

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
NOVEMBER 16, 2006**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, November 16, 2006 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 Chief Bill Post, Fire Chief Reggie Hassler, Public Services Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, and Development Services Director John Spear.

ANNOUNCEMENTS

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

Mayor Clawson read the following proclamation:

WHEREAS, America is a nation whose ancestry includes every people on earth; whose motto is “E PLURIBUS UNUM” which means “OUT OF MANY, ONE” and whose ideals of freedom under the law have inspired millions throughout the world; and

WHEREAS, racism is the most challenging issue confronting America today and our country cannot continue to harbor prejudice against any racial or ethnic group without betraying itself; and

WHEREAS, for too much of our history, ignorance and prejudice have led to endless conflicts in the name of race, class, nation, and religion; and progress toward tolerance, mutual respect, and unity has been painfully slow and marked with repeated setbacks; and

WHEREAS, the well-being of the whole of humankind, its peace and security, are unattainable unless and until its unity is firmly established; and

WHEREAS, the magnitude and urgency of this issue compel us to arise without further delay...

...to celebrate the diversity of the people of Boone

...to discourage and confront prejudice and discrimination wherever we may find it, and

*...to participate in **I-Have-A-Dream-Week** as a testimonial of our commitment to unity in diversity.*

*NOW THEREFORE, I, **Loretta Clawson**, Mayor of the Town of Boone, do hereby proclaim January 13-21, 2007, to be **I-Have-A-Dream-Week**, on this the 16th day of November, 2006.*

Mayor

ATTEST:

Town Clerk

TENTATIVE AGENDA ADOPTION

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

Addition of Item 4. B. - Consent Agenda - One-Year Renewal of Parking Lease Agreement with Watauga County.

Addition of Item 5. J. - Adoption of Land for Tomorrow Resolution.

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 Pepin, seconded by Council member Brantz, Council moved to adopt the following consent agenda items:

Minutes: October 2, 2006 - Special Meeting
 October 19, 2006 - Regular Meeting
 October 23, 2006 - Special Meeting

Approval of Agreement Renewal: One-Year Parking Lease with Watauga County **(permanently on file)**.

VOTE: Aye - All
 Nay - None

PRESENTATION OF AUDIT REPORT

Mr. Billy G. Combs, PC, presented the Fiscal Year 2005-2006 audit report **(permanently on file in the Finance Department)**. He listed several highlights within the report and praised employees of the Town's Finance Department for their hard work and exceptional job performance.

ADOPTION OF ZONING AMENDMENTS

Development Services Director John Spear presented **Case 20060687**: Randolph Johnson has submitted a request to change the zoning classification of 169 Rogers Drive from R-1, Single-Family Residential, to CD-R3, Conditional District Multi-Family Residential. Mr. Spear indicated that the Planning Commission recommends approval of this application with three staff-recommended conditions. Council member Pepin voiced her concern that allowing this zoning reclassification in a residential area would set an unfavorable precedent. Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved 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- 4 (Spann, Wilcox, Mason, Brantz)
 Nay - 1 (Pepin)

Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved that the application is both reasonable and in the public interest because it supports economic development in the town of Boone.

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

Upon a motion by Council member Brantz, seconded by Council member Wilcox, Council moved to adopt the map amendment with the following three staff-recommended conditions:

1. Project approval is subject to the petition and site specific development plan submitted by Randolph Johnson dated October 9, 2006. Minor modifications may be permitted if necessary to comply with the requirements of the UDO. Any commitments and representations concerning the proposed project made by the applicant or his

representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.

- 2. All signage must comply with requirements of Section 328 - Signs Permitted in the R-3 District.
- 3. All applicable requirements of the UDO and Town staff must be met prior to final approval and issuance of a certificate of occupancy.

VOTE: Aye - All
 Nay - None

Development Services Director John Spear presented **Case 20060659**: The Boone Town Council has initiated a zoning text amendment to UDO Section 165 which would require agricultural uses excluding livestock (use 14.110) to be permitted with a special-use permit in the B-3, General Business, zoning district. Mr. Spear indicated that the Planning Commission recommends approval of the application. Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved 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 moved that the application is both reasonable and in the public interest because it supports Comprehensive Plan policies which promote agricultural/rural development and the creation of parks, recreation, and open space.

VOTE: Aye - All
 Nay - None

Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved to adopt the following text amendment:

Section	165														
Uses Description	R-1	R-1A	R-R	R-2	R-3	R-4	R-A	M-H	O / I	B-1	B-2	B-3	U-1	M-1	
12.0 SERVICES AND ENTERPRISES RELATED TO ANIMALS															
12.100 Veterinarian							S		Z			Z	Z		
12.200 Kennel							S					S		Z	
13.0 EMERGENCY SERVICE OPERATIONS	S	S	S	S	S	S	S	S	S	S	S	S	Z	S	
14.0 AGRICULTURAL, SILVICULTURAL, MINING, QUARRYING OPERATIONS															
14.100 Agricultural operations, farming															
14.110 Excluding livestock	Z	Z	Z	Z			Z					S		Z	
14.120 Including livestock							Z								

VOTE: Aye - All

Nay - None

Development Services Director John Spear presented **Case 20060660**: The Boone Town Council has initiated zoning text amendments to UDO Sections 15 and 338 to define balloons and provide guidelines on the use of balloons as temporary signs. Mr. Spear noted that the Planning Commission had recommended denial of this amendment because it is not consistent with Comprehensive Plan policies regarding outdoor advertising which enhances the aesthetic quality of the town. Council member Mason stated that she feels the current definition of signs is too broad and needs some scrutinizing before this case is considered. Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved to table this issue until the definition of signs can be reviewed by the Development Services staff and the town attorney and until a report is presented to Council at its next meeting.

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

Development Services Director John Spear presented **Case 20060677**: The Boone Town Council has initiated text amendments to UDO Sections 322 and 324 providing for sponsorship signs at the Appalachian Skatepark. Mr. Spear noted that the Planning Commission recommended approval for this application. Upon a motion by Council member Mason, seconded by Council member Pepin, Council moved 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 Spann, Council moved that the application is both reasonable and in the public interest for the following reasons: it supports policies concerning the promotion of open space and recreational facilities and allows for the continued development of the skatepark.

VOTE: Aye - All
 Nay - None

Upon a motion by Council member Spann, seconded by Council member Mason, Council moved to adopt the following text amendment:

Section 322. Definitions

Add:

Appalachian Skatepark Sign: Sponsorship signs placed at Appalachian Skatepark.

Section 324. Signs Which Do Not Require a Permit

Add:

[a] [11] Appalachian Skatepark sponsorship signs are permitted at the site owned by Watauga County on Complex Drive. The maximum size of any sponsorship sign may not exceed thirty-two (32) square feet in dimension. The signs may not be canvas, vinyl, or a material of similar nature.

VOTE: Aye - All
 Nay - None

Development Services Director John Spear presented **Case 20060705**: The Planning Staff has initiated text amendments to UDO Section 384 to ensure the receipt of a valid protest petition is announced at a public hearing prior to accepting public comment. Mr. Spear noted that the Planning Commission recommended approval of this amendment. Upon a motion by Council member Brantz, seconded by Council member Spann, Council moved to adopt the following text amendment:

Section 384 [c] If a petition opposing a change in the zoning classification of any property is filed in accordance with the provisions of this section, the Administrator shall announce to the Town Council receipt of such petition prior to accepting public comment.

VOTE: Aye - All
 Nay - None

CREATION OF GREENWAY TRAIL MAP

Development Services Director John Spear informed the Council of a recommendation made at the last Greenway Committee meeting to create a map that would overlap the Town's Greenway system with the adjoining trails on the University property. Mayor Clawson advised that the Town should approach ASU officials with the idea before beginning any work on the project. Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved to approve the creation of a Greenway Trail map which would include trails on the adjoining ASU property and to authorize the Town Manager to discuss this project with the proper ASU officials.

VOTE: Aye- All
 Nay - None

DISCUSSION OF MIXED-USE ZONING DISTRICTS

Development Services Director John Spear presented a draft amendment for Mixed-Use Zoning Districts to the Council. Discussion ensued concerning the potential of locating a mixed-use zoning district in a location not suited for that type of use, specifically in the downtown area. Several Council members stated the need to preserve the unique quality of the downtown area. It was the consensus of Council members to request that the draft be reviewed by Mr. Spear to address their concerns and presented at the December meeting.

ADOPTION OF ORDINANCE - LEPOLDO BALESTRIERI/MULBERRY STREET TRATTORIA VIOLATIONS

Town Attorney Sam Furguele outlined the history of the sign violation at the Mulberry Street Trattoria. Upon a motion by Council member Mason, seconded by Council member Spann, Council moved to adopt the following ordinance:

ORDINANCE # 06-11

WHEREAS, the Town of Boone has duly adopted a Unified Development Ordinance, (hereinafter, the "UDO"); and

WHEREAS, the UDO regulates the display of signs within the Town of Boone and its planning jurisdiction; and

WHEREAS, following a July 3, 2006 inspection by personnel from the Development Services Department of the Town of Boone of a restaurant located at 179 Howard Street, Boone, North Carolina, Watauga PIN 2900-79-8185-000, owned and operated by Lepoldo Balestrieri and Mulberry Street Trattoria, L.L.C., staff notified Lepoldo Balestrieri and Mulberry Street Trattoria, L.L.C., that two signs displayed on the premises were displayed without permits and were thus illegal, and

WHEREAS, Lepoldo Balestrieri and Mulberry Street Trattoria, L.L.C., were assessed an initial penalty of \$200.00 and a daily penalty of \$200.00 until such time as the illegally displayed signs were removed and the violation abated; and

WHEREAS, Lepoldo Balestrieri and Mulberry Street Trattoria, L.L.C. filed a timely appeal of the Town's decision to the Town of Boone Board of Adjustment; and

WHEREAS, Lepoldo Balestrieri and Mulberry Street Trattoria, L.L.C., although informed that penalties would continue to accrue during the delays resulting from their

continuance request, should the Boone Board of Adjustment uphold the staff's decision and penalty, twice requested that the scheduled hearing on the appeal to the Boone Board of Adjustment be continued until the subsequent month's meeting; and

WHEREAS, at the November 2, 2006 meeting of the Boone Board of Adjustment, the matter was scheduled for a third time and no further request for continuance by Lepoldo Balestrieri and/or Mulberry Street Trattoria, L.L.C. was requested, but neither Lepoldo Balestrieri nor Mulberry Street Trattoria, L.L.C. appeared; and

WHEREAS, as a result of the failure of Lepoldo Balestrieri and/or Mulberry Street Trattoria, L.L.C., to appear for the scheduled appeal hearing, the Boone Board of Adjustment dismissed the appeal of Lepoldo Balestrieri and Mulberry Street Trattoria, L.L.C., in effect, affirming the decisions of staff; and

WHEREAS, Lepoldo Balestrieri and Mulberry Street Trattoria, L.L.C. have continued to display the illegal signs, through and including November 15, 2006, and have taken no action to remove the signs or obtain permits for them; and

WHEREAS, as of November 15, 2006, the penalties against Lepoldo Balestrieri and Mulberry Street Trattoria, L.L.C. total \$27,200.00, and neither Lepoldo Balestrieri nor Mulberry Street Trattoria, L.L.C. have made any attempt whatsoever to pay this amount or any portion of this penalty;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA, PURSUANT TO N.C. GEN. STAT. § 160A-175, AS FOLLOWS:

1. Lepoldo Balestrieri and Mulberry Street Trattoria, L.L.C. are the owner and operator of that certain restaurant known as "Mulberry Street Trattoria" located at 179 Howard Street, Boone, North Carolina, Watauga PIN 2900-79-8185-000. Said real property is located within the town limits and jurisdiction of the Town of Boone.
2. Lepoldo Balestrieri and Mulberry Street Trattoria, L.L.C. have violated the Unified Development Ordinance of the Town of Boone by displaying two signs without first obtaining a permit for them. Said violations are continuing in nature and thus constitute repeated violations of the Ordinance.
3. The Town Attorney is ordered to initiate a legal action in the General Court of Justice in Watauga County, North Carolina against Lepoldo Balestrieri and Mulberry Street Trattoria, L.L.C., seeking a mandatory injunction requiring Lepoldo Balestrieri and Mulberry Street Trattoria, L.L.C. to immediately and permanently abate its violation of the UDO, and to collect the unpaid penalties for its violations of the Ordinance, including attorney's fees and costs.
4. This Ordinance shall be recorded in the registry of the Watauga County Register of Deeds under the names Lepoldo Balestrieri and Mulberry Street Trattoria, L.L.C..

Adopted this ____ day of _____, 2006.

Mayor

Attest:

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3, PAGES 313-314)

VOTE: Aye - All
 Nay - None

ADOPTION OF AGREEMENT - JENKINS-HILL CONSULTING LLC

Brad Edwards gave a brief status report on the progress made during the past year. Upon a motion by Council member Brantz, seconded by Council member Wilcox, Council moved to adopt the following agreement:

AGREEMENT

Parties: This agreement is made October 25, 2006, between Jenkins Hill Consulting, LLC. and the Town of Boone.

Scope of Work:

We at the Jenkins Hill Consulting would begin a proactive education campaign to make sure that all decision-makers within the Legislative Branch (key staff and members) and Executive Branch of the federal government agencies are aware of Town of Boone's priorities and agenda for fiscal year 2008. This would include direct lobbying of members and staff of the Congress, the federal agencies and the White House. We would work with you, Town of Boone council members, staff and your current congressional supporters to build on what you have done in previous years to educate and develop goodwill with decision-makers.

Jenkins Hill Consulting partners would be on call to offer the Town of Boone guidance on any issues that may arise within the political arena.

Our team will work with you, Town of Boone council members and staff, to properly package your projects and legislative initiatives to ensure decision-makers clearly understand where the Town of Boone stands on issues and how those issues might affect your respective constituency.

The Jenkins Hill Consulting will work with Town of Boone council members and staff to ensure that decision-makers are educated on the cause and effect of federal and state initiatives, which will affect the Town of Boone and its taxpayer base. The principals at the Jenkins Hill Consulting will communicate these messages to decision-makers at the White House; federal agencies (Department of the Interior, Environmental Protection Agency, Department of Defense—Army Corps of Engineers, Department of Agriculture, etc.); Congressional authorizing committees; other Congressional Committees of jurisdiction or oversight; House and Senate Appropriations Committees; House and Senate Leadership; the North Carolina Congressional Delegation; and other public and private sector stakeholders. We will ensure that the Town of Boone's message and concerns are heard loud, clear and consistently by decision-makers involved in the process at all levels.

It is important to brief these members and their staffs prior to the start of the session of the 110th Congress to allow them to be able to make educated decisions and commit time and effort to support Town of Boone's efforts. We would engage this effort through direct lobbying while working with Town of Boone staff to hone our message.

Deliverables:

- § The Jenkins Hill Consulting will work with Town of Boone staff to develop and refine a concise message that will be able to be delivered to state and federal officials involved in the process.
- § The Jenkins Hill Consulting will be available to meet with the Town of Boone council members and staff 3 or 4 times a year to provide periodic updates on federal issues. Town of Boone and Jenkins Hill Consulting staff will work out appropriate times for these periodic meetings.
- § The Jenkins Hill Consulting will assist the Town of Boone in setting up meetings in Washington, DC for Town of Boone council members and staff. Our firm will also work with Town of Boone staff to coordinate visits to the district by Congressional members and staff and decision-makers within the federal government.
- § The Jenkins Hill Consulting stands ready to assist Town of Boone efforts in meeting with state decision-makers and stakeholders.
- § The principals and staff of the Jenkins Hill Consulting stand ready to assist the Town of Boone staff in fulfilling any requests concerning the federal government.

§ The Jenkins Hill Consulting will work with Town of Boone staff to develop and refine a concise message that will be able to be delivered to state and federal officials involved in the process.

Terms, Fees and Expenses: In consideration for Jenkins Hill Consulting services, Town of Boone agrees to pay the Jenkins Hill Consulting a monthly fee of \$6,000 beginning on November 1, 2006 – and ending October 31, 2007. Jenkins Hill Consulting, LLC. would also be reimbursed for non-local transportation, lodging and meals in relation to visits by congressional staff that visited the Town of Boone for educational purposes; however these will be authorized by you in advance.

Invoicing: Professional fees and expenses are invoiced separately:

1. **Professional Fees:** Jenkins Hill Consulting, LLC. will invoice Town of Boone on the 20th day of each month for professional fees in advance of the coming month, starting October 20, 2006.
2. **Expenses:** Jenkins Hill Consulting, LLC. will invoice Town of Boone on the 20th day of each month for expenses incurred during the month prior, starting, October 20, 2006.

Regardless of the ultimate duration of the Agreement, all invoices generated from the terms and between the two parties to this agreement are payable in-full and promptly upon receipt and shall be paid directly to the Jenkins Hill Consulting, LLC.

Termination & Cancellation: Either party may terminate this agreement upon thirty (30) days written notice, with no further obligation, other than to pay such fees and expenses that would have accrued up to and through the 30 day notice period.

Renewal & Extension: This contract can be renewed and extended upon notice by either party to the other and upon agreement of both, beyond the set termination date for a mutually agreed-upon term commencing on the first day following the previous contractual termination date. Terms and Scope of Work will remain materially and substantially the exact same as before, unless otherwise agreed to by the parties in writing.

Confidentiality: Jenkins Hill Consulting, LLC. recognizes that in the course of our representation, we may become aware of information, practices, or policies, which you wish kept confidential. Jenkins Hill Consulting, LLC. agrees to maintain that confidentiality and not disclose to any outside party the information either during the period of this contract or thereafter to the extent permitted by law.

Entire Understanding: This Agreement (and any attachments) contains the entire understanding between the parties. Amendment, modification or waiver of this agreement may be accomplished with a written instrument signed by both parties.

VOTE: Aye - All
 Nay None

APPROVAL OF ENCROACHMENT AGREEMENT - APPALACHIAN STATE UNIVERSITY

Town Manager Greg Young informed the Council that during construction of the new parking deck located on College Street, construction crews installed a 2-inch PVC pipe in the Town's right-of-way. Upon a motion by Council member Wilcox, seconded by Council member Brantz, Council moved to adopt the following encroachment agreement with language contained therein stating the nature of the encroachment:

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT, made and entered into this the 16th day of November 2006, by and between the TOWN OF BOONE, party of the first part; and Appalachian State University party of the second part,

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

THAT WHEREAS, the party of the second part desires to encroach on the right of way of the public road designated as College Street located off King Street with the following: a 2" PVC pipe for sump pump from the elevator pit; and

WHEREAS, it is to the material advantage of the party of the second part to effect this encroachment, and the party of the first part in the exercise of authority conferred upon it by stature, is willing to permit the encroachment within the limits of the right of way as indicated, subject to the conditions of this agreement.

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

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

That the party of the second part agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and other warning devices for the protection of traffic in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and Amendments or Supplements thereto. Information as to the above rules and regulations may be obtained from the Public Services Department of the party of the first part.

The party of the second part shall be responsible for all liability associated with the encroaching facility. The party of the second part agrees to indemnify and hold harmless the party of the first part from and against all claims, damages, losses and expenses, including court costs and attorney fees, arising out of or in any way related to the encroaching facility.

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

The party of the second part agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the Department of Public Services of the party of the first part. The party of the second part agrees to exercise every reasonable precaution during construction and maintenance to prevent eroding of soil; silting or pollution to the rivers, streams, lakes, reservoirs, other water impoundments; ground surfaces or other property; or pollution of the air. There shall be compliance with applicable rules and regulations of the North Carolina Sedimentation Control Commission, and with ordinances and regulations of various counties, municipalities and other official agencies relating to pollution prevention and control. When any installation or maintenance operation disturbs the ground surface and the existing ground cover, the party of the second part agrees to remove and replace the sod or otherwise reestablish the grass cover to meet the satisfaction of the Division Engineer of the party of the first part.

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

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

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

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

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

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

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

VOTE: Aye - All
 Nay - None

MONTHLY WATER USE 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 2.339 million gallons on Sunday, October 29, 2006. The average daily demand was 2.170 million gallons for the entire month. At a previous meeting, Town Council requested specific information to usage when Appalachian State has a home football game. On Saturday, September 30, the water treated was 2.127 million gallons per day, Saturday, October 14, the water treated was 2.294 million gallons per day, and on Saturday, October 28, the water treated was 2.253 million gallons per day.

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 twelve years.

As adopted in Ordinance 05-01, the Town of Boone Council appropriated for 25,000 gallons per day usage for year 2006 for allocation to customers of which 16,441 gallons was previously allocated leaving a balance of 8,559 gallons. Nine previously approved allocations did not contact us within the one year period and did not acquire all necessary permits as required in Ordinance 05-01, plus one project was denied an extension of their allocation by the Boone Town Council, and one applicant withdrew a request to extend the water allocation. The total water allotment remaining for the year 2006 has not broken the sixty percent threshold. All future water service requests in excess of 3000 gallons per day usage will be forwarded to Town Council as required in Ordinance 05-01. Since the last Town Council Meeting, the Utilities Department has approved three projects that subtracted 3,475 gallons per day from the 2006 allotment.

As you can see in the attached “Approved Water Connections” chart, the Public Utilities Department now has 15,133 gallons per day remaining for allotment in 2006. Also, be reminded that all calculations are based on 60% of the North Carolina Discharge Rate Schedule.

			Approved Water Connections			
			2006			
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						25000
		4165	John Cook	May-05	8038	16962
			CataCorner Investments	Jul-05	7296	9666
			CAT Tractor	Oct-05	1107	8559
			2005 Balance Carry Over	Jan-06	228	8787
**Relinquished		Previously	Approved Allocations	Feb-06	16965	25752
Bob Young	Feb-06	450				25302
Sarvos Properties	Feb-06	2100				23202
William Klein	Feb-06	540				22662
Andy Garrett	Feb-06	90				22572
Charles Ulerey	Feb-06	2985				19587
Eric Woolridge	Feb-06	540				19047
Ray Howell	Feb-06	104				18943
			Lynhill Daycare	Mar-06	693	18250
Gene Jensen	Mar-06	180				18070
BREMCO	Mar-06	15				18055
Mels Diner	Mar-06	360				17695
Raymond Verling	Mar-06	430				17265
Jeff Nichols	Mar-06	180				17085
			VIA LLC/Ed Street Co.	Apr-05	5000	22085
ECR Software	Apr-06	81				22004
S&T Enterprises	Apr-06	360				21644
			CC Bear Development	Apr-06	6344	15300
Watauga County	Apr-06	15				15285
TOB ABC Store	May-06	62				15223
A-Z Enterprises	May-06	45				15178
Boone Mall	May-06	1518				13660
			CataCorner Investments	Jul-05	7296	20956
Elaine Gray	Jul-06	90				20866
Pete Beckman	Jul-06	180				20686
			Two Rivers School	Aug-06	540	20146
			Cathy Kosterman	Jun-	1110	21796

				05		
Joyce Dunbar	Aug-06	1800				19996
Joyce Dunbar	Aug-06	360				19636
			Randall Honeycutt	Sep-06	360	19276
Watauga County	Sep-06	38				19238
Exec Partners LLC	Sep-06	30				19208
Boone Mall	Sep-06	600				18608
Watauga Commons	Oct-06	2024				16584
Carolina West Wireless	Oct-06	176				16408
Temleton Properties	Oct-06	1275				15133

ADOPTION OF BUDGET AMENDMENTS

Finance Director Amy Davis presented the budget amendments. Upon a motion by Council member Mason, seconded by Council member Pepin, Council moved to approve the following budget amendments:

DESCRIPTION	ACCOUNT #	TO:	FROM:
Dues & Subscriptions - Governing Body	010-400-000-539100	\$500.00	
Appropriated Fund Balance	010-000-000-499000		\$500.00
Appropriated Fund Balance	010-000-000-499000	\$2,109.00	
Transfer to Law Enforcement Pension Trust	010-500-300-598042		\$2,109.00
Maintenance - Powell Bill	010-600-403-525402	\$30,000.00	
Paving & Resurfacing - Powell Bill	010-600-403-577401	\$61,668.00	
Appropriated Fund Balance	010-000-000-499000		\$91,668.00
State Funding - Powell Bill Allocation	010-000-000-442100	\$15,866.00	
Maintenance - Powell Bill	010-600-403-525402		\$15,866.00
Miscellaneous Supplies - Water Operations	030-700-802-519900	\$663.00	
Miscellaneous Revenue	030-000-000-489900		\$663.00

VOTE: Aye - All
 Nay - None

ADOPTION OF RESOLUTION - LAND FOR TOMORROW

Council member Mason explained that this resolution is in support of legislation to increase conservation spending in North Carolina. Upon a motion by Council member Brantz, seconded by Council member Mason, Council moved to adopt the following resolution:

LAND FOR TOMORROW RESOLUTION

WHEREAS, the Town of Boone is committed to protecting lands critical to the future of North Carolina’s drinking water, economy, and quality of life; and

WHEREAS, North Carolina is losing more than 100,000 acres of those special places to population pressures each year; and

WHEREAS, North Carolina's population is expected to grow by 50 percent in the next 25 years; and

WHEREAS, the important tourism industry can only survive and continue to provide an economic boost to the state with natural beauty, clean water, and scenic vistas; and

WHEREAS, there is inadequate funding for protecting stream banks and floodplains, legacy forests, prime farmlands, local parks and recreation, state parks, greenway and inactive rail corridors, game lands, natural, scenic and historic places; and

WHEREAS, there is no second chance to protect North Carolina's great resources, and costs will only increase in the future; and

WHEREAS, additional state funding will leverage twice as much funding from federal, private, and local sources; and

WHEREAS, a legislative study commission is charges with the responsibility of exploring the financing options for increasing conservation spending in North Carolina and will report to the General Assembly its findings and recommendations by February 1, 2007.

NOW, THEREFORE BE IT RESOLVED that the Town of Boone urges the 2007 General Assembly to enact legislation to increase North Carolina's conservation spending by \$1 billion over five years.

Mayor

ATTEST:

Deputy Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 9)

VOTE: Aye - All
 Nay - None

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

REQUESTED APPEARANCE - NAN CHASE/DANIEL BOONE NATIVE GARDENS

Nan Chase, Acting Chair of the Daniel Boone Native Garden Board of Governors, appeared before the Council to request that the Council would consider allowing beer and wine to be served at weddings and other supervised functions at the Native Gardens. She explained that the Board is in the process of upgrading the services provided for weddings and would not be selling alcoholic beverages during the events. Mayor Clawson inquired about the liability insurance needed to cover this activity on Town property. Town Manager Greg Young stated that the Town may be responsible for some of the liability and may require persons using the facilities in that manner to provide liquor liability insurance. It was the consensus of the Council to direct the Town Attorney to further investigate this issue and develop criteria in order to amend the code to allow beer and wine to be served on Town property.

REQUESTED APPEARANCE – A TO Z ENTERPRISES LLC

Town Attorney Sam Furgiuele opened a public hearing at 8:23 p.m. to hear sworn testimony from Laura Hardee and Public Utilities Director Rick Miller concerning a request for water and sewer service to property located on Greenway Road. Ms. Hardee entered into evidence as **A To Z Enterprises LLC Exhibit 1** the following information: a summary of the request, a site plan of the proposed project, and a copy of the NRCD Discharge Schedule with calculations concerning the proposed project. Ms. Hardee stated that the project would include thirty-two

professional offices, including the Boone Pediatric offices, and 12,500 square feet of retail space. According to the information presented by Ms. Hardee, the project will use 1380 gallons-per-day. Public Utilities Director Rick Miller stated that there was not enough information given initially for his staff to calculate an approximate usage amount. He agreed that based on the information Ms. Hardee has submitted as evidence, the proposed amount of water usage can be approved by his staff. It was the consensus of the Council to allow the Utility Department to consider this request. Mr. Furgieuele closed the hearing at 8:31 p.m.

REQUESTED APPEARANCE – ROBERT E. NELSON JR./WATAUGA COUNTY

Mr. Rocky Nelson, Watauga County Manager, appeared before the Council to request Council's consideration of closing the following streets:

- US 421S in the vicinity of the Hill Top Drive intersection
- Daniel Boone Drive Extension in the vicinity of 282 Daniel Boone Drive Extension
- Daniel Boone Drive Extension in an area adjacent to 514 Daniel Boone Drive Extension

in preparation of beginning the new Watauga High School project. Mr. Nelson explained that a new road is planned for the project that would link New River Heights Extension with Cecil Miller Road and Hill Top Drive. He further informed the Council that this new road would allow homes east of the project to access Highway 421 by way of the Old Highway 421 at a new signalized intersection near the Industrial Park intersection. Residences west of the project will continue to access Highway 421 with the signalized intersection on the Old Highway 421 near Delmar Street. Mr. Nelson stated that this new intersection will be the only entrance to the high school and would serve to eliminate any cut-through traffic through the adjacent residential neighborhoods. He further stated that Watauga County now owns all of the properties needed for the project with the exception of two that are in negotiation. Town Manager Greg Young stated that more information is needed to legally start the road closure process including a survey of the property and metes and bounds description. Upon a motion by Council member Mason, seconded by Council member Pepin, Council members moved that they are in support of the road closures and will begin the road closure process when the needed documentation is submitted by the County.

VOTE: Aye - All
 Nay - None

REQUESTED APPEARANCE - ROBERT E. NELSON JR./WATAUGA COUNTY

Town Attorney Sam Furgieuele opened a public hearing at 8:56 p.m. to hear sworn testimony from Robert Nelson, Randy Johnson, and Public Utilities Director Rick Miller concerning a request for water and sewer for property located in the Perkinsville area. Mr. Nelson began by introducing as **Watauga County Exhibit 1**, a letter from R M & N Engineers dated November 1, 2006 outlining possible conservation strategies for use at the proposed Watauga High School project. Mr. Nelson explained that part of the plan for water conservation would be to use a rainwater collection system to flush commodes and irrigate fields. Public Utilities Director Rick Miller stated that the current water code does not allow this use but could be amended. He pointed out that this system would have to be metered as it is put back into the sewer system. Council member Wilcox inquired about the time period for construction for the new project. Mr. Nelson stated that he anticipates requesting conditional zoning for the property in early 2007 and applying for building permits in the spring of 2007. He stated that a completion date would follow within 2-3 years after permits are issued. Randy Johnson asked if the new high school is being designed to allow for more students than the current location allows. Mr. Nelson stated the new school would be built to accommodate 1600 students but demographic figures indicate that the student population will be leveled out at 1400 students. With no further public testimony, Mr. Furgieuele closed the public hearing at 9:19 p.m. Upon a motion by Council member Pepin, seconded by Council member Mason, Council moved to allocate 4800 gallons-per-day (gpd) from the 2006 allocation, 4800 gpd from the 2007 allocation, and 4800 gpd from the 2008 allocation for a total of 14,400 gallons with a condition that Watauga County begin the process of annexation for the property.

VOTE: Aye - All
 Nay - None

PUBLIC COMMENT

Mr. Dan Burke of Mountain Alliance appeared before Council to inquire about the new procedure for requesting funds by non-profit organizations. Council member Pepin stated that she, Council member Mason, Town Manager Greg Young, and Finance Director Amy Davis have conducted two meetings already to begin the task of designing a new procedure. She indicated that new applications will be ready by early spring of 2007 and that a notice will be sent out informing everyone of the new procedures. She further noted that each non-profit organization receiving funding will have to prepare a report on how the funds were used and submit it by April 15, 2007.

CLOSED SESSION

Upon a motion by Council member Wilcox, seconded by Council member Pepin, Council moved to enter Closed Session at 9:26 p.m. pursuant to NCGS 143-318.11a)3)5) in order to discuss the following matters:

- Potential Litigation - Ron McCreary.
- ASU Interconnection Agreement.
- Property Acquisition.
- Legal Ramifications of Conditional Zoning.

VOTE: Aye - All
 Nay - None

Upon a motion by Council member Mason, seconded by Council member Wilcox, Council moved to exit Closed Session at 10:52 p.m.

VOTE: Aye - All
 Nay - None

ACTION FOLLOWING CLOSED SESSION

Upon a motion by Council member Brantz, seconded by Council member Mason, Council moved to approve revisions and adopt the ASU Interconnection Agreement.

WATER SUPPLY AGREEMENT BETWEEN TOWN OF BOONE AND APPALACHIAN STATE UNIVERSITY

THIS AGREEMENT ("Agreement") is entered into as of the first day of _____, 2006, by and between APPALACHIAN STATE UNIVERSITY, an agency or instrumentality of the State of North Carolina and a constituent institution of the University of North Carolina (hereafter referred to as "University") and the TOWN OF BOONE, a North Carolina municipality (hereafter referred to as "Town").

W I T N E S S E T H:

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

WHEREAS, University is organized pursuant to the laws of the State of North Carolina, and is authorized by law to operate a water distribution system; and

WHEREAS, it is the policy of the State of North Carolina to encourage the cooperation of and support between independent water systems; and

WHEREAS, Town estimates that it will need a supplemental water supply in the foreseeable future to address the needs of its citizens; and

WHEREAS, the parties desire to cooperate with each other in meeting the needs of their respective constituencies;

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

1. Water Supply by University: University agrees to supply and sell to Town, upon Town's request, water to assist Town in meeting peak demand from time to time during the term of this Agreement; provided, however, that University's obligations under this Agreement shall not limit or restrict University's ability to meet the water supply needs of its constituents and provide for the safety, health and welfare of persons and property on its campus at any point in time or require production of potable water in excess of any permit issued to it by the North Carolina Department of Environment and Natural Resources or any of its divisions

(all of which shall be determined by University in its sole discretion). In addition, University agrees to supply and sell to Town, at Town's request, an amount of water at least equal to the amount of water supplied by Town to University-owned or controlled facilities, University Foundation owned or controlled facilities, and other facilities owned or controlled by entities created or controlled by the University or the Chancellor and his designee(s), through Town's water distribution system.

2. Water Supply Availability: University's intent is to make reasonable efforts to accommodate any additional water purchase requests that Town may make above and beyond the amounts provided for in section 1, above. In the event of a required interruption or curtailment of water delivery, the supplying party will give the receiving party at least twenty-four (24) hours notice prior to initiation of interruption or curtailment. In the event of a force majeure, each party agrees that any interruption or curtailment of water delivery to the other will be proportional to interruptions or curtailments by the supplying party to other water customers, if any.

3. Water Purchases by Town: Town agrees to receive and purchase from University the water supplied by University pursuant to this Agreement at the same rates applicable to Town's provision of water services to the University. Town shall, at least quarterly, pay for all water received, or grant to University a credit against its water services equal to the amount that Town would otherwise pay to University for water supplied pursuant to this Agreement, and provide to University an accounting of such credits against charges owed by University to Town for water services. On or before May 31 of each year, Town shall pay University the amount, if any, that such credits exceed charges billed to University for water services during the preceding 12 months. Such payment shall be made to University on or before June 15 of each year.

4. Interconnection of University and Town Water Systems:

4.1 The parties hereby agree to jointly fund the expenses of design, construction, maintenance and operation of an interconnection and related facilities ("the interconnection facilities") between their respective water distribution systems to allow transmission of water contemplated by this Agreement by either party to the other. The interconnection will be housed in a building constructed on University property, and with the Town's approval, will be constructed in substantial compliance with the recommendations set forth in Exhibit A ("Report on Interconnection of the Appalachian State University's and Town of Boone's Water Systems for Emergency Water Supply," issued by the Wooten Company as of May 9, 2005), which will be furnished to Town prior to the execution of this agreement.

4.2 University shall be responsible for selection of designers, engineers, and contractors to construct the interconnection facilities; provided, however, University shall provide Town at least forty-five (45) days to review and submit comments or recommendations on proposals prior to selection, which comments or recommendations will be taken into consideration by University before final selection. Upon completion of the preliminary and final designs of the interconnection facilities, University will furnish to Town two copies of the preliminary and final design plans and specifications, and such other data as may be required for Town to effectively review the documents. University shall provide Town

at least forty-five (45) days to review and submit comments or recommendations on all designs related to the project, which comments or recommendations will be taken into consideration by the University before entering any contracts for the preliminary and final design plans and specifications.

4.3 University hereby grants permission to Town to access University lands and facilities for all purposes required or necessary to the Town's performance of this Agreement, including, but not limited to, installing, inspecting, operating, maintaining, repairing and reconstructing such pipes, manholes, fittings, fixtures and other accessories as from time to time may be required, together with the full right of access to and egress from said area, and performing any other of its obligations under this Agreement. The Town shall not injure, mar or in any way deface any University property except to the extent reasonably necessary to complete the activities involved.

4.4 Placement of equipment and supplies, and other physical arrangements including, but not limited to, trenching, erection of special platforms, water tanks, scaffolding, rigging, and other apparatus – shall be subject to University's approval except when an emergency exists and Town is unable to obtain advance approval. However, University's approval shall not constitute an opinion or certification as to whether Town's placement of equipment and supplies, or other physical arrangements, complies with applicable requirements (including, but not limited to, those imposed by the Occupational Safety and Health Act, and implementing regulations). Town shall be responsible to University for any damage to University property through construction, maintenance or otherwise if such damage is the result of the Town's sole actions. Likewise, University shall be responsible to Town for any damage to Town property through construction, maintenance or otherwise if such damage is the result of the University's sole actions. If University property is disturbed, damaged or destroyed by the Town, the Town shall restore it to the condition that existed prior to the Town's activities. If Town property is disturbed, damaged or destroyed by the University, the University shall restore it to the condition that existed prior to the University's activities. All waste resulting from the Town's activities under this section shall be removed by the Town by its sole cost and expense.

4.5 University shall periodically invoice Town for one-half of all expenses incurred in the planning, design, construction, maintenance and operation of the interconnection facilities, and Town shall repay such invoices within thirty (30) days following receipt of such invoices.

4.6 Representatives designated by each of the parties will, from time to time, jointly develop protocols for staffing, security, meter reading and testing, and all other aspects of operations related to the interconnection facilities.

5. Water Transmission Mains, Booster Pumping Facilities and Appurtenances: The parties hereby acknowledge that they shall be responsible for the financing, construction, ownership, operation and maintenance of their respective water transmission mains, associated booster pumping facilities and other appurtenances necessary for them to deliver water to the interconnection facilities, as well as all equipment and materials on their respective sides of the point of the interconnection, which will remain the sole property of the respective parties.

6. Emergency Supply of Water: In the event of a failure or other emergency within the water system of one party, and the other system having excess water available, the non-failing system will provide water to the failed system to the maximum extent feasible; provided, however, that each party's obligation under this Agreement shall not limit or restrict that party's ability to meet the water supply needs of its constituents and provide for the safety, health and welfare of persons and property within its jurisdiction at any point in time, or require production of potable water in excess of any permit issued to it by the North Carolina Department of Environment and Natural Resources (NCDENR) or any of NCDENR's divisions (all of which shall be determined by the supplying party in its sole discretion). For the purposes of this Agreement, "emergency" is defined as a situation or set of facts that would lead a reasonable person to conclude that the condition of a party's water treatment or water distribution system presents an immediate or imminent threat to public health or safety. The recipient of water under this section shall pay to the provider the sum owed within thirty (30) days following the receipt of invoice therefore. Charges for water provided in an emergency under this section shall be based on the same rates described elsewhere in this Agreement. In the event of an emergency, the party in need of water shall promptly take all necessary and available steps to alleviate the emergency. A situation which lasts a period of time greater than thirty (30) days shall no longer be considered an

“emergency,” and the provision of water subsequently shall require further discussions as to the length of time and amount of water which will be needed, and an agreement as to the scope and timing of remedial measures which will be taken to end the emergency.

7. Water Quality: Any water delivered by University to Town, or by Town to University, will meet the Primary and Secondary Water Quality Standards as established by the State of North Carolina. Otherwise, the parties agree to accept water delivered by each other through the interconnection facilities “as is,” and each party will hold the other party harmless for water delivered which meets the aforesaid standards.

8. Metering: The interconnection facilities shall include meters that provide capacity for measuring flow of water from either party’s distribution system to the other party’s distribution system. Meters associated with the interconnection will be tested annually by a certified meter technician to maintain a mid-scale accuracy of greater than ninety five percent (95%) of the actual flow. In addition, should either party have reason to believe that the other party’s meter is not properly registering a flow of water within the stated tolerance, that party can request that the other party calibrate its meter to determine accuracy. Should the meter test with less accuracy, the bills or credits for a two (2) month period prior to the test will be adjusted proportionately. In addition, the party with the inaccurate meter will promptly repair or replace the meter. Each party shall bear its own cost for meter testing, repair and replacement of meters.

9. Reports, Data and Access: Each party shall furnish to the other such reports and data as the other party may reasonably require to determine water quantities furnished or to investigate water quality issues. In addition, appropriate officials of each party will have access to the other party’s water transmission main and associated appurtenances related to the facilities provided for in this Agreement, for the purpose of reasonable inspection and determination of compliance with the terms of this Agreement and all applicable State laws and regulations.

10. Liability: Each party shall be solely liable to the extent permitted by law for any claims, actions, demands or damages arising out of any act or omission on the part of its officers, employees and agents in performance of this Agreement.

11. Other Water Sales or Purchases: Nothing contained in this Agreement will preclude or restrict in any way a party’s authority or ability to enter into agreements with any other entity for the sale or purchase of water. However, at least one year prior to entering any proposed sale or agreement which prevents that party from supplying to the other party the amount of water contemplated by this Agreement, the party wishing to enter into such agreement shall notify the other party of its intention to enter such agreement or make such sale, in order to allow the receiving party adequate time to make alternative arrangements to meet its anticipated needs.

12. Insurance: Each party shall maintain during the term of this agreement, at its own cost and expense, self-insurance or public liability insurance purchased from an insurance company authorized to do business in North Carolina in the minimum limits of ONE MILLION DOLLARS (\$1,000,000.00) for each person injured or killed and not less than ONE MILLION DOLLARS (\$1,000,000.00) for the injury or death of two (2) or more persons in any one occurrence, and property damage insurance in the sum of not less than

FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for each occurrence. Each party shall, upon request, furnish the other party with a certificate showing that such insurance has been issued and is in full force and effect. Each party shall maintain at its own cost and expense workers’ compensation insurance or self-insurance in the amount required by statute throughout the term of this Agreement.

13. Non-assignment: This agreement shall not be assigned by either party without the prior written consent of the other party. Any attempt to assign this agreement without such consent will render this Agreement null and void, and all obligations hereunder shall immediately cease.

14. Parties: Each party shall be considered to be an independent contractor in relation to the other, and shall not be construed to be an agent or representative of the other party; therefore, neither party shall have any liability to a third party for the acts or omissions of the other party. In addition, neither party, nor any of its employees, agents, or contractors, shall be deemed to be employees or agents of the other party. Neither party, nor any of each party’s employees, agents

or contractors, shall be entitled to compensation for services, workers compensation, or employee benefits from the other party by virtue of this Agreement.

15. Choice of Law: This agreement shall be governed by, and construed in accordance with, laws of the State of North Carolina. Venue of any dispute between the parties shall be Watauga, North Carolina.

16. Termination/Remedies Cumulative: In the event of default each party shall have such rights or remedies available in equity or authorized by law for this Agreement. However, neither party shall terminate this Agreement for default or breach without first giving the other party a reasonable opportunity to cure any breach or default.

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

18. Severability: In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein; provided, however, in no case shall either party sue or otherwise assert any claim or cause of action, whether at law, in equity, or otherwise, against any signatory to the agreement in that person's individual capacity.

19. Waiver: No covenant or condition of this Agreement can be waived except by written consent of the parties hereto. A waiver of any covenant or condition on one occasion shall not be deemed a waiver of said covenant or condition on any subsequent occasion unless such fact is specifically stated in the waiver. Forbearance or indulgence by either party in any regard whatsoever shall not constitute a waiver of any covenant or condition to be performed by the other party, and, until the other party has completely performed all covenants and conditions of this Agreement, each party shall be entitled to invoke any remedy available to it under this Agreement or any law or equity despite such forbearance or indulgence.

20. Applicable Laws and Regulations: The parties mutually agree to comply with all applicable laws, rules and regulations of the State of North Carolina and the United States of America, in connection with the performance or enforcement of this Agreement.

21. Notices: All notices, demands and requests to be given or made hereunder shall be given or made in writing and shall be deemed to be properly given or made if sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

As to University:

Appalachian State University
438 Academy Street
ASU Box 32002

Boone, NC 28608
Attention: Chancellor
Phone: (828) 262-2040
Telephone: (828) 262-7195
Facsimile: (828) 262-3024

As to Town:

Town of Boone
P.O. Drawer 192

Boone, NC 28607
Attention: Town Manager
Telephone: (828) 262-4530
Facsimile: (828) 262-4572

Any such notice, demand or request may also be transmitted to the appropriate above-mentioned party by electronic mail, telephone or facsimile and shall be deemed to be properly given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing and sent as specified above. Any of such addresses may be changed at any time on written notice of such change sent by United States registered or certified mail, postage prepaid, to the other parties by the party effecting the change.

22. Limits of Agreement: Nothing in this agreement shall be construed to allow either party to tap into, connect into, or use the other party's water system except to the extent specifically authorized by this Agreement. Other connections to the Town of Boone water system shall be made only in compliance with the Town of Boone's Water and Sewer Code, and subject to all rates and charges provided therein.

23. Amendment: This Agreement cannot be amended, modified, supplemented or rescinded except in writing signed by the parties hereto.

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

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

26. Multiple Originals: This Agreement is executed in multiple originals, at least one of which will be retained by each of the parties hereto, and all of which together shall constitute one and the same instrument.

IN TESTIMONY WHEREOF, Town has caused this Agreement to be executed in its name by its Mayor, attested by its Town Clerk, and its official seal hereunto affixed, all by Resolution duly entered by the Town Council; and University has caused this Agreement to be executed in its name by its Chancellor, and attested by its Assistant Secretary, as evidenced by the affixing of the seal of the University by its Assistant Secretary, all pursuant to the authority of its Board of Trustees duly given, all effective on this the day and year first above written.

VOTE: Aye - All
 Nay - None

ADJOURNMENT

On a motion by Council member Mason, seconded by Council member Brantz, Council moved to adjourn the meeting at 10:53 p.m.

VOTE: Aye - All
 Nay - None

Deputy Town Clerk

Mayor