

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
MAY 18, 2010**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Tuesday, May 18, 2010, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro Tem Lynne Mason, Andy Ball, Jamie Leigh, 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 Dana Crawford, Interim Fire Chief Jimmy Isaacs, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, Human Resources Director Peri Moretz, Development Services Director Bill Bailey, and Planner Jane Shook.

ANNOUNCEMENTS

Mayor Clawson called the meeting to order, welcomed all in attendance and stated that any persons wishing to address the Council should sign in to speak during the Public Comment period.

Mayor Clawson, Public Utilities Director Rick Miller and Lane Weiss, Program Coordinator for Water Conservation Education, presented the winners of the 2010 Water Conservation Poster Contest:

1st Place - Mattie Suggs, Hardin Park Elementary School - Won a bicycle, helmet and \$75 savings bond

2nd Place - Andie Waugh, Hardin Park Elementary School - Won a \$40 gift card and \$50 savings bond

3rd Place - Jack Trew, Hardin Park Elementary School - Won a \$20 gift card and a \$25 savings bond

Mayor Clawson thanked all the students for their participation in this contest. Council Member Mason also encouraged the public to participate in the water audit program.

TENTATIVE AGENDA ADOPTION

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

1. Additional Information for items 6.B. and 6.C.

Mr. Young suggested that item 6.O. Approval of SAHA Lease be tabled until after the Closed Session of the Thursday, May 20th meeting. Council Member Mason asked that item 6.B. Case 20100163 Courtyard by Marriott CD Modification be tabled until the Thursday meeting because one of the adjoining property owners is out of town and attorney Jim Deal who is representing the applicant cannot be in attendance until the Thursday meeting. She also asked that item 6.C. Case 201010203 Multi-Family Uses in Business Districts be tabled until the Thursday meeting so that the Council can review the Planning Commission recommendations from the May 17th meeting. Council Member Leigh asked that item 6.F. Discussion of DBDA Contract Renewal be tabled until the May 20th meeting so that the Council can hear the presentation by Mary Baker of the DBDA prior to consideration of this item. Upon a motion by Council Member Leigh, seconded by Council Member Mason, Council moved to adopt the agenda as amended.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

CONSENT AGENDA ADOPTION

Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to adopt the following consent agenda items:

Minutes: April 8, 2010 - Special Meeting.

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 (one) 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

Approval of Tax Releases & Refunds - March & April 2010

**TAX RELEASES
MARCH 2010**

Taxpayer	Year	<u>Amount</u>	Description
MODERN TOYOTA SCION OF BOONE	2009	251.12	RENTALS
RESORT AREA MINISTRIES	2009	64.23	EXEMPT
CASA RUSTICA OF BOONE INC PEDRONI, RICHARD ARMANDO	2009	17.91	TURN IN TAG
NEALY, WALTER BARRY	2009	46.32	INCORRECT SITUS
FERGUSON, JOHN B	2009	25.97	INCORRECT TAX DISTRICT
ROBIE, JONATHAN WILLIAM	2008	49.21	LIVES IN DURHAM
WELSH, JANICE LEIGH	2008	20.31	TAGS OVERLAPPED
		475.07	

**MSD TAX RELEASES
MARCH 2010**

Taxpayer	Year	<u>Amount</u>	Description
RESORT AREA MINISTRIES	2009	36.46	EXEMPT
		36.46	

**TAX REFUNDS
MARCH 2010**

Taxpayer	Year	<u>Amount</u>	Description
PRATHER, JAMES H & MARY S	2009	2.16	TURN IN TAG
FERGUSON, JOHN B	2008	33.86	INCORRECT SITUS
		36.02	

**TAX RELEASES
APRIL 2010**

Taxpayer	Year	<u>Amount</u>	Description
OWENS, JOHN TREVOR	2009	1.08	SOLD VEHICLE
SMITH, KARL GREGOR	2009	7.40	TURN IN TAG
SQUIRES, LAWRENCE RANDALL	2009	.74	TURN IN TAG
SIZER, CHARLES T JR & MARY	2009	5.69	TURN IN TAG
		14.91	

**MSD TAX RELEASES
APRIL 2010**

Taxpayer	Year	Amount	Description
SMITH, KARL GREGOR	2009	4.20	TURN IN TAG
		4.20	

**TAX REFUNDS
APRIL 2010**

Taxpayer	Year	Amount	Description
MAYHEW, MICHAEL J AND SARA V	2009	36.02	TURN IN TAG
SMYTHE, ROYAL BENEC SMYTHE, MURIEL CUNNINGHAM	2009	3.41	TURN IN TAG
		39.43	

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

PUBLIC COMMENT

There was no one signed up to speak.

RESCHEDULING OF JUNE COUNCIL MEETINGS

Upon a motion by Council Member Mason, seconded by Council Member Leigh, Council moved to reschedule the June Council meetings to Thursday, June 17, 2010, and Monday, June 21, 2010, both beginning at 6:30 p.m. with the budget public hearing scheduled on Thursday, June 17, 2010 at 6:30 p.m. The meetings are being rescheduled to allow members of the Council to attend Town Hall Day in Raleigh.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

CONSIDERATION OF ZONING AMENDMENTS - MAY 3RD QUARTERLY PUBLIC HEARING

§ **Case 20100046 - Bates Conditional District Rezoning** - James and Janet Bates have filed

a Conditional District Map Amendment request for property located at 225 Delmar Street (Watauga County PIN 2910-68-7833-000). The request is to rezone the property from R-1 Single Family Residential to Conditional District R-2 Two Family Residential for a site specific development plan for Use 1.210 Single Family with Accessory Apartment. Development Services Planner Jane Shook presented the following information regarding the Planning Commission action on this request:

First Motion and Vote:

Commission Member Woolridge made a motion, seconded by Commission Member Scantlin, 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 the accessory use along with the principal single family use being adjacent to other more intense land uses serves as a buffer to the R-1 uses.

VOTE: Aye - 9 (Cherry, Huffstetler, McRae, Milstead, Rhyne, Scantlin, Spann, Woolridge, Vincent)
Nay - 2 (Dotson, Simmons)

Second Motion and Vote:

Commission Member Woolridge made a motion, seconded by Commission Member Scantlin, to recommend that the Planning Commission recommend approval because the amendment is reasonable and in the public interest because of the grandfathering issue and because of the adjacent land uses subject to the conditions listed in the Staff Report:

1. Approval is subject to the site plan submitted by the applicant bearing a received date of February 1, 2010. Insignificant deviations may be permitted to comply with the requirements of the UDO or State Building Code.
2. Any commitments and representations concerning the proposed project made by the applicant or his representatives at the public hearing shall also become a condition of approval.
3. Applications and final building plans shall be submitted that are in compliance with the provisions of the UDO and State Building Code.

Commission Member Simmons suggested a friendly amendment making Council aware that the adjacent property owner is in possession of a sealed survey that is in variance with the site plan and Council should consider clarifying the discrepancies between the survey and the site plan in relationship to the Town's right-of-way on Ruby Street before proceeding. This was accepted by Commission Member Woolridge and Scantlin.

VOTE: Aye - 9 (Cherry, Huffstetler, McRae, Milstead, Rhyne, Scantlin, Spann, Woolridge, Vincent)
Nay - 2 (Dotson, Simmons)

Council Member Mason voiced concern that the one of the units will not be owner-occupied therefore possibly allowing two unrelated persons to occupy units on one small property. She also stated a concern about the preservation of single-family neighborhoods. Council Member Leigh stated that a main concern regarding the preservation of single-family neighborhoods involves renters and college students. She pointed out that renters and college students can live in R-1 neighborhoods; however, she stated that she supports the preservation of existing single-family neighborhoods. Council Members Ball and Phillips agreed. Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved that the proposed amendment to the Town's zoning ordinance is not consistent with the Town's Comprehensive plan and other applicable adopted plans of the Town which relate to this application because it does not maintain the character of the surrounding neighborhood.

VOTE: Aye - All
Nay - Nay
Absent-1 (Brantz)

Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved to deny the proposed amendment to the Town's zoning ordinance and believe denial is reasonable and in the public interest because one unit will not be owner-occupied and because of concern about the adequacy of parking and setting a precedent in single-family neighborhoods.

VOTE: Aye - All
Nay - None
Absent-1 (Brantz)

§ **Case 20100149 - Faith Missionary Baptist Church Conditional District Rezoning - Mr.**

Sunny Younce for Faith Baptist Church has filed a Conditional District Map Amendment request for property located at 507 State Farm Road (Watauga County PINs 2910-44-4661-000, 2910-44-5528-000, 2910-44-6596-000). The request is to rezone the property from R-1 Single Family Residential to Conditional District B-2 Neighborhood Business District for a site specific development plan for Use 5.200 Churches. The property is currently permitted as a church but

the requested parking lot expansion exceeds the current R-1 Single Family intensity regulations. Development Services Planner Jane Shook presented the following information regarding the Planning Commission action on this request:

First Motion and Vote:

Commission Member Simmons made a motion, seconded by Vice Chair McRae, 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 the project will meet all intensity regulations for the B-2 Neighborhood District and also all R-1 regulations except for livability space and the 18 space expanded area will represent an improvement from the current situation in that all landscape buffers, storm water detention, and lighting will be provided per UDO requirements.

VOTE: Aye - All
 Nay - None

Second Motion and Vote:

Commission Member Simmons made a motion, seconded by Vice Chair McRae, that the Planning Commission recommend approval, subject to the conditions in the staff report because the project will meet all intensity regulations for the B-2 Neighborhood District and also all R-1 regulations except for livability space and the 18 space expanded area will represent an improvement from the current situation in that all landscape buffers, storm water detention, and lighting will be provided per UDO requirements.

Conditions in the Staff Report:

1. *Approval is subject to the site plan submitted by the applicant bearing a received date of March 31, 2010. Insignificant deviations may be permitted to comply with the requirements of the UDO or State Building Code.*
2. *Any commitments and representations concerning the proposed project made by the applicant or his representatives at the public hearing shall also become a condition of approval.*
3. *Applications and final plans shall be submitted that are in compliance with the provisions of the UDO and State Building Code.*

VOTE: Aye - All
 Nay - None

Council Member Leigh stated that the proposed project will improve the landscaping at the current location. Council Member Mason stated that the project is consistent with the type of development along State Farm Road. Upon a motion by Council Member Mason, seconded by Council Member Leigh, 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 the project is consistent with the other existing uses and does not compromise the other uses in the area including the adjacent single-family uses.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

Upon a motion by Council Member Mason, seconded by Council Member Leigh, Council moved to approve the proposed amendment to the Town's zoning ordinance with the following conditions recommended by the Planning Commission and believe approval is reasonable and in the public interest because it allows reasonable parking use:

1. Approval is subject to the site plan submitted by the applicant bearing a received date of March 31, 2010. Insignificant deviations may be permitted to comply with the requirements of the UDO or State Building Code.
2. Any commitments and representations concerning the proposed project made by the applicant or his representatives at the public hearing shall also become a condition of approval.

3. Applications and final plans shall be submitted that are in compliance with the provisions of the UDO and State Building Code.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

§ **Case 2010162 Studio West Apartments LLC Zoning** - The Town of Boone has initiated

a Zoning Map amendment to zone property owned by Studio West Apartments LLC in conjunction with the voluntary annexation of said property. The property is located at 1785 Highway 105 and is further identified as Watauga County PIN 2900-82-2752-000. The following zoning districts are under consideration for this property: B-3, General Business and R-A, Residential/Agricultural-of these only one will be chosen. In addition, the Corridor District and the Viewshed Protection District are under consideration for portions of the property that is being zoned. Development Services Planner Jane Shook presented the following information regarding the Planning Commission action on this request:

First Motion and Vote:

Vice Chair McRae made a motion, seconded by Commission Member Woolridge, that the proposed zoning of R-A, Corridor Overlay and Viewshed Protection is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because the zones are most appropriate for the terrain.

VOTE: Aye - All
 Nay - None

Second Motion and Vote:

Commission Member Huffstetler made a motion, seconded by Commission Member Vincent, that the Planning Commission recommend approval because the R-A, Corridor District and the Viewshed District are appropriate based upon the adopted plans.

VOTE: Aye - All
 Nay - None

Council Member Mason stated that the development is located on the portion of property already zoned B-3 and that the unzoned portion of the property consists of steep terrain. She also pointed out that the project meets the density requirements. Upon a motion by Council Member Mason, seconded by Council Member Phillips, 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 that portion of the property is located in the rural growth area.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to approve the proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because it limits development on an excessive slope.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

§ **Case 20100118 Department Name Change Text Amendment** - Effective July 1, 2010 the

Development Services Department will be renamed the Planning and Inspections Department. Development Services Planner Jane Shook presented the following information regarding the Planning Commission action on this request:

First Motion and Vote:

Commission Member Simmons made a motion, seconded by Vice Chair McRae, 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 the name change will eliminate public confusion and more specifically align the name of the department to its stated purpose.

VOTE: Aye - All
 Nay - None

Second Motion and Vote:

Commission Member Simmons made a motion, seconded by Commission Member Vincent, that the Planning Commission recommend approval because the name change will eliminate public confusion and more specifically align the name of the department to its stated purpose.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Leigh, 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 updates the UDO to reflect the department name change.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

Upon a motion by Council Member Mason, seconded by Council Member Leigh, Council moved to approve the proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because it updates the UDO to reflect the department name change:

**(CHANGED NAME OF "DEVELOPMENT SERVICES DEPARTMENT" TO
"PLANNING & INSPECTIONS DEPARTMENT" THROUGHOUT THE UNIFIED
DEVELOPMENT ORDINANCE)**

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

§ **Case 20100119 Text Amendment** - Amend the UDO for Use 1.400 Home Emphasizing Special Services, Treatment or Supervision and Use 7.0 Institutional Residence or Care Facilities. This includes the addition of Use 1.430 Home for Survivors of Domestic Violence and modified supplementary regulations and definitions for Use 1.400. Development Services Planner Jane Shook presented the following information regarding the Planning Commission action on this request:

First Motion and Vote:

Vice Chair McRae made a motion, seconded by Commission Member Woolridge, 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 these changes are felt to be necessary given current North Carolina General Statutes.

VOTE: Aye - All
 Nay - None

Second Motion and Vote:

Commission Member Rhyne made a motion, seconded by Commission Member Woolridge, that the Planning Commission recommend approval because these changes are felt to be necessary given current North Carolina General Statutes.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Ball, 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 addresses a housing need and enhances the quality of life.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

Upon a motion by Council Member Mason, seconded by Council Member Ball, Council 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 clarifies the existing definitions:

**CASE 20100119 USE 1.400 HOME EMPHASIZING SPECIAL SERVICES
(ADOPTED TEXT)**

Section 15. Definitions of Basic Terms

Nursing Care Home: A facility maintained for the purpose of providing intermediate nursing care and medical supervision at a lower level than that available in a hospital to not more than nine (9) persons.

Shelter for Homeless: A short or long term shelter for persons who lack a fixed, regular and adequate nighttime residence with a minimum of two (2) non-occupant managers. Such shelter must be established and managed by a non-profit organization.

Family Care Home: A home with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for not more than six resident persons with disabilities. For the purpose of this definition a "person with disabilities" is defined as a person with a temporary or permanent physical, emotional, or mental disability including but not limited to mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances and orthopedic impairments but not including mentally ill persons who are dangerous to others as defined in G.S. 122C-3(11)b.

Home for Survivors of Domestic Violence: A home that provides room and board, personal care and habilitation services in a family environment for persons and their children who have been aggrieved by acts of domestic violence and/or sexual assault.

Section 165. Table of Permissible Uses

	R-1	R-1A	R-R	R-2	R-3	R-4	R-A	MH	O/I	B-1	B-2	B-3	U-1	M-1
Uses Description														
1.400 Home emphasizing special services, treatment or supervision														
1.410 Family Care Home	Z	Z	Z	Z	Z	Z	Z		Z	Z	Z	Z	Z	
1.420 Nursing Care Home			S	S	Z	S	S		Z		Z	Z	Z	
1.430 Home for Survivors of Domestic Violence	Z	Z		Z	Z		Z		Z			Z	Z	

7.0 INSTITUTIONAL RESIDENCE OR CARE FACILITIES														
7.100 Hospital, clinic, other medical and mental health treatment facilities				S	S	S	S		Z		Z	Z	Z	
7.200 Nursing Care Institution and all other institutions which exceed the residency limits required for Use 1.400				S	S	S	S		Z		Z	Z	Z	
7.300 Shelter for Homeless					S				S	S	S	S	Z	Z
7.400 Halfway House					S				S	S	S	S	Z	

Section 184. Home Emphasizing Special Services, Treatment or Supervision

[a] Separation Requirements

[1] A Family Care Home (Use 1.410) shall not be located within five hundred feet of another Family Care Home (Use 1.410).

[2] A Nursing Care Home (Use 1.420) and a Home for Survivors of Domestic Violence (Use 1.430) shall not be located within one-half (.5) mile of any other home emphasizing special services, treatment or supervision (Use 1.400).

[b] Buffer and Streetyard Requirements: A home emphasizing special services, treatment, or supervision (Use 1.400) shall meet the buffer and streetyard requirements as outlined in Article XVII.

§ **Case 20100204 Electronic and Internet Gaming Uses** - UDO modification to add a new use category and provide supplementary use regulation for Electronic and Internet Gaming Uses. Development Services Planner Jane Shook presented the following information regarding the Planning Commission action on this request:

First Motion and Vote:

Commission Member Dotson, seconded by Commission Member Vincent, made a motion 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 promotes the health and welfare of the residents of the Town.

VOTE: Aye - All
 Nay - None

Second Motion and Vote:

Commission Member Simmons, seconded by Commission Member Dotson, made a motion that the Planning Commission recommend approval for the following reasons: to promote and protect the health, safety, and welfare of Boone's citizens and the need to clarify a loophole in current NC law.

VOTE: Aye - All
 Nay - None

Town Attorney Sam Furgiuele advised the Council to defer consideration of this request until after the Closed Session on Thursday. Upon a motion by Council Member Mason, seconded by Council Member Leigh, Council moved to defer action on Case 20100204 until after the Closed Session on Thursday, May 20, 2010.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

ADOPTION OF RESOLUTION - FIXING DATE OF PUBLIC HEARING - STUDIO WEST APARTMENTS LLC ANNEXATION

Development Services Planner Jane Shook stated that this is the second step in the annexation process for the Studio West Apartments LLC voluntary contiguous annexation. Upon a motion by Council Member Leigh, seconded by Council Member Ball, Council moved to set the date for the public hearing as June 17, 2010, at 6:30 p.m. in the Council Chambers, 1500 Blowing Rock Road.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to adopt the following resolution:

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-31
(Studio West Apartments LLC)

WHEREAS, a petition requesting annexation of the 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 of 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 area described herein will be held at Council Chambers at 6:30 on June 17, 2010.

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

A parcel of land lying and being in New River Township, Watauga County, North Carolina, being more particularly described as follows: Commence at the Northwestern corner of the Boonevest, A Limited Partnership parcel as described in Book of Records 1495, at page 815, Watauga County Registry; thence S.07°33¢41²W. along the Western boundary line of said Boonevest, A Limited Partnership parcel, 134.41¢; thence S.13°39¢26²W. along said Western boundary line, 154.08¢ to intersect the existing Town of Boone Limits Line for the Point of Beginning; thence S.13°39¢26²E., along said western boundary line, 147.12¢ to the Northwestern corner of the Elizabeth Kalnen parcel as described in Book of Records 107, at Page 268, Watauga County Registry; thence S.21°34¢12²W. along a portion of the Western boundary line of said Elizabeth Kalnen parcel, 181.46¢ to the Northeastern corner of The HCI Associates parcel as described in Book of Records 902, at Page 70, Watauga County Registry; thence Westerly and Northerly along the HCI Associated boundary line the following two courses and distances, (1) N.68°02¢56²W., 367.06¢, and (2) N.08°04¢47²E., 335.84¢ to intersect the aforementioned Town of Boone Limits Line; thence S.68°11¢05²E. along said Town of Boone Limits Line, 425.14¢ to the Point of Beginning and containing 3.01 acres as computed by coordinate geometry according to a survey performed by Municipal Engineering Services Company, P.A. d/b/a Skyline Surveyors, in March 2010 under the direct supervision of Walter R. McCracken, III, PLS, L-3832, Drawing Dated 15 March 2010, Job No.S10004.2, Description Dated 15 March 2010.

Section 3. Notice of the public hearing shall be published 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
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ATTEST:

Town Clerk	
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(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 138)

VOTE: Aye - All
Nay - None
Absent-1 (Brantz)

ADOPTION OF RESOLUTION - DIRECTING CLERK TO INVESTIGATE ANNEXATION PETITION - ECOLOGIC DEVELOPMENT CORPORATION (ANDREW SALDINO)

Council Member Leigh asked to be recused from this item since Ecologic Development Corporation and Andrew Saldino are clients of her business. Upon a motion by Council Member Ball, seconded by Council Member Mason, Council moved to recuse Council Member Leigh from consideration of this item.

VOTE: Aye - All
Nay - None
Absent-1 (Brantz)

Development Services Planner Jane Shook informed the Council that Andrew Saldino and Victoria Morehouse for Ecologic Development Corp. have submitted a petition for voluntary, non-contiguous annexation for property that is outside the corporate limits. The property contains .216 acres, is located off Junaluska Road, and is identified as Watauga County PIN 2901-81-7919-000. Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to adopt the following resolution:

**RESOLUTION DIRECTING THE CLERK TO INVESTIGATE
A PETITION RECEIVED UNDER G.S. 160A-58.1
(Ecologic Development Corp.)**

WHEREAS, a petition requesting annexation of an area described in said petition was received on May 18, 2010 by the Town Council; and

WHEREAS, G.S. 160A-58.2 provides that the sufficiency of the petition shall be investigated by the Town Clerk before further annexation proceedings may take place; and

WHEREAS, the Town Council of the Town of Boone deems it advisable to proceed in response to this request for annexation;

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

The Town Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the Town Council the result of her investigation.

ATTEST:	Mayor
Clerk	

(RESOLUTION TO BE TYPED IN BOOK 3 , PAGE(S) 139)

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

Upon a motion by Council Member Ball, seconded by Council Member Mason, Council moved to reseal Council Member Leigh.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

DISCUSSION OF DENSITY REGULATION RECOMMENDATIONS - DRAFT TEXT AMENDMENT

Council Member Mason requested that the Council direct the Planning Staff to draft language that will incorporate the following recommendations from the Density Subcommittee into the current regulations contained in the Unified Development Ordinance:

Density Committee Proposal

Background & Purpose

Our work has been in response to the Town Council’s memo of Nov. 20, 2008, related to Case 20080389 “Density & Dimensional Requirements” presented at the Fall 2008 Quarterly Public Hearing. In reference to this case, the Town Council has expressed that, “There was general agreement to the concepts presented on increasing the intensity regulations for the following zones: R3, O/I, B-2, B-3, and M-1. The Planning Commission should evaluate whether the following ratios are needed: Maximum Floor Area Ratio, Minimum Open Space Ratio, Minimum Livability Ratio, and Minimum Recreation Space Ratio. Attention needs to be given to see what, if any, can be combined or eliminated.” At the August 10, 2009 Planning Commission meeting, a Density Subcommittee was formed to examine these issues and make recommendations to the

town Council for modification to the Town's regulatory system related to height, setbacks, and density in the districts of interest.

Goals

1. Encourage greater density and infill development where appropriate.
2. Facilitate site design and building form in accordance with Smart Growth principles.
3. Encourage mixed-use development.
4. Reduce sprawl.
5. Increase walkability.
6. Make the UDO's Schedule of Land Use Intensity Regulations more user-friendly.

Proposed Changes

A. Change the Maximum Floor Area Ratio (FAR) to a Maximum Building Footprint (BF)

The current UDO establishes a FAR for each zoning district. The FAR determines a maximum number of square feet for the structure in relation to the lot size. In some instances, the developer is unable to or discouraged from developing multiple stories or circumvents the UDO by creating open corridors among units to reduce the number of calculated square feet. Our recommendation calls for the replacement of the FAR with a Maximum Building Footprint (BF). The BF establishes the maximum footprint for the structure as a percentage of the lot. Thus, the developer is not prevented from developing multiple stories on the basis of an arbitrary FAR. This change helps achieve goals 1-5.

B. Require Two-Story Minimums for B-1 and B-2

The B-1 and B-2 zoning districts are tightly defined within the existing UDO and Zoning Map and represent the Town's core. Two-story development should be required within these districts. This change helps achieve goals 1-5.

C. Reduce front setbacks, require maximum street setbacks, and reduce interior setbacks

The concept of buildings closer to the street with parking on the side and rear is a core principle in the Smart Growth Audit and recently adopted Master Plan. This proposed change either requires that the developer build to the street yard through a maximum setback or allows the flexibility to do so through a reduced setback.

C.1 B-1 and B-2 Districts

A "0" foot maximum setback is proposed for B-1 and B-2 districts. Hence, the front street yard line must be "built to." However, provisions shall be made to accommodate public art and social spaces.

C.2 B-3 Districts

A reduced setback, from 20' to 10' is proposed for the B-3 District. In the current UDO, a minimum 20 foot setback with a 10 foot street yard is required in these districts. Hence, the developer is often encouraged to push the structure back further, add to the required extra 10 feet, and create parking. With this proposal the developer MAY* build to the front street yard if they wish.

This proposal also recommends limits on the location of parking. A 35% maximum frontage parking build-out is allowed, but parking must be constructed at building line.

Note: *This issue highlights the need for a new form-based UDO. Our existing B-3 district is extensive and crosses may "transect" as identified in the Master Plan. Hence, there are many areas in the B-3 in which a maximum setback and frontage build outs should be required.

D. Eliminate the Open Space Ratio (OSR). This area represents the balance of land after Building Footprint (BF).

Goal #6

E. Eliminate the Minimum Recreation Space Ratio (RSR) and add recreation requirements to Section 204, that include:

§ All multifamily recreation space = 5%

§ Rather than provide recreation space, developer can pay a “fee in lieu of”

Proposed Intensity Table

Zone	Min. Gross Land Area (GLA) (sqft.)	Min. Lot Width (ft.)	Max. Building Footprint %GLA (BF)	Number of Building Stories (NBS)	Livability Space %GLA (LS)	Street Setback (Min./Max.) (ft.)	Interior Setback (Min.) (ft.)
R-3	2,000	30	50	-	25	10/-	5
O/I	5,000	50	50	-	25	10/-5	10
B-1	5,000	15	100	Min.2	none	-/0 ₁	0 ₁
B-2	5,000	50	50	Min.2	25	-/0 ₅	10
B-3	5,000	50	50	-	25	10/-5	10
U-1 ₂	none	none	25	-	25	10/- ₃	10 ₄
M-1	17,000	80	35	Max.2	25	20/-	22

1 refer to 205[b] and [c]

2 refer to 209[a]

3 refer to 205[g]

4 refer to 205[h]

5 proposed increase of street yard from 10 to 20ft.

Council Member Leigh agreed and added the following list of items that she would like specifically addressed in the proposed draft language:

1. Since increased density standards will result in decreased setbacks and larger building footprints, we need to strengthen and increase buffering requirements by developing performance standards, rather than simple distance standards, to address noise, light, garbage collection, etc. where commercial and (especially) multi-family zones abut neighborhoods.
2. Since increased density standards will result in increased impervious surfaces which I believe will compound stormwater problems, we need to concurrently address and strengthen our already lax stormwater standards to make them sufficient, with special attention given to changing the (likely inadequate) 10-year storm standard referenced in the UDO.
3. Since increased density in the B-1 zone will further limit parking options for individual properties (because of space limitations and because parking is encouraged in the rear which is more difficult to achieve), we should consider a fee-in-lieu arrangement to build funds to provide community parking in that district.
4. I believe we already need to comprehensively review and revise the Permissible Uses for each zone because many of them are inappropriate and/or inadvisable. However, with the increased density proposal, this review is even more urgent and should additionally include an analysis of whether each potential use would/should be able to specifically meet with the new density standards as proposed.

5. We need a careful and detailed staff analysis in all commercial and multi-family districts, but particularly in the B-1 district, to incorporate measures to protect and enhance (increase) our tree canopy that adds so much to the character of the town. The balance between dense building and a green streetscape will be important to achieving both our density and community appearance goals.
6. We need to incorporate language to address the two-story minimum rule in B-1 and B-2 zones to exempt properties from this mandate (a) if the properties are involuntarily damaged or destroyed by an Act of God, or (b) if they are existing structures that are being extensively remodeled/rehabilitated, so as not to discourage redevelopment efforts in town.

Discussion ensued concerning when the proposed text should be presented to the Council for review before being placed on a public hearing agenda. It was the consensus of the Council to direct staff to begin preparing the draft with a possible presentation of the draft or, if it is not ready, an update on the status of the draft to be given at the September 2010 regular Council meeting. Upon a motion by Council Member Mason, seconded by Council Member Leigh, Council moved to direct the Planning Staff and the Town Attorney to begin preparing draft language that will incorporate the Density Subcommittee recommendations and the items listed by Council Member Leigh into the current regulations contained in the UDO.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

DISCUSSION OF LANDSCAPE BUFFER RECOMMENDATIONS

It was the consensus of the Council that this item was included in the discussion of the density recommendations. No further action was taken on this matter.

ADOPTION OF PROPOSED TOURISM SUPPORTED EXPENDITURES FOR FY2010-2011

Town Manager Greg Young presented information regarding the proposed tourism-supported expenditures for FY2010/2011. Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to approve the following list of proposed tourism-supported expenditures for the Fiscal Year 2010/2011 and to forward the list to the Tourism Development Authority:

TOWN OF BOONE - TOWN COUNCIL PRIORITIES
TOURISM-SUPPORTED EXPENDITURES BUDGETED FOR FY2010-2011

<u>Town Council Priorities</u>	
Community Appearance	\$22,500
Jones House Community Center	\$72,500
King Street - Street Lighting	\$100,000
Seasonal Decorations	\$13,000
Sidewalk Construction	\$51,000
USPS King Street Bldg.-Renovation	\$100,000
Wata. Co. Arts Council-Folklorist Position	<u>\$15,000</u>
Total	\$374,000
 <u>Other Tourism Related Expenditures</u>	
4 th of July Celebration	\$6,500
Maintenance-Greenway	\$15,000
Maintenance-Parks	<u>\$7,500</u>
Total	\$29,000

Grant Total: \$403,000

In the event that funds are not fully expended by June 30, 2011 for the top seven Town Council priorities, the Town requests the four other tourism-related expenditures also be approved by the Tourism Development Authority for possible substitution as approved expenditures.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

AFFORDABLE HOUSING TASK FORCE RECOMMENDATIONS

Council Member Mason informed the Council that the Affordable Housing Task Force has voted to recommend to the Council that it consider achieving an inventory of existing rental housing stock in the Boone town limits. Furthermore, the task force recommended that the Council investigate the possibility of landlord registration and fees for rental units as one component of affordable housing. Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved to direct the Town Manager to gather information regarding the cost, including staff time and resources, of achieving a rental housing inventory and information regarding a rental registry program.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

Mayor Clawson declared a break at 7:52 p.m. Council reconvened at 8:01 p.m.

COMMUNITY APPEARANCE COMMISSION RECOMMENDATIONS

Adrian Tait, chair of the Community Appearance Commission, appeared before the Council to present a proposed addendum (**Copy of addendum permanently on file in the Clerk's office**) to the recently adopted downtown streetscape plan which includes the use of brick pavers in a basketweave pattern for the Depot Street and King Street intersection. He stated that the CAC has agreed that highlighting this historic, busy, and beautiful "core" component in the heart of Boone will demonstrate a powerful new start to the revitalizing of the downtown area. Council Member Leigh agreed with the proposal except for the section of brick paving proposed along the sidewalk from Howard Street to Rivers Street. She stated that, at this point, the brick pavers should be used only in the central intersection to highlight the core of downtown. Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to adopt the proposed addendum to the Downtown Streetscape Plan, as presented by CAC Chair Adrian Tait with the exclusion of the brickpaver sidewalk from Howard Street to Rivers Street, to extend the brickpaver sidewalk on King Street to the Town Hall location, and for the specifications for the brick color, design, etc., to be set forth by the Town of Boone.

VOTE: Aye - 3 (Phillips, Mason, Ball)
 Nay - 1 (Leigh)
 Absent-1 (Brantz)

APPROVAL OF DOT UTILITY AGREEMENT - RELOCATION OF MUNICIPALLY-OWNED WATER LINES

Town Manager Greg Young stated that the Council had previously approved this item but that the NC DOT had sent the wrong type of agreement format. He stated that the copy of the agreement as presented in the meeting packet is correct. Upon a motion by Council Member Phillips, seconded by Council Member Leigh, Council moved to approve the following agreement:

UTILITY AGREEMENT

NORTH CAROLINA
WATAUGA COUNTY

DATE: 5/6/2010

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

TOWN OF BOONE

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department" and the Town of Boone, hereinafter referred to as the "Municipality".

WITNESSETH:

WHEREAS, the Department has prepared and adopted plans to make certain street and highway improvements in Watauga County, said plans consists of the improvements to SR1665 (Old US 421) in Boone; Watauga County; said project having a right-of-way width as shown on the project plans on file with the Department's office in Raleigh, North Carolina; and,

WHEREAS, the parties hereto wish to enter into an agreement for certain utility work to be performed by the Department's construction contractor with full reimbursement by the Municipality for the costs thereof as hereinafter set out.

NOW, THEREFORE, it is agreed as follows:

1. The Department shall place provisions in the construction contract for WBS Element 41604, Watauga County, for the contractor to adjust and relocate water lines. Said work shall be accomplished in accordance with project special provisions attached hereto as Exhibit "A", cost estimate attached hereto as Exhibit "B" and the plan sheets attached hereto as Exhibit "C".
2. The Municipality shall be responsible for water lines costs as shown on the attached Exhibit "C". The estimated cost to the Municipality is \$49,679.20 as shown on the attached Exhibit "B". It is understood by both parties that this is an estimated cost and is subject to change. The Municipality shall reimburse the Department for said costs as follows:
 - A. Upon completion of the utility work, the Department shall submit an itemized invoice to the Municipality for cost incurred. Billing will be based upon the actual bid prices and actual quantities used.
 - B. Reimbursement shall be made by the Municipality in one final payment within sixty (60) days of said invoice.
 - C. If the Municipality does not pay said invoice within sixty (60) days of the invoice, the Department shall charge a late payment penalty and interest on any unpaid balance due in accordance with G.S. 147-86-23 and G.S. 105.241.21.
 - D. Any cost incurred due to additional utility work requested by the Municipality after award of the construction contract, shall be solely the responsibility if the Municipality. The Municipality shall reimburse the Department 100% of the additional utility cost.
3. In the event the Municipality fails for any reason to pay the Department in accordance with the provisions for payment hereinabove provided, North Carolina General Statute 136-413 authorizes the Department to withhold so much of the Municipality's share of funds allocated to said Municipality by North Carolina General Statute, Section 136-41.1, until such time as the Department has received payment in full.
4. Upon the satisfactory completion of the relocations and adjustments of the utility lines covered under this Agreement, the Municipality shall assume normal maintenance operations to the said utility lines. Upon completion of the construction of the highway project, the Municipality shall release the Department from any and all claims for damages in connection with adjustments made to its utility lines; and, further, the Municipality shall release the Department of any future responsibility for the cost of maintenance to said utility lines. Said releases shall be deemed to be given by the Municipality upon completion of construction of the project and its acceptance by the Department from its contractor unless the Municipality notifies the Department, in writing, to the contrary prior to the Department's acceptance of the project.
5. It is further agreed that the following provisions shall apply regarding the utilities covered in this Agreement.

- A. The Municipality obligates itself to service and to maintain its facilities to be retained and installed over and along the highway within the Department's right-of-way limits in accordance with the mandate of the North Carolina General Statutes and such other laws, rules, and regulations, as have been or may be validly enacted or adopted, now or hereafter.
 - B. If at any time the Department shall require the removal of or changes in the location of the encroaching facilities which are being relocated at the Municipality's expense, the Municipality binds itself, its successors and assigns, to promptly remove or alter said facilities, in order to conform to the said requirement (if applicable per G.S. 136-27.1) without any cost to the Department.
6. By Executive Order 24, issued by Governor Perdue, and N.C. G.S. §133-32, it is unlawful for any vendor or contractor (i.e., architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).

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 Municipality by authority duly given.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

CONSIDERATION OF TOWN BOARDS, COMMITTEES, COMMISSIONS, TASK FORCES, ETC. WITH NO SET LIFE OR TERM

Council considered the following list of town committees, boards, commissions, and task forces that have no set life or term:

§ Water Study Committee, Water Conservation Subcommittee

Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to set the term for the Water Study Committee and Water Conservation Subcommittee to expire December 31, 2011.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

§ Sustainable Development Task Force

Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to set the term for the Sustainable Development Task Force to expire on June 30, 2011.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

§ Affordable Housing Task Force

Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to set the term for the Affordable Housing Task Force as indefinite.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

§ **Greenway, Parks & Gardens Committee, Gardens Subcommittee, Greenspace Preservation Subcommittee**

Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to set the term for the Greenway, Parks & Gardens Committee as indefinite, using the existing terms set for the committee members.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to dissolve the Gardens Subcommittee and the Greenspace Preservation Subcommittee.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

§ **Transportation Committee/Alternative Transportation Committee**

Council deferred action on the consideration of the Transportation Committee and Alternative Transportation Committee until further information could be presented concerning the make-up of the membership and details for membership requirements could be determined.

§ **4th of July Planning Committee**

Council deferred action on the consideration of the 4th of July Planning Committee until further information could be presented concerning the make-up of the membership and details for membership requirements could be determined.

§ **Outside Agency Funding Review Committee**

Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to set the term for the Outside Agency Funding Review Committee as indefinite.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

§ **Steep Slope Task Force**

Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to dissolve the Steep Slope Task Force.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

§ **Occupancy Task Force**

Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to dissolve the Occupancy Task Force.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

ADOPTION OF CODE AMENDMENT - CHAPTER 114: PRIVILEGE LICENSE TAX

Upon a motion by Council Member Mason, seconded by Council Member Leigh, Council moved to defer action on this request until after the Closed Session on May 20th.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

APPOINTMENT OF ABC BOARD CHAIRMAN

Upon a motion by Council Member Ball, seconded by Council Member Mason, Council moved to appoint Candy Winebarger to serve at the Chair of the ABC Board.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

ANNOUNCEMENT OF BOARD VACANCY

Mayor Clawson announced the following vacancies:

Board of Adjustment - Two resident positions, one alternate resident position, one ETJ position, and one ETJ alternate position

Planning Commission - Two resident positions and one ETJ position

Community Appearance Commission - Two resident positions

Historic Preservation Commission - One resident position

BOARD APPOINTMENT - AFFORDABLE HOUSING TASK FORCE

There were no applications for consideration for this appointment.

BOARD APPOINTMENT - CABLE TV ADVISORY COMMITTEE

There were no applications for consideration for this appointment.

BOARD APPOINTMENT - HISTORIC PRESERVATION COMMISSION

There were no applications for consideration for this appointment.

BOARD APPOINTMENT - OUTSIDE AGENCY FUNDING COMMITTEE

There were no applications for consideration for this appointment.

BOARD APPOINTMENT - WATER STUDY COMMITTEE

Upon a motion by Council Member Ball, seconded by Council Member Phillips, Council moved to appoint Janet Pepin to serve as a member of the Water Study Committee with her term of membership expiring on June 30, 2012.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

SCHEDULE SPECIAL MEETING - WATER STUDY COMMITTEE

Public Utilities Director Rick Miller appeared before the Council to present a request from the Water Conservation Subcommittee for a scheduled meeting of the Water Study Committee to consider possible rebate programs for the water conservation program. Upon a motion by Council Member Ball, seconded by Council Member Mason, Council moved to schedule a

special meeting on Wednesday, June 9, 2010, at 6:00 p.m. in the Council Chambers, 1500 Blowing Rock Road.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

APPROVAL OF U-4020 ADDITIONAL WORK HOURLY RATE

Public Utilities Director Rick Miller informed the Council that he is awaiting further information to present in regard to this request. He asked that the matter be deferred for action until the May 20th meeting. Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved to defer action on this request until the May 20th meeting.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

MONTHLY WATER STATUS REPORT

Public Utilities Director Rick Miller presented the monthly water-use status report (**copy permanently on file in the May 2010 Town Council meeting packet.**)

APPROVAL OF BUDGET AMENDMENTS

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

DESCRIPTION	ACCOUNT #	TO:	FROM:
HORN IN THE WEST	010-411-000-549122	\$1,207	
MISC REVENUE	010-000-000-489900		(\$1,207)
NATURAL GAS/PROPANE- USPS KING STREET	010-417-000-523300	\$3,750	
APPROPRIATED FUND BALANCE -GF	010-000-000-499900		(\$3,750)
OVERTIME-FIRE DEPT.	010-500-350-501201	\$6,000	
CALL BACK PAY-FIRE DEPT	010-500-350-501210	\$5,500	
RETIREMENT-FIRE DEPT	010-500-350-508211	\$565	
401(k) - FIRE DEPT	010-500-350-508222	\$575	
FEMA REIMBURSEMENT	010-000-000-448030		(\$12,640)
CONTRACTED SERVICES- P&I	010-500-360-577000	\$4,500	
NC DENR URBAN/COMMUNITY FOREST GRANT MATCH	010-000-000-448028		(\$4,500)
COMMUNITY APPEARANCE SPECIAL PROJECTS (KING ST)	010-600-405-525102	\$20,000	
CONTRIBUTIONS/ DONATIONS	010-000-000-482200		(\$20,000)

CONTRACTED SERVICES- PUBLIC UTILITIES	030-700-801-57700	\$30,650	
NC RURAL CENTER- WATER/WASTEWATER CIP GRANT	030-000-000-448026		(\$30,650)

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

RECESS

Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to recess the meeting at 9:06 p.m. until Thursday, May 20, 2010 at 6:30 p.m. in the Council Chambers, 1500 Blowing Rock Road.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

CALL TO ORDER

A recessed meeting from Tuesday, May 18, 2010 was called to order at 6:30 p.m., Thursday, May 20, 2010, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro Tem Lynne Mason, Andy Ball, Jamie Leigh, 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 Dana Crawford, Interim Fire Chief Jimmy Isaacs, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, Development Services Director Bill Bailey, and Planner Jane Shook.

Mayor Clawson stated that any persons wishing to address the Council should sign in to speak during the Public Comment period.

TENTATIVE AGENDA ADOPTION

Town Manager Greg Young stated that there were no changes to the agenda. Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to adopt the agenda.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

PUBLIC COMMENT

There was no one signed up to speak.

REQUESTED APPEARANCE - CHERRY JOHNSON

Cherry Johnson, director of the Jones House Community Center, and Folklorist and Traditional Arts Coordinator Mark Freed appeared before the Council to present power-point programs summarizing the activities which have taken place during the past fiscal year. **(Copies of Power-Point presentations permanently on file in the Clerk's Office.)**

REQUESTED APPEARANCE - SETH NORRIS

Seth Norris appeared before the Council to request approval for the 2010 Emergency Fest special event permit. The event, sponsored by the Watauga County Firefighters' Association, is an annual festival, free to the public and dedicated to the promotion of fire and life safety education.

He stated that the festival is scheduled for Saturday, June 12th, from 10:00 a.m. until 4:00 p.m. and will include representation from both local and statewide emergency personnel. Mr. Norris requested that the \$1,500 fee for the closure of a portion of Howard and College be waived for this event. He also noted that the certificate of liability insurance has been provided to the Clerk's office. Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to approve the special event permit for the 2010 Emergency Fest on June 12, 2010, from 10:00 a.m. until 4:00 p.m. and to waive the \$1,500 permit fee.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

REQUESTED APPEARANCE - MARY BAKER/DBDA

Mary Baker, of the DBDA, presented a power-point reviewing the contract between the DBDA and the Town of Boone and to request renewal of the contract. **(Copy of Power-Point presentation permanently on file in the Clerk's office.)**

REQUESTED APPEARANCE - RON HOLSTE

Ron Holste, of the Town of Boone ABC Board, appeared before the Council to inform the Council of the 3rd Quarter 2009 ABC distributions: \$116,574.00 Town of Boone, \$6,508.00 Town of Boone Law Enforcement, \$13,017.00 Alcohol Education. The total amount was \$136,099.00.

REQUESTED APPEARANCE - RIO TAZEWELL

Rio Tazewell and Steve Owen of AIRE (Appalachian Institute for Renewable Energy) appeared before the Council to present a power-point proposal for an AIRE-Town of Boone partnership for a municipal renewable energy demonstration project. Council Member Ball stated that he would bring this topic to the Sustainable Task Force for discussion. **(Copy of Power-Point presentation permanently on file in the Clerk's office.)**

CONSIDERATION OF ZONING AMENDMENTS - MAY 3RD QUARTERLY PUBLIC HEARING

§ **Case 20100163 Catacorner Investments - Conditional District Zoning Modification** - Mr. Jeff Collins for Catacorner Investments and Mr. Reg Poteat have filed a Conditional District Map Modification request for property located on Highway 105 (Watauga County PIN 2910-13-8946-000 and a portion of 2910-13-6885-000). The request is to modify the site specific development plan associated with the Conditional District B-3 General Business zoning district for the Courtyard by Marriott which received Conditional District B-3 approval in November of 2008. Development Services Planner Jane Shook presented the following information regarding the Planning Commission action on this request:

First Motion and Vote:

Vice Chair McRae made a motion, seconded by Commission Member Vincent that the proposed amendment to the Town's zoning map is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because it is an appropriate modification to an existing conditional use zone and site plan to take account of the changes in the required design for this particular application and it is appropriate and effective design for a difficult site near a residential area.

VOTE: Aye - All
 Nay - None

Second Motion and Vote:

Commission Member Vincent made a recommendation, seconded by Vice Chair McRae, that the Planning Commission recommends approval, subject to the conditions of approval listed in the Staff Report and based upon the testimony of the applicants because it is an appropriate modification to an existing conditional use zone and site plan to take account of changes in the

§ The berm and hedge modifications be completed as soon as possible, to help shield the neighborhood from the next few years of construction noise.

(Information presented by Ms. White permanently on file in the Clerk's office.)

Susan Owen of 195 Wintergreen Drive stated that her concerns with the height of the building and the placement of the 25-foot buffer between her property and the proposed site have been adequately addressed.

Jim Deal, attorney representing the applicant, stated that his client has worked hard to put a new configuration on the footprint of the plan approved in 2008. He noted that there were concerns about the landscaping plan for the project. Mr. Deal stated the Town's Urban Design Specialist Brian Johnson has met with the neighbors to discuss their concerns regarding the landscaping plan. He further stated that the applicant does agree with condition #13 regarding the 25 ft. buffer between the Owens' property and the hotel site. Mr. Deal stated that the applicant is also agreeable to moving the dumpster site and the hours of operation for dumping. He reiterated that the applicant is willing to comply with Brian Johnson's recommendations concerning the landscape plan requirements. With no further testimony, Mayor Clawson closed the public hearing at 8:30 p.m. Mr. Deal stated that his client would like to have a decision on the landscaping requirements before setting any plants. Council Member Leigh stated that she would like to ask a question of Lynne White. Upon a motion by Council Member Leigh, seconded by Council Member Phillips, Council moved to reopen the public hearing at 8:41 p.m.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

Council Member Leigh asked if Ms. White is satisfied with the conditions of the proposed plan as presented in the staff report. Ms. White stated that she wants to make sure that conditions #7 and #18 are complied with by the applicant. Allen White, son of Lynne White, echoed his mother's concerns. Derek Goddard, of Blue Ridge Environmental Consultants, P.A., agreed that the applicant is willing to meet all existing conditions for this project except where noted by Mr. Deal. Greg Parsons stated that he feels that the issue of the landscaping depends on the perspective from which the project is viewed. With no other testimony offered, Mayor Clawson closed the public hearing at 8:48 p.m. Council Member Mason asked Mr. Deal if the applicant will agree to the following conditions: conditions contained in the staff report, a landscape plan based on the plan dated 11/17/08 as a base plan from which a final landscape plan can be developed by the applicant and a representative from the Planning & Inspections Department after consulting with the members of the neighborhood, a representative from the Planning & Inspections Department make the final recommendation for the landscape plan, and that if all parties do not agree on the final recommendation, the issue can be brought back before the Council. Mr. Deal stated that applicant will agree to the summary as stated by Council Member Mason. Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved that the proposed amendment to the Town's zoning map, with all stipulated conditions, is consistent with the Town's Comprehensive plan and other applicable adopted plans of the Town which relate to this application because the property is located in the primary growth area, is supported by the G-3 Mixed-Use Center sector of the Boone 2030 Land Use Plan, and because measures were taken to protect the residents of the adjoining properties of the project.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved to approve the proposed amendment to the Town's zoning ordinance with the staff conditions as contained in the Planning Commission minutes dated May 10, 2010, based on the site plan submitted May 10, 2010, and based on the landscape plan dated November 17, 2008 as a minimum plan on which a final plan will be developed by the applicant and a representative from the Planning & Inspections Department in consultation with the neighbors with a final recommendation from the representative from the Planning & Inspections Department. Furthermore she moved that approval is reasonable and in the public interest because efforts were made to minimize the impact on adjoining properties through effective buffering and

landscaping.

VOTE: Aye - Aye
 Nay - None
 Absent-1 (Brantz)

Mayor Clawson declared a break at 8:54 p.m. Council reconvened at 9:04 p.m.

CONSIDERATION OF ZONING AMENDMENTS - MAY 10TH SPECIAL PUBLIC HEARING

§ **Case 20100203 Multi Family Uses in Business Districts** - UDO modifications on how Multi-Family Residential Uses are regulated and permitted in the B-1, B-2, and B-3 zoning districts so as to require mixed-use buildings, mixed-use projects or mixed-use zones when multi-family is present. Information regarding the Planning Commission recommendations was presented by Development Services Director Bill Bailey and Planner Jane Shook, as follows:

PLANNING BOARD RECOMMENDATIONS

§ *By consensus the Planning Commission agreed on recommending the following changes within Section 155 [b][1]:*

1. That if a residential district adjoining the B-1 zoning district then any development off of said street should be residential in nature.

Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved not to accept this recommendation by the Planning Commission.

VOTE: Aye - 3 (Leigh, Mason, Ball)
 Nay - 1 (Phillips)
 Absent-1 (Brantz)

2. Clarify the language within Section 155 [b][4] regarding “be at least two floors above the street level”

After discussion, Council Member Ball moved to accept this recommendation with the following modification: *Clarify the language within Section 155 [b][4] regarding “be at least two floors above the **primary** street level”*. Council Member Mason seconded the motion.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

§ *Vice Chair McRae made a motion, seconded by Commission Member Purpur to recommend reducing the 75% window requirement within Section 155 [b][6] to 50%.*

VOTE: Aye - 3 (McRae, Purpur, Rhyne)
 Nay - 6 (Dotson, Huffstetler, Simmons, Spann, Vincent, Woolridge)

The motion fails.

Commission Member Woolridge made a motion, seconded by Commission Member Huffstetler, to keep the 75% window requirement within Section 155 [b][6] at 75%.

VOTE: Aye - 6 (Dotson, Huffstetler, Purpur, Simmons, Spann, Woolridge)
 Nay - 3 (McRae, Rhyne, Vincent)

After lengthy discussion, Council Member Ball moved make the window requirement in the B-1 zones and along primary roads 60%. The motion was seconded by Council Member Mason.

VOTE: Aye - All
Nay - None
Absent-1 (Brantz)

Council agreed to consider the issue of corner lots at a later time.

§ *Commission Member Purpur made a motion to recommend striking Section 155[b][10], there being no second, the motion failed.*

§ *Vice Chair McRae made a motion, seconded by Commission Member Vincent, to recommend Section 155[c][6] to read as follows:*

Building facades may be no further than 0' from the street right-of-way line, except where necessary to preserve existing significant or historic trees, which shall be preserved, if practical, or to provide landscaped courtyards, plazas, pocket parks, other pedestrian oriented amenities, or when there would be interference with public utilities, stormwater utilities, and snow removal.

VOTE: Aye - All
Nay - None

After discussion, Council Member Leigh moved not to accept this recommendation by Planning Commission.

VOTE: Aye - All
Nay - None
Absent-1 (Brantz)

§ *Commission Member Woolridge made a motion, seconded by Commission Member Simmons, to recommend that Section 155 [c][6] be further modified by changing “building facades may be no further than 10' from the street right-of-way line” to “building facades shall have a minimum 10' setback from the street right-of-way line.”*

VOTE: Aye - All
Nay - None

After discussion, Council Member Ball moved not to accept this recommendation by the Planning Commission. Council Member Leigh seconded the motion.

VOTE: Aye- 3 (Leigh, Mason, Ball)
Nay - 1 (Phillips)
Absent-1 (Brantz)

§ *Vice Chair McRae made a motion, seconded by Commission Member Woolridge, to recommend changing Section 155[d][1][B].ii.a to only require “20%” instead of “50%” because of the relationship of square footage for multi-family structures compare to that of commercial buildings.*

VOTE: Aye - All
Nay - None

After much discussion, Council Member Ball moved not to accept this recommendation by the Planning Commission. Council Member Leigh seconded the motion.

VOTE: Aye - 3 (Leigh, Ball, Clawson)
Nay - 2 (Phillips, Mason)
Absent-1 (Brantz)

§ *Vice Chair McRae made a motion, seconded by Commission Member Woolridge, that Use 10.0 “Parking” be excluded as a commercial use from Section 155[a].*

VOTE: Aye - All

Nay - None
Abstain - 1 (Purpur)

Upon a motion by Council Member Leigh, seconded by Council Member Mason, Council moved to accept this recommendation by the Planning Commission.

VOTE: Aye - All
Nay - None
Absent-1 (Brantz)

§ *By consensus, the Planning Commission agreed to add the “stormwater utilities, and snow removal” and the setback language “building facades shall have a minimum 10’ setback from the street right-of-way line” to all applicable sections in this proposed text.*

Upon a motion by Council Member Leigh, seconded by Council Member Ball, Council moved to accept the recommendation by the Planning Commission, as amended: to add the “stormwater facilities and snow removal if no reasonable alternative exists in the B-3 zones.

VOTE: Aye - All
Nay - None
Absent-1 (Brantz)

Upon a motion by Council Member Leigh, seconded by Council Member Ball, Council moved not to accept the recommendation by the Planning Commission in B-1 zones.

VOTE: Aye - All
Nay - None
Absent-1 (Brantz)

Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved not to accept the following portion of the recommendation by the Planning Commission: “...and the setback language ‘building facades shall have a minimum 10’ setback from the street right-of-way line’ to all applicable sections in the proposed text.”

VOTE: Aye - All
Nay - None
Absent-1 (Brantz)

§ *Vice Chair McRae made a motion, seconded by Commission Member Dotson, to recommend that the language in Section 155[d][3][a] be included in Section 155[d][2] as an alternative.*

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved not to accept the recommendation by the Planning Commission.

VOTE: Aye - 3 (Leigh, Mason, Ball)
Nay - 1 (Phillips)
Absent-1 (Brantz)

After discussion, Council Member Ball moved to amend the text to reflect the following standards:

60% window frontage in B-2 (on street level, for all uses)
60% window frontage in B-3 (for all uses).

Council Member Mason seconded the motion.

VOTE: Aye- 3 (Phillips, Mason, Ball)

1.300 Multi-Family Residences*														
1.310 Multi-family conversion*					ZS	ZS			ZS				Z	
1.320 Multi-family town homes*					ZS	ZS			ZS				Z	
1.330 Multi-family apartments*					ZS				ZS				Z	

28.0 COMBINATION USES	ZS	ZS	ZS	ZS	ZS	ZS	ZS	ZS	ZS	ZS	ZS	ZS	Z	ZS
28.100 Section 179 Mixed Uses									ZS	ZS	ZS			

*Note: Multi-family residential uses are only allowed as a permitted use in B-1, B-2, and B-3 when proposed as part of a multi-use development project in compliance with Article 9, Section 179 (see Use Category 28.1)

Section 166. Use of the Designations Z and S in the Table of Permissible Uses

[b] When used in connection with residential uses (use classification 1.000), except for multi-family uses in B-1, B-2 and B-3 districts, the designation “ZS” means that such developments with twelve (12) or less dwelling units must be pursuant to a zoning permit and developments with thirteen (13) or more dwelling units require a special use permit.

[e] Multi-family uses in the B-1, B-2 and B-3 districts are permitted by zoning permit if they meet the requirements of Section 179 and the lot to be developed is less than one (1) acre in size. If the lot is one (1) acre or more in size, such uses are permitted only by special use permit.

Section 172. Combination Uses Other than Multi-Family Uses in Business Districts Authorized by Section 179.

Section 179. Mixed Use Districts Established

[a] Multi-family residential uses (use 1.300) are allowed in the B-1, B-2 and B-3 zoning districts when the following criteria are met. Objectives of this Section include: protecting and preserving the Town’s limited business zones and primary corridors for commercial uses, while allowing appropriate housing opportunities; providing options for living, working, and shopping environments in close proximity to each other; facilitating more efficient use of land while minimizing potentially adverse impacts; and providing options for pedestrian-oriented lifestyles. For purposes of this Section, “commercial” shall include allowable uses from Use 2.0 Sales and Rentals of Goods, Merchandise and Equipment through 27.0 Government Uses except Use 10.0 Storage and Parking. To the extent this Section conflicts with other Articles of this Ordinance, this Section shall control.

[b] Multi-family residential uses, either as the result of new construction or conversion, are allowed in the Central Business District (B-1) only if the projects in which they are included meet all the following criteria:

- [1] Each project shall provide primary street level commercial land uses (i.e. retail, office, restaurant) of at least 50% of the square footage of the footprint of the development on the primary street level. For developments located on lots which abut more than one public street in the Central Business District, each additional street level floor shall provide commercial uses of at least 30% of that level's square footage. For purposes of this sub-section, the "primary street" shall be determined according to the following order: King Street, Howard Street, Depot Street, all other streets. For example, if a project is located on a lot that abuts both King Street and Howard Street, King Street shall be considered the "primary street" while for a project which abuts Howard Street and Depot Street, Howard Street shall be considered the "primary street" and so on.
- [2] The entire frontage of the primary street level of the building abutting the street shall provide commercial uses. Required entrances for ingress and egress to secondary uses are permitted along said frontage so long as they are no larger than necessary to meet building code and safety requirements for ingress and egress. Commercial uses on the non-primary street level(s) shall front on the non-primary street.
- [3] The entire primary street level floor of the building shall be constructed to commercial standards in accordance with North Carolina Building Code Group A, B, E or M.
- [4] New projects shall be at least two floors above the primary street level.
- [5] Buildings facades shall be oriented to each public street and shall have a primary entrance door facing each abutting public sidewalk.
- [6] A minimum of 60% of primary public street level facing building facade shall be comprised of transparent, non-reflective windows and 30% of non-primary street level facing building facades shall be comprised of transparent, non-reflective windows.
- [7] Surface parking shall be located away from each public street to the extent possible, and if practical, to the rear of the principal building.
- [8] Structured parking is permitted to the rear of the building or below the street level floor.
- [9] Building facades may be no further than 0'-0" from the established street setback line, except where necessary to provide landscaped courtyards, plazas, pocket parks, other pedestrian oriented amenities, or when there would be interference with public utilities.
- [10] The minimum building footprint shall be 50% of the total gross square feet of the lot.
- [11] Pedestrian weather protection such as awnings or canopies are encouraged along the public street but may be placed only in accordance with an encroachment agreement authorized by the Town Council.

[c] Multi-family residential uses, either as the result of new construction or conversion, are allowed in the Neighborhood Business District (B-2) only if the projects in which they are included meet all the following criteria:

- [1] Each project shall provide street level commercial land uses (i.e. retail, office, restaurant) of at least 100% of the street-level floor square footage.
- [2] Buildings facades shall be oriented to the public street and shall have a primary entrance door facing the public sidewalk.

- [3] A minimum of 60% of the street facing street level building facade shall be comprised of transparent, non-reflective windows.
- [4] Surface parking shall be located to the side or most preferably to the rear, and in no case shall parking extend beyond the front building line.
- [5] Structured parking is permitted but shall be located to the rear or below street-level commercial uses.
- [6] Building facades may be no further than 0'-0" from the street right-of-way line, except where necessary to preserve existing significant or historic trees, which shall be preserved, if practical, or to provide landscaped courtyards, plazas, pocket parks, other pedestrian oriented amenities, or when there would be interference with public utilities.
- [7] Interior setbacks for all mixed use buildings shall be 10'-0" except where abutting a residential zoning district in which case the interior setback shall equal the required interior setback in the abutting residential district.
- [8] Pedestrian weather protection such as awnings or canopies are encouraged along the public street provided they do not encroach into the roadway, but if they invade the space above a town sidewalk, may be placed only in accordance with an encroachment agreement authorized by the Town Council. Such awnings or canopies count toward the Recreation Space requirements found in Section 204 of this Ordinance.
- [9] All development shall comply with the landscape standards set forth in Article XX except that Type "A" interior landscape buffers may be provided regardless of adjacent land use classifications.

[d] Multi-family residential uses, either as the result of new construction or conversion, are allowed in the General Business District (B-3) only if the projects in which they are included meet the following:

[1] Multi-family uses wholly or partially on property zoned B-3 General Business within the Corridor Districts.

[A] Mixed Use Building(s):

- ' 30% of the street facing facade shall be comprised of transparent, non-reflective windows.
- ' Surface parking shall be located to the side or most preferably to the rear, and in no case shall parking extend beyond the front building line.
- ' Structured parking is permitted but shall be located to the rear or below street-level commercial uses.
- ' Building facades may be no further than 0'-0" from the street right-of-way line, except where necessary to preserve existing significant or historic trees, which shall be preserved, if practical, or to provide landscaped courtyards, plazas, pocket parks, other pedestrian oriented amenities, or when there would be interference with public utilities.
- ' Interior setbacks for all mixed use buildings shall be 10'-0" except where abutting a residential zoning district in which case the interior setback shall equal the required interior setback in the abutting residential district.
- ' Pedestrian weather protection such as awnings or canopies are encouraged along the public street provided they do not encroach into the roadway, but if they invade the space above a town sidewalk, may be placed only in accordance with an encroachment agreement authorized by the Town Council. Such awnings or canopies count toward the Recreation Space requirements found in Section 204 of this Ordinance.
- ' All development shall comply with the landscape standards set forth in Article XX except that Type "A" interior landscape buffers may be provided regardless of adjacent land use classifications.

- o Building facades may be no further than 10' from the street right-of-way line, except where necessary to preserve existing significant or historic trees, which shall be preserved, if practical, or to provide landscaped courtyards, plazas, pocket parks, other pedestrian oriented amenities, or there would be interference with public utilities, or the placement of stormwater facilities and no reasonable alternative to that placement exists.
- o Interior setbacks for all mixed use buildings shall be 10' except where abutting a residential zoning district in which case the interior setback shall equal the required interior setback in the abutting residential district.
- o Pedestrian weather protection such as awnings or canopies are encouraged along the public street provided they do not encroach into the roadway, but if they invade the space above a town sidewalk, may be placed only in accordance with an encroachment agreement authorized by the Town Council.

[2] Multi-Family Uses wholly or partially on Property Zoned B-3 General Business Outside the Corridor District but Proximate to Major Streets.

§ Mixed use building(s) shall meet the same requirements as described in Section 155[d][1][A].

§ Single use multi-family building(s) are only allowed as part of a mixed use project.

§ A mixed use project shall meet the following criteria:

1. Each project shall consist of street level commercial uses (i.e. retail, office, and restaurant) of 100% of the street level gross floor area on every building which fronts a major street. In addition, at least 25% of the total gross floor area of all buildings wholly or partially located within 200 feet of the centerline of a major street shall consist of commercial uses. This requirement may be satisfied if the commercial floor area is distributed among buildings or within one building.
2. For any floor containing a commercial use the entire floor shall be built to commercial standards in accordance with North Carolina Building Code Group A, B, E, or M.
3. A minimum of 60% of the major street facing street level façade of a building containing commercial use(s) shall be comprised of transparent, non-reflective windows.
4. Surface parking shall be located to the side or most preferably to the rear, and in no case shall parking extend beyond the front building line.

5. Structured parking is permitted but shall be located to the rear or below the commercial uses.
6. Building facades fronting the major street may be no further than 10' from the street right-of-way line, except where necessary to preserve existing significant or historic trees, which shall be preserved, if practical, or to provide landscaped courtyards, plazas, pocket parks, other pedestrian oriented amenities, or there would be interference with public utilities, or the placement of stormwater facilities and no reasonable alternative to that placement exists.
7. Interior setbacks shall be 10' except where abutting a residential zoning district in which case the interior setback shall equal the required interior setback in the abutting residential district.
8. Pedestrian weather protection such as awnings or canopies are encouraged along the public street provided they do not encroach into the roadway, but if they invade the space above a town sidewalk, may be placed only in accordance with an encroachment agreement authorized by the Town Council.

[3] Multi-Family Uses wholly or partially on property zoned B-3 General Business in all other areas.

[A] Multi-family uses not part of a mixed use development may be allowed if an applicant demonstrates that within ¼ mile (1,320 feet) of the borders of the lot that is to be developed there exists commercial uses with gross floor area square footage equal to the gross floor area square footage of the proposed multi-family project. If this standard cannot be met then the proposed project must meet the requirements in Section 155[d][2] above.

Section 200. Schedule of Land Use Intensity Regulations

Zone	Min. Gross Land Area (sq. ft.)	Min. Lot Width (ft.)	Max. Floor Area Ratio (FAR)	Min. Open Space Ratio (OSR)	Min. Livability Space Ratio (LSR)	Min. Recreation Space Ratio (RSR)	Min. Street Setback (ft.)	Min. Interior Setback (ft.)
B-1*	5,000	15	none	none	none	none	refer to 205 [b]	refer to 205[b]
B-2*	5,000	50	.264	.76	.27	.049	20	17
B-3*	5,000	50	.429	.71	.27	.062	20	17

*Multi-family uses in these districts are governed by Section 179.

VOTE: Aye - 3 (Leigh, Mason, Ball)
 Nay - 1 (Phillips)
 Absent-1 (Brantz)

Mayor Clawson declared a break at 11:08 p.m. Council reconvened at 11:12 p.m.

DISCUSSION OF DBDA CONTRACT RENEWAL

Council Member Mason moved to table discussion of the DBDA contract renewal until the results of the DBDA survey are reported. Council Member Phillips seconded the motion.

VOTE: Aye - 2 (Phillips, Mason)
 Nay - 3 (Leigh, Ball, Clawson)
 Absent-1 (Brantz)

Council Member Ball stated his concern that the MSD taxes are being administered responsibly. Council Member Mason inquired as to who would administer the MSD tax and the Main Street program. Council Member Ball suggested that the Council bring this duty “in-house” an action which will save money. Council Member Leigh stated her concern about the negative attitude that has developed between the DBDA and the Town. Council Member Phillips stated his opposition to not renewing the DBDA contract. Dempsey Wilcox, president of the DBDA Advisory Board, stated that the DBDA has done all it can to respond to and correct the concerns voiced by the Council last year. After lengthy discussion, Council Member Ball, seconded by Council Member Leigh, moved not to renew the contract, which expires June 30, 2010, with the DBDA to administer the MSD tax funds and further moved to direct the Town Manager to decide how the Town can administer the Main Street program, Art Crawl, and public art program.

VOTE: Aye - 3 (Leigh, Ball, Clawson)
 Nay - 2 (Phillips, Mason)
 Absent-1 (Brantz)

APPROVAL OF U-4020 ADDITIONAL WORK HOURLY RATE

Public Utilities Director Rick Miller explained that the initial estimated cost of \$650,000 for the U-4020 project did not include any unanticipated cost for discrepancies or omissions from the NC DOT drawings. He stated that Blythe Construction has requested an hourly rate of \$205.00 from the NC DOT to complete these installations and/or relocations and that the DOT has forwarded this request to the Town since the Town is ultimately responsible for reimbursing the DOT for all water- and sewer-related expenditures within the existing right-of-way on the project. Mr. Miller stated that the estimated cost for 60 hours at \$205.00 per hour is \$12,300.00. Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to approve the additional work hourly rate of \$205.00 for water and sewer related expenditures for the U-4020 project.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

CLOSED SESSION

Upon a motion by Council Member Ball, seconded by Council Member Mason, Council moved to enter Closed Session at 11:49 p.m. pursuant to NCGS 143-318.11a)3)5) in order to discuss the following matters:

Property Acquisition - Water Intake - BPS.
Legal Advice - Possible Water Disconnections
Legal Advice - DOT Compliance with UDO.
Legal Advice - SAHA Lease.
Legal Advice - Electronic Internet Gaming Uses.

VOTE: Aye - All
 Nay - None
 Absent-1 (Brantz)

Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to exit Closed Session at 12:57 a.m.

VOTE: Aye - All
Nay - None
Absent-1 (Brantz)

Upon a motion by Council Member Ball, seconded by Council Member Mason, Council moved to reenter Closed Session at 12:56 a.m. pursuant to NCGS 143-318.11a)5) in order to discuss:

§ Legal Advice - DOT Compliance with UDO.

VOTE: Aye - All
Nay - None
Absent-1 (Brantz)

Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to exit Closed Session at 1:06 a.m.

VOTE: Aye- All
Nay - None
Absent-1 (Brantz)

CONSIDERATION OF ZONING AMENDMENTS - MAY 10TH SPECIAL PUBLIC HEARING

§ **Case 20100204 Electronic and Internet Gaming Uses** - UDO modification to add a new use category and provide supplementary use regulation for Electronic and Internet Gaming Uses. Upon a motion by Council Member Phillips, seconded by Council Member Ball, Council moved to table consideration of Case 20100204 Electronic and Internet Gaming Uses until the next regular meeting.

VOTE: Aye - All
Nay - None
Absent-1 (Brantz)

ADOPTION OF CODE AMENDMENT - CHAPTER 114: PRIVILEGE LICENSE TAX

Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to approve the following code amendment to Chapter 114: Privilege License Tax, effective immediately:

PROPOSED AMENDMENT TO MUNICIPAL CODE CHAPTER 114: PRIVILEGE LICENSE TAX

CHAPTER 114: PRIVILEGE LICENSE TAX

...

§ 114.01 DEFINITIONS.

When used in this chapter (unless the context requires a different meaning):

...

ELECTRONIC AND INTERNET GAMING BUSINESS. A business where person(s) utilize electronic machines, including but not limited to computers or gaming terminals, to conduct games of chance, including sweepstakes and gambling activities not prohibited under N.C. Gen. Stat. Chapter 14, Article 37, and where cash, merchandise, or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds, including but not limited to Internet cafes,

Internet sweepstakes, electronic gaming machines, operations or cybercafes, and excluding a business solely participating in a lottery approved by the State of North Carolina.

...

§ 114.34 SPECIAL PROVISIONS RELATING TO ELECTRONIC AND INTERNET GAMING BUSINESSES

An applicant for an electronic and Internet gaming business privilege license shall provide the tax collector with the serial number or other identifying number of each electronic machine used or stored at the business location. These numbers shall be written on the face of the privilege license, and only those machines for which the identifying number is entered may be used or stored at the business location. Should substitute machines be desired to be used, an amended list of all machines must be provided to the tax collector prior to their use or location at the business location, and any additional tax due shall be paid prior to their use or location.

§ ~~114.34~~ 114.35 BUSINESS LICENSE FEE SCHEDULE.

...

Exceptions/Special Provisions	G.S. Section	Fee	Term
Indoor shooting gallery or indoor facility for the discharge of any air rifle, air pistol, B-B gun or similar weapon	160A-211	\$2,000.00 for businesses per year with up to four electronic machines plus \$2,500.00 for each additional machine	

Business

VOTE: Aye - All
Nay - None
Absent-1 (Brantz)

APPROVAL OF SAHA LEASE - WATAUGA COUNTY FARMER'S MARKET

Upon a motion by Council Member Ball, seconded by Council Member Mason, Council moved to table consideration of the approval of the SAHA lease until the June 8th Special Meeting.

VOTE: Aye - All
Nay - None
Absent-1 (Brantz)

ADJOURNMENT

On a motion by Council Member Ball, seconded by Council Member Mason, Council moved to adjourn the meeting at 1:09 a.m.

VOTE: Aye - All
Nay - None
Absent-1 (Brantz)

Deputy Town Clerk

Mayor