

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
OCTOBER 20, 2005**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, October 20, 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, Police Chief Bill Post, Public Services Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, and Development Services Director John Spear.

ANNOUNCEMENTS

Mayor Burnley recognized Council Member Elect Rennie Brantz. She also recognized Jud Watkins, president of the Student Government Association at ASU.

Mayor Burnley observed a moment of silence for national and international leaders.

TENTATIVE AGENDA ADOPTION

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

Item 11.E. - Requested Appearance - Jay E. Adams (This item will be on the November meeting agenda.)

Closed Session: Deletion of Possible Litigation - Toyota of Boone.

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

VOTE: Aye - All
Nay - None

CONSENT AGENDA ADOPTION

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

Minutes: September 15, 2005 – Regular Meeting
September 29, 2005 – Special Meeting
Tax Releases: September 2005

TAXPAYER	YEAR	AMOUNT	DESCRIPTION
PETRO PAWLYSZYN	2005	117.80	INCORRECT FIRE DISTRICT
BARRY L. KURTZ	2005	16.63	SOLD BOAT REPLACED W/ ANOTHER
BILLY MELTON	2005	4.84	DOES NOT LIVE IN TOB LIMITS
CALVIN A. WATSON, JR	2005	.80	SOLD VEHICLE
LOCK DOWN SECURITY, INC.	2005	26.40	OUT OF BUSINESS 2004, MOVED TO WINSTON- SALEM
FRED & JOHNNY CARROLL	2005	192.30	OA EXEMPTION
KEITH & LEOTA CLOYED	2005	99.00	SOLD VEHICLE TURNED IN TAG
REBECCA C. WHITLEY SCOTT H. AINSWORTH	2005	10.72	SOLD VEHICLE TURNED IN TAG
TIMOTHY E. CECIL	2005	10.56	LIVES IN DAVIDSON CO

CAMERON M. CECIL			
JAMES R. BALAZ, JR	2005	18.53	TURN IN TAG
SC AND S FUTURE	2005	9.76	TURN IN TAG
MICHAEL R. ENGLERT	2005	50.00	INCORRECT FIRE DISTRICT
MICHAEL R. ENGLERT CANDACE B. ENGLERT	2005	13.04	INCORRECT FIRE DISTRICT
SCA ENGINEERING AND CONSULTING	2005	93.88	LIVES IN AVERY CO
REID W. ARMSTRONG	2005	5.04	TURN IN TAG
JIM C. JONES LOU E. JONES	2005	310.80	HOUSE ONLY 25% COMPLETE NO ROUGH IN DONE PER BILL
GARY L. & EMILY CHILDERS	2005	8.53	TURNED IN TAG
SUSAN P. UREN	2005	11.55	TURNED IN TAG
UNITED AUTO SERVICE INC	2005	36.21	BILLED TO INCORRECT TAXPAYER BOAT NOT IN TOB
DAVID A. BLAKE	2004	16.60	ADJ. FOR INCORRECT VALUE
TOTAL		\$1052.99	

**MSD TAX RELEASES
SEPTEMBER, 2005**

TAXPAYER YEAR AMOUNT DESCRIPTION

SC AND S FUTURE	2005	5.12	TURN IN TAG
REID W. ARMSTRONG	2005	2.65	TURN IN TAG
		7.77	

Tax Refunds: September 2005

Taxpayer	Year	Amount	Description
DAVID E. BOWER	2005	31.08	SOLD CAR
RAMSDELL SCIENTIFIC INC JEFFREY EARL RAMSDELL	2005	83.60	INCORRECT FIRE DISTRICT
CANDACE BAILEY ENGLERT	2005	85.24	WRONG FIRE DISTRICT
DANIEL H NGUYEN LIVING TRUST	2005	28.80	TURNED IN TAG
JAMES BROOK COWART JESSICA ROSS COWART	2004	4.44	SOLD CAR
FRED AND JOHNNY CARROLL	2004	192.30	OA EXEMPTION
TOTAL		\$425.46	

Declaration of Obsolete/Scrap Items - Public Utilities

Whereas, the Council of the Town of Boone desires to dispose of certain surplus property of the Town;

Now, therefore be it resolved by the Council that:

1. The following described property is hereby described to be surplus to the needs of the Town:

Scrap parts and pipes from the Public Utilities Department.

2. The Public Utilities Director is authorized to dispose of the described property by private sale at a negotiated price.
3. The Town Clerk shall publish notice summarizing this resolution in accordance with G.S. 160A-267.
4. The sale may not be consummated not earlier than 10 days from the date of publication.

Adopted this the 20th day of October, 2005.

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 303)

VOTE: Aye - All
 Nay - None

DISCUSSION OF PLANNING PRIORITIES

Development Services Director John Spear stated that there were three priorities to be discussed. He began with the 2005 Comprehensive Plan update by stating that a final draft has been prepared by the Planning Commission. He also indicated that the Planning Commission would like to have the draft put on the town website so that public input can be gathered. The next priority listed by Mr. Spear was the status of the Steep Slope and Multi-Family Task Force. He explained that there should be a public comment period on the regulations recommended by this task force. Finally, Mr. Spear stated that the moratorium imposed on steep slope and multi-family development expires in February 2006. Council member Wilcox suggested a public hearing be scheduled sometime in early 2006 for the task force recommendations since there is still more work to be done with these issues. It was the consensus of the Council to hold a joint public hearing with the Planning Commission at its regular meeting in January to obtain public comment on the draft comprehensive plan update. Meanwhile, the draft will be put on the town website for public examination. In regard to the Steep Slope and Multi-Family Task Force recommendations, the Council decided that two public hearings would be scheduled on each topic to receive public comment. These public hearings will be scheduled for sometime in early 2006. Council member Mason suggested that the moratoriums be discussed at the February meeting and that an extension could be considered at that time. The Council agreed to this approach.

ACCEPTANCE OF RESOLUTION - MARKET COURT ANNEXATION

Development Services Director John Spear stated that adoption of this resolution is the next step in the annexation process. Upon a motion by Council member Wilcox, seconded by Council Clawson, Council moved to excuse Council member Eggers from voting on this issue only.

VOTE: Aye - All
 Nay - None

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

(Market Court Annexation)

To the Town Council of the Town of Boone, North Carolina:

I, Freida Van Allen, Town Clerk, do hereby certify that I have investigated the petition attached hereto and have found as a fact that said petition is signed by all owners of real property lying in the area described there in, in accordance with G.S. 160A-31.

In witness whereof, I have hereunto set my hand and affixed the seal of the Town of Boone, the 20th day of October , 2005.

Town Clerk

**RESOLUTION DIRECTING THE CLERK TO INVESTIGATE
A PETITION RECEIVED UNDER G.S. 160A-31**

WHEREAS, a petition requesting annexation of an area described in said petition was received on September 15, 2005 by the Town Council; and

WHEREAS, G.S. 160A-31 provides that the sufficiency of the petition shall be investigated by the Town Clerk before further annexation proceedings may take place; and

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

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

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

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 304)

VOTE: Aye - 4 (Clawson, Mason, Spann, Wilcox)
 Nay - None
 Excused-1 (Eggers)

DISCUSSION OF STORMWATER REGULATIONS

Council member Mason read the following prepared statement into record:

Follow up to the Storm Water discussion last spring during which Town Council amended the UDO regulations pertaining to storm water retention in order to bring the UDO in compliance with state regulations and in light of impending NPDES Phase II program requirements.

As we all realize by now, Storm Water Management is a complex issue involving both detention (water quantity or the prevention and abatement of flooding and runoff related property damage) and retention (water quality or the reduction of water quality degradation that results from pollutants).

While the intent of the Town to address Storm Water Management through the UDO is laudable, the consultant retained by the Town identified a number of concerns and

recommended that the Town temporarily take a step back to evaluate the land development process and storm water management approaches. The consultant recommended that the Town perform an overall assessment of the Town's storm water management program to include the following:

- * Perform a Program Audit*
- * Address Storm Water Maintenance*
- * Research Low Impact Development*
- * Perform a Storm Water Funding Assessment*
- * Prepare for NPDES Phase II*

The UDO was amended, removing retention requirements pending the development of a storm water management plan to address storm water quality for implementation in April of 2006.

Before we can address retention, we must complete an overall assessment of the Town's storm water management program, including our detention policies.

Though many storm water efforts have been directed at new development or redevelopment, we need to all address storm water issues for existing development.

Given the relevancy of these issues to our community in light of recent flooding and the likelihood that we will be drinking our storm water, we must continue to work towards a comprehensive Storm Water Management Plan integrating best storm water practices.

Council member Mason made a motion to perform a storm water assessment as recommended by the consultant utilizing the funds that have been previously designated for NPDES Phase II preparation so that the Town can move forward toward the development of a comprehensive Storm Water Management Plan integrating best storm water management practices, recognizing that the state model storm water ordinance and NPDES Phase II requirements may need to be included. Council member Wilcox seconded the motion. Town Manager Greg Young informed Council that the engineer who recommended this action, Tim Lormand, has retired and that the town is searching for an engineer with expertise in storm water issues. Council member Eggers pointed out that there are serious inconsistencies within the current UDO stormwater regulations that are counter productive, especially for single-family development.

VOTE: Aye - All
 Nay - None

ADOPTION OF ORDINANCE - INCREASE CABLE TV FRANCHISE FEES

Town Manager Greg Young pointed out that the recently passed state budget includes a 7% statewide tax on both cable TV companies and satellite TV providers. He stated that the Town of Boone currently collects a 3% franchise fee. He explained that, if the Town raises the amount to 5%, then only 2%, of the 7% tax, would revert to the state budget. Upon a motion by Council member Wilcox, seconded by Council member Eggers, Council moved to adopt the following ordinance:

ORDINANCE # 05-09 ORDINANCE RASING CABLE TELEVISION FEES

WHEREAS, the Town Council for Boone, NC by Ordinance granted a ten (10) year franchise agreement with Charter Communications under Ordinance #03-06, with a requirement to pay three percent (3%) franchise fees; and

WHEREAS, Ordinance #03-06 allows the Town to raise the franchise fee to five percent (5%) upon 90-day notification to Charter Communications; and

WHEREAS, the State of North Carolina recently amended part 4 of Article 5 of Chapter 105 of the General Statutes to read; "**105-164.21B. Credit for local cable television franchise taxes. A cable service provider is allowed a credit against the tax imposed by G.S. 105-164.4(a)(6) for the amount of local franchise tax payable under G.S. 153A-154 and G.S. 160A-214 on its gross**

receipts for that service. To comply with G.S. 105-164.4(a)(6) and apply the credit allowed under this section, a cable service provider may collect tax from its subscribers at the rate set in G.S. 105-164.4(a)(6) less the rate of the local franchise tax payable on its gross receipts for that service.”; and

WHEREAS, the Town desires to raise the franchise fees from three percent (3%) to five percent (5%) to keep as much of the fees and taxes paid by citizens of Boone, NC in the local community.

NOW, THEREFORE, BE IT RESOLVED by the Town Council for Boone, NC as follows:

1. Effective February 1, 2006, the Town of Boone, NC amends Ordinance #03-06 to raise the requirements for paying franchise fees by cable operators from three percent (3%) to five percent (5%) to keep as much of the fees and taxes paid by citizens of Boone, NC in the local community.
2. The Town Manager is instructed to give Charter Communications immediate notice of this amendment to Ordinance #03-06.
3. This amendment shall not operate to modify, revoke or terminate any other rights previously granted in the original franchise agreement, with the exception of Item 1 above.

Adopted this the 20th day of October, 2005.

Mayor

ATTEST:

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3, PAGE 278)

VOTE: Aye - All
 Nay - None

TDA BOARD APPOINTMENT

Council member Wilcox informed the Council that Diana Perry, currently a member of the Tourism Development Authority Board, has sold her business, Highland Hills Motel. This action makes her ineligible to retain her position on the board. The TDA has recommended Ashok Patel, who owns several taxable lodgings in Boone and who has agreed to serve by filling Ms. Perry’s term which expires in August 2008. Upon a motion by Council member Wilcox, seconded by Council member Eggers, Council moved to appoint Ashok Patel to serve the remainder of Diana Perry’s term on the Tourism Development Authority Board.

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 September. The Water Treatment Plant recorded a maximum daily demand of 2.045 million gallons on Monday, September 5, 2005, and the average daily demand was 1.849 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 total water allotment remaining

for the year 2005 has now broken the sixty percent threshold. All future water service requests in excess of 500 gallons per day usage will be forwarded to Town Council as required in Ordinance 05-01. Since the last Town Council Meeting the Utilities Department approved two projects that subtracted from our allotment.

As you can see in the attached chart, the Public Utilities Department has 622 gallons per day remaining for allotment in 2005. Also, be reminded that Council chose to allocate 15,334 gallons from 2006 leaving a balance of 9,666 gallons remaining for that year. All calculations are based on 60% of 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
			Hunter Nichols	Apr-05	360	22625
			VIA LLC/Ed Street Co.	Apr-05	5000	17625
			Watauga County Detention	Apr-05	3728	13897
Baxters Sport Bar	Apr-05	330				13567
Watauga Courthouse	Apr-05	1214				12353
			John Cook	May-05	5000	7353
			Hester Office Bldg	May-05	450	6903
			Americas Home Place	May-05	60	6843
Molecular Toxicology	Jun-05	60				6783
Dana Willet	Jun-05	450				6333
Watauga Arts Council	Jun-05	23				6310
			Glenwilde	Jun-05	900	5410
			James West	Jun-05	1440	3970
			Cathy Kosterman	Jun-05	1110	2860
			Blue Ridge Electric	Jun-05	30	2830
William Jackson	Jun-05	90				2740
Family	Jun-05	394				2346

One Inc						
Dana Willet	Jul-05	150				2196
Watauga Insurance	Jul-05	15				2181
Boone Dermatology	Jul-05	330				1851
			David Thompson	Jul-05	600	1251
Advance Auto	Aug-05	496				755
WMC Outpatient	Oct-05	73				682
Fulton Lovin	Oct-05	60				622
			Approved Water Connections			
			2006			
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						25000
		4165	John Cook	May-05	8038	16962
			CataCorner Investments	Jul-05	7296	9666

ADOPTION OF BUDGET AMENDMENTS

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

DESCRIPTION	ACCOUNT #	TO:	FROM:
Horn In The West Appropriated Fund Balance	010-411-000-549122 010-000-000-499900	\$9,950.00	\$9,950.00
Jenkins Hill Group, LLC - Lobby Appropriated Fund Balance	010-411-000-549126 010-000-000-499900	54,000.00	54,000.00
Maintenance - Vehicles (Police) Miscellaneous Revenue	010-500-300-525301 010-000-000-489900	368.00	368.00
Expendable Equipment (Fire) Assistance to Firefighters Grant Fund Balance Appropriated Assistance to Firefighters Grant	010-500-350-514110 015-420-000-551129 010-000-000-499900 015-420-000-461520	14,280.00 128,520.00	14,280.00 128,520.00
Office Equipment (Develop.Serv.) Appropriated Fund Balance	010-500-360-516200 010-000-000-499900	960.00	960.00
Contracted Services (Street Dept.) Fund Balance Appropriated	010-600-401-577000 010-000-000-499900	15,200.00	15,200.00
State Funds - Powell Bill Paving & Resurfacing (Powell Bill)	010-000-000-442100 010-600-403-577401	7,654.00	7,654.00
Paving & Resurfacing (Powell Bill) Appropriated Fund Balance	010-600-403-577401 010-000-000-499900	24,893.00	24,893.00

Protection Association Standards, and North Carolina Fire Code, and such other laws and regulations as may be established or exist which dictate the construction and operational standards which such indoor facilities must meet. No such facility may exist within the Town of Boone unless its proprietor has submitted to the Town of Boone Chief of Police operating rules concerning employee and invitee or licensee (patron) use of the indoor shooting range, the Chief of Police has, in writing, issued an opinion that said rules adequately protect the safety of the public, and those rules are fully implemented and enforced.

(D) No indoor shooting range or facility for the discharge of any air rifle, air pistol, B-B gun or similar weapon may operate within the Town of Boone where the proprietor is not the owner of the real property upon which it is situated unless:

(1) The proprietor, in the case of a limited liability company, corporation, or other legal entity other than a natural person, designates a person who is a resident of Watauga County as a person who has full authority to act on behalf of the proprietor in responding to complaints concerning the operation of the shooting range or facility, and said person's name and contact information is posted at the shooting range or facility in plain view of the public so that it may be read without a person having to enter the shooting range or facility in order to do so.

(2) The proprietor obtains and maintains liability insurance covering injuries and property damage to persons using the shooting range or facility in an amount no less than two million dollars per injury and claim, and provides proof of such insurance to the Town upon request.

Penalty, see §130.99

Cross-reference: Concealed weapons prohibited on public property, §34.02

VOTE: Aye - All
 Nay - None

REQUESTED APPEARANCE – MR. RICHARD FRANKLIN FOR CHARLES ULERY

Richard Franklin, on behalf of Charles Ulery, appeared before the Council to request water and sewer service to a new addition at the Oil Exchange. This request was tabled from the September meeting. Mr. Franklin stated that he had no new information to offer. Council member Mason indicated that she felt that more information is needed to determine if this use can be accomplished on this property. Upon a motion by Council member Clawson, seconded by Council member Wilcox, Council moved to table this request until after March 31, 2006 to allow time for additional information, public input, and any possible UDO modifications.

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

REQUESTED APPEARANCE – MR. ROCKY NELSON

Rocky Nelson, on behalf of the Watauga County Commissioners, appeared before the Council to request (40) free parking spaces on Queen Street. Mr. Nelson pointed out that public parking is at a premium around the courthouse. He stated that further loss of parking would result from an expansion of the courthouse in the rear parking lot. Council member Mason asked about revenue received from the metered parking spaces. Town Manger Greg Young listed the revenue totals from the following years:

- 2003 - \$16,005
- 2004 - \$26,805
- 2005 - \$11,178 (so far this year).

He stated that the town had spent \$35,000 to meter Queen Street. Mr. Young stated that there are currently three reserved parking spaces for law enforcement, a decrease from the original allocation of ten spaces. Council member Mason stated the town does not need to lose any of the revenue from those parking spaces and that the county might want to explore a lease agreement

that would provide parking spaces for courthouse patrons. Mr. Nelson explained a plan for future parking space with the demolition of the current law enforcement center. Upon a motion by Council member Spann, seconded by Council member Mason, Council moved to negotiate a lease agreement with the county for (40) spaces for \$10,000 for the duration of the construction period for the courthouse expansion and to increase the number of parking spaces for law enforcement to (10) spaces.

VOTE: Aye – All
 Nay – None

REQUESTED APPEARANCE - MR. ROCKY NELSON

Rocky Nelson, on behalf of the Watauga County Commissioners, appeared before the Council to request a lease modification to Section 8 Grant Applications on page three of the lease. This would allow for Watauga County to apply for a Parks and Recreation Trust Fund (PART F) grant in the spring of 2006. He explained that the grant award requires restrictions to be placed on the deed designating the property to be used for public recreation in perpetuity. Council member Mason asked if the county applied for this grant, will that action affect the grant with which the town purchased the property. Special Assistant to the Manager Jim Byrne stated he would have to research the matter. Upon a motion by Council member Mason, seconded by Council member Spann, Council moved to allow Watauga County to apply for the PART F grant contingent on research by Jim Byrne to determine if this action will affect the grant with which the land was purchased by the town.

VOTE: Aye - All
 Nay - None

REQUESTED APPEARANCE - MR. ROCKY NELSON

Rocky Nelson, on behalf of the Watauga County Commissioners, appeared before the Council to request inclusion of Watauga County in the Town's water supply study. He offered an invitation to the Council to attend a discussion in which Jeff Hughes of the Institute of Government's Environmental Finance Center, an expert in governmental partnerships, will address both governing bodies, as well as those of ASU and Blowing Rock. Council member Wilcox stated that the town is on track to address this problem and can not afford a lengthy negotiation period with the county. He stated that county officials should be prepared to let the town know their intentions. Council member Mason voiced a concern with extending water and sewer service to areas without development regulations. Several members of the Council agreed to attend the meeting on Tuesday, October 25, 2005, from 3:00 p.m. until 5:00 p.m. in the Agricultural Center conference room.

Mayor Burnley declared a 15- minute break at 8:25 p.m. Council reconvened at 8:40 p.m.

REQUESTED APPEARANCE – MS. FREDA GREENE

Freda Greene appeared before the Council to request that the following events be included under Community Event Signage in the UDO:

- Hickory Ridge Apple Festival held in October
- Haunted Horn held in October
- Christmas Tree Lighting held in December
- Olde Christmas held in January
- Horn in the West Outdoor Drama held June through August.

Development Services Director John Spear stated that applications have been received for the first three events on the list. Ms. Greene explained that the Olde Christmas event is non-profit. The Council advised that Ms. Greene meet with Mr. Spear to discuss whether the Horn in the West Outdoor Drama would qualify with the criteria in the UDO.

REQUESTED APPEARANCE – MR. SAUL CHASE

Saul Chase appeared before the Council to request a dedication ceremony for the Jimmy Smith Park be scheduled. Council members expressed their appreciation for the work that Mr. Chase has done to help see this project to fruition. Upon a motion by Council member Eggers, seconded by Council member Clawson, Council moved to schedule the dedication ceremony for the Jimmy Smith Park for Tuesday, November 1, 2005, at 12:30 p.m.

VOTE: Aye – All
 Nay – None

REQUESTED APPEARANCE - MR. JOHN TATE

John Tate appeared before the Council to request that section 75.06 (B) of the Town Code not require that his employees be present the entire time a boot is locked on a vehicle. Mr. Tate explained that he would like to utilize a paging system so that, when a car is booted, the owner will be provided with a number to call to request assistance. He further explained that the parking attendant could, after locking the boot, monitor other parking areas. Town Manager Greg Young stated that he has received several complaints from vehicle owners, especially from the parking lot of Angelica's Restaurant. Mr. Tate stated that Angelica's parking lot is a private lot and that the owners do not want any liability problems with cars left there overnight. Council member Mason voiced a concern with the availability of phones to request service from an attendant. She asked if the attendant could circulate through each parking lot every ten minutes. Mr. Tate stated he did not think that is possible. Council member Wilcox suggested the Town Attorney to prepare a draft amendment to be presented to the DBDA before being brought before the Council in November. Upon a motion by Council member Mason, seconded by Council member Spann, Council moved to direct the Town Attorney to prepare a draft amendment to the ordinance that is to be presented to the DBDA and then put on the November Town Council agenda.

VOTE: Aye - All
 Nay - None

REQUESTED APPEARANCE - MS. KAREN BAUMAN

Richard Bauman, on behalf of the Watauga County Farmer's Market, appeared before the Council to request five market sheds to be allowed to remain on Town property. Upon a motion by Council member Mason, seconded by Council member Clawson, Council moved to have staff pursue a modification of the lease with the Southern Appalachian Historical Association to address the ownership of the five sheds and the issue be placed on the November meeting agenda.

VOTE: Aye - All
 Nay - None

REQUESTED APPEARANCE - MS. KAREN BAUMAN

Richard Bauman, on behalf of the Watauga County Farmer's Market, appeared before the Council to request that the Farmer's Market be included under Community Event Signage in the UDO. Since the event is not strictly an annual event, Council member Mason suggested the event could be addressed by agriculture signage. Upon a motion by Council member Spann, seconded by Council member Mason, Council moved to have the Development Services Department explore signage options for this event under current UDO regulations or propose new regulations to address this event.

VOTE: Aye - All
 Nay - None

CLOSED SESSION

Upon a motion by Council member Wilcox, seconded by Council member Mason, Council moved to enter Closed Session at 9:40 p.m. pursuant to NCGS 143-318.11a)3 in order to discuss the following matters:

- ASU Violations
- Possible Litigation - AMP Properties
- Possible Litigation - Phillips/Van Heusen

VOTE: Aye - All
Nay - None

Upon a motion by council member Mason, seconded by Council member Clawson, Council moved to exit Closed Session at 10:04 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 accept the Phillips/Van Heusen settlement offer of \$5,000.00

VOTE: Aye - All
Nay - None

RECESS

On a motion by Council member Mason, seconded by Council member Clawson, Council moved to recess at 10:05 p.m. and to reconvene at 6:30 p.m. on Tuesday, October 25, 2005, in the Council Chambers.

VOTE: Aye - All
Nay - None

A recessed meeting from Thursday, October 20, 2005 was called to order at 6:30 p.m., Tuesday, October 25, 2005 in the Council Chambers, 1500 Blowing Rock Road. Mayor Velma C. Burnley presided. Council members present were Graydon Eggers, Lynne Mason, Bunk Spann and Dempsey Wilcox. Mayor Pro-Tem Loretta Clawson was absent due to family illness. Town Attorney Sam Furgiuele was also present. Staff present were Town Manager Greg Young; Town Clerk Freida Van Allen; Finance Director Amy Davis; Public Utilities Director Rick Miller; Development Services Director John Spear and Assistant to Manager Jim Byrne.

REQUESTED APPEARANCE - JOSEPH MILLER

Mr. Joseph Miller of Cheap Joe's Art Stuff appeared before Council to request that directional signs be allowed for his annual trade show held in June. Mr. Miller presented a short video depicting the economic impact of the show. Mr. Miller said the show was held at the Holmes Convocation Center last year and was attended by approximately 4,000 people, mostly from out of town. Mr. Miller said it would be helpful if signs were allowed to direct those customers to the Raley Hall parking lot or the ASU parking deck. Council member Mason asked if Cheap Joe's would be willing to follow the guidelines from the UDO regarding community events. Mr. Miller said yes. On a motion by Council member Eggers, seconded by Council member Spann, Council moved to recognize the Annual Cheap Joe's Art Stuff Trade Show as a community event and to allow directional signage.

VOTE: Aye-All
Nay-None
Absent-1 (Clawson)

REQUESTED APPEARANCE - KRISTOPHER FOWLER

Mr. Kristopher Fowler appeared before Council to request approval of a special events permit for the 1st Annual Watauga County Toy Run to be held on Saturday, November 5, 2005 beginning at 1:00 p.m. Mr. Fowler said the motorcycle ride will begin at the Boone Mall, travel to the Blue Ridge Parkway and return into Town on Highway 421. All money and gifts collected will be distributed to the children of inmates incarcerated at the Watauga County Jail. Mayor Burnley

pointed out the American Red Cross is sponsoring the event. Mr. Fowler requested that the insurance requirement and the \$250 permit fee be waived. Council member Eggers questioned whether or not the Town would still be liable by approving the special events permit if the insurance requirement is waived. Town Attorney Sam Furgiuele said perhaps, but that more than likely participants will have liability insurance if they operate a motorcycle. The Town Council discussed for some time the possibility of riders from Tennessee participating, where liability insurance is not required. On a motion by Council member Mason, seconded by Council member Spann, Council moved to approve the Special Events Permit and to waive the \$250 permit fee. Council also stipulated that the American Ride Cross provide an insurance rider for the event or have each participant provide proof of liability insurance and sign a release form.

VOTE: Aye-All
 Nay-None
 Absent-1 (Clawson)

REQUESTED APPEARANCE - MICHELLE HOLLARS

Town Attorney Sam Furgiuele opened the public hearing at 6:50 p.m. to hear sworn testimony from Michelle Hollars and Public Utilities Director Rick Miller for a request for water and sewer service to property located beside the Food Lion on old Highway 421. Ms. Hollars said she plans to operate an ice cream shop on property located beside the new Food Lion. Ms. Hollars said the ice cream shop will have three seats and will use approximately 24 gallons of water per day. Council member Wilcox asked if this is part of the property to which the Town agreed to provide water and sewer connections as part of an agreement with Sterling Carroll. Ms. Hollars said that, according to Mr. Carroll, it is part of the agreement. Town Attorney Furgiuele verified with Ms. Hollars that the property was included in the agreement. Town Attorney Furgiuele then read a portion of the agreement as follows:

1. Boone agrees that the real property described in the 1997 Agreement which includes the 2.17-acre tract, the 5.00-acre tract, and the 4.21-acre tract shown on the map attached hereto as Exhibit A shall be entitled to water and sewer service from Boone. This water and sewer service shall be provided by Boone at the time the owner of any of said real property requests the service. Boone further agrees that except as hereinafter agreed with respect to the Neighborhood Shopping Center the aforesaid real property does not have to be annexed into the Town of Boone in order to receive Boone water and sewer service if the owner thereof complies with the applicable terms of this Agreement. The owner of any of said real property will be required to pay all customary tap-on and availability fees charged by Boone prior to making the connection. If said real property is not annexed by Boone, the owner of any said real property will be required to pay the water and sewer rates customarily charged by Boone for "out of Town" real property. In accordance with the Town of Boone Water and Sewer Use Ordinance, the owner of any of said real property will be entitled to credits against any availability fees equal to one-half of the cost for the extension of Boone's water and sewer lines which are to be public lines.

Council member Mason asked if providing this service would require a line extension and if the owner of property is willing to annex. Public Utilities Director Rick Miller said it would not require a line extension. Ms. Hollars responded that she was unsure about annexation since she is not the property owner. Town Attorney Furgiuele asked if Mr. Sterling Carroll owns the property. Ms. Hollars said yes. There being no further testimony the public hearing closed at 6:57 p.m. On a motion by Council member Wilcox, seconded by Council member Eggers, Council moved to grant the water and sewer request as subjected by the agreement with Sterling Carroll.

VOTE: Aye-All
 Nay-None
 Absent-1 (Clawson)

REQUESTED APPEARANCE - CAROLINA TRACTOR AND EQUIPMENT

Town Attorney Sam Furgiuele opened the public hearing at 6:57 p.m. to hear sworn testimony from Gary McMinn of Carolina Tractor and Public Utilities Director Rick Miller regarding a request for additional water allocation to property located in the Gateway Center. Mr. McMinn requested an additional water allocation of 1,107 gallons per day in order to construct a mobile washing bay. Mr. McMinn said the bay is a closed loop system and will be used to wash equipment. Council member Wilcox questioned how the number of 1,107 gallons was determined. Public Utilities Director Rick Miller said the NC Discharge Rate Schedule for a carwash determines the gallonage. Council member Eggers questioned if there is a rate schedule for a closed loop recycling wash bay. Public Utilities Director Miller said no. Mr. McMinn testified that the wash bay system would use only about six to eight gallons of water per day. Council member Mason suggested looking at the actual usage once it is operational and then reallocate water. Council member Mason felt that the Town should find a way to grant this request since it is a business located in Town. There being no further testimony, the public hearing closed at 7:06 p.m. On a motion by Council member Eggers, seconded by Council member Mason, Council moved to approve the additional water allocation from the 2006 allotment.

VOTE: Aye-All
 Nay-None
 Absent-1 (Clawson)

REQUESTED APPEARANCE - WILLIAM KLEIN

Town Attorney Sam Furgiuele opened the public hearing at 7:08 p.m. to hear sworn testimony from William Klein, Jacob Klein, Development Services Director John Spear and Public Utilities Director Rick Miller regarding a request for sewer service to property located off Old Highway 421 and Archie Carroll Road next to Food Lion. Mr. Klein said he first appeared before Council in February, 2004 to request water and sewer service to the property and that the request was tabled and then later denied by the Public Utilities Department. Mr. Klein requested that the Town grant sewer service and allow a metered well given the water shortage the Town is currently facing. Mr. Klein said he plans to construct 13 multi-family units. Town Attorney Sam Furgiuele questioned if Mid-South Holdings Inc. is the applicant and owner of the property. Mr. Klein answered yes, indicating that he is vice-president of Mid-South Holdings Inc. Council member Wilcox asked if the company would be willing to connect to the system once water is available.. Mr. Klein said yes. Council member Mason asked if Mr. Klein has an easement to access the sewer line. Mr. Klein responded yes, indicating that it is a deeded easement. Council member Eggers asked if the Town has the sewer capacity available to handle this project. Public Utilities Director Rick Miller said yes, that the Town has plenty of capacity. Council member Mason questioned if the property is located in the ETJ. Development Services Director John Spear said no and that it is not in any growth area as defined in the 1993 Comprehensive Plan. Town Attorney Furgiuele then read the following excerpt from Ordinance 05-01:

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

Council member Mason presented that, since the property is not in the Town or ETJ our existing policies do not support granting this request, even if the Town did not have a water supply problem. Mr. Klein interjected that when he purchased the property he had hoped to provide affordable housing which is badly needed in the area. Mr. Jacob Klein reiterated that his company plans to construct 15 units resulting in an attractive development. Council member Mason said if service is provided the company should be annexed and should comply with UDO standards; however, she continued, a policy is in place that limits our ability to provide service at this time. After little discussion, Council member Mason, seconded by Council member Spann, made a motion to deny the project. After discussing at great length Article 6, Section 6-6(d) and Ordinance 05-01, both Council member Mason and Spann withdrew the motion and second. Council member Spann then questioned if the County regulations would allow a well and septic system on the property. Mr. Klein said yes but indicated that he would have to reduce the number of units. After opening and closing the public hearing several times, Town Attorney

Sam Furgiuele finally closed the public hearing at 7:37 p.m. Council member Mason then made another motion to deny the request since it is not consistent with the comprehensive plan and since the property is outside the ETJ. The motion failed for a lack of second. Council member Spann pointed out that, given the location of the property and the fact that the units will provide affordable housing, Council could make exceptions to our policy. Council member Wilcox made a motion to approve the request. Council member Eggers seconded. Council member Mason felt that the property should be annexed and that construction should be to UDO standards. After withdrawing the motion and second once again, Council member Eggers made a motion to approve the sewer request contingent upon the property's being annexed and zoned prior to the development of the property and that all construction meet Town of Boone UDO standards. Council member Wilcox seconded.

VOTE: Aye-3 (Eggers, Spann, Wilcox)
 Nay-1 (Mason)
 Absent-1 (Clawson)

REQUESTED APPEARANCE - JOYCE DUNBAR

Town Attorney Sam Furgiuele opened the public hearing at 7:45 p.m. to hear sworn testimony from Joyce Dunbar, Development Services Director John Spear and Public Utilities Director Rick Miller for a request for water and sewer service to property located at 1696 West King Street (Glenn Hodges Estate). Ms. Dunbar explained that she has a previous water allocation of 5,400 gallons for 36 units to be used on the east side of Town. Ms. Dunbar requested permission to transfer 3,600 gallons of water to be used at the Hodges estate. Ms. Dunbar said she plans to construct 24 one-bedroom apartment units on the property. Public Utilities Director Rick Miller clarified that Ms. Dunbar was granted the water request for a 36 one-bedroom units in 1998 to be constructed on the east side of Town. Council member Mason asked if the Town could serve the Hodges' property. Public Utilities Director Rick Miller said yes that the property is in the secondary pressure zone and will be served from the Charles/Gladys Street tank. Council member Mason then asked if the property is in the ETJ. Development Services Director John Spear said yes, and that it is in the primary growth area. Council member Mason asked Ms. Dunbar if she would be willing to annex. Ms. Dunbar responded yes. There being no further testimony, the public hearing closed at 8:03 p.m. Council member Mason then made a motion to allow the transfer of 3,600 gallons of water per day to the Hodges Estate project, contingent upon the property's being annexed. Before a second was recorded, Council member Wilcox interjected that he does not favor allocating water outside the Town of Boone corporate limits. Both Council members Eggers and Mason reiterated that the property will be in the Town limits and that this is not a new allocation, just a transfer. Town Manager Greg Young suggested that Council consider transferring only the twelve allocations that were granted before the water supply was restricted. Public Utilities Director Rick Miller said that those 12 applicants were notified in January, 2005 and told that they had one year either to use the allocation or to lose it. Ms. Dunbar clarified that she will be using her entire 5,400-gallon-per-day allocation at the two sites. Council member Spann seconded the motion.

VOTE: Aye-3 (Eggers, Mason, Spann)
 Nay-1 (Wilcox)
 Absent-1 (Clawson)

ADJOURNMENT

On a motion by Council member Eggers, seconded by Council member Spann, Council moved to adjourn at 8:05 p.m.

VOTE: Aye-All
 Nay-None
 Absent-1 (Clawson)

Town Clerk

Mayor

Deputy Town Clerk