Addition of Item 4.C. - Correction to September 20, 2007 Minutes and subsequent Water & Sewer Code Amendment.
2. Addition of Item 5.C. - One additional budget amendment.
3. Addition of Item 5.L. - Grant permission to apply for DOT-Safe Routes to School fund.
4. Addition to Closed Session of Possible Criminal Charges-Ulery and Personnel matter.
5. Deletion of Item 6.F. - Requested Appearance - Skip Greene.

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

VOTE: Aye - All
 Nay - None

CONSENT AGENDA ADOPTION

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

Minutes: October 18, 2007 - Regular Meeting.

Adoption of Automatic Aid Agreement: Deep Gap Volunteer Fire Department

FIRE PROTECTION CONTRACT FOR AUTOMATIC AID

**NORTH CAROLINA
WATAUGA COUNTY**

THIS AGREEMENT, made and entered into the 15th day of October, 2007, by and between the **Town of Boone**, a municipal corporation of Watauga County, North Carolina hereinafter referred as the party of the **First Part** and the **Deep Gap Volunteer Fire Department**, a corporation existing under the laws of the State of North Carolina, hereinafter referred as the part of the **Second Part**.

WITNESSETH:

WHEREAS, the Town of Boone (the part of the **First Part**) wishes to increase its Fire Insurance Boundary to six (6) miles, wherever possible, and in accordance with the rules as set forth and administered by the North Carolina Department of Insurance, Office of State Fire Marshal;

WHEREAS, the part of the **First Part** is therein required to have a contract wit the adjoining districts, thereby demonstrates their willingness and assurances of participation of rendering automatic aid;

WHEREAS, the County has written automatic aid protocols which is maintained and utilized by the Watauga County Telecommunications Center, and is utilized on all structure fires whereby they simultaneously dispatch the closest automatic aid department;

WHEREAS, that the Deep Gap Volunteer Fire Department (party of the **Second Part**) hereby contracts and agrees that:

Except as to the extent specified in that certain agreement dated September 20, 2007 between the Town of Boone and the Deep Gap Volunteer Fire Department, the party of the **Second Part**, when alerted for automatic aid, will respond with a piece of fire apparatus capable of carrying a minimum of 1,000 gallons of water to the party of the **First Part** to a specified location for structure fire protection. This Agreement is mutual and reciprocal as the aforementioned agreement of September 20, 2007.

IN WITNESS THEREOF, **Town of Boone** has caused this instrument to be signed in its corporate name by its Mayor, attested by its Town Clerk and its corporate seal affixed, and Deep Gap Volunterr Fire Department Inc., has likewise caused this instrument to be signed corporate name and in its corporate seal affixed, all on the day and year first above written and this agreement is executed in duplicate.

ATTEST:

TOWN OF BOONE

Town Clerk

By

Mayor

ATTEST:

DEEP GAP VOLUNTEER FIRE
DEPARTMENT

Secretary

By

President

Correction to September 20, 2007 Minutes and subsequently the Water & Sewer Code Amendment (Amended text reflected by ~~strikeout~~ and **bold**):

ADOPTION OF AMENDMENTS TO WATER & SEWER CODE - AFFORDABLE HOUSING DEFINITIONS

Town Attorney Sam Furguele presented the following definitions as recommended by the Affordable Housing Task Force. He explained that the proposed definitions will be considered for inclusion in both the Unified Development Ordinance and the Town Code of Ordinances at a later date. After a brief discussion, Council member Spann, seconded by Council member Brantz, moved to adopt the following amendments to the Water & Sewer Code:

Section 1.3 Definitions

Affordable Owner-Occupied Dwelling Unit:

*An affordable owner-occupied dwelling unit is a room or group of rooms within a dwelling forming a single, independent, habitable unit containing an independent kitchen, sanitary, and sleeping facilities, which complies with the Town of Boone Minimum Housing Code, and which has been sold or will be offered for sale for a gross price at which the monthly gross principal and interest payment, in a mortgage financing 90% of the purchase price, amortized over a period of thirty years and calculated with interest at the legal rate, is no more than ~~fifty~~ **twenty-five** percent of the monthly Area Median Income for a family of four, as established annually by the United States Department of Housing and Urban Development, and, if sold, the purchaser of which is a family in need of housing protection.*

Affordable Owner-Occupied Housing Development:

An affordable owner-occupied housing development is one in which fifty percent or more of the included dwelling units are, or upon completion of the development, will be, affordable owner-occupied dwelling units, as that phrase is defined herein.

Affordable Rental Dwelling Unit:

*“An affordable rental dwelling unit is a room or group of rooms within a dwelling forming a single, independent, habitable unit containing independent kitchen, sanitary, and sleeping facilities, which complies with the Town of Boone Minimum Housing Code, for which the monthly gross rental payment is no more than ~~fifty~~ **twenty-five** percent of the monthly Area Median Income for a family of four, as established annually by the United States Department of Housing and Urban Development, and which is occupied by a family in need of housing protection.*

Affordable Rental Housing Project:

An affordable rental housing project is one in which fifty percent or more of the included dwelling units are, or upon completion of the project, will be, affordable rental dwelling units, as that phrase is defined herein.

Family in Need of Affordable Housing:

A family in need of housing protection is one or more individuals related by blood, marriage, or adoption, living with each other in a “common law” or spousal relationship without the benefit of marriage, or as “domestic partners,” occupying a premises and living as a single, non-profit housekeeping unit, including domestic servants, live-in help, including: [a] a single person or married couple; [b] a single person or married couple’s biological, foster, or adopted child, a step-child, or other legal ward; [c] a single person or married couple’s parents, siblings, and persons preceding or succeeding generation denoted by the prefixes of grand, great, or great-great; [d] spouses of any persons named in the above groups; [e] cousins, who are defined to be relatives who are decedents from a common grandparent, with an aggregate current income and aggregate income for the previous twelve months equal to or less than the Area Median Income, as established annually by the United States Department of Housing and Urban Development, and for which the head of the household is not claimed as a dependent on the federal tax return of any other persons currently or in the most recently completed federal tax year, and for which any other adult occupant(s) is not and can not be currently claimed as a dependent(s) for federal tax purposes by any person(s) not residing in the dwelling unit.

VOTE: Aye - All
 Nay - None”

VOTE: Aye - All
 Nay - None

ADOPTION OF ZONING AMENDMENTS

Development Services Director John Spear presented the following zoning text amendments for consideration by Council:

Case 20070572 Joseph Sykes Rezoning - Joseph Sykes Jr. is requesting to rezone property located at 351 Hilltop Drive from Residential/Agriculture (RA) to Multi-Family Residential (R-3). Mr. Spear stated that the Planning Commission, after consideration of the case at its regular meeting, recommended denial of the request because the project is not consistent with all of the objectives and policies for growth and development of the 2006 Boone Comprehensive Plan. Furthermore, he pointed out that a valid protest petition was received in regard to this request, therefore requiring a super-majority vote. Council Member Mason inquired as to why the applicant did not request a conditional-use rezoning rather than a general-use rezoning. Mr. Spear stated that the applicant did choose to pursue a general-use rezoning rather than a conditional-use rezoning which is more costly. Council Member Mason stated that the surrounding properties had been zoned R-A since the early 1980's and have thus remained zoned residential/agriculture. She maintained that if rezoned to R-3, a variety of uses would be allowed in what is essentially a single-family neighborhood. Furthermore, she insisted that single-family neighborhoods must be preserved. Council Member Spann echoed those sentiments. Council Member Mason moved that the application is not consistent with all of the objectives and policies for growth and development contained in the 2006 Boone Comprehensive Plan. The motion was seconded by Council Member Spann.

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

Upon a motion by Council Member Mason, seconded by Council Member Spann, Council finds that the application is not both reasonable and in the public interest because R-3 uses would not be consistent with the surrounding single-family neighborhood.

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

Upon a motion by Council Member Mason, seconded by Council Member Spann, Council moved to deny the request.

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

Case 20070585 Joseph Coleman Rezoning - Joseph E. Coleman, Jr. requested to rezone the old tobacco warehouse property on West King Street from Light Industrial (M-1) to Central Business (B-1). Mr. Spear stated that the recommendation of the Planning Commission for this request is approval. Council Member Mason stated that the B-3 designation is consistent with the surrounding properties. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to open a public hearing at 6:44 p.m. to hear additional testimony on this request.

VOTE: Aye - All
 Nay - None

Patrick Beville, on behalf of the Kraut Creek Committee, stated that the project as presented is compatible with the intentions of the committee; therefore, the Kraut Creek Committee endorses the project as a whole and supports approval of the request. Council Member Pepin agreed that the proposed B-3 zoning designation is compatible with the zoning designation in the downtown area. Mayor Clawson closed the public hearing at 6:47 p.m. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council found that the application is consistent with all of the objectives and policies for growth and development contained in the 2006 Boone Comprehensive Plan.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council found that the application is both reasonable and in the public interest because it provides incentives for private downtown revitalization efforts.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve the general-use zoning map amendment (Case 20070585)

VOTE: Aye - All
 Nay - None

Case 20070597 Commercial Development Appearance Standards Text - The Community Appearance Commission has prepared an amendment to Article XXII which is intended to improve current standards applicable to certain commercial development and to extend those standards to parking structures. Development Services Director John Spear noted that the Planning Commission recommends approval of the request with two grammatical changes:

Section 393[a][1][c] “Parapets above the first floor are excluded from the calculations when the building is over ~~eight~~ eighty feet (80') in length.”

Section 393[b][1][h] “Pilasters, **which must be a different material or contrasting color than their background;**”

Council Member Wilcox asked if there was discussion at the Planning Commission concerning signage. Mr. Spear stated that there was no discussion of applying the standards to building signage. Council Member Wilcox requested that the language “excluding signage” be added to the text in Section 393[e]. Upon a motion by Council Member Mason, seconded by Council Member Pepin, Council moved to accept the recommendation, including minor text changes, from the Planning Commission and Council Member Wilcox’s request to add “excluding signage.”

VOTE: Aye - All
 Nay - None

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

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council found that the application is both reasonable and in the public interest aesthetic quality and consistent design standards are vital to the Town’s economic future.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council approved the following text amendment:

**Article XXII Commercial Development
 Appearance Standards**

Section 390. The Purpose and Intent

[a] The purpose and intent of this article is to regulate aesthetic features on commercial building sites to: improve community appearance by requiring developments to use designated exterior color palettes, provide finish materials that enhance the visual interest and regional character of a building, address the human scale through the use of architectural features and detailing, and provide well designed exterior lighting.

Section 391. Applicability

[a] This article is applicable to the publicly visible portions of building elements, as defined herein, in new commercial (non-residential), multi-family (more than three dwelling units), institutional, and industrial uses. Each element of a building shall be evaluated independently for public visibility.

[b] If building elements are not publicly visible at the time of construction due to existing site features (earth berms, heavily wooded areas, existing buildings to remain), then these existing site features must remain indefinitely. If they are altered at any time to allow greater visibility, then the element made visible must comply with the standard.

[c] This article is not intended to supercede more stringent requirements which may exist within the North Carolina Building Code.

Section 392. Definitions

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

- [1] Element of a building – an exterior wall, roof, or site wall which is manmade and constructed.
- [2] Public visibility – An element of a building shall be deemed publicly visible when any of the following conditions are met:
 - a. At least 70 percent of the element occurs above adjacent grade and is visible from any street adjacent to the property;
 - or
 - b. At least 70 percent of the element is, upon staff review, deemed visible from an adjacent residentially zoned property;
 - or
 - c. At least 70 percent of the element is taller than the vegetative buffer at the time of planting.
- [3] Exterior walls - the vertical or nearly-vertical planes which form the exterior envelope of a building.
- [4] Site walls – retaining walls, screen walls or other vertical or nearly-vertical planes which occur on a property, but are not part of the exterior envelope of a building.
- [5] Roof area – a single, unbroken, contiguous plane, measured perpendicular to slope.
- [6] Flat Roof – The external covering of a building having a 2(v):12(h) slope or less.
- [7] Pitched Roof – The external covering of a building having a slope greater than 2(v):12(h).
- [8] Field color – a single paint color which is used most extensively in a building's visible façade.
- [9] Trim color – a single paint color which is used on a building's trim, lesser in proportion to the Field Color.
- [10] Accent color – a single paint color which is used on a building, in the least proportion of all colors used, not to exceed 5% of the façade area.

- [11] Full cutoff fixture – a light fixture designed so that no light is projected at or above a 90-degree plane running through the lowest point on the fixture where the light is emitted and less than ten percent (10%) of the rated lumens are projected between 90-degrees and 80-degrees.
- [12] Façade – the face of a building.
- [13] Volume – a portion of a building which is offset by a minimum of ten feet (10') in plan or in elevation.
- [14] IESNA – The Illuminating Engineering Society of North America
- [15] Primary Public Way – The street that adjoins the property that carries the highest volume of traffic in accordance with Section 231

Section 393. Building Design ~~Site Walls~~

[a] Pedestrian-Orientation

The intent of this section is to provide a design of buildings that support a safe and attractive pedestrian environment.

- [1] Primary façade and main building entry shall face the primary public way. If site constraints are present, the applicant's intent to use a "stock plan" is not a basis for appeal. The Community Appearance Commission may approve a redesign in which the main primary entrance does not face the primary public way provided the following;
 - [a] The main building entrance, when not facing the primary public way, shall provide a safe and convenient access for pedestrians from the main building entrance to the primary public way. The pedestrian way must provide additional landscape amenities.
 - [b] Entrances which are oriented on a diagonal are permitted, provided that they are integrated with the overall architectural design, and not merely angled appendages or alcoves.
 - [c] Ground floor windows or window displays shall be provided along at least [10] percent of the building's(ground floor) street-facing elevation(s); windows and display boxes shall be integral to the building design and not mounted to an exterior wall. Parapets above the first floor are excluded from the calculations when the building is over eighty feet (80') in length.

[b] Exterior Walls ~~Section 394~~

The intent of this section is to require running lengths of walls to be interrupted by architectural features which lend a more human scale to the overall massing.

- [1] Features include:
 - [a] Offsets of the building wall or other elements in plan of ~~eight inches (8") minimum;~~ four (4) feet;
 - ~~[b] Wall recesses or projections of a minimum of eight inches (8") in section;~~
 - [b] A colonnade with columns or other vertical elements of sixteen feet (16') or less on center;
 - [c] A change in building material, with a maximum of two uses of this option being counted toward the schedules below;

- [d] Awnings or canopies;
 - [e] Covered entries or portico's
 - [f] Windows with a minimum width of 2'8" and a minimum height of 3'4";
 - [g] Trellises;
 - [h] Pilasters, which must be a different material or contrasting color than their background;
 - [i] A combination of the above; and
 - [j] Any other type of feature not listed here which is deemed by staff to meet the intent of this ordinance.
- [2] Plumbing, mechanical, electrical service components and gutter downspouts are not considered features and may require screening. Such screening is not considered an architectural feature.
- [3] Required features must be distributed throughout the building façade and not clustered.
- [4] Features shall be provided in accordance with the following feature schedules:

TABLE A
FEATURE SCHEDULE – PLAN

Linear Dimensions, in Plan	Minimum # of Feature Types	Minimum # of Total Features
10' to less than 40'	2	4
40' to less than 80'	3	8
80' to less than 120'	4	12
120'+	5	16

TABLE B
FEATURE SCHEDULE – ELEVATION

Linear Dimensions, in Elevation	Number of Features Required
10' to less than 16'	2
16' to less than 32'	3
32' to less than 48'	4
48'+	5

[4] [5] *Features which serve to interrupt the building façade in both plan and elevation shall be credited as such using the above charts. Windows are considered plan and elevation features. See examples in Figure 3 on page 22-12 22-14 and Figure 4 on page 22-13. 22-15.*

~~[5] — A building is assumed to have four elevations. The use of multiple volumes in any building is encouraged in order to articulate its façade. If a volume is offset ten (10) or more feet in elevation or ten (10) or more feet in plan, then it shall have its own feature requirements. See example in Figure 4 on page 22-13.~~

[c] Roofs Section 395

The purpose of this section is to regulate both pitched and flat roof types. The intent is to interrupt expanses of pitched roofs and minimize or prevent the visibility of flat roofs.

- [1] Walls shall not appear to terminate at flat roofs. Flat roofs shall be concealed from view by using pitched roof features, parapets, or a mixture thereof. Where only one elevation has this condition, the

- parapet or other feature will continue four feet (4') along the adjacent elevation. See Figure 5 on page ~~22-14~~. 22-16.
- [2] Buildings over two stories above grade may utilize a flat roof, provided the flat portion is not publicly visible. Compliance may not be possible if the adjacent road grade is substantially above the roof in question.
 - [3] Minimum roof slope for pitched roofs is 4'(v):12'(h).
 - [4] Publicly visible plumbing vent stacks shall be colored to match the roofing material.
 - [5] Where a parapet intersects with a pitched roof element, there shall be no apparent breaks in the parapet wall. See Figure 6 on page ~~22-15~~. 22-17.
 - [6] Awnings or canopies which are illuminated from within must be covered or finished with fully opaque material.
 - [7] Publicly visible pitched roofs shall be articulated by features in accordance with the following schedule. Features shall be in proportion to the roof area where they appear. Features include:
 - [a] Dormers;
 - [b] Eyebrows;
 - [c] Intermittent gables or hips;
 - [d] Vertical offset in ridge line;
 - [e] Horizontal offset in ridge line;
 - [f] A combination of the above; and
 - [g] Any other type of feature not listed here which is deemed by staff to meet the intent of this ordinance.

TABLE C
FEATURE SCHEDULE – ROOF AREAS

Roof Area	Number of Features Required
Less than 1200 s.f.	0
1200 s.f. to less than 1600 s.f.	1
1600 s.f. to less than 2400 s.f.	2
2400 s.f. +	3

- [8] No part of this ordinance shall be construed to prevent solar panels or any other type of renewable energy collection or storage method, provided the development follows the massing guidelines established herein.

[d] Materials ~~Section 396~~
 The purpose of this section is to establish standards for finish materials used on publicly visible exterior walls ~~and site walls~~. For any publicly visible elevation, a minimum of 25% of the building finish material must be stone or concrete-simulated stone, wood or simulated wood in concrete board (such as “Hardi” products), or brick or concrete-simulated brick.

- [1] Mirrorized glass is prohibited from use. Reflective tinted glass is acceptable up to 30 percent tint. Anything above 30 percent tint is subject to review by the Community Appearance Commission.

- [2] Architectural concrete masonry such as split face, ~~ribbed~~, or ground-face block is acceptable.
- [3] Stucco and synthetic stone are acceptable finish materials.
- [4] Architectural concrete (containing a pattern or finish) as a finish material is acceptable. Gray, unfinished concrete is ~~discouraged~~ prohibited as a finish material. Concrete architectural detail elements intended to be a decorative enhancement for exterior walls and site walls are acceptable
- [5] Other materials subject to staff review and approval include vinyl siding (which should simulate wood grain) and other manufactured materials. Vinyl siding shall be anchored to the exterior envelope sufficiently to avoid the appearance of deformation or bowing across the façade.
- [6] For publicly visible roof surfaces, allowed materials include standing seam metal, asphalt shingles, shakes, tile, or manufactured shingles which give an appearance of shingles, shakes, or other simulated natural material. Sheet materials other than those listed in this section are subject to staff review for use on publicly visible roofs.
- [7] Any materials which comprise less than 10 percent of a publicly visible exterior building wall ~~or site wall~~ and are components of windows or trim systems are allowed (example: aluminum storefront, metal corner trim, etc.).
- [8] FRP, PVC, and other composites formed into architectural detail elements such as columns, cornices, etc., are approved for use as long as such material is intended to be a decorative enhancement for the façade.

[e] Colors ~~Section 397~~

The purpose of this section is to prevent inordinately bright façades and primary color ranges. All new construction elements are subject to color requirements, except pavement markings and code required signage.

- [1] Acceptable colors for site walls, site lighting, and any other outside construction elements (excluding signage) include that equivalent to Sherwin-Williams series “Essential” and “Fundamentally Neutral” in the *Town of Boone Color Reference Guide*.
- [2] Acceptable field colors and trim colors are those equivalent to Sherwin Williams series “Essential” and “Fundamentally Neutral” in the *Town of Boone Color Reference Guide*.
 - [a] The “LRV” Light Reflection Value of field colors must be below 60. Any colors above “60 LRV” are subject to review by the Community Appearance Commission.
 - [b] Black is prohibited as a field color in the series “Essential”.
- [3] Acceptable ~~trim and~~ accent colors are those equivalent to Sherwin-Williams series “Essential”, “Fundamentally Neutral”, and “Color Options” in the *Town of Boone Color Reference Guide*.

Section 394. Parking Garages and Structures

[a] The purpose of this section is to regulate aesthetic features on parking structures to prevent a utilitarian appearance, and to provide a safe, secure environment for patrons, employees and vehicles.

[b] Publicly visible facades must comply with provisions of this article pertaining to exterior walls, materials, and colors.

[c] Ground-level parking facing the street shall be sufficiently screened to a height of 42" above the finished floor through any combination of walls, landscaping, and/or a continuous façade to prevent headlights projecting beyond the buffer.

[d] Landscaping used for screening ground level parking must provide a 10' buffer using large evergreen trees in accordance with the approved plant list in Appendix B. This buffer may serve as the required street yard if located within 35' of the street right-of-way.

[e] Upper parking floors shall be designed using a continuous façade incorporating window-like openings. The sill of any window-like opening must be a minimum of 42" above the finished floor.

[f] Exterior vehicle ramps are subject to review by the Community Appearance Commission to minimize the appearance of tilted ramps.

[g] Elevator and stair shafts shall be topped with gabled roofs or other architectural features and be oriented so that lobbies are visible from the street at each level.

[h] Lighting shall be uniform throughout the structure so that dark hiding places are not created. Lighting levels must conform to IESNA standards.

Section 395. Site Walls

[a] The purpose of this section is to limit dimensions of site walls. The intent is to prevent walls which appear to dwarf the human scale and to encourage equalizing cut/fill or majority cut slope methods of grading.

[b] No retaining wall may be more than eight feet (8') in height. This height does not include decorative caps that are less than eight inches (8") in height. Screen walls shall not be taller than necessary to conceal the item screened (such as a dumpster, HVAC equipment, etc.)

[c] Buildings located near the top of site retaining walls shall be a minimum of four feet (4') horizontally from the top of the retaining wall.

[d] Retaining walls, any portion of which are within six feet (6') of a sidewalk or pedestrian way, shall not exceed four feet (4') in height. Subsequent walls must be offset a minimum of four feet (4') in plan. See Figure 1 on page ~~22-10.~~ 22-12.

[e] A series of two (2) retaining walls must have a minimum of four feet (4') horizontally from the back of the top of the lower wall face to the toe of the upper wall face in plan. See Figure 1 on page ~~22-10.~~ 22-12. For three (3) or more walls in series, see item [g] below.

[f] The space between retaining walls in series shall be landscaped with appropriate grasses, vines or other ground cover in accordance with provisions of Appendix B and may contain shrubs and trees not to exceed thirty-five feet

(35') in height at maturity. This area shall be maintained in accordance with the provisions of Section 369.

[g] Retaining walls in series which collectively exceed sixteen feet (16') in height shall have a minimum of one (1), ten foot (10') wide Type "A" buffer (see Section 362), between two of the walls. Retaining walls which are separated by a building, a road, or a parking area shall be exempt from this requirement. See Figure 2 on page ~~22-11~~. 22-13.

[h] Publicly visible site wall material and color shall be architecturally compatible with the principle building(s) on site.

Section 396. Lighting

[a] The purpose of this section is to regulate the intensity of exterior lighting. The intent is to prevent light from commercial developments from excessively illuminating the property in question, other properties, or the night sky.

[b] Only light fixtures which are categorized as full cut-off (FCO) fixtures shall be permitted, except sportsfield fixtures which must comply with Section 393[d].

[c] The following are specific standards for lighting intensity based upon the land use involved. Values are presented in allowable foot-candles (fc) maintained (measured horizontally) at grade and are to be averaged throughout the site to avoid hot spots, i.e. areas of extreme light intensity relative to the remainder of the site:

Land Use	Minimum	Maximum	Min./Max. Uniformity Ratio
Pedestrian areas/sidewalks	.2 fc	1.0 fc	
Building entries	1.0 fc	10.0 fc	
Street lighting	.2 fc	1.0 fc	
Open Parking areas	.2 fc to .9 fc	3.6 fc	4:1
Playgrounds		5.0 fc	
Site perimeter		.5 fc	

[d] Lighting for sports fields and outdoor courts is generally in excess of general outdoor lighting levels. Recreation lighting levels established by the IESNA are to be used as the standard. Higher lighting levels for tournament or high league play are sometimes required and must be approved by the Community Appearance Commission. All sportsfields or tennis courts must meet the following minimum standards.

- [1] Fixtures must be fitted with the manufacturer's glare control package. If the manufacturer does not have a glare control package, the fixture specification must be changed to a manufacturer that offers a glare control package.
- [2] Lighting shall be extinguished no later than one hour after the event ends.
- [3] Fixtures must be designed with a sharp cutoff and aimed so that their beams fall within the primary playing area and the immediate surroundings, so that off-site direct illumination is significantly restricted.

[e] Gas station canopies shall be illuminated at a maximum illuminance of 30 fc and individual fixtures shall be flush mounted or have the canopy edge below the lowest light-emitting point on the fixtures. All existing gas station

canopies which exceed this standard shall be made compliant within seven (7) years of the date of adoption of this article.

[f] Up-lighting may be used to illuminate a building, landscaping element or architectural feature, provided the lighting design has a maximum illuminance of 12 fc, measured in a vertical plane. Down lighting is preferred.

[g] Parking decks and covered parking areas must conform to IESNA standards.

Section 397. Flexibility in Administration

[a] Flexibility in administration is required for this article. When strict application of the standards within this article undermines other provisions of the UDO, then those other provisions take precedence. For example, the retaining wall height limitation may be increased to afford an opportunity to preserve significant or historic tree(s).

Section 398. Submission Requirements

[a] Development site plans shall graphically illustrate, in both a site plan view and elevation view, those elements which are not publicly visible. Otherwise, each element of the project will be assumed by staff to be publicly visible.

[b] Elevation drawings of each side of the building shall be provided. The elevations shall have materials and colors rendered in such a way that each is distinct.

[c] Elevation drawings shall be accompanied by the following information for each portion of the building, corresponding to the design requirements set forth in Article XXII.

- [1] Largest distance in plan between required features, and the elevation(s) on which this occurs.
- [2] Largest distance in elevation between required features, and the elevation(s) on which this occurs.
- [3] Number of features required and number present in each elevation.
- [4] Name of each type of feature in elevation.

[d] Material samples shall be provided for all synthetic materials not specifically approved by ~~Section 396~~ Section 393.

[e] A lighting plan shall be submitted for staff review and approval prior to issuance of building permits. The plan shall contain the following information:

- [1] An area lighting plan, drawn to scale, indicating all structures, parking lots, building entrances, vehicular and pedestrian traffic areas, vegetation that may interfere with lighting, and adjacent land uses that may be adversely impacted by the lighting. The plan shall contain a layout of all proposed fixtures by location, orientation, aiming direction, mounting height and type.
- [2] The submission shall include, in addition to proposed area lighting, all other exterior lighting, e.g., architectural, building entrance, landscape, flagpole, sign, etc.
- [3] A 10' x 10' illuminance grid (point-by-point) of maintained footcandles overlaid on the site plan plotted out to 0.0 footcandles, which demonstrates compliance with light intensity standards specified in ~~Section 398~~ Section 396.

Section 399. Community Appearance Commission Review

[a] Alternatives to the appearance standards provided herein may be permitted upon review and approval of the Community Appearance Commission. Applications containing alternatives shall be forwarded to the commission for review at their next regularly scheduled meeting.

[b] The Commission may approve such alternatives if it finds the alternatives involved meet the purpose and intent of the provisions contained within this article.

[c] Unless otherwise specified, the Commission's review and approval of any deviation from the standards contained herein is required prior to permit approval.

(PROPOSED TEXT AMENDMENT DRAWINGS - EXHIBIT A)

VOTE: Aye - All
 Nay - None

Case 20070599 Affordable Housing Text - The Affordable Housing Task Force has prepared an amendment to various Articles intended to encourage and facilitate privately developed accessory housing (secondary to a primary residence but sharing the same site or structure) in R-1 and R-1A zoning districts. Owner occupancy is required. Development Services Director John Spear stated that although the Planning Commission recommended approval of this text amendment, there was concern with Section 181[d] regarding the use of a front yard area for parking. The consensus of the Planning Commission is that this section needs further review. Council Member Wilcox agreed that this section warrants further review and that allowing parking in a front yard area would be inappropriate. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council finds that the application is consistent with all of the objectives and policies for growth and development contained in the 2006 Boone Comprehensive Plan.

VOTE: Aye - All
 Nay - None

Council Member Mason stated that this text amendment will help to provide the community with more affordable housing opportunities while maintaining the integrity of single-family neighborhoods. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council finds that this application is both reasonable and in the public interest because the amendment provides expanded housing opportunities and choices, provides for pedestrian and mass-transit oriented lifestyles, promotes more efficient use of land, and promotes efficient provisions of public services.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council approved the following text amendment:

PROPOSED TEXT

1. Add the following definitions:

Section 15. Definitions of Basic Terms

Architecturally Compatible: A method or style of building in which two or more structures exist together harmoniously

Family in Need of Affordable Housing: A family in need of housing protection is a family, as that term is defined herein, including persons living with each other in a "common law" or spousal relationship without the benefit of marriage, or as "domestic partners," with an aggregate current income and aggregate income for the previous twelve months equal to or less than the Area Median Income, as established annually by the United States

Department of Housing and Urban Development, and for which the head of the household is not claimed as a dependent on the federal tax return of any other person currently or in the most recently completed federal tax year, and for which any other adult occupant(s) is not and cannot be currently claimed as a dependent(s) for federal tax purposes by any person(s) not residing in the dwelling unit.

Single Family Residence: A single dwelling unit used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that is occupied for living purposes by a single family, as the term is defined herein.

2. *Revise the Table of Permissible Uses to include accessory apartments as a permitted use in the R-1 zoning District:*

Section 165. Table of Permissible Uses

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

3. *Replace existing text in Section 181 with the following text:*

Section 181. Single Family Residence with Accessory Apartment

- [a] A single family residence which contains an accessory apartment (land use 1.210) shall have no more than one single family residence and one accessory apartment on a single lot. The accessory apartment may either be attached to or detached from the single family residence.
- [b] In the R-1 and the R-1A zoning districts, an owner of the lot shall reside in the single family residence or accessory apartment at least 90 (ninety) percent of the year.
- [c] The occupancy of an accessory apartment shall be limited to no more than 2 unrelated persons or 4 related persons.
- [d] Adequate off-street parking shall be provided to the side or to the rear of the single family residence. In no case shall a front yard area be converted to or used to satisfy off-street parking requirements.
- [e] The accessory apartment shall not be served by a separate driveway. [f]
- An attached accessory apartment shall be designed so that the appearance of the single family residence remains that of a one family dwelling. The accessory apartment entrance shall be located on the side or in the rear of the single family residence.
- [g] An accessory apartment shall be clearly subordinate to the single family residence. The square footage of the floor area of an attached accessory apartment may not be more than 50 (fifty) percent of the square footage of the floor area of the associated single family residence,

and the square footage of an attached accessory apartment's floor area may never exceed eight hundred square feet.

[h] Detached accessory apartments may be located over a garage, workshop, studio or similar structure or built as a free standing cottage. Every detached accessory apartment must be architecturally compatible with the associated single family residence. Free standing cottages shall not contain a floor area exceeding six hundred (600) square feet. Detached accessory apartments will not be approved or permitted until they have been reviewed and approved for architectural compatibility by the Community Appearance Commission.

[i] The detached accessory apartment shall be located to the side or rear of the single family residence and no closer to the fronting street than the front most point of the single family residence.

[j] A two story detached accessory apartment shall be allowed only when the single family residence is 1 ½ stories or more. Alternatives will only be permitted when reviewed and approved for architectural compatibility by the Community Appearance Commission.

[k] A single family residence which contains an accessory apartment (land use 1.210) shall observe applicable land use intensity ratios. The exemption in Section 200 [a] of this ordinance shall not apply to this land use.

EXISTING TEXT

1. The following text will need to be removed:

Page 11-2 Primary Residence with Accessory Apartment
Remove current text entirely.

Page 12-4 Section 201. [b]
Remove current text entirely.

VOTE: Aye - All
 Nay - None

Case 20070603 Rain Harvesting Systems Screening Text - The Community Appearance Commission has prepared an amendment to Article XX which would require screening of above ground commercial rain water harvesting systems. Mr. Spear stated that the recommendation of the Planning Commission is for approval of this application. Mayor Clawson asked if the text specified any certain location for the rain harvesting system. Mr. Spear stated that the amendment does not contain any criteria for the location, only that the system be screened. He further noted that the regulation applies to commercial uses only. Council Member Pepin stated that this amendment is an appropriate first step in developing guidelines for such systems but that some form of general guidelines should be studied for application to residential uses as well. Council Member Spann suggested that the Community Appearance Commission study the issue of applying general guidelines for rain harvesting systems for residential uses and explore options used by other communities for such systems. Upon a motion by Council Member Mason, seconded by Council Member Spann, Council finds this application is consistent with all of the objectives and policies for growth and development contained in the 2006 Boone Comprehensive Plan.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Pepin, Council finds that the application is both reasonable and in the public interest because aesthetic quality and consistent design standards are vital to the Town's economic future.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Spann, Council approved the following text amendment:

PROPOSED TEXT AMENDMENT

Article XX – Landscape Standards

Section 363[e][1]

[e] Screening of Dumpsters, Loading Docks, Outdoor Storage Areas, Utility Structures, and Rain Harvesting Systems.

[1] Loading docks, trash containers, outdoor storage, mechanical and HVAC equipment, Rainwater Harvesting Systems, and similar facilities on the roof, on the ground, or on buildings shall be incorporated into the overall design theme. These areas shall be located and screened so that the visual impacts of these facilities are fully contained and out of view from adjacent properties and public streets.

VOTE: Aye - All
 Nay - None

ADOPTION OF RESOLUTION - FIXING DATE OF PUBLIC HEARING ON BELL SOUTH ANNEXATION

Development Services Director John Spear stated that the petitioners are requesting contiguous annexation in conjunction with a request for water service for property located at 260 Bamboo Road. He reminded the Council that the property was granted water service at the October 18, 2007 Town Council meeting with the condition that the property be annexed. Mr. Spear stated that this is the second step in the annexation process. Upon a motion by Council member Wilcox, seconded by Council member Brantz, Council moved to adopt the following resolution:

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-31
(Bellsouth Annexation)

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

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

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

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

Section 1. A public hearing on the question of annexation of the area described herein will be held at Council Chambers at 6:30 p.m. on December 20, 2007.

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

ANNEXATION DESCRIPTION FOR BELL SOUTH TELECOMMUNICATIONS
Blue Ridge Township, Watauga County, North Carolina

A 3.150 acre tract located on the west side of Bamboo Road approximately 700 feet south of Deerfield Road being the same property as describe in Deed Book 193 at page 326 with the perimeter of same being surveyed by me, Frank Lee Hayes, PLS L-1488, on October 3, 2007 as: BEGINNING on an existing concrete monument in the James C. Lyons line a corner to Marvin Storie having NCGS NAD '83(07) coordinates of N=900, 624.56 E1,221,879.96 being located South 29 degrees 09 minutes 15 seconds West 156.95 from NCGS Monument "AIRPORT"; THENCE from the beginning and with the Lyons line South 66 degrees 32 minutes 10 seconds East, crossing an existing reference monument at 609.25 feet, a total distance of 639.75 feet to the center of Bamboo Road (NCSR 1524); THENCE with the center of said road a curve concave to the west having a radius of 1,520.00 feet for an arc distance of 218.38 feet (chord is South 00 degrees 08 minutes 20 seconds West 218.38 feet) to Marvin Storie's corner; THENCE leaving the road and with the Storie lien North 66 degrees 29 minutes 30 seconds West, crossing an existing reference ½ inch rebar at 31.63 feet, a total of 726.21 feet to an existing 3/4 inch pipe, a Storie corner; THENCE with the Storie line North 23 degrees 28 minutes 55 seconds East 199.79 feet to the BEGINNING; being described using NCGS NAD'83(07) bearings and distances.

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

ATTEST:

Mayor

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 44)

VOTE: Aye - All
Nay - None

PLANNING COMMISSION NOMINATIONS

Development Services Director John Spear noted that nominations are needed for the balance of Stephen Phillips's resident term on the Boone Area Planning Commission. He stated that the term is set to expire on June 30, 2010. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council decided to continue to accept applications and to make appointments at the December meeting.

VOTE: Aye - All
Nay - None

COMMUNITY APPEARANCE COMMISSION NOMINATIONS

Development Services Director John Spear stated that Commissioner Larry Bordeaux and Larry Greene have resigned their positions on the Community Appearance Commission. He noted that both terms will expire on June 30, 2008. Mr. Spear reiterated that it is critical that members of the appearance commission have formal training or experience in a design field such as architecture, landscape architecture, urban planning, or a similarly-related field. Upon a motion by Council Member Mason, seconded by Council Member Pepin, Council decided to continue accepting applications and to make appointments at the December meeting.

VOTE: Aye - All
Nay - None

BOARD OF ADJUSTMENT NOMINATIONS

Development Services Director John Spear informed the Council that the Watauga County Board of Commissioners appointed ETJ Alternate James Marsh to an ETJ Regular position on the Board of Adjustment, thereby leaving the remainder of the ETJ Alternate term vacant. He stated that the term will expire on June 30, 2009. Upon a motion by Council Member Mason, seconded

by Council Member Brantz, Council decided to continue accepting applications and to make a nomination to forward to the Watauga County Board of Commissioners at the December meeting.

VOTE: Aye - All
 Nay - None

APPROVAL OF STORMWATER GRANT APPLICATION

Special Assistant Jim Byrne appeared before the Town Council to request approval to apply for a 2007 Clean Water Management Trust Fund Storm Water Mini Grant for communities that are not under the NPDES Phase II regulations. He explained that the amount of the grant will be \$50,000 and that the Town would be required to make a \$12,000 match. Council Member Brantz asked the use of the funding. Mr. Byrne stated that the funding will be used for public outreach and education to encourage citizen participation and for illicit discharge detection. Upon a motion by Council Member Brantz, seconded by Council Member Wilcox, Council moved approval of the grant application.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Pepin, seconded by Council Member Brantz, Council moved to approve the following resolution:

RESOLUTION OF APPROVAL

**Town of Boone
2007 CWMTF Storm Water
Mini Grant Application**

WHEREAS, the citizens and property within the Town of Boone are subject to the effects of flooding and degraded water quality as the result of Storm Water runoff; and

WHEREAS, the Town desires ways to mitigate conditions that may aggravate such circumstances; and

WHEREAS, Clean Water Management Trust Fund (CWMTF) offers funding up to \$50,000 through a Storm Water mini-grant for communities that are not under NPDES Phase 2 regulations;

NOW, it is the intent of the Town Council of the Town of Boone to apply for the \$50,000 Storm Water mini-grant, and agrees to match these funds with a \$12,000 from the Town's General Fund, bringing the total project cost to \$62,000.

Adopted on November 15, 2007.

ATTEST: _____ Mayor

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 44)

VOTE: Aye - All
 Nay - None

APPROVAL OF BID - FIRE DEPARTMENT SQUAD 1

Fire Chief Reggie Hassler appeared before the Council to request approval for a bid and contract for the new Squad 1 vehicle. Chief Hassler stated that after a review of the bids submitted, the Fire Department recommends approval of the bid from HME, Inc. for the sum of \$327,213.00.

Council Member Brantz asked about the reason for the recommendation for HME, Inc. Chief Hassler stated that the Town has two vehicles manufactured by HME, Inc. and is very satisfied with the quality of the equipment. Council Member Pepin asked if the funds are available in the budget. Town Manager Greg Young stated that the price is \$52,500 more than anticipated. Furthermore, he explained that the amount contained in the budget will be used as a down payment, and the remainder of the cost will be financed. Mr. Young stated that details regarding the financing remain to be completed. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to approval of the bid of \$327,213.00 from HME, Inc. for a new squad vehicle and to approve the following contract:

**STATE OF NORTH CAROLINA
COUNTY OF WATAUGA**

CONTRACT

THIS CONTRACT, made and entered into this 16th day of November, 2007, by and between the TOWN OF BOONE, NORTH CAROLINA (HEREINAFTER REFERRED TO AS "BOONE") AND HME Incorporated (hereinafter referred to as "HME").

WITNESSETH:

**WHEREAS, Boone has advertised for bids for one Rescue Truck; and
WHEREAS, HME has submitted a bid to the Town; and
WHEREAS, HME has agreed to sell and Boone has agreed to buy a Rescue Truck.**

NOW, THEREFORE, in consideration of the mutual premises contained herein, as well as other good and valuable consideration flowing between parties, it is mutually agreed as follows:

- \$ HME shall deliver to Boone a Rescue Truck in accordance with the specifications attached hereto as Exhibit 1 pp 1-8, & 81-141 the Modifications thereof attached hereto as Exhibit 2, consisting of 1 page, and the Bid Proposal attached hereto as Exhibit 3, consisting of 1 page.**
- \$ The terms and specifications attached hereto as Exhibit 1, the modifications thereof attached hereto as Exhibit 2 and the Bid Proposal thereof attached hereto as Exhibit 3 are incorporated herein by reference. In the event any conflict exists between the contract and any provisions either of said attachments, this contract shall supersede the conflicting term of the attachments.**
- \$ Boone shall pay HME the sum of \$327,213.00 for said Rescue Truck. This payment shall be made within 10 days after HME delivers and Boone accepts Rescue Truck.**
- \$ HME covenants and agrees that unless noted otherwise, HME is the lawful owner of the above-described property; that it is free from all liens and encumbrances; that HME has the right to sell the above-described property; and that HME will indemnify Boone from all damages arising from claims by third parties to ownership of any of said property, and will warrant and defend these covenants against the lawful claims and demands of all parties.**
- \$ HME shall deliver the completed Rescue Truck and such documentation as necessary to obtain title.**
- \$ HME shall deliver the completed Rescue Truck to Boone in Boone, North Carolina within 340 days after award of contract. Award of contract occurs when a signed contract is delivered to HME.**
- \$ Boone and HME acknowledge that Boone will incur damages if HME fails to deliver the Rescue Truck within the time specified. The parties further acknowledge that the damages which might be reasonably anticipated are difficult to ascertain due to their indefiniteness or uncertainty. Consequently, the parties agree that HME shall pay Boone LIQUIDATED DAMAGES in the amount of \$327.21 per day for each day HME fails to deliver the Rescue Truck within the specified time.**
- \$ This Contract shall be governed by the laws of the State of North Carolina. Venue for any dispute shall be in Watauga County, North Carolina.**

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed their corporate names by their duly authorized officers and their seal to hereunto affixed, the day and year first written above.

VOTE: Aye - All

Nay - None

OUTSIDE AGENCY FUNDING REVIEW COMMITTEE RECOMMENDATION

Council Member Bunk Spann, who serves as the Council representative on the Outside Agency Funding Committee, stated that after discussing the issue, the committee decided to recommend the \$6,500 allotted to the New River Mental Health Serenity Farms for Men be funded to the Hunger Coalition. He noted that the NRMH Serenity Farms for Men has closed its facility. Council Member Spann explained that in an effort to maintain fairness, a decision was made to allocate the \$6,500 to the Hunger Coalition due to its importance to the community. Upon a motion by Council Member Spann, seconded by Council Member Pepin, Council moved to reallocate \$6,500 to the Hunger Coalition said amount of funding originally allocated to the Serenity Farms for Men which has since closed its facility.

VOTE: Aye - All
 Nay - None

MONTHLY WATER STATUS REPORT

Public Utilities Director Rick Miller presented the following status report:

As requested by Town Council, staff and I have compiled the following information concerning water use for the month of October. The Water Treatment Plant recorded a maximum daily demand of 2.560 million gallons on Friday, October 5, 2007, and the average daily demand was 1.977 million gallons for the entire month.

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

As adopted in Ordinance 05-01, the Town of Boone Council has appropriated for 25,000 gallons per day usage for year 2007 for allocation to customers. Council chose to allocate 4,800 gallons from 2007 and after adding back the 6,788 gallons carried over from 2006, a balance of 25,943 gallons remaining for allocation in 2007.

At the last Town Council meeting, Council chose to allocate 1,230 gallons per day to one project and since then the Public Utilities Department approved one project that subtracted 5 gallons per day from the 2007 allotment. Also at the last meeting Council authorized 11,464 gallons per day from the 2008 allotment for three projects. The total water allotment remaining for the year 2007 has broken the sixty percent threshold. All future water service requests will be forwarded to Town Council as required in Ordinance 05-01.

As you can see in the attached “Approved Water Connections” chart, the Public Utilities Department now has 71 gallons per day remaining for allotment in 2007 and 27 gallons remaining for 2008.

			Approved Water Connections			
			2007			
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						25000
			Watauga County	Nov-06	4800	20200
			2006 Balance Carry Over	Jan-07	6788	26988
Park Street Subdivision	Jan-07	850				26138
Steven Airey	Jan-07	195				25943
Boone Mall	Jan-07	439				25504
Sarvos	Feb-	2100				27604

Properties	06					
			Jamus FLP	Feb-06	4209	23395
Mauldin Chiropractic	Feb-07	69				23326
Ross Chrysler	Feb-07	60				23266
A-Z Enterprises	Feb-07	900				22366
			Fatbellies LLC	Mar-06	3750	18616
High Country Bank	Mar-07	450				18166
Enterprise Leasing	Mar-07	45				18121
James Maltba	Mar-07	31				18090
Dana Willet	Jun-05	450				18540
Dana Willet	Jul-05	150				18690
HW Partners	May-07	45				18645
Hoan Nguyen	May-07	283				18362
			CCC&TI	Jun-06	1650	16712
Jeff Templeton Rentals	Jul-07	490				16222
ECHO Prop LLC	Jul-07	270				15952
Karl Pond	Jul-07	90				15862
Winklers Creek Assoc.	Jul-07	150				15712
			Andrew Wade	Aug-07	8856	6856
Dogwood Plaza	Aug-07	300				6556
Richard Tazwell	Aug-07	90				6466
Watauga County DSD	Aug-07	285				6181
			AT&T	Sep-07	210	5971
			Cambridge Venture	Sep-07	4500	1471
Watauga County Landfill	Sep-07	75				1396
Rob Dyer	Sep-07	90				1306
			Brent Bingham	Oct-07	1230	76
Blue Ridge Invest. LLC	Oct-07	5				71
			2008			
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						25000
			Watauga County	Nov-06	4800	20200
			Jamus FLP	Feb-07	4209	15991
			Cambridge Venture	Sep-07	4500	11491

			Wilcox Wright LLC	Oct-07	5100	6391
			Howard Street Ventures	Oct-07	2250	4141
			Mangia Buona	Oct-07	4114	27

Mr. Miller presented a brief verbal summary outlining the content of a workshop he attended in Kenansville, North Carolina on November 14, 2007, entitled “Rural Water and Wastewater Projects: Getting to Success with Your Consulting Engineer.” He noted that this workshop was part of the NC Rural Communities Assistance Project, Inc. Fall 2007 Workshop series. He listed the following items that were discussed:

- § Conflict Resolution
- § Requests for Evaluating Proposals: Selection and Evaluating Tools
- § Financial Planning Assistance & Consultants
- § Contract Negotiation
- § Current Infrastructure Funding Programs.

Mr. Miller informed the Council that he would forward a copy of the workshop information and materials packet to the Mayor and Council members prior to the next regular meeting in December. Furthermore, a copy will be kept permanently on file in the Clerk’s office at Town Hall.

ADOPTION OF BUDGET AMENDMENTS

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

DESCRIPTION	ACCOUNT #	TO:	FROM:
Jones House Fence Project	010-411-000-549135	\$5,500.00	
Contributions/Donations	010-000-000-482200		(\$1,000.00)
NCAC Public Art/Design Grant	010-000-000-448027		(\$4,500.00)
Youth Initiative	010-412-000-549233	\$5,000.00	
Appropriated Fund Balance-GF	010-000-000-499900		(\$5,000.00)
Sidewalk Construction-Powell Bill	010-600-403-577402	\$26,504.00	
Paving & Resurfacing-Powell Bill	010-600-403-577401	\$48,956.00	
Appropriated Fund Balance-GF	010-000-000-499900		(\$26,504.00)
Powell Bill Funds-State of NC	010-000-000-442100		(\$48,956.00)
Maintenance & Repair-Water Plant	030-700-804-525201	\$28,250.00	
Appropriated Fund Balance-W/S	030-000-000-499900		(\$28,250.00)
Capital Outlay-Large Trucks-FD	010-500-350-573300	\$265,100.00	
Loan Proceeds-GF	010-000-000-492000		(\$265,100.00)

VOTE: Aye - All
 Nay - None

Council Member Pepin inquired about the progress of the installation of the VOIP phone system. Finance Director Amy Davis stated that the first phase of installation at Town Hall, the Fire Department, and the offices located in the Blowing Rock Road building will begin on November 26th.

WATER USE COMMITTEE RECOMMENDATION

Public Utilities Director Rick Miller stated that the Water Study Committee, after reviewing information comparing the actual water usage for projects that received water allocations with

predicted usage as calculated using the NCRD Discharge Rate Schedule, is recommending the following modifications to Ordinance 05-01:

1. The Town allocate 50,000 gallons in yearly increments for a four-year period beginning January 1, 2008.
2. The Town set aside 10,000 gallons for allocation to in-town vacant lots for a three-year period beginning January 1, 2008.
3. The Town review actual water usage records annually beginning November 2008.
4. Ordinance 05-01 be extended from December 2009 until December 2011.

Upon a motion by Council Member Pepin, seconded by Council Member Mason, Council moved to accept the aforementioned modifications to Ordinance 05-01 as recommended by the Water Study Committee and that the proposed recommendations be forwarded to Town Attorney Sam Furguele for his review.

VOTE: Aye - All
 Nay - None

Public Utilities Director Rick Miller updated the Council on the current drought conditions by stating that the Town is still under Stage I Water Shortage conditions. He urged all citizens to continue to utilize water conservation efforts as requested by Governor Mike Easley.

APPROVAL OF NCDOT-SAFE ROUTES TO SCHOOL GRANT

Council Member Mason stated that on the recommendation of the Walk Boone Committee and the Transportation Committee, approval for permission to apply for a grant for funding through the NCDOT Safe Routes to School program is requested from the Council. She explained that this grant is for planning and education purposes only and cannot be used for infrastructure purposes. Council Member Pepin asked if by applying for this grant, would there be any negative effects on any other grants the Town is pursuing. Town Manager Greg Young stated that this grant is not connected to any other grants. Upon a motion by Council Member Brantz, seconded by Council Member Pepin, Council moved to grant permission to apply for funding through the NCDOT Safe Routes to School program.

VOTE: Aye - All
 Nay - None

Mayor Clawson declared a break at 7:42 p.m. Council reconvened at 7:58 p.m.

REQUESTED APPEARANCE - MR. MATT COOPER

Mr. Matt Cooper appeared before the Town Council to present an update on progress and activity on the Community Garden. Mr. Cooper informed the Council of collaboration with such agencies as WAMY Community Action, Inc.; Boone Service League; Two Rivers School; and Western Youth Network. He informed the Council that as well as preparing for spring garden activity, he plans to organize a presentation on succession planting, develop strategies to increase the garden-voucher program, and continue to partner with community organizations. Furthermore, Mr. Cooper informed the Council of two upcoming events that he intends to offer during the summer of 2008: a bug workshop and organic gardening classes. Council Member Pepin suggested exploring a means of measuring the output from the garden.

REQUESTED APPEARANCE - MS. TUESDAE RICE

Ms. Tusedae Rice appeared before the Town Council to request approval for a brick paver fundraiser. She explained that the sale of the brick pavers will be a means for funding for the second phase of the Street Garden Project. Ms. Rice noted that businesses can purchase the bricks and have the business name or logo inscribed and that persons may also choose to have names inscribed on the bricks in memory or in honor of a person. She noted that the Downtown Boone Development Association will solicit orders and submit them to the company for delivery. Ms. Rice stated that the Public Works Department will install the brick pavers. Discussion ensued concerning the color choice for the brick pavers. It was the

consensus of the Council to use red brick pavers in order to coordinate with the Howard Street project.

REQUESTED APPEARANCE – MEGA BUILDERS LLC

Prior to opening a public hearing on this case, Town Attorney Sam Furgiuele asked the Council if any member has been contacted by a representative of Mega Builders in regard to this request. He explained that since water allocation requests are heard by the Town Council in a quasi-judicial manner, only evidence presented as public testimony during the hearing can be considered by the Council in making a determination on the request. Mr. Furgiuele advised that if a Council Member were contacted and substantive discussion took place, a request for recusal from deliberating the request should occur. Council Member Spann stated he was contacted by Mega Builders and questioned about Town regulations. He requested recusal for the deliberation of this case. Upon a motion by Council Member Pepin, seconded by Council Member Brantz, Council moved to excuse Council Member Spann from deliberation of this case.

VOTE: Aye - All
 Nay - None

Council Member Mason stated she also was contacted by a representative of Mega Builders, but no substantive discussion occurred. Council Member Brantz stated that he was contacted by Mega Builders and questioned about Town regulations. He requested recusal from the deliberation of this case. Upon a motion by Council Member Pepin, seconded by Council Member Mason, Council moved to excuse Council Member Brantz from deliberation of this case.

VOTE: Aye - All
 Nay - None

Mr. Furgiuele asked Mark Bloomquist, Chief Marketing Officer-Mega Builders LLC, if, due to the recusal of two Council Members thereby leaving three Council Members to hear the request and the necessity of a majority vote for approval, he would like to request a postponement of the case until the December meeting. Mr. Bloomquist indicated that he wished to proceed with the case at this meeting. Council Member Wilcox stated he was contacted by a representative of Mega Builders but that no substantive discussion occurred. Council Member Pepin stated she was not contacted by anyone from Mega Builders, LLC. At 8:24 p.m. Town Attorney Sam Furgiuele opened a public hearing to hear sworn testimony from Mark Bloomquist-Chief Marketing Officer, Mega Builders, LLC; Michael Trew-Project Engineer; Frank Ford-Development Coordinator, Mega Builders, LLC; Public Utilities Director Rick Miller; and Development Services Director John Spear in regard to a request for water and sewer service to property located off Eli Hartley Drive. Mr. Bloomquist described the project as a 48-unit, two-bedroom condominium complex located adjacent to a previous townhouse project developed by Mega Builders. He stated that the project will include some affordable-housing opportunities. Michael Trew clarified the amount of the request as 14,400 gallons per day instead of 21,000 gpd. He explained the former number is based on two-bedroom units while the latter is calculated based on three-bedroom units. Mr. Trew testified the current usage of the Mountaineer Village Apartment complex adjacent to the project as 4000 gpd. He stated that the building pads and access roads were put in place during the construction of the Mountaineer Village Apartment complex several years ago. He indicated very little effect on the area regarding the viewshed regulations. Mr. Trew stated that the eight-inch water line located on the adjacent property is adequate for this project. Public Utilities Director Rick Miller confirmed the calculation of 14,400 gpd based on two-bedroom units. Development Services Director John Spear pointed out the extra-territorial jurisdiction (ETJ) boundary and location of the project as depicted on the map provided by the applicant. He stated that based on the map presented, approximately half of one building in the project is located in the ETJ, the remainder of the property appearing to be located in Watauga County jurisdiction. He further noted that the portion of the project in the ETJ appeared to be located in the viewshed protection designation area but that he could not expound on the effect of the project since he had not reviewed the project in its entirety. In response to a question posed by Council Member Mason in regard to the Growth Strategy Map, Mr. Spear stated that the project area is designated as rural growth area. He stated that designation has been in effect

since 1993 and was not part of the map expansion in the 2006 update. He stated that the map update generally did not include the northern and southern boundaries of the town due to issues of topography and the availability of providing utility services to those areas. Council Member Mason asked about Comprehensive Plan policies which do and do not support the request. Mr. Spear pointed out policies regarding the location of high-density development in close proximity to Appalachian State University, employment or shopping centers, access to major thoroughfares and the transit system, and the affordable housing needs of the community. He also pointed out policies discouraging high density development in the Rural Growth Area. Frank Ford of Mega Builders stated that if the request is approved, the development will be annexed and adhere to all Town regulations. Mr. Ford agreed that Mega Builders would be willing to have the project annexed and zoned contingent on approval of the water and sewer request. Council Member Mason read into record the affordable housing definitions as contained in the Water and Sewer Code:

Affordable Owner-Occupied Dwelling Unit:

An affordable owner-occupied dwelling unit is a room or group of rooms within a dwelling forming a single, independent, habitable unit containing independent kitchen, sanitary, and sleeping facilities, which complies with the Town of Boone Minimum Housing Code, and which has been sold or will be offered for sale for a gross price at which the monthly gross principal and interest payment, in a mortgage financing 90% of the purchase price, amortized over a period of thirty years and calculated with interest at the legal rate, is no more than fifty percent of the monthly Area Median Income for a family of four, as established annually by the United States Department of Housing and Urban Development, and, if sold, the purchaser of which is a family in need of housing protection.

Affordable Owner-Occupied Housing Development:

An affordable owner-occupied housing development is one in which fifty percent or more of the included dwelling units are, or upon completion of the development, will be, affordable owner-occupied dwelling units, as that phrase is defined herein.

Affordable Rental Dwelling Unit:

An affordable rental dwelling unit is a room or group of rooms within a dwelling forming a single, independent, habitable unit containing independent kitchen, sanitary, and sleeping facilities, which complies with the Town of Boone Minimum Housing Code, for which the monthly gross rental payment is no more than fifty percent of the of the monthly Area Median Income for a family of four, as established annually by the United States Department of Housing and Urban Development, and which is occupied by a family in need of housing protection.

Affordable Rental Housing Project:

An affordable rental housing project is one in which fifty percent or more of the included dwelling units are, or upon completion of the project, will be, affordable rental dwelling units, as that phrase is defined herein.

Family in Need of Affordable Housing:

A family in need of housing protection is one or more individuals related by blood, marriage, or adoption, living with each other in a “common law” or spousal relationship without the benefit of marriage, or as “domestic partners,” occupying a premises and living as a single, non-profit housekeeping unit, including domestic servants, live-in help, including: [a] a single person or married couple; [b] a single person or married couple’s biological, foster, or adopted child, a step-child, or other legal ward; [c] a single person or married couple’s parents, siblings, and persons preceding or succeeding generation denoted by the prefixes of grand, great, or great-great; [d] spouses of any persons named in the above groups; [e] cousins, who are defined to be relatives who are decedents from a common grandparent, with an aggregate current income and aggregate income for the previous twelve months equal to or less than the Area Median Income, as established annually by the United States Department of Housing and Urban Development, and for which the head of the household is not claimed as a

dependent on the federal tax return of any other persons currently or in the most recently completed federal tax year, and for which any other adult occupant(s) is not and can not be currently claimed as a dependent(s) for federal tax purposes by any person(s) not residing in the dwelling unit.

Council Member Mason asked if the applicant will be willing to commit, by letter or written agreement, more than fifty percent of the units to be sold at no more than fifty percent of the area median income. Mr. Ford stated that he feels the price of the units will prove to be affordable in the range of \$150,000 to \$175,000 since most of the infrastructure is already in place and, due to the close proximity to water and sewer lines, will allow the developer to keep the cost low. With no other public testimony, Mr. Furguele closed the public hearing at 9:12 p.m. Council Member Wilcox stated that he feels that this area has grown faster than anticipated and that the need exists for both affordable and student housing opportunities. Council Member Mason stated her concern that the project is located at the “gateway to Boone” and is designated as Rural Growth Area. She further stated she would be able to support the request contingent on an agreement that the project will meet affordable housing standards as set forth in the Water & Sewer Code and that the project be annexed, zoned, and meet all Town of Boone land-use regulations. Town Attorney Sam Furguele advised that the Council can require an agreement to meet the affordable housing standards as a condition of approval of a Special-Use permit by the Boone Board of Adjustment. Upon a motion by Council Member Mason, seconded by Council Member Wilcox, Council moved to approve the request for 14,400 gpd with the following conditions:

1. The property must be annexed and zoned prior to issuance of permits.
2. As a condition of approval for a Special-Use permit by the Boone Board of Adjustment, the applicant must agree to comply with the affordable housing standards as defined in the Town of Boone Water & Sewer Code.
3. The requested 14,400 gpd will be allocated from the 2008 Allotment.

VOTE: Aye - 3 (Wilcox, Mason, Pepin)
 Nay - 0
 Excused - 2 (Spann, Brantz)

Upon a motion by Council Member Mason, seconded by Council Member Pepin, Council moved to reseat Council Members Spann and Brantz.

VOTE: Aye - All
 Nay - None

REQUESTED APPEARANCE - MS. KATRINA B. CALLIO

Town Attorney Sam Furguele opened a public hearing at 9:22 p.m. to hear sworn testimony from Katrina Callio regarding a request for water and sewer service to property located at 304 Glendale Drive. Ms. Callio stated that she is currently a water and sewer customer. She explained her request for 90 gpd for a bedroom addition. With no other testimony, Mr. Furguele closed the public hearing at 9:23 p.m. Upon a motion by Council Member Wilcox, seconded by Council Member Mason, Council moved to grant Ms. Callio’s request for a 90 gpd allocation.

VOTE: Aye - All
 Nay - None

REQUESTED APPEARANCE - MR. LEONARD SOLOMON

Town Attorney Sam Furguele opened a public hearing at 9:24 p.m. to hear sworn testimony from Michael Trew-Project Engineer, Public Utilities Director Rick Miller and Development Services Director John Spear in regard to a request for water and sewer service to property located off Candy Lane. Mr. Trew explained the request for 8,100 gpd for a 27-unit multi-family project with 54 bedrooms. He stated that the property is surrounded on all three sides by the Town limits. He informed the Council that the project is adjacent to Deer Valley Condominiums and will be marketed to senior citizens. Furthermore, he stated that if granted, the amount can be allocated from the 2009 allotment. Mr. Furguele pointed out that the one-year vesting period begins from the time of the approval of the request. Mr. Trew stated that

the project is in a flood hazard area and that, although no construction is planned in the floodway area, the building located in the flood plain area will be elevated. He stated that he has contacted the Federal Aviation Administration and that no permits are required since the project is located near the Boone Airport. Council Member Spann asked if the applicant will be willing to secure a letter from Boone Airport stating an evaluation or analysis of any potential problems with the location of the project. Mr. Trew agreed to comply with the request. Council Member Mason asked if the applicant will be willing to annex and have the property zoned. Mr. Trew also agreed to that request. Council Member Brantz asked of any future plans for expansion. Mr. Trew stated he is not aware of any plans for expansion of the project. In response to a question from Council Member Brantz regarding a traffic impact study, Mr. Trew stated he has not performed a study since that area of engineering is not his expertise. He offered that any traffic impact would not be full-time since the project is being marketed for senior citizens and those owning vacation homes. Public Utilities Director Rick Miller stated that the existing water and sewer lines are adequate for fire protection for the units. Development Services Director John Spear stated that the property is located in the Rural Growth area and that the surrounding area is mostly zoned R-A, Residential/Agriculture, which does not allow multi-family uses. With no further testimony, Mr. Furguele closed the public hearing at 9:52 p.m. Council Member Spann stated he feels comfortable in granting the request since the project will be compatible with surrounding uses and the condition that the applicant is willing to annex and have the property zoned. Council Member Mason stated her concern about the project in that it is located in the Watauga County planning jurisdiction, the floodway, the watershed, the Rural Growth Area, and its proximity to the Boone Airport. Council Member Brantz stated that the project does address housing needs and compliments the surrounding development in the area. Council Member Pepin stated her concern with the B-3 General Business zoning designation in that area and the impact of additional traffic on an already congested roadway. Upon a motion by Council Member Pepin, seconded by Council Member Brantz, Council moved to grant the request for 8,100 gpd subject to the property being annexed and zoned prior to the issuance of permits.

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

REQUESTED APPEARANCE - MS. ANNE HENNING

Town Attorney Sam Furguele opened a public hearing at 10:00 p.m. to hear sworn testimony from Bill Dixon-Project Architect, Public Utilities Director Rick Miller, and Development Services Director John Spear in regard to a request for water and sewer service to property located at 1087 West King Street, also known as the Austin City Limits building. Mr. Dixon stated that the project request for 795 gpd entails a complete renovation of the old Austin City Limits building to create a beauty and tanning salon and café on the main floor and office spaces in the basement level. He stated that the 3 one-bedroom apartments on the second floor will remain. Furthermore, he stated that in addition to cleaning up the site, the property owners plan to demolish the old Alpine Cleaners building to make additional parking area. Public Utilities Director Rick Miller explained that the water and sewer code requires that commercial and residential uses be separately metered. He stated that since the building has always been on one meter, there was no way to calculate the usage for the three apartments separate from the other uses. Mr. Miller stated that no additional impact fees will be charged for the three apartments. With no further testimony, Mr. Furguele closed the public hearing at 10:09 p.m. Upon a motion by Council Member Mason, seconded by Council Member Wilcox, Council moved to approve the request for 795 gpd.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Pepin, seconded by Council Member Brantz, Council moved to reconsider the Leonard Solomon water request.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Pepin, seconded by Council Member Spann, Council moved that in addition to the previous condition of annexation prior to the issuance of permits, the water allocation will be taken from the 2009 allotment.

VOTE: Aye - All
 Nay - None

REQUESTED APPEARANCE - WATAUGA COUNTY

Town Attorney Sam Furgiuele opened a public hearing at 10:12 p.m. to hear sworn testimony from Watauga County Manager Rocky Nelson and Rick Miller, Director of Public Utilities, in regard to a request for an extension of water allocation for the Watauga High School project. Mr. Nelson stated that Watauga County is requesting a one-year extension of the water allocation for the WHS project. Mr. Furgiuele asked about what permits the County has obtained for this project. Mr. Nelson replied that the County has a grading permit but that he anticipates obtaining additional construction permits by April 2008. Council Member Wilcox inquired as to whether Watauga County will request a transfer of the availability fee credit to the new site from the current highschool site. Mr. Nelson stated that the Board of Commissioners has not yet discussed that issue. In response to a question from Council Member Mason, Public Utilities Director Rick Miller explained that the new project site did receive water usage credit for two existing homes on the site. With no further testimony, Mr. Furgiuele closed the public hearing at 10:18 p.m. Upon a motion by Council Member Brantz, seconded by Council Member Spann, Council moved to grant a one-year extension for 14,400 gpd. for the WHS project.

VOTE: Aye - All
 Nay - None

Mr. Nelson presented a brief update on the status of the WHS project. He stated that a portion of Daniel Boone Drive has been closed and that Cecil Miller Road has been paved. He noted that the building pad should be ready by April 2008. Mr. Nelson assured the Council that the county is not anticipating any extension of the project end date.

PUBLIC COMMENT

There was no one present to speak during public comment.

CLOSED SESSION

Upon a motion by Council member Wilcox, seconded by Council member Spann, Council moved to enter Closed Session at 10:20 p.m. pursuant to NCGS 143-318.11a)3)5)6) in order to discuss the following matters:

- Property Acquisition - Water.
 - Attorney/Client: Discussion of Templeton request for privileged attorney time records.
 - Consultation regarding the status of the Community Garden Lease.
- § Update on possible criminal charges against Charles Ulery.
- § Personnel.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Spann, Council moved to exit Closed Session at 11:16 p.m.

VOTE: Aye - All
 Nay - None

ADJOURNMENT

On a motion by Council Member Pepin, seconded by Council Member Mason, Council moved to adjourn the meeting at 11:17 p.m.

VOTE: Aye - All
 Nay - None

Deputy Town Clerk

Mayor