

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
JULY 16, 2009**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, July 16, 2009, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, Rennie Brantz, Janet Pepin, and Stephen Phillips. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Deputy Town Clerk Kimberly Brown, Assistant to the Town Manager Jim Byrne, Police Chief Bill Post, Fire Chief Reggie Hassler, Public Works Director Blake Brown, Utilities Director Rick Miller, Finance Director Amy Davis, Development Coordinator David Graham, and Planner Jane Shook.

ANNOUNCEMENTS

Mayor Clawson called the meeting to order and welcomed all in attendance. She noted that anyone wanting to speak during the public comment session would need to sign the public comment sign-up sheet.

Mayor Clawson recognized Mr. and Mrs. Warren Dennis. She pointed out the painting placed in the Council Chambers that was donated to the Town by Mr. Dennis. She thanked Mr. Dennis for the donation of his painting and presented him with a letter of appreciation for the very generous gift.

Mayor Clawson recognized a delegation of visitors from Brazil who are studying the administrative processes in the United States as compared to that in Brazil. Mayor Clawson presented the delegation with Certificates of Achievement and the "keys to the town of Boone." She invited the delegation to explore the many activities that the High Country offers.

Mayor Clawson recognized Police Chief Bill Post who is retiring on July 29th after 10 years of service with the Town of Boone and 30 years of service in law enforcement. She thanked him for his dedication and service to the citizens of Boone and stated that he will be greatly missed. Town Manager Greg Young presented Chief Post with his service weapon and echoed the Mayor's sentiments.

Mayor Pro-Tem Mason presented the Town a plaque that she accepted on behalf of the Town for its participation in the Childhood Obesity Project.

Mayor Clawson announced that on Monday, August 10th, the Hickory Crawdads will be hosting "Watauga Night" and that she will be throwing out the ceremonial first pitch. She noted that the Horn in the West singers will perform the national anthem. Mayor Clawson invited all to attend.

Mayor Clawson announced the resignation of Council Member Liz Aycock, who has moved out of the town limits. She stated that the Town will be accepting applications from persons to fill the remainder of Ms. Aycock's term, which expires in December. Mayor Clawson and the members of the Council expressed their appreciation for Ms. Aycock's service to the citizens of Boone.

TENTATIVE AGENDA ADOPTION

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

1. Addition of Item 2.C. - Retirement Recognition - Chief Bill Post.
2. Addition of Item 2.D. - Presentation of Plaque - Childhood Obesity Project.
3. Addition of Item 4.D. - Appointment of Betty Bond to serve on the ASU Town/Gown Committee, replacing John Cook.
4. Addition of Item 4.E. - Adoption of Resolution - Payment in Lieu of Sidewalk Construction Capital Reserve Fund.
5. Addition of Item 7.T. - Discussion of Tourism Development Authority and Occupancy Tax.

6. Addition of Item 7.U. - Discussion and Possible Action of Downtown Boone Development Association and Main Street Program.
7. Addition of Item 7.V. - Announcement of Board Vacancy - Planning Commission.
8. Addition to Closed Session - Personnel.

Upon a motion by Council Member Brantz, seconded by Council Member Phillips, Council moved to adopt the agenda as amended.

VOTE: Aye - All
 Nay - None

CONSENT AGENDA ADOPTION

Minutes: June 9, 2009 - Special Meeting.
 June 16, 2009 - Special Meeting.
 June 16, 2009 - Special Meeting.
 June 18, 2009 - Special Public Hearing.
 June 18, 2009 - Regular Meeting.
 June 23, 2009 - Special Meeting.

Council Member Mason requested two changes to the minutes of the June 23, 2009 Special Meeting. The Clerk noted the changes to be made to the minutes.

Adoption of Municipal Records Retention and Disposition Schedule. **(Copy permanently on file in Clerk's Office.)**

Council Member Brantz requested that this item be tabled until the next regular meeting so that more information can be provided.

Adoption of Resolution - Retirement of Police Badges & Service Weapons.

RESOLUTION

The members of the Boone Town Council, meeting in regular session on July 16, 2009, do hereby adopt and pass the following resolution:

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

Curtis Main, Police Captain, 28 years
 Carl Underwood, Master Police Officer, 11 years
 Bill Post, Police Chief, 10 years

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

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

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

Curtis Main	Beretta 90SF 40 Caliber	Serial #TYO4897
Carl Underwood	Beretta 902F 40 Caliber	Serial #TYO4857
Bill Post	Beretta 96 Brigadier 40 Caliber	Serial #BER338953

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

Adopted this the 16th day of July, 2009.

Loretta Clawson, Mayor

ATTEST:

Freida Van Allen, Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 114)

Appointment of Betty Bond to serve on the ASU Town/Gown Committee (replacing John Cook).

Adoption of Resolution - Payment in Lieu of Sidewalk Construction Capital Reserve Fund:

**RESOLUTION
ESTABLISHMENT & MAINTENANCE
OF THE
PAYMENT IN LIEU OF SIDEWALK CONSTRUCTION CAPITAL RESERVE FUND**

WHEREAS, there is a need in the Town of Boone, North Carolina to plan for the expansion of sidewalk infrastructure

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

Section 1: The Governing Board hereby creates a Capital Reserve Fund for the purpose of reserving funds for sidewalk infrastructure – funded by payments in lieu of sidewalk construction as an alternative for developers in certain situations.

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

Section 3: Funds will be collected from developers when deemed appropriate.

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

Adopted this the 16th day of July, 2009.

Loretta Clawson, Mayor

ATTEST:

Freida VanAllen, Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 115)

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to adopt the consent agenda items with the amended minutes of the June 23, 2009 meeting and to table Item 4.B. until the next regular meeting.

VOTE: Aye - All
 Nay - None

PUBLIC COMMENT

Nancy Spann, Chair of the Southern Appalachian Historical Association Board, presented the following comments to the Council:

First, I want to say that SAHA does not have a signed lease with ASU that can be approved tonight. The draft lease was sent to the State Property Office which must approve all contracts and is still under review there.

Secondly, I will say that SAHA has been true to its values and integrity in facilitating a fair and reasonable compromise on the parking lot issue with ASU and the Farmer's Market. We found a solution that would work. From all indications from the Farmer's Market board chair and two other representatives, we believed that the solution was agreeable to them. We found out yesterday, second had, that they would not accept it or any other solution that was fair and reasonable.

You have several documents outlining the process that we went through to negotiate this compromise and the final outcome. I hope you will review them carefully.

Lastly, SAHA counts on income from rentals to ASU and the Farmer's Market to sustain it during the off season. We already know that we will not receive a grant in the amount of \$25,000 from the N. C. Legislature that we have received for the past two years. The only stable income we anticipate amounts to \$25,500 from the ASU rental and \$4100 from the Farmer's Market for a total of \$29,600. If we do not receive this income, it is highly likely that the Horn in the West will not operate next year. That will mean a documented loss of approximately \$1.2 million dollars to the economy along with the accompanying sales tax to the Town. As much as I care about the Farmer's Market and love to go there on Saturdays, to my knowledge, the Farmer's Market generates little or no revenue that contributes to the town's tax base.

Steve Canipe read the following statement into record:

SAHA is a 501c3, nonprofit organization. Our board has zero, personal, financial interest in the income of the organization (our by-laws forbid this.) Our board is simply dedicated to SAHA's continued success. On the other hand, the Farmer's Market board and all the vendor members are participating in a profit making venture. You (market farmers) don't as suggested in recent letters, put in the effort and hours for cultural heritage (SAHA's mission) but to simply make money. Nothing wrong with that. From anecdotal evidence, many are doing quite well. To some on the Market Board, it would seem to be to the market's advantage if they can somehow convince people that SAHA is trying to make money from "poor farmers". This isn't the case and your farmer's market membership and the public is being manipulated, mostly for personal gain.

Unlike the suggestion by the President of the Farmer's Market at the last Town Council meeting that (I paraphrase) SAHA hold concerts and serve beer and wine to make up for revenue loss from giving up the parking lease with ASU, we know our mission and such conduct and endeavors do not conform to prefer that he refrain from advising us on our business.

Terry Hamilton presented the following statement to the Council:

"Horn" had an attractive offer from Appalachian State University (ASU) for the use of the parking lot. The Watauga County Farmers Market (WCFM) asked that we rent fewer spaces and reduce the fee to ASU. The WCFM has made no commitment to make up the dollar deficit caused by the reduction of spaces rented to ASU. At last month's Town Council meeting, the president of the WCFM, representing the WCFM membership, suggested that "Horn" make up that deficit by holding concerts or bringing alcohol to the "Horn". I find bringing alcohol to the "Horn" a particularly offensive idea. Why won't the WCFM make up the dollar deficit? Because they say they have little or no money. 'We are just trying to make a living farming.' Now they propose taking over the parking lease and pay "Horn" 25 thousand dollars. Now money seems available. The WCFM proposes to displace about 200 student parkers on eight Saturdays, including football Saturdays. Where will the displaced students go? Many will go to downtown Boone, much to the dismay of the downtown merchants where parking is a problem

on any given day. In a recent WCFM proposal they ask you, the Town, to solve their Saturday parking problem by finding parking spots for students. Perhaps an alternate plan would be to move the Farmers Market on those eight Saturdays. There seems to be no large consensus at the WCFM on solving the parking situation. One group feels that there is viability in the McLaurin proposal. I personally feel that ASU should not be excluded from using the parking lot. They, like "Horn", have been good stewards of the facility, with maintenance, lighting, emergency call box, and police activity. ASU is a major part of Boone, and our town. Many of the WCFM family are not residents of the Town of Boone, an exception is Rebecca Kaenzig who brews delicious coffee and makes delectable goodies. In fact many are neither residents of Watauga County nor residents of our State. However, they ask you to cure their problems and spend the Town of Boone's money to supplement their endeavor. Does the WCFM bring credibility to our town as an attractive tourist destination? Certainly, but many take those dollars to another town, county, or state to spend. Traditionally the farm community is politically attuned to the concept of smaller government, less restrictions and the like but tonight they ask for government intervention and supplementation. The WCFM members are our friends and neighbors. They bring good spirit and support to the community. In many ways the three of us, "Horn", ASU, and the WCFM compliment each other.

Mayor Clawson thanked each person for their comments.

PUBLIC HEARING - ALLIANCE BIBLE FELLOWSHIP ANNEXATION

Mayor Clawson opened the public hearing at 7:00 p.m. to hear public comment on the Alliance Bible Fellowship annexation. Planner Jane Shook stated that this is the final step in the annexation process. With no public input, Mayor Clawson closed the public hearing at 7:01 p.m.

PUBLIC HEARING - 60-DAY MORATORIUM ON SIGN ORDINANCE ENFORCEMENT

Mayor Clawson opened the public hearing at 7:02 p.m. to hear public comment on a proposed 60-day moratorium on sign ordinance enforcement. Planner Jane Shook stated that there are issues in the current regulations contained in the ordinance regarding signage for certain non-profit events and issues in the staff's ability to enforce the ordinance in these instances. She stated that this moratorium will allow time for staff to study this issue. With no public input, Mayor Clawson closed the public hearing at 7:04 p.m.

ADOPTION OF ORDINANCE - ALLIANCE BIBLE FELLOWSHIP ANNEXATION

Development Services Planner Jane Shook stated that adoption of this ordinance is the final step in the Alliance Bible Fellowship voluntary non-contiguous annexation request. Upon a motion by Council Member Phillips, seconded by Council Member Mason, Council moved to adopt the following ordinance:

Ordinance 09-10

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE TOWN OF BOONE, NORTH CAROLINA (Alliance Bible Fellowship)

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 July 16, 2009 after due notice by Watauga Democrat on July 1, 2009; and

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

- \$ The nearest point on the proposed satellite corporate limits is not more than three (3) miles from the corporate limits of the Town;
- \$ No point on the proposed satellite corporate limits is closer to another municipality than to the Town;
- \$ 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;
- \$ No subdivision, as defined in G.S. 160A-376, will be fragmented by this proposed annexation;
- \$ 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 July 31, 2009.

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 2. Upon and after July 31, 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.

Adopted this the 16th day of July, 2009.

Mayor

ATTEST:

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3 , PAGE(S)381-384)

VOTE: Aye - All
 Nay - None

ADOPTION OF ORDINANCE - 60-DAY MORATORIUM ON SIGN ORDINANCE ENFORCEMENT

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to adopt the following ordinance:

ORDINANCE # 09-11

**ORDINANCE PROVIDING FOR A SIXTY
DAY
MORATORIUM ON THE ENFORCEMENT OF
CERTAIN VIOLATIONS OF THE SIGN PROVISIONS
OF THE UNIFIED DEVELOPMENT ORDINANCE**

WHEREAS, the Town of Boone (hereafter “the Town”) is a municipal corporation organized under the laws of North Carolina, invested with the powers enumerated in Chapter 160A of the North Carolina General Statutes; and

WHEREAS, pursuant to N.C. Gen. Stat. Chapter 160A, Article 19, the Town is given the authority to plan and regulate development within its corporate limits and its extra-territorial jurisdiction (“the Town’s Planning Jurisdiction”); and

WHEREAS, pursuant to N.C. Gen. Stat. Chapter 160A, Article 8, the Town is given authority to prohibit, regulate and abate acts, omissions, or conditions detrimental to the health, safety or welfare of its citizens; and

WHEREAS, pursuant to those powers, the Town has adopted a Unified Development Ordinance (“UDO”), and included in that ordinance provisions regulating the display of signs in the Town’s planning jurisdiction; and

WHEREAS, enforcement of certain of the provisions of the UDO related to the display of temporary signs related to certain beneficial activities, such as blood drives, has caused various charitable organizations engaging in activities to promote the common good to be subjected to the threat of civil penalties and has made it difficult for such organizations to effectively pursue their activities within the Town’s planning jurisdiction, thus producing results which the Town Council believes are not desirable nor beneficial; and

WHEREAS, the Town cannot selectively enforce its duly adopted ordinances and thus has no reasonable alternative methods of abating the potential harm to the aforesaid charitable organizations; and

WHEREAS, the Town Council has concluded that a full review, revision and possible simplification of the UDO’s sign provisions is necessary and desirable; and

WHEREAS, during such review, revision and possible simplification, the Town Council wishes to suspend enforcement of the provisions in question; and

NOW, THEREFORE, BE IT RESOLVED THAT THE TOWN OF BOONE, NORTH CAROLINA HEREBY ADOPTS A SIXTY DAY MORATORIUM ON THE ENFORCEMENT OF CERTAIN PROVISIONS OF THE UDO RELATING TO PORTABLE SIGNS, TO WIT:

1. During the term of this moratorium, the Town of Boone shall not cite any person for violation of Article XVIII of the Town’s Unified Development Ordinance when the violation asserted is for the display of a portable sign, as defined in UDO §322 and prohibited under UDO §326, if such sign is not illuminated, is displayed for no longer than 48 hours, is no larger in size than six square feet, and relates to and is displayed in connection with an event of less than twelve hours duration, unless said sign poses a threat to the public health and safety by, for example, by blocking a sidewalk to such a degree as to cause pedestrians using the sidewalk to have to step off the sidewalk in order to pass the sign, as prohibited by §326[a][18]. For purposes of this moratorium, an “event of twelve hours duration” shall not include activities which are conducted over more than three consecutive days at a single location, such as a four consecutive day event operating for three hours each day, and activities which occur more frequently at a single location than weekly are not included in this moratorium.
2. This moratorium does not authorize any person to display a sign in the public right of way, nor on private property absent the permission of the owner of the property.
3. During the term of this moratorium, staff of the Town’s Development Services Department shall, in consultation with the Town Attorney, review, and prepare a proposed amendment to the UDO for consideration by the Town Council, which revises and simplify, if possible, UDO Article XVIII.
4. This Ordinance is adopted and effective the 16th day of July, 2009.

Mayor

Attest:

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3 , PAGE(S) 385-386)

VOTE: Aye - All
 Nay - None

PROPOSED ZONING MAP & TEXT AMENDMENTS

Development Coordinator David Graham presented the following items to be placed on the August Quarterly Public Hearing agenda:

1. Michael General Use District Zoning Map Amendment request (rezoning)
2. Phan General Use District Zoning Map Amendment request (rezoning)
3. Modification of UDO text, “Administrator” (text amendment)
4. Modification of UDO text regarding accessory apartments
5. Modification of UDO text in Section 191 Manufacture Home Parks
6. Modification of UDO text in Article 21 Amendments
7. Modification of UDO text in Article 3 Administrative Mechanisms.

He noted that the Flood Damage Prevention Text and Map Amendments have been rescheduled to appear on the November Quarterly Public Hearing agenda. It was the consensus of the Council to place the items on the agenda for the August Quarterly Public Hearing.

APPROVAL OF ZONING TEXT AMENDMENT - ARTICLE XVIII SIGNS (GOVERNMENT ENTITIES)

Development Services Planner Jane Shook explained the request to draft a text amendment to the UDO for the purpose of defining “government entities” and modifying Article 18 for government entities. She informed the Council that the Planning Commission has recommended approval of this request. Upon a motion by Council Member Mason, seconded

by Council Member Brantz, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relate to this application because it is supported by Comprehensive Plan polices 2.1 The Economy, 2.1.1.A.1 Economic Development, 2.3 The Community, and 2.3.1 Community Appearance.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council members moved to approve the following proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because it promotes consistency and clarity within the UDO:

Article XVIII Signs

Section 322 Definitions:

***Governmental Entity:* The Town and its departments, the Watauga County Board of Education, Watauga County, the State of North Carolina and its departments, and the United States of America and its departments.**

Government Sign: Any temporary or permanent sign erected and maintained by ~~the town, county, state or federal government~~ ***a governmental entity.***

Section 325. Signs Excluded from Regulation

[a] The following signs and/or displays shall be exempt from the regulations of this ordinance **Article. These exemptions do not relieve an applicant from obtaining a building permit pursuant to the North Carolina Building Code:**

[1] ~~Signs of a duly constituted governmental body.~~ A government sign, when approved or duly authorized by the governmental entity's governing body.

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VOTE: Aye - All
 Nay - None

APPROVAL OF ENCROACHMENT AGREEMENT - DOE RIDGE POTTERY PROJECTING SIGN

Development Services Planner Jane Shook presented an encroachment agreement to Council for the Doe Ridge Pottery projecting sign. She stated the Doe Ridge Pottery located at 585 West King Street Suite D had applied for a sign permit for a projecting sign, and that due to the encroachment over the sidewalk, an encroachment agreement is required. She explained that the sign is sixteen square feet and shall meet all requirements of Article 18 of the UDO. Public Works Director Blake Brown suggested that the sign be located at least 10 feet above the sidewalk to allow for the snow removal equipment to pass along the sidewalk. Upon a motion by Council Member Phillips, seconded by Council Member Brantz, Council moved to approve the following encroachment agreement with the condition that construction of the sign be completed within six months and that the sign be located at least 10 feet vertical above the sidewalk.

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA
TOWN OF BOONE

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made and entered into this the 19th day of July 2009, by and between the TOWN OF BOONE, party of the first part; and Doe Ridge Pottery, party of the second part.

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

THAT WHEREAS, the party of the second part desires to encroach on public land designated as sidewalk located at 585 West King Street with the following: a Doe Ridge Pottery sign; and _____ (hereinafter referred to as “the facilities”).

WHEREAS, it is to the material advantage of the party of the second part to effect this encroachment, and the party of the first part, in the exercise of authority conferred upon it by statute, is willing to permit the encroachment on public land, subject to the conditions of this agreement.

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

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

That the party of the second part agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and other warning devices for the protection of the public and in the case of encroachment into a street right of way, in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and amendments or supplements thereto. Information as to the above rules and regulations may be obtained from the party of the first part.

To the extent permitted by law, the party of the second part shall be responsible for all liability associated with the encroaching facility. The party of the second part agrees to indemnify and hold harmless the party of the first part from and against all claims based upon actions or omissions occurring during construction and maintenance, damages, losses and expenses, including court costs and attorney fees, arising out of or in any way related to the encroaching facility. The party of the second part shall cause its contractors to name the party of the first part as an additional insured on general liability insurance policies applicable to the project contemplated by this agreement.

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

The party of the second part agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the party of the first part. The party of the second part agrees to exercise every reasonable precaution during construction and maintenance to prevent eroding of soil; silting or pollution to the rivers, streams, lakes, reservoirs, other water impoundments; ground surfaces or other property; or pollution of the air. There shall be compliance with applicable all rules and regulations of the North Carolina Sedimentation Control Commission, and all other applicable laws and regulations relating to pollution prevention and control. When any installation or maintenance operation disturbs the ground surface and the existing ground cover, the party of the second part agrees to remove and replace the sod or otherwise reestablish the grass cover to meet the satisfaction of the party of the first part. The party of the second part shall comply with all pertinent ordinances, rule, regulations and laws, and failure to do so shall be a basis for revocation of this encroachment agreement by the party of the first part.

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

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

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

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

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

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

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

TOWN OF BOONE

BY: _____
Mayor

ATTEST:

Town Clerk

BY: _____
President/Member-Manager/Owner

Printed Name: Party of the Second Part

ATTEST:

Secretary/Witness

VOTE: Aye - All
Nay - None

PROPOSED ZONING TEXT AMENDMENT - REQUEST PERMISSION TO DRAFT LANGUAGE FOR UDO HISTORICAL PRESERVATION ORDINANCE

Council Member Brantz requested that the Town Attorney, in consultation with Development Services staff and members of the Historic Preservation Commission, draft an amendment to the UDO to increase the scope of duties of the Historic Preservation Commission. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to direct the Town Attorney, in consultation with the Development Services staff and members of the Historic Preservation Commission, to draft an amendment to the UDO which expands the scope of duties of the Historic Preservation Commission.

VOTE: Aye - All
Nay - None

APPROVAL OF SAHA PARKING SUBLEASE

Council Member Brantz informed the Council that the SAHA parking sublease document is not complete and that there are some issues contained within the document that warrant further discussion. Upon a motion by Council Member Brantz, seconded by Council Member Phillips, Council moved to place the approval of the SAHA parking sublease on the closed session agenda for possible action following closed session.

VOTE: Aye - All
Nay - None

ADOPTION OF RESOLUTION - ENDORSING PHARMACEUTICAL TAKE-BACK PROGRAM

Council Member Brantz requested endorsement of a resolution regarding a pharmaceutical take-back program. Upon a motion by Council Member Brantz, seconded by Council Member Phillips, Council moved to adopt the following resolution:

**Resolution Supporting "Operation Medicine Cabinet"
A Pharmaceutical Take Back Project**

WHEREAS, mounting public concern about the increased presence of unregulated pharmaceuticals in our streams and rivers has prompted calls for immediate action,

WHEREAS, the Town of Boone is committed to providing safe water to its service area with a water treatment plant that is one of the best in the State and discharged water that exceeds standards promulgated by federal and State agencies, and the Town is committed to being proactive in protecting the water supply and keeping water sources such as the New River pristine,

WHEREAS, U.S. scientists have identified over 160 contaminants in America's rivers and streams that originate from residues of prescriptions, over-the-counter drugs, personal care products, and animal hormones, contaminants that the U.S. Environmental Protection Agency (EPA) and N.C. Department of Water Quality have no strategies to test, treat, limit, or even warn the public about,

WHEREAS, pilot programs to pick up unused drugs and pharmaceuticals have worked in North Carolina towns, other states such as Maine, California, and Florida, and in Europe, and

WHEREAS, safe water is not only a public health and safety issue, but also an issue of national security,

NOW, THEREFORE, BE IT RESOLVED that the Town Council of Boone, North Carolina does endorse and support the River Rescue Committee's "Operation Medicine Cabinet," a public service project that will collect unused or expired medications for proper disposal. The goal of this October 2009 initiative is to reduce the amount of pharmaceuticals entering Boone's wastewater treatment system.

Adopted this the 16th day of July, 2009.

Mayor

Attest:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 116)

VOTE: Aye - All
 Nay - None

DISCUSSION OF TOWN BOARDS/COMMITTEES

Council Member Mason stated that Council recently approved amendments to the following sections of the Municipal Code: Sections §30.51, §35.01, §35.02, §35.03, §35.04, and §35.05. She pointed out the list of Town committees, boards, task-forces, and subcommittees contained in the Council packet, many of which are governed by state statutes or regulations contained within the UDO. Council Member Phillips stated that the Council should let those boards that are not bound by either state statutes or UDO requirements elect their own chairperson and vice-chair. Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to allow the following town boards to elect the chairperson and vice chair:

1. Cable TV Advisory Board
2. Jones House Advisory Board
3. Fourth of July Planning Committee
4. Greenway, Parks & Gardens Committee
5. Affordable Housing Task Force
6. Outside Agency Funding Committee
7. Transportation Committee
8. Water Study Committee
9. Walk Boone Subcommittee
10. Gardens Subcommittee
11. Water Conservation Subcommittee.

VOTE: Aye - All
 Nay - None

ANNOUNCEMENT OF BOARD VACANCY - ABC BOARD & PLANNING COMMISSION

Mayor Clawson announced that there is a vacancy on the ABC Board due to the resignation of Ray Howell. She noted that the Clerk will advertise the vacancies in the usual venues and that an appointment for this position will be made in August.

BOARD OF ADJUSTMENT APPOINTMENT

Development Coordinator David Graham stated that an alternate resident position has become vacant and that Rebecca Kaenzig has submitted an application to fill the unexpired term. Upon a motion by Council Member Phillips, seconded by Council Member Brantz, Council moved to appoint Rebecca Kaenzig to serve as an alternate resident on the Board of Adjustment with the term due to expire on June 30, 2011.

VOTE: Aye - All
 Nay - None

Mr. Graham pointed out that this action now leaves Ms. Kaenzig's regular resident position vacant. The Mayor noted that the Clerk will advertise the vacancy in the usual venues.

CABLE TV ADVISORY COMMITTEE APPOINTMENT

Mayor Clawson noted that a vacant position is open on the Cable TV Committee and that no applications have been received for this position. She noted that the Clerk will continue to advertise for applications for this position.

COMMUNITY APPEARANCE COMMISSION APPOINTMENT

Development Coordinator David Graham noted that there is one vacant position on the Community Appearance Commission and that an application for the position was received from Renee Furman. He noted that this term will expire on June 30, 2012. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to appoint Renee Furman to serve on the Community Appearance Commission with her term expiring on June 30, 2012.

VOTE: Aye - All
 Nay - None

GREENWAY, PARKS & GARDENS COMMITTEE

Public Works Director Blake Brown stated that there are five terms, which expire on July 31, 2009, open on the Greenway, Parks & Gardens Committee. He noted that the positions are currently held by Ane Gade, Larry Horine, Matthew Burns, Dale Kirkley, and Meghan Baker and that Mr. Horine does not wish to serve another term. Mr. Brown stated that applications for the vacancies have been received from Meghan Baker, Ane Gade, Nancy Green, and Josette Maxwell. He pointed out the new terms will expire on July 31, 2012. Upon a motion by Council Member Phillips, seconded by Council Member Pepin, Council moved to appoint Meghan Baker, Ane Gade, Nancy Green, and Josette Maxwell to serve on the Greenway, Parks & Gardens Committee with terms to expire on July 31, 2012.

VOTE: Aye - All
 Nay - None

OUTSIDE AGENCY FUNDING COMMITTEE APPOINTMENT

Mayor Clawson noted that there are two terms on the Outside Agency Funding Committee which expire on July 31, 2009. She noted that current member, Kellie Ashcraft, does not wish to serve another term and that no response has been received from current member Dana Roten regarding serving another term. She noted that the Clerk has received an application from Deborah Ragsdale to serve on this committee. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to appoint Deborah Ragsdale to serve on the Outside Agency Funding Committee; her term will expire July 31, 2013.

VOTE: Aye - All
 Nay - None

WATER COMMITTEE APPOINTMENT

Public Utilities Director Rick Miller stated that no applications have been received for this position. It was the consensus of the Council to continue to advertise for this vacancy.

WATAUGA COMMUNITY LAND TRUST APPOINTMENT

Mayor Clawson informed the Council of a request for a nomination of a Council Member to serve on the Watauga Community Land Trust which will be dedicated to bringing workforce housing to the community. The Watauga County Board of Commissioners will consider the nomination for appointment at its regular meeting on July 30, 2009. Council Member Mason volunteered to serve on the Trust Board since she has been involved with issues regarding affordable housing in the town. Upon a motion by Council Member Phillips, seconded by Council Member Brantz, Council moved to nominate Council Member Mason to serve on the

Watauga Community Land Trust Board and to forward this nomination to the Watauga County Board of Commissioners for consideration.

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 July 2009 Town Council packet**).

APPROVAL OF BUDGET AMENDMENTS

Upon a motion by Council Member Phillips, seconded by Council Member Brantz, Council moved to approve the following budget amendments:

DESCRIPTION	ACCOUNT #	TO:	FRO M:
SEE ATTACHED ITEMIZATION FOR RE-ENCUMBERANCE OF FUNDS FROM FY2008/2009 TO FY2009/2010*			
NC/DOT-ALTERNATIVE TRANSPORTATION	010-000-000-448025		(\$269,985.00)
APPROPRIATED FUND BALANCE-GENERAL FUND	010-000-000-499900		(\$2,581,304.00)
APPROPRIATED FUND BALANCE-W/S FUND	030-000-000-499900		(\$701,352.00)
BLUE RIDGE PARKWAY 75, INC.	010-412-000-549235	\$4,000.00	
APPROPRIATED FUND BALANCE-GENERAL FUND	010-000-000-499900		(\$4,000.00)

*** List of itemization for re-encumbrance of funds from FY2008/2009 to FY2009/2010 can be found in the July 2009 Town Council supplemental packet.**

VOTE: Aye - All
 Nay - None

Mayor Clawson declared a break at 7:53 p.m. Council reconvened at 8:02 p.m.

DISCUSSION OF TOURISM DEVELOPMENT AUTHORITY AND OCCUPANCY TAX

Town Manager Greg Young announced that House Bill 401, which proposes an increase in occupancy tax from 3% to 6%, was ratified on July 13, 2009. He noted that if the Council wishes to raise the occupancy tax, certain steps must be taken, including a public notice of the intent and a public hearing. He noted that after a public hearing has occurred, the Council can then make the change by adoption of a resolution. Council Member Mason suggested that if the Council decides to raise the occupancy tax, a transition time should be established so that local hoteliers can have time to accommodate this change. She suggested a date of October 1, 2009 if the Council does decide to institute an increase in the occupancy tax. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to set a public

hearing on a proposed increase in occupancy tax for August 20, 2009, at 6:30 p.m. and to draft a resolution for consideration by the Council following the public hearing.

VOTE: Aye - All
 Nay - None

DISCUSSION OF DOWNTOWN BOONE DEVELOPMENT ASSOCIATION AND MAIN STREET PROGRAM

Council Member Mason began by presenting some information that she had compiled regarding this matter:

History of the MSD

June 30, 1988

- *Town of Boone adopts Municipal Service District for downtown Boone*

February 25, 1993

- *Application to the NC Main Street Program*
- *MSD Committee and the Downtown Boone Business Association merge to form the Downtown Boone Development Association (DBDA)*
- *Permission granted to the Municipal Service Executive Board to employ a full time Downtown Coordinator beginning with fiscal year 1993, to be funded through the MSD tax*

July 22, 1993

- *Town adopts resolution of duties for the DBDA*
 - The MSD Executive Board shall use the 4 point Main Street approach as a guideline for the management of business*
 - ▶ *The organization will use this approach to administer the resources of the DBDA; and*
 - ▶ *The tax revenue from the MSD tax*
 - The purpose of the DBDA is to provide municipal service district services to the municipal services tax district*

May 26, 1994

- *Town adopts contracts between the DBDA & Downtown Coordinator*

November 20, 1997

- *Town adopts first contract with DBDA after 501(3)(c) designation*

June 7, 1997

- *DBDA Bylaws updated*

June 4, 2008

- *DBDA Bylaws updated*

Concerns with DBDA

- *Has not been following their own bylaws*
- *Does not have membership by in on priorities including funding*
- *Is not following all four Main Street Program Approaches*
- *Does not have outcomes/goals, instead has activities (want to see impact and result)*

- *Has not sent Main Street Annual Reports (though not required, expected)*
- *Has not updated the Registered Agent*
- *Has not obtained a Solicitation License for fundraising activities above 25K*
- *Is a non-profit agency and needs to identify more than one stream of funding so it remains sustainable (MSD tax limited to MSD and DBDA and Main Street Program can include areas beyond the MSD)*
- *Needs better budgeting and financial accountability*

There is a desire by the Town to have a strong, viable Main Street Program (become a model for the state) and that the expenditure of MSD tax funds is for the MSD and reflects MSD by in

For the record, the Town Council has not made a decision on who will administer the MSD tax or Main Street Program

Options

- *DBDA to continue to provide services to the MSD and the Main Street Program, (but as a non profit agency needs to work towards developing a sustainable base of support, needs stakeholder participation in deciding how funds should be spent)*
- *Explore a partnership arrangement with local governments and institutions*
- *Town of Boone to oversee expenditures of MSD tax with MSD input and the Main Street Program*

There is an understanding with Town Council Members that they will look favorably on the DBDA continuing to provide services to the MSD and the Main Street Program without regard to a specific formula on how funds should be spent if the DBDA agrees to the following:

1. *Review and update bylaws to insure they are consistent with the purpose of the DBDA*
2. *Have annual meetings with the membership*
3. *The DBDA needs to follow its bylaws (especially membership, board of director appointments, meeting notifications, meetings and voting)*
4. *Needs to operate as a non-profit agency including knowing the board's responsibilities*
5. *The DBDA needs to make sure they comply with NCGS 160A-536 in spending MSD tax funds*
6. *The DBDA needs to comply with reporting requirements for all programs and funding sources*
7. *The DBDA needs to agree to work with Main Street Consultants and develop measurable goals related to the four Main Street approaches*
8. *The DBDA needs to market and share its successes with the downtown and broader community*
9. *The DBDA needs to work towards the development of a sustainable base of support*
10. *The DBDA needs to build partnerships with merchants, businesses, major stakeholders, institutions, and local government (discontinue negative talk)*
11. *The DBDA needs to demonstrate member by in on goals and plans and how money will be spent*
12. *The DBDA needs to adopt sound financial policies including the development of a budget that clearly reflects revenue sources and expenses*
13. *The DBDA provide semi annual written reports to the town, which should include progress on goals.*

Dempsey Wilcox, president of the DBDA, submitted a power-point presentation (**copy permanently on file in Clerk's office**) which addresses the concerns of the Council. The presentation includes actions steps that will be utilized by the DBDA in order to accomplish

goals and correcting problems and concerns listed by the Council. Council Member Pepin questioned what incentives are available to make businesses and property owners want to join the DBDA. Mr. Wilcox responded by listing such incentives as a reduced membership costs and distribution of information advertising DBDA actions which enhance membership goals. Council Member Phillips stated a concern for special event parking and requested ideas for a long-term parking solution. After brief discussion, Council Member Mason moved to rescind the previous motion by the Council to solicit proposals for the administration of the MSD tax. Council Member Phillips seconded the motion. Council Member Pepin stated that by not inviting different proposals, competition in the contractual process is lost. She emphasized that competition often results in fresh and innovative ideas.

VOTE: Aye - 3 (Phillips, Mason, Brantz)
 Nay - 1 (Pepin)

Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to initiate a joint meeting with the DBDA and the following: two Town Council members, Mayor Clawson, Town Manager Greg Young, Town Attorney Sam Furgiuele, and Assistant to the Manager Jim Byrne in order to negotiate a six month contract for the administration of the MSD tax.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to review the contract with the DBDA after a six-month time period and to conduct a survey at that time to receive input from the members of the Municipal Service District.

VOTE: Aye - All
 Nay - None

Council Members Mason and Phillips volunteered to serve as Council representatives to meet with the DBDA to discuss and negotiate a six-month contract. Council Member Pepin reiterated her disappointment in the loss of competition in the contractual process particularly for determining the administration of the MSD tax.

REQUESTED APPEARANCES - ANNETTE MUNZ

Annette Munz, on behalf of Cecil DeBoone LLC, appeared before the Council to request guidance in regard to a sign permit for the old Appalachian movie theater. She explained that the sign is a marquee, a type of sign not addressed in the current sign ordinance regulations. Ms. Munz pointed out that the renovation of the facade of the store includes new windows and doors, as well as a new sign. Town Attorney Sam Furgiuele listed the options available for the Council in regard to this matter:

1. Revise provisions in Article XVIII *Signs* of the UDO.
2. Review by either the Historic Preservation Commission or the Community Appearance Commission.

Council Member Mason moved to direct the Development Services staff to review the ordinance and make recommendations for modifications to the sign ordinance. Town Attorney Sam Furgiuele pointed out that this matter is on the agenda to be discussed during Closed Session and advised that Council wait until after that discussion to make a decision on the request. Council Member Mason withdrew the motion.

REQUESTED APPEARANCE - ADRIAN TAIT

Adrian Tait, Chair of the Community Appearance Commission, appeared before the Council to present an update on the site furnishings for the King Street area. He noted that information has been given to Public Works Director Blake Brown for securing bids for new trash receptacles. Council Member Mason asked that the Community Appearance Commission continue to develop a design for the downtown area, a design that can be accomplished in stages to present to the Council for review and approval.

Before deliberating on the water and sewer requests, Town Attorney Sam Furgiuele questioned the members of the Council on whether or not they have had contact with any of the applicants requesting water and sewer service. All Council members stated that they had not had any significant contact with any of the applicants submitting requests for water and sewer service.

WATER & SEWER REQUEST - JOHN WINKLER

Town Attorney Sam Furgiuele opened a public hearing at 9:24 p.m. to hear sworn testimony from John Winkler, Public Utilities Director Rick Miller, and Development Services Planner Jane Shook on a request for water and sewer service to property located on Poplar Grove Road. Mr. Winkler explained that the request is for 10,800 gallons per day for 40 single-family units with a total of 120 bedrooms. He stated that the development is intended to be marketed as affordable housing. He responded to questions by stating that the property is zoned R-1 and will be accessed from Poplar Grove Road. Public Utilities Director Rick Miller stated that the portion of the property located in the secondary pressure zone is part of the proposed development. He also explained that the actual amount of water allocation requested is for 10,530 gallons per day since that property was accounted for in the number of vacant properties located within the town limits. In regard to a question concerning annexation, Development Services Planner Jane Shook stated that the property is contiguous to the town limits and can be annexed. With no other testimony, Mr. Furgiuele closed the public hearing at 9:35 p.m. Upon a motion by Council Member Pepin, seconded by Council Member Mason, Council moved to approve the request for 10,530 gallons per day from the 2009 allocation with the condition that the property must be annexed.

VOTE: Aye - All
 Nay - None

ANNOUNCEMENT OF BOARD VACANCY

Mayor Clawson announced that a vacant position is open on the Planning Commission due to the resignation of Elif Karsi. She noted that the Clerk will advertise the vacancy in the usual venues.

CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Phillips, Council moved to enter Closed Session at 9:37 p.m. pursuant to NCGS 143-318.11a)3) to hear the following items:

- Legal Advice:
 - Daniel Boone Native Garden lease.
 - SAHA lease.
 - Enforcement of Sign Ordinance issues.

- Water Intake legal issues.
- Personnel

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Pepin, seconded by Council Member Mason, Council moved to exit Closed Session at 12:13 a.m.

VOTE: Aye - All
 Nay - None

ACTION FOLLOWING CLOSED SESSION

The Council first addressed the issue of the marquee for the renovation of the Appalachian Theater. Council Member Brantz moved that the Council direct the Town Attorney, in consultation with Town staff, to prepare an amendment to the Town's Unified Development Ordinance ("UDO") that would allow a sign of the type and features presented to the Council by Annette Munz on behalf of Cecil B. DeBoone, LLC to be constructed in the B-1 district. That motion was seconded by Council Member Mason, and following discussion, it was unanimously passed.

Next, Council Member Brantz moved that the Council direct the Town Attorney, in consultation and cooperation with Town staff from the Development Services Department, to prepare a complete overhaul and revision to the sign provisions of the UDO, including the sections relating to enforcement of UDO sign provisions, and to present that revision to the Council as soon as possible. The motion directed that the draft include provisions affording some flexibility in the B-1 District, to extent flexibility was due to the interest of the applicant in displaying signs which helped restore or preserve the historical look of that district, as well as possible flexibility jurisdiction wide through the mechanism of the Community Appearance Commission. That motion was seconded by Council Member Phillips, and following discussion, it was unanimously adopted.

The Council next discussed the issue of the problems which the Farmer's Market is having regarding parking. Council Member Mason moved that upon the request of the Farmer's Market, the Town underwrite the cost of Appalcart shuttle service to and from the Farmer's Market on each Saturday in 2009 during which time there is also a home ASU football game. Council Member Brantz seconded the motion. Following discussion, the motion unanimously passed.

Finally, the Council considered the request by the Southern Appalachian Historical Association ("SAHA") that its lease be renewed. Because of the issues which are still not resolved between SAHA and the Farmer's Market, but due to the time-sensitive nature of the negotiations between SAHA and ASU, Council Member Pepin offered a motion that the Town offer SAHA a two year renewal of its lease with the Town, with the same terms and conditions as its present lease, excepted as modified by the motion, and that the Town Council approve in concept SAHA's proposed sub-lease for parking with ASU contained in the Town Council's supplemental packet, but with the following additional conditions and provisions to the Town's lease and the sub-lease: (1) The lease between the Town and SAHA shall contain a forfeiture of SAHA's rights to the parking area, which upon notice by the Town, will revert to the Town after the first year of the two-year renewal term, should SAHA and the Farmer's Market fail to reach a written agreement within that time as to their cooperative utilization of the Horn in the West parking lot; (2) Should the right to control the parking lot revert to the Town, the Town will honor the

sub-lease between SAHA and ASU through the end of its term; (3) The lease between the Town and SAHA shall contain a provision encouraging the Farmer's Market and SAHA to enter a facilitated mediation, if necessary, using a court-certified mediator nominated by the Town to attempt to resolve the issues regarding utilization of the parking lot; and (4) SAHA will offer a sub-lease to the Farmer's Market which allows utilization of the parking area and other facilities by the Farmer's Market at least at the level offered by representatives of SAHA to the Farmer's Market in their most recent bilateral negotiations. Council Member Pepin further moved that both the final verbiage in the lease between the Town and SAHA and the sub-leases between SAHA and the Farmer's Market and SAHA and ASU shall be subject to review and final approval by the Town Manager without further action by the Town Council. This motion was seconded by Council Member Phillips, and following further discussion, it unanimously passed.

ADJOURNMENT

Upon a motion by Council Member Pepin, seconded by Council Member Brantz, Council moved to adjourn at 12:19 a.m.

VOTE: Aye - All
 Nay - None

Deputy Town Clerk

Mayor