

**MINUTES - SPECIAL MEETING
BOONE TOWN COUNCIL
AUGUST 8, 2008**

A special meeting of the Boone Town Council was called to order at 8:33 a.m., Friday, August 8, 2008, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council Members present were Mayor Pro-Tem Lynne Mason, Liz Aycok, and Stephen Phillips. Staff members present were Greg Young-Town Manager, Kimberly Brown-Deputy Town Clerk, Rick Miller-Public Utilities Director, Amy Davis-Finance Director, and Andrea Gimlin-Program Coordinator. Town Attorney Sam Furgiuele was also in attendance.

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

**ADOPTION OF RESOLUTION - AUTHORIZING THE FILING OF AN APPLICATION
FOR APPROVAL OF A FINANCING AGREEMENT**

Town Manager Greg Young stated that this resolution is for the filing of an application with the Local Government Commission for the installment contract financing of the replacement of the Highway 194 1.0-million gallon water tank. Council Member Mason inquired as to the cost of the water tank replacement. Public Utilities Director Rick Miller answered that the bid received for the project is for \$669,000 and will be placed on the next regular agenda for Council's approval. Council Member Mason asked about how well the tank will blend in with the surrounding area. Mr. Miller stated that after meeting with property owners within 150-feet of the project site, it was decided that the tank will remain concrete for one year. After the one-year period, if the concrete is not sufficiently weathered to blend in with the area, then the Utility Department will again meet with the surrounding property owners to determine an appropriate color to paint the tank. Council Member Mason asked about the length of the financing term for the new tank. Finance Director Amy Davis stated that the term of financing will be for three years and that the loan will be paid for from the water and sewer fund. Upon a motion by Council Member Mason, seconded by Council Member Aycok, Council moved to adopt the following resolution:

**RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION FOR
APPROVAL OF A FINANCING AGREEMENT AUTHORIZED BY NORTH
CAROLINA GENERAL STATUTE 160A-20**

WHEREAS, the Town of Boone, North Carolina desires to replace the Highway 194 1.0 MG Water Storage Tank (the "Project") to better serve the citizens of Boone; and

WHEREAS, the Town of Boone desires to finance the Project by the use of an installment contract authorized under North Carolina General Statute 160A, Article 3, Section 20; and

WHEREAS, findings of fact by this governing body must be presented to enable the North Carolina Local Government Commission to make its findings of fact set forth in North Carolina General Statute 159, Article 8, Section 151 prior to approval of the proposed contract;

NOW, THEREFORE, BE IT RESOLVED that the Town Council members of Boone, North Carolina, meeting in special session on the 8th day of August, 2008, make the following findings of fact:

1. The proposed contract is necessary or expedient because it has been determined that the existing water storage tank, constructed in 1966, has developed structural concerns.
2. The proposed contract is preferable to a bond issue for the same purpose because the required issuance cost and time would be greater than the installment purchase contract issuance cost and time.
3. Anticipated interest rates are attractive for the proposed repayment term.

4. The sums to fall due under the contract are adequate and not excessive for the proposed purpose because the Town has included the estimated debt service in their approved budget.
5. The Town of Boone's debt management procedures and policies are good because the Town complies with the Local Government Fiscal Control Act, and pays all principal and interest payments by the required due date.
6. The increase in taxes necessary to meet the sums to fall due under the proposed contract will be zero cents per \$100 valuation and is not deemed to be excessive.
7. The Town of Boone is not in default in any of its debt service obligations.
8. The attorney for the Town of Boone has rendered an opinion that the proposed Project is authorized by law and is a purpose for which public funds may be expended pursuant to the Constitution and laws of North Carolina.
9. The probable net revenues of the project to be financed will be sufficient to meet the sums to fall due under the proposed contract.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Finance Director is hereby authorized to act on behalf of the Town of Boone in filing an application with the North Carolina Local Government Commission for approval of the Project and the proposed financing contract and other actions not inconsistent with this resolution.

This resolution is effective upon its adoption this 8th day of August, 2008.

ATTEST:

Mayor

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 68)

VOTE: Aye - All
 Nay - None

INTRODUCTION OF BOND ORDER AND ADOPTION OF RESOLUTION SETTING A PUBLIC HEARING AND DIRECTING PUBLICATION OF NOTICE FOR A PUBLIC HEARING

Town Manager Greg Young stated that the Bond Order is to authorize the issuance of a \$25,000,000 General Obligation Bond to pay the necessary costs of acquiring, constructing, and equipping facilities for a new water source along the South Fork of the New River. Council Member Mason clarified that the payment of the loan will come from the water and sewer fund and that the Town does not anticipate an increase in taxes for the payment of the loan. Mr. Young explained that this language is necessary in the instance that the Town defaults in the repayment of the loan. He further noted that water and sewer fees have increased in the past four years in anticipation of this project. Council Member Mason inquired about how the Town's water and sewer rates compare to other area municipalities. Public Utilities Director Rick Miller stated that the Town's rates are average in comparison with surrounding areas. Council Member Mason suggested that the Town continue to educate the citizens about the utility system to reiterate that the Town's water and sewer rates are not extreme in relation to the surrounding areas. Upon a motion by Council Member Mason, seconded by Council Member Aycock, Council moved to approve the following Bond Order and Resolution:

**Bond Order Authorizing the Issuance of \$25,000,000
 General Obligation Water System Bonds
 of the Town of Boone, North Carolina**

WHEREAS, the Town Council of the Town of Boone, North Carolina, (the “*Town Council*”) has ascertained and hereby determines that it is necessary to pay the capital costs of acquiring, constructing, and equipping facilities for a new water source along the South Fork of the New River, including the costs of related studies, plans and design; acquiring land and rights-of-way in land and installing water transmission lines related to the acquisition of the new water source; renovating the Town of Boone Water Treatment Plant in order to increase its daily capacity, including improvements to and the acquisition and installation of plant equipment; and

WHEREAS, an application has been filed with the Secretary of the Local Government Commission of North Carolina requesting Commission approval of the General Obligation Water System Bonds hereinafter described as required by the Local Government Bond Act, and the Town Clerk has notified the Town Council that the application has been accepted for submission to the Local Government Commission.

NOW, THEREFORE, BE IT ORDERED by the Town Council of the Town of Boone, North Carolina, as follows:

- Section 1. In order to raise the money required for the public improvement purposes described above, in addition to any funds which may be made available for such purpose from any other source, General Obligation Water System Bonds of the Town are hereby authorized and shall be issued pursuant to the Local Government Finance Act of North Carolina. The maximum aggregate principal amount of such General Obligation Water System Bonds authorized by this order shall be \$25,000,000.
- Section 2. A tax sufficient to pay the principal of and interest on said General Obligation Water System Bonds when due shall be annually levied and collected.
- Section 3. A sworn statement of the Town’s debt has been filed with the Town Clerk and is open to public inspection.
- Section 4. This bond order shall take effect when approved by the voters of the Town at a referendum scheduled for November 4, 2008.

**Resolution of the Town of Boone, North Carolina Regarding a Bond Order
Authorizing the Issuance of \$25,000,000 General Obligation Water System Bonds,
Setting a Public Hearing Thereon and Directing Publication of a Notice of Said
Public Hearing**

WHEREAS, a bond order entitled:

**“Bond Order Authorizing the Issuance of \$25,000,000 General Obligation Water
System Bonds of the Town of Boone, North Carolina;”**

has been introduced at a meeting of the Town Council (the “*Town Council*”) of the Town of Boone, North Carolina this 8th day of August, 2008; and

WHEREAS, the Town Council desires to provide for the holding of a public hearing thereon on August 21, 2008 and the submission of a statement of debt in connection therewith as required by The Local Government Bond Act.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA that the public hearing on said bond order shall be held on the 21st day of August, 2008 at 6:30 p.m. in the Council Chambers, 1500 Blowing Rock Road, Boone, North Carolina, 28607.

BE IT FURTHER RESOLVED that the Town Clerk is hereby directed to cause a copy of said bond order to be published with a notice of such public hearing in the form prescribed by law in the *Watauga Democrat* on or before the 11th day of August, 2008.

BE IT FURTHER RESOLVED that the Finance Director is hereby directed to file prior to publication of the bond order with the notice of such public hearing, a statement setting forth

the debt incurred or to be incurred, the net debt of the Town, the assessed value of property subject to taxation by the Town and the percentage that net debt of the Town bears to the assessed value of property subject to taxation.

BE IT FURTHER RESOLVED that this Resolution shall become effective on the date of its adoption.

Adopted this the 8th day of August, 2008.

ATTEST:

Mayor

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 69)

VOTE: Aye - All
 Nay - None

ADOPTION OF ENCROACHMENT AGREEMENT - APPALACHIAN STATE UNIVERSITY

Town Manager Greg Young stated that this request for an agreement from Appalachian State University for the encroachment of steam, telephone, electric, water, chilled water, sewer, and storm drainage lines for the College of Education building. Town Attorney Sam Furgieuele explained that the agreement includes a modified indemnification agreement from the standard format employed by the Town that indemnifies the Town by actions of ASU employees and its agents. In discussing this matter with ASU Attorney Dayton Cole, Mr. Furgieuele stated that a compromise was agreed upon by which ASU officials will have the project contractors to include the Town of Boone in their liability insurance certification. He advised that the Town review such an insurance liability certificate by the contractors employed by ASU to ensure that the Town of Boone is listed on the policy. Mr. Young stated that the property was previously served by Town water and sewer service but will now be served by ASU water lines with Town sewer service. Public Utilities Director Rick Miller stated that a straight tap will be made into an existing Town sewer line for the project. Mr. Young further noted that ASU is planning to construct a round-about intersection and two speed humps (raised crosswalks) which are not included in this agreement as part of the project. He advised that the Town will continue to discuss this matter with ASU and introduce the matter for Council's consideration at a later date. Mr. Furgieuele further advised that important liability issues will need to be considered for this matter including traffic flow and pedestrian and bicycle safety. Upon a motion by Council Member Phillips, seconded by Council Member Mason, Council moved to adopt the following encroachment agreement with the condition that the Town will review and approve all liability insurance certificates from contractors employed by ASU for this project to ensure that the Town of Boone is listed as part of the liability insurance:

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT, made and entered into this the 8th day of August, 2008 , by and between the TOWN OF BOONE, party of the first part; and APPALACHIAN STATE UNIVERSITY, party of the second part,

W-I-T-N-E-S-S-E-T-H

THAT WHEREAS, the party of the second part desires to encroach on the right of way of the public road designated as College and Howard Street located adjacent to the new College of Education site with the following: steam, telephone, electric, water, chilled water, sewer, and storm drainage; and

WHEREAS, it is to the material advantage of the party of the second part to effect this encroachment, and the party of the first part in the exercise of authority conferred upon it by statute, is willing to permit the encroachment within the limits of the right of way as indicated, subject to the conditions of this agreement.

NOW, THEREFORE, IT IS AGREED that the party of the first part hereby grants to the party of the second part the right and privilege to make this encroachment upon the following conditions, to wit:

That the said party of the second part binds and obligates itself, and its successors and assigns, to install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said highway or street, nor obstruct nor interfere with the proper maintenance thereof, to reimburse the party of the first part for the cost incurred for any repairs or maintenance to its roadways and structures necessary due to the installation and existence of the facilities of the party of the second part, and if at any time the party of the first part shall require the removal of or changes in the location of the encroaching facilities, that the said party of the second part binds itself, its successors and assigns, to promptly remove or alter the said facilities, in order to conform to the said requirements, without any cost to the party of the first part.

That the party of the second part agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and other warning devices for the protection of traffic in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and Amendments or Supplements thereto. Information as to the above rules and regulations may be obtained from the Public Services Department of the party of the first part.

The party of the second part shall be responsible for all liability associated with the encroaching facility. The party of the second part agrees to indemnify and hold harmless the party of the first part from and against all claims, damages, losses and expenses, including court costs and attorney fees, arising out of or in any way related to the encroaching facility.

To the extent permitted by law, the party of the second part shall be responsible for all liability associated with the encroaching facility, and agrees to indemnify and hold harmless the party of the first part from and against all damages, losses, and expenses based on any third party claim arising solely from the negligence of a named employee or agent of the party of the second part and finally adjudged or ordered by a court or administrative agency of competent jurisdiction within thirty (30) days following exhaustion of the time for appeal thereof. The party of the first part shall provide the party of the second part with prompt notice of any such claim, cooperate with the party of the second part in defense thereof and refrain from entering into any settlement thereof without written approval from an authorized official of the party of the second part. The party of the second part shall cause its contractors to name the party of the first part as an additional insured on general liability insurance policies applicable to the project.

It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such facilities, within the highway or street rights of way limits, in carrying out its construction and maintenance operations.

The party of the second part agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the Department of Public Services of the party of the first part. The party of the second part agrees to exercise every reasonable precaution during construction and maintenance to prevent eroding of soil; silting or pollution to the rivers, streams, lakes, reservoirs, other water impoundments; ground surfaces or other property; or pollution of the air. There shall be compliance with applicable rules and regulations of the North Carolina Sedimentation Control Commission, and with ordinances and regulations of various counties, municipalities and other official agencies relating to pollution prevention and control. When any installation or maintenance operation disturbs the ground surface and the existing ground cover, the

party of the second part agrees to remove and replace the sod or otherwise reestablish the grass cover to meet the satisfaction of the Division Engineer of the party of the first part.

That the party of the second part agrees to assume the actual cost of any inspection of the work considered to be necessary by the Department of Public Services of the party of the first part.

That the party of the second part agrees to have available at the encroaching site, at all times during construction, a copy of this agreement showing evidence of approval by the party of the first part. The party of the first part reserves the right to stop all work unless evidence of approval can be shown.

Provided the work referred to in this agreement is being performed on a completed public street open to traffic; the party of the second part agrees to give written notice of when work will begin to the Department of Public Services of the party of the first part.

That in the case of noncompliance with the terms of this agreement by the party of the second part, the party of the first part reserves the right to stop all work until the facility has been brought into compliance or removed from the right of way at no cost to the party of the first part.

That it is agreed by both parties that this agreement shall become void if actual construction of the work contemplated herein is not begun and completed within one (1) year from the date of this agreement unless written waiver is secured by the party of the second part from the party of the first part.

The party of the first part expressly reserves the unrestricted right to require the party of the second part to change the location of the encroachments described herein at no expense to the party of the first part.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed the day and year first above written.

VOTE: Aye - All
 Nay - None

PUBLIC HEARING - ON THE FILING OF AN APPLICATION TO THE LGC FOR THE FINANCING OF THE HIGHWAY 194 1.0-MILLION GALLON WATER STORAGE TANK

Mayor Clawson opened a public hearing at 8:58 a.m. to hear public comment on the filing of an application to the Local Government Commission for the financing of the Highway 194 1.0-million gallon water storage tank. Council Member Mason commended Public Utilities Director Rick Miller and the personnel of the Public Utilities Department for garnering input from the surrounding property owners in regard to the effect of the appearance of this tank on the adjacent neighborhoods. She inquired as to the anticipated date of construction of the project. Mr. Miller stated that he anticipated the awarding of the bid by late September of this year with construction commencing shortly thereafter. He further noted that the contractor has indicated that the project should be completed within two months of beginning the project. With no public input, Mayor Clawson closed the public hearing at 9:03 a.m.

ADJOURNMENT

Upon a motion by Council Member Mason, seconded by Council Member Aycock, Council moved to adjourn at 9:03 a.m.

VOTE: Aye - All
 Nay - None

Deputy Town Clerk

Mayor