

**MINUTES - REGULAR MEETING  
BOONE TOWN COUNCIL  
DECEMBER 16, 2004**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, December 16, 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; Deputy Clerk Kim Tester; Fire Chief Reggie Hassler; Resource Director Jim Byrne; Personnel Director Peri Moretz; Finance Director Amy Davis; Development Services Director John Spear; Public Services Director Blake Brown and Police Chief Bill Post.

**ANNOUNCEMENTS**

Mayor Burnley requested a moment of silence in support of our troops and for peace on Earth.

**TENTATIVE AGENDA ADOPTION**

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

-Request from James Hopf (Requested Appearance - Item 7.A.) to table his request until the April, 2005 meeting.

-Unscheduled Appearance by Jim Thompson of Hospitality House.

-Closed Session - Delete Williamson Litigation and add Ulery Litigation and Legal Issues Concerning Subdivision Approvals.

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

VOTE: Aye-All  
Nay-None

**CONSENT AGENDA ADOPTION**

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

Minutes: November 9, 2004, Quarterly Public Hearing.  
November 16, 2004, Special Meeting.  
November 18, 2004, Regular Meeting.  
Tax Releases: November, 2004

<b>TAXPAYER</b>	<b>YEAR</b>	<b>AMOUNT</b>	<b>DESCRIPTION</b>
-----------------	-------------	---------------	--------------------

ALEXANDER, DONALD P & PATRICIA	2004	28.93	SOLD VEHICLE TURNED IN TAG
RAY, JERRY D & LORETTA P	2004	124.92	DOES NOT LIVE IN TOB
POLITI, CHRISTOPHER D	2004	25.53	TURNED IN TAG
STORIE, RONNIE H	2004	29.53	INCORRECT SITUS
RAMIREZ, VICTOR M	2004	19.13	TURNED IN TAG
HONDA LEASE TRUST	2004	97.56	VEHICLE SOLD TURNED IN TAG
CHESHIER, DOUGLAS E & ELIZABETH S	2004	10.02	SOLD VEHICLE TURNED IN TAG
MAYHEW, MICHAEL J & SARA V	2004	41.54	SOLD VEHICLE TURNED IN TAG
SPEED, ROBERT T	2004	133.39	DOES NOT LIVE IN TOB
MAXWELL, MARY T	2004	27.64	LIVES IN HOKE CO
HORINE, LAWRENCE E & MARY E	2004	32.00	SOLD VEHICLE TURNED IN TAG
BUCHANAN, BAIRD LEE	2004	17.04	SOLD VEHICLE TURNED IN TAG
PARKER, MARY R	2004	6.16	ADJ FOR BILL OF SALE
TAYLOR, RESA H /BRUSHY MTN.MOTORSPORTS	2003	104.20	SOLD VEHICLE TURNED IN TAG
FOGLE, ANITA JONES	1999	39.86	DID NOT LIVE IN TOB
<b>TOTAL</b>		<b>\$737.45</b>	

**MSD TAX RELEASES  
NOVEMBER 2004**

<b>TAXPAYER</b>	<b>YEAR</b>	<b>AMOUNT</b>	<b>DESCRIPTION</b>
SPEED, ROBERT T	2004	70.77	DOES NOT LIVE IN TOB
<b>TOTAL</b>		<b>\$70.77</b>	

Tax Refunds: November, 2004

<b>NAME</b>	<b>YEAR</b>	<b>AMOUNT</b>	<b>DESCRIPTION</b>
STORIE, RONNIE H	2004	26.51	INCORRECT SITUS
SAYLES, AGNES V	2004	33.46	TRANSFERRED VEH TO GRANDDAUGHTER
LOGAN, BEN J & KATHERINE M	2004	22.20	TURNED IN TAG
ASSOCIATES LEASING INC	2004	5.73	SOLD VEHICLE TURNED IN TAG
FOX, JEREMY & JOSEPHINE	2004	13.40	SOLD VEHICLE TURNED IN TAG
CHESHIER, DOUGLAS E & ELIZABETH S	2003	3.10	TURNED IN TAG
BANDANAS OF BOONE INC	2003	1.31	CO OWNER DECEASED AFTER SALE OF CO, SOLD VEHICLE
<b>TOTAL</b>		<b>\$105.71</b>	

VOTE: Aye-All  
Nay-None

### **NORTH HAMPTON ROAD STREET CLOSING PUBLIC HEARING**

Mayor Burnley opened the public hearing at 6:34 p.m. Town Manager Greg Young said the public hearing is a requirement of the general statutes regarding street closures. Town Manager Young stated that a portion of North Hampton Road is being closed to eliminate a hair-pin turn. Once this portion is closed, the developer, Scott Porter, will re-route North Hampton Road and dedicate that portion of the road to the Town. Town Manager Young noted that the property has been posted and advertised by the Clerk.

Mayor Burnley asked for public comment.

Mr. Don Watson, attorney for Scott Porter, strongly endorsed the street closing and said it is required as part of the Conditional Use Permit for the Carefree Estates project. Mr. Watson stated that there would be no negative impact on adjoining property owners by closing this portion of North Hampton Road.

There being no further comments, the public hearing closed at 6:37 p.m.

### **VIRGINIA STREET CLOSING PUBLIC HEARING**

Mayor Bunley opened the public hearing at 6:37 p.m. Town Manager Young said the property has been posted and advertised in accordance with the general statutes.

Mayor Burnley asked for public comment.

Tim Ford of Watauga Medical Center spoke in support of the street closing.

There being no further comments the public hearing closed at 6:37 p.m.

### **ADOPTION OF STREET CLOSING ORDER - A PORTION OF NORTH HAMPTON ROAD**

On a motion by Council member Eggers, seconded by Council member Clawson, Council moved to adopt the following street closing order:

WHEREAS, on the 18<sup>th</sup> day of November, 2004, the Council of the Town of Boone directed the Town Clerk to publish the Resolution of Intent of the Council to consider closing a portion of North Hampton Road in the Watauga Democrat once each week for four successive weeks, such resolution advising the public that a meeting would be conducted in the Council Chambers on December 16, 2004; and

WHEREAS, the Town Council on the 18<sup>th</sup> day of November, 2004, ordered the Town Clerk to notify all persons owning property abutting that portion of North Hampton Road as shown on county tax records by registered or certified mail, enclosing with such notification a copy of the Resolution of Intent; and

WHEREAS, the Town Clerk has advised the Council that she sent a letter to each of the abutting property owners advising them of the day, time and place of the meeting, enclosing a copy of the Resolution of Intent, and advising the abutting property owners that the question as to closing that portion of North Hampton Road would be acted upon, said letters having been sent by registered or certified mail; and

WHEREAS, the Town Clerk has advised the Council that adequate notices were posted on the applicable street as required by G.S. 160A-299; and

WHEREAS, after full and complete consideration of the matter and after having granted full and complete opportunity for all interested persons to appear and register any objections that they might have with respect to the closing of that portion of North Hampton Road in the public

hearing held on December 16, 2004; and

WHEREAS, it now appears to the satisfaction of the Council that the closing of said street is not contrary to the public interest, and that no individual owning property, either abutting the street or in the vicinity of the street or in the subdivision in which the street is located, will as a result of the closing be thereby deprived of a reasonable means of ingress and egress to his property;

NOW, THEREFORE, subject to the reservation of easement to the Town of Boone for utility purposes as shown on a map recorded in the Book of Maps \_\_\_\_\_, page \_\_\_\_\_ in the office of the Watauga County Register of Deeds, a portion of North Hampton Road is hereby ordered closed and all right, title and interest that may be vested in the public to said area for street purposes is hereby released and quitclaimed to the abutting property owners in accordance with the provisions of G.S. 160A-299.

The Mayor and the Town Clerk are hereby authorized to execute quitclaim deeds or other necessary documents in order to evidence vesting of all right, title and interest in those persons owning lots or parcels of land adjacent to the street or alley, such title for the width of the abutting land owned by them, to extend to the centerline of the herein closed street (with provision for reservation of easements to the Town of Boone for utility purposes) in accordance with the provision of G.S. 160A-299 (c).

The Town Clerk is hereby ordered and directed to file in the Office of the Register of Deeds of Watauga County a certified copy of this resolution and order.

Upon a motion made by Council Member Eggers, and duly seconded by Council member Clawson, the above resolution was adopted by the Town Council at a meeting held on December 16, 2004 in the Council Chambers.

---

Mayor

ATTEST:

---

Town Clerk

VOTE: Aye-All  
Nay-None

**ADOPTION OF STREET CLOSING ORDER - REMAINING PORTION OF VIRGINIA STREET**

On a motion by Council member Clawson, seconded by Council member Mason, Council moved to adopt the following street closing order:

WHEREAS, on the 18<sup>th</sup> day of November, 2004, the Council of the Town of Boone directed the Town Clerk to publish the Resolution of Intent of the Council to consider closing the remaining portion of Virginia Street in the Watauga Democrat once each week for four successive weeks, such resolution advising the public that a meeting would be conducted in the Council Chambers on December 16, 2004; and

WHEREAS, the Town Council on the 18<sup>th</sup> day of November, 2004, ordered the Town Clerk to notify all persons owning property abutting that remaining portion of Virginia Street as shown on county tax records by registered or certified mail, enclosing with such notification a copy of the Resolution of Intent; and

WHEREAS, the Town Clerk has advised the Council that she sent a letter to each of the abutting property owners advising them of the day, time and place of the meeting, enclosing a copy of the Resolution of Intent, and advising the abutting property owners that the question as to closing

that remaining portion of Virginia Street would be acted upon, said letters having been sent by registered or certified mail; and

WHEREAS, the Town Clerk has advised the Council that adequate notices were posted on the applicable street as required by G.S. 160A-299; and

WHEREAS, after full and complete consideration of the matter and after having granted full and complete opportunity for all interested persons to appear and register any objections that they might have with respect to the closing of that remaining portion of Virginia Street in the public hearing held on December 16, 2004; and

WHEREAS, it now appears to the satisfaction of the Council that the closing of said street is not contrary to the public interest, and that no individual owning property, either abutting the street or in the vicinity of the street or in the subdivision in which the street is located, will as a result of the closing be thereby deprived of a reasonable means of ingress and egress to his property;

NOW, THEREFORE, subject to the reservation of easement to the Town of Boone for utility purposes as shown on a map recorded in the Book of Maps \_\_\_\_\_, page \_\_\_\_\_ in the office of the Watauga County Register of Deeds, the remaining portion of Virginia Street is hereby ordered closed and all right, title and interest that may be vested in the public to said area for street purposes is hereby released and quitclaimed to the abutting property owners in accordance with the provisions of G.S. 160A-299.

The Mayor and the Town Clerk are hereby authorized to execute quitclaim deeds or other necessary documents in order to evidence vesting of all right, title and interest in those persons owning lots or parcels of land adjacent to the street or alley, such title for the width of the abutting land owned by them, to extend to the centerline of the herein closed street (with provision for reservation of easements to the Town of Boone for utility purposes) in accordance with the provision of G.S. 160A-299 (c).

The Town Clerk is hereby ordered and directed to file in the Office of the Register of Deeds of Watauga County a certified copy of this resolution and order.

Upon a motion made by Council Member Clawson, and duly seconded by Council member Mason, the above resolution was adopted by the Town Council at a meeting held on December 16, 2004 in the Council Chambers.

---

Mayor

ATTEST:

---

Town Clerk

VOTE: Aye-All  
Nay-None

### **DISCUSSION OF TRANSPORTATION ISSUES**

Public Services Director Blake Brown reminded Council of the public hearing held earlier in the week on the following transportation issues:

**Speed Limits in Neighborhoods** - Council member Mason said opinions at the public hearing were split, but if one reviews traffic comparisons before and after implementing the 20-mph speed limit, this lower speed limit really has made neighborhood streets safer. Council member Mason questioned if the Police Department is issuing citations for speeds of 21 or 22-mph.

Police Chief Bill Post said the Police Department has a cushion, but that officers do not issue citations for 21 or 22-mph. Mayor Burnley questioned if the Police Department would issue citations for cars accelerating to climb hills during inclement weather. Police Chief Post said his department typically does not work traffic enforcement during inclement weather since there are so many accidents to investigate. Council member Clawson agreed that it seems that the lower speed limit is working and questioned if the Police Department is working other neighborhoods. Police Chief Post said he plans to survey other neighborhoods in the future. Council member Wilcox suggested raising the speed limit back to 25-mph on some of the smaller, less traveled streets. Council member Eggers agreed that the Town made a mistake to change every neighborhood street to 20-mph and suggested that connector roads such as Poplar Hill Drive, Horn-in-the-West Drive, Horn Avenue and Market Hills Drive have a 25-mph speed limit. Mayor Burnley said it will be difficult for travelers to differentiate the speed limit changes in neighborhoods. Council member Spann suggested having the Transportation Committee review the situation and make recommendations to Council about the speed limits. Council member Mason pointed out that lowering the speed limit was the least restrictive of the recommendations previously made and the Town must do everything it can to make our neighborhoods safe, viable and attractive. Council member Spann agreed and said that most of the citizens who spoke against the lower speed limit did so because of a matter of convenience. After little discussion, on a motion by Council member Eggers, seconded by Council member Spann, Council moved to retain the 20-mph speed limit in neighborhoods and to have the Transportation Committee review some smaller streets and connector roads for different speed limits.

VOTE: Aye-All  
Nay-None

**Cut-Through Traffic Signage** - Mayor Burnley pointed out that the Town has erected “no cut-through traffic” signs which can not be enforced. Council member Spann made a motion to remove the “no cut-through traffic” signs and monitor the volume of traffic. Council member Spann said, if the volume increases, then the Town can re-erect the signs, adding the word, “please.” Council member Eggers seconded the motion.

VOTE: Aye-All  
Nay-None

**One-Way Street on Oak Street from Pine Street to Horn-in-the-West Drive** - Council member Wilcox said he has not heard anyone complaining about increased traffic on Blanwood or Woodland since Oak Street was made one-way. Council member Mason indicated that more people spoke in favor of keeping Oak Street one-way than spoke against it. Mayor Burnley said she is concerned about the older couple that resides on Blanwood and their inability to get to a traffic light. Council member Mason pointed out that the older couple can still get to a traffic light; they just have to travel a different way than before. Council member Eggers suggested changing the one-way from Clement Street to Horn Avenue. Council member Wilcox said Oak Street is much safer since instituting the one-way street. Council member Eggers asked Council member Wilcox if he felt the traffic volume would increase if Oak Street were two-way to Clement Street. Council member Wilcox said he was not sure about the volume, but that the street is too narrow to handle much traffic. Council member Eggers made a motion to open Oak Street to two-way traffic up to Clement Street. There was no second to that motion. On a motion by Council member Wilcox, seconded by Council member Mason, Council moved to continue one-way on Oak Street from Pine to Horn-in-the West Drive until May 1<sup>st</sup> and then re-evaluate the situation. Council also moved to survey the wall on Oak Street to determine right-of-way.

VOTE: Aye-All  
Nay-None

**Three-Way Stop Sign at the Intersection of Horn Avenue, Horn-in-the-West Drive and Oak Street** - On a motion by Council member Mason, seconded by Council member Spann, Council moved to retain the three-way stop sign at its present location.

VOTE: Aye-All  
Nay-None

**One-Way Street on Bear Trail** - Council member Clawson pointed out that a trip light has already been ordered for installation on Bear Trail. Council member Mason pointed out that seven people spoke in favor of keeping Bear Trail one-way while three people spoke against it. Mayor Burnley said that, with a trip-light, traffic will stack up in both directions. Council member Eggers indicated that Bear Trail should remain one-way if traffic concerns are the only consideration. Council member Clawson argued that the trip-light would work since few people actually use Bear Trail. Council member Mason made a motion to continue the one-waying of Bear Trail and to cancel the order for the trip-light and to refer the matter back to the Transportation Committee to consider and discuss other alternatives. Council member Eggers seconded. Before voting, Council member Wilcox said it seems that Council is pitting one neighborhood against another. Council member Eggers disagreed and said Council has been consistent in investigating safety issues versus convenience.

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

### **DISCUSSION ON HIGH DENSITY DEVELOPMENT ON STEEP SLOPES**

Council member Clawson made the following speech:

*I am very concerned about the increasing number of high-density developments occurring on our steep hillsides in town. I understand the reason for this building; flat, buildable land is at a premium, and that's why these large developments are now moving quickly up our hillsides. But this type of development is, in my opinion, unacceptable.*

*Our Comprehensive Plan warns us that, as development reaches into the hills around town, development pressures on our natural resources will begin to have an effect on our quality of life. Our Plan also identifies steep slopes as sensitive land areas, and says, "Intensive development is to be strongly discouraged in these areas due to the high potential for negative environmental and aesthetic impact."*

*In our recent town meetings to gather citizens' opinions on our Comprehensive Plan, residents expressed concern about environmental quality issues, including building on steep slopes. And, in addition to the visual problems this type of development presents, it is dangerous as well. The steeper the slope, the faster water runs down. We have already witnessed what can happen first-hand in the White Laurel Development just this year as people's homes tumbled in heavy rains.*

*We need to take immediate steps to find ways through our UDO to allow development on our steep slopes and ridge lines only if it is in character with Boone-low profile and low-density. We could look at limiting allowed excavation and fill on these slopes. We could look at limiting the visibility of new structures and imposing lower height limits for buildings. We could consider prohibiting high-density construction or site disturbance on significant slopes. **I don't know what the answers are, but I do know what the problem is. And I know that we must act immediately.***

*We cannot wait for years of study and analysis because these high-density developments are happening rapidly, and **we only have a limited window of time to make the changes in our UDO before all the hills around our town are covered in high-density developments.***

*For this reason, I am requesting that Development Services review the regulations of our UDO as they relate to high-density development on steep slopes and report back to the Council within a few months with recommendations for action, and I am asking the rest of the Council to join me in this request.*

Council member Spann said he appreciated the speech and fully supports the recommendation. Council members Spann, Mason and Eggers thought it was a good idea, too. Council member Wilcox suggested having the Planning Commission review the zoning map also because hillsides that are zoned multi-family or general-business are open to the type of project that was approved off Meadowview Drive. Council member Mason agreed and suggested reviewing our water and sewer services, only allowing development in our main pressure zones. On a motion by Council member Clawson, seconded by Council member Mason, Council moved to request that the Development Services Department review the regulations of our UDO and zoning map as they relate to high-density development on steep slopes and report back to the Council within a few months with recommendations for action.

VOTE: Aye-All  
Nay-None

### **AMENDMENT OF HARDSHIP POLICY DEFINITION IN THE WATER & SEWER USE ORDINANCE SECTION 1-4**

Council member Mason reminded Council that several months ago a representative from Habitat for Humanity appeared before Council to request fee waivers on two of its projects. Council member Mason said the hardship policy definition in the Water and Sewer Code refers to the “federal poverty level” which was instituted in the 1960's. Council member Mason suggested updating the definition to include an individual and/or family living at or below 60% of the area median income level. Council member Eggers said he was concerned about persons producing a tax return showing they are at poverty level when they are actually not. On a motion by Council member Mason, seconded by Council member Spann, Council moved to have Public Utilities staff investigate the impact of changing the hardship policy definition to include individuals or families living at or below 60% of the area median income level.

VOTE:Aye-All  
Nay-None

### **SCHEDULING OF JOINT RETREAT BETWEEN TOWN OF BOONE, ASU & WATAUGA COUNTY**

Council member Mason suggested hosting a retreat for Town Council, ASU officials & Watauga County Commissioners in the near future. Council member Mason felt that all involved would be more effective if we collaborated and worked together in developing a shared vision and common goals. Council member Mason said we already have good communication with ASU and Watauga County now and that now all three agencies should together develop an action plan. Council member Clawson felt it was a good idea. Council member Spann said he spoke with the Chairman of the Board of County Commissioners and that they both thought it was a good idea. On a motion by Council member Mason, seconded by Council member Spann, Council moved to coordinate and host a joint retreat, along with hiring a professional facilitator.

VOTE:Aye-All  
Nay-None

### **DISCUSSION OF STORM WATER ISSUES**

Council member Mason inquired whether or not the information from Tim Lormand of AMEC was ready. Town Manager Greg Young said the information would be ready and presented at the January 20, 2005 meeting.

### **STATUS OF MORETZ STREET PROPERTIES**

Council member Mason questioned the status of the two properties owned by Aisla Miller located on Moretz Street. Council member Mason recalled that the buildings had been condemned; however, they are still standing and are an eyesore. Town Attorney Sam Furguele reminded Council members that they adopted ordinances last month to initiate legal action; however, the Millers applied for a demolition permit the same day. Town Attorney Furguele said he could institute civil action immediately but that the Millers would have up to 60 days to appeal the action. Town Manager Greg Young reported that the Millers requested that the Fire Department burn the buildings. Fire Chief Reggie Hassler said the Millers have their asbestos removal permits and that they will be ready to burn in the next 30 to 60 days. Council member Eggers said he was concerned that they may not remove the debris. Town Attorney Furguele indicated that we should ask them to remove the debris within a certain time frame. On a motion by Council member Mason, seconded by Council member Eggers, Council moved to allow the Fire Department to burn the buildings as long as the debris is removed within 30 days.

VOTE:Aye-All  
Nay-None

Mayor Burnley declared a break at 8:10 p.m. Council reconvened at 8:20 p.m.

## **GREENWAY COMMITTEE NOMINATIONS**

On a motion by Council member Mason, seconded by Council member Clawson, Council moved to appoint Francesca Hyatt and Margie Mansure to the Greenway Committee.

VOTE: Aye-All  
Nay-None

## **WATER STUDY COMMITTEE APPOINTMENT**

On a motion by Council member Clawson, seconded by Council member Spann, Council moved to appoint Pam Williamson to the Water Supply Study Committee.

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

## **VOLUNTEER RESOURCE CENTER APPOINTMENT**

Council agreed to the appointment of Bunk Spann to serve on the Volunteer Resource Center Board and Boone Creek Committee.

## **ADOPTION OF LEASE - CAROLINA WEST WIRELESS**

Town Manager Greg Young said the lease with Carolina West Wireless for antenna space on our Public Works Center is due to expire February, 2005. Town Manager Young presented a revised lease agreement for another three year term which includes 32 cellular phones and a fee of \$3,960 per year. On a motion by Council member Eggers, seconded by Council member Clawson, Council moved to adopt the following lease agreement:

### **STATE OF NORTH CAROLINA**

### **LEASE AGREEMENT**

### **COUNTY OF WATAUGA**

**THIS LEASE AGREEMENT** is made this the **16th** day of **December**, 2004, by and between the **Town of Boone**, hereinafter referred to as "**Lessor**" and **North Carolina RSA 3 Cellular Telephone Company, Inc., d/b/a/ Carolina West Wireless**, a NC corporation, hereinafter referred to as "**Lessee**".

1. **Leased Premises.** The **Lessor** hereby leases to the **Lessee** the telecommunications equipment room on the 2nd floor of the **Lessor's** Public Works Department located at 321 East King Street, Boone, NC 28607. The **Lessor** shall allow the **Lessee** 24 hours - 7 days a week access to the leased premises. Only employees, technicians, or subcontractors of the **Lessee** shall be given access to the leased premises.

2. **Term.** The term of this Lease shall be **three years**, commencing on **February 1, 2005**.

3. **Rent.** The rent for the above described premises shall be **\$3,960.00** for the first year, and shall be due upon execution of this lease agreement. The annual rent shall increase each year by 5%, and shall be due on the first day of each subsequent year.

4. **Cellular Phones.** The **Lessee** shall provide the **Lessor** with free phones and phone service for thirty-two (32) cellular phones identified by service phone numbers set forth on **Exhibit "A"** attached hereto and made a part hereof.

5. **Repairs.** The **Lessee** shall make all repairs necessary to keep the leased premises in good condition. This includes repairs for any and all damage caused by the **Lessee**, its agents and/or invitees. However, this does not include repairs for ordinary wear and tear of the premises, which shall be the responsibility and obligation of the **Lessor**. The **Lessee** shall maintain its equipment in accordance with good engineering practices, and in a manner which will not interfere with the **Lessor's** normal governmental operations. Upon vacation of the leased premises, the **Lessee** shall surrender the leased space in the building and on the rooftop in substantially the same and in as good a condition as when this lease commenced, except for ordinary wear and tear.

6. **Assignment or Subletting.** The **Lessee** shall not assign nor sublease the leased premises without the prior written consent of the **Lessor**.

7. **Alterations.** The **Lessee** may erect antennas, without the use of a tower, on the rooftop of said building, and shall be responsible for the installation, maintenance and repair of said antennas. A "tower" for the purposes of this agreement shall be defined as any structure over fifteen feet in height. The **Lessee** shall be responsible for repairing any damage it causes to the roof of the **Lessor's** building. The **Lessee** may place communication equipment in the leased premises and shall be responsible for the installation, maintenance and repair of said equipment. The **Lessee** shall be solely responsible for the cost of the installation, maintenance and repair of the antennas and equipment. The **Lessee** shall not make any other alterations, additions or improvements to the above described premises without the prior written consent of the **Lessor**. All equipment installed by the **Lessee** shall remain the property of the **Lessee**.

8. **Utilities.** The **Lessor** shall be responsible for paying the water, sewer and electric utilities. The **Lessor** shall provide heating and air conditioning at no expense to the **Lessee**.

9. **Insurance.** The **Lessee** shall be responsible for providing and maintaining insurance coverage, in the minimum amount of \$2,000,000 per occurrence, against loss, destruction, or other damage to all its personal property located on the premises, and providing liability coverage protecting both **Lessee** and **Lessor** arising from personal injury or property

damage caused by **Lessee's** use of the premises. The **Lessor** shall provide and maintain insurance coverage against loss, theft, destruction or damage to the building structure, but shall not be responsible for any theft of property contained within the leased premises.

10. **Destruction of Premises.** If said premises are destroyed by fire or other cause, this Lease shall be terminated.

11. **Security Deposit.** A security deposit shall not be required.

12. **Inspection of Premises.** The **Lessor** may enter the premises at any reasonable time upon giving prior notice for the purpose of inspecting said premises.

13. **Use of Property.** The **Lessee** shall not use or knowingly permit any part of the leased premises to be used for any purpose which violates any law.

14. **Default.** If the **Lessee** defaults in the payment of rent or in the performance of any of the conditions of this Lease, the **Lessor** may give the **Lessee** written notice of default. If the **Lessee** does not cure any default within ten (10) days after the receipt of notice thereof, the **Lessor** may terminate this Lease. On the date specified in the notice, this Lease shall terminate and the **Lessee** shall at once quit and surrender the premises to the **Lessor**. If this Lease is terminated by the **Lessor**, it may thereafter resume possession of the premises by any lawful means and remove the **Lessee** and any other occupants and their property.

15. **Indemnity.** The **Lessee** shall indemnify and hold harmless the **Lessor** from any and all claims, actions, damages and liability associated with personal injury and/or damage to property arising out of any occurrence in, upon or at the leased premises, or associated with any act or omission of the **Lessee**, its agents, employees or invitees. In the event that the **Lessor** is made a party to any litigation brought against the **Lessee** or by reason of the **Lessee's** use or occupancy of the leased premises, the **Lessee** shall defend, protect and hold harmless the **Lessor** from any and all liability that may result therefrom.

16. **Modification of Lease.** This Lease Agreement contains all of the terms and conditions agreed to by the **Lessor** and the **Lessee** concerning the Lease of the above described premises. There are no oral terms or conditions agreed to by the parties hereto which are not contained in this written agreement. There shall be no modification of this Lease Agreement unless the modification is in writing and signed by both parties.

17. **Termination of Lease.** Either party may terminate this Lease by providing ninety (90) days prior written notice. If the **Lessee** terminates this lease prior to the end of the

lease term, the **Lessee** shall forfeit any lease payment made. If the **Lessor** terminates this lease prior to the end of the lease term, the **Lessor** shall refund to the **Lessee** a prorated portion of any lease payment made, based upon application of a factor with the number of days of possession during the payment period, as the numerator, and the total number of days for full payment period at the denominator, multiplied by the amount of the full rental payment made. At the termination of this Lease, **Lessee** shall not remove any property from the premises without advance notice and permission from **Lessor**. Following its vacation of the premises, should **Lessee** leave any property on the premises, it shall be deemed abandoned, and **Lessor** shall have the right to dispose of the property as it sees fit, at the expense of **Lessee**.

18. **Property Taxes.** The **Lessee** shall be responsible for paying the property taxes, if any, on its personal property.

19. **Right to Reentry.** **Lessee** shall be responsible for obtaining, at its sole expense, all permits, licenses and other permissions which may be necessary for any action or pursuit undertaken by **Lessee**. **Lessor** reserves, for itself, its agents, employees and assigns, the right to reenter the property to inspect, maintain and repair its property on the premises, and for such other purposes as may be reasonably necessary to discharge its responsibilities to protect the health, safety and welfare of the citizens of Boone.

19. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of North Carolina. All provisions of this agreement are material to this Agreement.

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

**Town of Boone, Lessor**

Velma Burnley, Mayor

ATTEST:

Freida Van Allen, Town Clerk

VOTE: Aye-All  
Nay-None

**ADOPTION OF BUDGET AMENDMENTS**

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

<b>DESCRIPTION</b>	<b>ACCOUNT #</b>	<b>TO:</b>	<b>FROM:</b>
Payment in Lieu of Taxes-Appalachian Student Housing Corp.	010-000-000-448020		\$99,873.
Current Year Taxes	010-000-000-411080		\$99,873.
Unemployment Insurance-GB	010-400-000-508501	1,040.	
Unemployment Insurance-DSD	010-500-360-508501	9,700.	
Unemployment Insurance-Facilities	010-600-405-508501	393.	
Appropriated Fund Balance	010-000-000-499900		11,133.
Maintenance-Vehicles	010-500-300-525301	1,575.	
Miscellaneous Revenue	010-000-000-489900		1,575.

VOTE: Aye-All  
Nay-None

**UNSCHEDULED APPEARANCE - JIM THOMPSON**

Mr. Jim Thompson, Director of the Hospitality House of Boone, appeared before Council to garner support of a resolution regarding the relocation of the Hospitality House facilities to the old County Health Department building. Council member Eggers said he appreciated all that the Hospitality House does for the community and made a motion to adopt the following resolution. Council member Clawson seconded.

**Whereas,** The Hospitality House has served the needs of thousands of homeless individuals and families since 1985 providing shelter, meals and counseling; and

**Whereas,** in 2004, over 500 individuals and 47 families were assisted with expenditures exceeding \$250,000; and

**Whereas,** the Hospitality House relieves Watauga County and the Town of Boone the financial burden of caring for the homeless and impoverished; and

**Whereas,** the current site is inadequate for the growing demands of crisis shelter services and families and individuals are often turned away and placed on waiting lists; and

**Whereas,** due to underemployment and insufficient affordable housing, securing permanent residences takes a longer period of time than in previous years; and

**Whereas,** Watauga County owns the Hannah Building, the former locations of the Health Department, which would meet the expanding needs of the Hospitality House; and

**Whereas,** the Hospitality House would consolidate services to one location served by Appalcart and eliminate the downtown presence; and

**Whereas,** the Hannah Building would allow space offer education and job training for reemployment; and

**Whereas,** the relocation of the Hannah Building would allow the Hospitality House to sell their present buildings to private interests and said properties would be placed back on the tax rolls with potentially increased tax revenues; and

**Now, Therefore Be it Resolved,** that the **Town of Boone** fully supports a resolution for the relocation of the Hospitality House of Boone, this the 16<sup>th</sup> day of December 2004.

Mayor

Attest:

---

Town Clerk

**(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 277)**

VOTE: Aye-All  
Nay-None

**CLOSED SESSION**

On a motion by Council member Wilcox, seconded by Council member Spann, Council moved to enter Closed Session at 8:40 p.m., pursuant to NCGS 143-318.11a)3) in order to discuss ASU violations, McCreary Condemnation, Legal Issues concerning Subdivision Approvals, Ulery litigation and the Houck vs. Watauga Medical Center Litigation.

VOTE: Aye-All  
Nay-None

On a motion by Council member Mason, seconded by Council member Spann, Council moved to exit Closed Session at 10:10 p.m.

VOTE: Aye-All  
Nay-None

**POSSIBLE ACTION FOLLOWING CLOSED SESSION**

On a motion by Council member Wilcox, seconded by Council member Clawson, Council moved to excuse Council member Eggers from voting on the following matter because he is a Watauga Medical Center Board member.

VOTE: Aye-All  
Nay-None

On a motion by Council member Wilcox, seconded by Council member Spann, Council moved to approve the following settlement agreement (**Exhibit A**) and to authorize a settlement payment of \$2,500.

VOTE: Aye-4 (Clawson, Mason, Spann, Wilcox)  
Nay-0  
Excused-1 (Eggers)

**ADJOURNMENT**

On a motion by Council member Mason, seconded by Council member Spann, Council moved to adjourn at 10:11 p.m.

VOTE: Aye-All  
Nay-None

---

Town Clerk

---

Mayor

