

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
MAY 20, 2004**

The regular meeting of the Boone Town Council was called to order Thursday, May 20, 2004, in the Council Chambers, 1500 Blowing Rock Road. Mayor Velma C. Burnley presided. Council members present were Mayor Pro-Tem Loretta Clawson, Graydon Eggers, Lynne Mason, Bunk Spann and Dempsey Wilcox. Town Attorney Sam Furgiuele was also present. Staff present were Town Manager Greg Young; Town Clerk Freida Van Allen; Fire Chief Reggie Hassler; Resource Director Jim Byrne; Finance Director Amy Davis; Public Services Director Blake Brown; Public Utilities Director Rick Miller; Personnel Director Peri Moretz; Police Chief Bill Post and Planning Director John Spear.

ANNOUNCEMENTS

Mayor Burnley asked for a moment of silence in support of the NC National Guard 1451st Unit from Boone as they are currently in Iraq.

Police Chief Bill Post presented a resolution awarding a service weapon upon retirement to Cecil Pittman for his service to the Town of Boone.

TENTATIVE AGENDA ADOPTION

There were no changes to the agenda.

CONSENT AGENDA ADOPTION

On a motion by Council member Wilcox, seconded by Council member Clawson, Council moved to adopt the following consent agenda items:

- Minutes: April 15, 2004, Regular Meeting.
- April 26, 2004, Special Meeting.
- Tax Releases: April, 2004

Taxpayer	Year	Amount	Description
BellSouth Telecommunications	2004	22.46	Public utilities
Blue Ridge Energies LLC	2004	205.66	Not in city
Hardy Enterprises Inc.	2004	91.07	VIN # problem, incorrect billing
Sky Country Tran. Services Inc.	2004	52.86	Turned in tag
Anneliese E. Jones	2003	20.55	Overlapped tags due to death
William D. Parker	2003	84.71	Incorrect city bill
John P. Graham	2003	80.11	Move to Chatam Co.
Sky Country Transportation Service	2003	55.46	Sold vehicle
Pamela M. Henson	2003	7.60	Sold car

Zanetta D. Kiziah	2003	29.56	Lives in Carteret County
Marie M. Grimes	2003	31.32	Did not own in 2003
Randy A. & Mary P. Keplar	2003	4.05	Turned in tag
Kathleen M. McFadden	2003	5.11	Incorrect fire district
Lee G. Whittington	2003	8.19	Incorrect fire district
William Hughes Jr. (Heirs)	2003	4.29	Deceased 1997
William Hughes Jr. (Heirs)	2002	4.29	Deceased 1997
William Hughes Jr. (Heirs)	2001	4.84	Deceased 1997
William Hughes Jr. (Heirs)	2000	4.84	Deceased in 1997
TOTAL		\$716.97	

Tax Refunds: April, 2004

Taxpayer	Year	Amount	Description
Charles E. & Natalie S. Smith	2003	7.20	Gave vehicle to daughter
Suzanne N. Moody	2003	3.29	Sold vehicle, turned in tag
Rachel H. Golding, Mary E. Golding	2003	12.87	Moved to Connecticut
Blue Ridge Energies LLC	2002	11.00	Not in TOB
TOTAL		\$34.36	

Sealing of Closed Session Minutes: April 23, 2002 to December 16, 2003.

VOTE:Aye-All
Nay-None

VENTURE PROPERTIES ANNEXATION PUBLIC HEARING

Mayor Burnley opened the public hearing at 6:35 p.m. Planning Director John Spear said this was the third step in the voluntary, non-contiguous annexation request. The property is located off Hwy. 421 East and contains 5.226 acres. Council member Mason questioned what typically happens when the Town annexes in a satellite area. Planning Director Spear responded that generally more annexation petitions will follow. Mr. David Barger of Venture Properties presented an update on the project and said he hopes to have the Food Lion project complete in July and that Venture has tried to address all Town concerns in complying with the UDO. There being no further comments, the public hearing closed at 6:40 p.m.

ADOPTION OF ORDINANCE - VENTURE PROPERTIES ANNEXATION

On a motion by Council member Wilcox, seconded by Council member Eggers, Council moved to adopt the following annexation ordinance. Before voting, Council member Mason pointed out the property is located outside the Town's growth strategy area and suggested tabling the matter

until the Comprehensive Plan and Water Study updates are available. Council member Mason pointed out that annexation typically follows water and sewer lines. Council member Wilcox said he saw no reason to wait for annexation. Council member Eggers agreed and said the Town required Venture to petition annexation in order to get water and sewer. Mayor Burnley agreed. Council member Mason pointed out that the contractual agreement did not obligate them to annex and felt that Council is responsible for Boone's future growth.

**AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE
TOWN OF BOONE, NORTH CAROLINA**

(Venture Properties III, LLC)

WHEREAS, the Town Council has been petitioned under G.S. 160A-58.1 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. on May 20, 2004 after due notice by Watauga Democrat on May 5, 2004; and

WHEREAS, the Town Council finds that the area described therein meets the standards of G.S. 160A-58.1(b), to wit:

- a. The nearest point on the proposed satellite corporate limits is not more than three (3) miles from the corporate limits of the Town;
- b. No point on the proposed satellite corporate limits is closer to another municipality than to the Town;
- c. The area described is so situated that the Town will be able to provide the same services within the proposed satellite corporate limits that it provides within the primary corporate limits;
- d. No subdivision, as defined in G.S. 160A-376, will be fragmented by this proposed annexation;
- e. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, does not exceed ten percent (10%) of the area within the primary corporate limits of the Town, and

WHEREAS, the Town Council further finds that the petition has been signed by all owners of real property in the area who are required by law to sign; and

WHEREAS, the Town Council further finds that the petition is otherwise valid, and that the public health, safety and welfare of the Town and of the area proposed for annexation will be best served by annexing the area described;

NOW, THEREFORE BE IT ORDAINED by the Town Council of the Town of Boone,

North Carolina that:

Section 1. By virtue of the authority granted by G.S. 160A-58.2, the following described non-contiguous territory is hereby annexed and made part of the Town of Boone, as of May 20, 2004.

A 5.226 acre tract, shown as Tract B on the "Recombination Survey" plat recorded in Plat Book 017 at page 182, located on the south side of old US Hwy 421 approximately 600 feet west of the intersection of said road with new Highway 421 and with the perimeter being surveyed by me, Frank Lee Hayes PLS L-1488, on August 8, 2003 as: BEGINNING on a right-of-way monument in the northern boundary of NC Department of Transportation Project 6.759003T (new Highway US 421), said monument having NCGS NAD '83 coordinates of N=911,088.11 feet and E=1,229,786.31 feet; THENCE from the beginning and with the NC DOT line North 83 degrees 39 minutes 05 seconds West 120.01 feet to a 5/8 inch rebar set, a common corner with Tract A; THENCE with the eastern boundary of said Tract A North 04 degrees 13 minutes 05 seconds East 235.33 feet to a 1/2 inch rebar set; THENCE with the same North 17 degrees 25 minutes 20 seconds East, crossing a 1/2 inch rebar set as reference 435.79 feet, a total distance of 465.02 feet to the center of old US Highway 421; THENCE with the center of said road South 72 degrees 28 minutes 35 seconds East 344.80 feet to the northwest corner of Tract C; Thence leaving the road and with the western boundary of said Tract C South 17 degrees 24 minutes 00 seconds West, crossing a 1/2 inch rebar set as reference at 28.65 feet, a total distance of 114.42 feet to a 1/2 inch rebar set; THENCE with the same South 10 degrees 26 minutes 40 seconds West 181.89 feet to a 1/2 inch rebar set; THENCE with the same South 72 degrees 47 minutes 00 seconds East 19.84 feet to 1/2 inch rebar set; THENCE with the same South 17 degrees 24 minutes 25 seconds West 209.85 feet to a 5/8 inch rebar set in the northern line of the NC DOT property; THENCE with said northern line South 69 degrees 50minute 15 seconds West 271.71 feet to the BEGINNING; being described with bearings and distance relative to the North Carolina Grid System NAD '83 using a combined grid factor of 0.999062.

Section 2. Upon and after May 20, 2004, 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 the 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 herein in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the County Board of Elections as required by G.S. 163-288.1.

Mayor

ATTEST:

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3, PAGES 236-237)

VOTE: Aye-3 (Eggers, Spann, Wilcox)
Nay-2 (Clawson, Mason)

ADOPTION OF ZONING AMENDMENTS

Planning Director John Spear presented the following zoning amendments:

Case RZ2004-5 Appalachian State University - ASU has filed a request to rezone .987 acre located between Locust and Dauph Blan Streets from R-3, Multi-Family Residential to U-1, University District. Planning Director Spear said the Planning Commission unanimously recommended approval of this rezoning request. On a motion by Council member Clawson, seconded by Council member Spann, Council moved to approve the rezoning request.

VOTE: Aye-All
Nay-None

Case RZ2004-6 Town of Boone - Following the voluntary annexation of the 5.22-acre Venture Properties tract, the Town of Boone has filed a request to apply the B-3, General Business zoning classification and also apply the Highway Corridor district overlay. The property is currently unzoned. Planning Director Spear said the Planning Commission, with an 8-to-1 vote, recommended approval of the zoning request. On a motion by Council member Wilcox, seconded by Council member Eggers, Council moved to approve the zoning request.

VOTE: Aye-3 (Eggers, Spann, Wilcox)
Nay-2 (Clawson, Mason)

Case RZ2004-7 Lowe's Home Centers, Inc. - Lowe's has filed a request to rezone 9 acres located at 1179 State Farm Road from CUB-3, Conditional Use General Business to O/I, Office & Institutional. Planning Director Spear said the Planning Commission unanimously recommended approval of the rezoning request. On a motion by Council member Mason, seconded by Council member Spann, Council moved to approve the rezoning request.

VOTE: Aye-All
Nay-None

Case RZ2004-8 Smalley, Adams, Slade & Davis - This request was withdrawn by the petitioners on May 18, 2004.

PERMISSION TO APPLY FOR DOT PROGRAM

Planning Director John Spear requested permission to apply for NCDOT Transportation Enhancement Program funding for the Greenway Road alternative transportation improvements. Mr. Spear said the deadline for the grant application is June 4, 2004 and, if awarded, the Town is responsible for 20% of the approved projected costs. Mr. Steve Blakely, Design Engineer with Kimley-Horn & Associates, made the following powerpoint presentation: **EXHIBIT A**. Mr. Blakely recommended that the Town apply for funding for Phase I of the project. Several members of the audience who live along Greenway Road voiced their opposition to the planned greenway. Council member Clawson asked if there were alternate routes. Mr. Blakely said there are several alternatives that could be reviewed. Council member Eggers said he is on board for funding and construction of Phase I. Public Services Director Blake Brown suggested staking out the proposed route so the neighborhood could see the impact. Council member Mason suggested focusing on completion of Phase I and reviewing all options for the remaining three phases. Town Manager Greg Young said the Town must pay for all costs associated with Phase I design and construction and receive 80% reimbursement from DOT. Also, acquisition of all right-of-way must be completed within one year of signing the agreement. Mr. Young said this could be done by allocating \$200,000 from the fund balance; however, he warned this move could affect other capital projects, such as the Howard Street project. On a motion by Council member Mason, seconded by Council member Eggers, Council moved to adopt the following resolution endorsing Phase I of the project, to recognize the Town's 20% cash-match obligation, and to recognize the Town's obligation to acquire right-of-way within one year of signing the agreement. As a part of the motion, Council agreed to continue to review the remaining three phases for alternate routes, asked that a Greenway Road resident serve on the Greenway Committee, and asked that the Public Services Department stake the remaining phases for visual impact.

WHEREAS, the *Boone/Blowing Rock Alternative Transportation Plan* was adopted by the Boone Town Council on November 20, 1995 to enhance non-vehicular travel; and

WHEREAS, the Town of Boone has performed a Feasibility Study that determines the constructability, cost, and potential impacts as well as the related maintenance and safety issues of the proposed bikeway project; and

WHEREAS, the Boone Town Council unanimously endorses the improvements to enhance the accessibility and mobility for bicyclist and pedestrians along Pride Drive/Leola Street/Greenway Road/Winkler's Creek Road and Wilson Drive. It is understood that the proposed project will provide sidewalk and on-street bicycle lanes along Wilson Drive from the intersection of Wilson Drive and NC 105 to the intersection of Wilson Drive and Winkler's Creek Road; and

WHEREAS, the Boone Town Council recognizes the need to and is committed to acquiring an easement from certain property along the route for construction purposes; and

WHEREAS, the Boone Town Council recognizes that the Enhancement Program for

Bicycle and Pedestrian Facilities requires a 20% local match.

NOW, THEREFORE, LET IT BE RESOLVED that the Town Council of the Town of Boone, North Carolina supports an application for Phase I, of the aforementioned improvements.

Adopted this the 20th day of May, 2004.

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE)

VOTE: Aye-All

Nay-None

ADOPTION OF ORDINANCE AMENDMENT - AT LARGE DOGS PROHIBITED

Town Attorney Sam Furgiuele presented a draft ordinance amendment that would prohibit at large dogs within Town limits. Mr. Furgiuele said this is a simple approach to animal control in that the owner or person responsible for the dog is required to have it on a leash or be fined \$50. This amendment will be in effect only in the town limits and will be enforced by the Police Department. Council member Clawson said the Town needs to educate the public about the new law. Council discussed at length the penalty phase. On a motion by Council member Mason, seconded by Council member Clawson, Council moved to adopt the following ordinance amendment, making it effective July 1, 2004, with warning citations to be given until September 1, 2004.

§100.02 AT LARGE DOGS PROHIBITED

(A) *For purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.*

(1) At Large - A dog shall be considered to be "at large" when it is off the property of its responsible person, and not on a leash or under physical restraint by the responsible person.

(2) Dog - A canine of either sex, or neutered, including domesticated dogs and any member of the Canis genus not customarily domesticated by humans, or any hybrids thereof, including but not limited to wolves, foxes, and wolf-dog hybrids.

(3) Responsible Person - Such person as may own the dog in question, or may have assumed or been assigned responsibility or control for the dog in question by the owner, or who otherwise is exercising responsibility or control over the dog in question.

- (B) Within the corporate limits of the Town of Boone, no dog may be at large.*
- (C) Violation of this Section shall constitute an infraction chargeable to the responsible person or the owner of the dog, if the owner and responsible person are different persons, and shall subject the responsible person or owner to a penalty of \$50.00. Violators shall be issued written notice of the violation, which must be paid within thirty days after the receipt of said notice. If the violator does not pay the penalty within thirty days, the Town may recover such penalty, and all subsequently accruing penalties, in a civil action. In the event that it is necessary for the Town to institute a civil action to collect such penalty, the violator shall be responsible for all court costs and attorney's fees incurred by the Town.*
- (D) The Chief of Police, or his designee, shall retain information containing the identities of all violators of this section for a period of no less than three years after their respective violations, and he shall periodically, upon request by the Town Council, provide such information to the Town Council.*

VOTE: Aye-All

Nay-None

ADOPTION OF ENCROACHMENT AGREEMENT - HABITAT FOR HUMANITY

Public Services Director Blake Brown said this encroachment agreement is for Habitat for Humanity's 30' driveway culvert located off Poplar Hill Drive. On a motion by Council member Eggers, seconded by Council member Spann, Council moved to adopt the following encroachment agreement:

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT, made and entered into this the 20th day of May 2004, by and between the TOWN OF BOONE, party of the first part; and Watauga County Habitat for Humanity party of the second part,

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

THAT WHEREAS, the party of the second part desires to encroach on the right of way of the public road designated as Poplar Hill Drive located adjacent to parcel #2900-73-6703 with the following: 30' driveway culvert (see attached plan); and

WHEREAS, it is to the material advantage of the party of the second part to effect this

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

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

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

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

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

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

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

or maintenance operation disturbs the ground surface and the existing ground cover, the party of the second part agrees to remove and replace the sod or otherwise reestablish the grass cover to meet the satisfaction of the Division Engineer of the party of the first part.

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

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

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

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

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

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

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

VOTE: Aye-All
Nay-None

REPORT ON TRAFFIC INPUT MEETINGS

Public Services Director Blake Brown reported that over 720 notices were sent out to residents in the Stadium Drive, Bear Trail and Oak Street neighborhoods. Over the three-night period, 117 citizens attended the meetings and gave comments about traffic in their neighborhoods. Mr. Brown thought the meetings were very positive and produced many good ideas. Mr. Brown said that any traffic-calming devices put in place will be there only on a temporary basis, and after

final review by the Transportation Committee, they may become a permanent solution. Mr. Brown requested that residents in an area that have not completed a survey contact his office to get one. Council member Clawson agreed that the meetings were very positive and helpful.

Mayor Burnley declared a break at 8:15 p.m. Council reconvened at 8:30 p.m.

UPDATE ON SBJ GROWTH DONATION

Town Attorney Sam Furguele said last year SBJ Growth approached the Town about donating a .9 acre tract of land adjacent to the Daniel Boone Native Gardens. Mr. Furguele said it was a triangular piece of land behind Jerry Butler's property. On a motion by Council member Mason, seconded by Council member Clawson, Council moved to accept the following non-warranty deed (**EXHIBIT B**) and to recommend that a thank-you letter be sent.

VOTE:Aye-All
Nay-None

UPDATE ON PSI SETTLEMENT

Town Attorney Sam Furguele said that two months ago Council adopted an ordinance to initiate legal action against PSI/New River Capital for the collection of \$55,000 in unpaid utility bills. Mr. Furguele happily reported that the bill was now paid in full and that he did not have to initial legal action.

PLANNING COMMISSION APPOINTMENTS

On a motion by Council member Eggers, seconded by Council member Clawson, Council moved to appoint Mary Ruth McRae, Skip Greene and ASU Student Lee Wood and to recommend ETJ member Mary Cavanaugh to another four-year term on the Planning Commission. Their terms will expire 6/30/08. Mr. Wood's term will expire 8/31/05.

VOTE:Aye-All
Nay-None

BOARD OF ADJUSTMENT NOMINATIONS

Council accepted the nominations of Jerry Kirksey, Diana Perry, Rick Foster and Rebecca Kaenzig for three regular positions and Bruce Jackson for one alternate, resident position to the Board of Adjustment. Appointments will be made at the June meeting.

COMMUNITY APPEARANCE COMMISSION APPOINTMENTS

On a motion by Council member Mason, seconded by Council member Clawson, Council moved to appoint Sean Krause and Terry Taylor to a three-year term on the Community Appearance Commission. Their terms will expire 6/30/07.

VOTE: Aye-All
Nay-None

RESIDENTIAL TASK FORCE NOMINATIONS

Council accepted the nominations of Judy Humphrey, Patricia Quinn, Nancy Henry, Mike Wade, Howard Dorgan and Joe Gaffney. Council agreed to solicit nominations from ASU Housing and Apartment Rental businesses to serve on the committee.

SCHEDULING OF BUDGET WORKSHOPS

On a motion by Council member Clawson, seconded by Council member Mason, Council moved to schedule the following budget workshops, public hearing and regular meeting for June.

Monday, June 7th - 10:00 am to 4:00 pm - Budget Workshop
Monday, June 21st - 10:00 am to 4:00 pm - Budget Workshop
Tuesday, June 29th - 6:30 p.m. - Public Hearing and Regular Meeting.

VOTE: Aye-All
Nay-None

ADOPTION OF BUDGET AMENDMENTS

On a motion by Council member Eggers, seconded by Council member Spann, Council moved to adopt the following budget amendments:

DESCRIPTION	ACCOUNT #	TO:	FROM:
Horn in the West	010-411-000-549122	\$25,000.	
Appropriated Fund Balance	010-000-000-499900		\$25,000.
Water-Contracted Services	030-700-802-577000	54,200.	
Water Capital Reserve Contribution	030-000-000-498031		54,200.

VOTE: Aye-All
Nay-None

REQUESTED APPEARANCE - DR. MATTHEW ROBINSON

Dr. Matthew Robinson appeared before Council to request adoption of a resolution in defense of the Bill of Rights and in favor of a civil liberties safe zone in Boone. Dr. Robinson presented this resolution under Unscheduled Appearances last month. He presented another version of the resolution that is similar to a resolution adopted by the National League of Cities. Council discussed at length the legality of the US Patriot Act and what version of resolution should be adopted. On a motion by Council member Mason, seconded by Council member Clawson,

Council moved to adopt the resolution presented by Dr. Robinson this evening. Before voting, Council member Eggers requested to table the matter until next month in order to allow him time to review the resolution presented this evening. Council member Eggers said he has seen four different resolutions on the matter and would like to make sure it is a resolution that every citizen of the Town of Boone would agree with. Council members Mason and Clawson then withdrew their motion and second and made a motion to table this matter until the June meeting. Dr. Robinson's resolution, as presented tonight will be the one for consideration next month. Council member Clawson seconded the motion to table.

VOTE: Aye-4 (Clawson, Eggers, Mason, Spann)
Nay-1 (Wilcox)

REQUESTED APPEARANCE -SAUL CHASE

Mr. Saul Chase appeared before Council to discuss construction of the Jimmy Smith Memorial. Mr. Chase reminded Council that an award winning design was planned for the corner of Rivers and Depot Street; however, it was rejected because of the intrusion into the floodplain. Mr. Chase said a simpler design has been chosen and would cost a little more than \$20,000. Mr. Chase asked that the Town provide matching funds for the project. Council member Eggers asked if the Town would provide the construction work. Public Works Director Blake Brown said the construction price includes a contractor's performing the work. Council member Eggers pointed out the price would be lower if the Town did the work. Council member Mason asked if the Development Services Department has reviewed the new plan. Mr. Chase said not yet. Council agreed to support the project by participating in the construction once the plan has received approval by the Development Services Department.

REQUESTED APPEARANCE - HABITAT FOR HUMANITY

Mr. Patrick Morgan of Habitat for Humanity appeared before Council to request a waiver on fees associated with the building of two homes on Poplar Hill Drive. Council member Mason pointed out that she serves on the Habitat Board. Mayor Burnley did not see a conflict of interest since there was no personal financial gain for Council member Mason. Council discussed at length whether to donate the amount of the fees, \$6,675, to Habitat or to waive that amount. Town Attorney Sam Furgiuele said since one of the houses may be sold for profit he was not sure that Council could waive fees for that residence. Town Attorney Furgiuele also said the Town should make sure that low-income families receive the residences. After some more discussion Council authorized the Town Manager to waive up to \$500 for each fee for the Habitat residence and to give the same waiver to the other residence if it is not sold for profit.

UNSCHEDULED APPEARANCE - MARY GRAY

Mr. Jim Toub of Eastbrook Drive spoke instead of Ms. Gray. Mr. Toub thanked Council for its prohibition of trucks over 33,000 lbs. in their neighborhood; however, he stated there is still a problem with single-axle trucks under 33,000 lbs. using neighborhood streets. Mr. Toub asked that Council amend the traffic ordinance to disallow through trucks under 33,000 lbs. Council

member Mason asked if this has been a recent occurrence. Mr. Toub said since Council prohibited 33,000 lb. trucks, it has been an on-going problem. Mr. Toub pointed out that the Police Department has done a good job policing and responding to complaints. After some discussion, on a motion by Council member Mason, seconded by Council member Mason, seconded by Council member Clawson, Council moved to adopt the following ordinance amendment, to become effective June 1st. The Police Department agreed to issue warning tickets until July 1st.

§ 71.05 WEIGHT LIMITATIONS ON CERTAIN STREETS.

*Whenever the Administrator installs a traffic-control device clearly stating or indicating that such vehicles are not permitted on a street or any portion thereof, no person may drive any vehicle with a GVW of **26,000 lbs.** or more on any such street or portion thereof unless the vehicle's destination or point of origin is on that street, and within the corporate limits of the town, and there is no alternative street to access the point of origin or destination.*

VOTE: Aye-All
Nay-None

CLOSED SESSION

On a motion by Council member Wilcox, seconded by Council member Mason, Council moved to enter Closed Session at 10:45 p.m., pursuant to NCGS 143-318.11a) 3)5) in order to discuss the Ulery Litigation; Coffey Donation; ASU Violations; Houck vs. WMC; McCreary Condemnation and Property Acquisition.

VOTE: Aye-All
Nay-None

On a motion by Council member Clawson, seconded by Council member Wilcox, Council moved to exit Closed Session at 11:42 p.m.

VOTE: Aye-All
Nay-None

ADJOURNMENT

On a motion by Council member Mason, seconded by Council member Wilcox, Council moved to adjourn at 11:43 p.m.

VOTE: Aye-All
Nay-None

Town Clerk

Mayor