MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
NOVEMBER 19, 2009

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, November 19, 2009, 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, Stephen Phillips, and Jamie Leigh. Council Member-Elect Andy Ball was also in attendance. Staff members present were Town Manager Greg Young, Deputy Town Clerk Kimberly Brown, Assistant to the Town Manager Jim Byrne, Police Chief Dana Crawford, Fire Chief Reggie Hassler, Public Works Director Blake Brown, Utilities Director Rick Miller, Development Coordinator David Graham, and Planner Jane Shook. Town Attorney Sam Furgiuele was also present.

ANNOUNCEMENTS

Mayor Clawson called the meeting to order and welcomed all in attendance. She asked to observe a moment of silence for the 13 victims of the November 5th shootings in Fort Hood, Texas, remembering, in particular, Specialist Fred Z. Greene from Mountain City who received full military honors at a public graveside service yesterday. She stated that we owe all of them a debt of gratitude.

Mayor Clawson offered congratulations to Doc Hendley, founder of Wine to Water, who has been designated as one of ten nominees for CNN's Hero of the Year. Wine to Water is a non-profit organization which helps to provide clean water for people in developing countries through funds raised at wine-tasting events. She stated that she really enjoyed her trip to NC State University where she read a proclamation in support of Doc Hendley who has helped to bring clean water to more than 25,000 people in refugee camps, schools, hospitals, orphanages, and private homes. She noted that the Hero of the Year will be announced on November 26th during "CNN Heroes: An All-Star Tribute."

Public Utilities Director Rick Miller invited Lee Spencer and Tom Boyd, Regional Engineers with the NC DENR Public Water Supply Section, to present Brenda Hicks, Water Treatment Plant Superintendent, with the AWOP (Area Wide Optimization Program) Award. Mr. Spencer pointed out that only two water treatment plants in this region have received this award. He and Mr. Boyd thanked the Town staff for their hard work and offered their congratulations for this achievement.

Mayor Clawson noted that anyone wanting to speak during the public comment session would need to sign the public comment sign-up sheet.

TENTATIVE AGENDA ADOPTION

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

1. Deletion of Item 6.A. - Update on Legislative Issues - Steve Metcalf, The Policy Group.
2. Addition of Item 6.V. - Scheduling of Special Meeting - Parking Charette.
3. Addition of Item 6.W. - Use of Horn in the West parking lot by ASU.
4. Additions to Closed Session (pursuant to NCGS 143-318.11a)3) - To receive legal advice regarding the Watauga High School properties; New Town Council legislation and grant application.

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

VOTE: Aye - All
Nay - None

CONSENT AGENDA ADOPTION

Council Member Mason indicated that the meeting times noted on the October 1, 2009 minutes are incorrect and that the parking charette had not been scheduled at that time as indicated in the

minutes. Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to adopt the following consent agenda items, as amended:

Minutes: October 1, 2009 - Special Meeting.
October 5, 2009 - Special Meeting.
October 15, 2009 - Regular Meeting.

Tax Releases & Refunds: September 2009:

TAX RELEASES
SEPTEMBER 2009

Taxpayer	**Year**	**Amount**	**Description**
TOMLINSON, JESSIE CARROLL	2009	13.26	TURN IN TAG
MAXWELL, JOSETTE LOU	2009	43.25	INCORRECT SITUS
BIGGERSTAFF, DONALD BRYSON	2009	41.68	TURN IN TAG
GRAHAM, DANIELLE RENEE	2009	5.24	TURN IN TAG
LONG, GEOFFRARY GREER	2009	9.25	ADJ FOR INCORRECT SITUS
MIMBS, ALYSSA CASWELL	2009	51.99	LIVES IN ALLEGHANY CO
NC DEPT OF TRANSPORTATION	2009	436.23	EXEMPT
WESTON, BENJAMIN	2009	32.01	LIVES IN GUILFORD CO
WALKER P.A., JEFFER JAY	2009	51.59	MOVED TO TENNESSEE
MOUNTAIN PIRATE	2009	16.28	BUSINESS CLOSED 2008
BLADE CORPORATION	2009	233.84	COMMON AREA
MARLETT, DAVID C MARLETT, EMILY D	2009	10.36	INCORRECT VALUE
CLONTZ, NEIL MONTE	2009	79.76	TURN IN TAG
PARLIER, GLORIA S	2009	5.78	FAILED TO RECEIVE OA EXEMPTION
HOWELL, GEORGE A & MELINDA	2009	1018.61	NO DWELLING ON PROPERTY
EGGERS, STACY C JR PERRY, MARGARET EGGERS	2009	9.25	CLERICAL ERROR
ARCHER, JOHN V ARCHER, LISA K	2009	11.57	TOTAL LOSS TITLE
VIDALIA MICHAEL VETRO JR	2009	11.19	BUSINESS SOLD IN 2008
THE BEAD BOX	2009	48.84	BUSINESS SOLD IN 2008
CT RENTAL LLC CAROLINA TRACTOR RENTAL LLC	2009	2076.80	MOST OF EQUIPMENT IS GROSS RENTALS
BLUE SKIES DIRECT, INC.	2008	203.50	BUSINESS CLOSED JULY 2007
HILL, ADAM GREGORY	2008	33.64	ADJ FOR INCORRECT BILL

		4443.92	

MSD SEPTEMBER 2009

Taxpayer	**Year**	**Amount**	**Description**
WALKER, P.A., JEFFER JAY	2009	29.28	MOVED IN TENNESSEE
VIDALIA MICHAEL VETRO JR	2009	6.35	BUSINESS SOLD IN 2008
		35.63	

TAX REFUNDS SEPTEMBER 2009

Taxpayer	**Year**	**Amount**	**Description**
JONES, CANDACE TAYLOR	2008	29.96	TURN IN TAG
		29.96	

VOTE: Aye - All
Nay - None

PUBLIC COMMENT

Jennele Vaquera, owner of the Lucky Penny, appeared before the Council to request an amendment to the agenda to take action on a request to approve an encroachment agreement. She explained that she is moving her business to a new location and is in need of an encroachment agreement in order to erect her new sign. She stated that she is holding a grand-opening for her new location on December 1st and cannot wait until the next regular meeting to seek Council's approval. Upon a motion by Council Member Phillips, seconded by Council Member Mason, Council moved to amend the agenda to add this request as an action item under "Council Matters" as Item 6.X.

VOTE: Aye - All
Nay - None

Kit Fischer, representing the Daniel Boone Native Gardens, appeared before the Council to request that the DBNG be added to the list of agencies receiving funds from the Tourism Development Authority. She listed several needs of the gardens. Council Member Pepin asked how she determined the prices of several of the items needed. Ms. Fischer replied that she obtained the pricing information from the Public Works Department. It was the consensus of the Council to add this item to the December meeting agenda.

William Bake stated that he would like to make comments regarding Item 6.H. Traffic Committee Recommendation.

ADOPTION OF ZONING AMENDMENTS

Case 20090342 Flood Damage Prevention - UDO Text amendment to revise Flood Damage Prevention Regulations and Zoning Map amendment to revise Special Flood Hazard Area/Floodway and Flood Fringe Districts (overlay districts). Development Coordinator David

Graham presented the following information regarding the Planning Commission action on this request:

Planning Commission First Motion and Vote:
Commission Member Simmons made a motion, seconded by Commission Member Marland, the proposed amendment to the Town's zoning ordinance is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relates to the application because the proposed changes to the ordinance and map meet or exceed the minimum criteria of the current NFIP and applicable NC laws.

VOTE: Aye -All
Nay -None

Planning Commission Second Motion and Vote:
Commission Member Simmons made a motion, seconded by Commission Member Marland, for the Planning Commission to recommend approval for the following reasons:

The proposed changes are required in order for affected property owners in the Town of Boone to have continued access in the NFIP after December 3, 2009 - the date upon which the adoption of such changes is required by FEMA if the Town of Boone is to have continued eligibility in the NFIP.

VOTE: Aye - All
Nay - None

Mr. Graham noted that the proposed text includes several optional sections which the Council will need to decide to include or delete. He presented each optional section (referencing the page number of the section) contained in the QPH packet staff report:

(Page 19)
Regulatory Flood Protection Elevation: *The "Base Flood Elevation" plus the "Freeboard"* ***of two feet.*** ~~*In "Special Flood Hazard Areas" wherer Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus two (2) feet of freeboard.*~~ *In "Special Flood Hazard Areas" where no BFE has been established, this elevation shall be at least _____ (__) feet above the highest adjacent grade.*

Council Member Mason suggested the amount of two feet in order to maintain consistency. Upon a motion by Council Member Pepin, seconded by Council Member Phillips, Council moved to insert the figure of "two feet" in the blank of this optional section.

VOTE: Aye - All
Nay - None

(Page 16)
Section 300 Definitions: *Floodway Zone: A zone around all unmapped streams with drainage areas greater than one square mile, extending fifty (50) feet from the center of a channel, or twenty-five (25) feet from the top of the bank.*

Mr. Graham stated that the above definition is now outdated and can be deleted from this section. Upon a motion by Council Member Pepin, seconded by Council Member Brantz, Council moved to remove the definition for *Floodway Zone* from the proposed text.

VOTE: Aye - All
Nay - None

(Page 20)
Substantial Damage: Damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of "substantial improvement". Substantial damage also means flood-related damage

sustained by a structure on two separate occasions during a 10-year period for which the costs of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

Upon a motion by Council Member Mason, seconded by Council Member Pepin, Council moved to remove the second sentence of this paragraph since the first sentence is sufficient.

VOTE: Aye - All
Nay - None

(Page 26)
Section 302[b][1][a](vii) *The certificate of the ~~plot~~ site plan by a registered land surveyor or professional engineer.*

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to delete subsection [b][1][a] (vii) of Section 302 as recommended by the Town Attorney.

VOTE: Aye - All
Nay - None

(Page 28)
Section 302[b][2][h] *Limitations of below BFE enclosure uses (if applicable). (i.e., parking, building access and limited storage only).*

Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to delete subsection [b][1][h] of Section 302 as recommended by the Town Attorney.

VOTE: Aye - All
Nay - None

(Page 28)
Section 302[b][3][a](i) *An Elevation Certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certificate of the elevation of the reference level, in relation to mean seal level. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.*

Section 302[b][3][a](ii) *An Elevation Certificate (FEMA Form 81-31) is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it shall be the duly of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.*

Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to keep subsections [b][3][a](i) and [b][3][a](ii) of Section 302 as recommended by the State and the Town Attorney.

VOTE: Aye - All
Nay - None

(Page 51)
Section 303[10][f][3] [b] *The no encroachment standard of Section 303 [f][1].*

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved that inclusion of subsection [10][f][3][b] of Section 303 is not necessary.

VOTE: Aye - All
Nay - None

Council Member Mason pointed out that these standards are mandated by the federal government and are necessary for participation in the Flood Insurance Program.

Town Council First Motion and Vote:
Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved that the proposed amendment to the Town's zoning ordinance, as amended, is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relate to the application because the proposed changes to the ordinance and map meet or exceed the minimum criteria of the current NFIP and applicable NC laws.

VOTE: Aye -All
Nay -None

Town Council Second Motion and Vote:
Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve the proposed amendment to the Town's zoning ordinance and believe that approval is reasonable and in the public interest because the proposed changes are required in order for affected property owners in the Town of Boone to have continued access in the NFIP after December 3, 2009 - the date upon which the adoption of such changes is required by FEMA if the Town of Boone is to have continued eligibility in the NFIP and the effective date of this amendment. **(Approved text permanently on file in the Clerk's Office at Town Hall.)**

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Pepin, seconded by Council Member Phillips, Council moved to accept the Flood Insurance Study (FIS) report. **(Permanently on file at the Development Services Department.)**

VOTE: Aye - All
Nay - None

Case 20090582 Grand Boulevard NCD Addition - UDO Text and Zoning Amendment for the extension of the Grand Boulevard Neighborhood Conservation District to include Iris Lane. Development Coordinator David Graham presented the following information regarding the Planning Commission action on this request:

Planning Commission First Motion and Vote:
Commission Member Dotson made a motion, seconded by Commission Member Milstead, that the proposed amendment to the Town's zoning ordinance is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relates to the application because the amendments contribute to the health, welfare, and safety of Boone's neighborhoods.

VOTE: Aye - All
Nay - None

Planning Commission Second Motion and Vote:
Commission Member Huffstetler made a motion, seconded by Commission Member Marland, for the Planning Commission to recommend approval for the following reasons: because the amendments contribute to the health, welfare, and safety of Boone's neighborhoods.

VOTE: Aye - All

Nay - None

Town Council First Motion and Vote:
Upon a motion by Council Member Brantz, seconded by Council Member Phillips, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relate to the application because the amendments contribute to the health, welfare, and safety of Boone's neighborhoods.

VOTE: Aye - All
Nay - None

Town Council Second Motion and Vote:
Upon a motion by Council Member Brantz, seconded by Council Member Phillips, Council moved to approve the proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because the amendments contribute to the health, welfare, and safety of Boone's neighborhoods. **(Approved text permanently on file in the Clerk's Office at Town Hall.)**

VOTE: Aye - All
Nay - None

Case 20090610 Historic Preservation Commission - UDO text amendment for the organization of a Historic Preservation Commission and the creation of Article XXIII Historic Preservation. Development Coordinator David Graham presented the following information regarding the Planning Commission action on this request:

Planning Commission First Motion and Vote:
Commission Member Milstead made a motion, seconded by Commission Member McRae, that the proposed amendment is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relates to the application because the amendment preserves the historic character of the Town and the inclusion of the Historic Preservation Commission in the UDO, and establishing its powers and duties, represents an integral step in officially identifying, preserving, and protecting individually historically and culturally significant structures, sites, and landmarks within the Town of Boone.

VOTE: Aye - All
Nay - None

Planning Commission Second Motion and Vote:
Commission Member Simmons made a motion, seconded by Commission Member McRae, for the Planning Commission to recommend approval for the following reasons: that these changes to the UDO provide a framework for private developers, property owners, public entities, and the Town of Boone to work together to protect and maintain such sites as redevelopments are proposed.

VOTE: Aye - All
Nay - None

Brief discussion ensued concerning the correction of some typographical errors contained in the proposed text.

Town Council First Motion and Vote:
Upon a motion by Council Member Pepin, seconded by Council Member Brantz, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because it directly addresses the Comprehensive Plan and Smart Growth goals for the protection of historic properties and for the provision of future guidelines for historic landmark or district designations.

VOTE: Aye - All
Nay - None

Town Council Second Motion and Vote:
Upon a motion by Council Member Pepin, seconded by Council Member Brantz, Council moved to approve the proposed text amendment to the Town's zoning ordinance and believe that approval is reasonable and in the public interest because as the Town grows with the addition of new development and revitalization efforts, it needs to invest in the protection of the history and character of the area. **(Approved text permanently on file in the Clerk's Office at Town Hall.)**

VOTE: Aye - All
Nay - None

REQUEST TO HEAR TWO ZONING CASES IN DECEMBER

Development Coordinator David Graham presented the following two cases to be placed on the agenda for a special public hearing on Monday, December 7, 2009:

Case 20090644 - Boone Exchange Partners - Request CD B-3 General Business, proposing to add one building containing six units with four bedrooms each (total of 24 bedrooms) to the Exchange Apartments Complex. This would bring the Exchange Apartments to three buildings and 72 bedrooms. This property is located off Highway 421/West King Street.

Case 20090645 - Poplar Cove of Boone, LLC - Request CDR-3 Multiple Family for an Architecturally Integrated Subdivision containing 29 lots (12 single-family detached homes, 15 townhome units, and two duplex units. This property is located off Poplar Grove Road, behind the Health Department.
Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved that the aforementioned two cases be placed on the agenda for the Special Public Hearing agenda on Monday, December 7, 2009, at 7:00 p.m. in the Council Chambers, 1500 Blowing Rock Road.

VOTE: Aye - All
Nay - None

PRESENTATION OF PROPOSED TEXT AMENDMENT

Development Services Planner Jane Shook explained that Watauga County is currently requesting annexation of a portion of property in response to a water and sewer request and that the property is located off Brookshire Road. She informed the Council that the property is not zoned and will need to be zoned in conjunction with the annexation request that has been submitted for action by the Council. Upon a motion by Council Member Mason, seconded by Council Member Leigh, Council moved to place a request for zoning for property owned by Watauga County located off Brookshire Road on the February 2010 Quarterly Public Hearing agenda.

VOTE: Aye - All
Nay - None

ADOPTION OF RESOLUTION - SET PUBLIC HEARING DATE FOR CCC&TI, HOSPITALITY HOUSE & WATAUGA COUNTY ANNEXATION

Upon a motion by Council Member Brantz, seconded by Council Member Leigh, Council moved to recuse Council Member Mason from deliberation of the following annexation request since she is employed by one of the petitioners.

VOTE: Aye - All
Nay - None

Development Services Planner Jane Shook stated that this action is the next step in the annexation process of a 6.44-acre tract located off Brook Hollow Road. Upon a motion by Council Member Phillips, 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-58.2 (CCC & TI, HOSPITALITY HOUSE AND WATAUGA COUNTY ANNEXATION)

WHEREAS, a petition requesting annexation of the non-contiguous 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 to 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 non-contiguous area described herein will be held at Council Chambers on Blowing Rock Road at 6:30 p.m. on December 17, 2009.

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

This is a description of a Satellite Annexation survey for the Town of Boone, being that property belonging to the Hospitality House of The Boone Area, Inc., a deed of which is recorded at Book of Records 1347 at Page 400 and also recorded at Plat Book 20 at Page 361, that property belonging to Caldwell Community College and Technical Institute, a deed of which is recorded at Book of Records 350 at Page 581 and also recorded at Plat Book 20 at Page 361, and that property belonging to Watauga County, a deed of which is recorded at Deed Book 153 at Page 756 and being Tract 1 of a plat entitled "Subdivision for Watauga County", a plat of which is recorded at Plat Book 12 at Page 260, all being recorded in the Watauga County Registry of Deeds, being in New River Township, Watauga County, North Carolina and being more particularly described as follows:

BEGINNING on a concrete monument found, being located on the southern side of Brook Hollow Road (SR #1614), being a common corner with that property belonging to New River Capital, Inc., a deed of which is recorded at Book of Records 317 at Page 638 and with that property belonging to the Hospitality House of The Boone Area, Inc., a deed of which is recorded at Book of Records 1347 at Page 400 and also recorded at Plat Book 20 at Page 361, all being recorded in the Watauga County Registry of Deeds, said POINT OF BEGINNING being located South 04 degrees 39 minutes 09 seconds East 58.10 feet from a railroad spike found in the pavement of Brook Hollow Road and in the eastern line of the Watauga County property as described in Deed Book 153 at Page 756 and also recorded at Plat Book 12 at Page 260 (Tract 1), both being recorded in the Watauga County Registry of Deeds, and POINT OF BEGINNING also is located South 72 degrees 13 minutes 50 seconds West 1,271.95 feet (horizontal distance) from N.C.G.S. Grid Monument "Hills"; thence from the POINT OF BEGINNING and with the New River Capital, Inc. property and aforementioned Hospitality House of The Boone Area, Inc. property South 66 degrees 56 minutes 05 seconds West 189.66 feet to a 5/8 inch rebar found, being a common corner with that property belonging to the Hospitality House of The Boone Area, Inc., New River Capital, Inc. and that property belonging to Boone-White Laurel, Inc., a deed of which is recorded at Book of Records 389 at Page 164 and at Plat Book 14 at Page 207,

both being recorded in the Watauga County Registry of Deeds; thence continuing with the Hospitality House of the Boone Area, Inc. property and the Boone-White Laurel, Inc. property South 66 degrees 44 minutes 54 seconds West 21.20 feet to a 5/8 inch rebar found, being a common corner between two parcels owned by Boone-White Laurel, Inc., the aforesaid tract and a parcel recorded at Book of Records 389 at Page 164 and at Plat Book 14 at Page 208, both being recorded in the Watauga County Registry of Deeds; thence continuing with the Hospitality House of the Boone Area, Inc. property and the Boone-White Laurel, Inc. property South 66 degrees 51 minutes 54 seconds West 93.80 feet to a 3/8 inch rebar found in concrete, being a common corner with the aforementioned Hospitality House of the Boone Area, Inc. property and the Boone-White Laurel, Inc. property (Book of Records 389 Page 164 and Plat Book 14 Page 208) and that property belonging to Southern Agricultural Insecticides, Inc., a deed of which is recorded at Deed Book 137 at Page 160 in the Watauga County Registry of Deeds; thence continuing with the Hospitality House of the Boone Area, Inc. property and the Southern Agricultural Insecticides, Inc. property for one call: North 26 degrees 33 minutes 14 seconds West 279.84 feet to an existing ½ inch iron pipe, and being a common corner with the aforementioned Southern Agricultural Insecticides, Inc property and that property belonging to Caldwell Community College and Technical Institute, a deed of which is recorded at Book of Records 350 at Page 581 and also recorded at Plat Book 20 at Page 361, all being recorded in the Watauga County Registry of Deeds; thence continuing with Southern Agricultural Insecticides, Inc property and that property belonging to Caldwell Community College and Technical Institute for three calls: continuing along the same bearing (North 26 degrees 33 minutes 14 seconds West) 349.81 feet to an existing ½ inch iron pipe, and still continuing along the same bearing 27.96 feet for a total distance along this bearing of 657.61 feet to a point; North 26 degrees 38 minutes 29 seconds West 32.10 feet to a point; North 26 degrees 33 minutes 00 seconds West 33.71 feet to a point in the south fork of the New River; thence continuing with the south fork of the New River North 81 degrees 19 minutes 00 seconds East 76.94 feet to a point, being a common corner with that property belonging to Caldwell Community College and Technical Institute, a deed of which is recorded at Book of Records 350 at Page 581 and also being recorded at Plat Book 20 at Page 361 and a corner with that property belonging to Watauga County, a deed of which is recorded at Deed Book 153 at Page 756 and also being Tract 1 of "Subdivision for Watauga County", a plat of which is recorded at Plat Book 12 at Page 260, all being recorded in the Watauga County Registry of Deeds; thence continuing with the south fork of the New River and with the Watauga County property for two calls: North 81 degrees 19 minutes 00 seconds East 322.47 feet to a point; North 84 degrees 31 minutes 00 seconds East 159.38 feet to a point in the south fork of New River, being a common corner with the Watauga County property and that property belonging to Republic Waste Industries, Inc., a deed of which is recorded at Book of Records 350 at Page 769 in the Watauga County Registry of Deeds; thence continuing with the Republic Waste Industries, Inc. property for three calls: South 04 degrees 58 minutes 20 seconds East 18.37 feet to a point; South 04 degrees 46 minutes 28 seconds East 73.57 feet to a point; South 04 degrees 45 minutes 35 seconds East 455.14 feet to a railroad spike found, being a common corner with the aforementioned Watauga County property; Republic Waste Industries, Inc. and that property belonging to New River Capital, Inc., a deed of which is recorded at Book of Records 317 at Page 638 in the Watauga County Registry of Deeds; thence continuing with the Watauga County property and the New River Capital, Inc. property South 04 degrees 22 minutes 12 seconds East 14.98 feet to a Mag Nail set, being a common corner with the Watauga County property, the New River Capital, Inc. property and The Hospitality House of the Boone Area, Inc. property, a deed of which is recorded at Book of Records 1347 at Page 400 and also at Plat Book 20 at Page 361, all being recorded in the Watauga County Registry of Deeds; thence continuing with the Hospitality House of the Boone Area, Inc property and the New River Capital, Inc. property South 04 degrees 45 minutes 02 seconds East 43.12 feet to the POINT OF BEGINNING containing 6.441 acres by coordinates.

As surveyed by Western Carolina Surveyors, P.A., PETER E. FLEMING, P.L.S., the 3rd day of September, 2009 and being REVISED this the 1st day of October, 2009 and being their JOB #8572-ANNEX.

Section 3. Notice of public hearing shall be published once 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(S) 120-121)

VOTE: Aye - All
Nay - None

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

VOTE: Aye - All
Nay - None

ADOPTION OF RESOLUTION - DIRECTING CLERK TO INVESTIGATE THE SUFFICIENCY OF ANNEXATION PETITION FOR WATAUGA COUNTY

Development Services Planner Jane Shook informed the Council that a petition for Voluntary Contiguous Annexation of property outside both the corporate limits and ETJ has been submitted by Jim Deal, Chairman of the Watauga County Board of Commissioners, on behalf of the Board of Commissioners. She explained that the property contains a total of 31.901 acres, is located off Brookshire Road, and is contained as a portion of Watauga PIN's 2911-92-5136-000 and 2921-02-9838-000. Ms. Shook noted that this action is the first step in the annexation process and is in response to a request for water service which was approved by the Council in March 2009. She further explained that the property is not zoned and will need to be zoned at the time of annexation. She relayed a request by the Petitioner for a delay of the effective date of the annexation in order to allow the Council sufficient time to adopt a zoning designation for the property.

Upon a motion by Council Member Pepin, seconded by Council Member Mason, Council moved to adopt the following resolution:

RESOLUTION DIRECTING THE CLERK TO INVESTIGATE A PETITION RECEIVED UNDER G.S. 160A-58.1 (Watauga County)

WHEREAS, a petition requesting annexation of an area described in said petition was received on November 19, 2009 by the Town Council; and

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

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

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

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

ATTEST: Mayor

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3 , PAGE(S) 122)

VOTE: Aye - All
Nay - None

REQUEST PERMISSION TO APPLY FOR DESIGNATION - PRESERVE AMERICA COMMUNITY DESIGNATION

Assistant to the Manager Jim Byrne appeared before Council to request permission to apply for the *Preserve America Community* designation. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to adopt the following resolution:

RESOLUTION TO APPLY FOR
***PRESERVE AMERICA* COMMUNITY DESIGNATION**

WHEREAS, *Preserve America* is a White House initiative developed in cooperation with the Advisory Council on Historic Preservation, the U.S. Department of the Interior, and the U.S. Department of Commerce; and

WHEREAS, the goals of this initiative include a greater shared knowledge about our Nation's past, strengthened regional identities and local pride, increased local participation in preserving the country's irreplaceable cultural and natural heritage assets, and support for the economic vitality of communities; and

WHEREAS, this initiative is compatible with our community's interests and goals related to historic preservation; and

WHEREAS, designation as a *Preserve America* Community will improve our community's ability to protect and promote its historical resources;

NOW, THEREFORE, BE IT RESOLVED that the Town of Boone, North Carolina will apply for the designation of Town of Boone as a *Preserve America* Community;

AND BE IT FURTHER RESOLVED that the Boone Town Council will protect and celebrate our heritage, use our historic assets for economic development and community revitalization, and encourage people to experience and appreciate local historic resources through education and heritage tourism programs.

ATTEST: Mayor

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3 , PAGE(S) 123)

VOTE: Aye - All
Nay - None

TRANSPORTATION COMMITTEE REQUEST - TRAFFIC SIGNAL AT INTERSECTION OF FARTHING AND KING STREETS

Public Works Director Blake Brown presented a recommendation from the Transportation Committee regarding the installation of a traffic signal at the intersection of Farthing and King Streets. He noted that this recommendation is a result of an outpouring of concern from the

neighborhood in this area regarding the U-4020 project. Mr. Brown explained the recommendation to draft a letter to the NC DOT asking for the reconsideration of the installation of a traffic signal at this intersection. He also indicated that he has been in contact with the Advent Christian Church, Modern Toyota, and Donna Cheek Bare regarding letters of consideration for a connector from Chestnut Drive to New Market Boulevard. John Heffron, who resides on Blue Ridge Avenue, appeared before the Council to request its support for a traffic signal at the intersection of Farthing and King Streets. He noted that he has also contacted N.C. Senator Steve Goss to request support for this matter. William Bake appeared before the Council to request support for the installation of a traffic signal at this intersection. He noted that the such action would help keep traffic from detouring into neighborhoods where there are pedestrians and unsafe driving conditions due to hills and curves. Upon a motion by Council Member Phillips, seconded by Council Member Mason, Council moved to draft a letter of support for the installation of a traffic signal light at the intersection of Farthing and King Street to send to the NC Department of Transportation to be included in the U-4020 project plans.

VOTE: Aye - All
Nay - None

TRANSPORTATION COMMITTEE REQUEST - THREE-WAY STOP AT INTERSECTION OF QUEEN AND STRAIGHT STREETS

Public Works Director Blake Brown presented a recommendation from the Transportation Committee regarding a proposed three-way stop at the intersection of Queen and Straight Streets. He explained that this recommendation is due to a site distance problem that results in a safety issue at the intersection. Upon a motion by Council Member Brantz, seconded by Council Member Phillips, Council moved to accept the recommendation of the Transportation Committee and direct the Public Works Department to install a three-way stop sign at the intersection of Queen and Straight Streets.

VOTE: Aye - All
Nay - None

TRANSPORTATION COMMITTEE REQUEST - INSTALLATION OF A STOP-SIGN AT INTERSECTION OF HUNTING ROAD AND EASTBROOK DRIVE

Public Works Director Blake Brown presented a recommendation from the Transportation Committee for the replacement of the existing yield sign at the intersection of Hunting Road and Eastbrook Drive with a stop sign. He indicated that an increase in traffic and motorists neglecting to slow down at the intersection are the reasons for the recommendation. Upon a motion by Council Member Brantz, seconded by Council Member Pepin, Council moved to accept the recommendation of the Transportation Committee and to direct the Public Works Department to replace the current yield sign with a stop-sign at the intersection of Hunting Road and Eastbrook Drive.

VOTE: Aye - All
Nay - None

ADOPTION OF CODE AMENDMENT - CHAPTER 97: SMOKING

Town Attorney Sam Furgiuele presented the amendments to Chapter 97: Smoking (as presented in the Council Meeting Packet). It was the consensus of the Council to place this item on the December agenda for final consideration. Furthermore, it was the consensus of the Council to direct the sub-committee which includes Council Member Pepin (and former Council Member Liz Aycock) to further study the issue of “public places”and which areas are considered such and to consider the issue of banning smoking for outdoor dining areas. Since Liz Aycock no longer serves on the Council, Council Member Mason volunteered to serve on the smoking subcommittee.

APPROVAL OF ENGINEERING CONTRACT - CAVANAUGH & ASSOCIATES FOR

WINKLER'S CREEK INTAKE PROJECT

Assistant to the Town Manager Jim Byrne presented a contract from Cavanaugh & Associates for the Winkler's Creek Intake project for approval by the Council. Upon a motion by Council Member Brantz, seconded by Council Member Phillips, Council moved to approve the contract (as presented in the Council Meeting Packet) pending review by the Town Attorney and the Town Manager:

VOTE: Aye - All
Nay - None

APPROVAL OF CONTRACT - MCGILL & ASSOCIATES FOR CIP FOR WATER & SEWER

Assistant to the Manger Jim Byrne presented a contract for approval from McGill & Associates for the Capital Improvement Plan for Water and Sewer. He explained that the Town of Boone has received a Rural Center grant to develop a Capital Improvement Plan for water and sewer. Mr. Byrne noted that McGill & Associates assisted the town in the development of the grant. He pointed out that the contract to implement with McGill & Associates as the engineering vendor is for $45,000. Mr. Byrne stated that the total project cost is $47,250, of which $30,650 will be grant funds and $16,600 are local matching funds. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve the contract (as presented in the Council Meeting Packet) pending review by the Town Attorney and the Town Manager.

VOTE: Aye - All
Nay - None

APPROVAL OF GRANT RESOLUTION & MATCHING FUNDS - PEDESTRIAN PLANNING GRANTS

Public Works Director Blake Brown informed the Council that the Town of Boone will be submitting a $31,500 grant application to NC DOT for a Pedestrian Planning Grant. He stated that the application requires the adoption of a resolution and the provision of matching $13,500 funds. Upon a motion by Council Member Pepin, seconded by Council Member Mason, Council moved to adopt the following resolution:

RESOLUTION

WHEREAS, the Town of Boone is hereby applying to the North Carolina Department of Transportation (NC-DOT) for grant funds to develop a Pedestrian Planning grant to develop pedestrian plan for the Town of Boone; and

WHEREAS, if the North Carolina Department of Transportation approves funding of the project as described in the grant application, the NC-DOT will prepare a Grant Agreement for execution by the Town Board; and

WHEREAS, the Town of Boone will provide matching funds up to the amount of $13,500 from the Fund Balance; and

WHEREAS, the Grant Agreement will require the Town of Boone to perform certain functions and obligations in order to carry out the work described in this grant application;

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Boone assures the North Carolina Department of Transportation that it understands the functions and obligations to which the Town of Boone is committing itself in order to carry out the work described in this grant application, and further agrees that the Town of Boone will proceed with diligence to perform those functions and obligations to accomplish the work described in this grant application.

ADOPTED this 19th day of November, 2009.

ATTEST: Mayor

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3 , PAGE(S) 124)

VOTE: Aye - All
Nay - None

Mayor Clawson declared a break at 8:34 p.m. Council reconvened at 8:46 p.m.

DISCUSSION OF DBDA PROPERTY OWNER SURVEY

Town Manager Greg Young presented two survey proposals submitted by Clark & Chase Research, Inc. and Insight Research, Inc. He reminded the Council of action taken at the July regular meeting that included the renewal of the DBDA contract for a six-month time period and conducting a survey to receive input from the members of the Municipal Service District. Mr. Young explained that in order to be objective and impartial, proposals were solicited from independent firms outside the Boone area. It was the consensus of the Council to delay the action of conducting a property owner survey until March or April of 2010.

COMMUNITY APPEARANCE COMMISSION RECOMMENDATION - DOWNTOWN STREETSCAPE PROJECT

Community Appearance Chair Adrian Tait presented a power-point outlining the Community Appearance Commission's recommendations for the Downtown Streetscape project. **(Copy of Power-Point presentation permanently on file in the Office of the Clerk.)** Council expressed its appreciation for the hard work of the Community Appearance Commission and the efforts of Mr. Tait in presenting this information. Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to adopt the "Downtown Streetscape Project" power-point as presented by Adrian Tait, Chair of the Community Appearance Commission, as the official plan for the downtown.

VOTE: Aye - All
Nay - None

ANNOUNCEMENT OF BOARD VACANCY

Mayor Clawson announced a vacancy on the Community Appearance Commission. She noted that the Clerk will advertise the vacancy in the usual venues.

BOARD APPOINTMENT - BOARD OF ADJUSTMENT

Mayor Clawson noted that no applications had been submitted for the board vacancy. She asked the Clerk to continue to advertise the vacancy in the usual venues.

BOARD APPOINTMENT - TREE BOARD

Mayor Clawson noted that no applications had been submitted for the board vacancy. She asked the Clerk to continue to advertise the vacancy in the usual venues.

SCHEDULE SPECIAL MEETING - WATER STUDY COMMITTEE

Public Utilities Director Rick Miller appeared before the Council to request a meeting of the

Water Study Committee in order to review water usage information from last year and to discuss possible changes to Ordinance 05-01 concerning LLC's. Upon a motion by Council Member Pepin, seconded by Council Member Leigh, Council moved to schedule a special meeting on Monday, December 7, 2009, at 5:00 p.m. in the Council Chambers in order to meet with the Water Study Committee.

VOTE: Aye - All
Nay - None

MONTHLY WATER USE STATUS REPORT

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

APPROVAL OF BUDGET AMENDMENTS

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

DESCRIPTION	ACCOUNT #	TO:	FROM:
CAPITAL OUTLAY-OTHER IMPROVEMENTS	010-409-000-574001	$16,180.00	
APPROPRIATED FUND BALANCE (GENERAL FUND)	010-000-000-499900		($16,180.00)
TOWN COUNCIL PRIORITIES-CAPITAL/PROJECTS	010-411-000-549130	$123,318.00	
ROOM OCCUPANCY TAX-TOURISM RELATED	010-000-000-412401		($114,479.00)
ROOM OCCUPANCY TAX-ADMINISTRATION	010-000-000-412402		($8,839.00)
SIDEWALK CONSTRUCTION-FACILITIES MAINTENANCE	010-600-405-514303	$36,300.00	
SIDEWALK EXPANSION-SPECIAL PROJECTS	010-411-000-549131		($19,957.00)
TRANSFER FROM SIDEWALK CAPITAL RESERVE FUND	010-000-000-498019		($16,343.00)

VOTE: Aye - All
Nay - None

SCHEDULING OF SPECIAL MEETING - PARKING CHARETTE

Town Manager Greg Young announced that a parking charette will be held on Tuesday, December 1, 2009, from 5:00 p.m. until 7:30 p.m. in the Council Chambers. He stated that the purpose of the work session is to gather input from the public regarding parking issues in Boone. Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to schedule a special meeting on Tuesday, December 1, 2009, from 5:00 p.m. until 7:30 p.m. in the Council Chambers to hold a parking charette.

VOTE: Aye - All
Nay - None

USE OF HORN IN THE WEST PARKING LOT BY ASU

Town Manager Greg Young explained that the Town has been contacted by officials from ASU requesting to use the Horn in the West lot for parking for home games at the Holmes Convocation Center during the ASU basketball season. He stated that he has informed the ASU officials that leases for the use of the parking lot have already been executed and that the Town had anticipated the use of the lot for the football season only. Mr. Young stated that he has further informed ASU officials that the issue would have to be brought before both the Horn in the West Board and the Town Council for consideration. He noted that he has contacted Billy Ralph Winkler with the request and that Mr. Winkler discussed the request with the SAHA Board which was in favor of the idea. After meeting with Mr. Winkler, Council Member Brantz, and David Jackson of ASU, Mr. Young stated that the consensus of the group was to recommend to the Council a set of terms as follows:

1. ASU will pay $4 per space for 100 spaces at the Horn in the West lot for the next three home games.
2. ASU will also provide $300 in advertising for the Horn in the West.

Mr. Young noted that the group agreed to proceed with this arrangement on a trial basis, and if successful, then ASU would like to negotiate the use of the lot for the remainder of the basketball season through February 2010. Upon a motion by Council Member Brantz, seconded by Council Member Phillips, Council moved to allow ASU to use the Horn in the West parking lot for parking for home basketball games with the following conditions:

1. ASU will pay $4 per space for 100 spaces at the Horn in the West lot for the next three home games.
2. ASU will also provide $300 in advertising for the Horn in the West.
3. Revenue generated by this action will be split evenly between the Town of Boone and the Southern Appalachian Historical Association.

VOTE: Aye - All
Nay - None

APPROVAL OF ENCROACHMENT AGREEMENT - LUCKY PENNY PROJECTING SIGN

Jennele Vaquera, owner of the Lucky Penny, requested approval of an encroachment agreement for her new location at 693 West King Street. She stated that she wishes to hold a "Grand Opening" event at this new location on December 1, 2009. Town Attorney Sam Furgiuele explained that an encroachment agreement is required for any signage that projects into the Town's right-of-way. Upon a motion by Council Member Pepin, seconded by Council Member Mason, Council moved to approve the request for an encroachment agreement from Jennele Vaquera for the Lucky Penny LLC at 693 West King Street contingent on the completion of a standard encroachment agreement form provided by the Town of Boone.

VOTE: Aye - All
Nay - None

REQUESTED APPEARANCE - GALIB ABBASZADE

Galib Abbaszade appeared before the Council to discuss the possibility of establishing a sister-city relationship with Guba, Azerbaijan. Mr. Abbaszade presented a slide-show of information about Guba, Azerbaijan. Upon a motion by Council Member Brantz, seconded by Council Member Phillps, Council moved to further investigate the possibility of establishing a sister-city relationship with Guba, Azerbaijan and to place the matter for consideration on the January 2010 regular meeting agenda.

VOTE: Aye - All
Nay - None

REQUESTED APPEARANCE - CEYLON BARCLAY

Andrea Robel, Partnership Specialist for the 2010 Census Bureau and Ceylon Barclay, Local Census Office Manager in Boone, appeared before the Council to discuss the upcoming 2010 Census project. Ms. Robel and Mr. Barclay informed the Council of the many benefits of participation in the census. Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to adopt the following resolution:

A RESOLUTION AFFIRMING THE TOWN OF BOONE'S SUPPORT OF AND PARTNERSHIP WITH THE 2010 CENSUS

WHEREAS, the U.S. Census Bureau if required by the Constitution of the United States of America to conduct a count of the population and provides a historic opportunity for the Town of Boone to help shape the foundation of our society and play an active role in American democracy; and

WHEREAS, the Town of Boone is committed to ensuring every resident is counted; and

WHEREAS, more than $300 billion per year in federal and state funding is allocated to communities, and decisions are made on matters of national and local importance based on census data, including healthcare, community development, housing, education, transportation, social services, employment, and much more; and

WHEREAS, census data determine how many seats each state will have in the U.S. House of Representatives as well as the redistricting of state legislatures, county and city councils, and voting districts; and

WHEREAS, the 2010 Census creates hundreds of thousands of jobs across the nation; and

WHEREAS, every Census Bureau worker takes a lifetime oath to protect confidentiality and ensure that data identifying respondents or their household not be released or shared for 72 years; and

WHEREAS, a united voice from businesses, government, community-based and faith-based organizations, educators, media and others will allow the 2010 Census message to reach a broader audience, providing trusted advocates who can spark positive conversations about the 2010 Census;

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

1. Supports the goals and ideals for the 2010 Census and will disseminate 2010 Census information to encourage participation.
2. Asks its affiliates and membership to partner together to achieve an accurate and complete count.
3. Encourages people in the Town of Boone to participate in events and initiatives that will raise overall awareness of the 2010 Census and increase participation among all populations.

ADOPTED this 19th day of November, 2009.

ATTEST: Mayor

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3 , PAGE(S) 125)

VOTE: Aye - All

Nay - None

REQUESTED APPEARANCE - ANDY HARKINS

Andy Harkins appeared before the Council to request permission to display two banners advertising the annual Nutcracker ballet performance produced by the Studio K Dance Studio. He asked to place one banner at the intersection of US Highway 321 and NC Highway 105 on the Wachovia Bank property, stating that he does have permission from the Wachovia branch manager to place the banner on the property. He also requested to place a banner on ASU property at Farthing Auditorium. Mr. Harkins stated that he has requested permission from officials at ASU to place a banner at that location. Council Member Phillips moved to approve the request. Council Member Brantz seconded the motion. Development Services Planner Jane Shook listed the regulations contained in UDO Section 338(a)(1)(b) regarding Temporary Signs. After brief discussion, the Council agreed that the regulations contained in the UDO did not allow for approval of the request. Council Members Phillips and Brantz withdrew the motion and second to approve the request.

REQUESTED APPEARANCE - MATTHEW CHATEAUVERT

Matthew Chateauvert appeared before the Council to request permission to operate a new taxi business called Classy Taxi. He stated that he plans to have two cabs and the drivers will be permitted individually. Upon a motion by Council Member Brantz, seconded by Council Member Phillips, Council moved to grant permission to Matthew Chateauvert to operate a new taxi business, Classy Taxi.

VOTE: Aye - All
Nay - None

REQUESTED APPEARANCE - ALIO NA-ALLAH

There was no one in attendance to present this information.

Before deliberating on the water and sewer requests, Town Attorney Sam Furgiuele questioned the members of the Council on whether or not they have had contact with any of the applicants requesting water and sewer service. All Council members stated that they had not had any significant contact with any of the applicants submitting requests for water and sewer service.

WATER & SEWER REQUEST - JASON HENNESSEE

Town Attorney Sam Furgiuele opened a public hearing at 10:22 p.m. to hear sworn testimony on a request for water allocation to property at 2586 Highway 105. Public Utilities Director Rick Miller, being duly sworn, stated that the public hearing for this request was continued from the last meeting in October. With no one in attendance to present the case, Mr. Furgiuele closed the public hearing at 10:23 p.m. Upon a motion by Council Member Phillips, seconded by Council Member Brantz, Council moved to deny the request for water allocation to property at 2586 Highway 105.

VOTE: Aye - All
Nay - None

WATER & SEWER REQUEST - DAVID WELSH

Town Attorney Sam Furgiuele opened a public hearing at10:24 p.m. to hear sworn testimony from David Welsh, Public Utilities Director Rick Miller, and Development Services Planner Jane Shook on a request for water and sewer service to property located off White Oak Road. David Welsh, owner of the property, presented the request for water and sewer service to this property in order to construct a five-bedroom house to be used for student housing. He noted that the property consists of .43 acres and is close to the Caldwell Community College location. He further noted that the property is in the ETJ. Public Utilities Director Rick Miller explained that

several surrounding properties are connected to the Town's main meter which is located on Highway 105. He noted that the properties received service prior to the allocation process which the Council now follows. Development Services Planner Jane Shook testified that the property is not in the Town of Boone corporate limits or the ETJ but is in Watauga County jurisdiction which is unzoned. She further testified that she cannot make a determination as to whether or not the property is within a subdivision. Ms. Shook stated that the surrounding properties in the Town's jurisdiction are zoned O/I-Office/Institutional. Public Utilities Director Rick Miller pointed out that the property lies in the secondary pressure zone. Mr. Welsh stated that there are private water and sewer lines that run across the top of his property. He stated that due to the placement of these lines and the topography of the lot, he cannot put a well and septic system on the property. He stated that he considers his request a hardship request due to the fact of the private lines that were installed on his property. With no other testimony offered, Mr. Furgiuele closed the public hearing at 10:46 p.m. Council Member Pepin stated that Ordinance #05-01 does not allow water and sewer service to be extended outside the Town's jurisdiction. Council Member Mason agreed and pointed out that the newly adopted Land Use Master Plan also discourages the placement of water and sewer lines in this area. Upon a motion by Council Member Pepin, seconded by Council Member Leigh, Council moved to deny the request for water and sewer service to property located off White Oak Road and owned by David Welsh.

VOTE: Aye - All
Nay - None

WATER & SEWER REQUEST - BOONE EXCHANGE PARTNERS LLC

Town Attorney Sam Furgiuele opened a public hearing at 10:48 p.m. to hear sworn testimony from Drew Taylor, Public Utilities Director Rick Miller, and Development Coordinator David Graham on a request for water and sewer service to property located at 285 Old Bristol Raod. Drew Taylor, Member-Manager of Boone Exchange Partners LLC, explained the request for 3,600 gallons-per-day for six multi-family units with a total of 24 bedrooms. Mr. Taylor entered into evidence a site plan of the proposed project **(Exhibit A, permanently on file in the Clerk's office)** and a rendering of the front elevation of the site **(Exhibit B, permanently on file in the Clerk's office)**. He stated that the structure currently on the property will be demolished and that construction of the project is anticipated to begin in the fall of 2010. Mr. Taylor noted that the property is currently zoned both B-3, General Business and R-2, Two-Family Residential but that he will be filing an application for a Conditional Zoning District to have the entire property zoned B-3, General Business. He noted that the access for the project will be from Old Bristol Road. Development Coordinator David Graham entered into evidence the Planning Analysis for the Utility Service Request **(Exhibit C, permanently on file in the Clerk's office)**. Furthermore, he noted that the property is within the Primary Growth Area and appears to be in the G-4 Downtown/Mixed-Use Sector of the Land Use Master Plan. Mr. Graham stated the both designations support this type of development. Public Utilities Director Rick Miller stated that the property is located in the Charles and Gladys Street secondary pressure zone and is currently served with water and sewer services. With no other testimony offered, Mr. Furgiuele closed the public hearing at 11:07 p.m. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to grant the request for water allocation in the amount of 3,600 gallons-per-day from the 2009 allotment for the property located at 285 Old Bristol Road.

VOTE: Aye - All
Nay - None

WATER & SEWER REQUEST - DOUGLAS MCGUIRE

Town Attorney Sam Furgiuele opened a public hearing at 11:08 p.m. to hear sworn testimony from Donald McNeil, Public Utilities Director Rick Miller, Development Services Planner Jane Shook, and David Ramsey on a request for water and sewer service to property located off US Highway 421 North and further identified as Watauga County PIN 1991-64-6666-000. Donald McNeil, representing the applicant, explained that the property consists of a 4.8-acre tract of land approximately 11/2 miles from the Town of Boone. He stated that the project will be multi-family student housing consisting of seven buildings with 48 units. Mr. McNeil stated that the project will have 36 two-bedroom units and 12 one-bedroom units. Council Member Phillips

asked if the applicant has investigated the possibility of using a well system to serve this property. Mr. McNeil stated that the applicant does not think that a well system has the capacity to support the development. Council Member asked about the expense of extending utility service to this property and who will bear the expense of such an extension. Public Utilities Director Rick Miller stated that the applicant would have to pay for the extension of the lines, as well as the pump station. In regard to the question of annexation of the property, Development Services Planner Jane Shook referenced the staff report information which states that the area proposed for annexation must be so situated that the municipality will be able to provide the same services within the satellite area that it provides within the primary limits. Furthermore, she stated that if the area proposed for annexation is part of a subdivision, the entire subdivision must be included. She stated that it is the recommendation of the staff that the applicant submit a legal opinion on this matter. David Ramsey, a professional engineer from Banner Elk, stated that he feels the Council should consider this request. He stated that a similar request for a project consisting of student housing located just beyond this property will be submitted to the Council in the near future. Mr. McNeil stated that the applicant is agreeable to petition for satellite annexation for this property. With no other testimony, Mr. Furgiuele closed the public hearing at 11:19 p.m. Council Member Pepin stated the regulations in Ordinance #05-01 do not support this request. Council Member Mason agreed and pointed out the provisions in the Land Use Master Plan also do not support this request. Upon a motion by Council Member Pepin, seconded by Council Member Mason, Council moved to deny this request.

VOTE: Aye - All
Nay - None

WATER & SEWER REQUEST - ANDREW SALDINO

Town Attorney Sam Furgiuele opened a public hearing at 11:20 p.m. to hear sworn testimony from Andrew Saldino, Public Utilities Director Rick Miller, Development Coordinator David Graham, and Assistant to the Manager Jim Byrne on a request for water and sewer service to property located at 703 Junaluska Road. Andrew Saldino, property owner, explained that a two-bedroom mobile home is on this property and is currently connected to the Town's water system. He stated that the mobile home is currently connected to a private septic system. Mr. Saldino stated that he plans to construct a four-bedroom home on the lot. Furthermore, Mr. Saldino stated that he is willing to annex the lot and that the remainder of the subdivision in which the lot is located has already been annexed. Development Coordinator David Graham stated that he does not anticipate any issues with the annexation of this property. Likewise, Public Utilities Director Rick Miller stated that he does not foresee any issues with connecting water and sewer service to this property. Assistant to the Manager Jim Byrne stated that this area was restored as part of a CDBG grant approximately twenty years ago and, at that time, funds were available for connection of water services only. With no other testimony, Mr. Furgiuele closed the public hearing at 11:29 p.m. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to grant the request for 180 gallons-per-day for water service and 360 gallons-per-day for sewer service to property located at 703 Junaluska Road contingent on annexation of the property.

VOTE: Aye - All
Nay - None

CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Pepin, Council moved to enter Closed Session at 11:31 p.m. pursuant to NCGS 143-318.11a)3) to hear the following items:

$ Legal Advice - Delinquent Water Account.
$ Legal Advice - Templeton LLC Lawsuit.
$ Legal Advice - WHS Property.
$ Legal Advice - New Town Council Legislation.

VOTE: Aye - All

Nay - None

Upon a motion by Council Member Brantz, seconded by Council Member Leigh, Council moved to exit Closed Session at 1:00 a.m.

VOTE: Aye - All
Nay - None

ADJOURNMENT

Upon a motion by Council Member Phillips, seconded by Council Member Mason, Council moved to adjourn at 1:01 a.m.

VOTE: Aye - All
Nay - None

_____

Deputy Town Clerk Mayor