

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
FEBRUARY 16, 2006**

The regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, February 16, 2006 in the Commissioners Board Room, Watauga County Courthouse. 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 present were Town Manager Greg Young; Town Clerk Freida Van Allen; Public Services Director Blake Brown; Development Services Director John Spear; Public Utilities Director Rick Miller; Resource Director Jim Byrne; Police Chief Bill Post; Finance Director Amy Davis; and Fire Chief Reggie Hassler .

TENTATIVE AGENDA ADOPTION

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

- Addition to first Closed Session - Legal Issues about Rivers Street.
- Scheduling of Special Meeting for Water Supply Study Committee.
- Addition to second Closed Session - Status Report on Greenway Engineering Contract.

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

VOTE: Aye-All
Nay-None

CONSENT AGENDA ADOPTION

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

Minutes: Regular Meeting - January 19, 2006

Tax Releases: January, 2006

TAXPAYER	YEAR	AMOUNT	DESCRIPTION
SULLIVAN, JOHN B. & LINDA S.	2005	\$8.23	SOLD JETSKI IN 2004
PHAN, KIET T.	2005	1.92	SOLD CAR
PEARSON, JESSICA C.	2005	10.10	SOLD CAR
TALEB, SAMER	2005	33.62	TURN IN TAG
DEAN, CLARENCE E. JR.	2005	5.85	SOLD CAR

FORD, BABETTE M.	2005	73.16	INCORRECT SITUS
MASSEY, KYLE R.	2005	47.76	MILITARY
ENTERPRISE LEASING COMPANY SE	2005	70.84	U-DRIVE-IT RENTAL
GLIDEWELL, POWELL W. IV	2005	78.72	INCORRECT SITUS
MAJERCIK, KIM	2005	1.76	BILLED IN CHEROKEE CO
BURGIN, WILBURN G. JR. & BARBARA P.	2005	1.16	INCORRECT CODE
TESTER, LARRY K.	2005	141.55	SOLD VEHICLE TURNED IN TAG
HICKS, JENNIFER D.	2005	2.08	MOVED TO TN
GRIMES, WILLIAM T.	2005	86.00	INCORRECT FIRE DISTRICT
WOOD, GINA L.	2005	3.52	INCORRECT SITUS
WOOD, GINA L.	2004	58.88	INCORRECT SITUS
A COMPUTER PLACE	2005	6.60	BUSINESS CLOSED IN AUG'03
A COMPUTER PLACE	2004	6.60	BUSINESS CLOSED IN AUG'03
HICKMAN, JOSHUA W.	2004	3.16	LIVES IN BUNCOMBE CO
CUPERTINO NAT'L BANK DBA THE MATSCO COMPANIES	2003	1480.13	EQUIPMENT DOUBLE TAXED
CUPERTINO NAT'L BANK DBA THE MATSCO COMPANIES	2001	878.32	EQUIPMENT DOUBLE TAXED
TOTAL		\$2999.96	

**MSD RELEASES
JANUARY, 2006**

TAXPAYER	YEAR	AMOUNT	DESCRIPTION
GLIDEWELL, POWELL W. IV	2005	\$41.33	INCORRECT SITUS
TOTAL		\$41.33	

Tax Refunds: January, 2006

TAXPAYER	YEAR	AMOUNT	DESCRIPTION
HERSEY CECIL FOREHAND III SARAH JONES FOREHAND	2005	\$20.78	SOLD CAR
WILLIAM H. POST DEBRA D. POST	2005	2.92	SOLD CAR
ANN ALEXANDER	2005	15.69	TURN IN TAG

BILLY DEAN TRIVETTE	2004	16.80	LIVES IN FIRE DISTRICT
ROBERT MICHAEL COX	2004	3.84	VEHICLE WRECKED, SOLD TO INS., TAG TURNED IN
CITICORP VENDOR FINANCE INC	2004	685.85	ASSET WAS DOUBLE BOOKED
JAIMIE PAULETTE DAVIS MARY BELL LUNSFORD	2004	8.14	TURN IN TAG
GINA LYNN WOOD	2003	80.42	INCORRECT SITUS
GINA LYNN WOOD	2002	12.87	INCORRECT SITUS
GINA LYNN WOOD	2001	17.47	INCORRECT SITUS
TOTAL		\$864.78	

Adoption of Agreement: Watauga County for sewer-lift maintenance.

MAINTENANCE AGREEMENT

THIS AGREEMENT is made this the ___ day of _____, 2006, by and between the **Town of Boone**, a North Carolina Municipal Corporation, hereinafter referred to as "**Town**" and **Watauga County**, a North Carolina County, hereinafter referred to as "**County**," collectively referred to as the "parties."

WITNESSETH

THAT WHEREAS County has constructed a new County Detention Facility which includes a sewer lift station; and

WHEREAS, County desires that Town maintain said lift station, and Town is willing to do so pursuant to the terms of this Agreement; and

WHEREAS, the parties have agreed that it is in their mutual interests to confirm the promises between them; and

WHEREAS, the governing board of each of the parties has duly adopted this Agreement;

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

1. **Term:** The term of this lease shall be one year, commencing on the 1st day of April, 2006 and ending on the 31st day of March, 2007, but in accordance with the provisions herein, may be renewed from year to year by the parties, upon approval of both governing boards.

2. **Premises:** The premises subject to this agreement is the sewer lift station constructed for the use of the Watauga County Detention Center on Hodges Gap Road, and all machinery, equipment, and parts, including electrical parts and connections and sewer parts and connections contained therein.
3. **Fees and Payments:** County shall pay Town the fixed sum of \$5,000.00, and in addition thereto, County is responsible for the costs of any equipment or parts needed to maintain the premises, including the actual costs, if any, of needed contractors, such as electrical contractors and the Town's labor if labor costs are incurred, other than the labor costs related to the Town weekly inspections. County hereby acknowledges that certain equipment needed and utilized in connection with the proper operation of the premises may involve significant expenditures. County authorizes Town to use parts and equipment which meets the Town's standards under the Town of Boone Water and Sewer Code, and is appropriate under applicable State and federal law and regulation, including the North Carolina building code. County will reimburse Town for any costs or expenses to be reimbursed under this Agreement within thirty days of notice by the Town of the costs or expenses to be reimbursed.
4. **County Initial Responsibilities:** Prior to the discharge by the Town of any of its responsibilities under this Agreement, County shall have installed and shall have purchased, or shall authorize the Town to install and purchase at County's expense, a radio telemetry mechanism compatible with Town monitoring capabilities, and a spare pump to be kept on-site, both of which meet Town specifications.
5. **Town Responsibilities:** Pursuant to this Agreement, Town shall inspect the premises on no less than a once per week basis to determine the operating condition of the premises and to make repairs or arrangements for repairs which in its sole judgment are necessary to maintain the premises in proper working condition. In addition, should Town become aware or be notified of any operational problem(s) of or at the premises, the Town shall promptly inspect the premises and make or arrange for such repairs as are needed to restore the premises to proper functioning. Any repairs made to the premises shall be done in a workmanlike manner and shall comply with the North Carolina State Building Code, as applicable, all ordinances of the Town of Boone and Watauga County, as pertinent, and all relevant federal and state laws relating to the operation of such facilities. However, by entering this agreement, Town does not insure the premises or guarantee their proper and safe operation, and specifically declines responsibility for personal injury or property damage, whether to County employees, agents, officers, invitees or other persons, or to County property or the property of County employees, agents, officers, invitees or other persons which may result from the malfunctioning of the premises, whatever the cause.
6. **Notice of Repairs:** In the case non-emergency repairs requiring expenditures exceeding five hundred dollars (\$500.00), Town will notify County before undertaking such repairs. In the case of all emergency repairs, and non-emergency repairs costing five hundred dollars or less, Town will notify County as soon as reasonably practicable of the nature and cost of the repairs.

7. **Access:** County shall provide Town unobstructed access to the premises. Town may go upon and cross County property without County's further permission in order to perform its duties under this Agreement, may operate such equipment in and around the premises as is reasonably needed to perform this Agreement, and may install such parts and equipment within the premises or in connection with the premises as may be necessary to maintain the proper functioning of the premises. In the discharge of its responsibilities under this Agreement, should Town disturb any land surrounding the premises, it shall restore the surface to the condition that it existed immediately prior to such disturbance. At the termination and non-renewal of this agreement, Town shall return or turn over all keys which relate to the premises to County.
8. **Insurance:** County shall provide and maintain insurance coverage against loss, destruction, or other damage to its property located on the premises, as well as against all risks for which County is required to indemnify and hold Town harmless. County's liability insurance coverage shall provide coverage for personal injury or bodily harm occurring during the term of the agreement, whensoever a claim is made, in an amount no less than two million dollars (\$2,000,000.00) per occurrence, and shall insure against injuries or damages which occur as a result of or in connection with Town's performance under this Agreement. Town shall immediately advise County of any assertion of claim of liability or demand for compensation, or of any litigation that may result in a finding of liability against Town.
9. **Default:** All terms of this Agreement are considered by the parties as material to the Agreement, and breach of any term by a party shall entitle the other, upon seven days notice, to terminate its further responsibilities under the Agreement.
10. **Indemnity:** County shall defend, indemnify and hold harmless Town from any and all claims, actions, damages, and liability associated with personal injury and/or damage to property and/or any other matter arising out of Town's good faith performance of this Agreement.
11. **Modification of Agreement:** This Agreement contains all of the terms and conditions agreed to by the parties concerning the above-described premises. There are no oral terms or conditions agreed to by the parties hereto which are not contained in this written agreement. There shall be no modification of this Agreement unless the modification is in writing and signed by both parties.
12. **Governing Law and Venue:** This Lease shall be governed by and construed in accordance with the laws of the State of North Carolina, and venue of any dispute between the parties shall be in Watauga County, North Carolina.
13. **Execution:** Each of the parties represents and warrants to the other that all necessary authorizations and approvals required for execution and performance of this Lease have been given and that the undersigned individual is duly authorized to execute this Lease and bind the party for which it signs.

14. **Notices:** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered to the following addresses:

If to Town to: Greg Young
Town Manager
Town of Boone
P.O. Drawer 192
Boone, NC 28607

If to County, to: Rocky Nelson
County Manager
Watauga County
814 West King Street, Suite 205
Boone NC 28607

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

VOTE: Aye-All
Nay-None

DEVELOPMENT OF GEOLOGIC HAZARDS MAP

Mr. Harvard Ayers, Chairman, of the Steep Slope and Multi-Family Task Force, appeared before Council to introduce Loren Raymond, ASU Geology Professor and a member of the task force. Mr. Raymond presented the following information:

GEOLOGIC HAZARD ZONE INDICATORS

RED ZONE-Areas of high probability that disturbance of the slope will yield landslides. Zones of probably frequent flooding.

RED ZONE INDICATORS

! Slopes steeper than 50% with any of the following:

- fault zone cataclastic (broken) rocks
- pre-existing landslide deposits
- daylighting fracture sets
- daylighting sedimentary layers (bedding), foliations (metamorphic layering), or other planar structures
- thick soils (>10 feet thick)

! Localized over-steepened slopes (>67%)(over-steepened by natural processes or

previous development)

- ! *Zones of likely debris flow deposition*
- ! *Zones of flooding at intervals of less than 100 years*

ORANGE ZONE-Areas of moderately probability that disturbance of the slope will yield landslides. Zones of likely flooding during greater than 100 year storms.

ORANGE ZONE INDICATORS

- ! *Slopes between 15% and 50% with any of the following:*
 - pre-existing landslide deposits*
 - daylighting fracture sets*
 - daylighting micaceous or clay-rich layers*
 - thick soils (>10 feet thick)*
- ! *Areas with localized over-steepened slopes (>67%)(over-steepened by natural processes or previous development) associated with other Orange Zone indicators*
- ! *Zones of possible debris flow deposition*
- ! *Zones of flooding along the floodway fringe*

GREEN ZONE-Areas of low probability that disturbance of the slope will yield landslides. Zones where flooding is extremely likely.

GREEN ZONE INDICATORS

- ! *Slopes of less than 15% **and***
- ! ***None** of the following:*
 - pre-existing landslide deposits*
 - zones of possible debris flow deposition*
 - zones with evidence of past flooding*

Mr. Raymond said there are three major types of hazards in Boone: 1) landslides, 2) run-off from landslides and 3) flooding above and below the 100-year flood zones. Mr. Raymond said this overlay map would be used for planning purposes and would be easy for the public to understand. Council member Mason questioned if the overlay map will be a part of the final recommendations from the Task Force. Mr. Raymond said yes it will actually reveal hazard areas in Boone. Council member Mason then asked the time frame for completion of the map.

Mr. Raymond said it would probably be complete in two to four months. Council member Mason then asked about the cost of the map. Mr. Raymond said between \$10 to \$20,000. Council member Brantz asked how much area in Boone would encompass the red zone. Mr. Raymond said it is difficult to say now without looking at all of the factors. Council member Pepin said she liked this approach and felt the map needs to be done to coincide with the task force recommendations. Council member Spann wondered what becomes of property located in the red or orange zones. Mr. Raymond said the Task Force would propose regulations for each zone, but that each zone should be subject to professional reviews and a decision-making process, such as the Board of Adjustment. Mayor Clawson thanked all members of the Task Force for their hard work. Council member Spann, seconded by Council member Pepin, moved to develop the geologic hazards map. After some discussion, both withdrew their motion and second. Council member Wilcox made a motion to prepare a request for proposal for a geologic hazards map for the town's jurisdictions. Council member Pepin seconded.

VOTE:Aye-All
Nay-None

CLOSED SESSION

On a motion by Council member Wilcox, seconded by Council member Brantz, Council moved to enter Closed Session at 6:55 p.m., pursuant to NCGS 143-318.11a) 3) in order to discuss firing range constitutionality and to discuss legal issues regarding Rivers Street.

VOTE:Aye-All
Nay-None

On a motion by Council member Wilcox, seconded by Council member Mason, Council moved to exit Closed Session at 7:38 p.m.

VOTE:Aye-All
Nay-None

ADOPTION OF ZONING AMENDMENTS

Development Services Director John Spear explained the new regulations regarding adoption of zoning amendments to which three motions must be made regarding each amendment.

Case 20060040 - The Boone Town Council has proposed an ordinance providing for the extension of the twelve month moratorium (RZ2005-5) on the issuance of building, zoning or special use permits for multi-family developments of more than 24 units from February 18, 2006 to May 29, 2006. Development Services Director Spear said the Planning Commission voted to recommend approval of the text amendment, with a 6 to 2 vote.

On a motion by Council member Mason, seconded by Council member Brantz, Council moved that the application is consistent with all objectives and policies for growth and development of the 1993 Boone Comprehensive Plan.

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

On a motion by Council member Mason, seconded by Council member Spann, Council moved to find that this application is both reasonable and in the public interest for the following reason:

! To allow time for recommendations from the Steep Slope & Multi-Family Task Force.

Before voting, Council member Wilcox voiced that it is unreasonable to have a moratorium in effect all over town, while waiting for recommendations from the Steep Slope & Multi-Family Task Force.

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

On a motion by Council member Mason, seconded by Council member Brantz, Council moved to approve the zoning text amendment and to adopt the following ordinance:

(INSERT ORDINANCE)
(ORDINANCE TO BE TYPED IN BOOK 3, PAGES _____)

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

Case 2006041 - The Boone Town Council has initiated text amendments providing for placement and performance standards for indoor shooting ranges. Development Services Director Spear said the Planning Commission unanimously recommended approval of the text amendments. Council member Spann felt this amendment sets a high threshold for potential indoor shooting ranges and that public safety concerns will be met. Council member Mason agreed.

On a motion by Council member Mason, seconded by Council member Wilcox, Council moved that the application is consistent with all objectives and policies for growth and development of the 1993 Boone Comprehensive Plan.

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

On a motion by Council member Mason, seconded by Council member Spann, Council moved to

find that this application is both reasonable and in the public interest for the following reason:

! That all public safety concerns have been satisfied and that the right to bear arms is protected constitutionally.

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

On a motion by Council member Mason, seconded by Council member Spann, Council moved to adopt the following zoning text amendment:

*! Adding Use Description 6.140 "Indoor shooting range" to the current table of permitted uses:
! Renumbering UDO Sections 193 through 198 as UDO Section 193[a]-[f].
! Adding a new Section 194, "Indoor Shooting Ranges," as follows:*

Section 194. Indoor Shooting Ranges

[a] No indoor shooting range may be authorized or permitted under this section unless it also meets all requirements imposed by Section 130.01 of the Town of Boone Municipal Code.

[b] Noise. The sound level for all indoor shooting ranges must be controlled in such way that there is no sound emanating from any activities within the building in which the range is located that are audible to the human ear of a person of normal hearing at any border of the tax parcel upon which the range is located, as shown on the tax maps of the Watauga County Tax Administrator.

[1] If the administrator receives noise complaints from two or more individuals within a 30-day period alleging that activities within the indoor shooting range are producing noise levels in violation of this section, the administrator will perform a minimum of two site inspections on separate occasions. If the administrator concurs with the complainants that the indoor use has caused or is causing continuous, frequent or repetitive noise, that use will be found to be in violation of this ordinance.

[c] Odors. No indoor shooting range may emit any continuous, frequent or repetitive odor, or any odor-causing substance or compound which is detectable beyond the lot line of the property on which the use is located.

[1] For the purposes of establishing initial compliance with this section, the existence of an odor will be presumed when the lowest mean concentration of the odor-causing substance or compound in the air exceeds published odor threshold values. In order to demonstrate initial compliance with this section, an odor assessment which accurately represents the concentrations of odor-causing substances or compounds present at the property boundary may be required by the permit issuing authority. The assessment must adequately reflect the emission rates of the proposed use, source heights, receptor distance from the source and

the effects of buildings, terrain features and other relevant environmental considerations.

- [2] *For the purposes of maintaining continuous compliance with this section, odor assessments involving field sampling may be required by the administrator even after a special use permit has been granted.*
- [3] *If the administrator receives odor complaints from two or more individuals within a 30-day period alleging that a use is in violation of this section, the administrator will perform a minimum of two site inspections on separate occasions. If the administrator concurs with the complainants that a use has caused continuous, frequent or repetitive odors, that use will be found to be in violation of this ordinance.*

[d] *Construction Standards.*

- [1] *Any building in which an indoor shooting range is proposed or operated must meet accepted national standards for the design and construction of an indoor shooting range, and must be designed and constructed in such a way as to eliminate any significant risk of injury to a patron of the range, or a member of the public either inside or outside the range, during the normal operation and use of the range. Such design and construction in accordance with these standards must be certified by a professional architect and/or professional engineer, who must be licensed by the State of North Carolina and in good standing, and who must be experienced or specifically trained, and skilled, in the design and construction, respectively, of indoor shooting ranges.*
- [2] *An indoor shooting range must be constructed and maintained in such way that the structure will contain within the portion(s) of the building in which firearms are discharged, a fired projectile with the greatest structure-penetrating characteristics which is proposed to be fired within the range. Such construction in accordance with this standard must be certified by a professional architect and/or professional engineer, licensed by the State of North Carolina and in good standing, who is experienced or specifically trained, and skilled, in the construction of indoor shooting ranges.*

[e] *Emissions.*

- [1] *Any building in which an indoor shooting range is proposed or operated must be designed and constructed in such way that no lead or other toxic particulate will leave the structure itself or the portion(s) of the structure used for the discharge of firearms. Such design and construction in accordance with this standard must be certified by both a professional architect and professional engineer, each of whom must be licensed by the State of North Carolina and in good standing, and each of whom must be experienced or specifically trained, and skilled, in the design and construction, respectively, of toxin collection systems for indoor*

shooting ranges. In addition, the applicant for a special use permit must provide manufacturing information which affirmatively demonstrates that the toxin collection system(s) to be used will meet this standard.

[2] *For the purposes of maintaining continuous compliance with this section, emissions assessments involving field sampling at the owner's expense may be required by the administrator on repeated occasions, and the owner of the property shall comply with any such requests. In addition, the administrator insure that this standard is continuously met, obtain testing samples from inside and/or outside the indoor shooting range, to measure compliance. The owner and operator of an indoor shooting range must fully comply with requirements and recommendations of the manufacturer of the toxin collection system(s).*

[f] *When a shooting range is proposed for a particular property, other uses proposed for the same property or application should be closely scrutinized for compatibility, the Town ordinarily disfavoring the combination of an indoor shooting range and other activities designed to attract persons to the property other than those attending the shooting range.*

[g] *Violation of any of the provisions of this Section, once an indoor shooting range has been issued a special use permit and/or certificate of occupancy, if it involves regulations designed to protect the health or safety of the public, as determined by the Administrator, shall give rise to an immediate suspension of the special use permit and/or certificate of occupancy, and, following notice and an opportunity for a hearing in accordance with this ordinance, permanent revocation of the special use permit and/or certificate of occupancy.*

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

Case 2006042 - The Boone Town Council has initiated text amendments providing for the protection of trees on land with certain commercial zoning designations. Development Services Director Spear said the Planning Commission unanimously recommended approval of the text amendment.

On a motion by Council member Mason, seconded by Council member Brantz, Council moved that the application is consistent with all objectives and policies for growth and development of the 1993 Boone Comprehensive Plan.

VOTE: Aye-All
Nay-None

On a motion by Council member Mason, seconded by Council member Brantz, Council moved to find that this application is both reasonable and in the public interest for the following reasons:
! To further clarify the language for tree removal.

VOTE: Aye-All
Nay-None

On a motion by Council member Mason, seconded by Council member Pepin, Council moved to adopt the following zoning text amendment:

Section 358. The Purpose and Intent

[c] The provisions of this Article and Appendix B of this ordinance shall apply to all commercially developed land and all land within the following commercial zoning districts: R-3, M-H, O/I, B-1, B-2, B-3, and M-1, unless the property is excluded from municipal regulation pursuant to NCGS 160A-458.5 (b.).

VOTE:Aye-All

Nay-None

Case 20060043 - The Boone Town Council has initiated text amendments providing for commercial community event signs and providing for farmers market signs. Development Services Director Spear said the Planning Commission unanimously recommended approval of the text amendment. Council member Wilcox requested that the amendment be split because of concerns he has about the commercial community events signs. Development Services Director Spear said the amendment can be split, but no language may be added to the amendment. Council member Wilcox felt that Council is continuing to erode the sign ordinance and that it will be very difficult to differentiate between commercial events in the future. Town Attorney Sam Furgiuele said Council could table the matter and discuss it next month since there are 60 days to act on the amendment. After little discussion on a motion by Council member Wilcox, seconded by Council member Pepin, Council moved to table this matter until the March 16, 2006, Council meeting.

VOTE:Aye-All

Nay-None

ADDITION OF POWELL BILL MAP - RIVERS STREET

Public Services Director Blake Brown said he received a proposal from the NC Department of Transportation to allow the Town of Boone to assume maintenance of and responsibility for Rivers Street (from Hardin Street to Water Street). Mr. Brown reported that the Town would receive an additional \$1,500 a year in Powell Bill funds. Mr. Brown also reported that it would cost approximately \$332,475 to resurface Rivers Street, but that the street would not need resurfacing for another 10 years. After little discussion, on a motion by Council member Pepin, seconded by Council member Wilcox, Council moved to table action on this item until the March 16, 2006, meeting.

VOTE:Aye-All

Nay-None

Mayor Clawson declared a break at 8:02 p.m. Council reconvened at 8:14 p.m.

PRESENTATION OF FINAL PLANS & SPECIFICATIONS - HOWARD STREET

Mr. Brian Tripp, Project Engineer with W.K. Dickson appeared before Council to present the final plans and specifications for the Howard Street project. **(Powerpoint presentation on permanent file with February, 2006 Council meeting.)** Mr. Tripp presented the reasons for the Howard Street improvements and estimated the project would cost about \$4.2 million. Mr. Tripp estimated that \$1.8 million will be the actual construction costs and \$1.1 million will be the cost for New River Light & Power to bury electrical lines. The remaining \$1.3 million will be geared to contingency costs and BellSouth and Charter Communication costs to bury their utilities. Council member Mason questioned why New River's estimate has more than doubled, from the original \$475,000 estimate. Mr. Tripp said he was not sure but that it was probably related to the costs of materials. Council member Mason then asked if the construction estimate includes water and sewer services, stormwater retention, benches, lighting, etc. Mr. Tripp said yes. Council member Pepin reiterated the concern about the New River cost increase. Town Manager Greg Young said that he and Mr. Tripp would investigate the cost increase. Town Manager Young said the next step is for the Town Attorney to review survey data so that easements can be prepared. The easements will then be sent to the DBDA for negotiation of execution. Once easements are signed, the Local Government Commission will be contacted to begin the bond referendum process.

APPOINTMENT OF TREE BOARD ALTERNATES

On a motion by Council member Brantz, seconded by Council member Mason, Council moved to appoint Chad Michael and Ane Gade as alternate members of the Tree Board. Their terms will expire 2/16/07.

VOTE: Aye-All
Nay-None

JONES HOUSE BOARD APPOINTMENTS

On a motion by Council member Brantz, seconded by Council member Mason, Council moved to appoint Shelby Lane, April Sauls and Helen Taulman to a three-year term on the Jones House Advisory Board. Their terms will expire 2/28/09.

VOTE: Aye-All
Nay-None

BOARD OF ADJUSTMENT NOMINATIONS

On a motion by Council member Pepin, seconded by Council member Brantz, Council moved to appoint Louise Miller as an alternate in-town member of the Board of Adjustment. Her term will

expire 6/30/07.

VOTE: Aye-All

Nay-None

ADOPTION OF ORDINANCE AMENDMENT - REVISION TO ORDINANCE 05-01

Town Attorney Sam Furgiuele drafted this amendment because the current ordinance allows for only a one-year vested water rights, with one additional year granted if availability fees are paid. For example, a developer could have a 5-year vested construction right, but only a 2-year vested water right. Council discussed at length the proposed amendment. Town Attorney Furgiuele felt that the Town would have to allow alternative water sources unless it is flexible with the water rights and that this amendment will allow for that flexibility. Council member Wilcox agreed and said it is very unusual for developers not to follow through on proposed projects. On a motion by Council member Brantz, seconded by Council member Pepin, Council moved to adopt the following ordinance amendment:

5. *Any applicant granted the right to connect to the Town's water distribution system, without regard to the calendar year to which the applicant's predicted water usage is attributed, must obtain all needed development permits within one year of the approval by the Town Council or Public Utilities Department of the water application, or said approval will expire and the allocated water usage shall return into the overall water census for redistribution. Upon subsequent action by the Boone Town Council, the approval of a water application may be extended for ~~a second year~~ **an additional period** from the date of the initial approval, whether by the Town Council or staff of the Public Utilities Department, upon payment by the applicant of a non-refundable availability fee in the amount of the normal availability fee established by the Town of Boone Water and Sewer Code for use(s) of the type proposed. **If approved, the additional period shall be no less than one year, but in the case where development rights are vested through the issuance of a zoning permit, special use permit, or the approval of a conditional zoning district, the additional period may be extended and approved for a longer period, so that the resulting water rights and the approved development rights simultaneously expire.** Previously approved requests which have not been connected shall likewise expire within one year of enactment of this ordinance. However, they, too, may be extended for ~~a second year~~ **an additional period** upon payment by the approved applicant of a non-refundable availability fee in the amount of the normal availability fee established by the Town of Boone Water and Sewer Code for use(s) of the type proposed. Without regard to the foregoing, should any applicant whose development project requires a special use permit or zoning permit allow the special use permit or zoning permit to expire, the applicant's water rights will also immediately expire.*

VOTE: Aye-All

Nay-None

MAXIMUM DAILY DEMAND STATUS REPORT

Public Utilities Director Rick Miller presented a chart and report which reflects that the maximum daily demand for water has increased from 1.664 million gallons per day in 1995 to 2.117 million gallons per day in 2005.

MONTHLY WATER USE STATUS REPORT

Public Utilities Director Rick Miller presented the following monthly water use status report:

As requested by Town Council, staff and I have compiled the following information concerning water use for the month of January. The Water Treatment Plant recorded a maximum daily demand of 1.917 million gallons on Thursday, January 19, 2006, and the average daily demand was 1.745 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 228 gallons per day was carried over from 2005 creating a total of 8,787 gallons per day allotment. Since the last Town Council meeting the Public Utilities Department reviewed our records and discovered that eight of the previously approved allocations had not contacted us within the one year period and had not acquired all necessary permits, as required in Ordinance 05-01. These water allocations totaled 16,965 gallons per day. This combined with the 2006 balance, creates a total of 25,752 gallons per day that can be allocated for use in 2006. This amount does not include two previously approved allocations that Council will here during the requested appearances portion on the meeting. The total water allotment remaining for the year 2006 has not broken the sixty percent threshold. All future water service requests in excess of 3000 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 has approved two projects that subtracted from the 2006 allotment.

As you can see in the attached chart, the Public Utilities Department now has 23,202 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	Council Approved	Date	Projected Usage
			Approved Water Connections		
			2006		
		4165	John Cook	May-05	8038
			CataCorner Investments	Jul-05	7296
			CAT Tractor	Oct-05	1107
			2005 Balance Carry Over	Jan-06	228
				Feb-06	16965
Bob Young	Feb-06	450			
Sarvos Properties	Feb-06	2100			
Molecular Toxicology	Feb-06	300			

ADOPTION OF BUDGET AMENDMENTS

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

DESCRIPTION	ACCOUNT #	TO:	FROM:
Gas & Oil - Administration	010-401-000-515100	\$200.00	
Gas & Oil - Finance	010-402-000-515100	200.00	
Gas & Oil - Police Department	010-500-300-515100	22,000.00	
Gas & Oil - Fire Department	010-500-350-515100	12,000.00	
Gas & Oil - Development Services	010-500-360-515100	2,000.00	
Gas & Oil - Street Department	010-600-401-515100	12,500.00	
Gas & Oil - Fleet Maintenance	010-600-404-515100	1,500.00	
Gas & Oil - Facilities Maintenance	010-600-405-515100	13,000.00	
Gas & Oil - Public Utilities	030-700-801-515100	200.00	
Gas & Oil - Water Operations	030-700-802-515100	6,000.00	
Gas & Oil - Sewer Operations	030-700-803-515100	6,000.00	
Gas & Oil - Water Trmt. Plant	030-700-804-515100	200.00	
Gas & Oil - Waste Water Trmt.	030-700-805-515100	200.00	
Approp. Fund Balance - General Fund	010-000-000-499900		\$63,400.00
Appropri. Fund Balance - W & S Fund	030-000-000-499900		12,600.00
Insurance	010-401-000-535101	31,800.00	
Approp. Fund Balance - General Fund	010-000-000-499900		31,800.00
Capital Outlay - Greenway Bridge	010-600-405-574200	39,000.00	
Approp. Fund Balance - General Fund	010-000-000-499900		39,000.00
Information Technologies	010-411-000-549111	12,586.00	
Miscellaneous Supplies - E911	011-500-304-519900	2,500.00	

Contacted Services - E911	011-500-302-577000	2,520.00	
Capital Outlay - Other Equip. E911	011-500-302-574000	3,127.00	
Capital Outlay - Other Equip. E911	011-500-304-574000	2,154.00	
Transfer to General Fund	011-500-302-598010	6,293.00	
Transfer to General Fund	011-500-304-598010	6,293.00	
Transfer from E-911	010-000-000-498011		12,586.00
Telephone Services - E-911	011-500-302-522101		11,940.00
Telephone Services - E-911	011-500-304-522101		10,947.00
Capital Outlay - Automobiles	012-500-303-573100	12,000.00	
Approp. Fund Balance - Narcotics	012-500-303-499900		12,000.00
Rebates & Adjustments - W&S	030-000-000-467103	210,029.00	
Approp. Fund Balance - W&S	030-000-000499900		210,029.00
Laboratory Supplies - Water Trmt.	030-700-804-517202	2,000.00	
Approp. Fund Balance - W&S	030-000-000-499900		2,000.00
Maintenance & Repair - Equipment	030-700-805-525201	12,000.00	
Approp. Fund Balance - W&S	030-000-000-499900		12,000.00

VOTE: Aye-All
Nay-None

SCHEDULING OF SPECIAL MEETING OF WATER COMMITTEE

On a motion by Council member Spann, seconded by Council member Pepin, Council moved to schedule a special meeting of the Water Committee on Wednesday, March 15, 2006 at 5:30 p.m. The location will be determined at a later date.

VOTE: Aye-All
Nay-None

REQUESTED APPEARANCE - MR. WAYNE HAMPTON

Mr. Wayne Hampton appeared before Council to request permission to begin street closing procedures for Sweet Water Drive. Mr. Hampton explained that the street is located off Boone Docks Street and is an abandoned right-of-way that has never been used. Mr. Hampton said the property is overgrown with trees and shrubs and looks bad. Public Services Director Blake

Brown said the Town has no use for the abandoned right-of-way. Mr. Hampton agreed to pay all costs associated with the street closing. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to begin the street closing procedures on Sweet Water Drive.

VOTE: Aye-All

Nay-None

REQUESTED APPEARANCE - MR. CHRIS TURNER

Mr. Chris Turner appeared before Council to present a status report on fare-free transit service in the Town. Mr. Turner said since fare-free transit was introduced in July, 2005, ridership has increased 20.9% to date and has many automobiles off the road during this seven-month period. Mr. Turner thanked Council for this bold, positive move toward promoting alternative transportation and added while there is some additional expense which is not significant. Council member Mason questioned if AppalCART is planning to expand new routes into the Kellwood or Mutton Crossing area. Mr. Turner said he may be able to plan a commuter route to the Kellwood area on a trial basis.

REQUESTED APPEARANCE - MR. KARL SMITH, JR.

Mr. Karl Smith Jr. appeared before Council to request approval of a Special Events Permit for the 4th Annual Big Daddy Rats Memorial Bike and Custom Auto Show. Mr. Smith said he preferred like to have the show on Howard and Depot Streets this year on Saturday, May 27 from 7:30 a.m. until 4:00 p.m. Howard Street would be closed from the Town Hall exit to Waters Street, and Depot Street would be closed from Rivers to King Street. Mr. Smith said he would provide the necessary insurance, but asked if Council would waive a portion of the \$1,500 street closing fee. Mr. Smith said any proceeds from the show would benefit the March of Dimes and area veterans. After some discussion, on a motion by Council member Mason, seconded by Council member Wilcox, Council moved to grant the special events permit and reduce the permit fee to \$1,000.

VOTE: Aye-All

Nay-None

REQUESTED APPEARANCE - BOVIS LEND LEASE & WMC

Town Attorney Sam Furgiuele opened the public hearing at 9:35 p.m. to hear sworn testimony from Justin Rider, Construction Manager for Bovis Lend Lease, and Rick Miller on a sewer request for property located at 140 Mary Street. Mr. Rider reported that the house located at 140 Mary Street is being used as a temporary field office by Bovis while working on construction at Watauga Medical Center, and that he is requesting sewer only since Bovis does not need the water service. Public Utilities Director Rick Miller explained that this house is owned by Watauga Medical Center and was previously used as a construction office receiving sewer

service for free. Once contacted about metering the well, the previous contractor opted not to use the sewer, so the service was disconnected. Council member Brantz asked how much it would cost to connect the water service. Public Utilities Director Miller responded about \$2,000. Council member Brantz then asked how many people will utilize the office. Mr. Rider said three people. Council member Wilcox felt Council should grant the sewer-only request since it is a temporary construction office. Council member Mason disagreed and said Council would be setting a precedent in allowing a sewer only connection since the Water and Sewer Code requires both water and sewer connections in Town. There being no further testimony, the public hearing closed at 9:54 p.m. On a motion by Council member Mason, seconded by Council member Spann, Council moved to deny the sewer-only request.

VOTE: Aye-3 (Brantz, Mason, Spann)
Nay-2 (Pepin, Wilcox)

REQUESTED APPEARANCE - MR. RAY HOWELL

Town Attorney Sam Furgiuele opened the public hearing at 9:55 p.m. to hear sworn testimony from Ray Howell on his request for extension of water rights until December 1, 2009. Mr. Howell testified that he received a special use permit in December, 2004, granting him a five-year vested right for development of the Deer Valley Condo project. Mr. Howell said he has paid \$19,000 in availability fees and would like to have his water rights coincide with the development rights. Mr. Howell said the site for the second phase is graded and utilities are in place, but if the investor-based project is not completed, he would like a refund of his availability fees. Town Attorney Furgiuele asked the date of the December, 2004 Board of Adjustment meeting. Mr. Howell replied December 2, 2004. Council member Pepin questioned how this request related to the previous ordinance amendment. Town Attorney Furgiuele said the ordinance amendment provided Council the flexibility to extend water allocations for additional years. There being no further testimony, the public hearing closed at 10:05 p.m. On a motion by Council member Wilcox, seconded by Council member Mason, Council moved to extend the water rights to Mr. Howell until 12/1/09.

VOTE: Aye-All
Nay-None

REQUESTED APPEARANCE - MR. JOHN GRASINGER

Town Attorney Sam Furgiuele opened the public hearing at 10:07 p.m. to hear sworn testimony from John Grasinger and Rick Miller on Mr. Grasinger's request for extension of water rights until November 3, 2008. Mr. Grasinger said this request was for the Kensington Gate project. Council member Brantz questioned how many units are included in the project. Mr. Grasinger said eight units in each building for a total of 24 units. Public Utilities Director Rick Miller commented that this request is similar to the Howell request. There being no further public testimony, the public hearing closed at 10:10 p.m. On a motion by Council member Mason, seconded by Council member Spann, Council moved to extend the water rights to Mr. Grasinger until November 3, 2008.

VOTE: Aye-All
Nay-None

CLOSED SESSION

On a motion by Council member Wilcox, seconded by Council member Spann, Council moved to enter Closed Session at 10:12 p.m. pursuant to NCGS 143-318.11a(3)7) in order to discuss the following matters:

- ! ASU Violations.
- ! Arch Wireless Property Lease.
- ! Pending Criminal Investigation.
- ! Status Report on Greenway Engineering Contract.

VOTE: Aye-All
Nay-None

On a motion by Council member Mason, seconded by Council member Pepin, Council moved to exit Closed Session at 11:33 p.m.

VOTE: Aye-All
Nay-None

ACTION FOLLOWING CLOSED SESSION - ADOPTION OF ASU AGREEMENT

On a motion by Council member Mason, seconded by Council member Spann, Council moved to adopt the following agreement:

AGREEMENT

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

WITNESSETH

THAT WHEREAS ASU controls certain land and facilities which are owned by the State of North Carolina and served by utilities, including, but not limited to sewer lines, constructed and/or maintained by the Town; and

WHEREAS, The Town desires access to such land and facilities for the purposes herein described; and

WHEREAS, the Town wishes to insure that ASU's connections into the Town sewer

system are fully compatible with the Town's sewer system and the Town's Water and Sewer Use Code, and further wishes to avoid future questions concerning the accuracy of sewer use charges by the Town to ASU; and

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

I. Compatibility of ASU meters with Town Sewer System:

1.0 Within five years from the execution of this Agreement by ASU, ASU will calibrate all of its sewer meters and will replace or repair any meters which are inaccurate to a degree exceeding + or - 4% of the correct reading, and shall replace all sewer meters which do not have the capacity to measure usage in 1,000 gallon increments. Any new meters which are installed by ASU in the future will be compatible with the requirements of the Town of Boone's Water and Sewer Code, including the capacity to be "touch read," and within five years from the execution of this Agreement by ASU, ASU will fit all meters which can be so fit with "touch read" capacity. ASU will confer with appropriate staff of the Town's Public Utilities Department before installation of any new meters so as to determine such compatibility. Any meters which are not presently equipped as touch-read meters will be retro-fitted within five years.

II. Access by Town to ASU lands and facilities

1.0 Grant:

ASU hereby grants permission to the Town to access all ASU lands and facilities served by Town utilities (hereinafter called "Facilities") for the following purposes: installing, inspecting, operating, maintaining, repairing and reconstructing **its** sewer lines, and such pipes, manholes, fittings, fixtures and other accessories as from time to time may be required, together with the full right of access to and egress from said area. (hereinafter referred to collectively as "Town activities").

2.0 Term:

Town shall be permitted access to the Facilities from March 1, 2006 to February 28, 2009, for the purposes stated above. Unless either of the parties notifies the other within thirty days prior to the end of this or subsequent renewal terms of its desire that the Town's access, created hereunder, should terminate, the Agreement will automatically renew for an additional three year period thereafter, according to the same terms and conditions.

3.0 Conditions of Use:

3.1 The Town shall, in all cases except emergencies, notify the ASU Director of Design and Construction or that person's designees (hereinafter referred

to as “Director”) of its plans to access Facilities at least three (3) business days prior to the date on which it engages in activities contemplated by this agreement. For purposes of this agreement, an emergency is a situation or set of facts that would lead a reasonable person to conclude that the condition of the Town’s utilities presents an immediate or imminent threat to public health or safety. In any case of emergency, the Town shall notify the Director or ASU’s Police Department as soon as practicable after Town staff or the Town’s contractor enter upon ASU lands. The Town agrees that except in an emergency, it will not engage in any land disturbance or activities in which fires, flame, weapons or other similarly potentially dangerous equipment or substances are involved without the prior written approval of the Director. Approval will not be unreasonably withheld.

3.2 This license shall establish a presumptive thirty-five (35) foot wide “zone” over and across the real property of the State of North Carolina, straddling existing sewer lines in such locations as lines currently exist, and creating such zones in areas where sewer lines are to be installed or constructed.

3.3 ASU, other than while the lines are under actual construction or repair, shall have the right to use the property of the zone, but shall avoid any use which interferes with or is inconsistent with the use thereof by the Town as provided herein. Among other things, ASU agrees that it will not erect any shed, building, structure or other permanent obstruction within the aforesaid “zone” of established sewer lines, shall not plant trees within the aforesaid zone, and will not construct other utility lines, including but not limited to, electric, gas, telephone, cable, or water lines, within the aforesaid zone without prior written approval by the Town. ASU shall be entitled to landscape the area within the zone with bushes, flowers, grass and/or mulch, so long as the roots from the bushes do not damage the sewer line. Any utility lines currently existing within the aforesaid zone(s) shall either remain where they are, or at the option of ASU, they shall be relocated at the expense of ASU.

4.0 Construction, Maintenance and Damage:

4.1 The Town shall not injure, mar or in any way deface the facilities or any other ASU property except to the extent reasonably necessary to complete the activities involved. If facilities are disturbed, the Town shall restore them to the condition that existed prior to the Town’s activities. All waste resulting from the Town’s activities shall be removed by the Town at its sole cost and expense.

4.2 Placement of equipment and supplies, and other physical arrangements – including, but not limited to, trenching, erection of special platforms, water tanks, scaffolding, rigging, and other apparatus--shall be subject to

the Director's approval except when an emergency exists and the Town is unable to obtain advance approval. However, the Director's approval shall not constitute an opinion or certification as to whether the Town's placement of equipment and supplies, or other physical arrangements, comply with applicable requirements (including, but not limited to, those imposed by the Occupational Safety and Health Act, and implementing regulations). Town shall be responsible to ASU for any damage to the Facilities through construction, maintenance or otherwise. ASU shall not be responsible for damage to or loss of Town's equipment or other property, or for any personal injury, except to the extent permitted and in the manner provided by the North Carolina Tort Claims Act, N.C.G.S. § 143-291, *et seq.*

5.0 ASU Equipment:

The Town shall not use equipment, tools or furnishings located in or about the Facilities, other than its own, without prior written approval of the Director.

6.0 Additional Users:

The license granted under this agreement is non-exclusive. Other events and activities may be held simultaneously in other parts of the Facilities. The Town shall conduct its activities so as to avoid unnecessary interference with such other activities, and ASU shall take necessary action to prevent interference with Town's activities by other licensees or invitees.

7.0 Parking:

The Town shall not place its vehicles or equipment in such way as to unnecessarily interfere with ASU parking facilities, and should there be a need to disrupt or use ASU Parking areas, the Town shall give advance written notification to the Director, describing the location and need for the disruption or use. Should Town personnel simply use ASU parking facilities for parking, they will be subject to rules and regulations then in force, and existing parking facilities shall be open to such traffic as is occasioned by the Town's use of the Facilities at the same costs charged to other visitors who operate motor vehicles on ASU's campus, but ASU shall not be required to hold such parking facilities for the exclusive use of such traffic.

8.0 Insurance:

8.1 Town shall maintain during the term of this agreement, at its own cost and expense, public liability insurance in the minimum limits of ONE MILLION DOLLARS (\$1,000,000.00) for each person injured or killed and not less than ONE MILLION DOLLARS (\$1,000,000.00) for the injury or death of two (2) or more persons in any one occurrence, and

property damage insurance in the sum of not less than ONE MILLION DOLLARS (\$1,000,000.00) for each occurrence. Town shall, at the time of the execution of this agreement or no later than ten (10) days prior to the time for which use is authorized, furnish ASU with a certificate showing that such insurance has been issued and is in full force and effect.

8.2 Town shall maintain at its own cost and expense workers' compensation insurance in the amount required by statute throughout the term of this agreement.

9.0 Emergency Medical Service:

Town shall hire at Town's sole expense, or otherwise make available during its use of the Facilities, emergency medical personnel and equipment appropriate for the nature of the Facilities, its use, and the planned activity.

10.0 Non-assignment:

This agreement shall not be assigned by either party without the prior written consent of the other party. Any attempt to assign this agreement without such consent will render this agreement null and void, and all obligations hereunder shall immediately cease.

11.0 Parties:

The relationship between the parties to this agreement is that of licensor and licensee. This agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, guardians, successors and assigns of the respective parties hereto.

12.0 Choice of Law:

This agreement shall be governed by, and construed in accordance with, the laws of the State of North Carolina.

13.0 Termination/Remedies Cumulative:

13.1 This agreement may be terminated by ASU at its option by giving written notice of termination to the Town if the latter should default in the performance of any obligation or payment of any indebtedness under this agreement.

13.2 The rights and remedies herein granted to ASU in the event of default or breach are cumulative, and the exercise thereof shall be without prejudice to the enforcement of any other right or remedy available in equity or authorized by law or this agreement.

14.0 Force Majeure:

In the event that either party shall be interrupted or delayed in completing performance of its obligations hereunder by an act of God or any other occurrence whatsoever which is beyond the control of the parties hereto, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

15.0 Severability:

In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

16.0 Indemnification:

Town shall indemnify and save harmless ASU and its trustees, agents and employees from all liabilities, losses, costs, damages, claims or causes of action of any kind or nature whatsoever, and expenses arising or claimed to have arisen out of any injuries or damages received or sustained by any person or persons or property, as a result of intentional acts or negligence of Town or its agents, employees, patrons or contractors.

17.0 Waiver:

No covenant or condition of this agreement can be waived except by written consent of the parties hereto. A waiver of any covenant or condition on one occasion shall not be deemed a waiver of said covenant or condition on any subsequent occasion unless such fact is specifically stated in the waiver.

Forbearance or indulgence by ASU in any regard whatsoever shall not constitute a waiver of any covenant or condition to be performed by Town, and, until Town has completely performed all covenants and conditions of this agreement, ASU shall be entitled to invoke any remedy available to ASU under this agreement or any law or equity despite such forbearance or indulgence.

18.0 Entirety of Contract:

This agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to said matter. Each party to this agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not included herein,

and that no other agreement, statement, or promise not contained in this agreement shall be valid or binding.

19.0 Access:

Director and other ASU personnel may enter any area around the Facilities at any time to make inspection or otherwise operate and maintain State-owned property.

21.0 Applicable Laws and Regulations:

Town and ASU mutually agree to comply with all applicable policies, rules and regulations of ASU, and all applicable policies, rules and regulations, ordinances and laws of the Town of Boone, County of Watauga, State of North Carolina and the United States of America, in connection with the Town's use and occupancy of the Facilities. If at any time the uses of the Facilities by Town violate an applicable rule or regulation of ASU or ordinance or laws of the Town of Boone, County of Watauga, State of North Carolina or the United States of America, Town shall either cease and desist from continuing such use or surrender the Facilities forthwith upon demand of the Director. Town shall remove from service upon the request of the Director any volunteer, employee or contractor deemed by the Director to have violated any such rule, regulation, ordinance or law.

22.0 Notices:

All notices, demands and requests to be given or made hereunder shall be given or made in writing and shall be deemed to be properly given or made if sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

Appalachian State University
438 Academy Street
ASU Box 32050
Boone, North Carolina 28608
Attention: Director of Design and Construction
Telephone: (828) 262-7195
Facsimile: (828) 262-7200

As to Town:

Town of Boone
P.O. Drawer 192
Boone, North Carolina 28607
Attention: Town Manager
Telephone: (828) 262-4530
Facsimile: (828) 262-4572

Any such notice, demand or request may also be transmitted to the appropriate above-mentioned party by telegram, telephone or facsimile and shall be deemed to be properly given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing and sent as specified above. Any of such addresses may be changed at any time on written notice of such change sent by United States registered mail, postage prepaid, to the other parties by the party effecting the change.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement.

VOTE: Aye-All
Nay-None

ADJOURNMENT

On a motion by Council member Spann, seconded by Council member Pepin, Council moved to adjourn at 11:35 p.m.

VOTE: Aye-All
Nay-None

Town Clerk

Mayor