

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
APRIL 21, 2005**

A regular meeting of the Boone Town Council was called to order at 6:27 p.m., Thursday, April 21, 2005 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, Deputy Town Clerk Kim Tester, Special Assistant to the Town Manager Jim Byrne, Fire Chief Reggie Hassler, Police Chief Bill Post, Public Services Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, Development Services Director John Spear, and Human Resources Director Peri Moretz.

ANNOUNCEMENTS

Mayor Burnley welcomed home members of the 1450th Transportation Unit of the North Carolina National Guard and observed a moment of silence for U. S. troops serving throughout the world.

Mayor Burnley invited the public to attend the groundbreaking ceremony for the Daniel Boone Monument being held on Friday, April 29, 2005, on Rivers Street.

TENTATIVE AGENDA ADOPTION

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

- Item 4.C. - Revised Conflict of Interest Policy.
- Item 5.K. - Recreation Task Force Report.
- Item 5.B.(1) - Receive nominations for Steep Slope Task Force.
- Item 6.G. - Delete Requested Appearance by Ms. Yogi Collins.
- Item 5.K. - Recreation Task Force report.

Closed Session: Deletion of Ulery Litigation.
 Addition of Ailsa Miller Potential Litigation.

Upon 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

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

Minutes: March 17, 2005 - Special Meeting
 March 17, 2005 – Regular Meeting
 March 23, 2005 – Special Meeting
Tax Releases: March 2005

TAXPAYER	YEAR	AMOUNT	DESCRIPTION
JAMES C. & LINDA CLINE	2005	\$28.34	BOAT LISTED & TAXES PAID IN CARTERET CO.
JOHN T. JONES	2005	51.92	PART OF PROPERTY IN TOB, PART IN FIRE DISTRICT
BELLSOUTH TELECOMMUNICATIONS	2005	30.64	EXEMPT
THEREAS P. & HANEEFAH R. ALLEN	2004	37.54	TURNED IN TAG
JOSEPH R. DOWNING	2004	12.64	TURNED IN TAG
HOWARD D. & SUSAN L. HUTCHINSON	2004	73.64	LIVES IN ASHE CO.
AMBER D. DAVIS	2004	2.27	TURNED IN TAG
JAY K. BECKER	2004	15.16	OWNER OF MV RESIDES IN UNION CO.
NINA J. SILVA	2004	20.24	TURNED IN TAG
CARDTRONICS	2004	45.36	LISTED UNDER FLEETWOOD FINANCIAL
CARL E. & REBA R. PRICE	2004	256.00	LIVES IN FIRE DISTRICT, NOT TOWN
SCOTT W. ROBERTS	2004	24.68	REGISTERED VEHICLE IN TENN.
SHARRON L. MOORE	2004	15.48	INCORRECT SITUS
APPALACHIAN STUDENT HOUSING	2004	99872.08	EXEMPT / N.C.P.T.C.
RUSSELL C. & TERRY TAYLOR	2004	48.64	DOES NOT LIVE IN TOB LIMITS
JAROSLAV CERNY	2004	43.12	DOES NOT LIVE IN TOB LIMITS
DWIGHT A. WIGGINS	2004	5.20	TURNED IN TAG
KRISTAL C. HOPKINS	2004	50.32	DOES NOT LIVE IN TOB LIMITS
ANTHONY Y. HUNTER	2004	52.08	LIVES IN AVERY CO.
WOOD MASONRY SUPPLY	2004	32.87	SOLD VEHICLE TURNED IN TAG

CHARLES E. CLEMENT	2004	66.96	DOES NOT LIVE IN TOB
RAMON C. & SANDRA B. SCHREFFLER	2004	19.04	VEHICLE TOTALED BOUGHT BY INS. CO.
TOTAL		\$100,804.22	

**MSD TAX RELEASES
MARCH, 2005**

Taxpayer	Year	Amount	Description
ANTHONY Y. HUNTER	2004	\$27.34	LIVES IN AVERY CO.
TOTAL		\$27.34	

Tax Refunds: March 2005

TAXPAYER	YEAR	AMOUNT	DESCRIPTION
KIMBERLY P. LI	2004	\$13.97	TURNED IN TAG
JO ANN & WILLIAM S. CUMMINGS III	2004	21.17	MOVED TO TENN./TURNED IN TAG
TOTAL		\$35.14	

Adoption of Conflict of Interest Policy:

The Town of Boone, North Carolina is a municipal corporation organized and chartered under the laws of North Carolina. All Town officials and employees are aware of, and in full compliance with **NCGS 14-234. Public Officers or Employees benefitting from Public Contracts; exceptions.**

Confirmed this the 21st day of April, 2005.

Velma Burnley, Mayor

ATTEST:

Town Clerk

Adoption of Code Amendment – Section 71.05

§ 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 multiple rear axles, or any single rear axle vehicle with a Gross Vehicle Weight Rating (GVWR) of 20,000 lbs. or more, on that street or designated portion thereof unless the vehicle's destination or point of origin is on that street, within the corporate limits of the Town, and there is no alternative street to access the point of origin or destination. Municipal vehicles, public utility vehicles and heating fuel delivery vehicles are exempt from this restriction.

Rescission of Resolution #214 – Occupancy Tax Increase

VOTE: Aye - All
 Nay - None

ADOPTION OF ZONING TEXT AMENDMENT

Case No. RZ2005-6 – The Boone Town Council initiated a zoning text amendment to UDO Section 316. *Drainage and Storm Water Management Design Standards*. The purpose of this amendment is to repeal the Town of Boone’s design standards for stormwater retention systems. Development Services Director John Spear informed the Council of the Planning Commission’s recommendation. The Planning Commission recommended approval of the text amendment to repeal the Town of Boone’s design standards for stormwater retention systems with the condition that the following text be added in place of the text removed:

“The Town of Boone is developing a comprehensive stormwater management plan to address stormwater quality. The plan is anticipated to be ready for implementation in April of 2006. The plan will reflect Low Impact Development strategies, an integrated system of preventive and control practices, to accomplish stormwater management goals consistent with NPDES Phase II program requirements. Contact the Development Services office for up to date information.”

Mr. Spear stated the intent of the condition is to inform property owners and developers of the Town’s on-going commitment to protect water quality through the implementation of cost effective urban stormwater best management practices. Upon a motion by Council member Wilcox, seconded by Council member Eggers, the Council moved to adopt the following zoning text amendment:

Section 316. Drainage and Storm Water Management Design Standards

[a] Design standards are established for the purpose of promoting sound development practices which respect, preserve and enhance the town's watercourses and are not intended to prohibit the use of innovative and alternative techniques which can be demonstrated to have the potential for successfully achieving the objectives stated in Section 315. Applications which are exempt from the Drainage Plan requirements set forth in Section 312[a] are also exempt from the Design Standards contained in Section 316[b][4].

[b] Design Storm:

[1] The minimum design capacity for all storm drainage facilities shall be the ten (10) year discharge. The design capacity for cross drainage facilities in public streets shall be the twenty five (25) year discharge.

[2] The design of drainage facilities in flood hazard areas shall be consistent with the requirements of Article XVII, Part I.

[3] The computation of storm water runoff shall follow established engineering practice. Acceptable methods of computation include, but are not limited to, those outlined in the Soil Conservation Service National Engineering Field Manual, the Rational Method, and published U.S. Geological Survey techniques for estimating stream flow. Runoff coefficients shall be based on full development of the watershed to the extent of the current zoning.

[4] Stormwater detention shall be provided to insure that the rate of discharge does not exceed the pre-development rate of discharge. In order to demonstrate this, pre and post development hydrographs will be submitted that demonstrate no increase in flow leaving the site during the 10 year 24 hour storm. Inflow-outflow calculations shall also be submitted for any storm water detention ponds.

Note: The Town of Boone is developing a comprehensive stormwater management plan to address stormwater quality. The plan is anticipated to be ready for implementation in April of 2006. The plan will reflect Low Impact Development strategies, an integrated system of preventive and control practices, to accomplish stormwater management goals consistent with NPDES Phase II program requirements. Contact the Development Services office for up to date information.

VOTE: Aye – All
 Nay – None

ADOPTION OF RESOLUTION – ESTABLISHING A TASK FORCE FOR STEEP SLOPES AND MULTI-FAMILY HOUSING

Council member Mason asked if the members of this task force must reside in Boone's planning jurisdiction. Mr. Spear indicated that this would be an ad-hoc committee, and the Town Council would decide the committee's make-up. Council member Clawson stated she knows several people who live outside of Boone's planning jurisdiction who have shown an interest in serving on this task force. She stated that this task force should be open to citizens county-wide who have the expertise to examine these issues. Council member Clawson stated she would like to serve on this task force. Mayor Burnley stated she feels this task force should be composed of

persons who reside in the planning jurisdiction of the town since they may make recommendations that apply to the citizens of Boone and the ETJ. Council member Eggers agreed that this task force should be made up of persons residing in the planning jurisdiction. He suggested the task force could use the expertise of outside consultants. Council member Spann moved to adopt the following resolution to create a task force to study the issues of steep slopes and multi-family housing. Council member Mason seconded the motion and asked that an amendment to the motion be that the Town Council will appoint persons after filing an application and that the task force would not be limited to persons residing in Boone's planning jurisdiction. Council member Spann accepted the amendment.

**RESOLUTION TO ESTABLISH A TASK FORCE
TO STUDY ISSUES RELATING TO
DEVELOPMENT OF STEEP SLOPES AND MULTI-FAMILY HOUSING**

WHEREAS, the Town Council has directed town staff to study issues relating to the development of steep slopes; and

WHEREAS, the Town Council has established a (12) month moratorium on the development of multi-family housing projects involving more than (24) units; and

WHEREAS, the Town Council desires the establishment of a Task Force consisting of a diverse group of citizens, elected officials and appointed board members having specific expertise in technical, aesthetic, environmental or economic issues relating to the development of steep slopes and large multi-family housing projects; and

WHEREAS, the Town Council desires the involvement of this Task Force in the analysis of said issues and the development of appropriate strategies relating to the future development of steep slopes and large multi-family housing projects within Boone's planning jurisdiction.

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

1. A (14) member Task Force shall be established by the Town Council.
2. The Task Force membership shall consist of:
 1. (2) Town Council members, (2) Planning Commission members, and (2) Community Appearance Commission members that are each appointed by their respective bodies; and
 2. (8) Individuals appointed by the Town Council after filing an application for service.
3. The Task Force shall work with town staff to insure that those issues specified in RZ2005-4: Moratorium on Steep Slope Development and in RZ2005-5: Moratorium on Multifamily Development are fully investigated.

4. The Task Force shall encourage a high level of public input and involvement throughout this process.
5. The Task Force shall work with town staff to develop a recommended strategy relating to the future development of steep slopes and large multi-family housing projects.
6. The Task Force shall present their findings to the Town Council on or before December 15, 2005.

This Resolution was passed and adopted on this, the 21st day of April, 2005.

Mayor

Attest:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 284)

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

Council member Mason suggested making appointments to this task force at the May meeting. She directed the Planning Commission and Community Appearance Commission to forward their applications prior to the May meeting.

ADOPTION OF RESOLUTION – SET DATE FOR PUBLIC HEARING ON WHITTINGTON ANNEXATION

Upon a motion by Council member Eggers, seconded by Council member Clawson, the Council moved to adopt the following resolution to hold a public hearing regarding the Whittington annexation on May 19, 2005 at 6:30 p.m.

**RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION
OF ANNEXATION PURSUANT TO G.S. 160A-58.2
(WHITTINGTON ANNEXATION)**

WHEREAS, a petition requesting annexation of the non-contiguous area described herein has been received; and

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

WHEREAS, certification by the Town Clerk as to the sufficiency to the petition has been made;

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

Section 1. A public hearing on the question of annexation of the non-contiguous area described herein will be held at Council Chambers on Blowing Rock Road at 6:30 p.m. on May 19, 2005.

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

Being all that tract of land containing 0.452 acres by coordinate geometry, lying on the West side of N.C.S.R. # 1102, commonly known as Junaluska Road in Brushy Fork Township, Watauga County, North Carolina bounded by natural boundaries and or\ lands owned by and / or in possession of persons as follows: On the South by David Vaughn Whittington (Book of Records 801, Page 89), on the West by Robert Thomas Kampfer (Book of Records 835, Page 466), on the East by the centerline of Junaluska Road and being more particularly described by courses and distances according to a survey performed February 11, 2005 by Skyline Surveyor's P.A. Job # S05007.2 under the direction and direction of C. Neal Bare, P.L.S L-2425 as follows:

BEGINNING on a 5/8 inch iron rebar set on the Southwest side of Junaluska Road, said point of BEGINNING located North 56 degrees 48 minutes 27 seconds West 110.97 feet from the Town of Boone, Town limits monument # 3, said point of BEGINNING being in the Northern boundary line of the aforesaid David Whittington Property; thence from the point of BEGINNING and along said Northern boundary line North 55 degrees 52 minutes 29 seconds West passing thru an existing 1/2 inch iron pipe at 176.54 feet continuing 14.55 feet for a total distance of 191.08 feet to a 5/8 inch iron rebar set on the West side of a small creek and in the Eastern boundary line of the aforesaid Kampfer Property ; thence along said Eastern boundary line the following (3) courses and distances: (1) North 41 degrees 37 minutes 21 seconds East 66.00 feet to a 5/8 inch iron rebar set on the West side of the aforesaid small creek, (2) North 62 degrees 07 minutes 31 seconds East 99.00 feet to a 5/8 inch iron rebar set on the East side of the creek and (3) North 45 degrees 07 minutes 31 seconds East passing thru a 5/8 inch iron rebar set at 113.81 feet continuing 10.00 feet for a total distance of 123.81 feet to a point in the center of Junaluska Road; thence along the center of said road the following (9) courses and distances: (1) South 11 degrees 49 minutes 32

seconds East 11.96 feet, (2) South 23 degrees 59 minutes 44 seconds West 31.43 feet, (3) South 34 degrees 05 minutes 12 seconds West 66.30 feet, (4) South 30 degrees 34 minutes 25 seconds West 33.22 feet , (5) South 18 degrees 04 minutes 21 seconds West 42.53 feet, (6) South 01 degrees 07 minutes 46 seconds East 41.21 feet, (7)South 10 degrees 57 minutes 23 seconds East 42.75 feet, (8) South 22 degrees 04 minutes 13 seconds East 25.40 feet and (9) South 43 degrees 29 minutes 05 seconds East 9.00 feet thence leaving the road, South 32 degrees 27 minutes 58 seconds West 14.90 feet to the point of BEGINNING.

Section 3. Notice of public hearing shall be published once in the Watauga Democrat, a newspaper having general circulation in the Town of Boone, at least ten (10) days prior to the date of the public hearing.

Adopted this the 21st day of April, 2005.

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 285)

VOTE: Aye – All
 Nay – None

FINAL PLAT APPROVAL – HAMPTON ESTATES – PHASE I

SD2005-3 – Hampton Property LLC is requesting final plat approval in accordance with Section 94 Major Subdivision Approval Process of the Town of Boone Unified Development Ordinance. Section 94[a] states:

The Town Council shall approve or disapprove major subdivision final plats in accordance with the provisions of this section. No major subdivision final plat shall be approved until a special use permit has been authorized by the Board of Adjustment.

Mr. Spear noted the final plat is in compliance with the conditional-use permit, zoning compliance certificate and the Town of Boone UDO requirements. He informed the Council that

staff recommends approval of the final plat. Mayor Burnley commented that the development is well planned. Council member Spann stated he is impressed with the deed restrictions for the development. Council member Mason expressed appreciation for the project which contains single family residences. Council member Clawson moved to approve the final plat. Council member Mason seconded the motion.

VOTE: Aye – All
 Nay – None

CONSIDERATION OF POLICY – PRIVATE PARTY CONNECTIONS TO TOWN GREENWAY SYSTEM

Development Services Director John Spear explained that at the last Greenway Committee meeting, the committee voted to request Town Council consideration of a policy regarding private party connections to the Town’s Greenway system. He noted upon Town Council authorization, the Greenway Committee and staff would begin work on a draft policy for Town Council review and approval. Upon a motion by Council member Eggers, seconded by Council member Clawson, the Council granted authorization for the Greenway Committee and Development Services staff to begin work on a draft policy for connections to the Greenway system by private parties.

VOTE: Aye – All
 Nay – None

ADOPTION OF PROPOSAL – GEOTECHNICAL CONSULTING SERVICES ON STEEP SLOPE DEVELOPMENT

Development Services Director John Spear presented information submitted by Trigon Engineering Consultants, Inc. Dick Wells, of Trigon Engineering Consultants, Inc., explained that issues concerning steep slopes, specifically at the White Laurel development, would be studied and results integrated with existing Town of Boone development policies. He stated the first step would be to review all documentation and interview key people associated with the situation. Town Manager Greg Young stated he would recommend approval of the proposal but not the soil borings on the property. He suggested that the engineering consultant could also examine other projects with high retaining walls. Council member Mason moved to accept the proposal with Geotechnical Consulting Services in the amount, not to exceed, \$18,500 and with the exception of soil borings and to expand the scope of work to include the study of other areas with steep slopes. Council member Clawson seconded the motion.

VOTE: Aye – All
 Nay – None

ADOPTION OF PROPOSAL – ANALYSIS OF HOUSING AND DEVELOPMENT TRENDS IN THE TOWN OF BOONE

Donald Judd, of Economic Research Associates, listed his work experiences as a consultant to Wachovia Bank, a member of the North Carolina State Task Force on Economy, and thirty years worth of economic impact studies. He stated that real estate analysis has been the main thrust of his academic work. Council member Clawson asked what information could be provided to them. Dr. Judd stated he would provide background information for the task force so that members could understand the following issues:

- The pattern of growth for the town of Boone.
- The economic impact of growth.
- The differences between rental housing and property ownership.
- Ideas and solutions from other communities facing the same issues as Boone.

Upon a motion by Council member Clawson, seconded by Council member Spann, the Council moved to accept the proposal with Donald Judd of Economic Research Associates in the amount of, not to exceed, \$25,000.

VOTE: Aye – All
 Nay – None

PLANNING COMMISSION APPOINTMENT

Development Services Director John Spear noted that Mr. Bob Snead and Mr. Gregory Reck have been nominated to fill the remainder of Charles Quinn's term, which expires on June 30, 2005. Mayor Burnley noted that Mr. Spear provided attendance information to the Town Council for the current members of the Planning Commission. Council member Mason stated that the UDO regulations do specify that the Town Council can remove any Planning Commission member who has not attended three consecutive meetings or whose attendance drops below fifty percent. She suggested that Mr. Spear contact those members whose attendance is below fifty percent to see if they can continue to serve. Mr. Spear stated, during the nominations in May, Council may want to consider any persons whose attendance is below the fifty percent standard. Mayor Burnley asked for a vote to consider Gregory Reck for the position.

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

Council member Spann stated he voted for Mr. Reck due to his experience in planning issues.

CABLE TV ADVISORY COMMITTEE APPOINTMENTS

Mayor Burnley noted that Council accepted the nominations of Howard Dorgan, Andy Mason, L. D. Hagaman, and Neil Hartley at the March meeting. She pointed out that since that time Mr. Dorgan has submitted his resignation from the committee. Upon a motion by Council member Mason, seconded by Council member Clawson, Council moved to appoint Andy Mason, L. D. Hagaman, and Neil Hartley to serve on the Cable TV Advisory Committee.

VOTE: Aye – All
 Nay – None

Mayor Burnley reminded Council members that they will need to nominate a person for the remaining vacant position at the May meeting.

JONES HOUSE ADVISORY BOARD APPOINTMENTS

Terms expired for three members of the Jones House Advisory Board, February 28, 2005. They were Beth Carrin, Larry Greene, and Veronica Toub. At their March 15th meeting, all three agreed to serve again if appointed. Terms will expire February 28, 2008. Mayor Burnley asked for a vote on the appointments. Upon a motion by Council member Clawson, seconded by Council member Wilcox, Beth Carrin, Larry Green, and Veronica Toub were appointed to serve on the Jones House Advisory Board with terms expiring February 28, 2008.

VOTE: Aye – All
 Nay – None

REPORT FROM RECREATION TASK FORCE

Council member Mason summarized the two meetings of the Recreation Task Force held on February 7, 2005 and March 7, 2005. She noted the Town had offered to lease the 12.55 acres of land to Watauga County for the construction of a YMCA facility. Since that time, the Town has learned that the YMCA can not be built at that location. She reminded the Council, that at the annual retreat, the Council agreed to lease the property to Watauga County for its development, maintenance, and management of recreational facilities. She listed the following options for the Council to consider:

1. For the Town to revisit with the County the option of the Town's leasing the 12.55 acres to the County to develop (with specific stipulations already discussed), maintain, and manage.
2. For the Town to develop the park with the option of leasing the park to the County to maintain and manage.
3. For the Town to develop, maintain, and manage the park.
4. For the Town to talk with ASU to see if arrangements for shared athletic fields can be made.

After a brief discussion, the consensus of the Council was to proceed with option #1.

ADOPTION OF RESOLUTION OF INTENT – SOUTH STREET CLOSING

Town Manager Greg Young explained that this is the first step in the street-closing process. Upon a motion by Council member Eggers, seconded by Council member Wilcox, the following resolution of intent for the South Street closing was adopted.

RESOLUTION OF INTENT

A Resolution Declaring the Intention of the Town Council to Consider the
Closing of A Portion of South Street.

Whereas, G.S. 160A-299 authorizes the Town Council to close public streets and alleys; and

Whereas, the Town Council considers it advisable to conduct a public hearing for the purpose of giving consideration to the closing of a portion of South Street ;

Now, Therefore, Be It Resolved by the Town Council that:

1. A meeting will be held at 6:30 p.m. on the 19th day of May, 2005 in the Council Chambers to consider a resolution closing a portion of South Street.
2. The Town Clerk is hereby directed to publish this Resolution of Intent once a week for four successive weeks in the Watauga Democrat, or other newspaper of general circulation in the area.
3. The Town Clerk is further directed to transmit by registered or certified mail each owner of property abutting upon that portion of said street a copy of this Resolution of Intent.
4. The Town Clerk is further directed to cause adequate notices of this Resolution of Intent and the scheduled public hearing to be posted as required by G.S. 160A-299.

Upon a motion duly made by Council member Graydon Eggers and duly seconded by Council member Dempsey Wilcox, the above resolution was duly adopted by the Town Council at the meeting held on April 21, 2005, in the Town Council Chambers.

VOTE: Aye-All
Nay-None

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 286)

VOTE: Aye – All
Nay – None

PERMISSION TO APPLY FOR A GRANT – POLICE DEPARTMENT NARCOTICS UNIT

Police Chief Bill Post informed the Council of the availability of some grant money from a pharmaceutical company, Purdue Pharma. He explained that the only requirement is for the department head write a letter requesting a grant. He further noted that the funds are unrestricted and that there is no match requirement for the Town. Upon a motion by Council member Clawson, seconded by Council member Eggers, Council granted permission to Chief Post to send a letter to apply for a Narcotics Grant.

VOTE: Aye – All
 Nay – None

APPROVAL OF CONTRACT – HILL STREET SEWER MAIN REPLACEMENT PROJECT

Public Utilities Director Rick Miller stated the Town Council, in February 2003, adopted a five-year wastewater capital improvement plan that includes a sewer main replacement project for the Hill Street area. The estimated cost budgeted for the project is \$211,000, which does not include engineering, permitting, and asphalt overlay costs. Mr. Miller informed the Council of a contract with W. K. Dickson for engineering design of the project at a cost of \$29,450. Mr. Miller recommended the approval of the contract with W. K. Dickson so that the design could be completed and bids for the project could be accepted before the end of the budget year. Council member Mason asked Public Works Director Blake Brown for a projected time when Hill Street would be repaved. Mr. Brown indicated that he might be able to put it on the list of projects for the summer of 2006 and utilize Powell Bill money for the project. Upon a motion by Council member Mason, seconded by Council member Clawson, Council moved to adopt the following contract for the engineering design services of W. K. Dickson for the Hill Street sewer main replacement project.

CONTRACT FOR SERVICES

This CONTRACT for Hill Street Gravity Sewer by and between the Town of Boone, hereinafter called the OWNER, and W.K. Dickson & Co., Inc., hereinafter called the CONSULTANT;

The parties hereto do mutually agree as follows:

- Employment of CONSULTANT. The OWNER hereby engages the CONSULTANT and the CONSULTANT hereby agrees to perform the professional services hereinafter set forth.
- Scope of Services. The CONSULTANT shall perform, in a professional manner, the services set forth in Attachment A, Scope of Services, which attachment is incorporated herein.

- Additional Services. The CONSULTANT shall provide additional services, not specifically called for in Attachment A, Scope of Services, upon request or authorization of the OWNER.
- Time of Performance. The CONSULTANT will commence work on the date of receipt of written Notice to Proceed. All work as set forth in the Scope of Services Section A, Design Surveys and Mapping, and Section B, Engineering Design, shall be completed within ninety (90) calendar days of that date, assuming the timely submission of all required data and the scheduling of all meetings and reviews by the OWNER or other delays beyond CONSULTANT'S control. CONSULTANT acknowledges that time is of the essence and will proceed with the scope of services as identified. Work identified above will be completed within the established timeframe as listed above.

If the OWNER requests modifications to the Scope of Services of the project, the time of performance of the CONSULTANT shall be adjusted appropriately. Likewise should the CONSULTANT'S services extend past the completion date above, at no fault of the CONSULTANT, the CONSULTANT'S compensation shall be adjusted accordingly in an amount mutually acceptable to the parties. Should additional compensation be needed, Town Council will have to approve the additional amount prior to the CONSULTANT proceeding with the associated work.

CONSULTANT'S services under the Contract, and each phase of services, if the Scope of Services is so divided, shall be considered complete at the earlier of (1) the date when the submissions for that phase have been accepted by the OWNER or (2) thirty days after the date when such submissions are delivered to the OWNER.

- Meetings. This Contract includes attendance by the CONSULTANT at meetings to make presentations or to otherwise review the progress of the work as identified in Attachment A.
- Reports. The CONSULTANT shall prepare and submit to the OWNER reports called for in Attachment A, Scope of Services, attached hereto.
- Subsurface Investigations. In soils, foundation, ground water, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total project cost and/or execution. These unforeseen conditions are not the responsibility of the CONSULTANT.
- CONSULTANT'S Personnel at Construction Site. The presence or duties of CONSULTANT'S personnel at a construction site, whether as onsite representative or otherwise, do not make CONSULTANT or CONSULTANT'S personnel in any way responsible for those duties that belong to OWNER and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction

methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the construction Contract Documents and any health or safety precautions required by such construction work. CONSULTANT and CONSULTANT'S personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity or any other persons at the site except the CONSULTANT'S own personnel.

The presence of CONSULTANT'S personnel at a construction site is for the purpose of providing to OWNER a greater degree of confidence that the completed work will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by the construction contractor(s). CONSULTANT neither guarantees the performance of the construction contractor(s) nor assumes responsibility for construction contractor's failure to perform their work in accordance with the Contract Documents.

- Compensation. The CONSULTANT agrees to perform the services provided for in the Scope of Services, and the OWNER agrees to compensate the CONSULTANT for such services as set forth in Attachment B, Basis of Compensation, which attachment is incorporated herein. Compensation for additional services shall also be as set forth in Attachment B, Basis of Compensation.

Payment by the OWNER to the CONSULTANT shall be due and payable on the 25th day of the month following that date of the invoice. Payments not received by the CONSULTANT by the 30th day of the month following the date of the invoice shall be overdue. Should a court action be taken to address collections, reasonable attorneys' fees and costs shall be paid to the prevailing party. Should the OWNER request a clarification for a legitimate item of any invoice within 30 calendar days of receipt, then the CONSULTANT will revise the invoice to satisfy those concerns or give a written reply to those concerns. If the invoice is still not paid within 30 additional calendar days, then the CONSULTANT will begin collection procedures. CONSULTANT shall not be bound by any provision wherein CONSULTANT waives any rights to a mechanic's lien, or any provision implying payment to CONSULTANT is contingent upon payment to OWNER by a third party. A failure by OWNER to pay CONSULTANT on a timely basis shall entitle CONSULTANT at its election, to stop work on the Project until such time as payment has been made, and upon seven days' notice and OWNER'S failure to pay all amounts then due, to terminate this contract.

- Personnel. The CONSULTANT represents that he has, or will secure at his own expense, all personnel required to perform the services under this Contract and that such personnel will be fully qualified to perform such services.
- Responsibilities of the OWNER. It is agreed that the OWNER will have the following responsibilities under this Contract:

a.) The timely provision of all available information, data, reports, records, and maps to which the OWNER has access and which are needed by the CONSULTANT for the performance of the services provided for herein.

b.) Providing assistance and cooperation for the CONSULTANT in obtaining any other needed material which the OWNER does not have in its possession.

c.) Making available the services of the OWNER as may be necessary to obtain information as needed to perform the work program set forth in the Scope of Services.

d.) The designation of a single representative who will be authorized to make necessary decisions required on behalf of the OWNER and will serve to provide the necessary direction and coordination for the project.

e.) Bear all costs for permitting and advertising for the project.

f.) Arrange access, to the extent possible, to all affected private property for CONSULTANT to perform all necessary surveying, engineering and inspections. All such OWNER responsibilities shall be conducted in a timely manner and without undue delay so as not to delay the CONSULTANT in the performance of his services.

· Opinion of Probable Construction Costs. CONSULTANT'S opinion of probable construction costs, if rendered as a service under this Agreement, is based on assumed labor costs and approximate quantities of material and equipment, and therefore is of a conditional character. CONSULTANT cannot and does not guarantee the cost of work to be performed by others since market or bidding conditions can change at any time and changes in the copse or quality of the project may affect estimates.

· Ownership of Materials. It is agreed that upon receipt of final payment, all final documents, studies, surveys, drawings, maps, models, photographs and reports prepared by the CONSULTANT under this Contract, shall be considered the property of the OWNER. However, the CONSULTANT shall retain such copies thereof as he desires. Any adaptation by OWNER without CONSULTANT'S written verification of adaptation will be at OWNER'S sole risk and without liability or legal exposure to CONSULTANT, and OWNER agrees to indemnify and hold CONSULTANT harmless from and against any claims or liability, including attorneys' fees resulting from any claim against CONSULTANT by any third party arising out of OWNER'S use of the documents referred to herein, for any purpose other than the completion of the Project.

· Delays Beyond the Control of the CONSULTANT. It is agreed that events which are beyond the control of the CONSULTANT may occur which may delay the performance of the Scope of Services. In the event that the performance of the Scope of Services by the CONSULTANT is delayed beyond his control, the CONSULTANT shall notify the OWNER in writing of such delay and the reasons therefore, and the OWNER shall extend the time of the performance appropriately.

- Changes. The OWNER or the CONSULTANT may, from time to time, request modifications or changes in the Scope of Services. Such changes, including any increase or decrease in the amount of the CONSULTANT'S compensation, which are mutually agreed upon by and between the OWNER and the CONSULTANT, shall be incorporated in written amendments.
- Termination of Contract. This Contract may be terminated by either the OWNER or the CONSULTANT with 7 calendar day's written notice. In the event of such termination, all finished or unfinished plans, specifications and reports prepared by the CONSULTANT shall, at the option of the OWNER, become OWNER'S property, subject to the provisions of paragraph 13. The CONSULTANT shall be entitled to receive compensation for work accomplished and for reimbursable expenses incurred prior to termination.
- Assignability. This Contract shall not be assigned or transferred by either the CONSULTANT or the OWNER without the prior written consent of the other. Notwithstanding the foregoing, however, the CONSULTANT shall not be prohibited from contracting with qualified sub-consultants or from assigning to a bank, trust company, or other financial institution any claims for compensation due, or to become due, without such prior written consent.
- Liability and Standard of Care. CONSULTANT'S liability to OWNER for any indemnity commitments, or for any damages arising in any way out of performance of this contract, is limited to \$1,000,000. The CONSULTANT shall maintain liability insurance coverage in this amount which insures the CONSULTANT for any liability to OWNER not otherwise released through this contract.

OWNER acknowledges that the CONSULTANT is a Corporation and agrees that any claim made by the OWNER arising out of any act or omission of any director, officer or employee of the CONSULTANT in the execution or performance of this agreement shall be made against the CONSULTANT and not against such director, officer or employee and OWNER waives any claim against all of CONSULATANT'S directors, shareholders, officers and employees.

IN WITNESS WHEREOF, the CONSULTANT and the OWNER have executed this Contract as of the date written below and under the laws of the State of North Carolina.

OWNER:

CONSULTANT:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Witness: _____

Witness: _____

Title: _____

Title: _____

ATTACHMENT A SCOPE OF WORK

PROJECT DESCRIPTION

This project involves providing Professional Engineering Services related to the design and construction of the Hill Street Gravity Sewer Improvements for the Town of Boone. The Town of Boone must continue to provide its residential customers on Hill Street, Whitener Drive, and Hayes Street area with uninterrupted sewer service while properly protecting and providing for the safety of its resources as well as protection of the public health and the environment. The Town must upgrade the existing sewer system if it intends to continue to meet its customer's needs, reduce sanitary sewer overflows / O & M issues, and avoid violations of the Pollution Control Act. The basic components of the proposed project will include:

1. Hill Street
 - α. Approximately 800 LF of 8" gravity sewer and six (6) manholes
 - β. Paving (either patching or asphalt overlay as chosen by the Town), seeding, mulching and erosion control
2. Hayes Street
 - α. Approximately 400 LF of 8" gravity sewer and one (1) manhole
 - β. Paving (either patching or asphalt overlay as chosen by the Town), seeding, mulching and erosion control
3. Whitener Drive
 - α. Approximately 1,000 LF of 8" gravity sewer and eight (8) manholes
 - β. Paving (either patching or asphalt overly as chosen by the Town), seeding, mulching and erosion control

PROPOSED SCOPE OF SERVICES

The CONSULTANT proposes to provide the following scope of services for the fees listed under "Basis of Compensation".

A. Design Surveys and Mapping

CONSULTANT proposes to complete field surveys (both topographic and physical) and related mapping for the proposed pump station upgrade. Work will include:

- Establishing horizontal and vertical control for the proposed improvements
- Survey physical and topographical conditions at the existing project site
- Locate visible above ground and subsurface utilities

B. Engineering Design

Utilizing the design surveying and mapping, final plans and specifications will be developed for the proposed project. Work in this phase will include the following:

- Finalize horizontal and vertical geometry
- Prepare plans and detail sheets for the project
- Show the necessary erosion control measures for the entire project and prepare erosion control details
- Prepare technical specifications on materials and workmanship
- Submit Plans, Specifications and Permit Applications to the following regulatory agencies for review: North Carolina Division of Water Quality Water Quality Section and the North Carolina Land Quality Section – Erosion Control.

The services consist of completing the required forms and the submission of applications to NCDENR. Services include furnishing the required reproducibles, and generating the necessary correspondence for and during the permit application process.

- Forward two (2) sets of plans and specifications to the OWNER for review

C. Construction Bidding

Upon receiving the required approvals from the regulatory agencies and the OWNER, the CONSULTANT will proceed with the Construction Bidding portion of the project consisting of the following tasks:

Provide engineering services necessary to place the work under contract including:

- Prepare final quantity and construction opinion of probable construction costs
- Prepare additional documents necessary for the bidding purposes including: Advertisements for Bids, Notice and Instructions to Bidders, Bid Form, Contract Agreement, General and Supplemental Conditions
- Prepare required advertisements (cost of advertising is not included in this proposal)
- Provide required sets of plans and specifications for bidding purposes
- Coordinate CONTRACTOR'S questions concerning plans and specifications
- Conduct bid opening
- Analyze bids and make recommendations to the OWNER
- Conduct pre-construction meeting
- Prepare contract documents for the OWNER'S review and coordinate execution by the CONTRACTOR and the OWNER

D. Construction Administration

Provide general consultation during period construction including:

- Review CONTRACTOR’S submittals (shop drawings, schedules, etc.) for intent
- Clarify and interpret construction plans and specifications
- Review CONTRACTOR’S monthly pay requests and make recommendation to OWNER
- Schedule and conduct a final site visit and recommend final payment to the CONTRACTOR

E. Consultation Observation

The CONSULTANT shall have one representative dedicated to the project and provide part-time construction observation services for a construction period of up to 8 man-days or less. Observation services can be provided beyond 8 man-days, if requested, as an extra service. The representative will call to the attention of the CONTRACTOR any deficient work noted in the field and, through the assistance of a project manager, interpret the plans and specifications when questions arise. It is assumed that construction will not exceed 60 Consecutive calendar days, 16 CONTRACTOR work days or 8 construction observation man-days. Additionally, the CONSULTANT’S project manager(s) will visit the project site periodically during the course of the project for construction progress meetings, or as needed and conduct site visit(s) at the completion of the project. The CONSULTANT will provide the Engineer’s Certification of Construction, as required by NCDENR, once the project is satisfactorily completed.

F. Additional Services

The OWENR may request additional services from time to time. When provided, additional services will be performed in accordance with the current rate schedule. These services will be provided on an as-needed basis only when requested by the OWNER.

**ATTACHMENT B
BASIS OF COMPENSATION**

(Lump Sum Fee)

1. Basic Services: The OWNER shall pay the CONSULTANT for services set forth in Attachment A, Scope of Services, a Lump Sum Fee of twenty-nine thousand, four hundred and fifty dollars (\$29,450.00).

• Surveying/Mapping (Lump Sum)	\$3,250.00
• Engineering/Planning/Design (Lump Sum)	\$15,800.00
• Bidding (Lump Sum)	\$1,300.00
• Construction Administration (Lump Sum)	\$4,300.00
• Construction Observation	\$4,800.00

(@ \$600/day not to exceed 8 days)

Total

\$29,450.00

A percentage of the Lump Sum Fee will be billed on the last day of each month. The percentage billed will be the percentage of work estimated to be complete as of the day of billing.

2. Additional Services The OWNER shall pay the CONSULTANT for additional services, which are not specifically called for in Attachment A, Scope of Services, in accordance with the CONSULTANT'S standard rates.

**W. K. DICKSON & CO., INC.
2005 RATE SCHEDULE**

LABOR

Principal	\$180.00/hr.
Project Manager	\$130.00/hr.
Senior Staff Engineer	\$120.00/hr.
Staff Engineer	\$ 95.00/hr.
Landscape Architect	\$100.00/hr.
Staff Planner	\$ 90.00/hr.
Senior Designer	\$ 90.00/hr.
Designer	\$ 82.00/hr.
Senior Technician	\$ 82.00/hr.
Technician	\$ 75.00/hr.
Administrative Assistant	\$ 48.00/hr.
Field Survey Party	\$110.00/hr.
GPS Crew	\$195.00/hr.
Registered Surveyor	\$100.00/hr.
Party Chief (Office Computations, Deed Research, etc.)	\$ 62.00/hr.
Construction Observation	\$600.00/day

EXPENSES

Reproduction:

- Xerox Cost
- Blacklines Cost
- Mylars Cost
- Sepias Cost

Mileage \$0.40/mi.

Telephone, Postage Cost

Travel (Meals/Lodging) Cost

Subconsultants Cost + 15%

VOTE: Aye – All
 Nay – None

**ADOPTION OF RESOLUTION INITIATING AN AMENDMENT TO UDO –
ADDITION OF TWO ALTERNATE MEMBERS TO THE BOARD OF ADJUSTMENT**

Town Attorney Sam Furgiuele explained that a majority of members of the Board of Adjustment are employed by the same employer, Appalachian State University. He stated that this situation sometimes causes a problem in securing a quorum and in creating a conflict of interest when a case comes before the Board of Adjustment concerning ASU. Mr. Furgiuele suggested amending the UDO to add two alternates who can not be employed by the same employer as any of the current members of the board. Upon a motion by Council member Eggers, seconded by Council member Clawson, the Council moved to adopt the following resolution to initiate a UDO text amendment.

RESOLUTION

WHEREAS, the Town of Boone (hereafter “the Town”) is a municipal corporation organized under the laws of North Carolina and invested with the powers enumerated in Chapter 160A of the North Carolina General Statutes; and

WHEREAS, the Town has adopted, pursuant to those powers and as part of it Unified Development Ordinance, certain measures regulating the display of signs within the planning jurisdiction of the Town; and

WHEREAS, the Town Council recognizes the cultural, historical and economic impact and importance of agriculture, and the benefits conferred upon the Town by those agricultural expositions, festivals and events held in proximity to the Town by the tourism which such undertakings engender; and

WHEREAS, the Town Council notes that the North Carolina General Assembly has recognized the economic and cultural benefits to the State of North Carolina of such agricultural endeavors, which the General Assembly has encouraged by enacting special provisions regarding, *inter alia*, signage relating to agricultural activities which promote tourism, pursuant to N.C. Gen. Stat. § 106-22.5; and

WHEREAS, the Town Council wishes to support the public policy of the State nad to encourage such agricultural activities and to remove unnecessary impediments which might exist in the signage article of the Town’s Unified Development Ordinance to allow the exhibition of information within the Town’s planning jurisdiction necessary to make visitors to the Town aware of the existence and location of such activities;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA, THAT THE TOWN OF BOONE, NORTH CAROLINA CODE OF ORDINANCES BE AMENDED, AND IT IS HEREBY AMENDED,

BY ADDING THE FOLLOWING PROVISIONS TO ARTICLE XVIII OF THE TOWN OF BOONE UNIFIED DEVELOPMENT ORDINANCE, AND WHERE APPROPRIATE, REPLACING THE EXISTING PROVISIONS OF LIKE NUMBER AND LETTER WITH THE FOLLOWING:

Section 322. Definitions

- [1a] Agricultural Sign: A temporary sign posted to direct the public to an agricultural exposition, festival or event, as those terms are described, when such exposition, festival or event is taking place within the corporate or planning limits of the Town, or within Watauga County. An agricultural exposition, festival or event is an event which involves at least ten separate participants involved in the cultivation of land, who for a period of time not exceeding six weeks per year, provide tours and/or on-site sales or samples of agricultural products resulting from that cultivation to area tourists.

Section 324 [8] Temporary Signs, other than Agricultural Signs.

Section 338. Temporary Sign Regulations

- [a] Temporary signs must conform to all regulations of this section not otherwise superceded by this section. No type of temporary sign, other than an agricultural sign whose placement is approved by the North Carolina Department of Transportation, may be placed in the public right-of-way. Temporary signs, other than agricultural signs, shall not be required to obtain a sign permit.

- [7] Agricultural signs are subject to the following criteria:

- [1] Permit(s) must be applied for by delivery of a completed application and payment of such fee(s) as have been established by the Boone Town Council, no less than forty-five days prior to the first day of display. Applications for permits must state the dates of the exposition, festival or event in question;
- [2] Signs must comply with all North Carolina Department of Transportation requirements, including those requirements as to location and placement, and the applicant is responsible for compliance with DOT requirements and with the requirements of this ordinance;
- [3] Off-premises signs may only be placed with the permission of the person with the legal authority to grant such permission.. There may be no more than five off-premises agricultural signs within the planning jurisdiction of the Town for each exposition, festival or event. No two signs may be placed closer to each other than one mile, as measured along the most direct vehicular route between the two;

- [4] Signs may be permitted for a maximum of six weeks, must be fixed in place for the duration of the exposition, festival or event, and must be removed by the applicant within forty-eight hours of the conclusion of the exposition, festival or event;
- [5] All signs relating to a particular agricultural exposition, festival or event must be uniform in size, shape, and colors. Any designs must be complementary. Each sign must be stable and must be properly secured to its location;
- [6] Signs may not exceed twenty-eight square feet, but may be comprised of a large sign with smaller signs attached, which smaller signs direct the public to particular locations participating in the exposition, festival or event;
- [7] Agricultural signs may not be illuminated.

Adopted this the 21st day of April, 2005.

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGES 287-288)

VOTE: Aye – All
 Nay – None

PERMISSION TO INITIATE AMENDMENT TO UDO – NEW PERMITTING PROCEDURE FOR SIGN DISPLAY RELATED TO AGRICULTURAL EXPOSITIONS OR EVENTS

Town Attorney Sam Furgiuele explained this change would allow for the placement of signs advertising such events as Christmas tree sales. Upon a motion by Council member Eggers, seconded by Council member Mason, Council moved to grant permission to the Town Attorney along with Development Services staff to initiate a UDO text amendment.

VOTE: Aye – All
 Nay – None

MONTHLY WATER USE STATUS REPORT

Public Utilities Director Rick Miller presented the following status report:

As requested by Town Council, staff and I have compiled the following information concerning water use for the month of March. The Water Treatment Plant recorded a maximum daily demand of 2.096 million gallons on Wednesday, March 2, 2005, and the average daily demand was 1.676 million gallons for the entire month.

As adopted in Ordinance 05-01, the Town of Boone Council has appropriated for 25,000 gallons per day usage for year 2004 and 25,000 gallons per day usage for year 2005 to be combined for a total of 50,000 gallons per day for allocation to customers. The Utilities Department approved three projects for water service in March, 2005. The chart below illustrates the remaining allocation of gallons remaining for allotment in 2005. All calculations are based on the North Carolina Discharge Rate Schedule.

			Approved Water Connections			
			2005			
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						50000
Cookout Grill	Jan-05	1500				50000
			Tom Adams	Feb-05	270	49730
Doug Hanks	Feb-05	600				49130
John Roberts	Feb-05	360				48770
David Styron	Feb-05	270				48500
			WMC Wellness Center	Mar-05	17250	31250
			Dan Minton	Mar-05	7200	24050
			David Blust	Mar-05	165	23885
David Blust	Mar-05	360				23525
Eddie Greene	Mar-05	270				23255
David Nicklaw	Mar-05	270				22985

The three projects approved by staff were as follows:

- 1) A previously approved water connection for a four bedroom residence for Mr. David Blust which is located outside the corporate limits on George Wilson Road. This project was previously approved by Town Council and is calculated to utilize 360 gpd usage.*
- 2) A three bedroom residence for Mr. Eddie Greene which is located inside the corporate limits on Daniel Boone Drive. This project is calculated to utilize 270 gpd usage.*

3) A three bedroom residence for Mr. David Nicklaw which is located inside the corporate limits between Eastbrook and Westbrook Drive. This project is calculated to utilize 270 gpd usage.

After removing these projected usages from our yearly allotment, the Public Utilities Department has 22,985 gallons per day remaining for allotment. When the total allotment remaining for the year reaches 20,000 gpd, all service requests will be forwarded to Town Council as required in Ordinance 05-01.

ADOPTION OF BUDGET AMENDMENTS

Upon a motion by Council member Clawson, seconded by Council member Eggers, Council adopted the following budget amendments:

DESCRIPTION	ACCOUNT #	TO:	FROM:
Capital Outlay-Large Trucks	010-600-403-573300		\$63,474.
Capital Outlay-Other Equipment	010-600-403-574000		25,820.
Capital Outlay-Large Trucks	010-600-405-573300		137,796.
Loan Proceeds	010-000-000-492000		\$227,090.
Transfer to Water Capital Reserve	030-700-890-598031		141,448.
Transfer to Sewer Capital Reserve	030-700-890-598031		175,700.
Impact/Availability Fees-Water	030-000-000-467301		141,448.
Impact/Availability Fees-Sewer	030-000-000-467302		175,700.

VOTE: Aye – All
 Nay – None

REQUESTED APPEARANCE – C. HUNTER NICHOLS

Town Attorney Sam Furgiuele opened the public hearing at 7:43 p.m. and reminded Mr. Nichols that he was still under oath. Requesting water service to property located off Greenbriar Road, Mr. Nichols began by stating his case hinges on two issues: securing an easement for the water lines across Mr. Adam’s property and the possible contamination of his well. He requested that the Council grant his request contingent on his obtaining an easement from his neighbor. Mr. Nichols pointed out on a map (**Exhibit A.1**) his property and the neighboring properties. Council member Eggers asked about the staff comments for this case versus the comments for the Tom Adams’ case. Being reminded that he was still under oath by the Town Attorney, Public Utilities Director Rick Miller stated the comments are different because Mr. Adam’s property was adjacent to the water line. He stated that Mr. Nichol’s property is not adjacent to a water line. Mr. Rocky Nelson, Watauga County Manager, was sworn to testify. He stated the whole area along the southern border of the landfill includes five wells that were connected to town water when the landfill settlement was completed. He stated that eleven out of twelve

wells tested resulted in a clear test. The twelfth well was found to have some chemicals but less than the federal standard for drinking water. With no other public testimony, Mr. Furguele closed the public hearing at 8:06 p.m. Upon a motion by Council member Wilcox, seconded by Council member Clawson, Council moved to allow the water tap contingent on Mr. Nichol's obtainment of an easement for the water line to cross his neighbor's property. Council member Eggers asked that an amendment be added that there is a perceived hardship in this situation. Council members Wilcox and Clawson agreed to the amendment.

VOTE: Aye – All
 Nay – None

Mayor Burnley declared a break at 8:13 p.m. Council reconvened at 8:28 p.m.

REQUESTED APPEARANCE – VIA LLC/ED STREET COMPANY

Town Attorney Sam Furguele opened the public hearing at 8:29 p.m. to hear sworn testimony regarding a request for water and sewer service to property located off Highway 421. Mr. Furguele reminded Mr. Street that he was still under oath. Mr. Street entered into evidence a packet of information about the project which includes aerial photographs taken of the site from various locations. He pointed out that this project will create 200-300 new jobs, generate an estimated \$96 million dollars in gross sales taxes, and generate at least \$25 million dollars in property taxes. Also included in the packet of information was a potential site plat on which Mr. Street pointed out the proposed green space area and photographs of similar projects in the Southeast. Mr. Street estimated the green space area to be at least fifteen acres, possibly as much as twenty-five acres. Mr. Street stated he can commit to this amount of green space for the project. He suggested that a neighboring property owner may also donate some acreage for the purpose of green space, but he would not commit to that possibility. Development Services Director John Spear, also under oath, stated that the majority of the project is not within the town limits but is in the ETJ. He also stated that the property is zoned B-3, General Business, and R-A, Residential/Agriculture. Council member Mason stated her concern that this property is not within the town limits, therefore, not a priority for water connection under the new water ordinance. She also voiced a concern that this property is not in the current growth area. The Council discussed the water usage of the project which was compared with the water usage of the current Wal-Mart store. Public Utilities Director Rick Miller, under oath, stated that the figures compiled by his staff were comparable to a Wal-Mart-type retail store, a bank, and a smaller retail store. He stated the applicant did not provide the square footage of the project for a more accurate comparison. Council member Wilcox asked if a daily usage of 5000 gallons is a fair estimate. Mr. Miller agreed that would be a fair estimate. Council member Mason asked if the property is in the main pressure zone and if a force-main pump-station would be necessary. Mr. Miller indicated that the property is within the main pressure zone and that based on the information presented, gravity sewer service could be obtained. With no further testimony, Mr. Furguele closed the public hearing at 9:35 p.m. Council member Mason reiterated her concern that the property is not within town limits and that the zoning does not support the project. Council member Eggers stated he feels this is an appealing project and would want a commitment on rezoning the property and annexation. Council member Wilcox pointed out this property is on the main thoroughfare and a vast majority of the property would remain zoned R-

A. Council member Mason voiced a desire for the property to be annexed immediately if approval is given for water connection. Council member Wilcox pointed out that the application for annexation must be completed by the property owner, not the developer. Furthermore, he pointed out that if the project did not come to fruition, the property owners would then be paying town taxes on the annexed land. Council member Wilcox moved to grant the request for a maximum usage of 5000 gallons per day with the following conditions:

- A petition for annexation must be filed prior to water connection.
- The project must contain at least 15 acres of green space.
- The portion of the development within the R-A, Residential/Agriculture zoning must be rezoned to B-3, General Business.
- Any water and sewer costs incurred are the responsibility of the applicant.
- Total building square footage cannot exceed 250,000 square feet.
- The applicant agrees to review and voluntarily comply with proposed appearance standards from the Community Appearance Commission.

Council member Clawson seconded the motion.

VOTE: Aye – All
 Nay – None

Council member Mason stated the Council may need to reconsider the policies in the new water ordinance so they can be applied consistently.

REQUESTED APPEARANCE – ROCKY NELSON/WATAUGA COUNTY

Town Attorney Sam Furgiuele opened the public hearing at 9:44 p.m. to hear sworn testimony from Rocky Nelson, County Manager for Watauga County, for a request for an additional water allocation to accommodate the addition of 32 new cells and to create meals on-site. According to information presented in the Council packet, the additional water needs will amount to 6714 gallons per day. Mr. Nelson stated the additional beds are needed due to the rising number of prisoners. Mr. Nelson informed the Council that the current facility houses 40-45 prisoners and uses approximately 2986 gallons per day. He stated the new facility would include fifty staff, nine NC Highway Patrolmen, and the emergency management staff. Mr. Nelson indicated that the current facility on Queen Street is slated to be demolished and parking space created. With no other testimony, Mr. Furgiuele closed the public hearing at 9:50 p.m. Upon a motion by Council member Clawson, seconded by Council member Mason, Council moved to approve the request for additional water allocation.

VOTE: Aye – All
 Nay – None

REQUESTED APPEARANCE – JAMES F. HOPF

James Hopf introduced himself as an attorney representing eleven homeowners whose homes were impacted by storms in the fall of 2004 in the White Laurel subdivision. Mr. Hopf

explained the deadline for the Order to Demolish or Repair and Vacate issued by Jesse Horner, Building Inspector for the Town of Boone, would be May 15, 2005. He requested an additional six-month extension so that the homeowners would have ample time to explore their options. Council member Wilcox moved to affirm the Order to Demolish or Repair and Vacate issued by Mr. Horner, but to modify the order to grant an additional six month extension. Council member Clawson seconded the motion.

VOTE: Aye – All
 Nay – None

REQUESTED APPEARANCE – CHRIS TURNER/APPALCART

Chris Turner, Director of Appalcart, appeared before the Town Council to propose a fare-free bus system for Boone. He stated that the current bus system makes 585,000 trips per year in Boone and that there are 40,000 customers paying fare to ride. He stated a fare-free system would save time for personnel collecting and counting fare money. Mayor Burnley inquired if there would be new routes added. Mr. Turner stated that no new routes would be added but that additional buses may be provided to cover peak-hour needs. Council member Mason stated that this wonderful idea encourages alternative transportation. Council member Spann asked how Appalcart plans to handle future growth. Mr. Turner stated he plans to replace the school-type buses with transit buses. Town Manager Greg Young asked if Appalcart is considered a regional or municipal transit system. Mr. Turner stated it is considered municipal since it does not offer transportation to the county. Council thanked Mr. Turner for the information.

REQUESTED APPEARANCE – HORN IN THE WEST

Del Fox, of Horn in the West, introduced each of the board members to the Council. Chris Parsons, Executive Producer, thanked Council members for their support and addressed major areas of concern regarding repairs to the facilities. Mayor Burnley asked if he has pursued any grants. Mr. Parsons stated that six grant applications are pending at this time and that other grant possibilities would be considered. Town Manager Greg Young stated that several items have been taken care of by the Town Public Works Department. He listed one of the priorities as the second bathroom which is in disrepair. He noted the price for the removal of trees and pruning is \$40,000 and that it will cost \$100,000 to renovate or relocate a pre-fab restroom facility. Special Assistant to the Manager Jim Byrne stated there are significant electrical work and tree work to be done. Public Works Director Blake Brown stated he did a walk-through tour of the property and the Daniel Boone Gardens. He noted that much of the work would be pruning and removing deadwood. He stated there are several trees that would need to be removed by a crane. Mr. Brown estimated the price for rebuilding the restrooms by the Public Works Department would be around \$35,000. He stated a new sewer line would need to be constructed because of root damage to the old system. Council member Mason stated a plan should be developed listing priorities, how the work will be done, and funding sources. She also mentioned a temporary solution of portable toilets until the restroom issue could be resolved. Council member Wilcox moved to allocate \$30,000 to fund the top three areas of concern: portable toilets, tree removal, and repairs to the stage area, and advised that a plan be developed for the remaining areas of concern. Council member Eggers seconded the motion.

VOTE: Aye – All
 Nay – None

REQUESTED APPEARANCE – SHARON BLAIR TOLBERT

Sharon Blair Tolbert explained her request for off-premise signage to promote an art and antiques sale at the Blair Home to take place on Saturdays from May until October 2005. Council member Mason explained that, under the existing sign ordinance, Ms. Blair could have two off-premise signs and one on-premise sign. Ms. Tolbert asked about signage for a community event. Town Manager Sam Furgiuele stated that the event must be sponsored by a non-profit organization. Council member Eggers suggested having a non-profit organization co-sponsor the event. Council advised Ms. Tolbert to confer with Development Services Director John Spear to explore the sign options for a co-sponsored community event.

CLOSED SESSION

Upon a motion by Council member Wilcox, seconded by Council member Spann, Council moved to enter Closed Session at 11:10 p.m. pursuant to NCGS 143-318.11a)3 in order to discuss the following matters:

- IRC Violation
- ASU Violations
- Williamson Litigation
- Ailsa Miller Possible Litigation

VOTE: Aye - All
 Nay - None

Upon a motion by council member Eggers, seconded by Council member Spann, Council moved to exit Closed Session at 11:57 p.m.

VOTE: Aye - All
 Nay - None

ACTION FOLLOWING CLOSED SESSION

Upon a motion by Council member Wilcox, seconded by Council member Mason, Council moved to adopt the following Consent Order:

North Carolina
County of Watauga

In the matter of Town of Boone
Industrial User Permit # 0001
Held by TT Electronics - International Resistive Company, Inc.

Consent Order and Compliance Schedule

Pursuant to provisions of the Sewer Use Ordinance of the Town of Boone, this Consent Order is made effective May 1, 2005, between TT Electronics - International Resistive Company, Inc. (hereinafter the "User") and the Town of Boone (hereinafter the "Town").

The User and Town hereby stipulate and agree as follows:

1. User holds Town of Boone Industrial User Permit # 0001 (hereinafter the "Permit", which shall refer to User's existing permit and any subsequent renewals or modifications thereof) for the operations of existing pretreatment units and discharges from said treatment works in to the Town's sewer system.
2. User has been unable to meet the Permit limitations for Lead (Pb) set forth in its Permit.
3. User has been having trouble with other permitted parameters since the change of sampling point (BOD, COD, Zinc, Nickel).
4. Achievement of these limits will require resolution of existing problems in the present treatment train and possibly, development of alternative solutions to alleviate noncompliance, including but not limited to the construction of additional pretreatment facilities as well as the preparation of plans and specifications as necessary.
5. User hereby agrees to do and perform all of the following:
 - a. Meet and comply with all terms and conditions of the permit (except as modified by the Order) provided, however, subject to the terms and conditions of the Consent Order, the following shall apply:

<u>Parameter</u>	<u>Daily Max (mg/L)</u>	<u>Monitoring Frequency</u>	<u>Detection Limit (mg/L)</u>
Lead	4.5	Monthly	0.010

- b. Unless and until Compliance is achieved, the User will undertake activities necessary to bring the User into Compliance in accordance with the following schedule:

COMPLIANCE SCHEDULE:

<u>Activities</u>	<u>Deadline for Completion</u>
(i) Submit a report on all the source(s) of Lead at the User's Facility; the destination of the Lead source(s), detailing which, if any, pretreatment units the Lead goes through; and the results of all sampling done to locate the source(s).	May 13, 2005
(ii) Submit a report on the removal efficiency of each pretreatment line for each permitted parameter that is	

treated by that particular line. The report should include at least: individual influent and effluent results for each pretreatment line daily for one normal production week in the calendar month May for BOD, COD, Nickel, and Zinc; individual influent and effluent daily results for each pretreatment line for one production day for each permitted parameter that is treated by that particular line; the average influent and effluent results and calculated efficiency for individual permitted parameters for each pretreatment line for the same time period; and the design removal efficiency of each pretreatment line. Be sure to be specific about sampling dates and sites.

June 30, 2005

(iii) Prepare an engineering report of process alternatives, pollution prevention/waste minimization alternatives and/or pretreatment equipment alternatives designed to achieve compliance. If required, submit necessary drawings and information to obtain any necessary permits and/or authorization to construct from the Town of Boone.

July 29, 2005

(iv) Begin construction and/or implement authorized process alternative(s), pollution prevention, and waste minimization alternatives after receiving any necessary permits and/or authorization to construct from the Town of Boone.

August 31, 2005

(v) Complete authorized construction/pollution prevention/waste minimization alternatives and/or process alternatives.

October 31, 2005

(vi) Begin analysis of implemented changes, including weekly monitoring at the sampling point, which is to continue until December 31, 2005. If the User is ahead of the compliance schedule, weekly monitoring at the sampling point will show at least 9 weeks of consecutive continuous compliance with the Permit limit.

November 1, 2005

(vii) Complete analysis of implemented changes, including weekly monitoring from November 1, 2005 to December 31, 2005, or the 9 weeks as mentioned above, at the sampling point and make necessary modifications to optimize and obtain full operational status.

December 31, 2005

(viii) Achieve full compliance with all terms and conditions of the Permit.

December 31, 2005

c. User shall perform each of the activities set forth in subparagraph (b) on or before the dates established thereby unless such dates are extended by agreement of User and the Town. The User may request of Town of Boone Council such extensions for good cause, and the Town will not unreasonably withhold its consent to such extensions. Any requests for amendments to this Consent Order must be made to Town of Boone Council.

d. User shall submit a comprehensive written report within five (5) days following each milestone date specified in subparagraph (b). Each such report shall be in narrative form, shall state in detail the activities undertaken since the last report to achieve Compliance, and shall indicate whether User has met the due date for the relevant milestone established in this Consent Order. If any report contains notice of failure to meet a milestone date the report shall also include a statement explaining the cause of the failure, any remedial actions taken, and the probability of meeting the next milestone.

During any period of construction, User shall submit on or before the 10th day of each month, detailed construction progress reports stating therein in narrative form the work performed during the month and the percentage of completion of the project.

All reports required by the Consent Order shall be submitted **in duplicate** to the Town by Certified Mail, Return Receipt Requested, addressed to:

**Ricky L. Miller, Public Utilities Director
Town of Boone
PO Drawer 192
Boone, NC 28607**

e. Any violation of the terms of this Consent Order shall subject the User to the enforcement authority outlined in the Ordinance. Such action may include, but is not limited to such fines, penalties and assessments as may be set forth in the Sewer Use Ordinance of the Town of Boone, as amended from time to time. All terms are material to the order and a breach of a material term, upon the election of the Town, voids the order.

In lieu of other penalties, the following stipulated penalties shall apply for violations of the User's limits or failure to meet a milestone date under this Consent Order, or failure to achieve full compliance with Consent Order. All civil penalties issued as a result of violations to this Consent Order are to be paid immediately and are not subject to appeal.

Violation of limits	\$ 250 per day per violation/
Failure to collect required samples, meet compliance schedule deadlines, required reports, or other milestone dates contained	\$ 500 per day per violation/ herein

Failure to achieve full compliance with terms and conditions of the Permit by expiration of Order

\$ 2500 per day/

all

Fines for limits violations will be charged for the date of sampling event, regardless of date of discovery of the violation. Fines for failure to collect samples, meet compliance schedule deadlines, required reports, other milestone dates contained herein and/or failure to achieve full compliance with the Permit on time will be back charged to the day after the missed milestone date, other deadline or event and continue to accrue until the violation is corrected, regardless of date of discovery of the violation.

g. Once Compliance is achieved, this Consent Order shall terminate and all obligations hereunder except any obligation to pay identified moneys to the Town shall expire. Upon termination of this Order, the User shall be subject to all terms of the Permit.

h. In the performance of activities under this Consent Order, User must otherwise follow the procedures, rules, regulations, ordinances, and statutes of the Town, State and Federal governments as they may apply to User. Nothing contained herein shall be construed as a waiver thereof by the Town.

i. These terms comprise the entire order, and no oral representations, discussions or statements prior to execution of this instrument or subsequent thereto may alter the terms of the order, which may only be modified in writing if signed by both IRC and the Town.

By signing, the User is consenting to the terms and conditions created by this Enforcement Order. Signed on this ___ day of _____ 2005.

This Order expires December 31, 2005

ADJOURNMENT

On a motion by Council member Wilcox, seconded by Council member Clawson, Council moved to adjourn at 11:58 p.m.

VOTE: Aye - All
 Nay - None

Deputy Town Clerk

Mayor