

**MINUTES - REGULAR MEETING  
BOONE TOWN COUNCIL  
FEBRUARY 19, 2009**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, February 19, 2009 in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, Janet Pepin, Liz Aycock, Rennie Brantz, and Stephen Phillips. Town Attorney Sam Furgiuele 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, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, Development Services Director John Spear, and Human Resources Director Peri Moretz.

**ANNOUNCEMENTS**

Police Chief Bill Post recognized Lieutenant J.R. Reese for over 28 years service to the Boone Police Department. Lieutenant Reese will retire effective March 1, 2009. Lt. Reese said it has been an honor to serve the Town.

**TENTATIVE AGENDA ADOPTION**

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

1. Addition of Item 6.L. - Discussion and approval of Greenway Connector project at new Watauga High School.
2. Addition of Item 7.E. - Update from Ernie McGuire, Frontier Natural Gas, on status of natural gas on Howard Street and in town.
3. Addition to Closed Session - Legal Advice - Garden Club lease.
4. Addition to Closed Session - Legal Advice - CNA Surety Settlement Proposal.

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

Minutes:       January 12, 2009 - Special Public Hearing.  
                  January 15, 2009 - Regular Meeting.  
                  January 26, 2009 - Intergovernmental Retreat.

Tax Releases & Refunds - December 2008 & January 2009:

**TAX RELEASES  
DECEMBER 2008**

Taxpayer	Year	Amount	Description
LANE, MING H	2008	13.19	TURN IN TAG
CERNY, JAROSLAV	2008	6.26	ADJ FOR BILL OF SALE
RAY, JERRY DAVID RAY, LORETTA P	2008	81.33	NOT IN TOB
WATAUGA YOUTH NETWORK	2008	109.16	EXEMPT
COREY, SHAW FEIMSTER COREY, DIANA	2008	8.40	INCORRECT SITUS

SHOEMAKE, BETTY EDMISTEN	2008	5.46	TURN IN TAG
COHEN, ZACHARY ROSS	2008	21.09	ADJ FOR BILL OF SALE
JASSO, RICARDO RUIZ	2008	8.77	TURN IN TAG
STUEBNER, GUNTER HURST SPENCER, MARGOT HELEN	2008	152.93	TURN IN TAG
SMITH, KARL GREGOR	2008	94.20	TURN IN TAG
BOONE DEVELOPMENT INC	2008	628.81	INCORRECT TAX CODE PERCENTAGE
SCRUGGS, MARK BRUCE SCRUGGS, ASHLEY RHODES	2008	16.65	PARCEL WAS DIVIDED FOR 2008
CORNERSTONE SUMMIT	2008	31.38	SOLD VEHICLE
VILLANOVA, PETER D ZAITZOW, BARBARA HOPE	2008	2.96	TURN IN TAG
MCGUIRE, PHILLIP C	2008	1.11	INCORRECT SITUS
TANTAU, MATTHEW REHFELD	2008	35.47	TURN IN TAG
		<b>1217.17</b>	

**TAX REFUNDS  
DECEMBER 2008**

<b>Taxpayer</b>	<b>Year</b>	<b>Amount</b>	<b>Description</b>
HOLADAY, LYNN E	2008	2.24	SOLD VEHICLE TURNED IN TAG
NEW RIVER BUILDING SUPPLY	2007	35.30	DOUBLE BILLED
BOONE DEVELOPMENT INC	2007	628.81	INCORRECT TAX CODE PERCENTAGE
	2006	628.81	INCORRECT TAX CODE PERCENTAGE
	2005	652.43	INCORRECT TAX CODE PERCENTAGE
MCGUIRE, PHILLIP C	2007	106.78	INCORRECT SITUS
	2006	84.99	INCORRECT SITUS
	2005	207.28	INCORRECT SITUS
	2004	106.59	INCORRECT SITUS
	2003	77.14	INCORRECT SITUS
THE DEAN H MCGUIRE LIVING TRUST	2007	88.06	INCORRECT SITUS
	2006	100.31	INCORRECT SITUS
	2005	82.84	INCORRECT SITUS
	2004	87.64	INCORRECT SITUS
	2003	87.91	INCORRECT SITUS

		<b>2977.13</b>	
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**TAX RELEASES  
JANUARY 2009**

<b>Taxpayer</b>	<b>Year</b>	<b>Amount</b>	<b>Description</b>
WATAUGA YOUTH NETWORK	2008	4.29	TURN IN TAG
ROACHE, PAUL FREEMAN	2008	1.11	TURN IN TAG
GREENE, SUSAN BOWKLEY	2008	13.67	TURN IN TAG
RIVERS, MELANIE NICOLE	2008	44.90	TURN IN TAG
SCHLAGAL, JULIEN JAMES	2008	6.77	TURN IN TAG
DOUGLAS, MICHAEL ERIN DOUGLAS, SONYIA CESSNA	2008	15.95	MOVED OUT OF STATE
MAYHEW, MICHAEL JOSEPH MAYHEW, SARA VETTER	2008	30.25	MOVED TO TN
IN STORE OPPORTUNITIES INC DBA SUPERFRIDGE	2008	2.74	DOUBLE BILLED
TAUBMAN, BRETT FILIP TAUBMAN, JULIE LYNN	2008	18.18	TURN IN TAG
ATKINSON, WILLIAM HENRY JR	2008	11.43	TURN IN TAG
APPALACHIAN INNKEEPERS SUPPLY JONES, FRANK EUGENE JR	2008	8.51	ADJ FOR INCORRECT VALUE
CAMPBELL, LESLIE IRENE	2008	12.17	TURN IN TAG
JACKSON, R. BRUCE II, MD, PA	2008	286.49	BUSINESS CLOSED JUNE 2007
TURNER, MICHAEL JOHN	2008	77.37	DID NOT OWN VEHICLE
TOYOTA OF BOONE, INC.	2008	56.87	RENTAL
CORTI, BENJI	2007	3.96	TURN IN TAG
		<b>594.66</b>	

**TAX REFUNDS  
JANUARY 2009**

<b>Taxpayer</b>	<b>Year</b>	<b>Amount</b>	<b>Description</b>
DOUGLAS, LAURA MICHELLE DOUGLAS, SONYIA CESSNA	2008	22.47	MOVED OUT OF STATE
DOUGLAS, MICHAL E DOUGLAS, SONYIA C	2008	1.11	MOVED OUT OF STATE
FORREN, KIMBERLY ANN	2008	2.79	TURN IN TAG
DAVIS, CATHERINE ELAINE	2008	28.95	TURN IN TAG
ROTEN, IVAN CARL ROTEN, DANA FRYE	2008	5.79	TURN IN TAG
ROBINSON, JOSEPH BUTLER III	2008	1.11	TURN IN TAG

APPALACHIAN INNKEEPERS SUPPLY	2007	73.82	INCORRECT SITUS
	2006	95.53	INCORRECT SITUS
	2005	105.72	INCORRECT SITUS
		<b>337.29</b>	

Adoption of Resolution - Support of Eliminating Secondhand Smoke.

**RESOLUTION IN SUPPORT OF ELIMINATING SECONDHAND SMOKE IN  
NORTH CAROLINA'S WORK SITES AND PUBLIC PLACES**

**WHEREAS**, the 2006 Surgeon's General Report found overwhelming evidence that secondhand smoke exposure is a risk to anyone, with **no** risk-free level of SHS exposure; and

**WHEREAS**, secondhand smoke is a leading cause of preventable death in the United States, causing the deaths of about 35,000 Americans per year and an estimated 1,220 to 2,180 North Carolina adults, children, and babies; and

**WHEREAS**, the Centers for Disease Control and Prevention (CDC) warns that all patients with or at increased risk of coronary heart disease should avoid all indoor environments that permit smoking; and

**WHEREAS**, secondhand smoke has been proven to cause cancer, heart disease, and asthma in both smokers and non-smokers; as little as 30 minutes of exposure can trigger a heart attack in someone with heart disease or risk factors for heart disease; and

**WHEREAS**, studies show that infants and children are especially vulnerable to secondhand smoke, suffering more respiratory problems, ear infections, asthma, and sudden infant death syndrome as a result of exposure, and pregnant women exposed to secondhand smoke are at increased risk to have low birth-weight babies; and

**WHEREAS**, no ventilation system can remove all the harmful elements in secondhand smoke from the air, according to the American Society of Heating, Refrigeration, and Air Condition Engineers (ASHRAE); and

**WHEREAS**, work sites and public places are locations where children, members of the community, and employees are exposed to secondhand smoke; and

**WHEREAS**, smoke-free workplace laws have either a positive or neutral effect on businesses; in fact, **no** rigorous, scientifically-conducted study has found negative economic impact from smoke-free policies; and

**WHEREAS**, the majority of North Carolinians and other Americans do not smoke; and

**WHEREAS**, smoke-free air policies have been shown to protect the public from exposure to secondhand smoke, and help smokers quit or reduce the number of cigarettes consumed;

**NOW, THEREFORE, BE IT RESOLVED** that the Boone Town Council endorses the General Assembly of North Carolina Session 2009 passing legislation that would prohibit smoking in public places and places of employment and would allow local governments to adopt local laws governing smoking within their jurisdictions that are more restrictive than the State law.

**ADOPTED** this 19<sup>th</sup> day of February, 2009.

ATTEST:

Mayor

Town Clerk

**(RESOLUTION TO BY TYPED IN BOOK 3, PAGE 91)**

Approving and Sealing of Closed Session Minutes - March 3, 2008-December 18, 2008.

VOTE:           Aye - All  
                  Nay - None

**PUBLIC COMMENT**

Peter Shurta, President of Wise Guys of Boone, spoke about harassment made by McLaurin Parking staff. Mr. Shurta said he has been threatened with booting of his car and that he feels like a victim.

Vicky Reed, a business owner on King Street, felt that the Council has ignored parking in downtown for way too long and that business owners and the Town need to work together to revise the current parking ordinances.

Bill Dixon of Boone Point appeared before Council to request a special public hearing be set to modify the conditions for the Boone Point conditional-use zoning permit. Mr. Dixon, along with builder John Grasier, explained that a lease had been signed for a fitness center within Boone Point, not realizing that it was not allowed.

Chris Rider of 166 Gladys Street commented that his neighborhood has been overtaken by hoodlums and hopes that Town Council will preserve it tonight by passing the neighborhood conservation district.

Greg Simmons of Delmar Street read a letter publicly thanking the Town Council, County Commissioners and School Board for honoring the commitment to provide a greenway access to their neighborhood along the new high school property.

On a motion by Council member Mason, seconded by Council member Phillips, Council moved to amend the agenda to include Scheduling of Special Public Hearing.

VOTE:           Aye-All  
                  Nay-None

**ADOPTION OF ZONING MAP & ORDINANCE AMENDMENTS**

**Case 20080389 Parking Requirements:** The Boone Town Council requests to amend the Unified Development Ordinance as an interim measure to promote smart growth principles. The proposed text reduces the number of parking spaces required for residential and commercial development. Development Services Director John Spear said the Planning Commission unanimously recommended approval of the text amendment. Council member Phillips pointed out that this amendment does not eliminate parking but gives more flexibility. Development Services Director Spear said yes. Council member Mason said the Town can always require additional parking studies on individual projects if needed. Town Attorney Sam Furguele reminded Council that this amendment should not be viewed as an interim measure because it is a permanent amendment until changed again by Council. On a motion by Council member Phillips, seconded by Council member Brantz, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because it is observing the recommendations from the Smart Growth audit for the beginning steps towards modifying the Unified Development Ordinance to encourage compact parking designs.

VOTE:           Aye-All  
                  Nay-None

On a motion by Council member Phillips, seconded by Council member Brantz, Council moved to approve the following amendment to the Town's zoning ordinance and believes approval is reasonable and in the public interest because it observes the recommendations from the Smart Growth audit to encourage compact parking designs:

## D. PROPOSED TEXT

### Section 15. Definitions of Basic Terms

[a] . . .

***Multi-Family Residences for the Elderly:* Housing as defined pursuant to Section 151(f) and other relevant sections of this ordinance for which the United States Department of Housing and Urban Development has determined that the housing is specifically designed for and occupied by elderly persons under a Federal, State or local government program, or it is occupied solely by persons who are 62 or older or it houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates intent to house persons who are 55 or older.**

***Affordable Rental Dwelling Unit:* An affordable rental dwelling unit is a dwelling unit, as that term is defined herein, for which the monthly gross rental payment is no greater than twenty-five per cent of the monthly Area Median Income for a family of four, as established annually by the United States Department of Housing and Urban Development, and which is occupied by a family in need of housing protection.**

***Affordable Owner-Occupied Dwelling Unit:* An affordable owner-occupied dwelling unit is a dwelling unit, as that term is defined herein, which has been sold or will be offered for sale for a gross price at which the monthly gross principal and interest payment, in a mortgage financing 90% of the purchase price, amortized over a period of thirty years and calculated with interest at the legal rate, is no greater than twenty-five per cent of the monthly Area Median Income for a family of four, as established annually by the United States Department of Housing and Urban Development, and, if sold, the purchaser of which is a family in need of housing protection.**

***Affordable Rental Housing Project:* An affordable rental housing project is one in which fifty percent or more of the included dwelling units are, or upon completion of the project, will be, affordable rental dwelling units, as that phrase is defined herein.**

***Affordable Owner-Occupied Housing Development:* An affordable owner-occupied housing development is one in which fifty percent or more of the included dwelling units are, or upon completion of the development, will be, affordable owner-occupied dwelling units, as that phrase is defined herein.**

*(Revise Section 346 as follows. Existing text is struck through and proposed text is shown in bold)*

### **Section 346. ~~Number of Parking Spaces Required~~ Vehicle Parking**

[a] All developments in all zoning districts shall ~~provide~~ **be served by** a sufficient number of parking spaces to accommodate the number of vehicles that ordinarily are likely to be attracted to the development in question.

~~[b]—The presumptions established by this article are that: (i) a development must comply with the parking standards set forth in Subsection [e] to satisfy the requirement stated in Subsection [a], and (ii) any development that does not meet these standards is in compliance. However, the Table of Parking Requirements is only intended to establish a presumption and should be flexibly administered, as provided in Section 347.~~

[b] The number of off-street vehicle parking spaces included in a development plan shall comply with the standards in Subsection [e] and other relevant parts of this Section; however, required minimums and maximums may be adjusted by the permit issuing authority when the applicant provides a parking demand analysis prepared by a qualified engineer which supports a conclusion that application of the minimums established by subsection [e] would result in excess and unnecessary parking for the development or maximums established by subsection [e] are inadequate to meet the parking needed for the development.

~~[e]— Uses in the Table of Parking Requirements (Subsection [e]) are indicated by a numerical reference keyed to the Table of Permissible Uses, Section 165. When determination of the number of parking spaces required by this table results in a requirement of a fractional space, any fraction of one half or less may be disregarded, while a fraction in excess of one half shall be counted as one parking space.~~

**[c] Uses listed in Subsection [e] are preceded by a number. Except as to churches and schools, that number corresponds to a broad use category of the Table of Permissible Uses, Section 165, *supra*, and includes all specific uses described within that category, i.e., 1.400 includes 1.410, 1.420, etc. When application of the formulas in Subsection [e] results in a number of parking spaces which includes fractional space of one half or less, the fractional space may be disregarded; when application of the formulas results in a number of parking spaces which includes fractional space in excess of one half, the fraction shall be counted as one additional parking space.**

~~[d]— The council recognizes that the Table of Parking Requirements set forth in Subsection [e] cannot and does not cover every possible situation that may arise. Therefore in cases not specifically covered, the permit issuing authority is authorized to determine the parking requirements using this table as a guide.~~

**[d] When a use is proposed which is not listed in Subsection [e], the permit issuing authority shall determine the number of spaces required or permitted, as relevant, by referencing the most similar use listed in Subsection [e]. If the permit issuing authority concludes that no reasonably similar use is listed, it may require the applicant to submit a parking demand analysis prepared by a qualified engineer to determine the number of needed or permitted spaces for the proposed use, or the permit issuing authority may procure its own parking demand analysis.**

~~[e]— Table of Parking Requirements.~~

*(Delete the current table of parking requirements completely and substitute the table on the following page. Proposed text is both regular and bold font)*

**[e] Required Parking by Use**

**Residential Land Uses**

**Minimum Parking Required**

1.100 Single-Family Residences	2 spaces
1.200 Two-Family Residences	3 spaces
1.300 Multi-Family Residences	1 space / 1 bedroom units 2 spaces / 2 bedroom units 3 spaces / 3 or more bedroom units 1 space / unit for multi-family residences limited to the Elderly 1 space / unit for affordable rental dwelling units
	1 space / unit for affordable owner-occupied dwelling units
1.400 Group Homes	1 space / 4 beds
1.500 Hotels/Rooms for Rent	1 space / rentable room

**Commercial Land Uses**

**Maximum Parking Allowed**

2.100 Commercial Retail	5 spaces / 1,000 Sq. Ft.
2.200 Commercial Wholesale	3 spaces / 1,000 Sq. Ft.
2.300 Convenience Stores	5 spaces / 1,000 Sq. Ft.
2.400 Large Scale Retail	5 spaces / 1,000 Sq. Ft.
3.0 Commercial Office	5 spaces / 1,000 Sq. Ft.
4.0 Industrial Uses	2 spaces / 1,000 Sq. Ft.
5.100 Schools	5 spaces / per classroom

5.200 Churches	Total spaces equal to half the seating capacity
6.0 Recreation/ Entertainment	5 spaces / per 1,000 Sq. Ft.
7.0 Institutional Residence	2 spaces / bed
8.0 Restaurants	12 spaces / 1,000 Sq. Ft.
9.0 Automobile Sales & Service	
First 2,000 Sq. Ft.:	20 spaces / 1,000 Sq. Ft.
Additional Sq. Ft. Above 2,000:	10 spaces / 1,000 Sq. Ft.
12.0 Animal Services	5 spaces / 1,000 Sq. Ft.
13.0 Emergency Services	5 spaces / 1,000 Sq. Ft.
16.0 Dry Cleaner	5 spaces / 1,000 Sq. Ft.
19.0 Open Air Markets	5 spaces / 1,000 Sq. Ft.
20.0 Funeral Home	12 spaces / 1,000 Sq. Ft.
22.0 Daycare	3 spaces / 1,000 Sq. Ft.
28.0 Combination Uses	As applied to individual uses

**[f] The minimum parking required for Use 1.300 Multi-family residences shall be reduced by a factor of 10% for each one of the following, with a maximum reduction of 20% based on these factors:**

**[1] The development is located within 1 mile of linear sidewalk distance from any portion of the Appalachian State University library, and public sidewalks or public pedestrian walkways exist or will be constructed in connection with the development which allow safe pedestrian travel the entire route between the development and the main campus.**

**[2] Bus service to the development exists or is arranged by the developer, and a transit shelter or bus pull-off for use by the residents is built or exists within ½ mile linear sidewalk distance from the development boundary.**

~~[g]—New development in the U-1 district shall include consideration of the need for additional parking to accommodate the new development, as well as strategies to mitigate parking and traffic impacts on the campus and the larger community. Depending upon the location and intensity of a particular development, the Town may require a Traffic Impact Analysis (TIA). This analysis shall include identification of specific strategies, improvements, or Transportation Demand Management measures necessary for the University to effectively mitigate identified impacts on the campus and larger community.~~

**[g] When requested by the Administrator or permit issuing authority, an application for a permit for a new development shall include an evaluation of the need for automobile parking which may result from the development as proposed, and strategies to mitigate parking impacts upon both the immediate environs of the development and upon the region which may be negatively affected. When the Administrator or permit issuing authority concludes that due to existing unsatisfactory traffic flows or anticipated unsatisfactory traffic flows if the development is constructed as proposed, or where the Administrator or permit issuing authority concludes that existing parking in the vicinity of the development, supplemented by parking proposed for the development, may be inadequate to meet the anticipated parking needs generated by the development, the Administrator or permit issuing authority may request that the applicant provide a report, prepared by a competent engineer, predicting the impact of the development on traffic and parking in the immediate environs of the development or the entire region which may be negatively affected. This analysis shall include identification of specific strategies, improvements, and other measures necessary to effectively mitigate identified impacts.**

VOTE:       Aye - All  
              Nay - None

**Case 20090001 Stebbins Properties LLC:** Stebbins Properties, LLC requests to amend the Unified Development Ordinance in order to remove a portion of land from the designated Water Supply Watershed. This undeveloped two-acre property is located on Deck Hill Road adjacent

to the Town of Boone Water Treatment Plant. On a motion by Council member Aycock, seconded by Council member Mason, Council moved to enter Closed Session at 7:07 p.m., pursuant to NCGS 143-318.11a)3) to discuss legal advice regarding watershed regulations.

VOTE: Aye-All  
Nay-None

On a motion by Council member Aycock, seconded by Council member Brantz, Council moved to exit Closed Session at 7:26 p.m.

VOTE: Aye - All  
Nay - None

On a motion by Council member Phillips, seconded by Council member Aycock, Council moved to table the action on this request until the March 19, 2009 meeting in order to allow the applicant the opportunity to speak at the special public hearing that will be scheduled in early March.

VOTE: Aye - All  
Nay - None

**Case 20090006 Queen Street Neighborhood Conservation District:** The Boone Town Council requests to amend Section 159 of the Unified Development Ordinance to establish a new Queen Street Neighborhood Conservation District. The proposed amendment would establish requirements for rental properties in the Queen Street, Gladys Street and Charles Street neighborhoods. Development Services Director John Spear said the Planning Commission had unanimously recommended approval of the zoning map and text map and text amendments. Development Services Director Spear said Council may want to set an effective date in the future in order to allow time for the owners of rental properties to come in and register properties and vehicles. Council member Brantz asked if the Town will contact the rental properties' owners. Development Services Director Spear said yes, that the Town will send a written notice with the effective date.

On a motion by Council member Mason, seconded by Council member Mason, Council moved that the proposed amendment to the Town's zoning ordinance and map is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because of the conformity to Section 2.3.3. of the Comprehensive Plan.

VOTE: Aye - All  
Nay - None

On a motion by Council member Mason, seconded by Council member Brantz, Council moved to approve the following amendment to the Town's zoning ordinance and map and believe approval is reasonable and in the public interest because there is a history of repeated occupancy violations in this neighborhood and these amendments promote public health, safety and welfare; stabilize and maintain a suitable low-density living environment for family life; and maintain and preserve the value of existing property:

*Proposed Text:*

**Queen Street:** *The limits of the district are depicted on the Neighborhood Conservation District overlay zoning map and include all or portions of Queen Street, Gladys Street and Charles Street.*

VOTE: Aye - All  
Nay - None

**Case 20090007 Sidewalk Standards** - The Boone Town Council requests to amend Article XIV of the Unified Development Ordinance to re-establish guidelines for requiring sidewalks and a payment in lieu of sidewalk construction. Town Attorney Sam Furgiuele suggested discussing this matter in the Closed Session later and take action following. On a motion by Council

member Aycock, seconded by Council member Phillips, Council moved to add this matter to the Closed Session.

VOTE:       Aye - All  
              Nay - None

**ADOPTION OF RESOLUTION - PERMITTING CWMTF APPLICATION**

Assistant to the Manager Jim Byrne requested permission to apply for a \$50,000 clean water management trust-fund grant to develop a planning grant for the restoration project on Winkler's Creek. Mr. Byrne said a \$15,000 match is required which will be covered by an existing CDBG grant. On a motion by Council member Brantz, seconded by Council member Mason, Council moved to adopt the following resolution:

**RESOLUTION**

**WHEREAS**, the Town of Boone is hereby applying to the North Carolina Clean Water Management Trust Fund ("the fund") for grant funds to develop a planning grant for a restoration project on Winkler's Creek; and

**WHEREAS**, if North Carolina Clean Water Management Trust Fund approves funding of the project as described in this grant application, the Fund will prepare a Grant Agreement for execution by the Town Council; and

**WHEREAS**, the Grant Agreement will specify the terms and conditions under which the Fund will provide the grant funding; and

**WHEREAS**, the Grant Agreement will require the Town of Boone to perform certain functions and obligations in order to carry out the work described in this grant application.

**NOW, THEREFORE BE IT RESOLVED** that the Town Council of the Town of Boone assures the North Carolina Clean Water Management Trust Fund that it understands the functions and obligations to which the Town of Boone is committing itself in order to carry out the work described in this grant application, and further agrees that the Town of Boone will proceed with diligence to perform those functions and obligations to accomplish the work described in this grant application.

**ADOPTED** this the 19<sup>th</sup> day of February, 2009.

ATTEST:

Mayor

Town Clerk

**(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 92)**

VOTE:       Aye - All  
              Nay - None

**TRANSPORTATION COMMITTEE RECOMMENDATION - ADOPTION OF SIDEWALK PRIORITIZATION MAP**

Public Works Director Blake Brown introduced Craig Scheffler from the Alternative Transportation Subcommittee. Mr. Scheffler showed a powerpoint presentation which indicates the steps in prioritizing sidewalk placement. **A copy of the powerpoint is permanently on file in the February, 2009 Council meeting file.** On a motion by Council member Phillips, seconded by Council member Mason, Council moved to adopt the sidewalk prioritization map as presented.

VOTE:       Aye - All  
              Nay - None

**TRANSPORTATION COMMITTEE RECOMMENDATION - REDUCE SPEED LIMIT ON KELLWOOD DRIVE**

Public Works Director Blake Brown said staff distributed a survey to the Kellwood Drive neighborhood residents soliciting their thoughts on traffic issues. Mr. Brown said the majority asked that the Town lower the speed limit along Kellwood Drive. Mr. Brown said the Transportation Committee also recommends that Council request that the NC Department of Transportation lower the speed limit on Kellwood Drive from 35 mph to 25 mph. On a motion by Council member Pepin, seconded by Council member Brantz, Council moved to request that the NC Department of Transportation consider lowering the speed limit on Kellwood Drive to 25-mph.

VOTE:           Aye - All  
                  Nay - None

**DISCUSSION OF DRAFT BILL - TOWN OF BOONE MODERATE INCOME HOUSING**

Mayor Pro-Tem Lynne Mason explained that public funds can be expended on only 60% of median income for affordable housing. Metropolitan areas in NC are up to 80% and the Town of Boone wants to be included within that provision. Mayor Pro-Tem Mason said it is problematic for employers in the Town and County to recruit new hires because of the high housing costs. On a motion by Council member Mason, seconded by Council member Aycock, Council moved to send to the General Assembly for adoption the following proposed bill. Before voting, Council agreed that Watauga County officials could be included in the draft bill if they so desired.

***GENERAL ASSEMBLY OF NORTH CAROLINA***

***SESSION \_\_\_\_\_***

*Short Title: Town of Boone Moderate Income Housing* *(Local)*

*Sponsors:*

*Referred to:*

*April 7, 2009*

1     ***A BILL TO BE ENTITLED***  
2     ***AN ACT AUTHORIZING THE TOWN OF BOONE, NORTH CAROLINA***  
3     ***TO ENGAGE IN THE DEVELOPMENT AND SUPPORT OF HOUSING***  
4     ***FOR PERSONS OF MODERATE INCOME***  
5     ***The General Assembly of North Carolina enacts:***  
6         ***SECTION 1. G.S. 157-9.1 reads as rewritten:***  
7         ***§ 157-9.1. Moderate income.***  
8             ***(a) Whenever the words "low income" appear in this Chapter, they shall be***  
9             ***construed to mean "low and moderate income."***  
10            ***(b) This section applies only to the housing authority of the largest city in a county***  
11            ***which has two or more cities with a population of 60,000 or over, according to the most***  
12            ***recent decennial federal census.***  
13            ***(c) This section shall apply only to existing, non-federally subsidized structures.***  
14            ***(d) Notwithstanding the provisions of subsections (b) and (c), subsection (a) of this***  
15            ***section applies to all counties with an area of 250 square miles or less, and a population***  
16            ***of***  
          ***more than 100,000 according to the most recent decennial federal census, and applies to***  
          ***all***

- 17 *cities within such counties., and shall apply to the Town of Boone, North Carolina,*  
*without*  
18 *regard to its population or the population of Watauga County.*  
19 **SECTION 2.** *This act applies only to the Town of Boone.*  
20 **SECTION 3.** *This act becomes effective \_\_\_\_\_.*

VOTE: Aye - All  
Nay - None

### **PERMISSION TO APPLY FOR GRANT - FIRE ACT**

Fire Chief Reggie Hassler requested permission to apply for a fire-act grant to purchase a fire extinguisher pit. If the grant is approved, \$8,562 will be awarded to the Town. Chief Hassler said a 10% match, or \$856, is required which will be paid by rural fire-district funds. On a motion by Council member Brantz, seconded by Council member Phillips, Council granted permission to apply for the grant.

VOTE: Aye - All  
Nay - None

### **BOARD APPOINTMENTS - JONES HOUSE ADVISORY BOARD**

On a motion by Council member Brantz, seconded by Council member Phillips, Council moved to postpone the Jones House Advisory Board appointments until the March 19<sup>th</sup> meeting.

VOTE: Aye - All  
Nay - None

### **ANNOUNCEMENT OF BOARD VACANCY - ALCOHOLIC BEVERAGE COMMISSION**

Mayor Clawson announced that the Town will be advertising for one position on the Alcoholic Beverage Commission and that the appointment will be made at the March 19<sup>th</sup> meeting.

### **ANNOUNCEMENT OF BOARD VACANCIES - PLANNING COMMISSION**

Development Services Director John Spear announced that Eric Woolridge and Jesse Pipes had resigned their resident positions on the Planning Commission. Mr. Spear said the Clerk will advertise for the two open positions with appointments to be made at the March 19<sup>th</sup> meeting.

### **ANNOUNCEMENT OF BOARD VACANCIES - WATER COMMITTEE**

Public Utilities Director Rick Miller said there are four vacancies on the water committee. On a motion by Council member Brantz, seconded by Council member Pepin, Council moved to advertise the vacancies and make appointments at the March 19<sup>th</sup> meeting.

VOTE: Aye-All  
Nay-None

### **MONTHLY WATER USE STATUS REPORT**

Public Utilities Director Rick Miller presented the monthly water status report (**copy permanently on file in January 2009 Town Council packet**).

### **DISCUSSION AND APPROVAL OF GREENWAY CONNECTOR PROJECT AT NEW WATAUGA HIGH SCHOOL**

Public Works Director Blake Brown presented the following information:

*The Transportation and Greenway sub-committee have been working with Jennifer Bryan Greene of the Appalachian District Health Services has acquired a grant through the Childhood Obesity Grant. The monies the Town of Boone is slated to receive for the Greenway Connection on Daniel Boone drive is \$96,000.00 with the town's match of in-kind- services. We have gone through three meeting with the Watauga County Commissioners and the Watauga County Board of Education. There is a strong support from the neighborhood for this location. On February 9, 2009 the School Board voted for option 2 which would cost as much as \$236,000.00. On February 17, 2009 the County voted 5 -0 to approve the Greenway Connector along the Edmisten House following the sewer out fall and then crossing at the existing culvert and following around the base of the hill to the west to connect at the greenway 200 feet from the third bridge near the sewer plant. The proposed cost for the connection is attached for your review. The county did have some requirements 1) No parking at the cul-de-sac at the end of Daniel Boone Drive. 2) County has the right to relocate the trail to be able to utilize the land they own in the future. 3) That the connector shall follow the edge of the woods past the existing culvert on the high school property. 4) That the Town with funds from the grant to help with the cost of fencing along the east side of the project located near the Edmisten house. 5) That the required survey for easement cost be the Town of Boone's responsibility. The committee would ask Council to accept the monies from the Obesity grant in the amount \$96,000.00 and allow the Public Works Department to use its personnel and equipment to construct the connector as the towns match for grant. Allow the Public Works Department to contract surveying and site planning for the project. Through this process Public Works has encumbered cost from a local site manager Mike Wilson; his bill is \$1,300 for help in determining the contract cost for both options and help in answering any questions that I could not answer for the school board and the county commissioners. There is another bill from Appalachian Architecture for \$3,679 that is for 3-D rendering of the proposed options; how option 2 would affect the hillside with crosscut profiles to show the amount of land that would be disturbed. Bill prepared a rendering, site and landscape plan for the proposed entrance off Daniel Boone Drive, beside the Edmisten house. Bill did an excellent job with the presentation. Without Bill, Mike and Eric's help I don't believe I could have sold the option t the boards. These bills can be absorbed in the existing budget with your approval.*

Council member Mason said this greenway connector will be a real asset to the high school property and to the community and that the project must be completed by late May so the citizens will be able to use the greenway connector this summer. On a motion by Council member Brantz, seconded by Council member Aycock, Council moved to authorize Staff to complete the greenway connector and that the Town Public Works budget absorb the costs of surveying and artists' renderings.

VOTE:           Aye - All  
                  Nay - None

#### **SCHEDULING OF SPECIAL MEETING - PRESENTATION OF LAND-USE MASTER PLAN**

Development Services Director John Spear said the Lawrence Group is ready to present the draft Land-Use Master Plan to the Town Council. After some discussion, on a motion by Council member Aycock, seconded by Council member Phillips, Council moved to schedule a special meeting for Tuesday, March 3<sup>rd</sup> at 4:00 p.m. in the Council Chambers.

VOTE:           Aye-All  
                  Nay-None

#### **SCHEDULING OF SPECIAL PUBLIC HEARING - ZONING AMENDMENT**

On a motion by Council member Phillips, seconded by Council member Aycock, Council moved to schedule a special public hearing on zoning map amendments for Monday, March 9<sup>th</sup> at 6:00 p.m. in the Council Chambers.

VOTE:           Aye-All  
                  Nay-None

Mayor Clawson declared a break at 8:30 p.m. Council reconvened at 8:42 p.m.

#### **REQUESTED APPEARANCES - KELLY J. DREY-HOUCK**

Ms. Kelly J. Drey-Houck appeared before the Council members to invite them and the community to the High Country Local-Food Summit on March 26, 2009 at the Valle Crucis Apple Barn from 9:00 a.m. to 5:00 p.m. Later in the evening at 7:00 p.m. Joel Salatin will be speaking at Farthing Auditorium. Ms. Drey-Houck hopes this will become an annual event in the community.

#### **REQUESTED APPEARANCES - RIO TAZEWELL**

Mr. Rio Tazewell appeared before the Council members to invite them and the community to attend the Broyhill Wind public-information forum on March 4, 2009 at the Broyhill Inn and Conference Center from 6:00 p.m. to 7:30 p.m.; it will focus on the proposed installation of a 100-kw wind turbine on the grounds of the inn.

#### **REQUESTED APPEARANCES - RANDALL PALMER**

Mr. Randall Palmer appeared before Council to discuss the proposed Boone Bypass routes. Mr. Palmer said one of the routes first proposed in 1991 is still being proposed in 2009. Mr. Palmer said residents voiced their opposition to the route in 1991, in 1995, in 2004 and again in 2009. Mr. Palmer requested that the Town pay close attention to what the DOT is proposing for the Boone Bypass.

#### **REQUESTED APPEARANCES - MORGAN MURRAY**

Mr. Morgan Murray appeared before Council to discuss different scenarios regarding downtown parking. Mr. Murray suggested the Town construct a parking deck and raise rates for parking downtown.

#### **REQUESTED APPEARANCES - ERNIE MCGUIRE**

Mr. Ernie McGuire, local representative for Frontier Energy, presented an update on the progress of installation of natural gas within the Town of Boone. Mr. McGuire requested that the Town of Boone consider switching its buildings to natural gas since it is cheaper than propane. Mr. McGuire said both ASU and Watauga County have switched to natural gas. Council member Mason asked when natural gas will be provided to the neighborhoods. Mr. McGuire said it is policy to provide to businesses first, then branch out into the neighborhoods. Council member Pepin asked if easements have been obtained to install lines along Howard Street. Town Manager Greg Young said that no easements have been obtained, but that Frontier has received verbal commitments from potential customers. Mr. Young reminded Council that Frontier originally opted out of the Howard Street project but is now interested in the project and will use easements that the Town obtains.

#### **WATER & SEWER REQUEST - JUSTIN NICHOLS**

Town Attorney Sam Furgiuele opened a public hearing at 9:20 p.m. to hear sworn testimony from Justin Nichols, Development Services Director John Spear, and Public Utilities Director Rick Miller on a request for water and sewer service to property located off Maplewood Drive and Highway 105 bypass. Mr. Nichols said he plans to construct a three-bedroom single family speculation home. Council member Phillips asked if he is willing to annex. Mr. Nichols said yes. Council member Aycock asked if a well could be dug. Mr. Nichols said yes but that connecting to Town water will make the project more affordable. Council member Mason asked about access to the property. Mr. Nichols said he will access the property from Maplewood Drive. Council member Phillips questioned if the residence will be located in the primary pressure zone. Mr. Nichols said yes. Council member Mason asked if the property is in the secondary pressure zone. Public Utilities Director Rick Miller said that a portion of the property is in the secondary pressure zone, but that the property will be served by the Gladys and Charles Street tanks. Mr. Miller also pointed out that the property is part of a subdivision; therefore it can not be annexed. Council member Mason asked if the property can be served by sewer. Mr. Miller said yes. Council member Mason asked about growth area and zoning of the property.

Mr. Spear said the property is in the secondary growth area and is zoned O/I. Council member Mason asked if a single-family house is allowed in that district. Mr. Spear said yes, he believed that to be true. There being no further comments, the public hearing closed at 9:30 p.m. On a motion by Council member Phillips, seconded by Council member Brantz, Council moved to grant the 270-gallon-per-day request out of the 2009 allocation. Before voting Council member Pepin pointed out that the request is not consistent with Ordinance 05-01. Council member Mason agreed and pointed out the property is located outside the Town limits.

VOTE:           Aye-2 (Brantz, Phillips)  
                  Nay-3 (Aycock, Mason, Pepin)

#### **WATER & SEWER REQUEST - MARGARET ANAGNOS**

Town Attorney Sam Furgiuele opened a public hearing at 9:41 p.m. to hear sworn testimony from Margaret Anagnos, Development Services Director John Spear, and Public Utilities Director Rick Miller on a request for water and sewer service to property located off University Drive. Ms. Anagnos explained that the previous allocation to Philip Starks, LLC was for 2,970 gallons per day and was to be used for a mixed-use development. After preparing marketing studies, Ms. Anagnos said there is plenty of office/retail space within the Town. Ms. Anagnos requested 9,000 gallons per day in order to construct sixty multi-family units. Ms. Anagnos plans to construct one-bedroom units and make them affordable to young business professionals. Town Attorney Sam Furgiuele asked Ms. Anagnos if she has the authority to relinquish the Philip Starks, LLC allocation. Ms. Anagnos said yes, that she is both Philip Stark LLC and PS2, LLC. Public Utilities Director Rick Miller explained that there is a 270-gallon-per-day vacant lot allocation that goes to this property and that the allocation to Philip Starks, LLC will expire in August 2009. Town Attorney Furgiuele explained the water relinquishment policy. Council member Brantz asked if sidewalks will be required. Development Services Director said this project would be an exemplary portrayal of the “fee-in-lieu” requirements just adopted tonight. There being no further comments, the public hearing closed at 9:59 p.m. On a motion by Council member Mason, seconded by Council member Pepin, Council moved to grant 9,000 gallons per day water out of the 2009 allocation contingent upon Philip Starks, LLC relinquishing the previous allocation of 2,700 gallons per day water.

VOTE:           Aye - All  
                  Nay - None

#### **WATER & SEWER REQUEST - BOONE DEVELOPMENTS**

Town Attorney Sam Furgiuele opened a public hearing at 10:01 p.m. to hear sworn testimony from John Winkler, Development Services Director John Spear, and Public Utilities Director Rick Miller on a request for water and sewer service to property located at the Boone Golf Course. Mr. Winkler said Boone Developments aka Boone Golf course has been a part of Boone since 1958. Mr. Winkler said Boone Developments is planning to develop an 84-unit hotel/condo project which will include a pool, workout area, meeting space, a new pro shop and golf shed. Mr. Winkler said this is a \$15,000,000 project with a completion date of mid-summer 2010. Mr. Winkler said he hopes that this development will make the Boone Golf course a destination for avid golfers. Council member Pepin asked if the entire project will be completed in 2010. Mr. Winkler said no, that only 44 units will be complete by 2010. Public Utilities Director Rick Miller presented the remaining water allocations for 2009, 2010 and 2011. Council member Mason asked about growth area and zoning of property. Development Services Director John Spear said the property is in the primary growth area and is zoned R-A. Council member Mason asked if this type of development is allowed in R-A zoning. Mr. Spear said yes, but that the hotel/condo will be an accessory use to the golf course. Council member Brantz asked if this proposed development will require a traffic study. Mr. Spear said perhaps, but that he has not seen any plans yet. Mr. Winkler explained in detail the layout of the golf course once the project is complete. There being no further public comments, the hearing closed at 10:26 p.m. On a motion by Council member Pepin, seconded by Council member Mason, Council moved to grant 8,634 gallons per day water from the 2009, 2010 and 2011 allocations for a total allocation of 25,902 gallons per day water, contingent upon the development being in compliance with all Town regulations.

VOTE: Aye - All  
Nay - None

### **WATER & SEWER REQUEST - ADAM UPCHURCH**

Town Attorney Sam Furgiuele opened a public hearing at 10:29 p.m. to hear sworn testimony from Public Utilities Director Rick Miller on a request for water and sewer service to property located off Park Street. Public Utilities Director Rick Miller pointed out that Mr. Upchurch was not in attendance; therefore, his water allocation of 24,750 gallons per day granted on 2/21/08 will expire on 2/21/09. Mr. Miller said Mr. Upchurch had hoped to have the water reallocated without paying availability fees. There being no further comments, the hearing closed at 10:30 p.m.

### **CLOSED SESSION**

On a motion by Council member Brantz, seconded by Council member Aycock, Council moved to enter Closed Session at 10:31 p.m., pursuant to NCGS 143-318.11a)3)5) in order to discuss the property acquisition-water intake project, the Ron Garber settlement property, legal advice on occupancy tax, legal advice on the garden club lease, legal advice on the CNA Surety settlement proposal and legal advice on the sidewalk standards zoning amendment.

VOTE: Aye-All  
Nay-None

On a motion by Council member Aycock, seconded by Council member Mason, Council moved to exit Closed Session at 11:43 p.m.

VOTE: Aye-All  
Nay-None

### **ADOPTION OF ZONING AMENDMENT**

**Case 20090007 Sidewalk Standards** - The Boone Town Council requests to amend Article XIV of the Unified Development Ordinance to re-establish guidelines for requiring sidewalks and to establish a payment in lieu of sidewalk construction as an alternative for developers in certain situations. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to amend the proposed section 243[e][2][c] to read as follows:

*All funds collected in lieu of construction shall be in addition to all other sidewalk funding and shall be placed in a separate account to be used only for costs associated with new sidewalk construction, as shown on the Sidewalk Priorities Plan duly adopted by the Town.*

VOTE: Aye-All  
Nay-None

On a motion by Council member Mason, seconded by Council member Aycock, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because it supports the Comprehensive Plan objective of pedestrian movement and the supporting policies as cited in the staff's report and recommendation.

VOTE: Aye-All  
Nay-None

On a motion by Council member Mason, seconded by Council member Brantz, Council moved to approve the following amendment, as amended, effective April 1, 2009 to the Town's zoning ordinance and believes approval is reasonable and in the public interest because the construction of sidewalks promotes public health, safety and welfare by providing improved pedestrian safety, expanded opportunities for recreational walking, easier access to goods and services, and reduced automobile dependency:

**Proposed Text:**

**Section 237. Street Width, Sidewalk, and Drainage Requirements in Subdivisions**

[a] Street rights-of-way are designed and developed to serve several functions: (i) to carry motor vehicle traffic, and in some cases allow on street parking; (ii) to provide a safe and convenient passageway for pedestrian traffic; and (iii) to serve as an important link in the town’s drainage system. In order to fulfill these objectives, all public streets shall be constructed to meet either the standards set forth in Subsection [b] or Subsection [c].

[b] The following classifications of streets may be constructed with four foot wide shoulders and drainage swales on either side in lieu of curb and gutter, so long as the street grade does not exceed a grade of fifteen percent (15%). Such streets shall be constructed to meet the criteria indicated in the table that follows as well as specifications referenced in Section 240. ~~No sidewalks shall be required.~~

Street Type	Minimum Right-of-Way Width (in feet)	Minimum Pavement Width (in feet)
Minor	45	18
Local	45	18
Private	30	18
Subcollector	50	20

[c] Except as otherwise provided in Subsection [b], all streets shall be constructed with curb and gutter and shall conform to the other requirements of this subsection. Only standard ninety (90) degree curb may be used, except that roll type curb shall be permitted along minor and local streets within residential subdivisions. Street pavement width shall be measured from curb face to curb face where ninety (90) degree curb is used, and from the center of the curb where roll type curb is used. The minimum paving width for local, subcollector and collector streets may be increased if deemed necessary by the permit issuing authority.

Street Type	Minimum Right-of-Way Width (in feet)	Minimum Pavement Width (in feet)	Sidewalk Requirement
Minor	40	20	None
Local	40	20	One side
Private	30	18	None
Subcollector	50	20	One side
Collector	50	20	One side

~~[d] All major subdivisions shall provide sidewalks along the entire frontage of any public street(s) abutting the subdivision. The developer of those subdivisions located along roads maintained by the North Carolina Department of Transportation (Department) shall enter into an encroachment agreement with the Department for the sidewalk construction. If the Department refuses to enter into an agreement, said refusal shall be grounds for a waiver of the requirement to install the sidewalk. Those subdivisions located outside of the Boone Town limits shall create a mandatory property owners association with the responsibility to maintain the sidewalk along the state road and the authority to make assessments for the maintenance of the sidewalk.~~

~~e]—The sidewalks required by this section shall be at least four feet in width and constructed according to NCDOT specifications, except that the permit issuing authority may permit the installation of sidewalks constructed with other suitable materials when it concludes that:~~

- ~~—[1]—Such walkways would serve the residents of the development as adequately as concrete sidewalks; and~~
- ~~—[2]—Such walkways would be more environmentally desirable or more in keeping with the overall design of the development.~~

~~[f]—Whenever the permit issuing authority finds that a means of pedestrian access is necessary from the subdivision to schools, parks, playgrounds, or other roads or facilities and that such access is not conveniently provided by sidewalks adjacent to the streets, the developer may be required to reserve an unobstructed easement of at least ten (10) feet in width to provide such access.~~

#### **Section 241. Public Streets and Private Roads in Subdivisions**

[b] Architecturally integrated residential subdivisions containing twenty five (25) or more dwelling units may be developed with private roads that do not meet the public street and sidewalk standards of this ordinance as long as:

#### **Section 242. Road and Sidewalk Requirements in Unsubdivided Developments**

[a] Within unsubdivided developments, all private roads and access ways shall be designed and constructed to facilitate the safe and convenient movement of motor vehicle and pedestrian traffic. Widths of roads, use of curb and gutter, and paving specifications shall be determined by the provisions of this ordinance dealing with parking (Article XIX) and drainage (Article XVII). To the extent not otherwise covered in the foregoing articles, and to the extent that the requirements set forth in this article for subdivision streets may be relevant to the roads in unsubdivided developments, the requirements of this article may be applied to satisfy the standard set forth in the first sentence of this subsection.

[b] Whenever a road in an unsubdivided development connects two or more subcollector, collector, or arterial streets in such a manner that any substantial volume of through traffic is likely to make use of this road, such road shall be constructed in accordance with the standards applicable to subdivision streets and shall be dedicated. In other cases when roads in unsubdivided developments within the town are constructed in accordance with the specifications for subdivision streets, the town may accept an offer of dedication of such streets.

~~[c]—In all unsubdivided residential development, sidewalks shall be provided linking dwelling units with other dwelling units, the public street, and on site activity centers such as parking areas, laundry facilities, and recreational areas and facilities. Notwithstanding the foregoing, sidewalks shall not be required where pedestrians have access to a road that serves not more than nine dwelling units.~~

~~[d] All development, except a single family home, shall construct a sidewalk along any abutting public street. The sidewalk shall extend along the entire frontage of the development parcel. If the abutting road is maintained by the North Carolina Department of Transportation (Department); the developer shall enter into an encroachment agreement with the Department for the sidewalk construction. If the Department refuses to enter into an agreement, said refusal shall be grounds for a waiver of the requirement to install the sidewalk.~~

~~[e] Whenever the permit issuing authority finds that a means of pedestrian access is necessary from an unsubdivided development to schools, parks, playgrounds, or other roads or facilities and that such access is not conveniently provided by sidewalks adjacent to the roads, the developer may be required to reserve an unobstructed easement of at least ten (10) feet to provide such access.~~

~~[f] The sidewalks required by this section shall be at least four feet wide and constructed according to NCDOT specifications, except that the permit issuing authority may permit the installation of walkways with other suitable materials when it concludes that:~~

- ~~[1] Such walkways would serve the residents of the development as adequately as concrete sidewalks; and~~
- ~~[2] Such walkways could be more environmentally desirable or more in keeping with the overall design of the development.~~

**Section 243. ~~Attention to Handicapped in Streets and Sidewalk Construction~~  
*Pedestrian Circulation and Sidewalk Requirements.***

*[a] Purpose. The purpose of this section is to provide minimum standards for the provision of sidewalks within the Town of Boone and the Town of Boone extraterritorial planning jurisdiction. The construction of sidewalks advances the promotion of health, safety and the general welfare of the public including improved pedestrian safety, expanded opportunity for recreational walking and easier access to goods and services.*

*[b] When Sidewalks Must Be Constructed. Sidewalks shall be required for all new construction and in connection with improvements, renovations, additions or expansions to existing structures which fall into one of the following categories:*

- [1] All new major subdivisions;*
- [2] All new multi-family residential development;*
- [3] All new office, institutional, commercial and industrial development;*
- [4] Any combination of the uses as listed above;*
- [5] All existing office, institutional, commercial, and industrial development improvements, renovations, additions or expansions which increase the value of the structure by more than fifty percent (50%) of its appraised valuation.*

*[a] The “appraised valuation” shall mean either the appraised valuation for property tax purposes, updated as necessary by the increase in the consumer price index since the date of the last valuation, or the valuation of a professionally recognized property appraiser.*

*[c] Design Requirements.*

- [1] Sidewalks shall be required along the entire length of any portions of public streets which abut the development parcel.*
- [2] Sidewalks will be constructed in accordance with the Town of Boone Transportation Specifications and Policy Manual. Any deviation from the requirements must be approved by the Administrator. Deviations may only be allowed when strict compliance with the Town of Boone Transportation Specifications and Policy Manual is impractical due to topography or because there exist site conditions beyond the applicant’s control and not of the applicant’s making.*
- [3] Whenever curb and gutter construction is used on public streets, wheelchair ramps for the handicapped shall be provided at intersections and other major points of pedestrian flow. Sidewalks, wheelchair ramps, and depressed curbs shall be constructed in accordance with the published standards of the North Carolina Building Code, Volume I-C, Accessibility.*
- [4] Sidewalk Construction must be approved by the Director of Public Works or his designee prior to the issuance of a Certificate of Occupancy.*

- [5] In all multi-family residential development, sidewalks shall be provided linking dwelling units with other dwelling units, the public street, and on site activity centers such as parking areas, laundry facilities, and recreational areas and facilities. ~~Notwithstanding the foregoing, sidewalks shall not be required where pedestrians have access to a road that serves not more than nine dwelling units.~~

*[d] Alternative Methods for Pedestrian Circulation: In circumstances when an alternative method of public pedestrian circulation has been identified in a duly adopted governmental alternative transportation plan, or where a proposed public greenway will connect to an existing public greenway the permit issuing authority may allow the installation of a public greenway instead of sidewalks. The following provisions shall apply for the approval of alternative methods for the provision of pedestrian circulation:*

*[1] The developer with written authorization from the property owner shall submit a written request for an alternative method for pedestrian circulation to Development Services. The request shall specify the method proposed as a substitute for sidewalk installation. A site plan depicting the location and dimensions of the alternative method of pedestrian circulation and any other information deemed necessary by Development Services shall be included with the request.*

*[2] All alternative methods will be constructed to meet Town of Boone standards and will require the dedication of an assignable permanent easement to the Town of Boone.*

*[e] Fee in Lieu*

*[1] Except for development along a Primary Sidewalk Priority Route, when a developer is required under Section 243(b) to construct a sidewalk, the developer may in lieu of such construction deposit funds into a sidewalk fund maintained by the Town of Boone.*

*[2] Procedures for Payment of Fee in Lieu*

*[a] The developer, with written authorization from the property owner, shall submit a written notification to the Administrator of the developer's intent to pay a fee in lieu of construction.*

*[b] The developer shall pay the fee prior to the issuance of a Certificate of Occupancy. The fee shall be a fixed amount per linear foot based on the rate calculated and published on a quarterly basis by the Town. The applicable fee shall be determined by the rate in effect on the date the development plan is approved.*

*[c] All funds collected in lieu of construction shall be in addition to all other sidewalk funding and shall be placed in a separate account to be used only for costs associated with new sidewalk construction as shown on the Sidewalk Priorities Plan duly adopted by the Town.*

[f] Whenever the permit issuing authority finds that a means of pedestrian access is necessary from the subdivision to schools, parks, playgrounds, or other roads or facilities and that such access is not conveniently provided by sidewalks adjacent to the streets, the developer may be required to reserve an unobstructed easement of at least ten (10) feet in width to provide such access.

VOTE:       Aye-All  
              Nay-None

**ADOPTION OF CONTRACT WITH TOURISM DEVELOPMENT AUTHORITY**

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

**STATE OF NORTH CAROLINA  
COUNTY OF WATAUGA  
CONDITIONAL AGREEMENT BETWEEN  
TOWN OF BOONE, A NORTH CAROLINA MUNICIPAL CORPORATION  
AND THE BOONE TOURISM DEVELOPMENT AUTHORITY**

**THIS AGREEMENT** (“Agreement”) is entered into this 19<sup>th</sup> day of , February 2009, by and between the TOWN OF BOONE, a North Carolina municipality (hereafter referred to as “Town”) and the BOONE TOURISM DEVELOPMENT AUTHORITY, (hereafter referred to as “the TDA”), collectively referred to as “the Parties.” This Agreement is expressly conditioned and is only effective upon the adoption by the North Carolina General Assembly of proposed local legislation authorizing the Town to levy a room occupancy tax of 6% of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the corporate limits of the Town that is subject to sales tax under N.C. Gen. Stat. § 105-164.4(a)(3).

**W I T N E S S E T H:**

**THAT, WHEREAS,** Town is a municipal corporation organized pursuant to the laws of the State of North Carolina and located in Watauga County, North Carolina; and

**WHEREAS,** the TDA is organized pursuant to the laws of the State of North Carolina, and is authorized by law to enter agreements for the development of tourism benefitting the Town and expenditure of funds for that purpose; and

**WHEREAS,** the parties desire to cooperate with each other in expending funds derived from the collection of occupancy taxes, and wish to confirm their agreements and commitments in writing;

**NOW, THEREFORE,** for and in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration passing from each party to the other, the receipt of which is hereby respectively acknowledged by each of the parties hereto, conditioned upon the adoption by the North Carolina General Assembly of the above referenced enactment (hereinafter, “the legislation”), Town and the TDA do hereby agree as follows:

- 1. Membership of the TDA:** In addition to the requirements of the legislation that one-third of the members of the TDA be individuals affiliated with businesses that collect the occupancy tax in the town and one-half be individuals currently active in the promotion of travel and tourism in the Town, and that the Finance Officer for the Town shall be an *ex officio* finance officer of the TDA, the parties agree that the membership of the TDA shall be created and comprised as follows: The Town Council shall appoint all members of the TDA, and the parties agree that the membership of the TDA shall include three individuals, all of whom reside within a fifty mile radius of the corporate limits of Town and in the State of North Carolina and who are owners or operators of taxable tourist accommodations located within Town’s corporate boundaries (hereafter, “Boone”); one resident of Watauga County who owns or operates a restaurant in Boone; two residents of Boone who are members of the Boone Area Chamber of Commerce; one member of the Boone Town Council; and two residents of Boone. Until the terms of those persons currently serving on the TDA expire according to their present terms, no new person shall be appointed by Town.
- 2. By-Laws of TDA:** Except to the extent superceded by the legislation, unless modified by the membership of the TDA, in accordance with its current by-laws, the parties agree that the by-laws of the TDA shall be unchanged by this Agreement.
- 3. Procedures for Town Recommendations to TDA for Expenditures of Funds Remitted to TDA:** Pursuant to the legislation, the TDA may only spend one-third of the funds (hereafter, “the

one-third funds”) remitted to it on tourism-related expenditures which have been recommended by the Town Council. The Town Council, by formal action of a majority of its members during the Town Council’s annual retreat, or at a regular meeting of the Town Council as part of a budget amendment, and no less often than annually, shall recommend to the TDA specific expenditures which it has determined are both tourism-related and in the best interests of the Town. Such recommendations shall be promptly transmitted to the TDA by the Town Clerk.

**4. Procedures for TDA Adoption of Recommendations and Remission of Funds to Town:**

No later than its May meeting the TDA shall act on the recommendation(s) of the Town adopted by the Town Council at its annual retreat. When the Town Council adopts a recommendation(s) at a subsequent regular meeting of the Town Council, the TDA shall act on that recommendation(s) at the next meeting of the TDA after notice is sent by the Town Clerk in accordance with paragraph 12 herein and in no case later than sixty (60) days following adoption of the recommendation(s). At its meeting, the TDA shall review the recommendations of the Town Council and approve the expenditure of funds in accordance with those recommendations, as it sees fit, in light of the purposes of the legislation and pursuant to its authority therein. Any portion of the aforementioned “one-third funds” not approved by the TDA at the time a recommendation is first considered shall be retained for later action, but such funds may never be expended or allocated by the TDA except in accordance with the duly adopted recommendations of the Town Council. All of the “one-third funds” remitted to the TDA in any fiscal year (July 1 through June 30) must be approved by the TDA

each year prior to the end of May of the current fiscal year. Once approved by the TDA, funds appropriate to the approved recommendation(s) shall be promptly remitted to Town, and those funds shall thereafter be applied by Town to the project, activity, event or cost for which the expenditure has been approved. Where expenditures recommended by Town are approved by the TDA prior to the TDA’s receipt of all funds needed to fully support a particular project, activity, event or cost to the degree recommended by the Town Council and approved by the TDA, subsequently received net proceeds of the occupancy tax received by Town shall be remitted to the TDA, but then immediately thereafter redirected by the Town’s Finance Officer back to the Town for application to the approved project, activity, event or cost to the extent authorized, without the necessity of further action by the TDA.

**5. Non-assignment:** This agreement may not be assigned by either party.

**6. Parties:** Each party shall be considered to be an independent contractor in relation to the other, and neither shall be construed to be an agent or representative of the other party; therefore, neither party shall have any liability to a third party for the acts or omissions of the other party. In addition, neither party, nor any of its employees, agents, or contractors, shall be deemed to be employees or agents of the other party. Neither party, nor any of each party’s employees, agents or contractors, shall be entitled to compensation for services, workers compensation, or employee benefits from the other party by virtue of this Agreement.

**7. Choice of Law:** This agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. Venue of any dispute between the parties shall be Watauga, North Carolina.

**8. Default:** In the event of default each party shall have such rights or remedies available in equity or authorized by law for this Agreement, including specific performance. However, neither party shall seek to judicially enforce this Agreement for default or breach without first giving the other party a reasonable opportunity to cure any breach or default.

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

**10. Severability:** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein; provided, however, in no case shall either party sue or otherwise assert any claim or

cause of action, whether at law, in equity, or otherwise, against any signatory to the agreement in that person's individual capacity.

11. **Waiver:** No covenant or condition of this Agreement can be waived except by written consent of the parties hereto. A waiver of any covenant or condition on one occasion shall not be deemed a waiver of said covenant or condition on any subsequent occasion unless such fact is specifically stated in the waiver. Forbearance or indulgence by either party in any regard whatsoever shall not constitute a waiver of any covenant or condition to be performed by the other party, and, until the other party has completely performed all covenants and conditions of this Agreement, each party shall be entitled to invoke any remedy available to it under this Agreement or any law or equity despite such forbearance or indulgence.

12. **Applicable Laws and Regulations:** The parties mutually agree to comply with all applicable laws, rules and regulations of the State of North Carolina and the United States of America in connection with the performance or enforcement of this Agreement.

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

As to TDA:

As to Town:

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

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

14. **Amendment:** This Agreement cannot be amended, modified, supplemented or rescinded except in writing signed by the parties hereto.

15. **Headings and Construction of Agreement:** The headings used in this Agreement have been prepared for the convenience of reference only and shall not control, affect the meaning, or be taken as an interpretation of any provisions of this Agreement.

This Agreement has been prepared on the basis of mutual understanding of the parties and shall not be construed against either party by reason of such party's being the drafter hereof.

16. **Entirety of Contract:** This agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to said matter. Each party to this agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.

17. **Multiple Originals:** This Agreement is executed in multiple originals, at least one of which will be retained by each of the parties hereto, and all of which together shall constitute one and the same instrument.

**IN TESTIMONY WHEREOF**, Town has caused this Agreement to be executed in its name by its Mayor, attested by its Town Clerk, and its official seal hereunto affixed, all by Resolution duly entered by the Town Council; and TDA has caused this Agreement to be executed in its name by \_\_\_\_\_, and attested by its

\_\_\_\_\_, as evidenced by the affixing of the seal of the \_\_\_\_\_, all pursuant to the authority of its Board duly given, all effective on this the day and year first above written.

**TOWN OF BOONE, NORTH CAROLINA**

ATTESTED:

By:

Loretta Clawson, Mayor

Freida Van Allen, Town Clerk  
[SEAL]

**BOONE TOURISM DEVELOPMENT  
AUTHORITY**

ATTEST:

By:

[SEAL]

VOTE:       Aye-All  
              Nay-None

On a motion by Council member Mason, seconded by Council member Aycock, Council moved to adopt the following resolution of support:

**RESOLUTION OF SUPPORT**

**WHEREAS**, the Town of Boone is a municipal corporation organized pursuant to the laws of the State of North Carolina and located in Watauga County, North Carolina; and

**WHEREAS**, the Boone Tourism Development Authority (TDA) is organized pursuant to the laws of the State of North Carolina and is authorized by law to enter into agreements for the development of tourism benefitting the Town and expenditure of funds for that purpose; and

**WHEREAS**, the parties desire to cooperate with each other in expending funds derived from the collection of occupancy taxes; and

**WHEREAS**, legislation which will authorize the Town to levy a room occupancy tax of 6% of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the corporate limits of the Town of Boone that is subject to sales tax under N.C. Gen. Stat. §105-164.4(a)(3) has been introduced before the North Carolina General Assembly for adoption;

**NOW, THEREFORE BE IT RESOLVED** that the Town Council of the Town of Boone, North Carolina, does hereby support the proposed legislation for an increase in occupancy tax to 6% that is before the North Carolina General Assembly.

**ADOPTED** the 19<sup>th</sup> day of February, 2009.

ATTEST:

Mayor

Town Clerk

**(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 93)**

VOTE:       Aye-All  
              Nay-None

**ADOPTION OF SETTLEMENT OFFER - RON GARBER**

On a motion by Council member Brantz, seconded by Council member Pepin, Council moved to accept the settlement offer of \$5,900 from Ron Garber for the UDO violation for which he was cited.

VOTE:           Aye-All  
                  Nay-None

**ADOPTION OF SETTLEMENT OFFER - CNA SURETY**

On a motion by Council member Pepin, seconded by Council member Phillips, Council moved to accept the settlement amount from CNA Surety of \$16,360.65 for forfeiture of the HME, Inc., bid bond for the fire/rescue truck contract following the failure of HME, Inc. to execute the Town's contract, an action which necessitated the Town contracting with the back up bidder.

VOTE:           Aye-All  
                  Nay-None

**ADOPTION OF DANIEL BOONE NATIVE GARDEN LEASE**

On a motion by Council member Pepin, seconded by Council member Mason, Council moved to adopt the following lease. Before voting, Council members discussed the terms of the lease which they were willing to authorize, including a five-year term with an automatic five-year renewal, rather than the longer term requested by the Garden Club. Council members also discussed the request by the Garden Club of North Carolina, Inc. to eliminate the need for the Club to carry a general liability insurance policy, but expressed the view that given that alcohol is allowed on the property, this requirement should remain in the lease offered by the Town. Finally, Council noted its willingness to provide, as requested by the Club, language allowing the Club to place statuary and previously approved structures in the Garden without losing ownership of them.

**STATE OF NORTH CAROLINA**

**LEASE AGREEMENT**

**COUNTY OF WATAUGA**

**THIS LEASE AGREEMENT** is made this the \_\_\_ day of \_\_\_\_\_, 2009, by and between the **Town of Boone**, a North Carolina Municipal Corporation, hereinafter referred to as "**Lessor**" and **The Garden Club of North Carolina, Incorporated**, a North Carolina non-profit corporation, hereinafter referred to as "**Lessee**," collectively referred to as the "parties."

1. **Leased Premises:** The **Lessor** hereby leases to the **Lessee** that certain piece, parcel or lot of land situated, lying and being in Boone Township, Watauga County, North Carolina, and improvements thereto, more particularly described as follows, with boundaries defined by an attached map, attached as Attachment "A," hereinafter referred to as "the premises:"

BEGINNING on an iron stake on the southeastern edge of a thirty foot paved street, said point being the northwestern corner of the James Winkler property and runs thence with the southeastern margin of said thirty foot street north 50 40' east 333.55 feet to a stake at the intersection of said street with a sixty foot right of way of Horn in the West Drive; thence with the south margin of the right of way of Horn in the West Drive, south 58 36' east 85.83 feet to a stake; thence leaving the Horn in the West Drive south 31 23 east 231.11 feet to an iron stake set in concrete; thence south 05 56' west 118.31 feet to an iron stake by an 18 inch tree; thence north 86 08' west 231.83 feet to an iron stake in the fence line; thence south 06 01' west 88.07 feet to an iron stake in the fence; thence south 54 51' east 67.83 feet to an iron stake in a fence; thence south 49 30' west 105.08 feet to a stake; thence south 61 57' east 208.77 feet to an iron stake; thence south 73 32' east 199.87 feet to an iron stake; thence south 04 12' east 93.75 feet to an iron stake by an 16 inch oak; thence north 63 04' west 442.24 feet to an iron stake; thence south 58 31' west 39.04 feet to a stake; thence north 30 58' west 248.15 feet to an iron

stake; thence north 53 55' east 9.30 feet to an iron stake; thence north 54 22' east 121.11 feet to an iron stake; thence north 25 27' east 89.87 feet to an iron stake; thence north 74 52 west 152.50 feet to the BEGINNING, according to a plat by James A. Dugger, registered land surveyor #L-1121, dated February 12, 1974.

2. **Ownership of Structures:** All structures on the premises, whether existing at the time of this lease or placed or constructed on the premises by either party shall be the property of **Lessor**. This provision shall not pertain to statuary placed on the premises by **Lessee**, unless abandoned by **Lessee** at the conclusion of its tenancy, and it shall not apply to other structures constructed or placed there by **Lessee**, if prior to placing or constructing the structure on the premises **Lessee** has notified **Lessor** of its intention to construct or place the structure on the premises, the Boone Town Council has duly recognized the intention of **Lessee** to retain or claim ownership of the structure and endorsed **Lessee's** retention of ownership, and the structure can be removed from the premises without causing significant damage to the premises.
3. **Term:** The initial term of this lease shall be five (5) years, commencing on March 1, 2009 and ending on February 28, 2010, but in accordance with the provisions herein, it may be renewed from time to time for additional terms of like duration by the parties. Renewal of this lease for an additional term of the same duration and each successive additional term of the same duration as the initial term shall be automatic unless **Lessee** is notified sixty days or more before the expiration of either the initial term or any succeeding term by **Lessor** of **Lessor's** intention to terminate the tenancy and avoid the automatic renewal of the lease.
4. **Rent:** The rent for the above-described premises is one dollar (\$1.00) per year, and shall be due and payable in full upon the execution of this Lease, and on or before the same date in each subsequent year during the term of this Lease.
5. **Repairs and Maintenance:** The **Lessee** shall provide all maintenance necessary to keep the premises in good and sanitary condition. Unless expressly assumed by **Lessor**, **Lessee** shall also be responsible for all repairs necessary to maintain the premises and improvements in safe, sanitary and good condition. **Lessee** agrees to notify **Lessor**, in writing, of any and all conditions in need of correction or repair. **Lessee** further agrees that no repairs will be undertaken, and no person or entity will be hired to undertake any repairs without first notifying **Lessor** in writing, at least ten days in advance, of **Lessee's** intention to undertake or make such repairs, or in the event of an emergency, without first notifying **Lessor** by telephone at (828) 268-6200 of the condition and repairs contemplated. Any repairs made to the premises shall be done in a workmanlike manner and shall become the property of **Lessor**. In making any repairs, **Lessee** shall comply with the North Carolina State Building Code, as applicable, all ordinances of the Town of Boone and Watauga County, as pertinent, and all relevant federal and state laws relating to its operation of a facility and enterprise open to the public, and to its use of paid employees therein. **Lessor** shall be entitled, at its sole option, to make any repairs to the property and conduct any maintenance to the property as it deems necessary or expedient.
6. **Alterations:** **Lessee** agrees to neither make nor arrange for any alterations to the premises without the advance written approval of **Lessor**. Should any alterations be approved by **Lessor**, they shall be done in a workmanlike manner, and they shall become the property of **Lessor**. In making any alterations, **Lessee** shall comply with the North Carolina State Building Code, as applicable, all ordinances of the Town of Boone and Watauga County, as pertinent, and all relevant federal and state laws relating to its operation of a facility and enterprise open to the public, and to its use of paid employees therein.
7. **Compliance with Laws:** In particular, and not by way of exclusion, in any and all its actions and activities, **Lessee** will comply with and hereby certifies its compliance with the Americans with Disabilities Act, as amended, Title VII of the Civil Rights Act of 1964, as amended, the Fair Labor Standards Act, as amended, the Occupational and Health Safety Act, as amended, the North Carolina Employment Security Act, as amended, and the North Carolina Worker's Compensation Act, as amended, to the extent each such law applies to **Lessee** and/or any of its activities. **Lessee** commits that it will act in accordance with its duly adopted by-laws and will comply with all laws related to its status as a non-profit North Carolina Corporation. **Lessee** shall provide **Lessor** with its current by-laws at any time requested by **Lessor**. Should **Lessee's** corporate status be revoked by the North Carolina Secretary of State, or should the **Lessee's** non-profit status be revoked by the United States Internal Revenue Service or otherwise, this lease shall immediately terminate.

8. **Assignments, Subleases and Licenses:** The **Lessee** shall not assign, sublease, nor license the use of the premises to another party without the prior written consent of the **Lessor**. No sublease, assignment or license shall be approved unless the sub-lessee, assignee, or licensee is a non-profit corporation or entity and agrees to provide adequate liability insurance protection for its activities and actions, which insurance protection inures to the benefit of **Lessor**, and unless the sub-lessee, assignee or licensee agrees to defend, indemnify and hold harmless **Lessor** from all claims, demands and liability of any kind whatsoever caused by its activities. All proposed subleases, assignments or licenses must be in writing and shall be submitted to **Lessor** at least thirty days in advance of the proposed effective date of the sublease, assignment or license. **Lessor** shall have no responsibility to approve any proposed sublease, assignment or license and may reject any such proposal for any reason which **Lessor**, in its sole discretion, considers adequate.
9. **Utilities:** The **Lessee** shall be responsible for paying all utility costs incurred in connection with its use of the premises.
10. **Keys and Locks:** Should **Lessee** change any of the locks or add any locks to any of the doors, windows or other locked feature of the premises, **Lessee** shall, at its own expense, immediately provide duplicate keys to all such locks to **Lessor**. At the end of the lease term, **Lessee** shall return or turn over all keys which relate to the premises to **Lessor**.
11. **Insurance:** The **Lessee** shall be provide and maintain insurance coverage against loss, destruction, or other damage to its own property located on the premises, as well as against all risks for which **Lessee** is required to indemnify and hold **Lessor** harmless. **Lessee's** liability insurance coverage shall provide coverage for personal injury or bodily harm occurring during the term of the lease, whensoever a claim is made, in an amount no less than two million dollars (\$2,000,000.00) per occurrence. Certificates of insurance for each insurance policy required to be obtained by **Lessee** in compliance with this paragraph shall be filed and maintained with **Lessor** annually during the term of the Lease. **Lessee** shall immediately advise **Lessor** of any assertion of claim or litigation that may result in a claim of liability against **Lessor**.
12. **Lessor's Right to Enter Premises:** The **Lessor** reserves the right and may enter the premises at any reasonable time for the purpose of inspecting said premises, making such repairs as the **Lessor**, in its sole discretion, desires to make, maintaining the premises and for any other purpose in any way related to **Lessor's** ownership or **Lessee's** use of the premises.
13. **Use of Premises:** The premises are to be used for the operation and maintenance of the Daniel Boone Native Gardens, a botanical garden developed and previously maintained by **Lessee**, the operation of said premises for the benefit and enjoyment by the public, and such other activities as may be necessary to support those purposes, including parking in appropriate locations on the premises. Any specific activity beyond those listed shall be subject to the advance approval of **Lessor**, but **Lessor** shall not unreasonably withhold approval for any such proposed activities, so long as they are in keeping with the general purposes of this lease and are consistent with **Lessee's** status as a non-profit corporation and the conservation goals of this lease. The **Lessee** shall not use or knowingly permit any part of the premises to be used for any purpose which violates any law, and **Lessee** shall comply with all land use ordinances of **Lessor**. **Lessor** reserves the right to use the premises described herein at such times as said premises are not being used by the **Lessee**. **Lessee** will take no action(s) which are in any way inconsistent with **Lessor's** ownership interest in the property.
14. **Conservation of Premises:** **Lessee** specifically acknowledges that the premises are significant for their artistic and cultural qualities and are significant to **Lessor** for their natural and scenic beauty. **Lessee** shall take no action which detracts or impairs or detracts from that significance or beauty, and specifically, **Lessee** shall avoid any construction of buildings or roads, and placement of any signs or advertising on the premises, except as necessary to direct the public in the safe use of the premises and to inform invitees of the various species and characteristics of the plant life existing and maintained on the premises. **Lessee** shall refrain from any activities detrimental to the drainage, erosion and conservation of the soil on the premises, and shall not remove or destroy any trees or shrubs on the property without the express permission of **Lessor**.
15. **Fees:** **Lessee** shall be entitled to charge and retain appropriate fees for the use of the premises by its invitees and licensees. Any such fees shall be charged according to a fee schedule approved by **Lessor**. However, this Lease does not and shall not be construed to establish or create a partnership, joint venture, franchise or other form of business association between **Lessor** and **Lessee**.
16. **Rules for Operation:** **Lessee** shall have the right to promulgate such rules and regulations as it may deem appropriate for the behavior of patrons and its licensees and

invitees. However, **Lessee** shall provide **Lessor** with a copy of such rules and regulations as it may promulgate reasonably prior to their effective date.

17. **Default:** If the **Lessee** defaults in the payment of rent or in the performance of any of the conditions of this Lease or its responsibilities thereunder, all of which are deemed material, or violates any of the terms of paragraphs 5, 6, 8, 13 or 14 of this lease, the **Lessor** may give the **Lessee** written notice of default for the first violation. If the **Lessee** does not cure said default within thirty (30) days after the receipt of notice thereof, the **Lessor** may terminate this Lease. In the event of any repeated violation by **Lessee** of its responsibilities under this Lease, **Lessor** may terminate the Lease without affording **Lessee** any further opportunity to cure its violation. On the date specified in any such notice of default (unless the default is cured) or notice of termination, 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** and any other occupants and their property therefrom.
18. **Abandoned Property:** Following the termination of this lease by action of **Lessor** or the expiration of the term without renewal, **Lessee** shall have a sixty day period to remove any of its property from the premises. Thereafter, such property will be deemed donated to **Lessor**.
19. **Indemnity:** The **Lessee** shall defend, indemnify and hold harmless the **Lessor** from any and all claims, actions, damages, and liability associated with personal injury and/or damage to property and/or any other matter arising out of any occurrence in, upon or at the premises, or associated with any act or omission of the **Lessee**, its agents, employees, licensees or invitees, or associated with **Lessee's** use of the premises. In the event that the **Lessor** is made a party to any litigation brought against the **Lessee** or by reason of the **Lessee's** use or occupancy of the premises, the **Lessee** shall defend, protect and hold harmless the **Lessor** from any and all liability that may result therefrom, including **Lessor's** costs in defending itself against any claim, action, litigation or other assertion of liability. However, **Lessee** shall be considered to have met this obligation by carrying insurance in accordance with paragraph 11 of this Lease.
20. **Modification of Lease:** This Lease Agreement contains all of the terms and conditions agreed to by the **Lessor** and the **Lessee** concerning the Lease of the above-described premises. There are no oral terms or conditions agreed to by the parties hereto which are not contained in this written agreement. There shall be no modification of this Lease Agreement unless the modification is in writing and signed by both parties.
21. **Waiver:** **Lessor's** failure to strictly enforce its rights under this Lease shall not constitute a waiver of such rights with respect to any violation of the Lease by **Lessee**, and the parties agree that this provision may itself not be waived by the conduct of the parties.
22. **Partial Invalidity:** If any term, covenant, condition or provision of this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.
23. **Governing Law and Venue:** This Lease shall be governed by and construed in accordance with the laws of the State of North Carolina, and venue of any dispute between the parties shall be in Watauga County, North Carolina.
24. **Execution:** **Lessor** and **Lessee** each represent and warrant to the other that all necessary authorizations and approvals required for execution and performance of this Lease have been given and that the undersigned individual is duly authorized to execute this Lease and bind the party for which it signs.
25. **Notices:** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested; to the following addresses:

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

If to **Lessee**, to:            Lila Peterson  
                                      The Garden Club of North Carolina, Incorporated

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**Town of Boone, Lessor**

\_\_\_\_\_  
Loretta Clawson, Mayor

Attest: \_\_\_\_\_(Seal)  
Town Clerk, Town of Boone

**The Garden Club of North Carolina, Incorporated, by**

\_\_\_\_\_  
President

Attest: \_\_\_\_\_(seal)  
Secretary, The Garden Club of North Carolina, Incorporated.

VOTE:       Aye-All  
              Nay-None

**ADOPTION OF DOCUMENTS - RAW-WATER-INTAKE PROJECT**

On a motion by Council member Mason, seconded by Council member Brantz, Council moved to adopt the following documents in regards to the purchase of the Cooper property for the raw-water intake and to ratify the Mayor's execution of the documents at the February 18, 2009 closing: **(EXHIBIT A)**

VOTE:       Aye-All  
              Nay-None

**ADOPTION OF BATHYMETRIC PROFILE AND 3-D VIEWSHED ANALYSIS**

On a motion by Council member Phillips, seconded by Council member Pepin, Council moved to adopt option #1 for \$17,420, for the bathymetric profile and option #1 for \$12,500 for the 3-D viewshed. Both the profile and analysis are required by the USDA as part of the raw-water intake project.

VOTE:       Aye-All  
              Nay-None

**ADJOURNMENT**

On a motion by Council member Brantz, seconded by Council member Pepin, Council moved to adjourn at 11:55 p.m.

VOTE:       Aye-All  
              Nay-None

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Mayor