

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
JANUARY 19, 2006**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, January 19, 2006 in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, Rennie Brantz, Janet Pepin, Bunk Spann, and Dempsey Wilcox. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Deputy Town Clerk Kim Tester, Special Assistant to the Town Manager Jim Byrne, Police Chief Bill Post, Fire Captain Jimmy Isaacs, Public Services Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, Human Resources Director Peri Moretz, and Development Services Director John Spear.

ANNOUNCEMENTS

Mayor Clawson called the meeting to order and welcomed all in attendance.

TENTATIVE AGENDA ADOPTION

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

Deletion of Item 7.E. - Bovis Lend Lease/Watauga Medical Center - Request for sewer service to property located at 140 Mary Street.

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

VOTE: Aye-All
 Nay-None

CONSENT AGENDA ADOPTION

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

Minutes: December 6, 2005 – Special Meeting
 December 15, 2005 – Regular Meeting

Tax Releases: December 2005

Taxpayer	Year	Amount	Description
STEVEN M. MITCHELL	2005	6.00	HIGH MILEAGE 179333
KATHERINE & MICHAEL WHATLEY	2005	50.48	LIVES IN BUNCOMBE COUNTY
MELISA J. PALMER	2005	22.64	TURNED IN TAG
ZAN V. LANDOWNE	2005	3.04	SOLD VEHICLE TURNED IN TAG
BOB B & BETTY MCFARLAND	2005	22.69	SOLD VEHICLE TURNED IN TAG
RICHARD S. WILKINSON, JR.	2005	13.09	TOTALED/ INS. CO. HAS VEHICLE
CARRIE N. WELLS	2005	39.16	MOVED TO SOUTH CAROLINA
JAMES C. FURMAN	2005	151.20	DONATED TO SAMARITAN'S PURSE

CHARLES D. & BETTY E. CHURCH	2005	13.97	TURN IN TAG
JASON W. BEACHMAN	2005	23.16	TURN IN TAG
OAKLEY W. & JOYCE B PYRON	2005	780.00	TAG REVOKED
MICHAEL R. ENGLERT	2005	17.84	INCORRECT FIRE DISTRICT
M. R. ENGLERT ENT INC.	2005	43.76	INCORRECT FIRE DISTRICT
CHARLES N. ULERY THE OIL EXCHANGE INC	2005	54.76	DOUBLE BILL
Totals:		\$1241.79	

**MSD
DECEMBER 2005**

Taxpayer	Year	Amount	Description
ROBERT T. SPEED	2005	24.86	DOES NOT LIVE IN MSD
Totals:		\$24.86	

Tax Refunds: December 2005

Taxpayer	Year	Amount	Description
SOUTH, LOU PRUITT	2005	3.15	TURN IN TAG
Totals:		\$3.15	

Approval of an Audit Contract - Billy G. Combs, P.C. - **Exhibit A**

Approval of Resolution - Financing with First Citizens Bank.

WHEREAS: The Town of Boone ("Town") has previously determined to undertake a project for two stainless steel elliptical tanker fire trucks, and the Finance Officer has now presented a proposal for the financing of such Project.

BE IT THEREFORE RESOLVED, as follows:

1. The Town hereby determines to finance the Project through First Citizens Bank, in accordance with the proposal dated January 5, 2006. The amount financed shall not exceed \$210,000.00, the annual interest rate (in the absence of default or change in tax status) shall not exceed 3.52%, and the financing term shall not exceed (4.5) years, respectively, from closing.
2. All financing contracts and all related documents for the closing of the financing (the "Financing Documents") shall be consistent with the foregoing terms. All officers and employees of the Town are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and

this resolution. The Financing Documents shall include a Financing Agreement and a Project Fund Agreement as First Citizens Bank may request.

3. The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance Officer is authorized to approve changes to any Financing Documents previously signed by Town officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Officer shall approve, with the Finance Officer's release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.
4. The Town shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The Town hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified tax-exempt obligations" for the purpose of Internal Revenue Code Section 265(b)(3).
5. All prior actions of Town officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

Approved this the 19th day of January, 2006.

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 307)

Approval of Code Amendment - Aggressive Begging, Panhandling, Solicitation.

101.03 AGGRESSIVE BEGGING, PANHANDLING, OR SOLICITING

It shall be unlawful for any person to engage in aggressive begging, panhandling or soliciting within the corporate limits of the Town, or to engage in **any** begging, panhandling or soliciting:

(1) within fifty feet of view of an outside automated teller machine (ATM) which is accessed from or immediately adjacent to a public sidewalk,

(2) while standing, walking, or sitting on a street, highway or other roadway; the shoulder or curb of a street, highway or other roadway; the median of a street, highway or other roadway; or from any other place where the target of the begging, panhandling or soliciting is a person(s) in a motor vehicle, or

(3) within fifty feet of view of a bank entrance, during the hours of ATM or bank operation, respectively.

VOTE: Aye-All
 Nay-None

PUBLIC HEARING ON SHOEMAKE ANNEXATION

Mayor Clawson opened a public hearing at 6:34 p.m. on the Shoemake annexation. With no public testimony, she closed the public hearing at 6:35 p.m.

PRESENTATION OF TASK FORCE RECOMMENDATIONS - MULTI-FAMILY HOUSING

Harvard Ayers, Chairman of the Boone Steep Slope Development & Multi-family Housing Task Force, presented the following recommendations for multi-family development in Boone:

1. *Development ordinances that encourage the development of housing stock and mixed use neighborhoods that will appeal to retirees, professionals, families, and students.*
2. *Create mixed use neighborhood districts for positive development where dense and medium dense development is designed and desired to occur. These districts must not encroach on existing single-family neighborhoods.*
3. *Develop and implement a long range vision of the built future of the Town of Boone and the region. Critical to this, hire a consulting firm of town planners to lead our community through this process.*
4. *Require a performance bond for large multi-family developments.*
5. *Create a moratorium on multi-family developments of twenty-four units or more on slopes twenty percent or greater until May 29, 2006, or until the Steep Slope and Multi-family Task Force recommendations can be acted on by the Town Council, whichever comes first.*
6. *Pursue all legal means to preserve green space and promote conservation easements, including making an annual appropriation to a Town fund for this purpose.*

Council member Spann questioned the justification of an extended moratorium. Mr. Ayers explained that during this time, the Task Force can develop recommendations for steep slopes and both issues can be addressed at the end of the moratorium time period. Council member Pepin questioned the location of the overlay districts. Mr. Ayers explained that the Shadowline area is a state of change with the potential for favorable regeneration; the Hardin Park school area was suggested by a local developer because of future development in that area, and the Highway 105 corridor was suggested as a good starting point for the positive development of a highway corridor. Mayor Clawson thanked the Task Force for the hard work, stating that these recommendations would likely be a topic at the upcoming Town Council retreat. Upon a motion by Council member Mason, seconded by Council member Spann, Council moved to discuss the aforementioned recommendations at the annual Council retreat with the exception of the moratorium recommendation.

VOTE: Aye - All
 Nay - None

PRESENTATION OF TOWN OF BOONE RAW WATER SUPPLY ALTERNATIVES STUDY PHASE II

Brian Tripp, of WK Dickson, presented a power-point presentation (**permanently on file with the January 2006 Town Council meeting packet**) which included an implementation schedule and cost estimate for the project. Mr. Tripp noted that the search for a viable water source is still underway but should be completed within the next three months. After a brief discussion of the information contained in the presentation, Mayor Clawson thanked Mr. Tripp for the update.

ADOPTION OF ORDINANCE - SHOEMAKE ANNEXATION

Development Services Director John Spear stated this is the final step in the annexation process and if approved, will become effective as of July 1, 2006. Upon a motion by Council member Wilcox, seconded by Council member Pepin, Council moved to adopt the following ordinance:

Ordinance 06-01

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

(Shoemake Annexation)

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

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

WHEREAS, the Town Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at Council Chamber at 1500 Blowing Rock Road at 6:30 p.m., January 19, 2006, after due notice by Watauga Democrat on January 4, 2006; and

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

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

Section 1. By virtue of the authority granted by G.S. 160A-31, the following described territory is hereby annexed and made part of the Town of Boone as of July 1, 2006:

Being a 0.48 acre tract of land; said tract being located in New River Township, Watauga County, North Carolina; being located between two roads shown on the plat of the Walter Bumgarner Subdivision but not named; being Lots 2 and 3; of the aforesaid subdivision and being more particularly described as: Beginning on a computed point in the line of Lot 3 and a twenty foot street right of way; said point being located South 06 degrees 56 minutes 30 seconds West – 953.44 feet from Boone City Limits Monument 33; and running thence from the beginning with the line of the 20 foot right of way South 72 degrees 51 minutes 28 seconds East – 53.29 feet to an iron rod; running thence with the line of Lot 5 South 12 degrees 01 minutes 46 seconds West – 82.76 feet to an iron rod; running thence with the line of the 30 foot right of way around the Hartley Cemetery North 60 degrees 59 minutes 57 seconds West – 2.52 feet to a computed point, North 73 degrees 34 minutes 43 seconds West – 31.62 feet to a computed point, South 87 degrees 52 minutes 57 seconds West – 11.73 feet to a computed point (said point being located North 06 degrees 46 minutes 30 seconds East – 42.09 feet from Boone City Limits Monument 34), South 87 degrees 52 minutes 57 seconds West – 17.06 feet to a computed point, South 41 degrees 37 minutes 18 seconds West – 18.50 feet to an iron rod, South 41 degrees 37 minutes 18 seconds West – 21.73 feet to an iron rod; running thence with the edge of a 44 foot right of way North 89 degrees 58 minutes 14 seconds West – 78.47 feet to an iron rod; running thence with the edge of a 30 foot right of way North 01 degrees 58 minutes 14 seconds West – 160.34 feet to an iron rod; running thence with the edge of the 20 foot right of way South 72 degrees 51 minutes 28 seconds – 103.05 feet to an iron rod and South 72 degrees 51 minutes 28 seconds East – 41.71 feet to the point of beginning, containing 0.48 acres as surveyed by O. Wayne Green, P.L.S. #L-2885 in job number 200544.

Section 2. Upon and after July 1, 2006, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the Town of Boone and shall be entitled to the same privileges and benefits as other parts of the Town of Boone. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the Town of Boone shall cause to be recorded in the office of Register of Deeds of Watauga County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the Watauga County Board of Elections, as required by G.S. 163-288.1.

Mayor

ATTEST:

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3 PAGES 281-282)

VOTE: Aye-All
 Nay-None

DISCUSSION OF MULTI-FAMILY MORATORIUM OPTIONS

Town Attorney Sam Furgiuele presented a draft ordinance concerning the extension of the twelve-month moratorium on the issuance of building, zoning, and/or special-use permits for multi-family developments of more than twenty-four units. He noted that this issue would need to be brought before the Town Council at a public hearing and suggested it be placed on the agenda for the February Quarterly Public Hearing. Upon a motion by Council member Brantz, seconded by Council member Mason, Council moved for the presentation of an ordinance for the extension of the twelve-month moratorium on multi-family development of more than twenty-four units to be placed on the agenda for the February Quarterly Public Hearing.

VOTE: Aye - 4 (Spann, Mason, Pepin, Brantz)
 Nay - 1 (Wilcox)

ADOPTION OF CONTRACT - BOONE GREENWAY PHASE I

Town Manager Greg Young pointed out that the contract for the Phase I design of the Boone Greenway with Kimley-Horn and Associates had been revised once with comments from Town staff. He noted that the Town Attorney has also reviewed the contract and has suggested several changes. Mr. Young recommended adopting the contract subject to the changes suggested by the Town Attorney. Upon a motion by Council member Pepin, seconded by Council member Wilcox, Council moved to adopt the following contract containing the suggested changes by the Town Attorney:

CONTRACT

Kimley-Horn and Associates, Inc. (“KHA” or “the Consultant”) is pleased to submit this letter agreement (the “Agreement”) to The Town of Boone (“the Client”) for design of Phase One of the Boone Greenway Alternative Transportation Plan. Our project understanding, scope of services, schedule, and fee are below.

Project Understanding

The Town of Boone [Town], as a result of its Alternative Transportation Improvements Feasibility Study prepared by KHA, plans to widen Wilson Road between N.C. Highway 105 and Winklers Creek Road to accommodate bike lanes and curb and gutter on the west side. This project will include modification to the Hodges Creek culvert. The Wilson Drive and Winklers Creek Road traffic signal will be modified to add pedestrian heads. Likewise, crosswalks and handicap ramps will be added to the four corners of the intersection. The signal at NC 105 and Wilson Drive will need modification to accommodate the crosswalks and future right turn lane proposed by NCDOT. This project will involve engineering design services to develop roadway plans to construct the bike lanes. KHA will design the project in conformity with the grant conditions funding the Project. The Town will furnish KHA all grant documents in its possession for its review. KHA will collect whatever information is needed to complete its design, and the Town agrees to provide any information in its possession needed and requested by KHA.

Scope of Services

Task 1 – Preliminary Design

- A. Preliminary Roadway Plans (Lump Sum)

Preliminary roadway plans will be developed from the preferred design developed in the Feasibility Study prepared by KHA and other pertinent design information resulting from the project planning to date. The plans will consist of cover/general notes, preliminary roadway plans, cross sections, major utility relocations (only adjustments to surface utilities such as valves, vaults, and manhole rims), permanent pavement markings, storm drainage improvements, maintenance and traffic control plans, and erosion control. Preliminary Roadway plans will be developed to the stage at which approximately 75% of the final roadway design for the project is complete. KHA will submit six copies of the preliminary roadway plans following the drawing standards of the Town of Boone. KHA will utilize NCDOT standard details for roadway, utility and drainage elements, and pavement markings. The intent of the drainage design will be to substantially maintain the existing drainage patterns collection and conveyance. It is assumed that stormwater improvements downstream of the roadway work will not be required.

NCDOT has plans to add an eastbound right-turn lane on NC 105 at Wilson Drive. The project is currently on hold, however, we will copy NCDOT on the proposed Wilson Drive widening, pavement marking layout, and signal design. We will review their comments with the Town and incorporate them into the design as directed by the Client.

B. Utility Coordination (Lump Sum)

KHA will contact and attend one joint meeting (if needed) with utility agencies/companies whose utilities are or may be proposed to be located within the project limits. KHA will request that the utilities provide plans that define the location and description of existing utilities and easements within the project limits and coordinate with them on suitable relocations. The proposed utility relocations will be incorporated into the Preliminary Roadway plans if submitted by the utility owner at least two weeks prior to scheduled submittal of roadway plans to the Town.

As a part of the utility coordination process, up to five subsurface utility pits (soft digs) using vacuum excavation may likely be required. These soft digs will be conducted on an hourly basis as an additional service if needed. KHA will coordinate soft digs only after confirmation/direction by the Town.

Task 2 – Structural Plans

A. Culvert Research (Lump Sum)

The Hodges Creek culvert must be addressed to accommodate the bike lanes and curb and gutter. Research will be conducted to determine options to addressing the relationship between the road and the culvert without altering the existing hydraulic opening and culvert headwall/wing walls. Since the culvert is in the floodway, it is preferable that modification to the culvert does not alter the hydraulic opening as this could trigger a flood study and natural resource permitting (see Task AS4). As a last resort, the culvert would need to be extended to accommodate the proposed bike lanes and curb and gutter.

To facilitate the research, Soil and Material Engineers, Inc (S&ME) will prepare a geotechnical report for the area immediately surrounding the culvert on the western side of Wilson Road. The report is to include results from a site visit with either hand auger or soil borings. The report will provide only enough information for design of the wall and foundation.

This scope assumes a segmental block retaining wall, or equivalent, over the existing corrugated metal pipes will be appropriate for the project and modification or relocation of the existing headwall will not be required. S&ME will prepare the design and construction plans for the wall based on their review of the existing conditions and proposed transportation improvements. Any required design for modification to the existing headwall or design of a new headwall is included as a specified additional service. Likewise, related flood study and environmental tasks are included as specified additional services.

Task 3 – Final Design Phase

A. Right-of-Way Plans (Lump Sum)

KHA will revise the Preliminary plans in conformance with the Town's review comments. The right-of-way plans will be developed to the stage at which approximately 90% of the final design for the Project is complete. KHA will show pertinent right-of-way information on the plans, which consists of:

- The general outlines of improvements, roads, and streams within and adjacent to the area to be acquired;
- Temporary pavements/roads needed for traffic control;
- Easement areas, temporary and permanent, needed to perform utility work (overhead and underground);
- Proposed location of signs, structures, trees, etc. Temporary easements will be shown only if the Town is to perform the relocation;
- Areas needed for erosion control, i.e., sediment control basins, check dams, etc.;
- The existing deed title lines, right-of-way lines, proposed property lines and easement lines within the Project limits. Fee simple, right-of-way and/or easements will be sufficient to encompass all improvements, and landscaping;
- The location of construction limits;
- The location of construction easements beyond the proposed property lines will be delineated with straight lines and labeled "e" for easement. The construction easement lines will be referenced to the baseline stationing and will include an offset distance at each break in the easement line and at property lines;
- The Town tax code designation, the deed book and page number, parcel number and street address of parcels; and the names of property owners;
- An exhibit for each property that requires a permanent storm drainage easement (PSDE); and

KHA will prepare a right-of-way summary list that consists of tabulating fee simple, permanent and/or temporary easements, underlying fee simple land currently maintained as right of way, and area remaining required for the Project. KHA will include the property owner's name, address and tax code on the table.

KHA will coordinate with our sub-consultant, Appalachian Professional Land Surveyors, to update deed titles for properties abutting to the project.

B. Final Plans (Lump Sum)

Final plans will consist of: cover/general notes, typical sections, roadway, storm drainage design and details, traffic control plans, pavement markings, erosion control details, and utility relocation plans (design to be provided by the utility owner). Final plans will be developed from the approved preliminary roadway and right-of-way plans. The plans will include sufficient dimensions and distance references to allow for field construction staking without the need to scale the drawings for distance or elevation data. Final plans will include road cross-sections at 50 foot stationing. KHA will make one set of revisions based on the Town's comments and submit one set of reproducible final roadway plans following the drawing standards of the Town of Boone.

KHA will prepare a pre-construction-level opinion of probable construction cost using current local and/or NCDOT unit costs for highway construction. Right-of-way and/or easement acquisition costs will not be included.

KHA assumes that an Erosion Control Permit is not required as less than one acre of impact is anticipated.

C. Final Design Project Coordination Meetings (Lump Sum)

KHA will schedule and attend up to one project meeting with the Town (if needed), to discuss key aspects of the final design and/or the review and/or approval of the Final Plans.

D. Bid Document Preparation and Contractor Notification (Lump Sum)

KHA will prepare and assemble construction bidding documents, including specifications for the subject Work and the construction contract, based on "Standard General Conditions of the

Construction Contract” (EJCDC No. C-700, 2002 edition) prepared by the Engineers Joint Contract Documents Committee. Additionally, KHA will issue bid packages for the submittal of quotations to perform the work and conduct pre-bid meetings with potential bidders. We will tabulate the bids received and evaluate the compliance of the bids received with the bidding documents. We will prepare a written summary of this tabulation and evaluation. If requested by the Client, KHA will notify the Contractor selected to begin work.

The project design will utilize **NCDOT Standard Specifications**, and **NCDOT Roadway Standard Drawings** when feasible, however KHA will prepare project construction special provisions to correlate with any non-standard proposed project elements.

Task 4 – Traffic Signal Modifications (Hourly not to exceed)

Our proposed scope of services, schedule and fee, based on discussions with you are described below, and is based on the following assumptions:

- The proposed traffic signal upgrades are related to the addition of pedestrian facilities, and the existing vehicle signal phasing will not change at the intersection of Wilson Road and Winkler’s Creek Road or Wilson Road and NC 105.
- The traffic signal at both intersections are owned and maintained by NCDOT.
- This project will not require any signal interconnect design modifications.
- We will obtain electronic versions of the existing signal plans in Microstation or AutoCAD format.

The base data we will rely on for our signal designs will be the electronic files of the existing signal plans and the proposed improvements provided by NCDOT. We will coordinate with NCDOT Central and Division offices to obtain the electronic files. If the existing signal plan files are unavailable, we will require survey data collected specifically for the signal design. We will collect, but not prepare all base survey data deemed to be reasonably necessary for the design.

A. Site Visit and Meeting with NCDOT and/or the Town of Boone

We will conduct one site visit and meet with the Town and NCDOT on site to review site issues and to discuss the designs. We will make adjustments and revisions to our design parameters as requested in this conference. We will obtain available data pertinent to the design from the Town of Boone and from NCDOT as available.

B. Traffic Signal Designs

Traffic Signal Upgrade Design: Winkler’s Creek Road and Wilson Drive

We will design an upgrade to this existing wood pole traffic signal to accommodate the proposed pedestrian crosswalks and signal heads. Based on the data provided by the Town and NCDOT, we will design the traffic signal in conformance to NCDOT standards.

The signal plans will be prepared in English units and will consist of following items:

Intersection Layout Plan. This plan will include the overall layout of the intersection showing all items proposed for construction. Items on the plans will include intersection striping and marking location as a reference (not to be considered a pavement marking plan); detector loop design and location; identification of conduit runs; signal head placement; pole location; location of controller cabinet and pull boxes; phasing diagram; a timing chart; a loop and detector unit chart; a sequence diagram; a signal equipment chart; and signal equipment and sign legends. The scope of this work consists of design modifications to the signal plan to reflect the addition of pedestrian signal heads.

Intersection Timing and Phasing Plans. We will prepare a phasing plan and develop the isolated traffic signal timing to be implemented for the subject intersection. These timing plans will be based on existing traffic data. The proposed isolated signal timing will be shown on the signal plan. We will develop the pedestrian timing to be implemented for the subject intersection. The proposed pedestrian timing will be shown on the signal plan.

Electrical Details Plan. This plan will include details for: the signal monitor programming detail, load resistor installation detail, back-up protection notes, and equipment information notes. We will also provide a field connection hook-up chart and electrical detail notes.

Traffic Signal Upgrade Design: NC 105 and Wilson Drive

We will design an upgrade to the existing wood pole traffic signal to accommodate the proposed bike lanes on Wilson Road and the associated lane shifts. In addition the design will include pedestrian crosswalks and signal heads. The location of the crosswalks on NC 105 and Wilson Road will be sited to accommodate the future addition of a right-turn lane on NC 105 proposed by NCDOT.

Signal plans will be prepared in English units and will consist of the following items:

Intersection Layout Plan. This plan will include the overall layout of the intersection showing the items proposed for construction. Items on the plans will include intersection striping and marking location (not to be considered a pavement marking plan); detector loop design and location; identification of conduit runs; signal head placement; pole location; location of controller cabinet and pull boxes; phasing diagram; a timing chart; a loop and detector unit chart; a table of operation; a stop bar location diagram; a pole location diagram; and signal head and sign legends.

Intersection Timing and Phasing Plans. We will prepare a phasing plan and develop the isolated traffic signal timing to be implemented for the subject intersection. These timing plans will be based on existing traffic data. The proposed isolated signal timing will be shown on the signal plan. We will develop the pedestrian timing to be implemented for the subject intersection. The proposed pedestrian timing will be shown on the signal plan.

Electrical Details Plan. This plan will include details for: the signal monitor programming detail, load resistor installation detail, back-up protection notes, and equipment information notes. We will also provide a field connection hook-up chart and electrical detail notes.

C. Coordination and Plan Submittal and Review

We will coordinate with the Division Traffic Engineer office of NCDOT to present the initial design concepts and recommendations and seek their input and initial approval. We will make adjustments and revisions to our design parameters as requested in this initial conference.

We will prepare and submit to NCDOT Division Traffic Engineer and the Town the 90% signal and electrical plans. The Division Traffic Engineer will coordinate with the Signal and Geometric unit of NCDOT for their review, comments, and approval. Upon receipt of 90% review comments for the Division Traffic Engineer, we will revise our plans if needed. We will sign, seal, and submit the 100% signal and electrical plans to NCDOT and the Town.

Additional revisions requested by NCDOT or the Town or changes in site conditions, development plans or roadway plans have not been included in the fee contained within this agreement.

Task 5 – Bid Phase Services

KHA will administer a public bid process to identify and select a contractor to construct the proposed improvements. The associated Bid Phase services are generally outlined below:

A. Bid Preparation (Hourly not to exceed)

KHA will prepare and assemble construction bidding documents, including specifications for the subject Work and the construction contract, based on “Standard General Conditions of the Construction Contract” (EJCDC No. C-700, 2002 edition) prepared by the Engineers Joint Contract Documents Committee. We recommend EJCDC as standard industry documents, but recommend the Town’s attorney review and approve the bidding documents. Additionally, KHA will issue bid packages for the submittal of quotations to perform the work and conduct pre-bid

meetings with potential bidders. We will tabulate the bids received and evaluate the compliance of the bids received with the bidding documents. We will prepare a written summary of this tabulation and evaluation. After first notifying Client of the date work is to begin and Client approving that date, KHA will notify the Contractor selected to proceed with construction.

B. Pre-Construction Activities (Hourly not to exceed)

Conduct a Pre-Construction Conference prior to commencement of Work at the Site.

Task 6 - Construction Phase (Hourly not to exceed)

KHA will provide profession construction phase services for the subject project for the purpose of assisting Client in ensuring that the construction is completed in substantial compliance with KHA's design. The parties understand and agree that KHA's services are not intended to guarantee the work of the Contractor(s), but it is the intention of the parties that KHA bring its expertise and best judgment to monitoring the construction, the Contractor's compliance with its contract, including building in substantial conformity with KHA's design, and the Contractor's use of sound construction methods and materials. So long as KHA exercises its best judgment and ordinary skill in performing these tasks, it has met its responsibilities under this contract.

Visits to Site and Observation of Construction.

KHA will provide on-site construction observation services during the construction phase of the Project. Observations will vary depending on the type of work being performed by the Contractor, the location, and the Contractor's schedules.

KHA will make visits to the Site at intervals, as needed in order to observe the progress of the Work. Observations will be of a nature, in terms of frequency and methods, adjudged by KHA as reasonably necessary to determine whether Contractor is proceeding in accordance with the contract, and KHA shall keep client informed of the general progress of the work. In the event KHA concludes, based upon these observations, that Contractor is not complying with its contract with Client, it will promptly inform Client of same and will make recommendations as to appropriate action to be taken. In the event liquidated damages are appropriate with regard to any particular perceived breach of contract by the Contractor, KHA will notify the Contractor, in compliance with the construction contract and on behalf of Client, of what behavior will result in the imposition of liquidated damages, and if such damages **are** imposed, of their imposition.

By this contract and its observations of construction, KHA does not thereby acquire supervisory authority and control over the Contractor or authority over the Contractor's means, methods, techniques, equipment choice and usage, sequences, schedules, or procedure of construction, for safety precautions and programs incident to the Contractor's work, nor for any failure of the Contractor to comply with laws and regulations applicable to the Contractor's performance, but KHA shall promptly report to Client any concerns relative to any of these matters, particularly as they relate to the Contractor's ability to properly, and in compliance with the contract, complete the construction contract.

Clarification and Interpretations.

KHA will issue necessary clarification and interpretation of the contract documents to Client as requested. Field Orders authorizing variations from the strict requirements of the construction contract will only be made after consultation with the Client.

Change Orders.

KHA will recommend Change Orders to Client, as appropriate, and will review and make recommendations related to Change Orders submitted or proposed by the Contractor.

Applications for Payment.

KHA will review applications by the Contractor for payment and accompanying supporting documentation and recommend to Client the amounts the Contractor should be paid, based upon its analysis of the extent to which the Contractor has completed its work, and its judgment as to

whether the Contractor is building in compliance with the construction contract. In the case of unit price work, KHA's recommendation of payment will include final determinations of quantities and classifications of Contractor's work, based on observations and measurement of quantities provided with pay requests. Before recommending payment to Client, KHA will obtain from the Contractor the written lien waiver of any sub-Contractor involved in the construction of the Project.

Recommendations with Respect to Defective Work.

KHA will recommend to Client that Contractor's work be disapproved and rejected while it is in progress if, on the basis of its observations, KHA believes that such work will not produce a completed Project that conforms generally to Contract Documents or if a stoppage will protect the integrity of the design concept of the completed Project as a functioning whole.

Inspections and Tests.

KHA will require such special inspections or tests of Contractor's work as KHA deems appropriate, receive and review certificates of inspections which are required by the contract documents, and promptly report to Client any inspection or test results which suggest to KHA that the Contractor(s) is not constructing the Project in accordance with Contract Documents or that the Project design needs to be altered in some non-minimal way.

Shop Drawings and Samples.

KHA will review and approve or take other appropriate action with respect to Shop Drawings and Samples and other data which Contractor is required to submit, in order to facilitate the construction of the Project in accordance with KHA's design, and to determine, to the extent reasonably feasible, whether Contractor is constructing the Project in conformity with the Contract Documents. Should KHA conclude from such drawings, samples or other data, that the Contractor is significantly deviating from the Contract Documents, it shall promptly inform Client of same and will offer Client its recommendations.

Substitutes and "or-equal."

KHA will evaluate and determine the acceptability of materials and equipment proposed by Contractor and their compliance with applicable construction codes, and shall promptly inform Client of Contractor's use of materials or equipment which predictably will result in construction not in compliance with the Contract Documents or applicable codes.

Disagreements between Client and Contractor.

As necessary and if requested by either Client or Contractor, KHA will render written opinions on all claims of Client and Contractor relating to the acceptability of Contractor's work or the requirements of the Contract Documents pertaining to Contractor's work. In rendering such opinions, KHA shall be fair and not show partiality to Client or Contractor, and Client agrees that KHA's opinion can be used in any forum convened to resolve or decide any dispute between Client and the Contractor. KHA will ensure that the construction contract commitments of Contractor contains a parallel commitment.

Limitations of Responsibilities.

KHA is responsible for its own performance and the performance of any sub-contractor which it employs to discharge its responsibilities under the contract. KHA is not responsible for the acts or omissions of the Contractor, or any of the Contractor's subcontractors, suppliers or any other individual or entity performing or furnishing the Work, unless KHA itself has employed or hired that individual or entity. KHA shall not have the authority or responsibility to stop the work of the Contractor, but is responsible for promptly notifying Client of any occurrences which might lead Client to direct the stopping of work. Should Client so direct, KHA shall promptly inform the Contractor of that decision.

Substantial Completion.

KHA will promptly, after notice from Contract that Contractor considers the entire Work ready for its intended use, and in the company of Client and Contractor, conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory construction of all items with the exception of those identified on a final punch list prepared by KHA and Contractor, and approved by Client. If KHA believes the work is not substantially complete, it will notify Contractor and Client of its conclusion, and will recommend to Client and Contractors available options to bring the construction into substantial conformity with the contract documents. If KHA believes the work is substantially complete, it will so advise Client of its conclusion, and absent written objection by Client, after Client has its own opportunity to inspect the construction, will notify the Contractor that either the construction is substantially complete or that the Client requires further action by the Contractor.

Final Notice of Acceptability of the Work.

Conduct a final site visit to determine if the completed Work of Contractor is in accordance with the Contact Documents and final punch list, and if KHA reaches the conclusion that the construction is substantially in accordance with the Contract documents, recommend to the Client that final payment be made to Contractor. However, KHA shall nevertheless notify the Client in writing of any respects or conditions **of which it is aware** which deviate from the contract documents, even if it considers such deviations minimal or insignificant.

Schedule

We will provide our services based on the schedule in Attachment A. Time is of the essence.

Fee and Billing

KHA will perform the services described in the Scope of Services for the following fees:

Construction Documents (Lump Sum)

<u>Task</u>	<u>Description</u>	<u>Lump Sum Labor Fee</u>
Task 1:	Preliminary Design	\$12,000.00
Task 2:	Structural (S&ME)	
	Geotech testing	\$1,500.00
	Segmental block wall design	\$1,500.00
Task 3:	Final Design Phase	\$9,250.00
Total Labor Budget		\$24,250.00

Task 4: Traffic Signal Modifications (Hourly, not to exceed) **\$20,000.00**

The fees described above are based on the assumption that the retaining wall is constructed on top of the existing culvert.

Bid Phase Services (Hourly not to exceed)

Task 5:	Bid Phase Services Labor	\$14,000.00
	Bid Phase Services Expenses	\$120.00
	(Assumes 1 trip @250 miles @ 0.485/mile)	

Construction Phase Services (Hourly not to exceed)

Task 6:	Construction Phase Labor	\$11,390.00	Construction
	Phase Expenses	\$240.00	
	(Assumes 2 trips @250 miles @ 0.485/mile)		

All permitting, application, and similar project fees will be paid directly by the Client.

Fees will be invoiced monthly based upon the percentage of services completed as of the invoice date. Payment will be due within 45 days of the date of the invoice.

Additional Services

Any services not specifically provided for in the above scope, as well as any changes in the scope you request, will be considered additional services and will be performed at our then current hourly rates (Attachment B). Additional services we can provide include, but are not limited to, the following:

- Additional survey excluding cross-sections of Winkler's Creek
- Additional traffic counts
- Additional traffic signal warrant studies
- Driveway permits/right-of-way encroachment agreements
- Environmental services
- Corridor signal timing plans
- Public Involvement
- Additional agency coordination and/or project meetings beyond those listed
- Creation and/or modification to existing FEMA floodplain model
- Utility relocation design
- Flood Study

Specified Additional Services

Specified Additional Services are listed below with budgets for tasks that may be required if the culvert headwall for Hodges Creek requires modification and / or relocation.

Task AS1 – Topographic Survey and Coordination Flood Study (Hourly not to exceed)

If a flood study is required (see Task AS4), our sub-consultant, Appalachian Professional Land Surveyors, will prepare six cross-sections of Hodges Creek. Three cross-sections will be taken upstream of the existing culvert and the other three will be taken downstream of the culvert. KHA will coordinate the location of each cross-section with the sub-consultant.

Coordination with the surveyor, including such tasks as reviewing base mapping information and coordinating the deliverable files is included in this task.

Task AS2 - Preliminary Design (Soft Digs) (Hourly not to exceed)

KHA will subconsult to a qualified firm the services to perform up to five soft digs (vacuum excavation) for the purpose of vertically locating underground utilities, if needed.

Task AS3 - Structural Design (Hourly not to exceed)

Preliminary structure plans will be developed for the applicable culvert modification only if a segmental block retaining wall can not be used. The structure plans will be completed to the stage at which approximately 25% of the final design is complete. The structure plans will be based on the preliminary roadway plans.

Structural tasks for **modifying the existing culvert** to accommodate the roadway widening are as follows:

- load calculations for the increased fill height;
- analysis of the existing headwall and footing;
- reinforced concrete design of a new headwall;
- design of necessary modifications to the existing footing;
- design of the tie-in to the existing headwall/culvert;
- produce demolition plans; and
- produce construction plans.

Structural tasks for **extending the existing culvert** to accommodate the roadway widening are as follows:

- load calculations for vehicle and soil loads;
- reinforced concrete design of new culvert section;
- footing design for new headwall;

- design of the tie-in to the existing headwall/culvert;
- produce demolition plans; and
- produce construction plans.

The plans and design will be finalized upon receipt of Town comments, final roadway plans, and applicable agency permitting are complete.

Task AS4 – Flood Study (Hourly not to exceed)

As discussed previously in Task 2, if the culvert can be modified such that the hydraulic opening and existing headwall/wing walls are not altered, a flood study and natural resource permitting would not be required. However, if a culvert extension is the only viable option, then this Task would be necessary.

A. Stream Hydrographic Survey and Analyses (Hourly not to exceed)

Research will be conducted and a hydrologic/hydraulic analysis will be performed to understand the existing streamflow and hydraulics of the existing Hodges Creek culvert. This analysis will establish a baseline in order to evaluate design impacts from the preferred roadway widening design. KHA will coordinate work with the Town of Boone and the Federal Emergency Management Agency (FEMA) as reasonably required.

KHA will contact FEMA to obtain an approved existing floodplain model of Hodges Creek. We assume that this model is available and that creation or modification to is not required. KHA will prepare a Duplicate Effective Model (DEM) that demonstrates that the software used (HEC-RAS) will provide water surface profile data that is identical to published information.

Based on additional survey data (Task AS1) of Hodges Creek, KHA will prepare an Existing Conditions Model that reflects most recent data regarding existing conditions. This update will be limited to culvert inverts and channel sections at the upstream and downstream face of culverts (prepared by surveyor).

KHA will incorporate the proposed culvert extension and prepare a Proposed Conditions Model to evaluate stages upstream and downstream of the culvert.

KHA will then compare the Existing Conditions Model with the Proposed Conditions Model to determine if the culvert extension altered the approved floodplain elevations at published cross sections. If there is a “no-rise”, then a “no-rise” certification will be submitted which will be the extent of the Flood Study. Natural Resources permitting will still be required. If a “no-rise” can not be obtained, a formal CLMOR/LOMR application must be completed and approved by FEMA.

KHA will summarize the hydraulic analysis in a technical memorandum to the Town of Boone

B. Natural Resources Permitting (Hourly not to exceed)

KHA and the Town will prepare necessary official forms and prepare and/or obtain supporting documentation to complete an application for a Conditional Letter of Map Revision. KHA will coordinate with FEMA officials or their designated contractor in submission of the CLOMR. Official forms may include the Overview & Concurrence Form, Riverine Hydrology & Hydraulics Form, Riverine Structures form, and a Payment Information Form. Acquisition of supporting documentation may include the notification of state and community officials, and includes the response to requests for additional information by FEMA after review of the initial application.

Once the Project is complete, KHA will assist the Town of Boone in preparation of a Letter of Map Revision application that reflects final as-built conditions of the culvert.

Task AS5 – Environmental Permitting (Hourly not to exceed)

In addition to CLOMR/LOMR applications, the following government agencies will be contacted to establish the extent of required environmental studies and associated permitting

required to construct the planned project improvements.

- U.S. Army Corps of Engineers 404 Permit
- NC Division of Water Quality 401 Water Quality Certification

Furthermore, wetlands determined present within the proposed construction limits will be delineated based upon the USACE 1987 manual and the boundaries will be flagged accordingly. Representative photo-documentation of existing conditions will be filed for future reference. Following the wetland delineation, KHA will coordinate with a USACE representative and Town project personnel (including the Town's Water Quality Program Administrator) to meet at the site for confirmation of the wetland boundaries, will shall subsequently be surveyed by a N.C. registered surveyor. Using the information gathered and the design, KHA will provide a Preconstruction Notification Application and supporting information to the USACE and NCDWQ for the presumed minimal stream and wetland impacts needed to remove the existing culverts and replace it with new culverts. KHA will make one round of revisions based on agency comments. The Town will provide any application fees. It is assumed that no agency meetings will be required as part of this process. Development of mitigation plans/design is not included in this scope.

Task AS6 – Special Use Permit (Hourly not to exceed)

KHA will submit a special use permit to the Town of Boone for the preferred culvert modification. KHA will attend one meeting with the Board of Adjustments for the Town of Boone. The Town will apply for all other permit applications, and pay the fees for all needed permits.

Task AS7 – Legal Descriptions (Hourly not to exceed)

If required, Appalachian Professional Land Surveyors will prepare up to three legal descriptions for the adjacent properties for right-of-way and / or easements.

Task AS8 – Temporary Staking (Hourly not to exceed)

If required, Appalachian Professional Land Surveyors will provide one temporary staking of the right-of-way and/or easements for each of the three properties adjacent to the project.

Task AS9 – Title Search (Hourly not to exceed)

KHA will utilize the services of Richard E. Mattar Attorney at Law to perform a standard title search for appraisal purposes. This scope assumes searching for three properties.

If Headwall Modification or Culvert Extension is Required

<u>Task</u>	<u>Description</u>	<u>Anticipated Cost Plus Labor Fee</u>
Task AS1:	Topographic Survey	\$2,000.00
Task AS2:	Preliminary Design (Soft Digs – assume 5)	\$1,500.00
Task AS3:	Structural Plans	\$12,250.00
Task AS4:	Flood Study	\$22,800.00
Task AS5:	Environmental Permitting	\$7,500.00
Task AS6:	Special Use Permit	\$1,200.00
Task AS7:	Legal Description (Assume 3)	\$300.00
Task AS8:	Temporary Staking	\$1,500.00
Task AS9:	Title Search for Appraisal	\$2,500.00
Total Cost Plus Labor Budget (<i>Not to exceed</i>)		\$51,550.00

Closure

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the terms and conditions in the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, the term "the Consultant" shall refer to Kimley-Horn and Associates, Inc., and the term "the Client" shall refer to The Town of Boone.

Council retreat on Friday, April 7, 2006, from 8:00 a.m. until 5:00 p.m. at the Broyhill Inn & Conference Center.

REQUEST PERMISSION TO APPLY FOR A GRANT

Police Chief Bill Post informed the Council that the Town of Boone has an opportunity to apply for a grant through the North Carolina Governor's Crime Commission. He explained that the grant amount is \$9,000 with a match of \$3,000 provided by the town. Chief Post proposed using the money to purchase two laptops, modems, and software to be installed in two police vehicles. Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved to grant permission for the application of this grant by the Town of Boone.

VOTE: Aye-All
 Nay-None

ACCEPTANCE OF PROPOSAL - WATERSHED CONCEPTS

Town Manager Greg Young stated the Town Council had directed him to secure the services of a qualified vendor to implement Tim Lormand's recommendations and to establish a stormwater program that employs Best Management Practices for Development. After extensive conversations with engineers and planners of stormwater and floodplain management programs from various other state and local entities, Mr. Young recommended that Watershed Concepts, a Division of HSMM, be hired to provide the town with services in the establishment of a stormwater program based on accepted BMP's that mitigate flooding and protect water quality. He pointed out the draft proposal in the meeting packet provided by Watershed Concepts. Council member Brantz inquired as to the role of ASU in this project. Mr. Young stated that has not been determined at this point and that state entities have the right to go on their on in establishing a stormwater program. Council member Mason stated she feels it is critical for planning purposes to involve ASU as it is an important part of the community. Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved to direct staff to continue to review this contract and for it to be further discussed at the Council retreat.

VOTE: Aye-All
 Nay-None

PRESENTATION OF UDO DRAFT AMENDMENT - INDOOR SHOOTING RANGES

Town Attorney Sam Furgiuele presented the Council with a draft amendment to the UDO relating to indoor shooting ranges. He explained that the proposal would allow the placement of an indoor shooting range in either the B-3, General Business, or the M-1, Light Industrial zoning districts. Further, a special-use permit will be required in either district so that the applicant must obtain approval from the Board of Adjustment. Upon a motion by Council member Mason, seconded by Council member Pepin, Council moved that the draft amendment be placed on the February Quarterly Public Hearing agenda.

VOTE: Aye-4 (Spann, Wilcox, Mason, Pepin)
 Nay-1 (Brantz)

PRESENTATION OF UDO DRAFT AMENDMENT - PROTECTION OF TREES

Town Attorney Sam Furgiuele presented a draft amendment to the UDO relating the protection of trees as instructed by the Council at the December meeting. Upon a motion by Council member Mason, seconded by Council member Wilcox, Council moved that the draft amendment be placed on the February Quarterly Public Hearing agenda.

VOTE: Aye-All
 Nay-None

PRESENTATION OF UDO DRAFT AMENDMENT - COMMUNITY SIGNAGE

Town Attorney Sam Furgiuele presented a draft amendment to the UDO to allow signs for

“commercial” as well as non-commercial community events, and to provide for “farmers’ market signs.” Upon a motion by Council member Brantz, seconded by Council member Spann, Council moved that the draft amendment be placed on the February Quarterly Public Hearing agenda.

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 December. The Water Treatment Plant recorded a maximum daily demand of 1.88 million gallons on Friday, December 2, 2005, and the average daily demand was 1.650 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 2006 for allocation to customers. Council chose to allocate 16,441 gallons from 2006 leaving a balance of 8,559 gallons for allocation. At the last Town Council Meeting I informed you that 303 gallons per day remained in the 2005 year allotment. Since that time the Public Utilities Department approved one project that subtracted from the allotment, leaving a carry over from 2005 of 228 gallons per day. This combined with the 2006 balance, creates a total of 8,787 gallons per day that can be allocated for use in 2006. The total water allotment remaining for the year 2006 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.

As you can see in the attached chart, the Public Utilities Department now has 8,787 gallons per day remaining for allotment in 2006. Also, be reminded that all calculations are based on 60% of the North Carolina Discharge Rate Schedule.

Staff Approved	Date	Projected Usage	Approved Water Connections 2006 Council Approved	Date	Projected Usage	Remaining Gallons
						25000
		4165	John Cook	May-05	8038	16962
			CataCorner Investments	Jul-05	7296	9666
			CAT Tractor	Oct-06	1107	8559
			2005 Balance Carry Over	Jan-06	228	8787

ADOPTION OF BUDGET AMENDMENTS

Finance Director Amy Davis presented the budget amendments. Upon a motion by Council member Brantz, seconded by Council member Wilcox, Council adopted the following budget amendments:

DESCRIPTION	ACCOUNT #	TO:	FROM:
Travel & Training-Gov. Body	010-400-000-521101		\$5,000.
Travel & Training-Administration	010-401-000-521101		8,000.
Fund Balance Appropriated	010-000-000-499900		\$13,000.
Council Chambers Renovation	010-407-000-525103		45,000.
Fund Balance Appropriated	010-000-000-499900		45,000.
Capital Outlay-Equipment	010-600-404-574000		4,165.

Fund Balance Appropriated	010-000-000-499900		4,165.
Unemployment Ins-DSD	010-500-360-508501	842.	
Unemployment Ins-Facilities	010-600-405-508501	787.	
Unemployment Ins-Water Ops.	030-700-802-508501	525.	
Unemployment Ins-Sewer Ops	030-700-803-508501	525.	
Fund Balance Appropriated	010-000-000-499900		1,629.
Fund Balance Appropriated	030-000-000-499900		1,050.
Capital Outlay-Greenway Bridge	010-600-405-574200	86,520.	
FEMA Reimbursement	010-000-000-448030		86,520.

VOTE: Aye–All
 Nay–None

Mayor Clawson declared a 10- minute break at 8:05 p.m. Council reconvened at 8:15 p.m.

REQUESTED APPEARANCE - HOPF & HIGLEY, P.A.

Town Attorney Sam Furgiuele explained the history of the situation at the White Laurel development. James Hopf, an attorney representing the residents of White Laurel who were subject to the condemnation order issued by Jesse Horner, stated his clients do not contest the order of condemnation, but are asking for consideration for additional time to determine their options. He stated that five of the lots were condemned with one home on a lot removed entirely. Mr. Hopf stated the residents have hired an engineer to oversee the progress in stabilizing the slopes. He stated that there are stormwater issues that are causing slope stability problems that need to be further studied. Mr. Hopf requested an additional nine-month extension. Upon a motion by Council member Wilcox, seconded by Council member Mason, Council moved to uphold the condemnation order issued by the Development Services Department and to grant a nine-month time extension to allow the residents time to comply with the order.

VOTE: Aye - All
 Nay - None

REQUESTED APPEARANCE – MR. DANIEL HETTINGER

Mr. Daniel Hettinger appeared before the Town Council to request approval for a Special Events permit application for the 2006 March for March parade scheduled for Saturday, March 25, 2006. He explained that his group is willing to provide liability insurance information and pay the event fee of \$250. Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved to approve the special events permit for the 2006 March for March parade subject to the payment of the \$250 fee and submittal of liability insurance.

VOTE: Aye – Aye
 Nay – None

REQUESTED APPEARANCE – MR. DAVID COOK

Mr. David Cook appeared before the Town Council to request water and sewer service to Lots 1 & 2 of the Junaluska Overlook subdivision located off Junaluska Road. Town Attorney Sam Furgiuele opened the public hearing at 8:36 p.m. to hear sworn testimony from David Cook, Public Utilities Director Rick Miller, and Development Services Director John Spear. Mr. Cook explained the request for water and sewer service for a four-bedroom house on each of the two properties, on one of which will be his private residence. He stated he is planning to sell the other lot. Public Utilities Director Rick Miller stated the property is not in the town limits and is in the secondary pressure zone. Furthermore, he stated that since the property is a minor

subdivision, it cannot be annexed into the town limits to meet Ordinance 05-01 requirements. Council member Mason asked if the properties could be served by adjacent water lines and asked about proposed usage. Mr. Miller stated that water and sewer service is provided to properties adjacent to Mr. Cook's properties. He further stated that the proposed usage for each property would be 360 gallons per day. Development Services Director John Spear stated the properties are located in the rural growth area. With no other testimony, Mr. Furgiuele closed the public hearing at 8:42 p.m. Council member Mason stated that based on the fact that the properties are not located in the town limits and are not areas targeted for water extension, she would be inclined to deny the request. Upon a motion by Council member Mason, seconded by Council member Spann, Council moved to deny the request.

VOTE: Aye – All
 Nay – None

REQUESTED APPEARANCE - CHS/ASU, LLC

Mr. Bruce Hobart, of CHS/ASU LLC, appeared before the Town Council to request the retention of water allocation for a condominium project located at 1359 King Street. Town Attorney Sam Furgiuele opened the public hearing at 8:46 p.m. to hear sworn testimony from Bruce Hobart and Public Utilities Director Rick Miller. Mr. Hobart indicated the construction of the project is about six to eight months behind schedule. He explained that minor modifications of the exterior of the building and the inclusion of elevators are the only changes to the project. Mr. Hobart stated the condominiums would contain three bedrooms, three bathrooms, and a den. Furthermore, he stated the project does have all the applicable permits with the exception of a building permit. Public Utilities Director Rick Miller stated the water allocation for this project was included in the initial water distribution as a previously approved allocation and had 17,346 gallons per day allotted. Mr. Miller stated this would not affect the 2006 water allocation. With no other testimony, Mr. Furgiuele closed the public hearing at 8:58 p.m. Upon a motion by Council member Mason, seconded by Council member Spann, Council moved to grant the request subject to the payment of the availability fees.

VOTE: Aye - All
 Nay - None

REQUESTED APPEARANCE - MS. NANCY REIGEL

Ms. Nancy Reigel, a member of the Kraut Creek Committee, informed the Council of the committee's plans to study the feasibility of enhancing and restoring areas of Kraut Creek in downtown Boone while creating open-space parks, greenway trails, and wildlife habitat. She stated that the committee recently secured a grant from the North Carolina Clean Water Management Trust Fund to study the feasibility of restoring stream ecosystems and providing public green space along Kraut Creek that will enhance downtown activities, support economic development and create a unique opportunity for University research. Dan Meyer, of the Chamber of Commerce, explained that a condition of the planning grant requires that the committee raise \$14,000 of in-kind funds. He informed the Council that the committee has already received \$9,750 and requested a contribution of \$250 from the Town of Boone. Upon a motion by Council member Brantz, seconded by Council member Spann, Council moved to grant the request for \$250 of in-kind funds. The Council requested that the Kraut Creek Committee keep the town apprised of further progress of this project.

VOTE: Aye - All
 Nay - None

CLOSED SESSION

Upon a motion by Council member Wilcox, seconded by Council member Brantz, Council moved to enter Closed Session at 9:11 p.m. pursuant to NCGS 143-318.11a)3)5) in order to discuss the following matters:

- ASU Violations
- Property Acquisition.
- Charter Settlement Agreement.

VOTE: Aye-All
 Nay-None

Upon a motion by Council member Pepin, seconded by Council member Spann, Council moved to exit Closed Session at 10:15 p.m.

VOTE: Aye-All
 Nay-None

ACTION FOLLOWING CLOSED SESSION

Upon a motion by Council member Pepin, seconded by Council member Mason, Council moved to pay ASU \$210,028.64 and adopted the following agreement:

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

AGREEMENT

This Agreement, made this ___ day of _____, 2006, by and between Appalachian State University, a constituent institution of the University of North Carolina (hereafter referred to as "ASU") and the Town of Boone, a North Carolina Municipal Corporation (hereafter "the Town"), known and referred to collectively as "the parties."

WITNESSETH

THAT WHEREAS certain issues have arisen relating to sewer usage overcharges billed by the Town to ASU, and paid by ASU to the Town; and

WHEREAS, the parties have reached an agreement of their free and voluntary wills, after consultation with their respective attorneys, which fully resolves the issue described; and

WHEREAS, the parties wish to memorialize their agreement so as to avoid any future uncertainty about its terms;

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

1. Within ten days after the execution of this Agreement, the Town will pay ASU Two Hundred and Ten Thousand, Twenty-eight dollars and Sixty-four cents (\$210,028.64) in full settlement and satisfaction of any and all sewer overcharges paid by ASU, whether known or unknown, which exist as of the date of the execution of this Agreement by ASU. The stated amount is comprised of a principal amount of \$186,184.53, with interest in the amount of \$23,844.11.
2. ASU waives any penalties or other interest, beyond that stated, arising from said overcharges.
3. This Agreement shall in no way bar the Town from charging ASU for any unbilled or unpaid sewer use by ASU which has occurred prior to the execution of this Agreement.
4. The terms described herein constitute the entire agreement between the parties.
5. The parties enter this agreement of their own free will and volition, after consultation with their respective legal counsel, and they each confirm that in executing this Agreement, they rely on no representations other than those contained herein.
6. The parties hereby submit to the jurisdiction of the courts of the State of North Carolina in any future action brought by either of them to enforce the provisions of this agreement, which shall be interpreted pursuant to the laws of North Carolina. The parties stipulate and agree that venue of any action relating to this agreement shall be in Watauga County, North Carolina.

7. This Agreement shall be effective when signed by both parties.

VOTE: Aye-All
 Nay-None

Upon a motion by Council member Mason, seconded by Council member Spann, Council moved to approve the Charter Settlement in the amount of \$4,500 and adopted the following agreement:

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the "Settlement Agreement") is made this 19th day of January, 2006, by and among the Town of Boone, North Carolina ("Town") and HPI Acquisition Co., LLC, locally known as Charter Communications ("Charter").

RECITALS

WHEREAS, Charter operates a cable system in the Town and pays franchise fees pursuant to a franchise agreement between the parties (the "Franchise");

WHEREAS, the Town conducted an audit of the franchise fee payments made by Charter for the period from January 1, 2000 to December 31, 2004 (the "Audit Period") and concluded that Charter underpaid franchise fees for the Audit Period. Charter disputed the claim and arrived at a different conclusion than the Town;

WHEREAS, Charter agrees to submit payment to the Town in the amount of four thousand and five hundred dollars (\$4,500.00) to forever settle past claims on franchise fees due the Town for the Audit Period;

WHEREAS, the Town and Charter now desire to conclude, settle, release and discharge once and forever, all rights, claims, causes of actions, liabilities, disputes and demands relating to the Town's past claims on franchise fees due the Town;

NOW THEREFORE, in consideration of the foregoing, and in consideration of the mutual promises and obligations hereinafter set forth, and for good and valuable mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Settlement Agreement hereto agree as follows:

AGREEMENT

1. SETTLEMENT AMOUNT

The Town and Charter have agreed that Charter shall submit payment to the Town in the amount of four thousand and five hundred dollars (\$4,500.00) in full settlement of past claims on franchise fees for the Audit Period. Charter agrees to pay this amount to the Town within forty-five (45) days after receipt of the executed Settlement Agreement from the Town. It is expressly understood and agreed that the Settlement Amount represents full and complete satisfaction and compromise of any and all claims, actions, causes of action, controversies, demands, damages, debts, agreements, obligations, liabilities, interest, liens, expenses, costs, attorney's fees and demands of any kind or nature, known or unknown, arising out of or in any way related to the Town's past claims on franchise fees due the Town during the Audit Period.

2. RELEASE OF CLAIMS

For the consideration set forth in this Settlement Agreement, the Town does hereby release and forever discharge Charter, and its parents, subsidiaries, related affiliates and their respective officers, directors, shareholders, owners, partners, employees, agents, contractors, representatives, predecessors, successors, assigns, insurers and attorneys, and each of them, from any and all claims, demands, actions, causes of action, liabilities, obligations, losses, accounts, debts, damages, judgments, costs, interest, expenses, attorney's fees and demands of any kind or nature, known or unknown, arising out of or in any way related to the Town's past claims on franchise fees due the Town during the Audit Period. Furthermore, the Town expressly agrees that this settlement, and/or the events leading up to it, including the dispute with respect to the

payment of franchise fees during the Audit Period, may not be used in any way in any subsequent judicial or administrative proceeding against Charter other than to enforce the terms of this Settlement Agreement.

3. VOLUNTARY AGREEMENT

This Settlement Agreement is freely and voluntarily given by each party, without any duress or coercion, and after each party has consulted with its counsel. Each party has carefully and completely read all of the terms and provisions of this Settlement Agreement. It is understood and agreed by the Town and Charter that nothing herein shall be deemed to be an admission of liability by Charter with respect to the matter of this Settlement Agreement.

4. AUTHORITY AND BINDING EFFECT

The Town and Charter represent and warrant to the other that each has the legal right, power and authority to enter into this Settlement Agreement and to perform its obligations hereunder. This Settlement Agreement will inure to the benefit of and be binding upon the parties and their respective successors and assigns. The parties for themselves and their respective successors and assigns agree to join in or execute any instruments and to do any other act or thing necessary or proper to carry into effect this or any part of this Settlement Agreement.

5. ENTIRE AGREEMENT

This Settlement Agreement sets forth the entire agreement between the Town and Charter relating to the subject matter of this Settlement Agreement.

6. GOVERNING LAW

This Settlement Agreement, and any controversies arising hereunder, shall be interpreted in accordance with the laws of the State of North Carolina and adjudicated in a state or federal court of competent jurisdiction located in the State of North Carolina.

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as their free and voluntary acts and deeds, effective as of the date first above written.

VOTE: Aye-All
 Nay-None

ADJOURNMENT

On a motion by Council member Mason, seconded by Council member Brantz, Council moved to adjourn the meeting at 10:17 p.m.

VOTE: Aye-All
 Nay-None

Deputy Town Clerk

Mayor