

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
JUNE 19, 2008**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, June 19, 2008, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, Janet Pepin, Rennie Brantz, Stephen Phillips, and Liz Aycock. Town Attorney Sam Furguele was also present. Staff members present were Town Manager Greg Young, Town Clerk Freida Van Allen, Assistant to the Town Manager Jim Byrne, Police Chief Bill Post, Fire Chief Reggie Hassler, Finance Director Amy Davis, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Development Services Director John Spear.

TENTATIVE AGENDA ADOPTION

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

- Addition of Item 4.J. - Adoption of Resolution - Awarding of Service Weapons.
- Additional application from Danny J. Cecile, Jr., for appointment to Planning Commission or Board of Adjustment. - Item 5. D. or F.
- Deletion of Item 5.J. - Hydraulic Modeling Proposal.
- Addition of Item 5.O. - Adoption of Contract with WK Dickson for Environmental Assessment.
- Addition of Item 5.P. - Cable TV Advisory Committee Appointments.
- Addition of Item 5.Q - Adoption of Code Amendments regarding board appointment procedures and approval of new board application.
- Addition of Item 5.R - Accept dedication of alleyway.
- Addition of two items to Closed Session.
 - 143-318.11a)5) - Property Acquisition - Howard Street.
 - 143-318.11a)6) - Personnel Matters.

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

Minutes: May 2, 2008 - Special Meeting.
 May 8, 2008 - Quarterly Public Hearing.
 May 15, 2008 - Regular Meeting.
 May 27, 2008 - Special Meeting.

Tax Releases & Refunds: March, April & May 2008.

TAX RELEASES MARCH 2008

Taxpayer	Year	Amount	Description
ENTERPRISE LEASING CO SE	2007	64.64	RENTAL
HIGH COUNTRY COUNCIL OF GOVERNMENTS	2007	179.68	EXEMPT
COUNCILL, JAMES EDWARD	2007	28.86	SOLD VEHICLE
STALLINGS, ELIZABETH LEMASTER	2007	1.42	INCORRECT BILL
HORINE, LAWRENCE E. AND MARY	2007	18.26	ADJ FOR BILL OF SALE
EVERGREEN PROPERTIES OF THE SOUTHEAST	2007	1.85	TURN IN TAG
QUAMME, CLAYTON ROLF	2007	15.01	TURN IN TAG
JONES, ADAM DREW	2007	18.04	TURN IN TAG
JOHNSON, BETTIE BROCK	2007	13.25	INCORRECT SITUS
JOHNSON, BETTIE BROCK	2007	7.81	INCORRECT SITUS
HILL, ROBERT WALLACE	2007	68.52	LIVES IN BOONE FIRE NOT TOB
STEWART, DIANE DUNCAN	2007	16.76	LIVES IN GASTON CO.
MCKAIG, FREDERICK THOMAS	2007	23.90	INCORRECT FIRE DISTRICT

		458.00	
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**TAX REFUNDS
MARCH 2008**

Taxpayer	Year	Amount	Description
ROBERTSON, BRYAN KENNETH	2007	3.74	TURN IN TAG
GATES, WILLIS COWAN GATES, GRACE HARRIS	2007	10.27	TURN IN TAG
CROOK, KRISTIN	2007	2.59	TURN IN TAG
GOLDEN-FIELDS, COCHETA KAAINA	2007	6.60	TURN IN TAG
STALLINGS, ELIZABETH LEMASTER	2007	28.34	INCORRECT BILL
CHILDERS, EMILY WALLACE CHILDERS, GARY LEE	2007	13.04	TURN IN TAG
		64.58	

**TAX RELEASES
APRIL 2008**

Taxpayer	Year	Amount	Description
DENNET, THOMAS RUSSELL	2007	48.10	ADJ FOR BILL OF SALE
RANDALL, RICHARD RHODES	2007	14.21	ADJ FOR BILL OF SALE
BAR-B FARMS	2007	111.93	BASED ON INCORRECT FIRE DISTRICT
KEPLEY, MICHAEL PAUL	2007	60.57	DOES NOT LIVE IN TOB
THE CHILDRENS COUNCIL OF WATAUGA	2007	34.34	EXEMPT

ROBERTSON, BRETT HAYSE	2007	52.98	SHOULD BE BILLED IN SWAIN CO
SUMMERS, JAMES D SUMMERS, ROSE H	2007	49.15	SOLD VEHICLE TURNED IN THE PLATE
GRIMES, WILLIAM THOMAS	2007	77.33	DOES NOT LIVE IN TOB
		448.61	

**TAX REFUNDS
APRIL 2008**

Taxpayer	Year	Amount	Description
SKYLINE SURVEYORS PA	2007	20.35	COMPANY MERGED IN TO MUNICIPAL ENGINEERING SERVICES
		20.35	

MSD APRIL 2008

Taxpayer	Year	Amount	Description
SKYLINE SURVEYORS	2007	11.55	CO MERGED TO MUNICIPAL ENGINEERING
		11.55	

Approval of Lease Agreement: Watauga County Arts Council.

STATE OF NORTH CAROLINA

LEASE

COUNTY OF WATAUGA

This LEASE is made on the 1st day of July, 2008, by and between the TOWN OF BOONE, (hereinafter referred to as Lessor), and the WATAUGA COUNTY ARTS COUNCIL, (hereinafter referred to as Lessee).

1. **Leased Premises.** The Lessor hereby leases to the Lessee an office in the 2nd floor of the Jones House, said office being the first office to the left of the stairs.

The Lessee also has the right to use the reception area and gallery on the first floor, said use to be in common with others. Gallery exhibits shall be determined and maintained by Lessee.

2. **Term.** The term of this lease shall be one (1) year beginning on July 1, 2008, and end on June 30, 2009.
3. **Rent.** The rent for this term shall be fifty dollars (\$50.00), per month and shall be due by the 1st day of each month.
4. **Hours of Operation.** The Jones House shall operate on the average of 25 hours per week, and the gallery available to the public 20 hours per week, with the exception of 2 weeks when it shall be closed. Those weeks are: One week around the Christmas holiday; and one week independently selected by the Jones House Executive Director. These weeks must be approved and mutually agreed upon by the Jones House Advisory Board and the Arts Council.
5. **Lessee's Care.** The Lessee will commit no act of waste, will take good care of the premises, and will comply with all applicable laws and regulations.
6. **Maintenance and Repairs.** Lessee shall be responsible for any damages caused by its employees, agents or invitees. The Lessor shall be responsible for repairs related to ordinary wear and tear.
7. **Supplies.** The Lessor shall allow the Lessee to use any surplus office equipment the Lessor may have at the Jones House. The Lessee shall be responsible for 1/2 of the supplies and maintenance costs of this equipment.
8. **Assignment of Subletting.** The Lessee shall not assign or sublease the premises without the prior consent of the Lessor.
9. **Alterations.** The Lessee shall not make any alterations, additions, or improvements to the premises without the prior consent of the Lessor.
10. **Utilities.** The Lessee is responsible for paying its phone bill. Lessor shall pay all other utilities.
11. **Personal Property.** The Lessor is not responsible for any personal property located within the Jones House or situated on the grounds of the Jones House.
12. **Default.** If the Lessee defaults in the payment of rent or in the performance of any conditions of this lease, the Lessor may give Lessee written notice of default. If the Lessee does not cure the default within ten (10) days after the giving of

notice, this lease shall terminate, and the Lessee shall at once quit and surrender the premises to the Lessor. If this lease is terminated by the Lessor, it may thereafter resume possession of the premises by any lawful means and remove the Lessee or other occupants and their property.

13. **Governing Law.** This lease shall be governed by and construed in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, the parties hereto executed this lease in duplicate originals, and agree to all the conditions set forth above, the day and year first above written.

TOWN OF BOONE

BY:

Mayor

ATTEST:

Town Clerk

WATAUGA COUNTY ARTS COUNCIL

BY:

President

Approval of Contract: Watauga County Arts Council.

STATE OF NORTH CAROLINA

CONTRACT

COUNTY OF WATAUGA

This contract, made and entered into this the 1st day of July, 2008, by and between the Town of Boone, (hereinafter called "Town"), and the Watauga County Arts Council (hereinafter called "Arts Council").

WITNESSETH:

WHEREAS, the Jones House Advisory Board has recommended to the Boone Town Council that the Town enter into a contract with the Arts Council for the purpose of providing an Executive Director for the Jones House; and

WHEREAS, the Arts Council is willing to provide such a service.

Now, therefore, in consideration of the mutual promises contained herein, as well as other good and valuable consideration flowing between the parties, it is mutually agreed as follows:

1. The Arts Council shall provide an Executive Director and an Administrative Assistant for the Jones House. The Arts Council shall include as part of its personnel committee, one representative of the Town of Boone and one from the Jones House Advisory Board. The purpose of these appointees is to assist the Arts Council in selection and performance appraisal of the Jones House Executive Director and Administrative Assistant. The duties and responsibilities of such personnel shall be as follows:

a. To promote the purpose and goals of the Jones House Community Center which is to provide via the Jones House structure, its grounds, and any additions, a community and cultural center for performances, exhibitions, classes and meetings sponsored by various community organizations.

b. To assist the Jones House Advisory Board in implementing policies and objectives of the Board.

c. The Jones House Executive Director shall:

--Provide administrative support to the Jones House Advisory Board to carry out responsibilities set forth in the Jones House Resolution dated May 27, 1993.

--See that Jones House is made available to the public, 25 hours per week, for meeting space and to keep the gallery open 20 hours per week.

--Oversee facility maintenance - cleanup, etc.

--Schedule Special Events and community groups for maximum use of the house.

--Work with the Advisory Board in developing Annual Budget and Annual plan for the House.

--The Executive Director will employ and supervise part-time help as needed with input from the Personnel Committee.

--Handle other reasonable activities as directed by Jones House Advisory Board.

2. The Town shall pay the Arts Council the sum of \$40,494. for said services, said sum to be paid in twelve equal monthly installments, commencing on July 30, 2008.
3. The Arts Council agrees to help keep the Jones House open for nighttime and weekend events as much as possible.
4. This contract shall terminate on June 30, 2009.

IN WITNESS WHEREOF, the parties hereto have executed this contract the day and first above written.

TOWN OF BOONE

BY:

Mayor

ATTEST:

Town Clerk

WATAUGA COUNTY ARTS COUNCIL

BY:

President

Approval of Contract: Downtown Boone Development Association.

STATE OF NORTH CAROLINA

AGREEMENT

COUNTY OF WATAUGA

THIS AGREEMENT, made and entered into this the 1st day of July 2008, by and between the Town of Boone, hereinafter "Town", and the Downtown Boone Development Association, Inc., hereinafter "DBDA".

WITNESSETH:

WHEREAS, the Town has established a Municipal Service District pursuant to N.C.G.S. 160-535, *et seq.*: and

WHEREAS, the DBDA is a non-profit corporation organized to promote, encourage and assist the revitalization and economic health and stability of the Municipal Service District; and

WHEREAS, the parties hereto desire to enter into an Agreement for the purpose of promoting the economic development of the Municipal Service District.

NOW, THEREFORE, in consideration of the mutual promise contained herein, as well as other good and valuable consideration flowing between the parties, the parties hereto agree to the following terms and consideration.

1. The term of this contract shall begin on July 1, 2008 and shall end on June 30, 2009.
2. The services the DBDA shall provide include, but are not limited to, the following activities within the Municipal Service District.
 - A. Advancing, promoting and marketing the commercial, business, economic, residential and civic development of the Municipal Service District in whatever way and by such means as shall improve orderly growth and development.
 - B. Organizing and operating revolving load funds and facade programs contingent on availability of funds in order to finance physical improvements to structures within the Municipal Service District at a reasonable and economic cost.
 - C. Providing a coordinating service to carry on the revitalization of the Municipal Service District, including the coordination of the efforts of the public and private sectors to render the guidance, expertise planning, support and capital necessary for such revitalization.
 - D. Acting as a real estate clearinghouse in order to match the needs of business ventures with the most appropriate structures available and thereby best utilize the commercial buildings of the Municipal Service District and to increase their occupancy rates.
 - E. Providing a public relations programs for the purpose of retaining presently existing businesses and attracting new businesses to the Municipal Service District.
 - F. Increasing the efficiency of Boone's economy by capitalizing on existing public investments in services and physical improvements and private investments in business, service, and structures.

- G. Improving the quality of life by enhancing the physical, environmental and business conditions in central Boone.
 - H. Generating additional jobs in the Municipal Service District through the expansion of commercial, office and ancillary economic developments.
 - I. Stabilizing the tax base, enhancing property values and promoting retail sales in the Municipal Service District.
 - J. Engaging in or assisting in any “downtown revitalization project” as defined in N.C.G.S. 160A-536.
3. For services rendered by the DBDA pursuant to this Agreement, the Town shall pay to the DBDA the total sum of moneys collected from the Boone Municipal Service District tax for fiscal year 2008-2009, less all expenses the Town incurs collecting said taxes.
 4. The DBDA shall submit to the Town for approval a detailed budget and work plan reflecting the services to be performed on or before April 15, 2009.
 5. This agreement is contingent upon the approval of the DBDA’s budget and work plan by the Boone Town Council.
 6. Funds made available to the DBDA pursuant to this agreement shall be expended only in accordance with applicable federal, state, and local laws.
 7. DBDA shall operate in accordance with generally accepted accounting principals approved by a certified public accountant and the Town’s Finance Officer.
 8. DBDA shall provide the Town with such records, verification of expenditures of funds and such other information pertaining to the duties of the DBDA as requested by the Town.
 9. All records of the DBDA shall be available for inspection by employees or agents of the Town at all times.
 10. DBDA shall provide the Town with an audit of its finances for fiscal year 2007-2008 performed by a certified public accountant on or before October 1, 2008.
 11. DBDA is responsible for all Municipal Service District tax revenue that it receives and spends.
 12. A member of the Boone Town Council shall be an ex-officio member of the DBDA’s Board of Directors.

13. The DBDA shall provide the Town with a progress report on its activities on or before December 31, 2008. This report shall be in a form acceptable to the Town.
14. In the event the DBDA breaches this Agreement and fails to cure any breach promptly upon notice thereof, the Town shall have the right to suspend or terminate the grant of funds in whole or part and declare this agreement terminated. In the event the Town breaches this Agreement and fails to cure any breach promptly upon notice thereof, the DBDA shall have the right to declare this Agreement terminated.
15. If for any reason the Town terminates this Agreement pursuant to Section 14 above, the DBDA agrees to remit forthwith to the Town any Town funds the DBDA then has on hand less any amounts necessary to pay obligations properly incurred by the DBDA pursuant to this agreement.
16. The DBDA shall provide the Town with a final report of its activities for fiscal year 2007-2008 on or before July 31, 2008. This report shall be in a form acceptable to the Town.

IN WITNESS WHEREOF, each party hereto has caused this agreement to be signed in its corporate name by its duly authorized representatives, and its seal to be hereunto affixed by authority of its governing board, the day and year first above written.

The Town of Boone

The Downtown Boone Development Association, Inc.

By: _____
Mayor

By: _____
President

Attest: _____
Town Clerk

Attest: _____
Secretary

Approval of Agreement: School Resource Officer.

**AGREEMENT
between
Watauga County Board of Education
and
Town of Boone
for The Police School Resource Officer Program**

This Agreement, entered into this 19th day of June, 2008, between Watauga County Board of Education, a public body corporate organized and existing under the Constitution and laws of the State of North Carolina, hereinafter referred to as the "School Board," and the Town of Boone, a municipal corporation organized and existing under the laws of the State of North Carolina, through it's Police Department, hereinafter referred to as the "Police Agency,"

Witness that:

The School Board and Police Agency mutually agree as follows:

1. **That the School Board shall:**

- a. Provide funds, not to exceed \$64,467 for services rendered by Police Agency during the term of this agreement, to the Police Agency for providing, through a law enforcement officer employed by Police Agency, those services set forth in this agreement.
- b. Develop desired schedule of work for the School Resource Officer, understanding that the School Resource Officer will comply with the Town of Boone Personnel Policies as a Town of Boone employee.

2. **That the Police Agency shall:**

- a. Cause to be provided for and on behalf of the School Board one school resource officer to carry out the duties and responsibilities listed in this agreement. The School Board or their representatives will approve the officer to be assigned.
- b. Cause to be completed and submitted to the School Board, as requested by the School Board, all students and program records.
- c. The Town of Boone will invoice the School Board on a monthly basis.
- d. Allow full access to the personnel file of the School Resource Officer to the School Board, provided the Resource Officer consents and signs a written release in accordance with N.C.G.S. 160A-168 (c)(6).

3. **Reporting Authority:**

- a. For issues of school policy, the School Resource Officer will follow recommendations and coordinate activities with Watauga High Administration.
- b. For all other law enforcement duties and general supervision as per Town of Boone and Boone Police Department Personnel Policy, the School Resource Officer will report to the Boone Police Department.

4. **This agreement shall remain in effect from July 1, 2008 until June 30, 2009, unless terminated sooner pursuant to Section 9 of this agreement.**

5. **Performance Responsibilities:**

The general duties of the School Resource Officer shall be to protect students, staff, visitors, and property of the school. He/she will investigate criminal activity, assist other law enforcement agencies as requested, assist social services and mental health agencies, patrol areas as directed or needed, and provide police protection to special and athletic events.

He/she will attend required training, assist in medical emergencies, assist counseling staff in crisis intervention and prevention, work in the conflict resolution program, conduct formal and informal counseling, and classroom instruction to students on areas of expertise. The School Resource Officer will take law enforcement action as necessary and notify Watauga High Administration and the Boone Police Department within guidelines of the Boone Police Agency. Appropriate campus officials shall be notified of any law enforcement action by the School Resource Officer in a timely fashion for proper school action related to the offender's behavior.

6. **Prevention:**

- a. Establish positive relationships between the officer and the student population.
- b. Assist other agencies such as social services, mental health and other organizations which provide services and care to school system employees, students, and families.
- c. Receive training in Conflict Resolution and Peer Mediation.
- d. Assist students and teachers through Conflict Resolution classroom activities, assemblies, and informal discussion.
- e. Work with training team to conduct staff development in Conflict Resolution strategies.
- f. Assist in training students in Peer Mediation.

7. **Intervention:**

- a. Identify causes of violence in the schools.
- b. Educate students on legal aspects of violence and criminal behavior.
- c. Investigate criminal activity against property, personnel, students, and visitors.

- d. Provide and/or coordinate law enforcement at school activities.
 - e. Assist local law enforcement authorities in school related matters as requested.
 - f. Serve as liaison between law enforcement and school officials, students, and parents.
 - g. Keep a log of activities relating to class, student, parent contacts.
 - h. Any other duties as assigned by the Boone Police Department.
8. **Critical knowledge, training or certification:**
- a. Basic Law Enforcement training.
 - b. Certified as a North Carolina Law Enforcement Officer sworn by the Boone Police Department.
 - c. General experience in law enforcement with specialized knowledge of and/or experience in dealing with substance abuse, juvenile law, and operating standards of accepted School Resource Officer procedures.
9. **Termination:**

Either party may terminate this agreement without cause on 30 days notice in writing to the other party; further, either party may terminate this agreement immediately for cause, upon giving written notice to the other party, provided such notice is accompanied by a written opinion from the general counsel of the party terminating the agreement stating that it is not legally permissible for that party to continue to substantially comply with this agreement.

Approval of Special Event Permit: 2008 Grandfather Mountain Marathon.

Adoption of Code Amendment: To allow alcoholic beverages to be served at the Jones House Community Center.

CODE AMENDMENT TO §130.20 EXEMPTIONS

§130.20 EXEMPTIONS.

Possession and consumption of malt beverages and/or unfortified wine shall be permitted ~~within~~ at the Jones House Community Center and at Daniel Boone Native Gardens.....

Adoption of Code Amendment: Chapter 93 Noise Control.

CHAPTER 93: NOISE CONTROL

Section

- 93.01 Statement of policy
- 93.02 Noises prohibited
- 93.03 Owner's responsibility
- 93.04 Permit to exceed
- 93.99 Penalty

§ 93.01 STATEMENT OF POLICY.

It shall be unlawful for any person, firm, corporation or other entity to make, allow, or cause to be made any excessive, unreasonable or unusually loud noise, **or** any noise which would annoy or disturb a reasonable person. ~~and about which a complaint is received.~~
Penalty, see § 93.99.

§ 93.02 NOISES PROHIBITED.

The following acts, among others, are declared to be loud and disturbing noises in violation of this chapter, but said enumeration shall not be deemed to be exclusive, namely:

(A) *Horns, signaling devices, etc.* The sounding of any horn or signal device on any automobile, motorcycle, bus, or other vehicle, except as a danger signal, so as to create any unreasonably loud or harsh sound, or the sounding of such device for an unreasonable period of time, or the use of any siren upon any vehicle, other than police, fire or other emergency vehicle or equipment.

(B) *Radios, phonographs, etc.* The using, operating, playing, or permitting to be played, used or operated of any television set, radio receiving set, musical instrument, phonograph, musical instrument or sound amplifying device or other machine or device for the producing or reproducing of sound in such manner or with such volume as to annoy or disturb a reasonable person within his or her temporary or usual place of abode or place of employment, ~~and about which a complaint is received.~~ However, before any establishment located in a general business district, which as part of its business activities presents live performances of music, is penalized under this Chapter, **there must be a complaint made by such person, and the establishment shall be given a warning by the responding law enforcement officer and an opportunity to reduce the volume of the offending sounds.** ~~it shall be warned by a law enforcement officer~~ that the sound is of such volume that it would annoy or disturb a reasonable person and that the sound is, in fact, annoying or disturbing a person within his or her temporary or usual place of abode or place of employment, and it shall be given an opportunity to come into prompt compliance with the noise ordinance.

(C) *Yelling, shouting, etc.* Yelling, shouting, whistling, or singing on the public streets, between the hours of 11:00 p.m. and 6:00 a.m. or at any time or place in such manner as to annoy or disturb a reasonable person within his or her temporary or usual place of abode or place of employment., ~~and about which a complaint is received.~~

(D) Parties. Noise from parties or gatherings of people in the vicinity of residential areas especially between the hours of 11:00 p.m. and 6:00 a.m. which is at a level which would annoy or disturb a reasonable person within his or her place of abode, including but not limited to noise from loud conversation, drunken conversation, yelling, shouting, singing, music and fireworks.

~~(D)~~(E) *Animals, birds, etc.* Noise from any animal or bird which, by causing frequent, constant or continued noise, would annoy or disturb a reasonable person within his or her temporary or usual place of abode or place of employment. ~~and about which a complaint is received.~~

~~(E)~~(F) *Vehicles.* The use of any automobile, motorcycle, or vehicle so out of repair, so loaded or in such manner as to create grating, grinding, rattling or other noise which would annoy or disturb a reasonable person within his or her temporary or usual place of abode or place of employment. , ~~and about which a complaint is received.~~

~~(F)~~(G) *Loading, unloading, opening boxes.* The creation of noise in connection with loading or unloading any vehicle or the opening and destruction of bales, crates, and containers which would annoy or disturb a reasonable person within his or her temporary or usual place of abode or place of employment. , ~~and about which a complaint is received.~~ No person, firm, corporation or other entity shall load or unload any commercial vehicle between the hours of 11:00 p.m. and 6:00 a.m. if such activity creates noise that is audible from a residence. Penalty, see § 93.99

§ 93.03 OWNER'S RESPONSIBILITY.

The owner of every premises shall be responsible and liable for the actions of his or her ~~tenants and their~~ guests **at the premises** when such actions violate this chapter. **Unless the owner of the premises where an action in violation of this chapter occurs has provided in a lease that an offending tenants at such premises shall refrain from activities which violate this ordinance, the owner of the premises shall be responsible and liable for the actions of his or her tenants and their guests at the premises when such actions violate this chapter.** This shall in no way relieve **an owner's guests or a tenant or a tenant's** ~~such tenants or their~~ guests from liability for any violations of this chapter. Penalty, see § 93.99

§ 93.04 PERMIT TO EXCEED.

A person, firm, corporation or other entity shall be exempt from the provisions of §§ 93.01 and 93.02 hereof upon obtaining a “Permit to Exceed” from the town. With a permit to exceed, the maximum allowable sound levels are set forth in division (F) below. On an annual basis, the Town shall notify any establishment located in a general business district within the Town of Boone, which as part of its business activities presents live performances of music, of the requirements of this Chapter and of the availability of “permits to exceed.”

(A) *Action by the Town Manager.* The Town Manager or his/her designee shall act upon all applications for permits to exceed. In considering and acting upon such application, the Town Manager shall consider, but shall not be limited to, the following:

- (1) The nature of the requested activity;
- (2) The previous experience with the applicant;
- (3) The time of the event;
- (4) The location of the event;
- (5) Other activities in the vicinity of the proposed location;
- (6) The effect of the activity on any adjacent residential property.

(B) *Application and permit fee.* An application for a permit to exceed, on a form provided by the Town and fully completed by the applicant, must be submitted to the Town at least 48 hours prior to the event for which such permit is needed. A non-refundable processing fee in the amount of \$15 must be paid at the time the application is submitted.

(C) *Security deposit.* A deposit in an amount up to \$500.00, as set by the Town Manager, must be paid at the time an application for a permit to exceed is submitted. The purpose of this deposit is to secure the compliance of the party requesting the permit to exceed with the conditions included in the permit. Upon the satisfaction of all of the conditions of the permit to exceed, said deposit shall be promptly refunded to the applicant. Should the applicant fail to comply with the conditions of the permit, the security deposit shall be forfeited.

(D) *Conditions of permits.* A permit to exceed shall specify the date, time period and location to which it applies. The permit shall also prescribe the conditions necessary to minimize the adverse effects the event may have upon the community or surrounding neighborhoods. The Town Manager may require, but shall not be limited to, the following conditions:

- (1) That permit holders place sound speaker in such manner as to minimize any disturbance;

(2) That permit holders will change the arrangement of the amplifying equipment or sound instruments upon the request of the Police Department so as to minimize the disturbance to others resulting from the position or orientation of said amplifying equipment;

(3) That adequate provisions be made to ensure the proper cleanup of any litter resulting from the event;

(4) That if over 50 people attend the event for which the permit to exceed was obtained, adequate private security shall be provided for the purpose of crowd and traffic-control. The adequacy of such private security may be determined by the Police Department if so requested by the Town Manager or his/her designee.

(E) *Limit on permits.* All permits to exceed shall be subject to the following limitations:

(1) Permits will only be granted for temporary purposes not to exceed eight continuous hours at any one time period;

(2) Unless the applicant is an establishment located in a general business district within the Town of Boone, which as part of its business activities presents live performances of music, no more than two permits shall be allowed per address (person or group of persons) during any six-month period. January 1 through June 30 shall constitute one six-month period. July 1 through December 31 shall constitute the second six-month period;

(3) No permit shall be granted for the time period between 1:00 a.m. - 10:00 a.m.

(F) *Maximum sound level.* Except as allowed in Table 2 below, no person, corporation or other entity shall create, generate or produce, directly or indirectly, sound in such a manner as to create a sound level which at its peak exceeds the limits set forth in Table 1 when measured at or beyond the property line of the property from which the sound originates. For purposes of measurement, the back of the curb, the outside edges of driveways, fences, hedges, or other physical features commonly associated with property boundaries are presumed to be at a point which is at or beyond the property line.

TABLE 1 - SOUND LEVELS

<i>Time</i>	<i>Sound Level Limit dB(A)</i>
10:00 a.m. - 11:00 p.m.	75 dB(A)
11:00 p.m. - 10:00 a.m.	60 dB(A)

Sound levels in excess of the limits established in Table 1 may be permitted as follows:

TABLE 2 - SOUND LEVELS

<i>Time</i>	<i>Sound Level Limit dB(A)</i>
Friday evening (5:00 p.m. - 11:00 p.m.)	85 dB(A)
Saturday* (10:00 a.m. - 12:00 midnight)	85 dB(A)

* The designation “Saturday” includes all holidays observed by the town.

(G) *Cooperation.* Permit holder(s) shall agree to cooperate with the Police Department in enforcing the noise ordinance by having the signer(s) of the permit available at the site of the event during the entire time period for which a permit has been issued and capable of assisting the police in enforcing the noise ordinance.

(H) *Enforcement.*

(1) The permit to exceed shall be revoked and/or the security deposit forfeited if:

(a) The signer(s) of the permit fails to be present during the entire time period for which the permit has been issued; or

(b) The signer(s) of the permit fails or refuses to assist the police in enforcing this chapter; or

(c) Sound is created, generated or produced, directly or indirectly by the permitted activity, that exceeds the limits set forth in division (F) above or the permit, whichever is less; or

(d) The signer(s) of the permit fails to comply with any of the conditions of the permit to exceed.

(2) Once the permit to exceed has been revoked, the provisions of §§ 93.01 and 93.02 shall immediately apply.

(I) *Limitation on provisions.* The provisions of this § 93.04 apply ONLY when a person, firm, corporation or other entity has obtained a permit to exceed, and ONLY on the date and during the time period set forth in said permit. The provisions of §§ 93.01 and 93.02 apply at all other times.

Penalty, see § 93.99

§ 93.99 PENALTY.

(A) **Except when liability is vicarious, violation of this chapter shall subject the offender to a civil penalty in the amount of \$100 for the first offense, to be recovered by the town. A second violation in any rolling twelve month period shall subject the offender to a civil penalty in the amount of \$200.00, and each subsequent violation in any rolling twelve month period shall result in the assessment of a \$500.00 civil penalty. When liability is vicarious, the owner of the premises shall first be issued a written warning, and a second violation and subsequent violations shall result in civil penalties as for first, second and subsequent violations by a perpetrator of a violation.** Violators shall be issued written notice of the violation which must be paid within thirty days after the receipt of said notice. If the violator does not pay the penalty within thirty days, the town may recover such penalty, and all subsequently accruing penalties, in a civil action. In the event that it is necessary for the town to institute a civil action to collect such penalty, the violator shall be responsible for all court costs and attorney's fees incurred by the town. **A person committing a third violation of this Chapter during any rolling twelve month period shall also be guilty of a Class 3 misdemeanor and shall be fined not more than five hundred dollars (\$500.00), in accordance with N.C. Gen. Stat. § 14-4.**

Adoption of Resolution:

Awarding service weapons.

RESOLUTION

The members of the Boone Town Council, meeting in regular session on June 19, 2008, do hereby adopt and pass the following resolution:

WHEREAS, the following persons have served the citizens of the Town of Boone for a number of years:

Phyllis Denney, Master Police Officer and Program Coordinator II, 30 years
William Greene, Captain of Detective Division, 28 years
James Harrison, Detective Sergeant, 17 years
Mike Norris, Lieutenant of Patrol Division, 24 years
Johnny Reese, Lieutenant of Patrol Division, 28 years

WHEREAS, each of these Officers will be retiring within the year after serving as leaders in the Boone Police Department in an exemplary fashion; and

WHEREAS, their contributions in the service of Boone and its citizens will always be appreciated;

NOW, THEREFORE, BE IT RESOLVED, that each of the Officers shall be awarded his or her Police badge and service weapon as follows:

Phyllis Denney	Beretta 9000S 40 Caliber	Serial #003004
William Greene	Beretta 96FS 40 Caliber	Serial #BER024668M
James Harrison	Beretta 96FS 40 Caliber	Serial #BER382525
Mike Norris	Beretta 96FS 40 Caliber	Serial #BER382497
Johnny Reese	Beretta 96FS 40 Caliber	Serial #BER382515

Furthermore, a copy of this Resolution shall be given to each of the abovementioned Officers.

Adopted this the 19th day of June, 2008.

Loretta Clawson, Mayor

ATTEST:

Freida Van Allen, Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 60)

VOTE: Aye-All
Nay-None

ADOPTION OF FY2008/2009 BUDGET ORDINANCE

Stephen LaPointe of the Watauga County Rescue Squad appeared before Council to request funding for fiscal year 2008/2009. Mr. LaPointe explained that the Rescue Squad realized yesterday that funding had not been allocated for fiscal year 2008/2009. Mr. LaPointe requested \$16,000 and said it is important that the Rescue Squad receive funding from the Town. Council member Aycock explained the outside agency funding allocation process. Council member Mason made a motion to allow the Rescue Squad to complete an application for fiscal year 2008/2009 funding and to ensure that the application be reviewed by the Outside Agency Funding Committee. The application is due by June 30, 2008. Council member Brantz seconded.

VOTE: Aye-All
Nay-None

Town Manager Greg Young presented the final fund totals for the budget. On a motion by Council member Brantz, seconded by Council member Pepin, Council moved to adopt the following ordinance:

ORDINANCE #08-04

**TOWN OF BOONE, NORTH CAROLINA
2008-2009 BUDGET ORDINANCE**

BE IT ORDAINED by the Town Council of the Town of Boone, North Carolina that:

SECTION 1: It is established that the following revenues will be available in each fund listed for the operation of the Town of Boone government and its activities for the fiscal year beginning July 1, 2008 and ending June 30, 2009.

GENERAL FUND	
CURRENT YEAR TAXES	\$
PRIOR YEAR TAXES	\$
TAX PENALTIES & INTEREST	\$
TAX REFUNDS	\$
GROSS RECEIPTS TAX	\$
PRIOR YEAR TAX REFUNDS	\$
LOCAL SALES TAX 1%	\$
LOCAL SALES TAX 1/2% (40)	\$
LOCAL SALES TAX 1/2% (42)	\$
LOCAL SALES TAX 1/2% (44)	\$
BUSINESS LICENSE	\$
ROOM OCCUPANCY TAX	\$
ROOM OCCUPANCY TAX - ADMIN	\$
CABLEVISION FRANCHISE REVENUE	\$
LOCAL VIDEO PROGRAMMING REVENUE	\$
UTILITIES FRANCHISE TAX	\$
TELECOMMUNICATIONS SALES TAX	\$
BEER & WINE TAX	\$
ABC REVENUES	\$
ABC BOARD - LAW ENFORCEMENT	\$
STATE FUNDS - POWELL BILL	\$
PYMT IN LIEU OF TAXES - APPALACHIAN STUDENT HOUSING	\$
BUILDING & SIGN PERMIT FEES	\$
PARKING VIOLATION PENALTIES	\$
POLICE FEES	\$
SCHOOL RESOURCE OFFICER	\$
FIRE PROTECTION CHARGES - WATAUGA COUNTY	\$
FIRE PROTECTION CHARGES - ASU	\$
FIRE DEPARTMENT - MISC. FEES/PERMITS	\$
INTEREST EARNED ON INVESTMENTS	\$
INTEREST EARNED ON POWELL BILL	\$
LIBRARY LOT PARKING	\$

TRACY CIRCLE PARKING	\$
QUEEN STREET - METERED	\$
JONES HOUSE PARKING	\$
CITY HALL LOT PARKING	\$
QUEEN STREET - LOT	\$30,000

BOOT FEES	\$2,000
PARKING METERS	\$35,000
SALE OF SURPLUS PROPERTY	\$5,000
CONTRIBUTIONS/DONATIONS	\$500
RENTAL INCOME	\$10,000
RENTAL - JONES HOUSE	\$750
MISCELLANEOUS REVENUE	\$40,000
TRANSFER FROM E-911 1	\$17,584
TRANSFER FROM WATER & SEWER FUND (REPAYMENT LAND)	\$45,000
TRANSFER FROM SEPARATION ALLOWANCE TRUST	\$68,461
TRANSFER FROM TOB RURAL FIRE TAX	\$334,900
APPROPRIATED FUND BALANCE	\$564,720

TOTAL GENERAL FUND REVENUE	\$12,326,994
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EMERGENCY TELEPHONE SYSTEM	
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E-911 SERVICE CHARGE	\$160,000
INTEREST EARNED ON INVESTMENTS	\$3,500

TOTAL EMERGENCY TELEPHONE SYSTEM REVENUE	\$163,500
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NARCOTICS ENFORCEMENT	
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APPROPRIATED FUND BALANCE	\$18,000
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TOTAL NARCOTICS ENFORCEMENT	\$18,000
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WATER & SEWER FUND	
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INTEREST EARNED ON INVESTMENTS	\$100,115
WATER SALES	\$2,635,840
SEWER CHARGES	\$2,782,105
WATER - LABOR & MATERIAL CHARGES	\$25,000
SEWER - LABOR & MATERIAL CHARGES	\$15,000
CONNECTION/RECONNECTION/DISCONNECTION FEES	\$11,500
SEPTIC TANK DISCHARGE FEE	\$66,000
SALE OF BIOSOLIDS	\$150
IMPACT/AVAILABILITY FEES - WATER	\$150,000
IMPACT/AVAILABILITY FEES - SEWER	\$150,000

NSF/RETURNED CHECK CHARGES	\$500
METER CHECK/METER RE-READ CHARGES	\$9,000
LATE PAYMENT PENALTIES	\$61,500
MISCELLANEOUS REVENUES	\$10,000
WATER CAPITAL RESERVE CONTRIBUTION	\$93,500
SEWER CAPITAL RESERVE CONTRIBUTION	\$120,000
TOTAL WATER & SEWER FUND REVENUE	\$6,230,210
HEALTH INSURANCE FUND	
INSURANCE REVENUE - RETIREE %	\$25,000
INSURANCE REVENUE - GENERAL FUND TRANS	\$730,000
INSURANCE REVENUE - WATER/SEWER FUND TRANS	\$300,000
INTEREST EARNED ON INVESTMENTS	\$12,500
MISCELLANEOUS REVENUE	\$1,000
TOTAL HEALTH INSURANCE FUND REVENUE	\$1,068,500
MUNICIPAL SERVICE DISTRICT	
CURRENT YEAR TAXES	\$110,834
PRIOR YEAR TAXES	\$350
TAX PENALTIES & INTEREST	\$250
INTEREST EARNED ON INVESTMENTS	\$800
TOTAL MUNICIPAL SERVICE DISTRICT REVENUE	\$112,234
RURAL FIRE SERVICE DISTRICT	
CURRENT YEAR TAXES	\$537,464
PRIOR YEAR TAXES	\$2,000
TAX PENALTIES & INTEREST	\$500
TAX REFUNDS	\$(150)
INTEREST EARNED ON INVESTMENTS	\$4,000
MISCELLANEOUS REVENUE	\$250
TOTAL RURAL FIRE SERVICE DISTRICT	\$544,064
GRAND TOTAL - ALL REVENUE	\$20,463,502

SECTION 2: The following amounts are hereby appropriated in each fund listed for the operation of the Town of Boone government and its activities for the fiscal year beginning July 1, 2008 and ending June 30, 2009.

GENERAL FUND	
GOVERNING BODY	\$97,109
ADMINISTRATION	\$792,471
FINANCE	\$385,706
TAX COLLECTIONS	\$101,494
LEGAL	\$95,200
FIRE STATION # 1	\$23,724
BLOWING ROCK ROAD BUILDING	\$41,250
BROWN BUILDING	\$74,835
JONES HOUSE	\$80,829
TOWN HALL BUILDING	\$64,460
SPECIAL PROGRAMS & PROJECTS	\$1,051,886
SUBSIDIES & ALLOCATIONS	\$115,722
PROFESSIONAL MEMBERSHIPS	\$17,456
GIS	\$153,756
FIRE STATION #2	\$11,240
NON-DEPARTMENTAL/DEBT SERVICE	\$16,017
POLICE DEPARTMENT	\$2,932,229
COMMUNICATIONS	\$467,165
FIRE DEPARTMENT	\$1,361,182
DEVELOPMENT SERVICES DEPARTMENT	\$861,864
PUBLIC SERVICES & ENGINEERING	\$302,373
STREET DEPARTMENT	\$1,237,215
POWELL BILL	\$412,880
FLEET MAINTENANCE	\$310,240
FACILITIES MAINTENANCE	\$1,032,791
SANITATION	\$144,250
RECYCLING	\$141,650
TOTAL GENERAL FUND APPROPRIATIONS	\$12,326,994
EMERGENCY TELEPHONE SYSTEM	
E-911	\$163,500
TOTAL EMERGENCY TELEPHONE SYSTEM APPROPRIATIONS	\$163,500
NARCOTICS ENFORCEMENT DIVISION	
ENFORCEMENT	\$18,000
TOTAL NARCOTICS ENFORCEMENT APPROPRIATIONS	\$18,000

WATER & SEWER FUND	
PUBLIC UTILITIES (ADMIN)	\$289,351
WATER OPERATIONS	\$856,642
SEWER OPERATIONS	\$746,269
WATER TREATMENT PLANT	\$868,614
WASTE WATER TREATMENT PLANT	\$1,322,148
UTILITY BILLING & COLLECTIONS	\$215,105
NON-DEPARTMENTAL/DEBT SERVICE	\$1,932,081
TOTAL WATER & SEWER FUND APPROPRIATIONS	\$6,230,210
HEALTH INSURANCE FUND	
HEALTH INSURANCE	\$1,068,500
TOTAL HEALTH INSURANCE FUND APPROPRIATIONS	\$1,068,500
MUNICIPAL SERVICE DISTRICT	
MUNICIPAL SERVICE DISTRICT	\$112,234
TOTAL MUNICIPAL SERVICE DISTRICT APPROPRIATIONS	\$112,234
RURAL FIRE SERVICE DISTRICT	
RURAL FIRE SERVICE DISTRICT	\$544,064
TOTAL RURAL FIRE SERVICE DISTRICT APPROPRIATIONS	\$544,064
GRAND TOTAL - ALL APPROPRIATIONS	\$20,463,502

SECTION 3: There is hereby levied a tax rate of thirty seven cents (\$0.37) per one hundred dollars (\$100.00) valuation of property as listed for taxes as of January 1, 2008 for the purpose of raising the revenues listed "Current Year Taxes" in the General Fund in Section 1 of this Ordinance. This rate is based on an estimated total valuation of property for the purpose of taxation of \$1,314,727,600 assessment ratio of 100% of the appraised value. The collection rate of 98% is reflected in the budget. The FY 2008- 2009 operating

budget follows the general reappraisal of real property for the Town of Boone.

SECTION 3 (a): There is hereby levied a tax rate of twenty one cents (\$0.21) per one hundred dollars (\$100.00) valuation of property as listed for taxes as of January 1, 2008 for the purpose of raising the revenues listed "Current Year Taxes" in the Downtown Municipal Service District in Section 1 of this Ordinance. This rate is based on an established taxation of \$53,960,400 assessment ratio of 100% of the appraised value. The collection rate of 97.5% is reflected in the budget. The FY 2008-2009 operating budget follows the general reappraisal of real property for the Downtown Municipal Service District.

SECTION 4: The Budget Officer is hereby authorized to transfer appropriations within a Fund as contained herein under the following conditions:

1. He may transfer amounts between objects of expenditure within a Department to a maximum of the budgeted amount per Department. Transfers shall be filed with the Finance Department for public and Town Council inspection. Town Council shall approve transfers in excess of the limitation.
2. He may transfer available funds between departments of the same fund with an official report of such transfer on file with the Finance Department for inspection by the general public and the Town Council.
3. He may not transfer any amounts between Funds.
4. Town Council shall establish, by governing body procedure, the purchasing mechanism for large capital items (e.g. vehicle purchases). Such procedures shall not be in conflict with NCGS 143-1 29.

SECTION 5: The rates for water and sewer shall be established as set forth in Exhibit A, which is an attachment to this Ordinance. These rates will remain in effect until subsequently repealed or modified by the Town Council.

SECTION 6: Copies of this Budget Ordinance shall be furnished to the Finance Director and to the Budget Officer of the Town of Boone to be kept on file by them for their direction in the disbursement of funds.

ADOPTED this the 19th day of June, 2008 by the Town Council of the Town of Boone, North Carolina.

ATTEST:		
	Town Clerk	MAYOR

**TOWN OF BOONE
WATER AND SEWER ORDINANCE
EFFECTIVE 07/01/2008**

<p>Late Penalty Charge: \$10.00 Meter Re-read Charge: \$10.00 Meter Connect/Disconnect/Reconnect (Each): \$20.00 Returned Check Charge: \$25.00 Septic Disposal Fees (Per 100 Gallons): \$7.00 Residential; \$10.00 Commercial Availability Fees (Per Gallon): \$3.75 Water; \$4.50 Sewer</p>
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Deposits (Outside City Limits Deposits are Double Rates Listed Below):	
Residential	\$
Commercial	\$
Construction (Temporary):	
	3/4" \$200.00
	2" or 3" \$800.00

Minimum Fees Each - Water & Sewer:**(Outside City Limits Minimums are Double Rates Listed Below)**

Minimum Residential 3/4" Includes 0 - 1,000 Gallons	\$	14.00
Minimum Residential 3/4" Includes 1,001 - 2,000 Gallons	\$	15.00
Minimum Commercial 3/4" Includes First 2,000 Gallons	\$	20.00
Minimum Commercial 1" Includes First 2,000 Gallons	\$	25.00
Minimum Commercial 1 1/2" Includes First 2,000 Gallons	\$	30.00
Minimum Commercial 2" Includes First 2,000 Gallons	\$	30.00
Minimum Commercial 3" Includes First 2,000 Gallons	\$	40.00
Minimum Commercial 4" Includes First 2,000 Gallons	\$	50.00
Minimum Commercial 6" Includes First 2,000 Gallons	\$	70.00
Minimum Commercial 8" Includes First 2,000 Gallons	\$	90.00

Consumption - Water:**(Outside City Limits Consumption is Double Rates Listed Below)**

2,001 to 4,999 Gallons	\$	5.15
4,999 to 9,999 Gallons	\$	5.40
10,000 to 14,999 Gallons	\$	5.65
15,000 to 19,999 Gallons	\$	5.90
Over 20,000 Gallons	\$	6.15

Consumption - Sewer:**(Outside City Limits Consumption is Double Rates Listed Below)**

Over 2,000 per 1,000 Gallons	\$	4.50
Other - 2 Bedroom Flat Rate (Outside City Limits)	\$	63.60

(ORDINANCE TO BE TYPED IN BOOK 3, PAGES 347-354)

VOTE: Aye-All

Nay-None

ADOPTION OF RESOLUTION - REQUEST FOR MIXED BEVERAGE ELECTION

Council member Phillips presented information from the ABC Task Force, who in conjunction with SPARC, has suggestions for local control once liquor by the drink is implemented. Council member Mason said she plans to support the resolution requesting a mixed beverage election because it is important to let the voters of Boone make the decision. Council agreed. Council member Pepin expressed her concern over the lack of local control measures but agreed that the decision should be left to the voters. Mayor Clawson said she is against liquor by the drink in the Town. On a motion by Council member Brantz, seconded by Council member Aycock, Council moved to adopt the following resolution:

RESOLUTION

WHEREAS, a request has been made to the Town Council to allow the voters of Boone to determine whether the sale of mixed beverages should be allowed in the Town of Boone; and

WHEREAS, the Town Council has been presented with information, both pro and con, regarding the desirability of such sale, including the relative impacts on the Town of the sale of mixed beverages versus the continuation of the State-mandated brown bagging option which currently exists in the Town; and

WHEREAS, representatives of the Boone business and tourism communities have announced their support for a referendum to determine the wishes of the voters of Boone upon this issue; and

WHEREAS, although the members of the Town Council have not collectively taken a position as to whether the sale of mixed drinks in the Town will have a positive or negative impact upon the Town and the preservation of a high quality of life therein; and

WHEREAS, while recognizing that many people living in the Town and County oppose the sale of mixed beverages in the Town, and many people living in the Town and County may support the sale, a majority of the Town Council has concluded that in an effort to conclusively determine the desires of a majority of Boone residents it is in the best interests of the residents of Boone to allow the democratic process to itself determine their wishes and the desirability of mixed beverage sales via a referendum to either allow or prohibit the sale of mixed beverages in hotels, restaurants, private clubs, community theatres and convention centers in the Town of Boone;

THEREFORE, BE IT RESOLVED that the Town Council hereby requests that the Watauga County Board of Election, in accordance with the provisions of N.C. Gen. Stat. §§ 18B-601 and 602, conduct a mixed beverage election within the time frame provided by law.

The Town Clerk is hereby directed to promptly transmit this request, in the form of this resolution, to the Watauga County Board of Elections.

Adopted this 19th day of June, 2008.

Mayor Pro Tem

Attest:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 61)

VOTE: Aye-All

Nay-None

APPROVAL OF AGREEMENT - FLASH FLOOD EQUIPMENT LANDOWNER

Public Services Director Blake Brown said this agreement will allow an early flash flood warning and detection system to be placed near the water intake off Hunting Hills Lane. Council member Pepin asked if the Town would maintain the equipment. Mr. Brown said no. On a motion by Council member Brantz, seconded by Council member Pepin, Council moved to adopt the following agreement, once the Town Attorney includes an indemnification clause.

VOTE: Aye-All

Nay-None

ADOPTION OF CODE AMENDMENT - BOARD APPOINTMENTS

Council member Pepin explained that she, along with Council member Mason, met with Town Attorney Sam Furgiuele, to prepare a code amendment to make the board appointment process clearer. On a motion by Council member Pepin, seconded by Council member Aycock, Council moved to adopt the following code amendment and board application:

§ 30.07 ORDER OF BUSINESS

(H) Items shall be placed on the agenda according to the Order of Business. The Order of Business for each regular meeting shall be, but not limited to, the following: adoption of an agenda (regular and/or consent), approval of the minutes, **announcement of vacancies to boards, commissions, task forces, advisory bodies and committees**, public hearings, administrative reports, committee reports, unfinished business, new business, informal discussion and public comment. . . .

§ 30.51 APPOINTMENTS.

...

(C) The Council shall use the following procedure to appoint individuals to various subordinate boards, ~~and Offices~~ **commissions, task forces, advisory bodies or committees:**

(1) At least two months before any anticipated vacancy on any board, commission, task force, advisory body or committee (the “body”) due to the expiration of a term, the Department Head staffing the body shall notify the Town Clerk of the expected vacancy. For vacancies created by resignation or removal for failed attendance, the Department Head shall notify the Town Clerk as soon as practical.

(2) At least one month before the Town Council meeting when action is to be taken, the Town Clerk shall cause to be published on the Town’s website, and in the Watauga Democrat, the Mountain Times and the High Country Press notice of the vacancies on Town boards, commissions, task forces, advisory bodies and committees for which appointments are contemplated, with the date when action on the appointments is expected. To the extent practical, the Town Clerk shall also seek announcements of such vacancies on WATA radio and WASU.

(3) Any person seeking appointment to a body, including individuals seeking reappointment to the body and student representatives to the body, must complete and submit to the Town Clerk an “Application for Appointment to a Board, Commission, Task Force, Advisory Body or Committee,” on a form approved by the Town Council and available from the Town’s website and the Town Clerk.

(4) The Town Clerk shall include in the “board book” for the meeting where the appointment shall be considered:

- (a) a copy of each application received for the appointment,**
- (b) a current roster of the membership of the body in question, with terms shown, and**
- (c) a copy of the selection criteria, if any, established under State law or Town ordinance, such as the Unified Development Ordinance.**

Should an application be submitted too late for inclusion in the board book, it shall be provided to Council members as part of a “supplemental packet” prior to the beginning of the Council meeting. Unless a person’s application is provided in the board book or supplemental packet, the person shall not be considered for the appointment, but this provision shall not prevent the Town Council from delaying appointment of the position in question until a later meeting.

(5) Unless superceded by State law or otherwise directed by other Town ordinance, people who reside in the Town shall generally be favored for appointment to Town bodies over people who reside outside the Town. Notwithstanding this provision, the Town Council shall strive to appoint at least 25% of the membership of any body from residents of the Town’s Extra Territorial Jurisdiction (“ETJ”). However, when an applicant neither resides in the Town nor ETJ, but has particular skills or experience that make appointment of that applicant desirable, the applicant may nevertheless be appointed.

(6) The Town Council shall generally avoid appointment of any one person to more than two bodies.

(7) Any Council member may request that applicants for a body be present at the Council meeting during which the appointment is expected to be made so that the applicant may be questioned by members of the Council as to the applicant’s qualifications. Even if no such request is made, it shall be proper for Council members to directly contact applicants to discuss the applicant’s interest in and qualification for the appointment.

(8) At the meeting during which an appointment is to be made, ~~(1) The~~ the Mayor shall first open the floor to nominations. Nominations shall be made by Council members from the applicants properly before the Council, but a nomination shall require no “second.” Once all nominations have been made, ~~whereupon~~ the names of ~~possible appointees~~ **nominees shall be put forward by the members and debated. Upon the conclusion of the debate, the Mayor shall propose each name in alphabetical order, **and** the members shall cast their votes.**

~~(2)~~ (9) Each Council member shall be entitled to one vote for each position, and when multiple appointments are made, each member must cast each vote for a different nominee. ~~If only one appointee is to be selected, the V~~oting shall

DO YOU OWN REAL PROPERTY IN THE ETJ: _____

NAME OF BOARD, COMMISSION, TASK FORCE, ADVISORY BODY OR COMMITTEE APPOINTMENT SOUGHT (list one only):

WHY DO YOU WISH TO OBTAIN THIS APPOINTMENT?

ARE YOU FAMILIAR WITH THE TOWN'S 2006 COMPREHENSIVE PLAN? (It can be accessed at www.townofboone.net/departments/development/index.html): _____

RATE YOUR SUPPORT FOR THE 2006 COMPREHENSIVE PLAN (with "1" signifying no support and "10" signifying great support):

1 2 3 4 5 6 7 8 9 10

PLEASE EXPLAIN YOUR LEVEL OF SUPPORT FOR THE COMPREHENSIVE PLAN:

WHAT SKILLS, EDUCATION, TRAINING, EXPERIENCE OR AREA(S) OF EXPERTISE WOULD YOU BRING TO THIS APPOINTMENT? _____

HAVE YOU HAD ISSUES WITH THE TOWN OF BOONE WHICH RELATE TO THE WORK OF THE BODY TO WHICH YOU SEEK APPOINTMENT? IF YES, PLEASE EXPLAIN: _____

DO YOU HAVE ANY KNOWN OR POTENTIAL CONFLICTS OF INTEREST (INCLUDING MEMBERSHIP IN ANY ORGANIZATION, YOUR EMPLOYMENT, AND THE MEMBERSHIPS AND EMPLOYMENT OF ANY FAMILY MEMBER) THAT MIGHT ARISE IF YOU ARE APPOINTED? IF YES, PLEASE EXPLAIN: _____

HAVE YOU EVER BEFORE SERVED ON ANY TOWN BOARD, COMMISSION, TASK FORCE, ADVISORY BODY OR COMMITTEE. IF SO, PLEASE STATE THE NAME OF THE BOARD, COMMISSION, TASK FORCE, ADVISORY BODY OR COMMITTEE, AND THE APPROXIMATE DATES OF SERVICE: _____

IF YOU HAVE PREVIOUSLY SERVED ON A TOWN BOARD, COMMISSION, TASK FORCE, ADVISORY BODY OR COMMITTEE, PLEASE EXPLAIN THE QUALITY OF YOUR EXPERIENCE: _____

I hereby certify that the foregoing answers are true, and that should I be appointed to the board, commission, task force, advisory body or committee, and should a conflict of interest exist or develop with regard to a specific matter, I will disclose the conflict of interest and recuse myself from the deliberations and action involved. Conflicts of interest include, but are not limited to: a direct or indirect financial interest by myself or a member of my family, and other interest which impairs my ability to participate fairly in the deliberations and actions in question.

Signature

Date

VOTE: Aye-All
Nay-None

BOARD OF ADJUSTMENT APPOINTMENTS

On a motion by Council member Pepin, seconded by Council member Phillips, Council moved to table the Board of Adjustment, Community Appearance, Planning Commission and Cable TV appointments until next month in order to allow applicants to apply utilizing the new board application.

VOTE: Aye-All
Nay-None

TRANSPORTATION COMMITTEE RECOMMENDATIONS

Public Services Director Blake Brown presented the following Transportation Committee recommendations:

1. Request that the DOT perform a warrant study at the intersections of Winklers Creek and Deck Hill Roads and Wilson Drive. After some discussion, on a motion by Council member Brantz, seconded by Council member Phillips, Council moved to approve the recommendation.

VOTE: Aye-All
Nay-None

2. Request that the Town change the intersection of King Street and Horn in the West Drive to a "right-in/right-out" intersection. Public Services Director Brown felt that changing

the intersection at this time would affect the Boone Point construction. Mr. Brown said when King Street is widened and a median installed, the safety concern should be alleviated.

3. Request that the Town prohibit left-turns from Grand Boulevard onto King Street. On a motion by Council member Brantz, seconded by Council member Phillips, Council moved to approve the recommendation. Council member Pepin suggested placement of signage before the intersection.

VOTE:Aye-All
Nay-None

4. Request that the DOT install a signalized crosswalk at the intersection of Appalachian and King Street. On a motion by Council member Pepin, seconded by Council member Phillips, Council moved to approve the recommendation.

VOTE:Aye-All
Nay-None

5. Request that the DOT review and make recommendations on all downtown intersections from College to Water Street regarding the installation of pedestrian crosswalks and the widening of left-turn lanes. On a motion by Council member Pepin, seconded by Council member Brantz, Council moved to approve the recommendation.

VOTE:Aye-All
Nay-None

6. Request that the DOT study the four intersections on King Street (from Highway 105 Extension to Grove Street) regarding signalized pedestrian crosswalks, with at least two push-button pedestrian heads for two quadrants of each intersection. On a motion by Council member Pepin, seconded by Council member Brantz, Council moved to approve the recommendation.

VOTE:Aye-All
Nay-None

Council member Brantz felt that the Turchin Center driveway should be “right-in/right out” since making left turns in or out congests traffic on King Street. Council member Aycock felt there are too many signs in Town. Public Services Director Brown said he would call for discussion both issues at the next Transportation Committee meeting and that he would write a letter to the DOT regarding the above recommendations. Mr. Brown said he hopes that a closed loop system will be installed on King Street in the near future.

APPROVAL OF “WALK BOONE” PROGRAM

Alternative Transportation Committee member Jennifer Bryan Greene showed a powerpoint display of the **Walk Boone** program which is to promote pedestrian safety and activity in the Town of Boone (**The powerpoint display and Walk Boone program is permanently on file**). Ms. Greene presented the following objectives and recommendations:

Objectives:

1. *To promote pedestrian activity in the local area.*

2. *To increase pedestrian activity in the local area.*
3. *To increase pedestrian safety in the local area.*
4. *To further enhance pedestrian infrastructure in the Town of Boone.*
5. *To decrease traffic congestion within the Town of Boone.*
6. *To recognize and promote healthier lifestyles.*
7. *To recognize the importance of walkable communities and the impact that it has on transportation, the environment, and the economy.*
8. *To open dialogue with other agencies regarding pedestrian activity in the area.*
9. *To recognize the importance of pedestrian facility planning.*

In order to reach these objectives, the Alternative Transportation Subcommittee makes the following recommendations:

Recommendations:

1. *Request that the Transportation Committee formulate and present to Town Council a Pedestrian Safety Action Plan for adoption.*
2. *Request that the Town of Boone Department of Public Works perform an initial evaluation of Town maintained pedestrian infrastructure for deficiencies.*
3. *Request that after the initial evaluation of Town maintained infrastructure, that the Department of Public Works perform an annual inspection to keep pedestrian infrastructure in good order.*
4. *Direct appropriate Town staff and/or Town Committee to enter into discussion with NC DOT regarding the amount and quality of NC DOT maintained pedestrian infrastructure in the Town of Boone.*
5. *Request that the Boone Police Department continue with enforcement of traffic violations as described in the **Walk Boone** program proposal.*
6. *Request that the Town of Boone set aside funding and research additional funding options for the creation and distribution of maps.*
7. *Request that Boone Town Council and/or appropriate Town Committees utilize media outlets on a regular basis for the promotion of **Walk Boone**.*
8. *Request that Town Council authorize and direct the Alternative Transportation Subcommittee to follow up on recommendations for Educational Opportunities. There will be an annual cost for printing of materials.*
9. *Request that Town Council authorize the Transportation Committee to update the Alternative Transportation Plan. This request includes the separation of pedestrian and bicycle facility planning. (NOTE: The North Carolina Department of Transportation supports the separation citing that there are two different users of such facilities). The Alternative Transportation Subcommittee acknowledges that they will begin work on a master sidewalk plan in 2007 which can be incorporated into the Pedestrian Plan.*
10. *That the Town Council commit through funding the continued expansion of pedestrian infrastructure (sidewalks, crosswalks and pedestrian signals).*
11. *For the Town of Boone to commit to participate in healthy lifestyle opportunities such as FIT Community.*
12. *To place information regarding **Walk Boone** on the Town website.*

Council member Mason said the initial emphasis must be on infrastructure since the Town must have sidewalks in place before promotion of walking. On a motion by Council member Pepin, seconded by Council member Phillips, Council moved to accept the objectives and recommendations.

VOTE: Aye-All
Nay-None

AWARDING OF BID AND APPROVAL OF CONTRACT - EXTENSION OF WEST FIRE TRUCK BAY - FIRE STATION #2

Fire Captain Jimmy Isaacs explained that a bid opening was held on June 5, 2008 for the extension of the west fire truck bay at Station #2. Mr. Isaacs said that adding a rear door to the station will give the fire station about six more feet of room in which to maneuver the truck. Mr. Isaacs recommended that Hickory Construction be granted the bid award in the amount of \$60,000. On a motion by Council member Phillips, seconded by Council member Pepin, Council moved to award the bid and adopt the following contract:

STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

CONTRACT

THIS CONTRACT, made and entered into this 22nd day of June, 2008, by and between the TOWN OF BOONE, NORTH CAROLINA (HEREINAFTER REFERRED TO AS "TOWN") AND HICKORY CONSTRUCTION, INC. (hereinafter referred to as "HICKORY CONSTRUCTION").

WITNESSETH:

WHEREAS, Boone has requested proposals to extend the west bay of Fire Station 2; and WHEREAS, Hickory Construction has submitted a proposal to the Town to complete described west bay extension at a price of \$60,000.00, the lowest proposal received by the Town; and

WHEREAS, Hickory Construction has agreed to extend the west bay of Fire Station 2 and the Town has agreed to a pay \$60,000.00 for the Fire Station 2 west bay extension.

NOW, THEREFORE, in consideration of the mutual premises contained herein, as well as other good valuable consideration flowing between parties, it is mutually agreed as follows:

1. The architect drawings attached hereto as Exhibit 1 and project manual attached as Exhibit 2 are incorporated herein by reference.
2. Hickory Construction shall complete west bay extension of Fire Station 2 in accordance with the plans attached hereto as Exhibit 1.
3. The Town shall pay Hickory Construction the sum of \$60,000.00 for said Fire Station 2 west bay extension. This payment shall be made on the date Hickory Construction completes said Fire Station 2 west bay extension.
4. Hickory Construction shall guarantee the workmanship of the west bay extension for a period of 1 year from completion of west bay extension.
5. The Town is responsible for obtaining all Permits for completion of said west bay extension.
6. This Contract shall be governed by the laws of the State of North Carolina.
7. Any alteration or deviation involving extra costs will be executed only upon written change orders.
8. Hickory Construction shall complete west bay extension to Fire Station 2 within 90 Days from date of contract. Time is of the essence.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed with their corporate names by their duly authorized officers and their seal to hereunto affixed, the day and year first written above.

TOWN OF BOONE (Municipal Seal)

By:

Mayor

ATTEST:

Town Clerk

HICKORY CONSTRUCTION, INC.

(Corporate Seal)

By:

President

ATTEST:

Secretary

VOTE: Aye-All

Nay-None

ADOPTION OF WATER & SEWER CODE AMENDMENT - GREASE PREVENTION PROGRAM STANDARDS

Public Utilities Director Rick Miller said the Town’s collection system permit requires that a fat, oil and grease prevention program be implemented. Mr. Miller said public meetings were held in December with restaurants and commercial businesses that would be affected by the program. Council member Brantz asked if the ordinance would apply to ASU properties. Mr. Miller said yes and that ASU representatives attended the meeting. Council member Mason asked about the time frame for compliance. Mr. Miller said compliance will be expected within a year. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to adopt the following water and sewer use code amendment:

VOTE: Aye-All

Nay-None

ACCEPTANCE OF PROPOSAL - TO MONITOR VIBRATIONS AT RAINBOW TRAIL WATER TANK

Public Utilities Director Rick Miller said a requirement of the special use permit received is to monitor the vibrations of the demolition and construction of the Rainbow Trail water tank. The cost will be \$1,200 per month and will not require Town staff to monitor the seismic stations.

Council member Brantz asked how long it would take to complete the project. Mr. Miller said it may be up to one-year before construction is complete. On a motion by Council member Brantz, seconded by Council member Phillips, Council moved to accept the proposal from Vibra-Tech for \$1,200 per month.

VOTE: Aye-All
 Nay-None

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 May. The Water Treatment Plant recorded a maximum daily demand of 2.316 million gallons on Thursday, May 1, 2008, and the average daily demand was 1.718 million gallons for the entire month. The total amount of water treated was 53.26 million gallons. This is a 1.15 percent decrease over the total amount of water treated in May 2007.

Attached you will find a chart that depicts a comparison of the maximum daily demands for the month of April since 1995. Included is an average trend line that illustrates the extent the maximum daily demand has increased during the last thirteen years.

At the last Town Council meeting, Council chose to allocate 525 gallons per day from the 2008 allotment for two projects. Since the last Town Council meeting the Public Utilities Department has approved four projects that subtracted 447 gallons per day from the 2008 allotment. The total water allotment remaining for the year 2008 has broken the sixty percent threshold and all future water service requests in excess of 500 gallons per day will be forwarded to Town Council as required in Ordinance 05-01.

As you can see in the attached “Approved Water Connections” chart, the Public Utilities Department now has 6,239 gallons per day remaining for allotment in 2008, 4,731 gallons remaining for 2009 and 45,371 gallons remaining for 2010.

The NC Drought Management Advisory Council has upgraded Watauga County to “Extreme Drought”. I have attached a chart which indicates that since January 2007, Watauga County has received 42.8 inches of precipitation. As you can see on the chart, this equates to a 19.1 inch deficit from our normal precipitation levels.

			2008			
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						50000
			Mega Builders	11/15/2007	14400	35600
			Anne Henning	11/15/2007	795	34805
			Katrina Callio	11/15/2007	90	34715
Brad	1/2/2008	916				33799

Moretz						
Park Street Subdivision	1/2/2008	810				32989
Bob Buyce	1/2/2008	2043				30946
James Bates	1/2/2008	270				30676
Beth Postlewait	1/2/2008	270				30406
John Winkler	1/2/2008	252				30154
Pat Carroll	1/2/2008	936				29218
WWWC LLC	1/2/2008	2682				26536
Carroll Companie s	1/2/2008	2730				23806
WWWC LLC	1/2/2008	936				22870
WWWC LLC	1/2/2008	2982				19888
			Oscorp Investment	1/17/2008	6750	13138
Salvation Army	1/7/2008	176				12962
			Adam Upchurch	2/21/2008	7452	5510
			Jamus FLP	2/16/2006	4209	9719
			Jamus FLP	2/16/2006	4209	13928
Thomas McGowan	1/24/2008	90				13838
Phillip Cresman	2/8/2008	30				13808
John Winkler	2/11/2008	30				13778
Den-Mac	3/4/2008	15				13763
			John Winkler	3/20/200 8	3450	10313
			Michael Brown	3/20/200 8	2400	7913
Boone Drug	3/27/2008	162				7751
			Warren Shepherd	4/17/200 8	30	7721
			Hollar & Greene	4/17/200 8	360	7361
Ethan Anderson	4/30/2008	150				7211
			Brent Davis	5/15/200 8	60	7151
			High Country COG	5/15/200 8	465	6686

William Scantlin	5/6/2008	150				6536
Templeton Properties	5/6/2008	135				6401
APE Inc.	5/8/2008	150				6251
Lee Bryant	5/21/2008	12				6239
			2009			
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						50000
			Leanord Soloman	11/15/2007	8100	41900
			Oscorp Investment	1/17/2008	4225	37675
			Adam Upchurch	2/21/2008	20350	17325
			Boone Five LLC	2/21/2008	8418	8907
			Charisma Partners	4/17/2008	4176	4731

			2010			
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						50000
			Hospitality House	4/17/2008	4629	45371

APPROVAL OF BUDGET AMENDMENTS

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

DESCRIPTION	ACCOUNT #	TO:	FROM:
Watauga Co.-Collection of Taxes(GF)	010-403-000-577110	\$11,500.00	
Watauga Co.-Collection of Taxes(MSD)	050-450-000-577110	\$500.00	
Current Year Taxes (General Fund)	010-000-000-411080		(\$11,500.00)
Current Year Taxes (MSD)	050-450-000-411080		(\$500.00)
Watauga County-Coordination of Elections	010-405-000-577111	\$2,242.00	
Appropriated Fund Balance (GF)	010-000-000-499900		(\$2,242.00)
Professional Services-Legal	010-409-000-509100	\$30,000.00	

Appropriated Fund Balance (GF)	010-000-000-499900		(\$30,000.00)
Capital Outlay-Land (GF)	010-411-000-575021	\$19,000.00	
Transfer from Raw Water Land Acquisition	010-000-000-498018		(\$19,000.00)
Transfer to Capital Reserve-Town Facilities	010-411-000-598017	\$250,000.00	
Howard Street	010-411-000-549124		(\$250,000.00)
Capital Outlay-Other Improvements (Fire Station #2)	010-415-000-574001	\$60,000.00	
Transfer from Capital Reserve-Land	010-000-000-498016		(\$60,000.00)
Professional Services(Development Services)	010-500-360-509100	\$55,232.00	
Appropriated Fund Balance (GF)	010-000-000-499900		(\$55,232.00)
Contracted Services(Development Services)	010-500-360-577000	\$10,400.00	
Appropriated Fund Balance (GF)	010-000-000-499900		(\$10,400.00)
Capital Outlay-Small Trucks(Fleet)	010-600-404-573200	\$25,515.00	
Miscellaneous Revenue (GF)	010-000-000-489900		(\$12,255.00)
Appropriated Fund Balance (GF)	010-000-000-499900		(\$13,260.00)
Gas & Oil-Police Department	010-500-300-515100	\$21,500.00	
Gas & Oil-Fire Department	010-500-350-515100	\$2,750.00	
Gas & Oil-Development Services	010-500-360-515100	\$2,000.00	
Gas & Oil - Facilities Maintenance	010-600-405-515100	\$3,700.00	
Appropriated Fund Balance (GF)	010-000-000-499900		(\$29,950.00)
Gas & Oil-Water Operations	030-700-802-515100	\$5,000.00	
Gas & Oil-Sewer Operations	030-700-803-515100	\$1,500.00	
Appropriated Fund Balance-Water/Sewer	030-000-000-499900		(\$6,500.00)
Transfer to General Fund(E911)	011-500-304-598010	\$74,853.00	
Special Projects-IT (General Fund)	010-411-000-549111	\$66,933.00	
Maintenance & Repair-Equip.(Comm.)	010-500-301-525201	\$7,920.00	
Appropriated Fund Balance(E911)	011-500-000-499900		(\$74,853.00)
Transfer from E911(General Fund)	010-000-000-498011		(\$74,853.00)

Sludge Dryer-Heat(WWTP)	030-700-805-523122	\$35,000.00	
Appropriated Fund Balance-Water/Sewer	030-000-000-499900		(\$35,000.00)
Transfer to Water Capital Reserve	030-700-890-598031	\$102,3000.00	
Transfer to Sewer Capital Reserve	030-700-890-598032	\$241,900.00	
Impact/Availability Fees-Water	030-000-000-467301		(\$102,300.00)
Impact/Availability Fees-Sewer	030-000-000-467302		(\$241,900.00)
Group Medical Insurance-Claims	035-430-000-535611	\$75,000.00	
Insurance Revenue-Retiree %	035-430-000-450002		(\$15,000.00)
Insurance Revenue-General Fund Transfer	030-430-000-450003		(\$60,000.00)
Property Tax Allocation (MSD)	050-450-000-553101	\$8,000.00	
Current Year Taxes (MSD)	050-450-000-411080		(\$8,000.00)

VOTE: Aye-All
Nay-None

ADOPTION OF CONTRACT - ENVIRONMENTAL ASSESSMENT

Town Manager Greg Young said this contract will allow W.K. Dickson to prepare the environmental assessment for the proposed raw water intake on the New River. Mr. Young said the environmental assessment needs to begin promptly and that the Town Attorney and USDA will need to approve the language of the contract. Council member Pepin felt that the Town should educate the public better, by using more common language, when discussing the raw water intake project. Council member Pepin felt the Town received more criticism at the USDA scoping meeting because of a lack of information. On a motion by Council member Brantz, seconded by Council member Aycok, Council moved to adopt the following contract:

CONTRACT FOR SERVICES

This CONTRACT for the Boone USDA Environmental Report by and between the Town of Boone, hereinafter called the OWNER, and W.K. Dickson & Co., Inc., hereinafter called the CONSULTANT;

The parties hereto do mutually agree as follows:

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

3. Additional Services. The CONSULTANT shall provide additional services, not specifically called for in Attachment A, Scope of Services, upon request or authorization of the OWNER.
4. Time of Performance. The CONSULTANT will commence work on the date of receipt of written Notice to Proceed. All work as set forth shall be completed within one hundred eighty (180) calendar days of that date, assuming the timely submission of all data requested by the CONSULTANT and the scheduling of all meetings and reviews by the OWNER or other delays beyond CONSULTANT'S control. CONSULTANT acknowledges that time is of the essence and will proceed with the scope of services as identified. Work identified above will be completed within the established timeframe as listed above.

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

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

1. Meetings. This Contract includes attendance by the CONSULTANT at meetings to make presentations or to otherwise review the progress of the work as identified in Attachment A.
2. Reports. The CONSULTANT shall prepare and submit to the OWNER reports called for in Attachment A, Scope of Services, attached hereto.
3. Compensation. The CONSULTANT agrees to perform the services provided for in the Scope of Services, and the OWNER agrees to compensate the CONSULTANT for such services as set forth in Attachment B, Basis of Compensation, which attachment is incorporated herein. Compensation for additional services shall also be as set forth in Attachment B, Basis of Compensation.

Payment by the OWNER to the CONSULTANT shall be due and payable on the 25th day of the month following the date of the invoice. Payments not received by the CONSULTANT by the 30th day of the month following the date of the invoice shall be overdue. Should a court action be taken to address collections, reasonable attorneys fees and costs shall be paid to the prevailing party. Should the OWNER request a clarification for a legitimate item of any invoice within 30 calendar days of receipt, then the CONSULTANT will revise the invoice to satisfy those concerns or give a written reply to those concerns. If the invoice is still not paid within 30 additional calendar days, then the CONSULTANT will begin collection procedures. CONSULTANT shall not be bound by any provision wherein

CONSULTANT waives any rights to a mechanic's lien, or any provision implying payment to CONSULTANT is contingent upon payment to OWNER by a third party. A failure by OWNER to pay CONSULTANT on a timely basis shall entitle CONSULTANT at its election, to stop work on the Project until such time as payment has been made, and upon seven days' notice and OWNER'S failure to pay all amounts then due, to terminate this contract.

4. Personnel. The CONSULTANT represents that he has, or will secure at his own expense, all personnel required to perform the services under this Contract and that such personnel will be fully qualified to perform such services.
5. Responsibilities of the OWNER. It is agreed that the OWNER will have the following responsibilities under this Contract:
 - a) The timely provision of all available information, data, reports, records, and maps to which the OWNER has access and which are needed by the CONSULTANT for the performance of the services provided for herein.
 - b) Providing assistance and cooperation for the CONSULTANT in obtaining any other needed material which the OWNER does not have in its possession.
 - c) Making available the services of the OWNER as may be necessary to obtain information as needed to perform the work program set forth in the Scope of Services.
 - d) The designation of a single representative who will be authorized to make necessary decisions required on behalf of the OWNER and will serve to provide the necessary direction and coordination for the project.
 - e) Bear all costs for permitting the project.
 - f) Arrange access, to the extent possible, to all affected private property for CONSULTANT to perform all necessary surveying, engineering and inspections.

All such OWNER responsibilities shall be conducted in a timely manner and without undue delay so as not to delay the CONSULTANT in the performance of his services.

5. Opinion of Probable Construction Costs. CONSULTANT'S opinion of probable construction costs, if rendered as a service under this Agreement, is based on assumed labor costs and approximate quantities of material and equipment, and therefore is of a conditional character. CONSULTANT cannot and does not guarantee the cost of work to be performed by others since market or bidding conditions can change at any time and changes in the scope or quality of the project may affect estimates.
6. Ownership of Materials. It is agreed that upon receipt of final payment, all final documents, studies, surveys, drawings, maps, models, photographs and reports prepared by the Consultant under this Contract, shall be considered the property of the OWNER. However, the CONSULTANT shall retain such copies thereof as he desires. Any adaptation by OWNER without CONSULTANT'S written verification of adaptation will be at OWNER'S sole risk and without liability or legal exposure to CONSULTANT, and OWNER agrees to indemnify

and hold CONSULTANT harmless from and against any claims or liability, including attorneys' fees resulting from any claim against CONSULTANT by any third party arising out of OWNER'S use of the documents referred to herein, for any purpose other than the completion of the Project.

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

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

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

VOTE: Aye-All

Nay-None

CABLE TV ADVISORY COMMITTEE APPOINTMENTS

The appointments will be made at the July meeting.

ACCEPT DEDICATION OF ALLEYWAY

Town Manager Greg Young explained that he was unsure if the Town has ever accepted the dedication of the alleyway that runs behind Farmers Hardware to Murphys and the alley between High Country Bank and the Emporium. In order to use the alley as negotiation in the Howard Street project the Town should accept dedication of the alleyway. On a motion by Council member Mason, seconded by Council member Aycock, Council moved to accept the alleyway as described above.

VOTE:Aye-All
Nay-None

Mayor Clawson declared a break at 8:06 p.m. Council reconvened at 8:17 p.m.

Council member Mason made a motion to reconsider the adoption of the Fiscal Year 2008/2009 budget. Council member Aycock seconded.

VOTE:Aye-All
Nay-None

Council member Mason explained that since she is employed by the Hospitality House, which is an outside agency receiving funding from the Town, she should have excused herself from voting on the budget adoption. On a motion by Council member Pepin, seconded by Council member Aycock, Council moved to adopt the Fiscal Year 2008/2009 budget, without the Hospitality House allocation included.

VOTE:Aye-All
Nay-None

On a motion by Council member Pepin, seconded by Council member Aycock, Council moved to excuse Council member Mason from voting on the following Hospitality House allocation

VOTE:Aye-All
Nay-None

On a motion by Council member Pepin, seconded by Council member Aycock, Council moved to adopt the Hospitality House allocation/portion of the budget.

VOTE:Aye-4 (Aycock, Brantz, Pepin, Phillips)
Nay-None
Excused-1(Mason)

REQUESTED APPEARANCES - JAMES R. HARTLEY

Town Attorney Sam Furgiuele opened a public hearing at 8:19 p.m. to hear sworn testimony from James Hartley, Chris Eller, Public Utilities Director Rick Miller and Development Services Director John Spear on a request for water service to Camp Rock Road. Mr. James Hartley requested water service to the property because wells in the area are failing. Mr. Hartley explained that because of the well failures the Town had provided a water main to the area years ago. Council member Mason asked if only one house will be built on the lots. Mr. Hartley said yes, that one three-bedroom house will be constructed. Council member Phillips asked if Mr. Hartley had obtained the necessary easements. Mr. Hartley said he could use the dedicated thirty-foot right-of-way easement along the road. Council member Brantz asked Mr. Hartley if he is willing to annex the property. Mr. Hartley said he supposed he could annex the property even though it is not located in the Town's growth area. Town Attorney Sam Furgiuele explained that since Mr. Hartley's property is a portion of a subdivision the entire subdivision must be annexed. Council member Aycock asked Mr. Hartley if he has attempted to drill a well. Mr. Hartley said no. Council member Aycock then asked if there are wells being used in the subdivision, to which Mr. Hartley said yes. Council member Aycock asked how long the waterline has been in place. Public Utilities Director Rick Miller said the line was in placed before 1987, with the latest extensions made in 1996 to 1998. Council member Phillips asked about the state law regarding annexation. Development Services Director John Spear confirmed the Town Attorney's interpretation that the entire subdivision must annex. Council member Brantz asked if Mr. Hartley plans to construct the residence for himself. Mr. Hartley said no, that he plans to sell the property to a local man, Chris Eller. Mr. Eller testified that he plans to construct one three-bedroom house on the lot if water is granted. There being no further comments, the public hearing closed at 8:39 p.m. Council member Mason pointed out that it is well documented that the entire area has a problem with water and that she considers this a hardship case. On a motion by Council member Mason, seconded by Council member Phillips, Council moved to grant the water request, without annexation, with the stipulation that one three-bedroom house is constructed on the lot. Council member Mason made the motion based upon the facts that it is well-documented that wells are failing in this area and that there is an existing water line. Before voting, Council discussed placing UDO requirements for R-1 zoning as another stipulation but decided not to since there are no monitoring mechanisms.

VOTE:Aye-All

Nay-None

REQUESTED APPEARANCES - HARRIS TEETER, INC.

Town Attorney Sam Furgiuele opened a public hearing at 8:46 p.m. to hear sworn testimony from Mike Trew, an engineer representing Harris Teeter, Inc. Mr. Trew requested an additional 636 gallons per day of water for a proposed 9,600 square foot expansion. Mr. Trew commented that the land intensity ratios will meet the UDO regulations and that a special-use permit must be modified before construction can begin. Council member Mason asked when the water will be needed. Mr. Trew said probably in the fall of 2009. There being no further comments, the public hearing closed at 8:51 p.m. On a motion by Council member Aycock, seconded by Council member Mason, Council moved to allocate an additional 636 gallons per day of water from the 2009 allocation.

VOTE:Aye-All

Nay-None

REQUESTED APPEARANCES - AUSTIN L. WATTS, P.E.

Town Attorney Sam Furgiuele opened a public hearing at 8:53 p.m. to hear sworn testimony from Don O'Toole, attorney from Troutman Sanders and Public Utilities Director Rick Miller on a request for additional water allocation to Walmart. Mr. O'Toole said Walmart would like to expand the store by 27,000 square feet an amount which would require an additional water allocation of 1,998 gallons per day. Mr. O'Toole presented historical water data which showed a much lower water use than estimated by Town staff. Mr. O'Toole also pointed out that with the expansion the new store will be smaller than a Walmart Super Center. Town Attorney Sam Furgiuele asked Public Utilities Director Rick Miller how Ordinance 05-01 water charts were calculated. Public Utilities Director Miller said Ordinance 05-01 is based upon water plant calculations, not individual accounts. Mr. O'Toole also pointed out that the store expansion will not be complete until the first quarter of 2010. Council member Aycock asked if the expansion would cause more impervious surfaces. Mr. O'Toole said no, that there would be more pervious surface. There being no further comments, the public hearing closed at 9:02 p.m. On a motion by Council member Brantz, seconded by Council member Phillips, Council moved to allocate an additional 1,998 gallons per day of water to Walmart from the 2010 allocation.

VOTE:Aye-All
Nay-None

PUBLIC COMMENT

Kendal McDevitt presented statistics on the effects of alcohol and agreed that more local control is needed. Ms. McDevitt said she would be working with the ABC Task Force with suggestions to help mitigate any future alcohol problems that may occur in the community as a result of implementing liquor by the drink.

CLOSED SESSION

On a motion by Council member Brantz, seconded by Council member Pepin, Council moved to enter Closed Session at 9:09 p.m., pursuant to NCGS 143-318.11a)3)5)6) in order to discuss the Walmart Special Use Permit; potential litigation - Nautical Land LLC application; a sewer service disconnection; property acquisition - Howard Street and personnel matters.

VOTE:Aye-All
Nay-None

On a motion by Council member Pepin, seconded by Council member Aycock, Council moved to exit Closed Session at 10:55 p.m.

VOTE:Aye-All
Nay-None

ADJOURNMENT

On a motion by Council member Brantz, seconded by Council member Pepin, Council moved to adjourn at 10:56 p.m.

VOTE: Aye-All
Nay-None

Town Clerk

Mayor