

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
DECEMBER 20, 2007**

An organizational meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, December 20, 2007, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro Tem Lynne Mason, Rennie Brantz, Janet Pepin, Liz Aycock, and Stephen Phillips. Town Attorney Sam Furguele was also present. Staff members present were Town Manager Greg Young, Town Clerk Freida Van Allen, Deputy Town Clerk Kimberly Tester, Special Assistant to the Town Manager Jim Byrne, Police Chief Bill Post, Fire Chief Reggie Hassler, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, Human Resources Director Peri Moretz, and Development Services Director John Spear.

District Court Judge Greg Horne presided over the swearing-in ceremonies. Official oaths precede this page.

ANNOUNCEMENTS

Mayor Clawson presented Bunk Spann with a plaque commemorating his service of four years as a Boone Town Council member. Mr. Spann expressed his appreciation for Mayor Clawson and members of the Boone Town Council and thanked the citizens of Boone for the opportunity to serve.

Mayor Clawson presented Dempsey Wilcox with a plaque commemorating his twelve years of service as a member of the Boone Town Council. Mr. Wilcox stated he very much enjoyed his service on the Council and expressed his appreciation for the hard work of the Town staff.

Mayor Clawson recognized each of the current Council Members. Council Member Phillips expressed his appreciation for the service of both Mr. Spann and Mr. Wilcox and stated that he is looking forward to serving the citizens of Boone. Council Member Aycock stated she is very appreciative of having the opportunity to serve as a member of the Boone Town Council. Council Member Mason stated she is excited to serve the citizens of Boone, and she will continue to work toward making Boone a sustainable community. Council Member Pepin thanked Mr. Wilcox for his sense of humor during Council deliberations; she also thanked Mr. Spann for his gift of dialogue and communication while serving as a member of the Council. Council Member Brantz thanked both Mr. Wilcox and Mr. Spann for their service and commitment to the Town of Boone.

Mayor Clawson recognized Public Utilities Director Rick Miller to present Jackie Austin with a retirement service award. Mr. Miller expressed his sincere appreciation for Mr. Austin's 32 years of service with the Town of Boone, beginning in the Fire Department. Mr. Miller stated that Mr. Austin is retiring from the Town of Boone as the Water Treatment Plant Superintendent, one of the four original water treatment plant operators for the Town of Boone. Mr. Austin thanked the Town for opportunity to serve the citizens of Boone by providing clean and safe drinking water. He also thanked his wife for her support throughout the years. Council expressed its appreciation of Mr. Austin's hard work and commitment to the Town of Boone.

Mayor Clawson read the following proclamation for "I-Have-A-Dream" week:

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 12-20, 2008, to be ***I-Have-A-Dream Week***, on this the 20th day of December, 2007.

ATTEST:

Mayor

Town Clerk

Mayor Clawson urged all citizens to take the opportunity to attend the many events scheduled to celebrate unity and diversity.

Mayor Clawson stated that any persons wishing to address the Council should sign in to speak during the Public Comment period.

TENTATIVE AGENDA ADOPTION

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

1. Addition of item to Closed Session - Personnel matter.
2. Addition of item to Closed Session - Consideration of Town vs. Light Settlement Proposal.

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

VOTE: Aye - All
 Nay - None

CONSENT AGENDA ADOPTION

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

Minutes: November 8, 2007 - Special Meeting.
 November 8, 2007 - Quarterly Public Hearing.
 November 15, 2007 - Regular Meeting.
 November 19, 2007 - Special Meeting.

Council Member Mason asked that the following correction to the November 15, 2007 Regular Meeting minutes be made:

“Council Member Mason asked if the applicant will be willing to commit by letter or written agreement, more than fifty percent of the units to be sold at ~~twenty-five~~ **no more than fifty** percent of the area median income.”

Tax Releases & Refunds: October & November 2007.

**TAX RELEASES
OCTOBER 2007**

Taxpayer	Year	Amount	Description
HUSTED, JUSTIN BENJAMIN	2007	10.73	VALUE ADJ TO BILL OF SALE
FIFTH THIRD AUTO LEASING TRUST	2007	40.13	DID NOT RENEW LEASE
TURNER, LUKE JEFFREY	2007	12.12	ADJ FOR BILL OF SALE
HUDSON, MELANIE L	2007	13.08	TURN IN TAG
POPE, GREGORY E POPE, CAROLYN	2007	10.85	SOLD VEHICLE TURN IN TAG
CHECK INTO CASH NC INC #10027	2007	23.83	BUSINESS CLOSED APRIL 2006
GTE LEASING CORPORATION	2007	22.55	TURN IN TAG
KENYON, JAMES DAVID JR	2007	5.92	TURN IN TAG
GWYN R PARSONS CAP LLC PARSONS, GWYN R	2007	217.06	TURN IN TAG
HOLDER, JOSH RANDALL	2007	28.61	TURN IN TAG
SPEECHCENTER INC	2007	46.62	TURN IN TAG
WWC DEVELOPMENT LLC	2007	621.60	NO HOUSE ON THIS PARCEL
WWC DEVELOPMENT LLC	2007	522.81	COMMON AREA
ALTERATIONS BY JOANNE	2007	47.62	CLERICAL ERROR
AT AND T CAPITAL SERVICES	2007	104.27	NO BUSINESS PERSONAL AS OF 1/1/07
GEIS, RICHARD L GEIS, CHRISTOPHER R	2007	64.53	TURN IN TAG
HENSLEY, DONALD WAYNE HENSLEY, JANICE PARIS	2007	52.21	INCORRECT SITUS
MATTHEWSON, REBA ANN	2007	25.53	ADJ FOR BILL OF SALE VALUE
WISHBONES LLC DBA BAXTER'S SMOKEHOUSEBLUES	2007	1017.50	LEASEHOLD VALUE ADJUSTMENT
WISHBONES LLC DBA BAXTER'S SMOKEHOUSEBLUES	2006	925.00	LEASEHOLD VALUE ADJUSTMENT

WISHBONES LLC DBA BAXTER’S SMOKEHOUSEBLUES	2005	1000.00	LEASEHOLD VALUE ADJUSTMENT
		4812.57	

**MSD
OCTOBER 2007**

Taxpayer	Year	Amount	Description
AT AND T CAPITAL SERVICES	2007	59.18	NO BUSINESS PERSONAL AS OF 1/1/07
		59.18	

**TAX REFUNDS
OCTOBER 2007**

Taxpayer	Year	Amount	Description
GTE LEASING CORP.	2007	53.89	TURN IN TAG
HI COUNTRY WIRELESS INC CORNETT, GLENDA OLLIS	2007	42.49	TURN IN TAG
PEKHART, JIRI	2007	6.36	TURN IN TAG
SONGBYRD ENTERPRISES INC.	2007	4.29	TURN IN TAG
GE CAPITAL INFORMATION TECH	2007	39.00	PERSONAL PROPERTY NOT IN TOB
MCRAE, LARRY TRAFFORD MCRAE, RUTH JONES	2006	2.47	TURN IN TAG
		148.50	

**TAX RELEASES
NOVEMBER 2007**

Taxpayer	Year	Amount	Description
AIRFLOW HEATING & COOLING INC	2007	185.00	AMENDED TAX RETURN
FARKAS, SCOTT MATTHEW	2007	.65	PREPAID MAY OF 2007
SCHMITT, JEREMY JAY	2007	40.70	TURN IN TAG
WILKINS, STEPHANIE HAMILTON	2007	12.52	TURN IN TAG
LINEBACK, NEAL G	2007	80.92	TAXED INCORRECT VALUE ON BOAT
IRISH, MARY PATRICIA	2007	50.25	INCORRECT FIRE DISTRICT
CHILDRESS, JAMES ANDREW	2007	3.805	TURN IN TAG

RAY, JERRY DAVID RAY, LORETTA P	2007	89.58	INCORRECT SITUS
HINES, LOUIS ALVIN PARSONS, GWYN R	2007	23.486	TURN IN TAG
GRACE EVANGELICAL LUTHERAN CHURCH	2007	13.95	EXEMPT
EGGERS, GRAYDON POE JR	2007	15.60	SOLD VEHICLE
BB&T LEASING CORPORATION	2007	2648.20	PERSONAL PROPERTY NOT LOCATED IN TOB
TEMPLETON, PHILIP ANTHONY	2007	11.961	TURN IN TAG
HILL, ROBERT WALLACE	2007	46.62	INCORRECT FIRE DISTRICT
DCFS TRUST	2006	77.52	INCORRECT BILL
STORIE, BRIAN CHRISTOPHER STORIE, RONALD HUNTER	2005	78.97	INCORRECT BILL
		3379.72	

**TAX REFUNDS
NOVEMBER 2007**

Taxpayer	Year	Amount	Description
YOUNCE, THOMAS EDWARD	2007	40.24	TURN IN TAG
SPANN, MILTON G SPANN, NANCY	2007	46.14	TURN IN TAG
ROOK, RANDY L ROOK, ANDREA ZIGLI	2007	4.63	TURN IN TAG
		91.01	

Approval of Agreement: Cove Creek Volunteer Fire Department.

FIRE PROTECTION CONTRACT FOR AUTOMATIC AID

**STATE OF NORTH CAROLINA
WATAUGA COUNTY**

THIS AGREEMENT, made and entered into the ____ day of _____, 20____ by and between Cove Creek Volunteer Fire Department corporation existing under the laws of the State of North Carolina, hereinafter referred as the party of the **FIRST PART**, and the Town of Boone, a municipal corporation of Watauga County, North Carolina hereinafter referred to as the party of the **SECOND PART**.

WITNESSETH:

WHEREAS, the Cove Creek Volunteer Fire Department (the party of the **FIRST PART**) wishes to increase its Fire Insurance Boundary to six (6) miles, wherever possible, and in accordance with the rules as set forth and administered by the North Carolina Department of Insurance, Office of the State Fire Marshal;

WHEREAS, the party of the **FIRST PART** is therein required to have a contract with the adjoining districts, thereby demonstrates their willingness and assurances of participation of rendering automatic aid;

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

WHEREAS, that the Boone Fire Department (Party of the **SECOND PART**) hereby contracts and agrees that:

Except as to the extent specified in that certain agreement dated July 19, 2007 between Cove Creek Volunteer Fire Department and Boone Fire Department, the party of the **SECOND PART**, when alerted for automatic aid, will respond with a piece of fire apparatus capable of carrying a minimum of 1,000 gallons of water to the party of the **FIRST PART** to a specified location for structure fire protection.

IN WITNESS WHEREOF, Cove Creek Volunteer Fire Department, Inc. Has caused this instrument to be signed in its corporate name and its corporate seal affixed, and the Town of Boone has likewise caused this instrument to be signed in its corporate name by its Mayor, attested by its Town Clerk and its corporate seal affixed.

COVE CREEK VOLUNTEER FIRE DEPARTMENT

BY

ATTEST:

President

Secretary

TOWN OF BOONE

BY

ATTEST:

Mayor

Town Clerk

Annual Certification of Firemen: Boone Fire Department.

Approval of Ordinance Amendment: Ordinance 05-01.

ORDINANCE 05-01

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

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

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

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

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

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

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

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

1. To the extent feasible and during the term of this Resolution, the Town shall allocate its remaining water usage gallons, ~~estimated at the time of adoption as 150,000 gallons,~~ evenly in yearly increments **of 50,000 gallons** for a **four** ~~six~~ year period beginning January 1, 2004, **2008**, ~~with the first two years of allocation available in calendar year 2005,~~ **and along with** any unused allocation from a prior calendar year made available in the following calendar year. **In addition, through and including December 31, 2010, the Town shall reserve an allocation of 10,000 gallons per day from its available water supply for possible allocation to existing vacant lots within the corporate limits of the Town.** Any approval of water service in a particular calendar year shall ordinarily be attributed to the available allocation for that same calendar year; however, the Town Council may designate that a particular approval of water service shall be attributed to the available allocation from any year within the term of this resolution, but the periods of time established in paragraph 5 herein for the expiration of rights shall be measured from the date of the Town Council's approval. (Amended 6/27/05)
2. **Beginning November 2008, and no less than annually thereafter, the Town shall review actual water usage records to determine whether changes should be made to the allocation allotments for subsequent years.** The Council may adjust ~~the~~ any yearly allocation based on actual usage as it can be determined and/or new information concerning remaining capacity.
- 2.3. Within the aforesaid limits, the Town of Boone shall ordinarily provide water service to future customers within the corporate limits on a first-come, first served, basis. The water usage predicted as to each application shall be determined by multiplying the usage predicted by the North Carolina Discharge Rate (NCDRS) Schedule by 60%. (Amended 6/27/05) Any requests for water service which involve predicted usage, as thus calculated, of over 3,000 gallons per day shall only be approved upon action, by majority vote, of the Boone Town Council acting in its *quasi* judicial capacity. (Amended 6/27/05) Likewise, in each calendar year in which the Town has allocated two-thirds (2/3) of the water allotted for that year, all subsequent requests for water connection for which there is a predicted usage of more than five hundred (500) gallons per day must be approved by the Boone Town Council, without regard to the predicted usage resulting from the granting of the request. (Amended 6/27/05) In determining the desirability of approving a connection for water service, the Council shall consider the following:
 - a. Any factor which may make the predicted actual use different from the NCDRS predicted usage;
 - b. The amount of water usage in gallons per day previously approved during the calendar year;
 - c. The amount of water usage in gallons per day predicted to be used by the applicant, ordinarily with small requests preferred over large requests;

- d. Whether in its opinion the application is for a land use which is consistent with the Town's adopted policies concerning growth and development; and
- e. Such other factors as may be identified by the Town Council in its deliberations which either suggest that a particular project promotes or undermines the public health or safety, or the general welfare of the Town.

~~3.4.~~ During the term of this Resolution, ordinarily only requests for service connections to property which is in the corporate limits will be granted. An applicant whose property is partly or wholly outside the Town limits may petition the Town for annexation, and if the property is annexed, in accordance with the requirements of North Carolina General Statutes and the Town of Boone's ordinances, water services may be extended to such property, in accordance with the provisions of this Resolution.

~~4.5.~~ During the term of this Resolution, no service extensions into the secondary pressure zone shall be considered for approval unless the requesting property was located inside the Boone corporate limits on or before March 8, 2007 and applicant is willing to adhere to Town of Boone secondary pressure zone specifications. These specifications include but are not limited to, eight-inch minimum pipe diameter; booster pumping stations shall be an EFI design with fire pumping capabilities; minimum 100,000 gallon welded joint steel storage tank, pressure protection is provided for each individual water service, telemetry systems shall be Dataflow Systems radio telemetry and shall be compatible with existing Town of Boone system, and proposed extension does not exceed 3,620 feet in elevation. A connection to an existing water main in a secondary pressure zone may be considered where the connection is within the corporate limits as they exist as of the date of the resolution, and where such connection creates no negative impact on the Town's distribution system, allows adequate pressure to be maintained as may be necessary to comply with the requirements of the Boone Fire Department applicable fire codes, results in no additional costs to the Town, and otherwise complies with the requirements of the Town of Boone Water and Sewer Code for connection to the Town's water system. For purposes of this paragraph, a "connection" is defined as the linking of pipes serving a single dwelling unit to an existing water main. For purposes of this paragraph, an "extension" refers to the continuation of a water main beyond its currently existing limits.

~~5.6.~~ Any applicant granted the right to connect to the Town's water distribution system, without regard to the calendar year to which the applicant's predicted water usage is attributed, must obtain all needed development permits within one year of the approval by the Town Council or Public Utilities Department of the water application, or said approval will expire and the allocated water usage shall return into the overall water census for redistribution. (Amended 6/27/05) Upon subsequent action by the Boone Town Council, the approval of a water application may be extended for a second year from the date of the initial approval, whether by the Town Council or staff of the Public Utilities Department, upon payment by the applicant of a non-refundable availability fee in the amount of the normal availability fee established by the Town of Boone Water and Sewer Code for use(s) of the type proposed. (Amended 6/27/05) Previously approved requests which have not been connected shall likewise expire within one year of enactment of this ordinance. However, they, too, may be extended for an additional period (Amended 2/16/06) upon payment by the approved applicant of a non-refundable availability fee in the amount of the normal availability fee established by the Town of Boone Water and Sewer Code for use(s) of the type proposed. If approved, the additional period shall be no less than one year, but in the case where development rights are vested through the issuance of a zoning permit, special use permit, or the approval of a conditional zoning district, the additional period may be extended and approved for a longer period, so that the resulting water rights and the approved development rights simultaneously expire. (Amended 2/16/06) Previously approved requests which have not been connected shall likewise expire within one year of enactment of this ordinance. However, they, too, may be extended for an additional period (Amended 2/16/06) upon payment by the approved applicant of a non-refundable availability fee in the amount of the normal availability fee established by the Town of Boone Water and Sewer Code for use(s) of the type proposed. Without regard to the foregoing, should any applicant whose development project requires a special use permit or zoning permit allow the special use permit or zoning permit to expire, the applicant's water rights will also immediately expire. Likewise, should nay applicant whose development project acquires a building

permit allow the building permit to expire, the applicant's water rights will also immediately expire.

- ~~6.7.~~ For purposes of this Ordinance, the term "development permits", as referred to in paragraph 6 above, shall mean the following:
- a. In the case of applicants for water service for a minor subdivision, the minor subdivision plat approval and recording of the approved plat with the Watauga County Register of Deeds, and any associated zoning and grading compliance certificates;
 - b. In the case of applicants for water service for a major subdivision, a special use permit, and associated zoning and grading compliance certificates;
 - c. In the case of commercial development projects, all permits required for the physical development of the land, plus those permits necessary for the building. These may include some or all of the following: special use permits, zoning permits, and building permits. (Amended 12/15/05)
- ~~7.8.~~ Whenever the Town Council approves an application for water service to either a proposed minor or major subdivision, the Director of Public Utilities shall subtract an amount of water from the available water calculations which reflects the project amount of water which will be consumed when all residences in the proposed subdivision are fully constructed. (Amended 12/15/05)
- ~~8.9.~~ During the term of this Resolution, Section 3-10(G) of the Town of Boone Water and Sewer Code, which prohibits the connection into the Town's sanitary sewer system of the discharge from private water systems, other than the system of Appalachian State University, is suspended as to those applicants whose application for both water and sewer connections cannot be granted because the request for water service has been denied by the action of the Town Council in applying this Resolution. However, in order to be granted the right to connect to the sanitary sewer system, along with such other conditions as may be placed upon the applicant in accordance with the Town of Boone Water and Sewer Code, the applicant must agree to connect into the Town's water system, should the Town later request that such a connection be made, and the applicant must sign a statement of commitment to that effect, which will remain on file with the Town's Public Utilities Department. (Amended 7/21/05)
- ~~9.10.~~ Any requests for water services from the Town must comply with all requirements of the Town of Boone Water and Sewer Code which are not superceded by this Resolution. (Amended 12/15/05)
- ~~10.11.~~ The Town of Boone Water and Sewer Department shall provide a monthly report to the Boone Town Council concerning the number and predicted volume of each water connection request approved during the term of this Resolution.
- ~~11.12.~~ This resolution shall expire December 31, 2009, unless specifically extended by action of the Boone Town Council, and it may be modified by the Boone Town Council upon majority vote of the Council.
- ~~12.13.~~ This policy shall become effective upon the adoption of this Resolution.

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

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

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

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

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

VOTE: Aye - All
 Nay - None

PUBLIC HEARING - BELL SOUTH ANNEXATION

Mayor Clawson opened a public hearing at 7:15 p.m. to in order to receive public comment regarding the BellSouth Telecommunications Annexation petition. There being no one signed up to speak, Mayor Clawson closed the public hearing at 7:16 p.m.

ELECTION OF MAYOR PRO-TEM

Council Member Pepin nominated Council Member Mason to serve as Mayor Pro-Tem due to her years of service as a member of the Town Council, her supreme organizational skills, and her commitment and dedication to serving the citizens of Boone. With no other nominations, Council Member Pepin moved to elect Council Member Mason to serve as Mayor Pro-Tem. Council Member Aycock seconded the motion.

VOTE: Aye - All
 Nay - None

ELECTION OF TDA COUNCIL REPRESENTATIVE

Upon a motion by Council Member Brantz, seconded by Council Member Aycock, Council moved to appoint Council Member Mason to serve as the Town Council representative to the Tourism Development Authority.

VOTE: Aye - All
 Nay - None

COUNCIL LIAISON APPOINTMENTS

Mayor Clawson presented the following list of Town Council assignments and liaisons:

2007-2009 COUNCIL ASSIGNMENTS AND LIAISONS

Mayor Loretta Clawson	Region D Council of Governments*; High Country Council of Government RPO; Citizens for Responsible Pet Population
Rennie Brantz	Watauga County Solid Waste Committee*; Recycling; Fire Department; Vehicle Committee; Jones House*; Historic Preservation Commission; Zero-Waste Committee; Outside Agency Funding Review Committee
Liz Aycock	Personnel; Finance; Purchasing; Public Records; DBDA; Outside Agency Funding Review Committee; Affordable Housing Task Force
Janet Pepin	Water and Sewer; Utility Mapping; E911; Vehicle Committee; CableTV Committee; Historic Preservation Commission; Citizens for Responsible Pet Population
Lynne Mason	Development Services; Greenway Committee; Affordable Housing Task Force; Transportation Committee; Walk Boone Committee; Zero Waste Committee; Smart Growth Task Force
Stephen Phillips	AppalCART*; Police Department; Transportation Committee; Greenway Committee; Parks & Recreation*; Smart Growth Task Force

* Requires a Council Member to serve on respective board/commission

Effective: December 20, 2007

SCHEDULE SPECIAL PUBLIC HEARING ON ZONING AMENDMENT AND REZONING PETITION

Development Services Director John Spear stated that a public hearing on a zoning text amendment and a rezoning petition from ASU needs to be scheduled by the Council. He

presented the following summary of activity by members of the Town Council, Town staff, the Appalachian State University Board of Trustees and ASU staff regarding university growth planning:

“On September 4, 2007, members of the Boone Town Council and Appalachian State University Board of Trustees and members of their respective administrative staffs, met to discuss a plan proposed by the Town for university land use planning. Members of the Council and the Board expressed general agreement on some items in the proposal and agreed to appoint three delegates each to continue discussions on the remaining issues in the proposal. Town Manager Greg Young, Development Services Director John Spear, and Town Attorney Sam Furgieuele were appointed to represent the Town. ASU Chief of Staff Dr. Loren Baumhover; Greg Lovins, Interim Vice-Chancellor for Business Affairs; and ASU Attorney Dayton Cole were appointed to represent ASU. The delegates discussed the proposal at length, and recommend that both bodies adopt the following principles in ongoing cooperation between the Town and University with regard to University planning and related text amendments to the Town’s Unified Development Ordinance (UDO).”

Mr. Spear referred to the following items contained within the report:

1. All University land uses will be permitted by right within the University District (“U-1”). No public hearing or Town board approval will be required. Zoning permit applications will be submitted by University staff for approval by Town staff.
2. University campus land will be considered as a whole for purposes of computing land use intensity under the UDO. This provision does not apply to satellite tracts; however, land separated from the main campus only by a public street or thoroughfare will be deemed part of the main campus, and any land separated from the University’s State Farm property only by a public street or thoroughfare will be deemed part of the State Farm property. (“Land use intensity” includes maximum floor area, maximum building coverage, and minimum green space requirements intended to prevent overcrowding of land and avoid undue concentration of population. However, we recognize that many University facilities, e.g., classroom buildings and residence halls, are inherently intensive uses and should be accommodated in the overall University master plan and the UDO.)
3. The Town and University will cooperate in development of master plans for the University and the larger Boone community, including opportunities for one or more representatives designated by each party to confer with committees and staffs of the other party during all phases of planning efforts.
4.
 - a. Street setbacks of 10 feet from the established right-of-way line, or 25 feet from the center line of the street, whichever is greater, will apply to University property only when that property is adjacent to Town - maintained streets. No street setback is required on State or privately maintained roadways within the main campus or other University property.
 - b. Interior setbacks (sides and rear of property) of 10 feet are required when University property shares a boundary with property in a district other than U-1. The purpose of this requirement is to secure safety from fire, provide adequate light and air, and generally protect the health and welfare of occupants of both parties.
5. University building height generally is limited only by the Town’s fire fighting capability, except for buildings located immediately adjacent to property in a non-University district. In this instance:
 - a. All buildings proposed within 100 feet of property zoned R-1, R-1A, RR, R-2, R-4, or RA shall be limited to the maximum height allowed in the adjoining district.

b. All buildings proposed within 50 feet of property in zoning districts other than those listed in subsection 5.a shall be limited to the maximum height allowed in the adjoining district.

A table showing the height limitations established in the current UDO is set forth below for reference:

Zone	Height Limitation (Feet)
R-1, R-1A, RR, R-2, R-4, RA	35
R-3	50 (primary) - 90 (secondary)
MH	35
O/I	67
B-1	44 (primary) - 67 (secondary)
B-2	35 (primary) - 40 (secondary)
B-3	44 (primary) - 67 (secondary)

- 6. Plans for a new development in the U-1 district will include consideration of the need for additional parking to accommodate the new development, as well as strategies to mitigate the need for additional parking and traffic impacts on the campus and the larger community. The University will continue to seek off-campus parking options to increase utilization of mass transit services.
- 7. New development in the U-1 district shall comply with State of North Carolina law and regulations governing storm water. The University is currently in the process of selecting a design professional to aid in development of a University master plan. In addition, the University is committed to including in that plan strategies to mitigate the volume and velocity of storm water discharge, and negative impacts on water quality. Such strategies may include Leadership in Energy and Environmental Design (LEED) considerations, other sustainable development principles, and practices aimed at limiting post construction storm water discharge to pre-development rates. If a project fails to meet such standards, the University will undertake remedial measures at other sites on the campus to achieve those goals on a campus-wide basis to the extent feasible.
- 8. New development in the U-1 district shall provide street trees along Town-maintained streets consistent with the University’s treatment of streets on or adjacent to the main campus and in furtherance of the Town’s Master Tree Plan.
- 9. New development in the U-1 district shall provide a 10-foot landscape buffer adjacent to non-University property to create a separation of spaces without completely eliminating visual contact, soften the appearance of institutional development and provide some measure of privacy for adjacent residential land uses.

Council Member Mason spoke of the need for a joint master plan to address such issues as housing needs, infrastructure, traffic and parking, and storm water and further stated that it will be beneficial to both entities. Council Member Pepin clarified that the matter was first addressed at the Town Council retreat last February. ASU Attorney Dayton Cole stated that the University does endorse the report and looks forward to working with the Town. Mr. Spear stated that the planning staff will compose the text amendment proposal from the language in the report. Upon a motion by Council Member Brantz, seconded by Council Member Phillips, Council moved to set a public hearing on Thursday, January 10, 2008, at 7:00 p.m. in the Town Council Chambers to consider a text amendment and to instruct Development Services staff to draft the language for the proposed text amendment.

VOTE: Aye - All
 Nay - None

ADOPTION OF ORDINANCE - BELL SOUTH ANNEXATION

BellSouth Telecommunications has filed a petition for contiguous annexation in conjunction with a request for water and sewer service for property located at 260 Bamboo Road, further identified as Watauga County PIN 2920-20-0393-000. Development Services Director John Spear stated that following a public hearing on the annexation petition, adoption of the annexation ordinance is the final step in the annexation process. He noted the annexation will be effective on December 31, 2007. Upon a motion by Council Member Phillips, seconded by Council Member Brantz, Council moved to approve the following ordinance:

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE TOWN OF BOONE, NORTH CAROLINA (BellSouth Telecommunications)

WHEREAS, the Town Council has been petitioned under G.S. 160A-31 to annex the area described below; and

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

WHEREAS, the Town Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at Council Chambers at 1500 Blowing Rock Road at 6:30 p.m., December 20, 2007, after due notice by Watauga Democrat on December 5, 2007; and

WHEREAS, the Town Council finds that the petition meets the requirements of G.S. 160A-31;

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

Section 1. By virtue of the authority granted by G.S. 160A-31, the following described territory is hereby annexed and made part of the Town of Boone as of December 31, 2007:

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

A 3.150 acre tract located on the west side of Bamboo Road approximately 700 feet south of Deerfield Road being the same property as described in Deed Book 193 at page 326 with the perimeter of same being surveyed by me, Frank Lee Hayes PLS L-1488, on October 3, 2007 as: BEGINNING on an existing concrete monument in the James C. Lyons line a corner to Marvin Storie having NCGS NAD'83(07) coordinates of N=900,624.56 E1,221,879 being located South 29 degrees 09 minutes 15 seconds West 156.95 feet from NCGS Monument "AIRPORT"; THENCE from the beginning and with the Lyons line South 66 degrees 32 minutes 10 seconds East, crossing an existing reference monument at 609.25 feet, a total distance of 639.75 feet to the center of Bamboo Road (NCSR 1524); THENCE with the center of said road a curve concave to the west having a radius of 1,520.00 feet for an arc distance of 218.38 feet (chord is South 00 degrees 08 minutes 20 seconds West 218.19 feet) to Marvin Storie's corner; THENCE leaving the road and with the Storie line North 66 degrees 29 minutes 30 seconds West, crossing an existing reference ½ inch rebar at 31.63 feet, a total of 726.21 feet to an existing ¾ inch pipe, a Storie corner; THENCE with the Storie line North 23 degrees 28 minutes 55 seconds East 199.79 feet to the BEGINNING; being described using NCGS NAD '83(07) bearings and distances. Frank Lee Hayes, PLS L-1488

Section 2. Upon and after December 31, 2007, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in the Town of Boone and shall be entitled to the same privileges and benefits as other parts of the Town of Boone. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the Town of Boone shall cause to be recorded in the office of Register of Deeds of Watauga County, and in the office of the Secretary

of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with duly certified copy of this ordinance. Such a map shall also be delivered to the Watauga County Board of Elections, as required by G.S. 163-288.1.

ATTEST:

Mayor

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3, PAGES 340-341)

VOTE: Aye - All
 Nay - None

SCHEDULE SMART GROWTH PRESENTATION

Development Services Director John Spear presented the following summary of information regarding the Smart Growth presentation:

“The Smart Growth Audit is complete. The Audit, essentially an assessment of the Town’s existing growth and development policies, programs, and ordinances in relation to the principles of Smart Growth, involved broad community participation and detailed review of adopted plans and programs. The Audit provides detailed strategies to create an environment of Smart Growth in Boone.

The Advisory Committee has recommended a public presentation of the Smart Growth Audit and has invited the Lawrence Group to present the audit findings. The presentation would also serve to recognize the contributions of the numerous stakeholders involved in the process and provide opportunities for community feedback.

January 9, 2008 has been reserved for the presentation beginning at 6:30 p.m. in the Town Council Chambers. The public is strongly encouraged to attend to learn more about the positive impact of Smart Growth implementation.

The Audit can be found on the Town’s website by following the link on the Public Notices page.”

Council Member Mason stated that she served on the Smart Growth Task Force, and she encouraged citizens to learn more about smart growth practices and provide input on the issue. Council Member Phillips noted that a Lunch & Learn session sponsored by the Chamber of Commerce is scheduled for that same date at 12 p.m. in the Council Chambers and that the topic will be a presentation on smart growth practices. Upon a motion by Council Member Phillips, seconded by Council Member Mason, Council moved to schedule a special meeting on Wednesday, January 9, 2008, at 6:30 p.m. in the Council Chambers for a smart growth presentation.

VOTE: Aye - All
 Nay - None

SCHEDULE ANNUAL PLANNING RETREAT

Development Services Director John Spear stated that it is time to schedule the annual Planning Retreat. He suggested the following dates: Friday, January 25, 2008 or Friday, February 1, 2008. Mr. Spear stated that members of the Planning Commission and other board chairpersons will be invited to the retreat in order to discuss Town priorities for the 2008 year. Furthermore, he noted that the retreat will be an all-day event with lunch provided. Upon a motion by Council Member Pepin, seconded by Council Member Mason, Council moved to schedule the annual Planning Retreat on Friday, January 25, 2008, beginning at 9:00 a.m. in the Council Chambers.

VOTE: Aye - All
 Nay - None

BOARD OF ADJUSTMENT NOMINATIONS

Development Services Director John Spear stated that Board of Adjustment ETJ alternate James Marsh was appointed by the Watauga County Board of Commissioners to a regular ETJ position on the Board. He asked for any nominations from the Council to be forwarded to the County Commissioners. Council Member Mason informed the Council that the County has requested that two nominations be forwarded to the Commissioners for any vacancies that arise for ETJ positions. She suggested that the Council continue to accept applications until the next regular meeting for this board vacancy. It was the consensus of the Council to continue to receive applications for this ETJ position and revisit the matter at the next regular meeting in January.

COMMUNITY APPEARANCE COMMISSION APPOINTMENTS

Development Services Director John Spear stated that nominations to serve the remaining terms for two positions on the Community Appearance Commission (CAC) are needed. He pointed out that the terms will expire on June 30, 2008. Council Member Mason stated that an application from Casey Pond has been received for consideration for a vacancy on the Planning Commission. She stated that Mr. Pond is willing to be considered for the vacancy for the CAC and that due to his expertise in this area, he should be considered for nomination. Mr. Spear stated that applications for the vacant positions have also been received from Robert de Camara and Tom Jamison. Council Member Mason pointed out that Mr. de Camara is currently serving on the Board of Adjustment. By majority vote, Council appointed Casey Pond and Tom Jamison to serve the remainder of the two terms left vacant by the resignation of Commissioners Bordeaux and Greene, the terms due to expire on June 30, 2008.

PLANNING COMMISSION APPOINTMENTS

Development Services Director John Spear stated that two resident positions are open on the Planning Commission due to the resignation of Stephen Phillips and Liz Aycock. He stated that applications for the two vacancies have been received from Caroline Poteat, Sheri Lynn Baker, Mark Templeton, Bunk Spann, and Jesse Pipes. Mr. Spear pointed out that an ETJ position on the Planning Commission has recently become vacant. Council Member Pepin inquired about an attendance policy for the various Town boards. Mr. Spear stated that an attendance policy is contained in the UDO. Council Member Pepin asked that an attendance report for this board be compiled and presented to the Council. By majority vote, the Council moved to nominate Sheri Lynn Baker for the ETJ position and to forward the nomination to the Watauga County Board of Commissioners.

VOTE: Aye - All
 Nay - None

Council Member Brantz nominated Bunk Spann for a resident position. By majority vote, Council appointed Bunk Spann to a regular position on the Planning Commission.

VOTE: Aye - All
 Nay - None

Council Member Mason nominated Caroline Poteat for a resident position. By majority vote, Council appointed Caroline Poteat to a regular position on the Planning Commission.

VOTE: Aye - All
 Nay - None

CABLE TV BOARD NOMINATIONS

Council Member Pepin inquired about the function of this board. Town Manager Greg Young stated that the duty of the Cable TV Board is to develop the franchise agreement for cable TV service and to monitor compliance and the terms of agreement for the duration of the agreement. There were no nominations presented for the vacancy left by the resignation of Andrew Mason.

APPROVAL OF AGREEMENT - ELK MOTEL SEWER LINE EXTENSION

Town Attorney Sam Furguele briefly reviewed the terms of the agreement between the Town of Boone and Floyd Garrison Enterprises, Inc. Mr. Floyd Garrison expressed his appreciation to

the Town Council. In regard to discussion concerning providing insurance for the property, Mr. Garrison inquired about the consequences if he is unable to acquire the needed insurance for the property. Mr. Furguele explained that Mr. Garrison would have the opportunity to appear before the Town Council to request a modification to the agreement. Council Member Mason requested that Mr. Garrison provide financial information for Floyd Garrison Enterprises, Inc. including schedule C and other tax documents. Upon a motion by Council Member Pepin, seconded by Council Member Mason, Council moved to approve the following agreement and requested that Mr. Garrison provide financial information (Schedule C tax documents) for Floyd Garrison Enterprises, Inc. for review by the Town Council:

**STATE OF NORTH CAROLINA
COUNTY OF WATAUGA**

AGREEMENT

THIS AGREEMENT is made this the 20th day of December, 200 7, by and between the **Town of Boone**, a North Carolina Municipal Corporation, hereinafter referred to as "**Town**" and the **Floyd Garrison Enterprises, Inc.**, a North Carolina corporation, hereinafter referred to as "**Garrison**," collectively referred to as the "parties."

WITNESSETH

WHEREAS, Garrison is the owner and operator of a multi-family housing facility known as the "Elk Motel," located at 2588 and 2592 U.S. Highway 321 South; and

WHEREAS, Garrison has requested that Town extend its existing sewer service lines to the Elk Motel; and

WHEREAS, the parties agree that the Elk Motel serves an important public purpose for the citizens of Boone, in that it provides stable, long-term and affordable housing to individuals who would otherwise be unable to maintain such housing, thus avoiding potential homelessness; and

WHEREAS, the septic system at the Elk Motel is at risk of imminent failure, and due to the location, dimensions, topography, and geology of the land upon which the Elk Motel is situated, a replacement system compliant with prevailing health and sanitation standards cannot be installed; and

WHEREAS, the cost of an extension of Town's sewer line to the Elk Motel exceeds the financial capabilities of Garrison, and if undertaken by Garrison alone, even if Garrison had such capability, would force the cost of tenancy and rent at the Elk Motel to significantly increase, defeating its character as long-term, affordable housing; and

WHEREAS, Garrison has offered to pay one-third of the completed cost of the sewer line extension, and to meet other requirements of Town for its extension of the sewer line; and

WHEREAS, Town has determined that it is the best interests of the Town of Boone, and of critical importance in sustaining the well-being and general welfare of the citizens of Boone, to extend the needed Town sewer line so as to allow a connection to the Elk Motel, but further has determined that to accomplish these goals, certain requirements and security must attach to the extension of said sewer line, and the obligations created hereunder;

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES OF THE PARTIES, and for other good and valuable consideration, the receipt of which is hereby acknowledged, each party hereby enters into this written agreement, fully understanding the terms, conditions and provisions hereof, and agreeing that such terms are fair, just and reasonable; and in further consideration of the promises, the mutual promises and undertakings required and contained herein, the undersigned, for themselves, their heirs, executors, administrators, assigns, agents, employees, officers, managers, and successors, agree as follows:

1. Town will extend its sewer line from the current end of the line to a point which will allow a sewer service connection to the Elk Motel.
2. Garrison shall pay one-third of the full cost of extending the Town's sewer line to the Elk Motel, including but not limited to the expenses, if any, of surveying, engineering, the purchase of materials, and construction of said sewer line, and shall deposit with Town the sum of one hundred thousand dollars (\$100,000.00), the amount estimated to

represent one-third of the total cost, three hundred thousand dollars (\$300,000.00), to be used for that purpose. Should the extension of the sewer line be completed for a lower cost, an appropriate amount shall be refunded to Garrison so that it will have contributed exactly one-third of the completed cost. Should the cost of extension of the sewer line exceed the amount estimated, Garrison shall, within sixty days of notification by Town, pay additional funds to Town so that after such payment, Garrison will have paid exactly one-third of the completed cost.

3. Garrison agrees that for a period of at least ten years from the execution of this Agreement, Garrison will operate Elk Motel as an "Affordable Housing Project," as that term is defined in the Town of Boone Water and Sewer Use Code. Garrison shall provide Town, from time to time, upon request, with such information as may be necessary to confirm the continued operation of the Elk Motel as an Affordable Housing Project.
4. Contemporaneous with the execution of this Agreement, Garrison shall file a petition with Town for voluntary annexation of the Elk Motel property, identified by Watauga County parcel identification number 2819-68-2643-000 and consisting of 1.3200 acres, more or less, into the corporate limits of Town. Upon completion and connection of the sewer line to the Elk Motel, Garrison shall pay for sewer service at the normal rates for such service for Town sewer customers, and if annexation is denied, shall pay at the rates charged for sewer customers located outside the corporate boundaries of Town.
5. Simultaneously with the execution of this Agreement, Garrison shall execute a promissory note and accompanying deed of trust, secured by that certain tract of land upon which the Elk Motel is located, identified by Watauga County parcel identification number 2819-68-2643-000 and consisting of 1.3200 acres, more or less. Said deed of trust shall secure Garrison's obligations hereunder and shall secure a further obligation, in the event of a default by Garrison of its obligations under paragraph 3, *supra*, to reimburse Town for its expenditures, in the amount of one-third of the completed cost, to extend its sewer line to the Elk motel.
6. Following completion of Garrison's performance of all obligations under this Agreement, Town shall release and cancel the aforesaid lien and deed of trust. Should Garrison, due to death, ill health or other calamity outside the control of Garrison, be unable to fully perform the obligations created by paragraph 3 of this Agreement, *supra*, Town, by duly exercised act of the Boone Town Council, may nevertheless release and cancel the aforesaid lien and deed of trust, and may relieve Garrison from further obligations under this Agreement.
7. Should Garrison transfer ownership of the Elk Motel property, or discontinue the use of the Elk Motel as an Affordable Housing Project, as required by paragraph 3, *supra*, the Town's lien shall be reduced to an amount equal to the Town's share of the expenditure of funds to extend the sewer line, multiplied by a factor calculated by dividing the number of days from the date of the execution of this Agreement to the date of sale or the number of days of compliance with the provisions of paragraph 3 of this Agreement, whichever is less, by 3,650, the number of days in the ten year period required under paragraph 3.
8. Garrison shall provide and maintain insurance coverage against loss, destruction, or other damage to its Elk Motel property in an amount no less than necessary to satisfy any other outstanding indebtedness secured by said property plus the amount of the Town's lien under this Agreement. A certificate of insurance in compliance with this paragraph shall be filed and maintained with Town annually during the ten years following the execution of this Agreement.
9. This Agreement does not and shall not be construed to establish or create a partnership, joint venture, franchise or other form of business association between the parties.
10. If Garrison defaults in the performance of any of its responsibilities under this Agreement, all of which are deemed material, Town may give Garrison notice of its default. If Garrison does not cure said default within seven (7) days after the receipt of notice thereof, Town may terminate the Agreement, and may foreclose upon the Elk Motel property in compliance with the procedures, if any, established by the deed of trust and North Carolina law.
11. Garrison shall provide Town with all necessary access to its property, including, if

requested, an easement, for Town to complete, operate and maintain the aforesaid sewer line.

12. This Agreement contains all of the terms and conditions agreed to by the parties. There are no oral terms or conditions agreed to by the parties hereto which are not contained in this written agreement, but the Town of Boone Water and Sewer Use Code shall apply to all relevant matters, unless superceded by this Agreement. There shall be no modification of this Agreement unless the modification is in writing and signed by both parties.
13. Town's failure to strictly enforce its rights under this Agreement shall not constitute a waiver of such rights with respect to any violation of the Agreement by Garrison, and the parties agree that this provision may itself not be waived by the conduct of the parties.
14. If any term, covenant, condition or provision of this Agreement shall, to any extent, be determined invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.
15. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, and venue of any dispute between the parties shall be in Watauga County, North Carolina.
16. Each party represents and warrants to the other that all necessary authorizations and approvals required for execution and performance of this Agreement have been given and that the undersigned individual is duly authorized to execute this Agreement and bind the party for which he/she signs.
17. Each party shall execute any additional documents provided for herein or which are necessary to carry out the terms and intent of this agreement.
18. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested; to the following addresses:

If to Town, to: Greg Young
 Town Manager
 Town of Boone
 P.O. Drawer 192
 Boone, NC 28607

If to Garrison, to: Floyd H. Garrison Enterprises, Inc.
 2048 Junaluska Road
 Boone, NC 28607

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate originals, and agree to all of the terms and conditions set forth above, the day and year first above written.

VOTE: Aye - 4 (Phillips, Mason, Pepin, Brantz)
 Nay - 1 (Aycok)

REQUEST FOR ACTION BY BOARD OF ADJUSTMENT - J. REID BAILEY COMPLAINT

Town Attorney Sam Furguele provided the following memorandum regarding this matter:

MEMORANDUM

*To: Town Council
From: Samuel F. Furguele, Jr.
Date: December 11, 2007
Re: Request for Action by Board of Adjustment*

At the December 6, 2007 meeting of the Board of Adjustment, the Board, by unanimous vote, requested that I present to the Council its request that a complaint be filed with the North Carolina Engineering Board against J. Reid Bailey, of The Art of Foundations,

apparently an engineering firm in Charlotte. The basis for this request is as follows:

Mr. Bailey was employed by Peter Owens, the owner of a home at 258 Rippling Water Lane, located off Payne Branch Road in the Town's extra-territorial jurisdiction ("ETJ"), to perform engineering services in conjunction with Mr. Owens' remodeling of the home. Mr. Bailey certified and sealed a letter to Mr. Owens, which was then presented to the Town's Development Services Department, indicating that the first floor of the home was 6/1 feet above the 100 year flood elevation. Based upon this certification and seal, the Town issued a permit to Mr. Owens to undertake his planned alterations. The Town's UDO required that for Mr. Owens to renovate to extent desired, the floor of the home needed to be at least two feet above the 100 year flood elevation.

Subsequently, Mr. Owens discharged Mr. Bailey, and in order to proceed with his plans, he had to obtain a new opinion about the elevation of the home. A local surveyor determined that the first floor was actually less than two feet above the flood elevation, and the result of this determination was that Mr. Owens, who had apparently already demolished portions of the home, could not proceed with his plans without first obtaining a variance. Although the Board of Adjustment granted the variance, members of the Board were very concerned that such a large and significant mistake could have been sealed by a professional engineer. Mr. Owens, who was represented by Tony di Santi, had obviously concluded that the surveyor's opinion was correct and the engineer's option was erroneous.

Even though Mr. Owens might have direct recourse against Mr. Bailey, the Board of Adjustment members thought that the inability of Town staff to question such a sealed opinion, and the possibility that an error of this magnitude could lead Town staff to approve a project that was actually in violation of development requirements, as could have occurred in Mr. Owen's case, required some formal action by the Town. The Town is bound by the seal of a professional, and the Board members were vocal in expressing the view that it is a serious matter for the Town to have to rely on a sealed opinion which turns out to be mistaken to such an extent and that there should be consequences to such an error. The Board of Adjustment therefore believes that a complaint to Mr. Bailey's licensing board should be made.

I advised the Board that it would be a decision for the Council as to whether the Town would pursue a complaint.

Mr. Furgiuele further explained that the Board of Adjustment would like to submit a history of what has happened in this instance. Council Member Mason stated that since the Town does rely on professional opinion and certification as part of the process of issuing development permits, the Town should report this situation to the proper review authority. Council Member Pepin agreed that this individual should be held accountable for his actions. Upon a motion by Council Member Aycock, seconded by Council Member Mason, Council moved to pursue filing a complaint with the North Carolina Engineering Board against Mr. J. Reid Bailey of "The Art of Foundations."

VOTE: Aye - All
 Nay - None

ADOPTION OF RESOLUTION - HIGHWAY 105 TRAFFIC SAFETY ISSUES

Council Member Mason presented the following statement concerning traffic safety issues and statistics on Highway 105 in Boone:

We have all been impacted by the tragic accident on 105 over the Thanksgiving Holiday. I know that both myself and many others in the community are frustrated by the lack of response from DOT to safety issues on our DOT maintained roadways. It is important for the citizens of Boone to know that safety issues on 421, 321, and 105 have been repeatedly brought to the attention of DOT. The Town Council has previously requested that DOT drop the speed limit on 105, but the request was denied (referenced in 7/2/02 Transportation Committee Meeting Minutes). This issue was discussed again at the Transportation Committee Meeting again on July 14, 2004. We all know that the traffic volume on 105 has been steadily increasing as have the number of businesses. 105 has a high volume of traffic turning on and off the roadway and 45 MPH is too fast. 105 should be treated no differently than 321 or Blowing Rock Road. The Mayor sent a letter to DOT dated April 26, 2006 addressing a number of safety concerns including crosswalk improvements, which remain unaddressed. We are still waiting for DOT to approve the

enhancements for the 421 Project, which include safety-related measures (requested by the Town, County, ASU, Chamber and COG.)

Safety of our roadways must be made a priority by DOT and the needed funding appropriated. Specifically, 105 can be made safer by adding left turn lanes, reducing speed limits and adding traffic lights. Biking and walking should be viable transportation options in our community and can be part of our traffic solution but the needed infrastructure to insure safety must be addressed. We are talking about something as basic as bike lanes, sidewalks, and crosswalks. The Town is actively working on expanding both sidewalks and the greenway as well as the incorporation of bike lanes with new projects.

<u>Year</u>	<u>Lanes</u>	<u>PI</u>	<u>PI%</u>	<u>PD</u>	<u>PD%</u>	<u>Total</u>	<u>%</u>	<u>Comments</u>
2004								
	5	3	100%	37	100%	40	100%	
	4	8	267%	48	130%	56	140%	
	Ped							
2005								
	5	5	100%	29	100%	34	100%	
	4	10	200%	29	100%	39	115%	
	Ped					7	175%	1 near 321 & 105
2006								
	5	7	100%	26	100%	33	100%	
	4	10	143%	41	158%	51	155%	
	Ped					14	350%	1 near 321 and 105
2007*								
	5	6	100%	30	100%	36	100%	
**	4	9	150%	38	127%	47	131%	
	Ped					13	325%	2 near 321 and 105

*11 months

**includes one fatality

Range of 15% to 55% increase of total accidents on 4 lane section/105

Range of 43% to 167% increase of PI accidents on 4 lane section/105

Range of 27% to 58% increase of PD accidents on 4 lane section/105

Up to a 250% increase in pedestrian accidents

The residents of Poplar Hill neighborhood and the mother of a pedestrian hit on 321 have been in contact with me and want to see something done. I want to see something done.

I propose that the Town Council should send a letter from the Mayor to DOT with copies to our state representatives requesting the following:

1. Immediate reduction of the speed limit on Hwy 105 from 45 mph to 35 mph between 105 Bypass and Poplar Hill Road. (i.e. 35 mph from 421 to 105 Bypass).
2. Left turn lanes be added at intersections on the 4 lane section of 105.
3. Traffic light be added for safe access to and from the Poplar Hill neighborhood and coordinated with the County’s resolution for a traffic light at Poplar Grove Road.

4. *Cross walks be added and/or maintained at all major state maintained roadway intersections to include 421 and 194, 421 and University Village/New Market Boulevard, 421 and 105, 105 and State Farm Road (repainted), 105 and 321, 321 and Shadowline Road, 321 and Boone Heights Drive, 321 and Deerfield Road, and all intersections along King Street and Rivers Street.*
5. *DOT to reevaluate speed limits on all DOT maintained roads in town to include neighborhoods.*

I would also like the Town to request that the County, ASU, and the COG to consider sending a similar letter and to encourage all citizens to do so as well.

Last of all, the Town of Boone needs to look at what we can do to reduce drunk driving. At the recent MADD organization meeting, I learned that Watauga County is one of the top 16 counties for DWI arrests in the state and that only one in 200 drunk drivers are caught. I want Boone to be known as a town that has ZERO tolerance for drunk and/or impaired driving and that drunk and/or impaired drivers will be prosecuted to the fullest extent allowed by the law.

Council Member Pepin requested that the DOT consider reducing the speed limits on all state-maintained roads within the Town of Boone. Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to send a letter from Mayor Clawson on behalf of the Town of Boone to the NC Department of Transportation requesting the following:

1. Immediate reduction of the speed limit on Hwy 105 from 45 mph to 35 mph between 105 Bypass and Poplar Hill Road. (i.e. 35 mph from 421 to 105 Bypass).
2. Left turn lanes be added at intersections on the 4-lane section of 105.
3. Traffic light be added for safe access to and from the Poplar Hill neighborhood and coordinated with the County's resolution for a traffic light at Poplar Grove Road.
4. Cross walks be added and/or maintained at all major state maintained roadway intersections to include 421 and 194, 421 and University Village/New Market Boulevard, 421 and 105, 105 and State Farm Road (repainted), 105 and 321, 321 and Shadowline Road, 321 and Boone Heights Drive, 321 and Deerfield Road, and all intersections along King Street and Rivers Street.
5. DOT to reevaluate speed limits on all DOT-maintained roads in town to include neighborhoods.

VOTE: Aye - All
 Nay - None

REQUEST PERMISSION TO APPLY FOR GRANTS - BOONE POLICE DEPARTMENT

Police Chief Bill Post requested permission to apply for two grants through the North Carolina Governors Crime Commission. He explained that the first grant would be for the purchase of toughbook-style laptop computers and mounts to be used in patrol vehicles and that the grant amount would be \$9,000 plus a 25% cash match of \$3,000 from the Town of Boone. He noted the total grant amount to be \$12,000 and that the matching funds would be paid from the Town's fund balance. Chief Post stated the second grant would be used to purchase three surveillance cameras and related signaling equipment to be installed in trouble locations within the town, initially in the downtown area. He explained that the total amount of the project will be \$22,650 with the grant amount of \$16,987.50 and that the Town would pay a 25% match in the amount of \$5,662.50 from its fund balance. Chief Post noted that grant applications are required to be submitted to the NC Governors Crime Commission by December 31, 2007 and that grant recipients will be notified by April 1, 2008 if their applications are accepted. He stated that implementation of the grants will begin on July 1, 2008. Council Member Pepin questioned the use of surveillance cameras as a means of deterring criminal activity. Chief Post indicated that the use of surveillance equipment will not be used solely for deterring criminal activity but to monitor areas where crime is more prevalent. Council Member Aycock asked about the increase in crime. Chief Post noted a 10% increase in crimes such as vandalism and disorderly conduct, especially in the downtown area, with a majority of offenses committed in the early morning hours when downtown bars close. Council Member Aycock read the following statement into the record:

While the safety of our community is of utmost importance, I have some concerns about the privacy rights of our citizens. In May 2004, the Town Council signed a resolution "Affirming the principles and of Federalism and Civil Liberties" in which it affirms that the Town of Boone is in support of protecting our civil liberties, one being the right to privacy.

I am in complete agreement that if crime is increasing in our downtown area, that something needs to be done. I would have no hesitation with having a police officer in the downtown area 24 hours a day, if necessary. In my opinion, video surveillance should only be used when all other law enforcement means have been tried and have failed. The benefits must substantially outweigh the reduction of privacy that is at risk when a video surveillance system is in place. The citizens of Boone should have the right to walk around town without being recorded and monitored.

Currently the Town does not have a policy that describes how and when a video surveillance system is to be used. I believe that before we consider implementing a surveillance plan on the downtown area, that we need a comprehensive, written policy for the operation of the system.

I believe that the citizens of Boone deserve to have a voice in this matter. I would like to request that we add this item for discussion at the quarterly public hearing in February. I think that citizen input is needed on whether we want video surveillance on public lands at all. I want to ask that this be added to the agenda at the February quarterly public hearing and that we approve the request to match the grant money for the surveillance cameras, but the use of them will be determined after public input and a policy on this in place.

Upon a motion by Council Member Brantz, seconded by Council Member Phillips, Council moved to approve applying for a grant for the purchase of toughbook-style laptop computers and mounts to be used in patrol vehicles in the amount of \$9,000 with a 25% cash match from the Town of Boone in the amount of \$3,000 to be paid from the Town of Boone fund balance.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Aycok, seconded by Council Member Mason, Council moved to approve applying for a grant for the purchase of three surveillance cameras and related signaling equipment, to be installed in trouble locations initially in the downtown area, in the amount of \$16,987.50 with the Town of Boone to pay a match of \$5,662.50 out of the Town of Boone fund balance.

VOTE: Aye - All
 Nay - None

MONTHLY WATER STATUS REPORT

Public Utilities Director Rick Miller presented the following status report:

As requested by Town Council, staff and I have compiled the following information concerning water use for the month of November. The Water Treatment Plant recorded a maximum daily demand of 2.181 million gallons on Friday, November 2, 2007, and the average daily demand was 1.509 million gallons for the entire month. The total amount of water treated was 56.435 million gallons. This is a six percent increase over the total amount of water treated in November 2006.

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

Originally the Boone Town Council appropriated for 25,000 gallons per day usage for allocation to customers over a five year period. In November the Water Use Committee met and after careful review of predicted vs actual water usage numbers, recommended to Council that the allocation amount be increased to 50,000 gallons per day until 2012. This recommendation was approved by the Boone Town Council at the last meeting.

At the last Town Council meeting, Council chose to allocate 15,285 gallons per day to three projects from the 2008 allotment and authorized 8,100 gallons per day from the 2009 allotment for one additional project. The total water allotment remaining for the year 2008 has not broken the sixty percent threshold. All future water service requests in excess of 3,000 gallons per day will be forwarded to Town Council as required in Ordinance 05-01.

			2008			
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						50000
			Mega Builders	Nov-07	14400	35600
			Anne Henning	Nov-07	795	34805
			Katrina Callio	Nov-07	90	34715
			2009			
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						50000
			Leanord Soloman	Nov-07	8100	41900

REQUESTED APPEARANCE - MR. GORDON NOBLE

Mr. Gordon Noble, of 1012 Hunting Hills Lane, appeared before the Town Council to relay his frustration with a strong sewer odor that is continually permeating his house. He explained to the Council that since two new homes were built below the location of his home, he has experienced this problem. Furthermore, Mr. Noble stated that he has employed two different plumbing companies to determine if the problem is one within his plumbing system but that each plumbing company has detected no problem with his system. He stated that he notices the problem each time his neighbors are staying in their home. Mr. Noble praised the staff of the Public Utilities Department who have investigated and utilized several methods in hopes of rectifying the situation, to no avail. Public Utilities Director Rick Miller stated that all avenues have been exhausted with the exception of performing a smoke test but that is a last-resort measure since it would be performed in a private residence and would require a written release from Mr. Noble for any damages that might occur as a result of the smoke test. Mr. Noble stated that he has not noticed the problem during the past couple of weeks but that the neighbors have not been in the residence until a few days ago. He requested that if he does experience this problem again he would like to appear before the Council to request help in solving the problem. The members of the Council assured Mr. Noble of their desire to help him find a solution to this situation.

PUBLIC COMMENT

Appalachian State University Attorney Dayton Cole appeared before the Town Council to clarify that action had been taken to include a zoning amendment during the Special Public Hearing that was scheduled for January 10, 2008, at 7:00 p.m. in the Council Chambers. Upon a motion by Council Member Brantz, seconded by Council Member Pepin, Council moved to include a petition for rezoning to be submitted by ASU on the agenda for a Special Public Hearing scheduled for January 10, 2008 at 7:00 p.m. in the Council Chambers.

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 9:34 p.m. pursuant to NCGS 143-318.11a)3)5)6) in order to discuss the following matters:

- Property Acquisition - Water.
 - ASU Agreements.
 - Personnel.
- § Consideration of Town vs. Light Settlement Proposal.

VOTE: Aye - All

Nay - None

Upon a motion by Council Member Pepin, seconded by Council Member Phillips, Council moved to exit Closed Session at 11:21 p.m.

VOTE: Aye - All
 Nay - None

ACTION FOLLOWING CLOSED SESSION

Council Member Mason questioned ASU Attorney Dayton Cole about stipulating that no building will be constructed on top of any sewer lines until the issue of whether a 5' vertical clearance on top of a sewer line is resolved. Mr. Cole stated that ASU will agree to the stipulation. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve the following Sewer Access Agreement with a condition that the Town of Boone jointly with Appalachian State University obtain from the NC Department of Environment and Natural Resources an interpretation of the state rules as to whether or not a building can be constructed on top of a sewer line with a 5' vertical clearance:

STATE OF NORTH CAROLINA COUNTY OF WATAUGA

SEWER ACCESS AND COMPLIANCE AGREEMENT

This Agreement, made as of the first day of January, 2008, 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 "ASU") and the Town of Boone, (hereafter the "Town"), known and referred to collectively as "the parties."

WITNESSETH

THAT WHEREAS ASU controls certain land and facilities which are owned by the State of North Carolina and served by utilities, including, but not limited to, sewer lines constructed and/or maintained by the Town; and

WHEREAS, the Town desires access to such land and facilities for the purposes herein described; and

WHEREAS, the Town wishes to insure that ASU's connections into the Town sewer system are fully compatible with the Town's sewer system and the Town's Water and Sewer Use Code, and further wishes to avoid future questions concerning the accuracy of sewer use charges by the Town to ASU;

NOW, THEREFORE, for and in consideration of the mutual promises herein contained, the Parties agree as follows:

1. Compatibility of ASU Meters with the Town Sewer System:

Within five years from the execution of this Agreement by both parties, ASU will calibrate all of its sewer meters and will replace or repair any meters which are inaccurate to a degree exceeding + or - 4% of the correct reading, and shall replace all sewer meters which do not have the capacity to measure usage in 1,000 gallon increments. Any new meters which are installed by ASU in the future will be compatible with the requirements of the Town of Boone's Water and Sewer Code, including the capacity to be "touch read," and within five years from the execution of this Agreement by both parties, ASU will fit all meters which can be so fit with "touch read" capacity. ASU will confer with appropriate staff of the Town's Public Utilities Department before installation of any new meters so as to determine such compatibility. Any meters which are not presently equipped as touch-read meters will be retro-fitted within five years.

2. Access by the Town to ASU Lands and Facilities

2.1 Grant:

ASU hereby grants permission to the Town to access all ASU lands and facilities served by Town utilities (hereinafter called "Facilities") for the following purposes:

installing, inspecting, operating, maintaining, repairing and reconstructing its sewer lines, and 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 (hereinafter referred to collectively as “Town activities”).

2.2 Term:

Town shall be permitted access to the Facilities from January 1, 2008 to December 31, 2010, for the purposes stated above. Unless either of the parties notifies the other within thirty days prior to the end of this or subsequent renewal terms of its desire that the Town’s access, created hereunder, should terminate, the Agreement will automatically renew for an additional three year period thereafter, according to the same terms and conditions.

2.3 Conditions of Use:

2.3.1 The Town shall, in all cases except emergencies, notify the ASU Director of Physical Plant or that person’s designees (hereinafter referred to as “Director”) of its plans to access Facilities at least three (3) business days prior to the date on which it engages in activities contemplated by this Agreement. For purposes of this Agreement, an emergency is a situation or set of facts that would lead a reasonable person to conclude that the condition of the Town’s utilities presents an immediate or imminent threat to public health or safety. In any case of emergency, the Town shall notify the Director or ASU’s Police Department as soon as practicable after Town staff or the Town’s contractor enter upon ASU lands. The Town agrees that except in an emergency, it will not engage in any land disturbance or activities in which fires, flame, weapons or other similarly potentially dangerous equipment or substances are involved without the prior written approval of the Director. Approval will not be unreasonably withheld.

2.3.2 This license shall establish a presumptive thirty-five (35) foot wide “zone” over and across the real property of the State of North Carolina, (17.5 feet on either side of sewer lines) in such locations as lines currently exist, and creating such zones in areas where sewer lines are to be installed or constructed.

2.3.3 (a) ASU, other than while the lines are under actual construction or repair, shall have the right to use the property of the zone, but shall avoid any use which interferes with or is inconsistent with the use thereof by the Town as provided herein. In accordance with State laws and regulations, ASU shall be entitled to construct Facilities and landscape the area within the zone with trees, bushes, flowers, grass or other vegetation and/or mulch, so long as the roots from the bushes do not damage the sewer line. In the event of any such damage, ASU shall bear the expense of necessary repairs to the sewer line. If the Town is unable to reasonably access and repair damaged sewer lines without causing damage to such Facilities, trees or other vegetation, which the Town will make all reasonable efforts, in light of the circumstances, to avoid, ASU will, at its option and sole expense, remove the Facilities or vegetation, or repair or re-route the damaged sewer lines, promptly and within a reasonable time following receipt of notice from the Town.

(b) Generally, the parties acknowledge that the best and preferable practice is to avoid construction of new facilities in the zone. In order to ameliorate potential problems resulting from an incursion into the zone, University agrees to encase the portion of the sewer line affected by any such incursion. Should University wish to construct a facility over a sewer line, University will relocate the sewer line unless such relocation is impracticable, in which case University will take all reasonable actions to protect the sewer line. If new construction or renovations require modifications, relocation or repair of existing sewer lines so as to facilitate ASU’s compliance with its obligations under this section, such modifications, relocation or repairs shall be undertaken by ASU at its sole expense, but no such relocation or repair will be undertaken without reasonable advance notice to the Town, in light of the circumstances. Any relocation or repair will be completed by ASU in compliance with all State and Town requirements; provided, however, in the event of any perceived conflict between State and Town requirements, ASU and Town officials will confer jointly with State officials to resolve such

conflict.

(c) Should ASU construct or allow the construction of other utility lines, including but not limited to, electric, gas, telephone, cable, or water lines, within the aforesaid zone, ASU shall provide the Director of the Town Department of Public Utilities with such information as may be necessary to fully inform the Director of the exact location of any new lines, it being the intention of the parties that should the Town undertake any repairs to the sewer lines, it can do so without risking injury to its personnel or damage to other utility lines. However, if ASU elects to place other utility lines within the aforesaid zones, and the Town is unable to reasonably access and repair damaged sewer lines without causing damage to such other utility lines, which the Town will make all reasonable efforts, in light of the circumstances, to avoid, ASU will remove and/or relocate such utility lines as soon as practicable following receipt of notice from the Town.

2.4 Construction, Maintenance and Damage:

2.4.1 The Town shall not injure, mar or in any way deface the facilities or any other ASU property except to the extent reasonably necessary to complete the activities involved. If facilities are disturbed, the Town shall restore them to the condition that existed prior to the Town's activities. All waste resulting from the Town's activities shall be removed by the Town at its sole cost and expense.

2.4.2 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 the Director's approval except when an emergency exists and the Town is unable to obtain advance approval. However, the Director's approval shall not constitute an opinion or certification as to whether the Town's placement of equipment and supplies, or other physical arrangements, comply with applicable requirements (including, but not limited to, those imposed by the Occupational Safety and Health Act, and implementing regulations). Except as otherwise provided in this Agreement, Town shall be responsible to ASU for any damage to the Facilities caused solely by Town, or its agents or employees, through construction, maintenance or otherwise.

2.5 ASU Equipment:

The Town shall not use equipment, tools or furnishings located in or about the Facilities, other than its own, without prior written approval of the Director; provided, however, no written approval shall be required prior to the Town's routine readings of meters associated with ASU facilities.

2.6 Additional Users:

The license granted under this Agreement is non-exclusive. Other events and activities may be held simultaneously in other parts of the Facilities. The Town shall conduct its activities so as to avoid unnecessary interference with such other activities, and ASU shall take necessary action to prevent interference with Town's activities by other licensees or invitees.

2.7 Parking:

The Town shall not place its vehicles or equipment in such way as to unnecessarily interfere with ASU parking facilities, and should there be a need to disrupt or use ASU Parking areas, and (except in cases of emergency) the Town shall give advance written notification to the Director, describing the location and need for the disruption or use. In the event of an emergency, the Town shall give oral notice to the Director as soon as may be practicable, followed by a written report of the emergency conditions and actions undertaken by Town officials to remedy them. If notice to the Director in the time and form specified above is not practicable, the Town shall give such notice to ASU through ASU's Police Department.

2.8 Insurance:

2.8.1 Town shall maintain during the term of this Agreement, at its own cost and expense, public liability insurance 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 ONE MILLION DOLLARS (\$1,000,000.00) for each occurrence. Town shall, at the time of the execution of this Agreement or no later than ten (10) days prior to the time for which use is authorized, furnish ASU with a certificate showing that such insurance has been issued and is in full force and effect.

2.8.2 Town shall maintain at its own cost and expense workers' compensation insurance in the amount required by statute throughout the term of this Agreement.

2.9 Emergency Medical Service:

Town shall hire at Town's sole expense, or otherwise make available during its use of the Facilities, emergency medical personnel and equipment appropriate for the nature of the Facilities, its use, and the planned activity.

3. 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.

4. Parties:

The relationship between the parties to this Agreement is that of licensor and licensee. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, guardians, successors and assigns of the respective parties hereto.

5. Choice of Law:

This Agreement shall be governed by, and construed in accordance with, the laws of the State of North Carolina.

6. Termination/Remedies Cumulative:

6.1 This Agreement may be terminated by either party at its option by giving at least thirty (30) days' written notice of termination to the other party.

6.2 The rights and remedies herein granted to the parties in the event of default or breach are cumulative, and the exercise thereof shall be without prejudice to the enforcement of any other right or remedy available in equity or authorized by law or this Agreement.

7. 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.

8. 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.

9. Indemnification:

Town shall indemnify and save harmless ASU and its trustees, agents and employees from all liabilities, losses, costs, damages, claims or causes of action of any kind or nature whatsoever, and expenses arising or claimed to have arisen out of any injuries or damages received or sustained by any person or persons or property, as a result of intentional acts or negligence of Town or its agents, employees, patrons or contractors.

10. 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 ASU in any regard whatsoever shall not constitute a waiver of any covenant or condition to be performed by Town, and, until Town has completely performed all covenants and conditions of this Agreement, ASU shall be entitled to invoke any remedy available to ASU under this Agreement or any law or equity despite such forbearance or indulgence.

11. 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, which are not included herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.

12. Access:

Director and other ASU personnel may enter any area around the Facilities at any time to make inspection or otherwise operate and maintain State-owned property.

13. Applicable Laws and Regulations:

Town and ASU mutually agree to comply with all applicable policies, rules and regulations of ASU, and all applicable policies, rules and regulations, ordinances and laws of the Town of Boone, County of Watauga, State of North Carolina and the United States of America, in connection with the performance of this Agreement.

14. 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
265 Dale Street
ASU Box 32105
Boone, North Carolina 28608
Attention: Director of Physical Plant
Telephone: (828) 262-3190 ext. 106
Facsimile: (828) 262-4017

As to Town:

Town of Boone
P.O. Drawer 192
Boone, North Carolina 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 e-mail, telegram, 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 mail, postage prepaid, to the other parties by the party effecting the change.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement.

Appalachian State University

By:
Kenneth E. Peacock, Chancellor
Date:

Attest:

(Seal)

Town of Boone

By:
Loretta Clawson, Mayor
Date:

Attest:

Town Clerk, Town of Boone
(Seal)

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Pepin, Council moved to approve the following Water Supply Agreement between the Town of Boone and Appalachian State University subject to the following conditions:

1. It be stipulated that under Section 2 (water supply by the University) applies to the existing five accounts identified:
 - a. Appalachian Panhellenic Hall (formerly Quality Inn)
 - b. Existing facilities at State Farm (including, but not limited to, Physical Plant, Motor Pool, and Fields)
 - c. Child Development Center (Poplar Grove Road)
 - d. Existing facilities at Ayers Property (536 Poplar Grove Road)
 - e. McKinney Alumni Center (553 Blowing Rock Road)
2. The last two sentences in Section 2 of the Water Supply Agreement be deleted:
 ~~"...In the event new projects are developed or acquired by University, University wishes to furnish water to Town equal to the amount of water used by such projects. The parties will negotiate arrangements for such projects on a case by case basis in good faith."~~

**WATER SUPPLY AGREEMENT
BETWEEN
TOWN OF BOONE
AND
APPALACHIAN STATE UNIVERSITY**

THIS AGREEMENT (“Agreement”) is entered into as of the first day of January, 2008, 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. 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. 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.

2. 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). Beginning January 1, 2011, University agrees to supply and sell to Town, and Town agrees to accept and pay or credit University for, an amount of water at least equal to the amount of water supplied by Town to the following Appalachian State University facilities:
 - a. Appalachian Panhellenic Hall (formerly Quality Inn)
 - b. State Farm (including, but not limited to, Physical Plant, Motor Pool and Fields)
 - c. Child Development Center (Poplar Grove Road)
 - d. Ayers Property (536 Poplar Grove Road)
 - e. McKinney Alumni Center (553 Blowing Rock Road)

In addition, University may 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 as may be agreed upon by the parties.

3. Payment by Parties for Water Purchases: Each party agrees to receive and purchase from the other the water supplied pursuant to this Agreement at the same rates then applicable to Town's provision of water services to the University. Each party shall, at least quarterly, pay for all water received, or grant to the supplying party a credit against charges owed by the supplying party for water services, and provide to the supplying party an accounting of such credits against charges. On or before May 31 of each year, each party shall pay the other party the amount, if any, that such credits exceed charges billed to the other party.

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), a copy of which has been 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, where reasonable, will be incorporated into any contracts for construction.

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, performing any other of its obligations under this Agreement, and recovery of Town's equipment in the event this Agreement expires or is otherwise terminated. 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 at 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. Each invoice shall be accompanied by documentation evidencing all charges reflected in the invoice.

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, or receive water from, 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. 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 sections 1 and 2, 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.

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.”
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.
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 County, North Carolina.
16. Termination/Remedies Cumulative: Either party may terminate this Agreement without cause, effective at least one (1) year following delivery of notice of such termination to the other party. 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.

27. No Third-Party Beneficiaries: This Agreement is not intended, and shall not be construed, to benefit any third party.

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.

TOWN OF BOONE, NORTH CAROLINA

ATTESTED:

By: _____
Loretta Clawson, Mayor

Freida Van Allen, Town Clerk

[SEAL]

APPALACHIAN STATE UNIVERSITY

ATTEST:

By: _____

Kathy B. Roark, Assistant Secretary

[SEAL]

ASU Attorney Dayton Cole questioned the changes to the agreement to which Council Member Mason responded.

VOTE: Aye - All
 Nay - None

ADJOURNMENT

On a motion by Council Member Pepin, seconded by Council Member Mason, Council moved to adjourn the meeting at 11:32 p.m.

VOTE: Aye - All
 Nay - None

Deputy Town Clerk

Mayor