

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
JUNE 18, 2009**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, June 18, 2009 in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, Liz Aycock, Rennie Brantz, Janet Pepin 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 Manager Jim Byrne, Building Development Coordinator David Graham, Planner Jane Shook, Human Resources Director Peri Moretz, Public Utilities Director Rick Miller, Public Services Director Blake Brown, Fire Chief Reggie Hassler, Finance Director Amy Davis and Police Chief Bill Post.

TENTATIVE AGENDA ADOPTION

Town Manager Greg Young presented one addition to the agenda:

Item 7.Z. - Discussion of 75th Blue Ridge Parkway Anniversary.

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

Minutes: May 4, 2009 Quarterly Public Hearing
May 21, 2009 Regular Meeting
Tax Releases & Refunds: March, 2009

**Tax Releases
March, 2009**

Taxpayer	Year	Amount	Description
TAYLOR, RUSSELL CARL & TERRY	2008	19.34	SOLD VEHICLE
TANAWHA PROPERTIES, INC.	2008	12.44	TURN IN TAG
WRIGHT, DOROTHY PICKLES	2008	1.11	TURN IN TAG
PIAZZA, SEAN MICHAEL	2008	16.58	TURN IN TAG
WHEELER, SCOTT HARVEY	2008	8.45	TURN IN TAG
BERRY, ROBERT DEAN JR	2008	3.21	TURN IN TAG
CLAWSON, CODY CHRISTOPHER	2008	8.94	TURN IN TAG
MILLER PROPERTIES INC	2008	1.67	ADJ FOR VALUE
PALMER, RANDALL MARION PALMER, JANET TAYLOR	2008	4.69	TURN IN TAG
DUO-FAST CAROLINAS INC	2008	68.89	VEHICLE IN MECKLENBERG CO
FLYNN, CHELSEA LYNNAE FLYNN, MICHAEL GLENN	2008	25.03	TURN IN TAG
APPALACHIAN INNKEEPERS SUPPLY JONES, FRANK EUGENE JR	2008	55.91	INCORRECT VALUE

		226.26	

**TAX REFUNDS
MARCH, 2009**

Taxpayer	Year	Amount	Description
MITCHELL, STEVEN MARK	2008	7.91	TURN IN TAG
DCFS TRUST	2007	65.12	TURN IN TAG
		73.03	

Tax Releases & Refunds: May, 2009

**TAX RELEASES
MAY 2009**

Taxpayer	Year	Amount	Description
JOHNSON, BETTIE BROCK	2008	18.69	DOES NOT LIVE IN TOB
JACKSON SUMNER & ASSOC	2008	36.45	NOT IN TOB
LIMBACHER, TIMOTHY R	2008	19.49	TURN IN TAG
NEW RIVER BLDG SUPPLY INC	2008	22.87	INCORRECT SITUS
SNYDER, NORMA DIAZ	2008	8.52	SOLD VEHICLE
BRAGG, STEVEN WILLIAM	2008	70.19	INCORRECT SITUS
THE DEAN H MCGUIRE LIVING TRUST	2008	74.15	WRONG DISTRICT
BLAKE, DAVID ANDREW	2008	15.08	SOLD VEHICLE
MOUNTAIN LUMBER CO.	2008	142.45	INCORRECT FIRE DISTRICT
DEFORREST, SCOTT BAIN	2008	9.25	SOLD VEHICLE TURN IN TAG
FANKHAUSER, GABE	2008	12.05	ADJ FOR BILL OF SALE
		429.19	

**MSD
MAY 2009**

Taxpayer	Year	Amount	Description
DEFORREST, SCOTT BAIN	2008	5.25	SOLD VEHICLE TURN IN TAG
		5.25	

**TAX REFUNDS
MAY 2009**

Taxpayer	Year	Amount	Description
JOHNSON, BETTIE BROCK	2008	13.84	DOES NOT LIVE IN TOB

BLANKENSHIP, SEAN DAVID BLANKENSHIP, DAVID TERRY	2008	1.85	TURN IN TAG
CERNY, JAROSLAV & JULIA	2008	1.65	TURN IN TAG
		17.34	

Adoption of Lease: Watauga County Arts Council
STATE OF NORTH CAROLINA

LEASE

COUNTY OF WATAUGA

This LEASE is made on the 1st day of July, 2009, by and between the TOWN OF BOONE, (hereinafter referred to as Lessor), and the WATAUGA COUNTY ARTS COUNCIL, (hereinafter referred to as Lessee).

1. **Leased Premises.** The Lessor hereby leases to the Lessee an office in the 2nd floor of the Jones House, said office being the first office to the left of the stairs. The Lessee also has the right to use the reception area and gallery on the first floor, said use to be in common with others. Gallery exhibits shall be determined and maintained by Lessee.
2. **Term.** The term of this lease shall be one (1) year beginning on July 1, 2009, and end on June 30, 2010.
3. **Rent.** The rent for this term shall be fifty dollars (\$50.00), per month and shall be due by the 1st day of each month.
4. **Hours of Operation.** The Jones House shall operate on the average of 25 hours per week, and the gallery available to the public 20 hours per week, with the exception of 2 weeks when it shall be closed. Those weeks are: One week around the Christmas holiday; and one week independently selected by the Jones House Executive Director. These weeks must be approved and mutually agreed upon by the Jones House Advisory Board and the Arts Council.
5. **Lessee's Care.** The Lessee will commit no act of waste, will take good care of the premises, and will comply with all applicable laws and regulations.
6. **Maintenance and Repairs.** Lessee shall be responsible for any damages caused by its employees, agents or invitees. The Lessor shall be responsible for repairs related to ordinary wear and tear.
7. **Supplies.** The Lessor shall allow the Lessee to use any surplus office equipment the Lessor may have at the Jones House. The Lessee shall be responsible for 1/2 of the supplies and maintenance costs of this equipment.
8. **Assignment of Subletting.** The Lessee shall not assign or sublease the premises without the prior consent of the Lessor.
9. **Alterations.** The Lessee shall not make any alterations, additions, or improvements to the premises without the prior consent of the Lessor.
10. **Utilities.** The Lessee is responsible for paying its phone bill. Lessor shall pay all other utilities.
11. **Personal Property.** The Lessor is not responsible for any personal property located within the Jones House or situated on the grounds of the Jones House.
12. **Default.** If the Lessee defaults in the payment of rent or in the performance of any conditions of this lease, the Lessor may give Lessee written notice of default. If the Lessee does not cure the default within ten (10) days after the giving of notice, this lease shall terminate, and the Lessee shall at once quit and surrender

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

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

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

Adoption of Contract: Watauga County Arts Council
STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

CONTRACT

This contract, made and entered into this the 1st day of July, 2009, by and between the Town of Boone, (hereinafter called "Town"), and the Watauga County Arts Council (hereinafter called "Arts Council").

WITNESSETH:

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

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

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

1. The Arts Council shall provide an Executive Director and an Administrative Assistant for the Jones House. The Arts Council shall include as part of its personnel committee, one representative of the Town of Boone and one from the Jones House Advisory Board. The purpose of these appointees is to assist the Arts Council in selection and performance appraisal of the Jones House Executive Director and Administrative Assistant. The duties and responsibilities of such personnel shall be as follows:
 - a. To promote the purpose and goals of the Jones House Community Center which is to provide via the Jones House structure, its grounds, and any additions, a community and cultural center for performances, exhibitions, classes and meetings sponsored by various community organizations.
 - b. To assist the Jones House Advisory Board in implementing policies and objectives of the Board.
 - c. The Jones House Executive Director shall:
 - Provide administrative support to the Jones House Advisory Board to carry out responsibilities set forth in the Jones House Resolution dated May 27, 1993.
 - See that Jones House is made available to the public, 25 hours per week, for meeting space and to keep the gallery open 20 hours per week.
 - Oversee facility maintenance - cleanup, etc.
 - Schedule Special Events and community groups for maximum use of the house.
 - Work with the Advisory Board in developing Annual Budget and Annual plan for the House.

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

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

2. The Town shall pay the Arts Council the sum of \$40,494. for said services, said sum to be paid in twelve equal monthly installments, commencing on July 30, 2009.
3. The Arts Council agrees to help keep the Jones House open for nighttime and weekend events as much as possible.
4. This contract shall terminate on June 30, 2010.

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

Purging of 2002 Unpaid Parking Citations: **List permanently on file in the June, 2009, Boone Town Council packet.**

Adoption of Resolution: Support for Veteran Stamp/Coin Program.

WHEREAS, the nation is blessed with men and women who voluntarily swear on oath to defend the Constitution of the United States of America against all enemies, foreign and domestic; and

WHEREAS, these men and women make great personal sacrifices in the name of our Constitution thereby ensuring the perpetuation of our individual liberties; and

WHEREAS, these same men and women voluntarily make great personal sacrifices to carry democracy and extend the freedoms we enjoy to the underprivileged of the world; and

WHEREAS, some of these men and women will incur great personal hardships and catastrophic injury in the performance of their duties; and

WHEREAS, we feel duty bound to honor, support, and provide relief to these warriors, and their families;

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Boone, North Carolina, does hereby resolve its support of an initiative implementing a new government bond, stamp, and coin program, the proceeds from which shall be used exclusively for those warriors and their families who have born the brunt of preserving our freedoms and extending those freedoms throughout the world.

ADOPTED this 18th day of June, 2009.

ATTEST:

Loretta Clawson, Mayor

Freida Van Allen, Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 108)

Adoption of Watauga County Solid Waste Plan Resolution:

RESOLUTION ACCEPTING AND ENDORSING THE SOLID WASTE MANAGEMENT PLAN UPDATE OF 2009 FOR THE TOWN OF BOONE

WHEREAS, it is a priority of this community to protect human

health and the environment through safe and effective management of municipal solid waste;

WHEREAS, the reduction of the amount and toxicity of the local waste stream is a goal of this community;

WHEREAS, equitable and efficient delivery of solid waste management services is an essential characteristic of the local solid waste management system;

WHEREAS, it is a goal of the community to maintain and improve its physical appearance and to reduce the adverse effects of illegal disposal and littering;

WHEREAS, The Town of Boone recognizes its role in the encouragement of recycling markets by purchasing recycled products;

WHEREAS, involvement and education of the citizenry is critical to the establishment of an effective local solid waste program;

WHEREAS, the State of North Carolina has placed planning responsibility on local government for the management of solid waste;

WHEREAS, NC General Statute 130A-309.09A(b) requires each unit of local government, either individually or in cooperation with other units of local government, to update the Ten Year Comprehensive Solid Waste Management Plan at least every three years;

WHEREAS, the Town of Boone has undertaken and completed a long-range planning effort to evaluate the appropriate technologies and strategies available to manage solid waste effectively;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TOWN OF BOONE:

That Watauga County's 2009 Ten Year Comprehensive Solid Waste Management Plan Update is accepted and endorsed and placed on file with Clerk to the Board on this the 18th day of June, 2009.

Attest: Mayor

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 109)

Adoption of Contract Extension: Bank of Granite. Flat monthly fee of \$250 per month from August 1, 2009 to July 31, 2012.

Adoption of Resolution: Amend Capital Reserve Fund - Raw Water.

WHEREAS, there is a need in the Town of Boone, North Carolina to fund infrastructure improvements associated with NC Department of Transportation Project U-4020.

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD THAT:

Section 1: The Governing Board hereby amends the Capital Reserve Fund for the purpose of using accumulated funds toward costs associated with infrastructure improvements associated with NC Department of Transportation Project U-4020.

Section 2: This fund will remain operational until provisions are made to satisfy identified needs.

Section 3: The Board has identified \$405,000 for transfer to general fund for costs associated with NC Department of Transportation Project U-4020.

Section 4: This resolution shall become effective upon its adoption.
Adopted this the 18th day of June, 2009.

Mayor

Attest:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 110)

Adoption of Resolution: Amend Capital Reserve Fund - Sanitation.

WHEREAS, there is a need in the Town of Boone, North Carolina to fund infrastructure improvements associated with NC Department of Transportation Project U-4020.

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD THAT:

Section 1: The Governing Board hereby amends the Sanitation Capital Reserve Fund for the purpose of using accumulated funds toward costs associated with infrastructure improvements associated with NC Department of Transportation Project U-4020.

Section 2: This fund will remain operational until provisions are made to satisfy identified needs.

Section 3: The Board has identified \$81,542 for transfer to general fund for costs associated with NC Department of Transportation Project U-4020.

Section 4: This resolution shall become effective upon its adoption.

Adopted this the 18th day of June, 2009.

Mayor

Attest:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 111)

VOTE: Aye-All
 Nay-None

PUBLIC COMMENT

Mr. Joe Martin, President of the Watauga County Farmers' Market, appeared before Council to express his concern about renegotiation of the parking lease between the Southern Appalachian Historical Association (SAHA) and Appalachian State University(ASU). Mr. Martin said if SAHA leases to ASU as in the past, on August 15, 2009, the Farmers' Market will not have any parking spaces for the Saturday morning market. Mr. Martin said SAHA should require ASU to lease the parking spaces for commuter students in order for the cars to be moved on Friday afternoons and return after the Farmers' Market closes on Saturday afternoons. Mr. Martin asked that Council consider the plight of the farmers when considering the Town of Boone/SAHA lease.

Mr. Terry Hamilton, who has been associated with Horn in the West for over 40 years, appeared before Council and said that basically the Farmers' Market has outgrown the space which the market utilizes on the Horn in the West grounds.

Mr. Billy Ralph Winkler, Watauga County Commissioner and SAHA supporter, appeared before Council and said he does not like the fact that SAHA and the Farmer's Market are in an adversarial situation. Mr. Winkler said SAHA is proposing to lease 250 spaces to ASU which is a smaller number of spaces than the past lease. Mr. Winkler said ASU pays \$25,500 to SAHA for the parking spaces which is a huge amount of money. Mr. Winkler said that neither SAHA nor ASU is the enemy of the Farmers' Market. Mr. Winkler reiterated that SAHA is working with the Farmers' Market.

Ms. Nancy Spann, President of the Southern Appalachian Historical Association, appeared before Council and said she regrets that the parking lease with ASU has become so contentious. Ms. Spann said that SAHA is dependent on the parking revenues from ASU and that perhaps the Farmers' Market should look for a larger space. Ms. Spann said that ASU is making concessions and thinks that both entities will resolve the problem. Council member Mason asked if the ASU students could move their cars on Friday afternoon. Ms. Spann said that request is unrealistic to ASU since the Horn in the West lot is perimeteric, long-term parking lot. Commuter students actually park on the ASU campus. Council member Aycock asked if moving the market would be detrimental to business. Mr. Martin said yes, that two to three years would pass before business would be regained.. Council member Mason asked Mr. Martin if he had talked with representatives of First Citizens Bank about parking in their lot on Saturdays. Mr. Martin said no, but that he is willing to discuss this issue with them. Council member Aycock asked how many vendors depend upon the Farmers' Market income. Mr. Martin said that 75% of the farmers' income for the year comes from the Farmers' Market.

PUBLIC HEARING - SALDINO ANNEXATION

Mayor Clawson opened the public hearing at 7:00 p.m. Planner Jane Shook said this hearing is part of the third and final step of the voluntary satellite annexation process. The 3.188-acre parcel is located off Junaluska Road. There being no further comments, the public hearing closed at 7:01 p.m.

ADOPTION OF CODE AMENDMENT - §30.51 BOARD APPOINTMENTS/OPERATION OF COMMITTEES

Town Attorney Sam Furgiuele said this code amendment is the same amendment that was presented last month. Mr. Furgiuele said because this amendment did not pass unanimously or with a super majority, it must be presented and adopted again. Council member Phillips said his main objection to the amendment is that Town Council will be responsible for appointing chairs and vice-chairs of committees. Town Attorney Furgiuele pointed out that Council will appoint chairs and vice-chairs only if the committees' by-laws do not specify chair appointment. Council member Pepin said she views the code amendment as giving Council a choice either to prepare by-laws for committees or to appoint the chair and vice-chair of a committee. Council member Mason suggested that the Town Clerk prepare a list of committees and sub-committees

for Council's review. Then at the time of review Council can specify if the Committee can retain the right to appoint chairs and vice-chairs. Town Attorney Furgiuele also pointed out that this Town Code amendment does not regulate UDO boards/commissions/committees. Council member Brantz said he favors the code amendment because it regularizes committees. After some discussion, on a motion by Council member Mason, seconded by Council member Brantz, Council moved to adopt the code amendment. Before voting, Council member Phillips pointed out that waiting for Council to appoint chairs and vice-chairs might present procedural problems and will take months for subcommittees to form. Town Attorney Furgiuele pointed out that recently formed subcommittees have not been meeting all aspects of the NC Open Meetings Law and that the Town needs some mechanism to regulate all the committees and subcommittees. After a very lengthy discussion, the following vote was recorded.

VOTE: Aye-4 (Aycock, Brantz, Mason, Pepin)
Nay-1 (Phillips)

ADOPTION OF ORDINANCE - SALDINO ANNEXATION

Planner Jane Shook presented the Saldino annexation ordinance and said the effective date of annexation is June 30, 2009. On a motion by Council member Mason, seconded by Council member Phillips, Council moved to adopt the following ordinance:

Ordinance 09-07

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

WHEREAS, the Town Council has been petitioned under G.S. 160A-58.1 to annex the area described below; and

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

WHEREAS, the Town Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at Council Chambers at 1500 Blowing Rock Road at 6:30 p.m. on June 18, 2009 after due notice by Watauga Democrat on June 5, 2009; and

WHEREAS, the Town Council finds that the area described therein meets the standards of G.S. 160A-58.1(b), to wit:

- a. The nearest point on the proposed satellite corporate limits is not more than three (3) miles from the corporate limits of the Town;
- b. No point on the proposed satellite corporate limits is closer to another municipality than to the Town;
- c. The area described is so situated that the Town will be able to provide the same services within the proposed satellite corporate limits that it provides within the primary corporate limits;
- d. No subdivision, as defined in G.S. 160A-376, will be fragmented by this proposed annexation;
- e. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, does not exceed ten percent (10%) of the area within the primary corporate limits of the Town, and

WHEREAS, the Town Council further finds that the petition has been signed by all owners of real property in the area who are required by law to sign; and

WHEREAS, the Town Council further finds that the petition is otherwise valid, and that the public health, safety and welfare of the Town and of the area proposed for annexation will be best served by annexing the area described;

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

Section 1. By virtue of the authority granted by G.S. 160A-58.2, the following described non-contiguous territory is hereby annexed and made part of the Town of Boone, as of June 30, 2009.

BEING a certain tract of land containing 3.188 acres according to a survey by Ashe Land Surveyors, P.A., located in Brushy Fork Township, Watauga County, North Carolina, and being more particularly described as follows: BEGINNING on a 3/4" conduit, thence S 54°48'08" W a distance of 81.60 feet to a 3/4" conduit; thence S 43°11'19" E a distance of 104.22 feet to a 3/4" conduit; thence S 58°18'40" W a distance of 99.93 feet to a 5/8" rebar; thence S 43°50'18" W a distance of 66.04 feet to a 5/8" rebar; thence N 53°59'51" W a distance of 115.17 feet to a 5/8" rebar; thence S 44°27'58" W a distance of 49.89 feet to a 1/2" rebar; thence N 59°54'33" W a distance of 170.78 feet to a 5/8" rebar in a creek; thence N 13°15'32" E a distance of 201.72 feet to a 3/4" conduit in a creek; thence N 18°42'16" E a distance of 63.91 feet to a 1 1/2" pipe in a creek; thence S 67°49'27" E a distance of 71.01 feet to a 5/8" rebar; thence N 15°01'59" E a distance of 84.14 feet to a 1/2" conduit; thence N 64°52'36" W a distance of 110.67 feet to a 1/2" conduit in a creek; thence N 05°01'38" W a distance of 37.82 feet to a 1/2" conduit; thence N 21°59'46" E a distance of 76.72 feet to a 3/4" conduit in a creek; beginning at a 3/4" conduit in a creek; thence S 58°42'23" E a distance of 137.70 feet to a 3/4" conduit; thence N 57°29'46" E a distance of 69.91 feet to a 5/8" rebar; thence S 20°16'06" E a distance of 84.51 feet to a 1/2" rebar; thence S 12°37'02" E a distance of 74.81 feet to a 1/2" rebar; thence S 13°34'02" E a distance of 63.11 feet to a 3/4" conduit; thence S 38°26'02" E a distance of 71.27 feet to a 1/2" rebar; thence S 35°10'24" E a distance of 59.43 feet to a 3/4" conduit; thence S 35°16'46" E a distance of 11.88 feet to a 3/4" conduit, thence the point of BEGINNING. Survey was performed without the benefit of a title search which may reveal additional conveyances, easements, rights-of-ways, covenants restrictions or building set back lines. Bearings are relative to NC Grid North NAD 83 (86). For source of title, see Record Book 1241, Page 33 and Record Book 1377, Page 552; Watauga County Register of Deeds Office. Area by coordinate computation. Job No. 090106.

Section 2. Upon and after June 30, 2009, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the Town of Boone and shall be entitled to the same privileges and benefits as other parts of the Town of Boone. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

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

Mayor

Attest:

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3, PAGES 370-371)

VOTE: Aye-All

Nay-None

ADOPTION OF RESOLUTION - SETTING DATE OF PUBLIC HEARING ON ALLIANCE BIBLE ANNEXATION

Planner Jane Shook said this the second step in the satellite annexation process for the Alliance Bible Fellowship. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to adopt the following resolution:

WHEREAS, a petition requesting annexation of the non-contiguous area described herein has been received; and

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

WHEREAS, certification by the Town Clerk as to the sufficiency to the petition has been made;

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

Section 1. A public hearing on the question of annexation of the non-contiguous area described herein will be held at Council Chambers on Blowing Rock Road at 6:30 p.m. on June 18, 2009.

Section 2. The area proposed for annexation is described as follows:

Brushy Fork Township

Watauga County, North Carolina

DEED DESCRIPTION FOR ANNEXATION OF ALLIANCE BIBLE FELLOWSHIP PROPERTY

Re: 12.790 acres

more particularly described as follows:

A parcel of land lying on the northeast side of North Carolina Secondary Road No. 1107, commonly know as N.C. 105 by-pass and being the lands shown on plat recorded in Plat Book 020 at page 138 being bounded on the southwest by NCSR No. 1107, on the west by Four Sac Self Storage Corp., Ray Phillips, and Coca-Cola Bottling Company of Asheville, NC, on the north by Emery Presnell, and on the east by Brenda Lee Guy, Ashley Winebarger, Ronald Harmon, Blust Properties, Inc. and Columbus-Howard Investments, LLC as surveyed by Donald H. McNeil, P.L.S., L-2809, survey no. 08212, dated October 09, 2008 as BEGINNING on an existing 5/8 inch rebar found in the western line of the lands conveyed to Columbus-Howard Investments, LLC by deed recorded in Book of Records 714 at page 776 and on the north side of NCSR No. 1107, said rebar being located North 44 degrees 05 minutes 55 seconds West 1,378.48 feet from North Carolina Geodetic Survey Monument "LYONS" and also located South 14 degrees 23 minutes 20 seconds West 245.48 feet from a well located on this parcel; thence with the western line of the lands of said Columbus-Howard Investments, LLC, South 21 degrees 05 minutes 30 seconds West 94.98 feet to a point in the center line of N.C.S.R. No. 1107; thence with the center line of said highway the following eight (8) courses and distances: (1) North 46 degrees 01 minutes 30 seconds West 33.29 feet to a point; (2) North 45 degrees 31 minutes 12 seconds West 100.08 feet to a point; (3) North 44 degrees 51 minutes 54 seconds West 91.38 feet to a point; (4) North 43 degrees 37 minutes 12 seconds West 97.45 feet to a point; (5) North 42 degrees 08 minutes 30 seconds West 86.78 feet to a point; (6) North 40 degrees 05 minutes 42 seconds West 104.88 feet to a point of curvature; (7) with a curve to the right having a radius of 3349.50 feet, an arc length of 101.72 feet (chord: North 38 degrees 06 minutes 36 seconds West 101.72 feet to a point in the center line of said road; (8) with a curve to the right having a radius of 3349.50 feet, an arc length of 207.91 feet (chord: North 35 degrees 28 minutes 18 seconds West 207.88 feet to a point in the center line of said road, said point being a corner to the lands conveyed to Four Sac Self Storage Corp. by deed recorded in Book of Records 431 at page 406; thence with the line of said lands, North 73 degrees 12 minutes 48 seconds East 52.30 feet to an existing 5/8 inch rebar on the northeast side of NCSR No. 1107; thence continuing said line and course for 154.97 feet, a total distance of 207.27 feet to an existing 5/8 inch rebar; thence North 02 degrees 52 minutes 06 seconds East 489.95 feet to an existing 3/4 inch pipe, said pipe being the southeast corner of the lands conveyed to Ray Phillips by deed recorded in Book of Records

174 at page 630; thence with the line of the lands of Phillips, North 02 degrees 52 minutes 06 seconds East 29.89 feet to an existing concrete monument; thence North 04 degrees 50 minutes 55 seconds East 45.46 feet to an existing 1/2 inch conduit pipe found in the fence, the southeast corner of the lands conveyed to Coca-Cola Bottling Company of Asheville, NC by deed recorded in Deed Book 163 at page 176, said pipe being located South 83 degrees 51 minutes 40 seconds East 481.75 feet from an existing 5/8 inch rebar found on the east side of N.C.S.R. No. 1107; thence with the eastern line of the lands of said Bottling Company, North 03 degrees 37 minutes 10 seconds East 190.69 feet to an existing 5/8 inch rebar found in a fence angle; thence North 26 degrees 43 minutes 30 seconds West 143.43 feet to a 5/8 inch rebar set, said rebar being a corner to the lands conveyed to Emery Presnell by deed recorded in Book of Records 008 at page 883 and is located South 26 degrees 43 minutes 30 seconds East 70.47 feet from an existing 5/8 inch rebar, the southeast corner of the lands conveyed to Watauga/Avery Homebuilders Association, Inc.; thence with a new line through the lands of said Presnell, North 84 degrees 43 minutes 10 seconds East 333.31 feet to a 5/8 inch rebar set in the western line of the lands conveyed to Brenda Lee Guy by deed recorded in Book of Records 308 at page 513; thence with the western line of said lands, South 05 degrees 28 minutes 05 seconds East 61.20 feet to an existing 3/4 inch conduit pipe, said pipe being the northwest corner of the lands conveyed to Ashley Winebarger by deed recorded in Book of Records 669 at page 727; thence with the western line of said lands, South 13 degrees 07 minutes 00 seconds East 221.43 feet to a 5/8 inch rebar set in 3/4 inch conduit pipe found, said pipe being the northwest corner of the lands conveyed to Ronald Harmon by deed recorded in Book of Records 097 at page 102, said rebar being located North 79 degrees 26 minutes 10 seconds West 158.39 feet from an existing 3/4 inch conduit pipe found on the west side of NCSR No. 1105; thence with the western line of the lands of Harmon, South 03 degrees 54 minutes 55 seconds West, crossing a gravel drive 174.43 feet to an existing 5/8 inch rebar set in the northern line of the lands conveyed to Blust Properties, Inc by deed recorded in Book of Records 1176 at page 760; thence with the northern line of said lands, North 80 degrees 40 minutes 30 seconds West 40.81 feet to an existing 5/8 inch rebar on the south side of the gravel road; thence with the western line of said lands of Blust Properties, Inc., South 01 degrees 09 minutes 54 seconds West 267.72 feet to an existing 5/8 inch rebar on the south side of a paved drive; thence South 80 degrees 48 minutes 06 seconds East 73.49 feet to an existing 5/8 inch rebar on the south side of said drive; thence South 08 degrees 14 minutes 00 seconds East 635.86 feet to an existing 5/8 inch rebar, said rebar being the northwest corner of the lands conveyed to Blust Properties, Inc. by deed recorded in Book of Records 389 at page 246, and located North 88 degrees 46 minutes 30 seconds West 142.99 feet from an existing 5/8 inch rebar; thence with the western line of said lands, South 01 degrees 14 minutes 30 seconds West 25.00 feet to an existing 5/8 inch rebar, said rebar being the northeast corner of the aforesaid lands of Columbus-Howard Investments, LLC; thence with the line of the lands of Columbus-Howard Investments, LLC, North 88 degrees 46 minutes 30 seconds West 46.08 feet to an existing 5/8 inch rebar; thence South 21 degrees 05 minutes 30 seconds West 142.81 feet to the BEGINNING and covering an area of 12.790 acres as calculated by the coordinate geometry method and having bearings relative to the North Carolina Geodetic Survey (NAD 83) and all distances being horizontal measurements.

Section 3. Notice of public hearing shall be published once in the Watauga Democrat, a newspaper having general circulation in the Town of Boone, at least ten (10) days prior to the date of the public hearing.

Mayor

Attest:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGES 112-113)

VOTE: Aye-All

Nay-None

PRESENTATION OF UDO AMENDMENTS

Building Development Coordinator David Graham presented the following UDO amendments:

1. Article II, Section 15, Definitions of Basic Terms - defining Administrator. Council pointed out a typographical error with the “manger.” It should be “manager.”
2. Article IX, Section 181, Primary Residence with Accessory Apartment, Article X, Permissible Uses. Town Attorney Furguele explained this amendment will allow accessory apartments within primary residences. Council member Mason said this amendment will provide for more affordable housing options in town.
3. Article XI, Section 191 Manufactured Home Park. This amendment clarifies the separation allowance for manufactured home parks.
4. Article XXI Amendments. This amendment will clarify who may initiate amendments to the UDO.
5. Article III, Administrative Mechanisms, Article V Appeals, Variances, Interpretations. Town Attorney Furguele said this language will model the Town Code amendments and will bring the UDO language into conformity with State law. Council member Mason requested that the language allow Council to have the choice of appointing the chair/vice-chair.

On a motion by Council member Phillips, seconded by Council member Pepin, Council agreed to present the text amendments at the August 3, 2009 Quarterly Public Hearing.

VOTE:Aye-All
Nay-None

DISCUSSION OF FLOODPLAIN MANAGEMENT REGULATIONS

Building Development Coordinator David Graham said that FEMA has notified the Town of the final determination to the base flood elevations which will become effective December 3, 2009. Mr. Graham said the UDO requires that all flood map amendments go through the map and text amendment process. Mr. Graham requested Council’s permission to proceed with the Town Attorney to prepare the necessary text and map amendments. Council member Aycock asked if property owners can contest FEMA’s determinations. Assistant to the Manager Jim Byrne said the appeal process has passed but that property owners can provide a CLOMR or LOMR to the Town if development in the floodplain is necessary. On a motion by Council member Brantz, seconded by Council member Aycock, Council granted permission to the staff and the Town Attorney to prepare the necessary text and map amendments to the UDO that will be presented at the August 3, 2009 Quarterly Public Hearing.

VOTE:Aye-All
Nay-None

ADOPTION OF FY 09/10 BUDGET ORDINANCE

On a motion by Council member Aycock, seconded by Council member Brantz, Council moved to excuse Mayor Pro-Tem Mason from deliberation and voting on this agenda item because of a financial conflict of interest.

VOTE:Aye-All
Nay-None

Town Manager Greg Young said the \$19,516,542 budget is proposed with a tax rate of 37¢ per \$100 valuation and new water and sewer rates that will be effective July 1, 2009. Council member Pepin thanked the Town Manager and staff for their work on the budget. Council member Phillips hoped that the Town will be able to financially support Parks and Recreation

next year. On a motion by Council member Brantz, seconded by Council member Aycock, Council moved to adopt the following budget ordinance:

ORDINANCE #09-08

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

SECTION 1: It is established that the following revenues will be available in each fund listed for the operation of the Town of Boone government and its activities for the fiscal year beginning July 1, 2009 and ending June 30, 2010.

GENERAL FUND

CURRENT YEAR TAXES	\$	4,851,861
PRIOR YEAR TAXES	\$	35,000
TAX PENALTIES & INTEREST	\$	11,000
TAX REFUNDS	\$	(1,500)
GROSS RECEIPTS TAX	\$	18,000
PRIOR YEAR TAX REFUNDS	\$	(2,500)
LOCAL SALES TAX 1%	\$	1,539,778
LOCAL SALES TAX 1/2% (40)	\$	500,310
LOCAL SALES TAX 1/2% (42)	\$	500,310
LOCAL SALES TAX 1/4% (44)	\$	296,055
LOCAL SALES TAX 1/4% (14) MEDICAID HOLD HARMLESS	\$	250,000
BUSINESS LICENSE	\$	40,000
SOLID WASTE DISPOSAL TAX	\$	5,000
ROOM OCCUPANCY TAX	\$	157,500
ROOM OCCUPANCY TAX - ADMIN	\$	18,900
CABLEVISION FRANCHISE REVENUE	\$	19,200
LOCAL VIDEO PROGRAMMING REVENUE	\$	121,500
UTILITIES FRANCHISE TAX	\$	458,800
TELECOMMUNICATIONS SALES TAX	\$	231,250
BEER & WINE TAX	\$	60,000
ABC REVENUES	\$	400,000
ABC BOARD - LAW ENFORCEMENT	\$	10,000
STATE FUNDS - POWELL BILL	\$	355,702
PAYMENT IN LIEU OF TAXES - APPALACHIAN STUDENT HOUSING	\$	119,268
BUILDING & SIGN PERMIT FEES	\$	122,000
PARKING VIOLATION PENALTIES	\$	115,000
POLICE FEES	\$	14,400
SCHOOL RESOURCE OFFICER	\$	53,214
FIRE PROTECTION CHARGES - WATAUGA COUNTY	\$	19,000
FIRE PROTECTION CHARGES - ASU	\$	170,580
FIRE DEPARTMENT - MISC. FEES/PERMITS	\$	20,000
INTEREST EARNED ON INVESTMENTS	\$	72,945
INTEREST EARNED ON POWELL BILL	\$	750
LIBRARY LOT PARKING	\$	6,600
TRACY CIRCLE PARKING	\$	3,800
JONES HOUSE PARKING	\$	5,400
CITY HALL LOT PARKING	\$	50,000
QUEEN STREET PARKING	\$	32,500
BOOT FEES	\$	2,000
PARKING METERS	\$	31,500
SALE OF SURPLUS PROPERTY	\$	5,000
CONTRIBUTIONS/DONATIONS	\$	500
RENTAL INCOME	\$	20,000
RENTAL - JONES HOUSE	\$	750
MISCELLANEOUS REVENUE	\$	20,000

TRANSFER FROM E-911	\$	17,769
TRANSFER FROM WATER & SEWER FUND (REPAYMENT LAND)	\$	45,000
TRANSFER FROM SEPARATION ALLOWANCE TRUST	\$	109,080
TRANSFER FROM TOB RURAL FIRE TAX	\$	338,615
APPROPRIATED FUND BALANCE	\$	8,000
TOTAL GENERAL FUND REVENUE	\$	11,279,837
EMERGENCY TELEPHONE SYSTEM		
E-911 SERVICE CHARGE	\$	150,000
TOTAL EMERGENCY TELEPHONE SYSTEM REVENUE	\$	150,000
NARCOTICS ENFORCEMENT		
APPROPRIATED FUND BALANCE	\$	17,100
TOTAL NARCOTICS ENFORCEMENT	\$	17,100
WATER & SEWER FUND		
INTEREST EARNED ON INVESTMENTS	\$	52,557
WATER SALES	\$	2,886,225
SEWER CHARGES	\$	2,871,882
WATER - LABOR & MATERIAL CHARGES	\$	20,000
SEWER - LABOR & MATERIAL CHARGES	\$	15,000
CONNECTION/RECONNECTION/DISCONNECTION FEES	\$	15,000
SEPTIC TANK DISCHARGE FEE	\$	66,000
SALE OF BIOSOLIDS	\$	200
IMPACT/AVAILABILITY FEES - WATER	\$	75,000
IMPACT/AVAILABILITY FEES - SEWER	\$	75,000
NSF/RETURNED CHECK CHARGES	\$	500
METER CHECK/METER RE-READ CHARGES	\$	12,000
LATE PAYMENT PENALTIES	\$	65,000
MISCELLANEOUS REVENUES	\$	15,000
SEWER CAPITAL RESERVE CONTRIBUTION	\$	60,000
TOTAL WATER & SEWER FUND REVENUE	\$	6,229,364
HEALTH INSURANCE FUND		
INSURANCE REVENUE - RETIREE %	\$	43,500
INSURANCE REVENUE - GENERAL FUND TRANS	\$	830,000
INSURANCE REVENUE - WATER/SEWER FUND TRANS	\$	325,000
INTEREST EARNED ON INVESTMENTS	\$	2,500
MISCELLANEOUS REVENUE	\$	500
TOTAL HEALTH INSURANCE FUND REVENUE	\$	1,201,500
MUNICIPAL SERVICE DISTRICT		
CURRENT YEAR TAXES	\$	107,789
PRIOR YEAR TAXES	\$	350
TAX PENALTIES & INTEREST	\$	250
INTEREST EARNED ON INVESTMENTS	\$	200
TOTAL MUNICIPAL SERVICE DISTRICT REVENUE	\$	108,589
RURAL FIRE SERVICE DISTRICT		
CURRENT YEAR TAXES	\$	529,502

PRIOR YEAR TAXES	\$	2,000
TAX PENALTIES & INTEREST	\$	500
TAX REFUNDS	\$	(3,000)
INTEREST EARNED ON INVESTMENTS	\$	1,000
MISCELLANEOUS REVENUE	\$	150
TOTAL RURAL FIRE SERVICE DISTRICT	\$	530,152
GRAND TOTAL - ALL REVENUE	\$	19,516,542

SECTION 2: The following amounts are hereby appropriated in each fund listed for the operation of the Town of Boone government and its activities for the fiscal year beginning July 1, 2009 and ending June 30, 2010.

GENERAL FUND

GOVERNING BODY	\$	82,914
ADMINISTRATION	\$	767,594
FINANCE	\$	373,850
TAX COLLECTIONS	\$	103,337
LEGAL	\$	130,200
ELECTIONS	\$	25,000
FIRE STATION # 1	\$	14,899
BLOWING ROCK ROAD BUILDING	\$	37,935
BROWN BUILDING	\$	71,175
JONES HOUSE	\$	69,689
TOWN HALL BUILDING	\$	61,525
SPECIAL PROGRAMS & PROJECTS	\$	473,896
SUBSIDIES & ALLOCATIONS	\$	109,936
PROFESSIONAL MEMBERSHIPS	\$	18,357
GIS	\$	151,277
FIRE STATION #2	\$	16,480
DOWNTOWN POST OFFICE BUILDING	\$	17,475
NON-DEPARTMENTAL/DEBT SERVICE	\$	74,714
POLICE DEPARTMENT	\$	2,710,212
COMMUNICATIONS	\$	468,616
FIRE DEPARTMENT	\$	1,290,546
DEVELOPMENT SERVICES DEPARTMENT	\$	853,255
PUBLIC SERVICES & ENGINEERING	\$	284,879
STREET DEPARTMENT	\$	1,128,974
POWELL BILL	\$	355,702
FLEET MAINTENANCE	\$	310,153
FACILITIES MAINTENANCE	\$	980,044
SANITATION	\$	141,400
RECYCLING	\$	155,803
TOTAL GENERAL FUND APPROPRIATIONS	\$	11,279,837
EMERGENCY TELEPHONE SYSTEM		
E-911	\$	150,000
TOTAL EMERGENCY TELEPHONE SYSTEM APPROPRIATIONS	\$	150,000
NARCOTICS ENFORCEMENT DIVISION		
ENFORCEMENT	\$	17,100

TOTAL NARCOTICS ENFORCEMENT APPROPRIATIONS	\$ 17,100
WATER & SEWER FUND	
PUBLIC UTILITIES (ADMIN)	\$ 282,597
WATER OPERATIONS	\$ 712,671
SEWER OPERATIONS	\$ 681,746
WATER TREATMENT PLANT	\$ 863,688
WASTE WATER TREATMENT PLANT	\$ 1,288,369
UTILITY BILLING & COLLECTIONS	\$ 206,912
NON-DEPARTMENTAL/DEBT SERVICE	\$ 2,193,381
TOTAL WATER & SEWER FUND APPROPRIATIONS	\$ 6,229,364
HEALTH INSURANCE FUND	
HEALTH INSURANCE	\$ 1,201,500
TOTAL HEALTH INSURANCE FUND APPROPRIATIONS	\$ 1,201,500
MUNICIPAL SERVICE DISTRICT	
MUNICIPAL SERVICE DISTRICT	\$ 108,589
TOTAL MUNICIPAL SERVICE DISTRICT APPROPRIATIONS	\$ 108,589
RURAL FIRE SERVICE DISTRICT	
RURAL FIRE SERVICE DISTRICT	\$ 530,152
TOTAL RURAL FIRE SERVICE DISTRICT APPROPRIATIONS	\$ 530,152
GRAND TOTAL - ALL APPROPRIATIONS	\$ 19,516,542

SECTION 3: There is hereby levied a tax rate of thirty-seven cents (\$0.37) per one hundred dollars (\$100.00) valuation of property as listed for taxes as of January 1, 2009 for the purpose of raising the revenues listed "Current Year Taxes" in the General Fund in Section 1 of this Ordinance. This rate is based on an estimated total valuation of property for the purpose of taxation of \$1,351,869,800 assessment ratio of 100% of the appraised value. The collection rate of 97% is reflected in the budget. The FY 2009-2010 operating budget follow the general reappraisal of real property for the Town of Boone.

SECTION 3(a): There is hereby levied a tax rate of twenty-one cents (\$0.21) per one hundred dollars (\$100.00) valuation of property as listed for taxes as of January 1, 2009 for the purpose of raising the revenues listed "Current Year Taxes" in the Downtown Municipal Service District in Section 1 of this Ordinance. This rate is based on a established taxation of \$52,915,600 assessment ratio of 100% of the appraised value. The collection rate of 97% is reflected in the budget. The FY 2009-2010 operating budget follows the general reappraisal of real property for the Downtown Municipal Service District.

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

A. He may transfer amounts between objects of expenditure within a Department to a maximum of the budgeted amount per Department. Transfers shall be filed with the Finance Department for public and Town Council inspection. Town Council shall approve transfers in excess of the limitation.

B. He may transfer available funds between departments of the same fund with an official report of such transfer on file with the Finance Department for inspection by the general public and the

Town Council.

C. He may not transfer any amounts between Funds.

D. Town Council shall establish, by governing body procedure, the purchasing mechanism for large capital items (e.g. vehicle purchases). Such procedures shall not be in conflict with NCGS 143-129.

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

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

ADOPTED this the 18th day of June, 2009 by the Town Council of the Town of Boone, North Carolina.

Mayor

ATTEST:

Town Clerk

**APPENDIX A
TOWN OF BOONE
WATER AND SEWER ORDINANCE**

EFFECTIVE 07/01/2009

Late Penalty Charge: \$10.00
Meter Re-read Charge: \$10.00
Meter Connect/Disconnect/Reconnect (Each): \$20.00
Returned Check Charge: \$25.00
Septic Disposal Fees (Per 100 Gallons): \$7.00 Residential; \$10.00 Commercial
Availability Fees (Per Gallon): \$3.75 Water; \$4.50 Sewer

Deposits (Outside City Limits Deposits are Double Rates Listed Below):		
Residential	\$	125.00
Commercial	\$	225.00
Construction (Temporary): 3/4"	\$	200.00
2" or 3"	\$	800.00

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

Minimum Residential 3/4" Includes 0 - 1,000 Gallons or	\$14.00
Minimum Residential 3/4" Includes 1,001 - 2,000 Gallons	\$15.25
Minimum Commercial 3/4" Includes First 2,000 Gallons	\$20.50
Minimum Commercial 1" Includes First 2,000 Gallons	\$25.50
Minimum Commercial 1 1/2" Includes First 2,000 Gallons	\$30.50

Minimum Commercial 2" Includes First 2,000 Gallons	\$30.50
Minimum Commercial 3" Includes First 2,000 Gallons	\$40.50
Minimum Commercial 4" Includes First 2,000 Gallons	\$50.50
Minimum Commercial 6" Includes First 2,000 Gallons	\$70.50
Minimum Commercial 8" Includes First 2,000 Gallons	\$90.50

Consumption - Water:	
(Outside City Limits Consumption is Double Rates Listed Below)	
2,001 to 4,999 Gallons	\$5.65
4,999 to 9,999 Gallons	\$5.90
10,000 to 14,999 Gallons	\$6.15
15,000 to 19,999 Gallons	\$6.40
Over 20,000 Gallons	\$6.65
Consumption - Sewer:(Outside City Limits Consumption is Double Rates Listed Below)	
Over 2,000 per 1,000 Gallons	\$5.00
Other - 2 Bedroom Flat Rate (Outside City Limits)	\$74.50

(ORDINANCE TO BE TYPED IN BOOK 3, PAGES 372-379)

VOTE: Aye-All

Nay-None

Excused-1 (Mason)

ADOPTION OF McLaurin Parking Contract

Town Manager Greg Young said this contract is the same as the previous one. Council member Brantz asked if the Town receives more revenue from parking than the cost of the contract. Town Manager Young said yes, about 50% more revenue over cost. Council member Phillips asked who will hear the parking appeals now that the contract with DBDA has expired. Town Manager Young said the Town Council will decide who it wants to hear the appeals. Mr. Steve McLaurin said he would be willing to work with the SAHA and Farmers' Market on their parking issues. On a motion by Council member Pepin, seconded by Council member Phillips, Council moved to adopt the following contract:

STATE OF NORTH CAROLINA

PARKING MANAGEMENT AGREEMENT

COUNTY OF WATAUGA

THIS PARKING MANAGEMENT AGREEMENT, made and entered into this 18th day of June, 2009 by and between the Town of Boone, hereinafter referred to as "the Town," and McLaurin Parking Company, a corporation organized and existing under the laws of the United States and the State of North Carolina, hereinafter referred to as "McLaurin."

WITNESSETH:

WHEREAS, the Town possesses the utilization rights of on-street parking spaces on the north and south side of King Street, Queen Street, the north side of West Howard Street, the north and south side of Depot Street, and three (3) off-street parking lots in Downtown Boone.

WHEREAS, McLaurin has an experienced parking management team, and has employees available to operate the parking operation; and

WHEREAS, the Town wishes to enter into an agreement that will ensure the efficient operation of the on-street and off-street parking operation and provide an acceptable financial return on the parking operations; and

WHEREAS, the Town and McLaurin have agreed to the terms and conditions for operation of one short-term parking facility, two monthly parking facilities, and the on-street monitoring and ticket writing.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein contained and other valuable considerations, the Town and McLaurin agreed as follows:

- a. TERM: The initial term of this agreement shall be from July 1, 2009 through and including June 30, 2012. Not less than sixty (60) days prior to the termination date, the parties will confer to determine if this Agreement is to be renewed, and make any supplemental agreement or modification for that purpose, and if not so renewed, said Agreement shall expire June 30, 2012 midnight; and provided further that either party may terminate this agreement by giving 120 days written notice to the other party. At the termination of this agreement, McLaurin shall surrender the premises in as good a state as they were at the time the facilities were turned over to McLaurin for management, normal wear and tear excepted.
- b. PERSONNEL: McLaurin shall staff the operations of the parking areas with sufficient competent personnel to operate the parking facilities in a satisfactory manner and said personnel shall be adequately supervised. The operating hours for the hourly parking facilities shall be from 7:30 a.m. to 5:30 p.m., Monday through Friday. The on-street monitoring shall be conducted from 8:00 a.m. to 4:00 p.m. Monday through Friday. Said parking areas shall not be operated during the following holidays: New Years Day, July 4th, Labor Day, Thanksgiving Day, and Christmas Day.
- c. MANAGEMENT STAFF: McLaurin agreed to provide sufficient management staff for the facilities who will supervise the operation of the parking facilities, process monthly accounts from the McLaurin central office in Raleigh, formulate marketing plans for use of the facilities during regular hours and for special events, and to audit all revenues through McLaurin's central office. This service includes the Town Hall Lot, Queen Street Lot, Depot Street Lot, the new Queen Street Lot and the on-street parking operation on King Street from Straight Street to College Street, the north side of Queen Street and on the north side of West Howard Street.

For these services, McLaurin will charge and receive an annual fee of \$40,690.64 prorated and payable monthly in installments of \$3,390.90 by the 15th of the month for the previous calendar month.

- d. CLEANING AND MAINTENANCE. The Town shall be solely responsible for cleaning and maintaining the parking areas, including snow removal.
- e. EQUIPMENT. All parking control equipment including ticket issuing machines, gates, booths, and revenue control systems located in the off-street lots shall be property of the Town.

McLaurin shall be responsible for maintaining the parking control equipment (except for booths) and revenue control equipment in good working order. If outside service personnel are required, McLaurin will be responsible for labor charges and Town will be responsible for the cost of all replacement parts on Town's equipment. The Town will be responsible for any

repairs to the booths that may be necessary. All booth repairs must be approved by the Town Manager.

- f. SUPPLIES. McLaurin will furnish all paper supplies, such as parking tickets, register tapes and reporting paper, for the off-street parking operations and on-street parking operations for a fee equal to the exact documented cost and payable monthly.
- g. PUBLIC RELATIONS. The Town and McLaurin recognize that the operations of the parking area must be accomplished in a satisfactory manner so as to engender good public relations for the Town, and all of McLaurin's employees shall be properly dressed and friendly and courteous to all those using said parking facilities.
- h. PARKING REVENUE AND PAYMENT FOR SERVICES. All gross receipts from the operations of the parking areas shall be the property of the Town and will be deposited at least once daily into a bank account as directed by the Town Manager. On or before the 15th of each calendar month, McLaurin will provide to the Town the previous month's gross revenue and a statement for the previous month including revenues by date, and for costs including labor, approved office overhead, supervision, insurance, replacement tickets and other items associated with the operation of the parking facilities as approved in writing by the Town Manager. McLaurin shall maintain professional written accounting records and the Town shall reserve the right to inspect those records at any time during the term of this agreement and for one year thereafter. The Town Manager may at times request reasonable analysis by McLaurin and may change the reporting procedure. All reports shall be public records upon receipts by the Town.

The Town shall reimburse and compensate McLaurin by the 15th of each month for the cost incurred and services rendered during the previous month as follows:

<u>TOWN HALL PARKING LOT</u>	<u>ANNUAL</u>
LABOR	
Estimated annual hours 2455 @ \$9.23/hour	\$22,659.65
EQUIPMENT MAINTENANCE	
(\$62.08/month)(12 months/year)	\$ 774.80
UTILITIES	
(/month)(12 months/year)	Exact cost per year
Exact cost per month	
SUPPLIES-paper reports, register tape, etc..	Exact cost per year
INSURANCE	
(99.33/month)(12 months/year)	<u>\$ 1,192.00</u>
	\$24,626.45
	Plus exact cost of utilities, postage, and paper supplies

ON-STREET MONITORING AND TICKET WRITING

LABOR

Estimated annual hours 4160 @ \$10.42/hour \$43,347.20

SUPPLIES

(/month)(12 months/year) exact cost per year

OFFICE STAFF – inputting citations into the system each day
(\$690.00 / month)(12 months/ year) \$ 8,280.00

INSURANCE
(\$50.42/month)(12 months/year) \$ 605.00

\$52,232.20

System Management
(Scheduled Compensation-Section \$40,690.64

TOTAL CONTRACT = \$117,549.29

- i. SIGNS. McLaurin may, subject to approval of the Town, install neat, attractive signs, indicating the service provided and that the services are provided by McLaurin Parking Company. McLaurin will advise the Town as to signs and markings which may be needed for directing the public to the parking facilities, those signs to be prepared and installed by the Town. All signs must comply with the Town’s regulations concerning signs, as well as the Uniform Traffic Control Device Manual.
- j. LIABILITY INSURANCE. McLaurin agrees to obtain liability insurance covering the following items:
 - a. Comprehensive General Liability and Property Liability insurance in the amount of \$500,000.00 bodily injury or death per incident and \$100,000.00 property damage per incident.
 - b. Garage Keeper’s Excess Specified Perils insurance including fire, explosion, vehicular theft, vandalism, and malicious mischief in the amount of \$1,000,000.00. Said insurance represents excess insurance in the event that the individual in question lacks individual coverage of this type.
 - c. Umbrella Excess Liability insurance in the amount of \$1,000,000.00. Umbrella Excess Liability insurance is insurance over the underlying Comprehensive General Liability or Garage Keeper’s Excess Specified Perils (a. or b.).
- k. ASSIGNMENT AND DEFAULT. The rights and duties under this agreement may not be transferred or assigned in whole or in part without the written consent of both parties, and in the event of bankruptcy, reorganization, or any attempt to make an assignment for the benefit of its creditors by McLaurin, or default by McLaurin, this agreement will immediately terminate at the option of the Town, at which time the Town shall assume full possession of the parking facilities.
- l. REGULATIONS: McLaurin and the Town shall comply with all Federal, State and local laws, statutes, ordinances and regulations as applicable to this agreement.
- m. MODIFICATION. This Agreement may only be modified by the written mutual consent of McLaurin and the Town.
- n. DISCRIMINATION. In consideration of the signing of this agreement, the parties hereto for themselves, their agents, officials, employees, and servants hereby agree

not to illegally discriminate in any manner on the basis of race, color, creed, gender, age, handicap, or national origin with regard to the subject matter of the contract of this agreement, no matter how remote. This provision shall be incorporated into this agreement for the benefit of the Town of Boone and its residents and may be enforced by action for specific performance, injunctive relief or other remedy as by law provided this provision shall be construed in such a manner as to prevent and eradicate all discrimination based upon race, color, creed, or national origin.

- o. TELEPHONE. McLaurin shall maintain a telephone for business and emergency use.
- p. PROOF OF INSURANCE. Proof of insurance is required upon acceptance of the agreement, and will be maintained on file with the Town of Boone.
- q. INDEMNIFICATION. McLaurin shall indemnify, defend and hold harmless, the Town of Boone, its officers, employees and agents, against all claims, costs, losses, and damages, arising out of or relating to its performance of its duties under this Parking Management Agreement, including claims for negligence, claims or causes of action under or pursuant to 42 U.S.C. 1983 or other civil rights law, including but not limited to claims of violation of constitutional rights to due process of law and equal protection under the law, claims or causes of action under or pursuant to the North Carolina constitution, North Carolina General Statutes or the appellate decisions of the North Carolina Court of Appeals and North Carolina Supreme Court, and all such other claims or causes of action, it being the intent of McLaurin to release the Town of Boone, its agents, officers and employees, from all possible liability arising from its performance of this Agreement.
- r. JURISDICTION AND VENUE. The Parties agree that should a dispute arise regarding the interpretation or enforcement of this Agreement, the laws of North Carolina will control the interpretation of the Agreement. Should any issue relating to this Agreement be presented to the courts for determination, the Parties agree that Watauga County, North Carolina is the proper venue for any such determination.

IN WITNESS WHEREOF, the parties have executed this parking management agreement the day and year first above written.

VOTE: Aye-All
Nay-None

ADOPTION OF MAPS GROUPS CONTRACT

Town Manager Greg Young said this contract is for facilitation services for meetings to be held about downtown parking issues. Town Manager Young said the contract will cost \$2,500. Council member Brantz asked if the engineering report to be used in the downtown parking issue discussion is completed. Town Manager Young said no. On a motion by Council member Brantz, seconded by Council member Aycock, Council moved to postpone action on this contract until the engineering study is completed.

VOTE: Aye-All
Nay-None

ADOPTION OF GDS CONTRACT

Public Works Director Blake Brown said the contract is the same as in the past. On a motion by Council member Pepin, seconded by Council member Aycock, Council moved to adopt the following contract:

**STATE OF NORTH CAROLINA
COUNTY OF WATAUGA**

**THE TOWN OF BOONE AND REPUBLIC SERVICES
OF NORTH CAROLINA, LLC d/b/a/ GDS SOLID
WASTE AND RECYCLING AGREEMENT**

THIS AGREEMENT, made and entered into as of the 18th day of June, 2009, by and between the **TOWN OF BOONE**, a town organized under the laws of the State of North Carolina, (hereinafter referred to as the "Town"), and **REPUBLIC SERVICES OF NORTH CAROLINA, LLC, d.b.a. GDS**, a North Carolina limited liability company, having its principal place of business in Conover, North Carolina, (hereinafter referred to as the "Contractor"), collectively referred to as, "the parties".

WITNESSETH:

WHEREAS, the Contractor is qualified to provide solid waste and recycling collection services; and

WHEREAS, the Town and Contractor desire to enter into a written contract for the efficient, healthful, and aesthetic collection, hauling, and disposal of non-hazardous and non-infectious solid waste for residences, and for the efficient, healthful, and aesthetic collection, hauling, and processing of certain recyclable materials for residences and businesses located in the town limits of the Town of Boone. Such services are to be rendered beginning July 1, 2009; and

WHEREAS, the parties have agreed to replace all prior contracts with the agreement set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and consideration contained herein, the Town and Contractor hereby agree as follows:

1. **DEFINITIONS**

GARBAGE is defined as all waste food and/or other materials normally associated with common household waste which should not include recyclable items.

RECYCLABLES for residential must include, without limitation, the following items: aluminum beverage cans and steel food cans, all colored and clear plastic bottles including but not limited to milk jugs, soft drink bottles, liquor, juice mineral water, sports drink bottles as well as ALL plastics that display the #1 or #2 recycle symbol.; all glass food jars and beverage bottles to include clear, brown, green and blue; newsprint to include inserts, telephone directories, magazines and catalogs, and paste board. Recycling for businesses inside the Town limits shall include, but not be limited to, office paper which is defined as white/and all colored paper, computer paper, memo, junk mail, newspapers/with inserts, magazines, brochures, file folders, telephone directories, manila envelopes, adding machine tape, time cards, multi-part forms (without carbon), legal pads, message pads, and continuous-run computer paper copy, and plain and windowed envelopes. Business recyclables also include plastics as described above as well as aluminum, steel cans and includes a route pick up for old corrugated cardboard.

SPECIAL WASTE is bulky materials and other special wastes that are not stored in a standard storage container or equivalent trash bags and cannot be picked up by the normally used collection vehicle. Included are appliances, furniture, yard waste, building materials, demolition debris, bulky cartons not broken down, or other solid or liquid wastes that are unacceptable at the Watauga County transfer station according to County, State, or Federal regulations.

2. **TERMS AND RENEWALS**

The Agreement shall commence on July 1, 2009 and expire on June 30, 2012. At the option of the Town, the initial term of this Agreement can be extended for up to two (2) additional three (3) year periods upon the same terms and conditions then in effect. In order to renew this Agreement for each additional period, the Town shall give the Contractor a written notice of its intention to renew at least ninety (90) days prior to the expiration of such initial term or extension term by certified US mail, return receipt requested.

No renewal shall be for a period greater than three (3) years. The renewal terms and provisions of the Agreement shall remain substantially the same. The renewal pricing to be paid by the Town to the Contractor shall remain the same as the Initial term except for increases due to annexations and cost of living increases.

3. **SCOPE OF WORK**

A. GARBAGE COLLECTION – The Contractor will be responsible for the collection of garbage from residences and recyclables from residences and businesses as well as the processing of the recyclables. As designated by the Town, it shall be the duty of the Contractor to collect and dispose of all items of garbage, as that term is defined, *supra*, generated within the corporate limits of the Town at the Watauga County Landfill. The Town will pay the disposal fees directly for all disposal of such garbage.

At least once each week, Monday through Friday, fifty-two (52) weeks per year, the Contractor shall use enclosed vehicles to pick up containerized residential garbage and return containers to their previous location.

The Contractor shall provide collection in accordance with the following guidelines:

Collection – Residential:

Cans/carts at the CURB: At least once each week, Monday through Friday, fifty-two (52) weeks per year, the Contractor shall collect up to, but not more than, 95 gallons of garbage from cans or carts provided by the each resident which are placed at the curbside of each residence in the Town. ***Each can may not exceed 32 gallons capacity. Each cart may not exceed 100 gallons.*** All garbage shall be placed inside the can/cart. The Contractor ***will not*** be required to pick up any loose piles. The Contractor shall make available back door collection service for those residents who are physically unable to take their garbage to the curb, pursuant to the provisions of paragraph 3(I), *infra*.

The Contractor will not be required to pick up trees, tree limbs, roofing materials, plaster, concrete, concrete blocks or other substances which result from the clearing of land, repairs, construction, or demolition of buildings undertaken by contractors or residents of the Town.

Collection – Commercial (DOWNTOWN BUSINESS DISTRICT ONLY)

The Contractor will make available collection of garbage by can or cart at the curb of the streets in the Downtown Business District on Mondays, Wednesdays, and Fridays. Costs will be paid by each business owner placing garbage for collection.

Commercial properties that have dumpsters will be billed directly by the Contractor.

Garbage collection is to be collected at the following Town of Boone offices free of charge:

Public Works, 321 East King Street (8yd 1x/wk, 8 carts 1x/wk)
Town Hall, 567 West King Street (2 carts 1x/wk)
Fire Station I, 729 West King Street (2 carts 1x/wk)
Fire Station II, 1075 State Farm Road (2 carts 1x/wk)
Police Department, 1500 Blowing Rock Road (5 carts 2x/wk)
Planning and Inspections, 1510 Blowing Rock Road (2 carts 2x/wk)
Public Works Stockyard, 174 Horn Avenue (8yd 1x/wk, 4yd 1x/mo, 4 carts 1x/wk)
Water Plant, 310 Deck Hill Road (4yd 1x/wk)
Wastewater Treatment Plant, 201 Casey Lane (20yd roll-off / on call, 8yd 1x/wk,)
Street cans 22 cement cans 3x/wk with additional pickups as needed
Town of Boone may request 90 gallon carts for special events

B. SPECIAL WASTES – The Contractor shall not be responsible for collection of special wastes.

C. RECYCLABLE MATERIALS – The Contractor shall collect recyclable materials located at the curbside of each residential/small commercial property from bins provided by the Town. Residential recyclable materials will be collected once each week, Monday through Friday, fifty-two (52) weeks per year, on the same day that the residential garbage is collected.

Recyclable items are to be picked up at town residences, apartment/condo complexes, offices and businesses throughout the town. The Contractor shall provide an adequate number of 96 gallon carts for recycling at the apartment/condo complexes at the owner's expense (currently 237 carts).

Listed are the Town of Boone offices that require free recycling collection:

Public Works, 321 East King Street (8yd 1x/wk)
Town Hall, 567 West King Street
Fire Station I, 729 West King Street
Fire Station II, 1075 State Farm Road
Police Department, 1500 Blowing Rock Road (8yd every other wk)
Planning and Inspections, 1510 Blowing Rock Road
Water Plant, 310 Deck Hill Road
Wastewater Treatment Plant, 201 (Casey Lane 4yd – OCC)

The Town will furnish recycling bins to town residents, apartment/condo complexes and offices.

D. CHANGE OF SCHEDULE

The Contractor shall furnish to the Director of Public Works or his/her designee all routes and schedules of any changes in routing structure, equipment or other services performed or made.

E. HOLIDAYS

The Contractor shall not be required to perform on the following holidays: Thanksgiving Day and Christmas Day. If a normally scheduled pickup falls on one of the designated holidays, collections shall be resumed on the next working day.

The Contractor shall be responsible for placing an ad in an approved newspaper and on the local radio stations announcing the change in schedule.

F. HOURS

The collection described herein shall be between the hours of 7:00 AM and 5:00 PM, Monday through Friday, provided that in the event of emergencies, or with prior approval of the Director of Public Works or his/her designee, collections may be made on Saturday and/or Sunday between 7:00 AM and 5:00 PM.

G. STORMS AND OTHER DISASTERS

Work under the contract does not include the collection and disposal of any increased volume resulting from a flood, hurricane or similar or different Act of God over which the parties have no control. In the event of such a flood, hurricane or other Act of God, the Contractor and the Town will negotiate payment to be made to the Contractor for any additional collection.

H. ANNEXATION

The parties agree that any contiguous areas annexed by the Town during the term of the contract shall be included within the service area and the Contractor shall charge at the same per unit rate as provided for in this Agreement for existing areas of the Town.

I. HANDICAPPED AND ELDERLY COLLECTION

The Contractor shall provide back door pickup for garbage and recycling at no extra charge for a maximum of 5% of the total residential customer count to allow for customers with disabilities or those who are otherwise unable to move containers to the curbside. The Director of Public Works or his/her designee shall approve those residents eligible for this service.

J. METHOD OF COLLECTION

Collection of garbage shall be made from each residential property at the curbside, alley or backdoor and the area around the containers shall be left free from any garbage spilled during the collection. The Contractor shall not be responsible for cleaning up unsanitary conditions about the containers caused by the negligence or carelessness of the occupant of the residence or business. Care shall be taken by employees of the Contractor to prevent damage to containers by rough treatment. Any damage caused by the Contractor shall be repaired or replaced in a reasonable period of time.

The Contractor shall use only personnel who are qualified to perform the services and shall require its employees to serve the public in a courteous, helpful and impartial manner. Careful and competent personnel who are thoroughly familiar with the type of work being performed shall perform the services in an efficient and workmanlike manner. Performance of the services shall be subject to the inspection and approval of the Town.

4. DEFAULT

In the event either party shall fail to observe or perform any of the covenants or terms of this Agreement, the other party may give notice in writing of such default. In the event such default is not cured within seven (7) days from the date of such notice, the non-defaulting party may cancel this Agreement. Cancellation of this Agreement by the non-defaulting party shall not prevent said party from maintaining an action against the defaulting party for damages for such default or from pursuing such other legal remedies as may be available to it by reason of such default. Neither party shall be liable for non-performance or delay in performance for causes due to force majeure and without its fault or negligence. For purposes of this Agreement, force majeure is defined as cause beyond the control of the parties, including, but not limited to, acts of God; wars or civil commotion; destruction of facilities by fire, earthquake, or storm; labor strikes; epidemic; or failure of public facilities or common carrier. Notwithstanding the provisions of this paragraph, if at any time, while this Agreement is in force, Contractor fails to or is unable for cause to provide the service contemplated herein, the Town shall have the right without payment or liability to Contractor to effect such other arrangements as it deems desirable during the Contractor's inability to perform.

5. LEGAL CONDITIONS

The Contractor shall comply with all applicable federal, state, county and local laws, rules, regulations and ordinances including, without limitation, solid waste legislation of the State of North Carolina, the rules and regulations of the Watauga County Health Department and the Federal Motor Carrier Safety Regulations issued by the United States Department of Transportation, Federal Highway Administration.

6. PERFORMANCE BOND

The Contractor shall furnish to the Town a performance bond for the faithful performance of its obligations arising out of this Agreement in an amount equal to 100% of the annual contract amount for the first twelve (12) month period of the contract, and said performance bond shall remain in full force and effect during the entire term of the contract. A surety company, which is satisfactory to the Town, shall execute the performance bond and must be a duly licensed corporate surety authorized to do business in the State of North Carolina ("Surety"). The Contractor shall pay the premium for the bond. A certificate from the Surety showing that the bond premium has been paid in full shall accompany the performance bond when it is issued. The Surety will be responsible for any default by the Contractor without regard to the cause of the default.

7. INDEMNIFICATION

The Contractor shall indemnify, defend and hold harmless the Town from and against any and all losses, claims, actions, damages, liability, and expenses, by whatever label, title or name, including, without limitation, those asserted in connection with loss of life, bodily or personal injury, or damage to property occasioned by the actions or omissions of the Contractor.

8. INSURANCE

The Contractor shall obtain and maintain the following minimum amounts of insurance coverage in full force and effect for the duration of this Agreement and as long thereafter as is necessary to fund the Contractor's indemnification and defense obligations, and to protect against any assertions of liability which might arise as the result of or in connection with the Contractor's performance of this Agreement. The Town of Boone shall be named as an additional insured to the extent of Contractor's negligence and shall be given at least thirty (30) days notice prior to any change or cancellation of coverage:

- a. A comprehensive general liability insurance policy, specifically endorsed to include coverage for completed operations, contractual liability, independent contractors, and Broad Form Property Damage. Said policy of insurance to have a minimum limit of \$5,000,000.00 per occurrence combined single limit for bodily injury (including death) and property damage;
- b. An excess umbrella policy of \$10,000,000.00;
- c. An automobile liability insurance policy covering owned, non-owned and hired vehicles. Said policy of insurance to have a minimum limit of \$1,000,000.00 per occurrence combined single limit for bodily injury (including death) and property damage.
- d. A workman's compensation and employer's liability insurance policy with a statutory limit of workman's compensation and a limit of \$100,000.00 per accident for employer's liability; and

9. EQUIPMENT

All equipment to be used in the performance of the work contemplated under the provisions of these specifications must be new or in excellent operable condition not to be more than ten (10) years old and able to effectively perform the Agreement. All equipment shall be kept in good repair and appearance and in a sanitary, clean condition at all times. Reserve equipment must be available which can be put into service and operation within two (2) hours of any breakdown. Such reserve equipment shall substantially correspond in size and capability to the equipment used by the Contractor to perform its duties hereunder. All equipment shall display the company's name and telephone number so it is visible on both sides and rear of vehicles.

10. UNIFORMS

Contractor shall at all times provide uniforms, with identification of company and employee, for all drivers and attendants. All uniforms shall be kept neat, clean and in good order.

11. **DRUG FREE WORK PLACE**

The Contractor agrees to make a good faith effort to establish and maintain a drug free workplace in connection with the performance of this Agreement. Consistent with the size and organization of its work force the Contractor may wish to consider taking the following or other appropriate actions in establishing a drug free workplace: publicizing a drug free workplace policy; initiating an employee drug awareness program, encouraging participation in existing community programs; and informing employees of the general availability of drug counseling programs, etc.

12. **PUBLIC RELATIONS AND COOPERATION**

The Contractor, through its agents and employees, shall make every effort to create and maintain an excellent working relationship with the persons and businesses it is servicing in the town. To that end, the Contractor will encourage all of its representatives to be courteous and exercises good judgment in dealing with the persons and businesses it serves. Likewise, the Contractor shall cooperate with the Town in fulfilling its obligations under this Agreement including the investigation of any alternative service levels or procedures which the Town may wish to examine for the purpose of providing such service to Town residences and commercial establishments.

13. **CONTAINERS**

Dumpsters for commercial businesses may be supplied by the Contractor and billed by the Contractor directly to the businesses. Residents will supply their own garbage cans, while the Town will provide recycling bins for all residences, offices, apartments/condos and businesses. Contractor shall deliver carts for recycling to apartments/condos, where needed.

14. **RECYCLING CONTAMINATION**

Non-recyclable materials placed in a recycling bin shall not be collected. A completed form shall be left in the bin explaining the reason(s) the non-recyclable materials were not collected. Prior to use, this form must be approved by the Director of Public Works or his/her agent. Copies of each completed form shall be sent to the Town of Boone on a monthly basis.

15. **ROUTES AND SCHEDULES**

The Contractor shall annually provide the Town with schedules of residential collection routes and keep such information current at all times. In the event of changes in routes or schedules that will alter the day of the pickup, the Contractor shall so notify the Town and each affected customers no less than fourteen (14) days prior to the change. The Contractor shall be responsible for placing an ad in an approved newspaper announcing the change.

16. **OFFICE HOURS: ADMINISTRATION**

The Contractor shall maintain a fully staffed office and maintenance facility within Watauga County. This facility shall have a toll free telephone number to be attended at least Monday through Friday, 8:00 AM to 5:00 PM, except for the following holidays: Thanksgiving Day and Christmas Day. The Contractor shall maintain, at its cost, a telephone listed in the name by which it does business as the Contractor and shall provide full time (not recorded) answering service during the times and days referred to herein before. The Contractor shall provide an

adequate number of telephone lines so that under normal circumstances there will not be an unreasonable delay to customers trying to contact the Contractor.

The Contractor shall provide and maintain adequate and competent supervision during the performance of the services, and shall appoint a local manager who shall be in charge of the services. All directives given by the Director of Public Works or his/her designee to the local manager, when consistent with the provisions of the contract, shall be binding upon the Contractor. The Contractor shall further maintain continuous surveillance of the services performed under the contract.

17. COMPLAINTS BY CUSTOMERS

The Contractor shall make every reasonable effort to provide high quality service and have no unresolved complaints. All complaints shall be resolved within twenty-four (24) hours, whenever possible. The Contractor shall prepare a Town approved form or maintain a register at his/her local office on all complaints and indicate the disposition of each. Such records shall be provided to the Town on at least a monthly basis and shall be available for inspection at all times during business hours. The record shall indicate the resident or business who complained, a detail of the complaint, the day and the hour on which the complaint was received and the day and the hour on which it was resolved. When a complaint is received on the day preceding a holiday or on a Saturday, it shall be serviced no later than the next working day.

18. PROCESSING OF RECYCLABLES

The Contractor shall be solely responsible for the marketing and sale, in a timely manner, of collected recyclable materials, and shall be solely responsible for the storage and disposition of the recyclable materials. Landfilling or incineration of collected recyclables is not permitted. Any costs incurred for the disposal of non-recyclables or residuals will be the sole responsibility of the Contractor.

19. EDUCATION

The Town shall be responsible for the education component of this project. The Contractor shall have a minimum of one qualified staff person available to assist with public speaking engagements from the time of bid award through the term of the contract. The Town will place educational materials in each bin delivered by Town employees.

The Contractor will have educational materials available to furnish to any resident or business if requested. At the direction of the Director of Public Works or his/her designee, the Contractor shall place educational materials in each bin/cart during collection by the Contractor. The Contractor shall distribute door hangers if requested by the Public Works Director or his/her designee to affected businesses and residents approximately thirty (30) days prior to commencement of collection of any new materials.

20. DISPOSAL

All garbage will be disposed of at the direction of the Town Public Works Director or his/her designee. The current location is to be the Watauga County Sanitary Transfer Station which is located in Watauga County on Landfill Road, Boone, North Carolina and operated by Watauga County. The Contractor may negotiate a new if the Town of Boone changes location for the disposal of the garbage, and the new location increases the expenses of the Contractor.

21. CHANGES

If any changes occur in the collection or processing of materials such as, but not limited to, addition of recyclable materials or changes in the collection schedule, the Director of Public Works must be notified in writing at least thirty (30) days in advance of the proposed starting date. The Contractor may not cease collection of a recyclable material without written approval of the Director of Public Works or his/her designee.

22. RECYCLING REPORTING

The Contractor will submit to the Town a monthly recycling report which includes the following:

- a. Tonnage of all materials recovered, broken down by material;
- b. Participation rates in terms of monthly participation;
- c. Current market prices for processed recyclable materials sold to purchasers, names of current purchasers, and total tonnage sold to purchasers
- d. Copies of notices left to residents explaining why non-recyclables were not collected; and
- e. Residual rate from processing of materials.

23. **RECYCLING MARKETING**

The Contractor will be responsible for marketing all recyclable materials. The Town of Boone shall be paid quarterly 100% of the fair market value of all recyclable materials. Fair Market value shall be based on the amount that Watauga County or any other local recycler is paying for materials.

24. **CONTRACT PRICING**

Pricing for the first year of the Agreement shall be as set forth in the Contactor's BID SHEET attached hereto and incorporated by reference herein.

Fluctuations in the number of units serviced and billed shall be assessed and if warranted, the amounts paid to the Contractor shall be adjusted accordingly at the end of each fiscal year. The prices bid by the Contractor are the base prices being paid to the Contractor during the first year of the term of the Agreement. The base prices may also be adjusted during the second and the third year of the initial term of the Agreement, and may be adjusted during each year of any renewal term, based upon any increase in the cost of living, determined as follows:

As promptly as practicable after March 30, 2010 and each March 30 thereafter during the initial term or renewal terms, the Contractor may compute the increase or decrease, if any, in the cost of living, using as the basis of such computation the "Consumers Price Index for All Urban Consumers, U. S. City Average, All items 1982-84-100" ("Index") published by the Bureau of Labor Statistics of the United States Department of Labor, and contract payments shall be adjusted accordingly; however, the maximum annual increase will not exceed 3 1/2% unless a higher amount is agreed upon by Town Council.

Along with the prices as determined using the above procedure, the Town shall pay \$7.50 per month for each business that has a recycling cardboard container as a subsidy for the service to that business.

25. **MISCELLANEOUS TERMS**

a. This Agreement is not to be transferable or assignable without the express written consent of the Town; provided however, that such consent shall not be unreasonably withheld. In the event of any assignment or transfer, the assignee or transferee shall assume all of the rights and obligations, including those relating to indemnification, insurance and liability of the original Contractor covered by this Agreement.

b. Except as provide herein in the event of an interruption in service, the Contractor shall have a non-exclusive franchise, license and privilege to provide residential solid waste collection and removal services within the area contracted.

c. Title to all solid waste, except hazardous or infectious waste, shall pass to the Contractor when placed in the Contractor's collection vehicle, removed by the Contractor from a cart or container, or moved by the Contractor from a customer's premises, whichever first occurs.

d. Invoices submitted for prior month services by the 1st of each month will be due and payable by the 15th of that month.

26. **VENUE AND JURISDICTION**

Jurisdiction over any disputes regarding this Agreement shall be in North Carolina, and venue shall be in Watauga County, North Carolina.

27. SEVERABILITY

In case one or more 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;

28. WAIVER

No covenant or condition of this Agreement can be waived except by written consent of the parties. 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 or any law or equity despite such forbearance or indulgence.

29. 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, addresses as follows:

As to the Contractor:

Republic Services of North Carolina
P.O. Box 2943
Hickory, NC 28603
Attention: Area President
Telephone: (828) 464-2414
Facsimile: (828) 464-6922

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 above-mentioned 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.

30. AMENDMENT

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

31. 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

WITNESSETH:

WHEREAS, the parties have agreed to make certain improvements within the Municipality under WBS Element 41496 in Watauga County in accordance with the plans and specifications approved by the Department; and,

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly including, but not limited to, the following legislation: General Statutes of North Carolina (NCGS) Section 136-66.1, Section 136-66.3, Section 136-18(24), Section 20-169, Section 160A-296, and Section 297, to participate in the planning and construction of the Project approved by the Board of Transportation for the safe and efficient utilization of transportation systems for the public good; and,

WHEREAS, the Department and the Municipality have agreed that the jurisdictional limits of the Parties, as of the date of the awarding of the contract for the construction of the above-mentioned Project, are to be used in determining the duties, responsibilities, rights, and legal obligations of the parties hereto for the purposes of this Agreement; and,

WHEREAS, the parties of this Agreement have approved the construction of said Project with cost participation and responsibilities for the Project as hereinafter set out.

NOW, THEREFORE, the parties hereto, each in consideration of the promises and undertakings of the other as herein provided, do hereby covenant and agree, each with the other, as follows:

SCOPE OF THE PROJECT

1. The Project consists of Pedestrian Safety Improvements at the intersection of US 321 and NC 105 in the Town of Boone including the removal and replacement of concrete curb and gutter, the construction of 4" concrete sidewalk, the construction of 6" concrete driveways, and the construction of concrete wheelchair ramps with detectable warning domes (hereinafter the "Project").

PLANNING AND DESIGN

2. The Department, and/or its consultant, shall prepare the environmental and/or planning document and obtain any environmental permits needed for the Project. All work shall be done in accordance with departmental standards, specifications, policies, and procedures.
3. The Department shall design and prepare the plans and specifications for the Project, in accordance with the Department's standard practices, regulations and guidelines for transportation improvements. The Department shall review and approve Project plans and specifications.

UTILITIES

4. All utility work shall be performed in a manner satisfactory to and in conformance with rules and regulations of the Department prior to the Municipality beginning construction of the Project. The Municipality shall make all necessary adjustments to house or lot connections or services lying within the right-of-way or construction limits of the Project, whichever is greater, regardless of ownership of the connections or services. Any encroachment agreement and/or permits required for the Project must be obtained from the Division Office. All work shall be performed in accordance with the Department's approved Utility Relocation Policy and standard procedures for utility improvements.

RIGHT OF WAY

5. If the Project is not to be constructed within the existing right-of-way, the Department will be responsible for any additional right-of-way or easements. Acquisitions of right-of-way shall be accomplished in accordance with applicable policies, guidelines, statutes, and the North Carolina Department of Transportation Right-of-Way Manual.

CONSTRUCTION

6. The Municipality shall construct, or cause to be constructed, the Project in accordance with the plans and specifications of said Project as filed with, and approved by, the Department. The Municipality shall enter into and shall administer the construction contract for said Project and the procedures set out herein below shall be followed:
 - A. Prior to advertising the Project for construction bids, the Municipality or its agents, shall submit for approval by the Department, the final construction plans, the total contract proposal, and an estimate of the Project costs to the Division Engineer. Bids received along with proper documentation of Municipal approval shall be submitted to the Division Engineer for review and approval by the Department prior to the contract being awarded by the Municipality. Upon award of the Project, the Municipality shall provide the Division Project Manager copies of the executed contract and sets of plans as requested.
 - B. The Municipality shall follow Department regulations, and North Carolina General Statutes regulations pertaining to bid procedures in the award of the contract and purchases. The Municipality shall not enter into any contractual agreement for any phase of the Project without prior written approval from the Department.
 - C. The construction engineering and supervision will be furnished by the Municipality. Said work shall be accomplished in accordance with terms set out in Provision #2 of this Agreement.
 - D. The Department's Division Engineer, shall have the right to inspect, sample, test, and approve or reject any portion of the Project being performed by the Municipality or the Municipality's contractor, to ensure compliance with the provisions of this Agreement. The Department will furnish the Municipality with any forms that may be needed in order to follow standard Departmental practices and procedures in the administration and performance of the contract.
 - E. The Municipality shall sample and test all materials in reasonable close conformity with the Department's Guide for Process Control and Acceptance Sampling and Testing. The Division Engineer shall be provided a copy of the testing results.
 - F. During construction of the Project, if any changes in the plans are necessary, such changes must be approved by the Division Engineer prior to the work being performed.
 - G. All materials incorporated in the Project and workmanship performed by the contractor shall be in reasonable close conformity with the Standards and Specifications of the Department.
 - H. Upon completion of the Project, the Municipality shall furnish the Division Engineer with complete sets of "Plan of Record" and/or "As Built" plans as requested.
 - I. Prior to the final acceptance and payment by the Department, the Division Engineer shall make a final inspection of the completed work. The Division Engineer will be responsible for final acceptance of the completed work on behalf of the Department.

- J. During construction of the Project, the Department shall provide and maintain adequate barricades, signs, signal lights, flagmen, and other warning devices for the protection of traffic in conformation with standards and specifications of the Department and the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways published by the Federal Highway Administration.
- K. In the event the Project is not let to contract within six (6) months after receiving final approval of construction plans and proposals from the Department, the Municipality shall be responsible for documenting to the Department justification for project delay and that the Project remains in compliance with the terms of this Agreement, the approved plans and specifications, and current codes.
- L. The Municipality shall complete construction of the Project, in accordance with the terms of this Agreement within one year(s) of execution of this Agreement. If the Municipality has not completed its responsibilities to the satisfaction of the Department, including satisfactory progress of the various phases of the Project, the unexpected balance of funds may be recalled by the Department and assigned to other Projects by the Board of Transportation and the Municipality shall reimburse costs incurred by the Department associated with the Project.

CONSTRUCTION SUBCONTRACTOR GUIDELINES

- 7. Any construction contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Minority Businesses and Women Businesses as required by GS 136-28.4 and the North Carolina Administrative Code.
 - A. The Department will provide the appropriate provisions to be contained in those contracts. Those provisions are available on the Department's website at www.ncdot.org/doh/preconstruct/ps/contracts/sp/2006sp/municipal.html.
 - B. No advertisement shall be made nor any contract be entered into for services to be performed as part of this Agreement without prior written approval of the advertisement or contents of the contract by the Department.
 - C. Failure to comply with these requirements will result in funding being withheld until such time as these requirements are met.

FUNDING

- 8. Subject to compliance by the Municipality with the provisions set forth in this Agreement, and the availability of funds, the Department shall participate in the actual construction costs. The estimated construction cost is \$18,422 (estimated total cost are \$127,000). Reimbursement to the Municipality shall be made upon approval of the invoice by the Department's Division Engineer and the Department's Fiscal Section.
 - A. The Municipality may bill the Department for actual costs by submitting an itemized invoice and requested documentation to the Department. Reimbursement shall be made upon completion. By submittal of said invoice, the Municipality certifies that it has adhered to all applicable state laws and regulations as set forth in this Agreement.
 - B. Force account work is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than contract awarded by competitive bidding process. Written approval from the Division Engineer is required prior to the use of force account by the Municipality. Said invoices for force account work shall show a summary of labor, labor additives, equipment, materials, and other qualifying costs in conformance with the standards for

allowable costs set forth in Office of Management and Budget (OMB) Circular A-87 (www.whitehouse.gov/omb/circulars/a087.html). Reimbursement shall be based on actual cost incurred with the exception of equipment owned by the Municipality or its Project partners. Reimbursement rates for equipment owned by the Municipality or its Project partners cannot exceed the Department's rates in effect for the time period in which the work is performed.

- C. In accordance with OMB Circular A-133, "Audits of States, Local Governments, and Non Profit Organizations" (www.whitehouse.gov/omb/circulars/a133/a133.html) dated June 27, 2003, the Municipality shall arrange for an annual independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the annual independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.
- D. The Municipality shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of final payment under this Agreement, for inspection and audit by the Department's Fiscal Section.
- E. The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs.
- F. Failure on the part of the Municipality to comply with any of these provisions will be grounds for the Department to terminate participation in the costs of the Project.
- G. All invoices associated with the Project must be submitted within six months of the completion of the Project to be eligible for reimbursement by the Department.
- H. The Project must progress in a satisfactory manner as determined by the Department. If the Project does not remain active, the Department reserves the right to de-obligate said funding.
- I. The expenses incurred by the Department for reviews, approvals, inspections, and other tasks set forth in this Agreement are an eligible Project cost and charged to allocated Project funding.

TRAFFIC

- 9. All traffic operating controls and devices shall be established, enforced, and installed in accordance with the North Carolina General Statutes, the latest edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, the latest edition of the "Policy on Street and Driveway Access to North Carolina Highways", and maintained and controlled by the Department upon completion of the Project.

MAINTENANCE

- 10. Upon completion of the Project, only those improvements within the state owned right-of-way shall be considered on the State Highway System and owned and maintained by the Department.

ADDITIONAL PROVISIONS

- 11. This Agreement is solely for the benefit of the identified parties to the Agreement and is not intended to give any rights, claims, or benefits to third parties or to the public at large.

12. It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency. By execution of this Agreement, the Municipality certifies, that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by a governmental department or agency.
13. The Municipality shall certify to the Department compliance with all applicable State laws and regulations and ordinances and shall indemnify the Department against any fines, assessments or other penalties resulting from noncompliance by the Municipality or any entity performing work under contract with the Municipality.
14. The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this Project. The Department is not responsible, for any expenses or obligations incurred for the Project except those specifically eligible in the terms of this Agreement. However, at no time shall the Department reimburse the Municipality costs which exceed the total funding for this Project.
15. The Municipality will indemnify and hold harmless the Department and the State of North Carolina, their respective officers, directors, principals, employees, agents, successors, and assigns from and against any and all claims for damage and/or liability in connection with the Project activities performed pursuant to this Agreement including construction of the Project. The Department shall not be responsible for any damage claims, which may be initiated by third parties.
16. The Department must approve any assignment or transfer of the responsibilities of the Municipality set forth in this Agreement to other parties or entities.
17. If the Municipality decides to terminate the Project without the concurrence of the Department, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project. Any notification of termination of this Project shall be in writing to the other party. Reimbursement to the Department shall be made in one lump sum payment within sixty (60) days of billing. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with G. S. 147-86.23 and G. S. 105-241.21.
18. In compliance with state policy, the Municipality, and/or its agent, including all contractors, subcontractors, or sub-recipients shall have a Conflict of Interest Policy and adhere to the Department's Women Business Enterprise (WBE) and Minority Business Enterprise (MBE) policy which requires goals to be set and participation to be reported, as more fully described in the Subcontractor Guidelines section of this Agreement.
19. All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.
20. Where the Department determines that the funds paid to the Municipality for this Project are not used in accordance with the terms of this Agreement, the Department reserves the right to deduct monies from the Municipality's Powell Bill Fund. Such determination shall be made, either by audit and/or inspection of books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs, not to be in compliance with the terms of this Agreement or in the event of non-payment by the Municipality.

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the Department is subject to conditions of this Agreement and that no expenditure of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Town of Boone by authority duly given.

VOTE: Aye-All

Nay-None

ANNOUNCEMENT OF BOARD VACANCIES - GREENWAY, PARKS & GARDENS & OUTSIDE AGENCY FUNDING

Mayor Clawson presented the following board vacancies:

Greenway, Parks & Gardens - Five positions expire 7/31/09.

Outside Agency Funding Committee - Two positions expire 7/31/09.

The vacancies will be advertised, with appointments being made at the July meeting.

BOARD APPOINTMENT - AFFORDABLE HOUSING TASK FORCE

Mayor Clawson presented the applications of Dr. Jeff Doyle and Terence Milstead for one position. Council member Mason said Mr. Milstead has been a faithful visitor to the Affordable Housing Task Force meetings. On a motion by Council member Mason, seconded by Council member Aycock, Council moved to appoint Terence Milstead to the Affordable Housing Task Force.

VOTE: Aye-All

Nay-None

BOARD APPOINTMENTS - BOARD OF ADJUSTMENT

Mayor Clawson presented the following applications:

Two resident positions - Richard Crepeau and Thomas Herron. On a motion by Council member Mason, seconded by Council member Aycock, Council moved to appoint Richard Crepeau and Thomas Herron as resident members on the Board of Adjustment. Their terms will expire 6/30/12.

VOTE: Aye-All

Nay-None

Two resident alternate positions - Allen Scherlen, Denise Lockett and James Milner. The following votes were cast:

Allen Scherlen - (Aycock, Brantz, Mason, Pepin, Phillips)

Denise Lockett - (Aycock, Brantz, Mason, Pepin)

James Milner - (Phillips)

Allen Scherlen and Denise Lockett were appointed as resident alternate members on the Board of Adjustment. Their terms will expire 6/30/12.

One ETJ position - Earl Keller. Council unanimously agreed to forward this application as nomination to the Watauga County Commissioners.

One ETJ alternate position - William Aceto. Council agreed to forward this application as nomination to the Watauga County Commissioners.

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

BOARD APPOINTMENT - CABLE TV ADVISORY COMMITTEE

There were no applications so the Clerk will continue to advertise the vacant position.

BOARD APPOINTMENTS - COMMUNITY APPEARANCE

Mayor Clawson presented the application of Yozette Collins for one of the two vacant resident positions on the Community Appearance Commission. Council unanimously voted to appoint Yozette Collins to the Community Appearance Commission. Her term will expire 6/30/12. The Clerk will advertise for the remaining vacant position.

BOARD APPOINTMENTS - HISTORIC PRESERVATION

Mayor Clawson presented the application of Bettie Bond for the vacant position on the Historic Preservation Commission. Council unanimously voted to appoint Bettie Bond to the Historic Preservation Commission. Her term will expire 6/30/13.

Mayor Clawson declared a break at 8:21 p.m. Council reconvened at 8:32 p.m.

BOARD APPOINTMENTS - PLANNING COMMISSION

Mayor Clawson presented the applications of Eric Woolridge and Terence Milstead for two vacant resident positions on the Planning Commission. Council unanimously voted to appoint Eric Woolridge and Terence Milstead to the resident positions on the Planning Commission. Their terms will expire 6/30/13.

Mayor Clawson presented the application of Sarah Huffstetler for the ASU student position on the Planning Commission. Council unanimously voted to appoint Sarah Huffstetler as the ASU student representative on the Planning Commission. Her term will expire 6/30/10.

BOARD APPOINTMENT - WATER COMMITTEE

Mayor Clawson presented the application of Danny Tim Wilson to the Water Commission. Council unanimously voted to appoint Tim Wilson to the Water Committee.

BOARD APPOINTMENTS - TOWN/GOWN COMMITTEE

Council member Phillips said the Town/Gown Committee members would like to add two members to their committee. One of the members would be affiliated with the University and the other would not. After little discussion, on a motion by Council member Aycock, seconded by Council member Mason, Council moved to table this appointment until Council reviews the Town/Gown Committee by-laws.

VOTE: Aye-All
Nay-None

ADOPTION OF ORDINANCE INITIATING LEGAL ACTION - PEPPER RODGERS

Town Attorney Sam Furgiuele said this action stems from the failure of Mr. Rodgers to pay for debris removal. On a motion by Council member Brantz, seconded by Council member Pepin, Council moved to adopt the following ordinance:

ORDINANCE # 09-08

WHEREAS, on or about August 13, 2008 Pepper Rodgers of 172 Cherrybrook Lane, Boone, North Carolina requested that the Town remove household debris from his aforementioned property; and

WHEREAS, Town personnel advised Mr. Rodgers that there would be charges assessed to pick up the requested material, and he indicated they should proceed; and

WHEREAS, in accordance with the request, on or about August 15, 2008, general maintenance personnel of the Town of Boone removed the household debris from Mr. Rodgers' property; and

WHEREAS, the expenses of the Town in meeting this request, \$203.35, resulted in charges in that amount which were billed to Mr. Rodgers on August 20, 2008; and

WHEREAS, despite repeated requests, Pepper Rodgers has failed and refused to repay the Town said \$203.35, or any amount whatsoever; and

WHEREAS, N.C. Gen. Stat. §§ 160A-11, 160A-12, and 160A-314 empower the Boone Town Council to authorize the institution of a civil action against Pepper Rodgers to recover the charges which it assessed in connection with his request;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA, PURSUANT TO N.C. GEN. STAT. §§ 160A-12 and 160A-314, that the Town Attorney is ordered to initiate a legal action in the General Court of Justice in Watauga County, North Carolina against Pepper Rodgers to recover \$203.35, including available attorney's fees and costs.

Adopted this 18th day of June, 2009.

Mayor

Attest:

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3, PAGE 380)

VOTE: Aye-All

Nay-None

REQUEST PERMISSION TO APPLY FOR CDBG GRANT

Assistant to the Manager Jim Byrne requested permission to apply for a CDBG grant for OASIS. If awarded, the funds will be used to make improvements to the OASIS domestic violation shelter. On a motion by Council member Aycock, seconded by Council member Pepin, Council moved to grant permission to apply for the CDBG grant.

VOTE: Aye-All

Nay-None

SCHEDULING OF SPECIAL MEETING

On a motion by Council member Mason, seconded by Council member Brantz, Council moved to schedule a special meeting for 5:00 p.m., Tuesday, June 23, 2009 at the Westwood Elementary School in West Jefferson. The purpose of the meeting is to meet jointly with the Ashe County Commissioners to discuss the proposed water intake project.

VOTE: Aye-All

Nay-None

ADOPTION OF CONTRACT CHANGE ORDER - RAINBOW TRAIL WATER TANK PROJECT

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

CHANGE ORDER

Order No. 1

Date: 5-7-09

Agreement Date: 9-5-08

NAME OF PROJECT: Highway 194 1.0 MG Storage Tank

OWNER: Town of Boone

CONTRACTOR: The Crom Corporation

The following changes are hereby made to the CONTRACT DOCUMENTS:

1- An adjustment to the bid allowance for materials testing has been made for the actual testing performed and as required by the actual field conditions encountered during the time of construction.

Justification:

1- The bid schedule allowance was adjusted for actual testing services utilized and associated costs incurred by the contractor.

Change to the CONTRACT PRICE:

Original CONTRACT PRICE: \$669,000.00

Current CONTRACT PRICE adjusted by previous CHANGE ORDER: \$669,000.00

The CONTRACT PRICE due to this CHANGE ORDER will be decreased by \$4,704.70.

The new CONTRACT PRICE including this CHANGE ORDER will be \$664,295.30.

Change to CONTRACT TIME:

The CONTRACT TIME including previous change orders: 365 calendar days.

The CONTRACT TIME will not be changed by this change order.

The date for completion of all WORK will remain 9-15-09.

To be effective this Order must be approved by the Town Council if it changes the scope or objective of the PROJECT, or if it will increase the budgeted amounts of contract funds needed to complete the PROJECT, or as may otherwise be required by the SUPPLEMENTAL GENERAL CONDITIONS

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 June 2009 Town Council packet.**)

ADOPTION OF BUDGET AMENDMENTS

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

DESCRIPTION	ACCOUNT #	TO:	FROM:
WATAUGA COUNTY- COLLECTION OF TAXES (GF)	010-403-000-577110	\$10,000.00	
WATAUGA COUNTY- COLLECTION OF TAXES (MSD)	050-450-000-577110	\$500.00	
CURRENT YEAR TAXES (GENERAL FUND)	010-000-000-411080		(\$10,000.00)
CURRENT YEAR TAXES (MSD)	050-450-000-411080		(\$500.00)
PROFESSIONAL SERVICES-LEGAL	010-404-000-509100	\$75,000.00	
APPROPRIATED FUND BALANCE (GENERAL FUND)	010-000-000-499900		(\$75,000.00)
CONTRACTED SERVICES-WCAC FOR FOLKLORIST	010-409-000-577009	\$15,000.00	
HORN IN THE WEST	010-411-000-549122		(\$15,000.00)
NC DOT PROJECT U-4020 RELATED EXPENDITURES	010-411-000-549121	\$1,212,750. 00	
TRANSFER FROM RAW WATER LAND ACQUISITION	010-000-000-498018		(\$405,000.00)
CLAWSON-BURNLEY PARK	010-411-000-549123		(\$50,000.00)
STORMWATER ASSESSMENT	010-411-000-549109		(\$36,339.00)
STREAMBANK RESTORATION	010-411-000-549133		(\$40,000.00)
HOWARD STREET	010-411-000-549124		(\$331,545.00)
TRANSFER FROM WATER CAPITAL RESERVE	010-000-000-498031		(\$257,000.00)
TRANSFER FROM SANITATION CAPITAL RESERVE	010-000-000-498013		(\$81,542.00)
HORN IN THE WEST	010-411-000-549122		(\$11,324.00)

MAINTENANCE & REPAIR VEHICLES (POLICE DEPARTMENT)	010-500-300-525301	\$1,191.00	
MISCELLANEOUS REVENUE (GENERAL FUND)	010-000-000-489900		(\$1,191.00)
UNDERCOVER OPERATIONS (NARCOTICS)	012-500-303-529902	\$3,000.00	
MISCELLANEOUS SUPPLIES (NARCOTICS)	012-500-303-519900	\$1,000.00	
APPROPRIATED FUND BALANCE (NARCOTICS)	012-500-303-499900		(\$4,000.00)
TRANSFER TO WATER CAPITAL RESERVE (W&S FUND)	030-700-890-598031	\$22,550.00	
TRANSFER TO SEWER CAPITAL RESERVE (W&S FUND)	030-700-890-598032	\$70,120.00	
IMPACT/AVAILABILITY FEES-WATER (W&S FUND)	030-000-000-467301		(\$22,550.00)
IMPACT/AVAILABILITY FEES-SEWER (W&S FUND)	030-000-000-467302		(\$70,120.00)

VOTE: Aye-All

Nay-None

DISCUSSION OF BLUE RIDGE PARKWAY 75TH ANNIVERSARY REQUEST FOR FUNDING

Mayor Clawson presented a letter from Harris Prevost which requested funding for the Blue Ridge Parkway 75th anniversary. Mayor Clawson said the organization is requesting \$4,000 this year and \$4,000 next year. Council member Pepin questioned what the money would be used for. Council member Mason said the Boone Tourism Development Authority supported a similar request and felt the any contribution will directly benefit the Town. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to allocate \$4,000 from the fund balance, with the stipulation that the Town be acknowledged as a sponsor on the Blue Ridge Parkway 75th Anniversary website.

Aye-4 (Aycok, Brantz, Mason, Phillips)

Nay-1 (Pepin)

REQUESTED APPEARANCE - JOHN WEAVER

Mr. Mike Curcio appeared before Council for Mr. John Weaver, requesting approval of a special events permit for the Grandfather Mountain Marathon. Mr. Curcio said the marathon has been held over the past 30 years and will start at Kidd Brewer Stadium on Saturday, July 11th. After little discussion, on a motion by Council member Mason, seconded by Council member Phillips, Council moved to approve the special events permit for the Grandfather Mountain Marathon for Saturday, July 11th.

VOTE: Aye-All

Nay-None

REQUESTED APPEARANCE - MIKE CURCIO

Mr. Mike Curcio, Chairman of the Greenway Parks and Garden Committee appeared before Council to request permission that the Greenway Parks and Garden Committee be allowed to retain the power to appoint the chair and vice-chair, along with subcommittees. Council discussed at length why Council is changing the policy regarding appointment of chair, vice-chair and subcommittees. Council member Mason said Council plans to review all committees next month and clarify whether or not the committee can appoint the chair, vice-chair and subcommittees.

In another matter, Mr. Curcio requested that Council pursue a greenway trail connector along the Optimist Park beginning underneath State Farm Road to the Wellness Center along Boone Heights Drive. Council member Brantz asked why the connector is being recommended rather than sidewalks. Public Works Director Blake Brown said the cost is the same for both. On a motion by Council member Aycock, seconded by Council member Phillips, Council moved to pursue the greenway trail connector along the Optimist Park to the Wellness Center.

VOTE: Aye-All

Nay-None

WATER AND SEWER REQUEST - CHRISTINE CARROLL

Town Attorney Sam Furgiuele opened a public hearing at 9:20 p.m. to hear sworn testimony from Jim Souter and Public Utilities Director Rick Miller on a request for water service to property located at 491 Greenbriar Road. Mr. Souter testified that he is Ms. Carroll's real estate agent and that she has plans to construct a three-bedroom single-family home on the property. Council member Pepin asked for a history of why water is available in the area. Public Utilities Director Miller said a waterline was constructed in the area as part of the landfill contamination settlement. Council member Mason asked when the water will be needed for use. Mr. Souter said within the next 90 days. There being no further comments, the public hearing closed at 9:27 p.m. On a motion by Council member Aycock, seconded by Council member Mason, Council moved to allocate 270 gallons of water per day from the 2009 allocation.

VOTE: Aye-All

Nay-None

WATER AND SEWER REQUEST - HOLLAR & GREENE

Town Attorney Sam Furgiuele opened a public hearing at 9:28 p.m. to hear sworn testimony from Tony Greene, Public Utilities Director Rick Miller and Building Development Coordinator David Graham on a request for water service to property located at 276 Cabbage Row. Mr. Tony Greene, Operations Manager for Hollar & Greene Produce, presented a letter outlining his request for water and sewer service. The letter explained that the septic system is failing; however, the Health Department has allowed a temporary repair until a permanent solution is found. Mr. Greene said he is willing to pay all costs associated with the extensions; however, he is requesting an exemption to the annexation requirement. Council member Aycock asked why the Town should not annex the property. Mr. Greene said he estimates over a \$100,000 cost for the extensions and that he will not be able to pay other expenses such as taxes. Council member Mason asked Mr. Greene if he has a letter from the Health Department regarding the failing system. Mr. Greene said that he has a letter and is willing to provide a copy to Council later. Council member Phillips pointed out that the Town usually requires annexation. Mr. Greene asked if the Town is willing to pay for the extensions in that case. Council member Aycock asked if this property is part of a subdivision. Building Development Coordinator Graham said he is unsure as he does not have enough information to be make that

determination. Council discussed that a title search will need to be performed in order to determine if the property can be annexed. Council member Mason asked how the property is zoned. Mr. Graham said the property is zoned B-3. Council member Phillips asked about the difference in water rates. Public Utilities Director Miller said property owners outside the corporate limits pay double water rates. Council member Pepin asked if the property is located in the main pressure zone. Public Utilities Director Miller said yes. There being no further comments, the public hearing closed at 9:42 p.m. Council member Mason felt this is a hardship case for a combination of reasons; however, she indicated that if the property is part of a subdivision the Town will not be able to annex. On a motion by Council member Mason, seconded by Council member Aycock, Council moved to grant the water and sewer request for 360 gallons of water per day from the 2009 allocation subject to the following conditions:

1. Annexation is required unless the property owner is able to prove that the property is part of a legal subdivision as certified by an NC-licensed attorney.
2. That a copy of the letter from the Appalachian District Health Department requiring a permanent solution to the failing septic system must be provided to the Town.

VOTE: Aye-All

Nay-None

WATER AND SEWER REQUEST - ANDREW SALDINO

On a motion by Council member Brantz, seconded by Council member Phillips, Council moved to excuse Council member Aycock from discussing and voting on this matter because she has previously discussed the project with Mr. Saldino.

VOTE: Aye-All

Nay-None

Town Attorney Sam Furgiuele opened a public hearing at 9:48 p.m. to hear sworn testimony from Andrew Saldino and Public Utilities Director Rick Miller regarding a request for an increased water allocation of 450 gallons per day water to property located at Junaluska Overlook subdivision, off Junaluska Road. Mr. Saldino presented a letter outlining his request and said that there was a mis-communication in the original proposal regarding the number of bedrooms in the attached single-family townhouse units. Mr. Saldino said the number of dwellings on the land and the density are the same as originally proposed; however, the gallons of water per day will increase from 2,700 to 3,150, a total of 450 gallons per day. Council member Brantz asked about the time frame for the completion of the project. Mr. Saldino said he hopes to have the townhouse units completed by the end of October. Council member Pepin asked if the water increase is approved whether or not the date on the previous water allocation will change. Public Utilities Director Miller said no. There being no further questions, the public hearing closed at 9:58 p.m. On a motion by Council member Brantz, seconded by Council member Mason, Council moved to allocate an additional 450 gallons of water per day, from the 2009 allocation.

VOTE: Aye-4 (Brantz, Mason, Pepin, Phillips)

Nay-None

Excused-1 (Aycock)

CLOSED SESSION

On a motion by Council member Brantz, seconded by Council member Pepin, Council moved to enter closed session at 10:00 p.m., pursuant to NCGS 143-318.11a)3)5) to discuss property acquisition for the water intake project, to hear legal advice regarding possible condemnation, and to hear legal advice regarding the SAHA property lease.

VOTE: Aye-All
Nay-None

On a motion by Council member Aycock, seconded by Council member Pepin, Council moved to exit closed session at 11:03 p.m.

VOTE: Aye-All
Nay-None

ADJOURNMENT

On a motion by Council member Aycock, seconded by Council member Mason, Council moved to adjourn at 11:04 p.m.

VOTE: Aye-All
Nay-None

Town Clerk

Mayor