

**MINUTES-REGULAR MEETING
BOONE TOWN COUNCIL
MARCH 15, 2011**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m. on Tuesday, March 15, 2011, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, Stephen Phillips, Jamie Leigh, Andy Ball, and Rennie Brantz. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Deputy Town Clerk Kim Brown, Assistant to the Manager Jim Byrne, Finance Director Amy Davis, Police Chief Dana Crawford, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Human Resources Director Peri Moretz, Planning & Inspections Director Bill Bailey, and Planner Jane Shook.

ANNOUNCEMENTS

Mayor Clawson announced that any persons wishing to address the Council on a non-agenda item should sign in to speak during the Public Comment period.

TENTATIVE AGENDA ADOPTION

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

1. Deletion of Item 6.E. - Greenway Committee Recommendation-Greenway Trail Entrance Sign.
2. Addition of Item 7.O. - Approval of Amendments to Ordinance #11-01 (formerly Ord. #05-01).
3. Addition of Item 12.C. - Discussion of Priorities-High Country RPO Priorities Needs List.

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

VOTE: Aye - All
Nay - None

CONSENT AGENDA ADOPTION

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

Minutes: February 7, 2011 - Quarterly Public Hearing.
 February 10, 2011 - Special Meeting.
 February 15/17, 2011 - Regular Meeting.
 February 22, 2011 - Special Meeting.
 February 28, 2011 - Special Meeting.
 February 28, 2011 - Special Public Hearing.

Tax Releases & Refunds: December 2010 & February 2011:

**TAX RELEASES
DECEMBER 2010**

Taxpayer	Year	Amount	Description
BIERALS, GREGORY PAUL	2010	27.15	TURN IN TAG
CANIPE, MARTHA MURRAY	2010	20.16	SOLD VEHICLE
CARDINAL HEALTH 200 LLC	2010	362.82	INCORRECT EQUIPMENT VALUE
COLLIER, NANCY LEE	2010	25.19	TURN IN TAG

KELLER, MARY ANN FLANNERY	2010	5.81	INCORRECT SITUS
KIVETTE, HENRY RADMON	2010	1.85	SOLD VEHICLE
LEONARD, CARLTON KEITH	2010	13.69	TURN IN TAG
SPEED, ROBERT THOMAS	2010	137.27	NOT IN TOB
TALMAN, BARBARA N	2010	40.44	DOUBLE BILLED
TEITLEMAN, MICHAEL HERBERT	2010	13.69	NOT IN TOB
TURNER, MICHAEL RAY	2010	25.46	NOT IN TOB
COLES, HARVEY LEE	2009	20.24	ADJ PER BILL OF SALE
		693.77	

**MSD TAX RELEASES
DECEMBER 2010**

Taxpayer	Year	Amount	Description
SPEED, ROBERT THOMAS	2010	165.27	NOT IN MUNICIPAL SERVICE DISTRICT
		165.27	

**TAX RELEASES
FEBRUARY 2011**

Taxpayer	Year	Amount	Description
BECVINOVSKI, TANYA STANLEY STANLEY, FUSHIA JOHNSON	2010	7.74	REDUCED VALUE DUE TO SALVAGE
JONES, JOHN T JONES, NANCY R	2010	8.21	NOT IN TOB
EGGERS, JOHN LEE	2010	.78	INCORRECT BILL
MARDEN, LAURA PILEGGE	2010	56.61	INCORRECT OWNER/TITLED INCORRECTLY
RESORT AREA MINISTRIES	2010	55.24	EXEMPT
ARCHER, JOHN V. ARCHER, LISA K.	2010	1.80	TURN IN TAG
INGOLD, JAMES LEWIS	2010	7.47	LIVES IN MONTGOMERY
JOHNSON COOK INC	2010	7.74	TURN IN TAG
BERRY, ROBERT DEAN JR	2010	7.34	SOLD VEHICLE

		152.93	
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**MSD TAX RELEASES
FEBRUARY 2011**

Taxpayer	Year	Amount	Description
RESORT AREA MINISTRIES	2010	31.35	EXEMPT
		31.35	

**TAX REFUNDS
FEBRUARY 2011**

Taxpayer	Year	Amount	Description
HEARTHSTONE ENTERPRISES, INC DBA CHARLESTON FORGE	2010	1.11	TURN IN TAG
KLIMA, RICHARD ERVIN	2010	21.48	TURN IN TAG
EGGERS, JOHN LEE	2009	5.48	NOT IN TOB
		28.07	

Adoption of Encroachment Agreement - Expressions Projecting Sign:

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made and entered into this the 15th day of March, 2011, by and between the TOWN OF BOONE, party of the first part; and Alex Covington dba Expressions, party of the second part.

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

THAT WHEREAS, the party of the second part desires to encroach on public land designated as (CHOOSE ONE) a public sidewalk/public street/public park/public land (hereinafter referred to as the "public land") located at 221 Howard Street with the following: a projecting sign (hereinafter referred to as "the encroaching facility"); and

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

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

That the party of the second part complies with all pertinent provisions of the North Carolina State Building Code, the Town of Boone Unified Development Ordinance and Town of Boone Municipal Code, and such other laws, regulations and ordinances which might apply;

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

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

That to the extent permitted by law, the party of the second party shall be responsible for all liability associated with the encroachment and encroaching facility. In furtherance of such responsibility, the party of the second part agrees to indemnify and hold harmless the party of the first part from and against any claim by any third party based upon any action or omission occurring during construction and maintenance of the encroaching facility, as well as from and against any and all claims, demands, suits, causes of action, or other assertion of responsibility, however denominated, for personal injury, damage to property, losses and expenses, including court costs and attorney's fees, arising out of or in any way related to the encroachment or encroaching facility;

That where pertinent and requested by the party of the first part, the party of the second part agrees to name the party of the first part as an additional insured on its and/or its contractor's general liability insurance policies applicable to the encroachment or encroaching facility.

It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such encroaching facility as the party of the first part carries out its construction and maintenance operations, and the party of the second party expressly waives all claims of liability or responsibility against the party of the first party for any damage that may be caused to the encroaching facility as the result of the Town carrying out any construction and maintenance operations. The party of the second part acknowledges that with regard to canopies, awnings, signs and similar encroachments, even where same fully comply with the Town of Boone Unified Development Ordinance, when placed less than ten feet above the surface of a public sidewalk, such obstructions are at great risk of damage by the equipment of the party of the first part during snow removal and general sidewalk construction and maintenance, and the party of the second part understands that by placing the encroaching facility less than ten feet above the surface of a public sidewalk, the party of the second part is knowingly and intentionally assuming that heightened risk of damage.

That the party of the second part agrees to be bound by such other and additional conditions as the Town Council may impose in connection with the encroaching facility.

The party of the second part agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the party of the first part. The party of the second part agrees to exercise every reasonable precaution during construction and maintenance to prevent eroding of soil; silting or pollution to the rivers, streams, lakes, reservoirs, other water impoundments; ground surfaces or other property; or pollution of the air. The party of the second part shall comply with all applicable all rules and regulations of the North Carolina Sedimentation Control Commission, the Town of Boone Unified Development Ordinance 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 encroaching facility has been brought into compliance or removed from the right of way at no cost to the party of the first part.

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

The party of the first part expressly reserves the unrestricted right to require the party of the second part to change the location of the encroaching facility 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.

Adoption of Encroachment Agreement - Jungle Boogie Projecting Sign:

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made and entered into this the 15th day of March, 2011, by and between the TOWN OF BOONE, party of the first part; and John Bura dba Jungle Boogie, party of the second part.

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

THAT WHEREAS, the party of the second part desires to encroach on public land designated as (CHOOSE ONE) a public sidewalk/public street/public park/public land (hereinafter referred to as the "public land") located at 444 West King Street with the following: a projecting sign (hereinafter referred to as "the encroaching facility"); and

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

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

That the party of the second part complies with all pertinent provisions of the North Carolina State Building Code, the Town of Boone Unified Development Ordinance and Town of Boone Municipal Code, and such other laws, regulations and ordinances which might apply;

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

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

That to the extent permitted by law, the party of the second party shall be responsible for all liability associated with the encroachment and encroaching facility. In furtherance of such responsibility, the party of the second part agrees to indemnify and hold harmless the party of the first part from and against any claim by any third party based upon any action or omission occurring during construction and maintenance of the encroaching facility, as well as from and against any and all claims, demands, suits, causes of action, or other assertion of responsibility, however denominated, for personal injury, damage to property, losses and expenses, including court costs and attorney's fees, arising out of or in any way related to the encroachment or encroaching facility;

That where pertinent and requested by the party of the first part, the party of the second part agrees to name the party of the first part as an additional insured on its and/or its contractor's general liability insurance policies applicable to the encroachment or encroaching facility.

It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such encroaching facility as the party of the first part carries out its construction and maintenance operations, and the party of the second party expressly waives all claims of liability or responsibility against the party of the first party for any damage that may be caused to the encroaching facility as the result of the Town carrying out any construction and maintenance operations. The party of the second part acknowledges that with regard to canopies, awnings, signs and similar encroachments, even where same fully comply with the Town of Boone Unified Development Ordinance, when placed less than ten feet above the surface of a public sidewalk, such obstructions are at great risk of damage by the equipment of the party of the first part during snow removal and general sidewalk construction and maintenance, and the party of the second part understands that by placing the encroaching facility less than ten feet above the surface of a public sidewalk, the party of the second part is knowingly and intentionally assuming that heightened risk of damage.

That the party of the second part agrees to be bound by such other and additional conditions as the Town Council may impose in connection with the encroaching facility.

The party of the second part agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the party of the first part. The party of the second part agrees to exercise every reasonable precaution during construction and maintenance to prevent eroding of soil; silting or pollution to the rivers, streams, lakes, reservoirs, other water impoundments; ground surfaces or other property; or pollution of the air. The party of the second part shall comply with all applicable all rules and regulations of the North Carolina Sedimentation Control Commission, the Town of Boone Unified Development Ordinance 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.

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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 encroaching facility has been brought into compliance or removed from the right of way at no cost to the party of the first part.

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

The party of the first part expressly reserves the unrestricted right to require the party of the second part to change the location of the encroaching facility 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.

VOTE: Aye - All
Nay - None

PUBLIC COMMENT

There was no one present to speak during the public comment session.

APPROVAL OF ZONING MAP REQUEST - BRIAN MUELLER CONDITIONAL DISTRICT REZONING

Case 20110059 Brian Mueller Conditional District Rezoning - Request for Conditional District Rezoning for properties located at 183 Delmar Street, further identified as Watauga County PINs 2910-68-5966-000 and 2910-68-6897-000. The request is to rezone the properties from R-1 Single Family to Conditional District B-3 General Business and Conditional District R-2 Two-Family with a 5-year vesting period. The phased project contains the following uses within the Conditional District B-3: Use 1.111 single-family residences and Use 3.120 operations designed to attract little or no customer or client traffic other than employees of the entity operating the principal use and within the Conditional District R-2: Use 1.111 single-family residences and Use 1.700 home occupations. Ms. Shook listed the conditions suggested by the applicant and by the Planning Commission regarding the request. Brief discussion ensued regarding condition 1.e. regarding the taxation of the lots when sold. Council Member Phillips made a motion to reopen the public hearing which was seconded by Council Member Brantz.

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

The motion failed.

Vote #1

Upon a motion by Council Member Ball, seconded by Council Member Mason, Council moved 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 promotes mixed-use development in a compatible, low-density, residential and commercial area and preserves the character and quality of life in an existing neighborhood; he also moved to approve a five-year vesting period and to include the following conditions (with the exemption of Condition 1.e.):

1. Conditions submitted by applicant Brian Mueller.

- a. Located at 183 Delmar, this new project will offer three solar home sites and two solar duplex sites all sharing a green space. Below are conditions for the subdivision.
- b. Lot 1 and Lot 2 requesting rezoning from R-1 to B-3. Transitioning to R-2 with Lot 3 and restoring the old bungalow to an architectural-styled home, then to Lots 4, 5, and 6 that are solar single-family homes.
- c. All large trees and key large shrubs will be utilized in the design of the home sites (as indicated on the site plan dated February 21, 2011).
- d. Requesting a recording of plat for the B-3 side of subdivision upon first sale and a recording of the R-2 side of the subdivision upon first sale.
- ~~e. Requesting lots be taxed when sold.~~
- f. Requesting an internal landscape between B-3 and R-2 reduced from 10' to 5'.
- g. Requesting a 5-year vesting of project.
- h. All lots will be in a POA to address infrastructure.
- i. All new construction will be of the Appalachian Bungalow Architectural styling with the same styling found in other homes in the area, including hip roof porches, large gable dormers, living & storage under the roof area, timber brackets for eave supports, larger windows, exposed rafter tails and unique trim details. The building sciences will be fully expressed in the designs, green, sustainable and energy efficient.
- j. Lot 1: 3901, sf, B-3, 32x40 2-story duplex. The duplexes are split with the business on the lower level and residence on the upper level. The businesses on the lower level will offer space for small appointment-driven businesses such as an accountant, massage therapist, acupuncturist, day time and early evening business hours. One employee per business.
- k. Lot 2: 5924 sf, B-3, 32x40 2-story duplex with 30x40 single level. The duplexes are split with the business on the lower level and residence on the upper level. The businesses on the lower level will offer space for small appointment-driven businesses such as an accountant, massage therapist, acupuncturist, day time and early evening business hours. One employee per business.
- l. Green Space 3867 sf, located between the B-3 and R-2 to add to buffering, picnic table area, fire ring and flat area for volleyball, frisbee, and other sports.
- m. Lot 3 5543, sf, R-2, old single family home with garage.
- n. Lot 4 3901 sf, R-2, 32x24 single family home, home occupation.
- o. Lot 5 7386, sf, R-2, 32x28 single family home, home occupation.
- p. Lot 6 4601, sf, R-2, 32x24 single family home, home occupation.

Phasing

- q. When the first B-3 Lots 1 or 2 sell:
 - The B-3 plat will be recorded.
 - The storm water retention area will be installed.
 - The total parking area will be built.
 - r. When the first R-2 Lots 4, 5, or 6 sell:
 - The R-2 plat will be recorded.
 - The storm water retention area will be installed.
 - The driveway will be finished for lot 6 if Lot 5 sells.
 - s. The intent is for balance in the building sequence of the duplexes and homes.
2. Occupancy in the B-3 General Business portion is limited to no more than 2 unrelated.
 3. Approval is subject to the site plan and supplemental information submitted bearing the received date of February 14, 2011. Insignificant deviations may be permitted to comply with the requirements of the UDO or State Building Code.
 4. 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.
 5. Applications and final plans that are in compliance with the provisions of the UDO and State Building Code shall be submitted.

VOTE: Aye - All
Nay - None

Vote #2

Upon a motion by Council Member Ball, seconded by Council Member Mason, Council moved to approve the proposed amendment to the Town's zoning map and believe approval is reasonable and in the public interest because it follows density and redevelop goals of the 2030 Master Plan and promotes the accessibility and general welfare of the neighborhood, to approve a five-year vesting period, and to approve the following conditions (with the exception of condition 1.e.):

1. Conditions submitted by applicant Brian Mueller.
 - a. Located at 183 Delmar, this new project will offer three solar home sites and two solar duplex sites all sharing a green space. Below are conditions for the subdivision.
 - b. Lot 1 and lot 2 requesting rezoning from R-1 to B-3. Transitioning to R-2 with Lot 3 and restoring the old bungalow to an architectural-styled home, then to Lots 4, 5, and 6 that are solar single-family homes.
 - c. All large trees and key large shrubs will be utilized in the design of the home sites (as indicated on the site plan dated February 21, 2011).
 - d. Requesting a recording of plat for the B-3 side of subdivision upon first sale and a recording of the R-2 side of the subdivision upon first sale.
 - ~~e. Requesting lots be taxed when sold.~~
 - f. Requesting an internal landscape between B-3 and R-2 reduced from 10' to 5'.
 - g. Requesting a 5-year vesting of project.
 - h. All lots will be in a POA to address infrastructure.
 - i. All new construction will be of the Appalachian Bungalow Architectural styling with the same styling found in other homes in the area, including hip roof porches, large gable dormers, living & storage under the roof area, timber brackets for eave supports, larger windows, exposed rafter tails and unique trim details. The building sciences will be fully expressed in the designs, green, sustainable and energy efficient.
 - j. Lot 1: 3901, sf, B-3, 32x40 2-story duplex. The duplexes are split with the business on the lower level and residence on the upper level. The businesses on the lower level will offer space for small-appointment driven businesses such as an accountant, massage therapist, acupuncturist, day time and early evening business hours. One employee per business.
 - k. Lot 2: 5924 sf, B-3, 32x40 2-story duplex with 30x40 single level. The duplexes are split with the business on the lower level and residence on the upper level. The businesses on the lower level will offer space for small-appointment driven businesses such as an accountant, massage therapist, acupuncturist, day time and early evening business hours. One employee per business.
 - l. Green Space 3867 sf, located between the B-3 and R-2 to add to buffering, picnic table area, fire ring and flat area for volleyball, frisbee, and other sports.
 - m. Lot 3 5543, sf, R-2, old single family home with garage.
 - n. Lot 4 3901 sf, R-2, 32x24 single family home, home occupation.
 - o. Lot 5 7386, sf, R-2, 32x28 single family home, home occupation.
 - p. Lot 6 4601, sf, R-2, 32x24 single family home, home occupation.
- Phasing
 - q. When the first B-3 Lots 1 or 2 sell:
 - The B-3 plat will be recorded.
 - The storm water retention area will be installed.
 - The total parking area will be built.
 - r. When the first R-2 Lots 4, 5, or 6 sell:
 - The R-2 plat will be recorded.
 - The storm water retention area will be installed.
 - The driveway will be finished for Lot 6 if Lot 5 sells.
 - s. The intent is for balance in the building sequence of the duplexes and homes.
2. Occupancy in the B-3 General Business portion is limited to no more than 2 unrelated.
3. Approval is subject to the site plan and supplemental information submitted bearing the received date of February 14, 2011. Insignificant deviations may be permitted to comply with the requirements of the UDO or State Building Code.

4. 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.
5. 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

PRESENTATION OF P&I MONTHLY REPORT

Planning & Inspections Director Bill Bailey presented the P&I Monthly Report (**permanently on file in the March 2011 Town Council Packet.**) Mr. Bailey directed the Council’s attention to a proposed educational brochure regarding pavement sealant information, including permit requirements and a reference to the Town’s website and contact information for fee information.

DISCUSSION & POSSIBLE ACTION OF FEE SCHEDULE - DRIVEWAY SEALANT ORDINANCE

Planning & Inspections Director Bill Bailey presented a proposed fee schedule for the Driveway Sealant Ordinance. Brief discussion ensued regarding a reduced fee for residential uses so as not to discourage participation in the permitting process. Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to adopt the following fee schedule with changes as discussed and to review the fee schedule after nine months:

10.9	Pavement Sealants : Non Coal Tar Based: Residential (Single Family and Two Family) Commercial under 5,000 sq. ft. Commercial 5,000 sq. ft. and over Coal Tar Based (All Uses)	 \$10.00 \$50.00 \$100.00 \$500.00
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VOTE: Aye - All
 Nay - None

GREENWAY COMMITTEE RECOMMENDATION - POSSIBLE CONCERT/MOVIE SERIES AT CLAWSON-BURNLEY PARK

Mike Curcio, Greenway Committee Chairperson, appeared before the Council to present a recommendation from the committee for a concert/movie series beginning with a two-date pilot during the summer at Clawson-Burnley Park. He explained that the Greenway Committee is proposing this idea for a two-date trial basis. Mr. Curcio stated that the members of the committee along with volunteers will manage the operation at a cost of between \$500-\$1,000 for the rental of equipment. During discussion of the proposal, several issues were raised including the fact that there are no power sources in the park other than for the stormwater pump and that there is no lighting in the park which may present a liability issue for use of the park after dark. Additionally, there was concern regarding the potential impact of lighting and noise on the surrounding neighborhoods. Council Member Leigh suggested that the Greenway Committee be directed to reexamine the proposal regarding the concerns that have been voiced. Council Member Mason agreed that more detail and cost information is needed, as well as input from the surrounding neighborhoods. Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved to refer this issue back to the Greenway Committee for further review and development and to bring the matter back before the Council with more information.

VOTE: Aye - All
 Nay - None

TRANSPORTATION COMMITTEE RECOMMENDATION - “BICYCLE-FRIENDLY COMMUNITY” DESIGNATION

Public Works Director Blake Brown presented a recommendation from the Transportation Committee for the Council’s endorsement and approval to apply for a “Bicycle-Friendly Community” designation through the League of American Bicyclists and noted that the

application deadline is July 22, 2011. He explained that the process will assist the Town in identifying what should be prioritized as it moves forward with the bike-ability project and will help generate feedback based on where the Town currently stands as a “Bicycle Friendly Community.” Mr. Brown further indicated that the structure of the designation will assist in different initiatives that can be taken in collaboration with ASU, the local business community, and the TDA. He noted that there is no application fee or cost obligation in applying for this designation. Upon a motion by Council Member Leigh, seconded by Council Member Ball, Council moved to grant permission to apply for the “Bicycle-Friendly Community” designation and for the application be brought back before the Council before final submission.

VOTE:Aye - All
Nay - None

UPDATE ON DOWNTOWN BOONE POST OFFICE PROJECT

Town Manager Greg Young noted that he had received the report from Jessica Zeigler-Cihlar of JMA Architects regarding a historical review of the Downtown Boone Post Office renovation project just prior to the beginning of the Council meeting. After taking a few minutes to briefly review the report, Council Member Ball moved to table consideration of this matter until the Thursday, March 17, 2011 meeting to allow for the review of the report by the Historic Preservation Commission and project architect Randy Jones. Council Member Brantz seconded the motion.

VOTE:Aye - All
Nay - None

COMMITTEE MEMBERSHIP REQUEST - 911 COMMITTEE

Due to legal issues that need to be discussed, Town Attorney Sam Furgiuele suggested that the Council amend the agenda to consider this item during Closed Session. Upon a motion by Council Member Ball, seconded by Council Member Brantz, Council moved to amend the agenda to discuss this item during Closed Session on Thursday, March 17, 2011, pursuant to N.C.G.S. §143-318.11(a)(3) Attorney/Client Privilege.

VOTE:Aye - All
Nay - None

APPROVAL OF AMENDMENT TO CONTRACT - WATER INTAKE PROJECT

Town Manager Greg Young explained that this request is for formal approval for costs already incurred so that the contract can be amended and submitted to the USDA for reimbursement. Upon a motion by Council Member Ball, seconded by Council Member Mason, Council moved to approve the following contract amendment for costs associated with the Raw Water Intake Project:

■	Environmental Review	\$45,000.00
■	ER Project Hourly Administration	\$92,569.07
■	Environmental Reimbursable	\$2,500.00
■	Bathymetric #1, 3D, Archaeological	\$38,671.00
■	Bathymetric #2	\$17,405.00
■	Mussel Site Relocation	\$6,300.00
	Total	\$202,445.07

VOTE:Aye - All
Nay - None

APPROVAL OF BID RECOMMENDATION - DOWNTOWN STREET LIGHTING IMPROVEMENTS

Public Works Director Blake Brown submitted the low bid from Beco, Inc. in the amount of \$210,000 for street light improvements in downtown Boone and submitted the following breakdown of the bid for the project:

<	Disconnects	\$2,542.00
<	Poles & Lights	\$121,538.00
<	Material	\$6,173.00
<	Labor & Expense	\$33,895.00
<	Set Poles	\$6,662.00
<	Cut & Patch Sidewalk /New Pole Bases	\$34,359.00
<	Mobilization	<u>\$4,831.00</u>
	Total	\$210,000.00

Mr. Brown anticipated the project to begin by the beginning to mid-April and pointed out that the contract stipulates the project be completed within 90 days. Upon a motion by Council Member Ball, seconded by Council Member Mason, Council moved to approve the bid from Beco, Inc. in the amount of \$210,000 for streetlight improvements in downtown Boone.

VOTE:Aye - All
Nay - None

APPROVAL OF BID RECOMMENDATION - HIGHWAY 421 STREET LIGHTING IMPROVEMENTS

Public Works Director Blake Brown submitted the lowest bid from Beco, Inc. in the amount of \$711,000.00 for street light improvements for the Highway 421 project. Mr. Brown noted that the cost increase has resulted in the rising cost of materials including copper and fixtures. He submitted the following breakdown for the project:

<	Disconnects	\$17,778.00
<	Poles & Lights	\$212,504.00
<	Quazite Boxes	\$34,680.00
<	Wire	\$77,502.00
<	Material	\$20,709.00
<	Labor & Expense	\$132,719.00
<	Ditching & Boring	\$175,000.00
<	Set Poles	\$37,208.00
<	Mobilization	<u>\$2,900.00</u>
	Total	\$711,000.00

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to approve the bid from Beco, Inc. in the amount of \$711,000.00 for streetlight improvements for the Highway 421 project.

VOTE:Aye - All
Nay - None

ADOPTION OF ORDINANCE - PURSUE LEGAL ACTION AGAINST RON DARBO LLC

Town Attorney Sam Furguele presented an ordinance authorizing the Town to pursue legal action against Ron Darbo, LLC for a violation of the UDO by making rock cuts which were neither permitted nor properly certified by a NC engineer or licensed geologist. Planning Director Bill Bailey stated that it had been indicated to him that an engineer is due to visit the site, make a determination this week, and submit the findings to the Planning Department by next week. Mr. Furguele pointed out that even if the situation is resolved, the matter of the civil penalties will still need to be addressed. Rob Angle, a registered agent of Ron Darbo LLC, appeared before the Council to address the matter of mis-communication between the Planning Department and the property owner. He stated that he hopes the Council will be amenable to waiving some of the civil penalties regarding this matter. Mr. Furguele noted that the Planning

Staff did follow proper procedure in notifying the property owner of the UDO violation. Upon a motion by Council Member Leigh, seconded by Council Member Ball, Council moved to table consideration of this issue until the regular meeting in April 2011.

VOTE: Aye - All
Nay - None

SCHEDULING OF SPECIAL MEETINGS

Upon a motion by Council Member Mason, seconded by Council Member Ball, Council moved to approve the following special meetings:

- Monday, March 28, 2011 at 5:00 p.m. - Intergovernmental Retreat at Broyhill Inn
- Tuesday, March 29, 2011 at 5:30 p.m. - Joint meeting with Planning Commission at Council Chambers
- Tuesday, April 26, 2011 at 5:30 p.m. - Joint meeting with Planning Commission at Council Chambers.

VOTE: Aye - 4 (Phillips, Mason, Ball, Brantz)
Nay - 1 (Leigh)

MONTHLY WATER-USE STATUS REPORT

Public Utilities Director Rick Miller presented the monthly water-use status report. **(Permanently on file in the March 2011 Boone Town Council meeting packet.)** Mr. Miller noted that the NC Drought Management Advisory Council has Watauga County categorized at the “Abnormally Dry” status level.

APPROVAL OF AMENDMENTS TO ORDINANCE #11-01 (formerly ORD #05-01)

Public Utilities Director Rick Miller presented proposed changes to Ordinance #11-01, formerly known as Ordinance #05-01, which calls for setting aside a 70,000 gallons per day water allocation for the old Watauga High School property until December 31, 2011 and addresses substantial changes in mixed-use projects in regard to multi-family portions of the project. Upon a motion by Council Member Ball, seconded by Council Member Mason, Council moved to approve the following amendments to Ordinance #11-01:

ORDINANCE 11-01 (FORMERLY ORDINANCE 05-01)

1. **Term and Applicability of Ordinance:**
 - a. This ordinance shall control the approval of new water or sewer connections to the extent specified herein during the period beginning January 1, 2008 through December 31, 2011 or such other end date as the Town Council may by majority vote designate. To the extent its provisions create any conflict with the Town of Boone Water and Sewer Use Code this ordinance shall supercede and control. To the extent the provisions of this ordinance do not conflict with or otherwise supercede the Town of Boone Water and Sewer Use Code, that Code remains in full force and effect.
2. **Amount of Water which may be Allocated:**
 - a. **Annual Amount Which May Be Allocated.** The amount of water available for allocation and attributable to any designated calendar year during the term of this ordinance shall be 50,000 gallons per day, collectively referred to as “the water census.” The Town shall always reserve at least 10,000 gallons per day from its available water supply for possible allocations to existing vacant lots within the corporate limits of the Town. **In addition, in recognition of its value to the citizens of the Town and the taxpayers of Watauga County in terms of its size, key location, and financial importance; and as a result of the Town Council’s express interest in promoting the sale and beneficial development of the property currently owned by Watauga County upon which the old Watauga High School is situated (“the property”), there shall be a reserve of 70,000 gallons per day set aside until December 31, 2011 (“the**

high school reserve”), for allocation to the property, subject to the following conditions and provisions:

- i. For a site specific development plan (hereinafter, “the project”) to qualify for allocation of the high school reserve, both the preparation of the site for the project and the construction of the project must fully comply with all provisions of the Town’s Unified Development Ordinance, whether or not they would generally be applicable to Watauga County;
 - ii. The applicant for the reserve must obtain approval for the allocation of the reserve from the Boone Town Council in conformity with this ordinance;
 - iii. The application for the reserve may request an amount larger than the reserve, if needed for the project; and
 - iv. If the reserve is not allocated before December 31, 2011, the water thus reserved shall again be made available to applicants in conformity with this ordinance.
- b. Determination of the Amount of Water to be Allocated and Deducted if a Request is Granted.** The water usage predicted for each application and thus deducted from the available water from the year(s) to which it is attributed shall be determined by multiplying the usage predicted by the North Carolina Discharge Rate (NCDRS) Schedule by .60, even in cases where an applicant asserts that actual use will be less than the predicted use.
- i. **Deductions for Subdivision Approvals.** When an application for water service to either a proposed minor or major residential subdivision is approved, the Director of Public Utilities (“the Director”) shall subtract an amount of water from the available water census which reflects the projected amount of water when all residences in the proposed subdivision are fully constructed and occupied.
 - c. **Designation of Year from Which Allocation Is Made.**
 - i. Depending upon which is given authority to approve an application, the Town Council or the Director shall designate the calendar year(s) from which an allocation shall be deducted.
 - ii. An approval of water service by the Director shall always be attributed to the calendar year in which it is approved.
 - iii. An approval of water service by the Town Council shall ordinarily be attributed to the calendar year in which it is approved; however, the Town Council may designate that a particular approval of water service shall be attributed to the available allocation from another year within the term of this resolution or may apportion the allocation over two or more years.
 - d. **Water Remaining at End of Year.** Any unused allocation from a prior calendar year may be made available in any subsequent calendar year(s).
 - e. **Water Shortage Declarations.** When either a Stage II or Stage III water shortage is declared pursuant to Article VII of the Town of Boone Water and Sewer Code or imposed on the Town by the State of North Carolina, the Town Council may suspend its consideration and approval of any new water applications for the duration of the water shortage, and it may direct the Public Utilities Department (hereafter, “the Department”) to suspend its consideration or approval of any new water applications until further action by the Town Council.
 - f. **Adjustment of Water Census.** Each year while this ordinance is in effect the Town shall review actual water usage records to determine whether changes should be made to the allocation allotments for subsequent years either because more water is being used than was predicted or less water is being used. At any time the Town Council may increase or decrease any yearly allocation amount based on actual usage information concerning remaining capacity.

3. Who May Allocate Water:

a. Allocations by Director. Until the Town has allocated two-thirds or more of the full water allotment for the year during which the request is made, the Director may approve new applications for water serving property within the corporate limits of the Town (“the Town limits”) when the predicted water usage is three thousand (3,000) gallons per day or less. Once more than two-thirds of the full water allotment for the year has been approved, the Director may approve new applications for water serving property within the Town limits when the predicted water usage is no more than five hundred (500) gallons per day.

b. Allocations by Town Council. Except those allocations which may be approved by the Director, every other request for a new allocation of water serving property within the Town limits or within the Town’s planning extra-territorial jurisdiction (“ETJ”) must be approved upon action, by majority vote, of the Boone Town Council acting in its *quasi* judicial capacity. Any request for a new water allocation serving property outside the Town limits and ETJ of the Town, without regard to the amount of the request, must be approved by a two-thirds super-majority of the Town Council members present and not excused from the vote.

4. Requests for Service in the Town’s Secondary Pressure Zone. Requests for extensions and connections into the Town’s secondary pressure zone may only be approved if the following additional criteria are satisfied. For purposes of this paragraph, an “extension” refers to the continuation of a water main beyond its currently existing limits while a “connection” is defined as the linking of pipes serving a single customer to an existing water main.

a. Requests for Extensions into the Secondary Pressure Zone. No service extensions into the secondary pressure zone shall be considered for approval unless:

i. The property for which service is requested was located inside the Boone Town limits on or before March 8, 2007; and

ii. The applicant agrees to adhere to Town of Boone secondary pressure zone specifications, and among other things, agrees at its expense to:

A. Use minimum eight-inch minimum pipe diameter;

B. Provides all needed booster pumping station(s) of EFI design with fire pumping capabilities;

C. Provides a minimum 100,000 gallon welded joint steel storage tank;

D. Installs pressure protection for each individual water service; and

E. Install Dataflow Systems radio telemetry compatible with existing Town of Boone system is provided; and

iii. All portions of a proposed extension are below 3,620 feet in elevation.

b. Request for Connections into the Secondary Pressure Zone. A connection to an existing water main in a secondary pressure zone may be approved by the Town Council in cases in which such connection:

i. Creates no negative impact on the Town’s distribution system;

ii. Allows adequate pressure to be maintained as may be necessary to comply with the requirements of the Boone Fire Department and applicable fire codes;

iii. Results in no additional costs to the Town; and

- iv. Otherwise complies with the requirements of the Town of Boone Water and Sewer Code for connection to the Town's water system.
- 5. **Sewer Only Approvals.** During the term of this ordinance, Section 3-10(G) of the Town of Boone Water and Sewer Code, which prohibits the discharge into the Town's sanitary sewer system of any discharge from private water systems other than the system of Appalachian State University, is suspended as to those applicants whose application for both water and sewer connections cannot be granted because the request for water service has been denied by the action of the Town Council in applying this ordinance.
- 6. **What information Must be Provided by an Applicant for Water or Sewer Service.** At the time of application, an applicant for water service shall designate and describe the following:
 - a. The name and address of the applicant;
 - b. The specific location of the property to be served so that it may be determined whether it is in the Town limits or ETJ, whether any portion of it is within the secondary pressure zone, and the relative location of available water and sewer connections;
 - c. The name and address of the owner of the property if the applicant is not the owner of the property;
 - d. If the applicant is not the owner of the property, a description of the legal rights of the applicant to apply for and obtain service and proof of those rights, as requested by the Director;
 - e. If water rights have previously been approved for a property and are currently vested, a written relinquishment of previously granted water rights signed by the owner or other person with legal authority to do so.
 - f. A site specific development plan for the property for which service is requested in sufficient detail to enable the Town to assess the factors which may be considered under this ordinance; and
 - g. Any technical information needed by the Director to determine compliance with this ordinance or the Water and Sewer Use Code.
- 7. **Town Council Priorities in the Allocation of Water.**
 - a. **Requests Considered on a First-Come, First-Served Basis.** The Town shall ordinarily provide water service to future customers within the Town limits on a "first-come, first-served," basis. Hearings on requests shall be conducted by the Town Council in the order in which completed applications have been received by the Department, unless a case has been tabled to a later date for consideration either at the request of the applicant or by action of the Town Council.
 - b. **Requests for Service in Town Preferred over Other Requests.** Requests for water service serving properties within the Town limits shall be preferred over other requests. Ordinarily, only requests for service connections to property which is in the Town limits will be granted.
 - c. **Smaller Requests are Preferred over Larger Requests.** Ordinarily, the Town Council shall prefer small requests over large requests for water, and a request may be denied based on the determination by the Town Council that a particular request, if approved, would too greatly reduce the remaining water to be allocated.
 - d. **Compliance by Applicant with Other Conditions Required by this Ordinance and the Water and Sewer Use Code.** The Town Council may also deny a request because an applicant has not complied with any other requirement of this ordinance or the Water and Sewer Use Code.

8. **Additional Factors Which the Town Council May Consider When Deciding Whether to Grant a Request for Water.** In addition to the priorities and considerations described in paragraph 7, the Town Council can consider the following in deciding whether to grant or deny a request for water or sewer service:
 - a. Any factor which may make the predicted actual use different from the NCDRS predicted use;
 - b. The amount of water usage in gallons per day previously approved during the calendar year and the amount still left to be allocated for the year;
 - c. Whether in its opinion the application is for a land use which is consistent with the Town's adopted policies concerning growth and development; and
 - d. Such other factors as may be identified by the Town Council in its deliberations, which either suggest that a particular application promotes or undermines the public health or safety, or the general welfare of the Town.
9. **Conditions.** The Town Council may place conditions upon a successful application for water or sewer service. Without limitation and by way of example only, the Town Council may require:
 - a. That an applicant whose property is partly or wholly outside the Town limits petition the Town for annexation in accordance with the requirements of North Carolina General Statutes and the Town of Boone's ordinances before service is provided.
 - b. That an applicant whose property is partly or wholly outside the Town limits comply with designated development policies of the Town in order to receive and continue to receive service.
 - c. That an applicant granted the right to connect to the sanitary sewer system agree to connect into the Town's water system should the Town later request that such a connection be made, and that the applicant sign a statement of commitment to that effect which will remain on file with the Town's Public Utilities Department.
10. **Vesting of Water Rights.**
 - a. **Rights Vest to Property, Not Applicant.** Any vesting of water rights which is obtained through a successful application during the term of this ordinance vests to the property itself for the specific project rather than to the applicant personally. Therefore, any change in ownership or change in legal rights subsequent to approval shall not affect the vesting of the water rights, the time periods described herein, or the payment or retention of required fees.
 - b. **Rights not Transferrable.** Water rights may not be transferred from the property designated in the application to a different piece of property, even for the same or a similar site specific development plan.
 - c. **Vesting Does Not Occur until Required Fees Are Paid.** No vesting of water or sewer rights occurs until the fees required by this ordinance are paid.
 - d. **Initial Payment of Fees.** Within thirty days of the time an application is approved and at the applicant's option, the applicant must pay either ten percent (10%) or twenty percent (20%) of the availability fee for the approved site specific development plan. Such fee is non-refundable, but will be credited against the availability fee charged at the time of the actual connection to the Town's system if the site specific plan is constructed as proposed.
 - i. **Fees are Non-Transferrable to Another Property.** A fee paid pursuant to this paragraph may not be transferred from one property to another property.

- ii. **Fees May not be Transferred to Another Project on the Same Property.** A fee paid pursuant to this paragraph may not be transferred from one site specific development plan to another, even if both are on the same property, if the subsequent plan represents a substantial change, as defined in paragraph 11, below, from the plan which has been approved.

- e. **Initial Vesting Period.** If an applicant pays ten percent (10%) of the availability fee for the approved site specific development plan, the applicant shall be entitled to a one year initial vesting period; if an applicant pays twenty percent (20%), the applicant shall be entitled to a two year initial vesting period, dated from the date of approval by the Town Council or Director of the application.

- f. **Lapse of Vesting after Initial Period of Vesting.** Unless extended by the payment of full availability fees, any applicant granted the right to connect to the Town's water distribution system must obtain all needed development permits within the initial vesting period or said approval will expire and the allocated water usage shall return into the water census for redistribution. For purposes of this section the term "development permits" shall mean the following:
 - i. In the case of applicants for water service for a minor subdivision, the minor subdivision plat approval and recording of the approved plat with the Watauga County Register of Deeds, and any associated zoning and grading compliance certificates;
 - ii. In the case of applicants for water service for a major subdivision, a special use permit, and associated zoning and grading compliance certificates;
 - iii. In the case of a commercial development project, all permits required for the physical development of the land, plus those permits necessary for the building. These may include some or all of the following: a special use permit, a zoning permit and a building permit.

- g. **Extension of Period of Vesting upon Payment of Full Availability Fees.** Upon payment made prior to the expiration of the initial vesting period of the full remainder of the availability fee predicted for the site specific development plan for which approval has been granted, the approval of a water application will be extended for an additional period matching the vesting period of approved development permits for the site specific development plan, but not less than one additional year from the expiration of the initial vesting period, and any additional vesting of development permits which is obtained during the additional vesting period shall automatically extend the water rights to match that vesting period.
 - i. **Availability Fee Payment Non-Refundable.** The funds paid pursuant to this section are non-refundable, but will be credited against the availability fee charged at the time of the actual connection to the Town's system if the site specific plan is constructed as proposed.
 - ii. **Availability Fee Payment Non-Transferrable.** The funds paid pursuant to this section are non-transferrable, as described. Such funds may not be transferred as a credit from one property to another property, and they may not be transferred from one site specific development plan to another, even if both are on the same property, if the subsequent plan represents a substantial change, as defined in paragraph 11, below, from the approved plan.
 - iii. **Adjustment in Availability Fee at Time of Connection.** If the required availability fee at the time of the connection to the Town's system is more than the amount which has been previously paid, the remainder of the then current availability fee must be paid before a connection will be allowed; if the required current availability fee at the time of the connection to the Town's system is less than the amount which has been previously paid, no refund shall be due.

- h. **Expiration of Vesting.** Without regard to the payment of fees and term of vesting, should any applicant whose development project requires a special use permit or zoning

permit allow the special use permit or zoning permit to expire, the applicant's water rights will also immediately expire. Likewise, should any applicant whose development project acquires a building permit allow the building permit to expire, the applicant's water rights will also immediately expire.

11. Changes in Development Plan after Approval.

a. **Substantial Changes Prohibited.** When an application has been approved for water or sewer service and fees paid to vest the approval, a substantial change may not be made in the site specific development plan designated in the application without a new application and appropriate payment of fees if approved. **Except for a mixed use development proposed in accordance with Section 179 if the Town's Unified Development Ordinance (a "mixed use project"),** a "substantial change" is one for which a different type of principal zoning use is proposed, e.g. multi-family to commercial, or there is more than a ten percent (10%) change, plus or minus, in the predicted water use for the site specific development plan, as determined by the calculations prescribed in paragraph 2(b), provided that a reduction in predicted use which is the result of a change to a site specific development plan initiated and mandated by the Board of Adjustment in a special use permit proceeding, or one which is the result of conditions or modifications agreed upon by the Town Council in a conditional district zoning proceeding shall not be considered a "substantial change" for purposes of this ordinance.

b. **A substantial change in a mixed use project shall occur when there is a change in the multi-family portion of the project which, if viewed as an independent project, would be considered a substantial change pursuant to subparagraph 11(a), or for which there is more than a 10% change, plus or minus, in the square footage of the completed commercial space from the commercial space described by the applicant at the time the application is approved, provided that a reduction in predicted square footage which is the result of a change to a site specific development plan initiated and mandated by the Board of Adjustment in a special use permit proceeding, or one which is the result of conditions or modifications agreed upon by the Town Council in a conditional district zoning proceeding, shall not be considered a "substantial change" for purposes of this ordinance.**

12. **Monthly Water Reports.** The Director shall provide a monthly report to the Boone Town Council concerning the number and predicted volume of each water connection request approved during the term of this Resolution.

13. This policy as amended shall become effective upon adoption.

Amended and effective this the 15th day of March, 2011.

VOTE: Aye - All
Nay - None

RECESS MEETING

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to recess the meeting at 8:31 p.m. until Thursday, March 17, 2011.

VOTE: Aye - All
Nay - None

A recessed meeting from Tuesday, March 15, 2011 was called to order at 6:30 p.m. on Thursday, March 17, 2011 in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, Andy Ball, Rennie Brantz, Jamie Leigh and Stephen Phillips. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Town Clerk Freida Van Allen, Finance Director Amy Davis, Fire Chief Jimmy Isaacs, Human Resources Director Peri Moretz, Assistant to the Manager Jim Byrne, Police Chief Dana Crawford, Public Utilities Director Rick Miller, Public Services Director Blake Brown and Planning Director Bill Bailey.

ANNOUNCEMENTS

Mayor Pro-Tem Mason noted that Mayor Clawson was absent because of illness. Mayor Pro-Tem Mason also requested a moment of silence in honor of Boone Police Officer Jonathon Cropper.

TENTATIVE AGENDA ADOPTION

Town Manager Greg Young presented one change to the agenda:

-Addition to Closed Session of Legal Advice - Regarding Threatened Legal Action Against Town.

On a motion by Council member Leigh, seconded by Council member Phillips, Council moved to adopt the agenda as amended.

VOTE: Aye-All
Nay-None

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Pro-Tem Mason announced one vacancy on the Alcoholic Beverage Commission due to the resignation of Candy Winebarger.

BOONE ABC BOARD APPOINTMENT

Council agreed to fill both vacant positions since three applications were received. Council member Phillips nominated Ronnie Holste for another three-year term. There being no further nominations Ronnie Holste was appointed for another three-year term on the ABC Board. His term will expire March 31, 2014. Council member Brantz nominated Pat Wilkie for the unexpired term. There being no further nominations Pat Wilkie was appointed to an unexpired term on the ABC Board. Her term will expire April 30, 2013.

AFFORDABLE HOUSING TASK FORCE APPOINTMENT

There were no applications submitted for the vacancy.

BOARD OF ADJUSTMENT APPOINTMENTS

Council member Leigh nominated Dr. Cameron Lippard for an alternate ETJ position that expires on June 30, 2012. There being no further nominations, Dr. Cameron Lippard was nominated for that position.

Council member Brantz nominated Dr. Robert Goddard for an alternate ETJ position that expires on June 30, 2011. There being no further nominations, Dr. Robert Goddard was nominated for that position.

Both nominations will be forwarded to the Watauga County Commissioners for final appointment.

DBDA BOARD OF DIRECTORS APPOINTMENTS

Council member Leigh made a motion to table appointments to the board until the April 21, 2011 Council meeting in order to receive additional applications for consideration. Council member Ball seconded.

VOTE: Aye-All
Nay-None

GREENWAY PARKS AND GARDEN COMMITTEE APPOINTMENT

Council member Ball nominated Judith Phoenix to the vacant position on the Greenway Parks and Garden Committee. There being no further nominations, Judith Phoenix was appointed to the Greenway Parks and Garden Committee. Her term will expire July 31, 2012.

JONES HOUSE ADVISORY BOARD APPOINTMENT

Council member Brantz nominated Larry Keeter to another term on the Jones House Advisory Board. There being no further nominations, Larry Keeter was appointed to the Jones House Advisory Board. His term will expire February 28, 2014.

Council member Phillips nominated Ross Cooper to another term on the Jones House Advisory Board. There being no further nominations, Ross Cooper was appointed to the Jones House Advisory Board. His term will expire February 28, 2014.

OUTSIDE AGENCY FUNDING COMMITTEE APPOINTMENT

There were no applications submitted for the vacancy.

PEDESTRIAN PLAN STEERING COMMITTEE APPOINTMENT

Council member Brantz nominated Dale Kirkley to serve as the Alternative Transportation Committee representative on the Pedestrian Plan Steering Committee. Council member Leigh nominated Randy McDonough to serve as the Watauga County School representative on the Pedestrian Plan Steering Committee. Council member Mason nominated Paul Welsh to serve as a Senior Citizen representative on the Pedestrian Plan Steering Committee. There being no further nominations, all three were appointed to the committee.

WATER STUDY COMMITTEE APPOINTMENT

There were no applications submitted for the vacancy.

DISCUSSION OF HIGH COUNTRY RPO PRIORITIES NEEDS LIST

Town Manager Greg Young explained that the High Country Council of Governments is requesting that the Town provide a list of transportation improvement projects to be included in the North Carolina Department of Transportation's TIP list. After little discussion on a motion by Council member Brantz, seconded by Council member Ball, Council moved to request that the following projects be included on the High Country RPO priority list:

1. Highway 105 (from bypass to US 321) including a study of the Poplar Grove Road intersection.
2. US 421 Bypass.

VOTE:Aye-All

Nay-None

UPDATE ON DOWNTOWN BOONE POST OFFICE PROJECT

Council member Brantz reviewed the recommendations of the Historic Preservation Commission regarding the architectural review of the Downtown Boone Post Office by John Milner Associates, Inc. This firm was hired to review the drawings as prepared by Randy Jones. Council member Brantz felt the Milner evaluation of the drawings is very positive. Council member Brantz said the Historic Preservation Commission made three motions to request that the Town allow Mr. Jones the opportunity to redesign the post office entrance to the east side and that no canopy be included within the redesign and if a canopy is included that the roof be made of coppers. Mr. Randy Jones appeared before Council and said at this point he needs direction from Council in order to move forward. Assistant to the Manager Jim Byrne reiterated that the project needs to move forward as it will take another six months for the State Historic office to

review any redesign. Council member Leigh expressed her displeasure of having to redesign a project that Council previously agreed was a good design. After a lengthy discussion, on a motion by Council member Brantz, seconded by Council member Mason, Council moved to have the entrance to the post office redesigned for the east side of the post office.

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

REQUESTED APPEARANCE - GEORGE SANTUCCI

Mr. George Santucci, Executive Director for the National Committee of the New River, appeared before Council to request the Town's participation in the newly formed New River Basin Coalition. Mr. Santucci said this new initiative will pool public and private organizations and leverage financial and other resources to ensure the New River's high water quality. Mr. Santucci said the annual dues will be about \$3,000 and will not be due until July 1, 2011. Mr. Santucci also requested that the Town provide free water testing for the Coalition for at least 24 months. Public Utilities Director Rick Miller said testing involves a nominal cost and that he sees no problem in providing this service. On a motion by Council member Ball, seconded by Council member Leigh, Council moved to adopt the following resolution, allocate \$3,000 dues for the next fiscal year and provide free water testing for the Coalition for the next 24 months:

RESOLUTION

WHEREAS, the Town of Boone is committed to the preservation and protection of the present high quality of water in the New River basin; and

WHEREAS, the Town of Boone recognizes the increasingly complex nature of water quality management issues in the New River basin; and

WHEREAS, the basic objective of the New River Basin Coalition is to preserve the waters of the New River basin through innovative and cost-effective pollution reduction strategies by forming a coalition of units of local governments and other public and private agencies, organizations, businesses, and individuals to pool financial resources and expertise; and

WHEREAS, the Town of Boone desires to cooperate with other local government and private entities to improve the efficacy of pollution reduction strategies and programs in the New River basin.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Boone during its regular meeting on March 17, 2011, authorized the Town of Boone to participate as a member in full in the activities of the New River Basin Coalition effective July 1, 2011.

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 158)

VOTE: Aye-All
Nay-None

REQUESTED APPEARANCE - GEORGE SANTUCCI

Mr. George Santucci, Executive Director for the National Committee for the New River, updated Council on the Army Corps New River Phase II project. Mr. Santucci said this project is located along the Greenway from the first covered bridge to the second bridge. The project will include restoration of about 4,000 feet of the New River. Mr. Santucci said the Army Corps has committed \$1.3 million for the project and that the National Committee for the New River is trying to secure an additional \$250,000 for the project.

REQUESTED APPEARANCE - DOWNTOWN BOONE DEVELOPMENT ASSOCIATION

Ms. Pilar Fotta, Director of the Downtown Boone Development Association, appeared before Council to request a \$2,835.59 budget amendment . Ms. Fotta explained that this money was originally allocated in the facade's grant program and that this amount remains. Ms. Fotta said the DBDA is requesting to reallocate this money to the Doc Watson project. Ms. Fotta explained that a statue of Doc Watson will be placed in front of diSanti, Watson's office. After some discussion it was determined that the Town of Boone does not have the authority to grant a budget amendment to the DBDA's budget. Town Attorney Sam Furgiuele pointed out that it is the Town Council's responsibility to make sure that MSD funds are used properly and that he does not believe that MSD funds can be used for this project. Mr. Furgiuele said Council will need to consider a contract amendment to allow for the use of MSD funds for this project and that the Town will need to discuss with the DBDA and the property owner ownership and liability issues regarding the statue. On a motion by Council member Leigh, seconded by Council member Ball, Council moved to have the Town Attorney draft a contract amendment that would allow for the expenditure of MSD funds on the non-sculpture amenities of the Doc Watson project and that all liability issues between the Town, DBDA and diSanti be included in the contract amendment, which will be presented to both the Town of Boone and DBDA.

VOTE:Aye-All
Nay-None

WATER AND SEWER REQUEST - DEREK WESLEY SCISM

Town Attorney Sam Furgiuele opened a public hearing at 8:10 p.m. to hear sworn testimony on a request for water and sewer service to property located off White Oak Road. There being no one in attendance to speak to the request, the public hearing closed at 8:11 p.m. On a motion by Council member Phillips, seconded by Council member Brantz, Council moved to deny this water and sewer request.

VOTE:Aye-All
Nay-None

WATER AND SEWER REQUEST - JOHN WINKLER

Town Attorney Sam Furgiuele opened a public hearing at 8:11 p.m. to hear sworn testimony from Jason Gaston and Bill Bailey, Director of Planning and Inspections, on a request for water and sewer service to property located at 603 Blowing Rock Road. Mr. Jason Gaston of Valor Engineering testified that he was speaking on behalf of John Winkler. Mr. Gaston said this mixed-use project will be located at the corner of the Blowing Rock Road and Clement Street and after several appearances before Council Mr. Winkler is still awaiting changes to the UDO regarding density requirements. Planning and Inspections Director Bill Bailey said that some of density regulations will be presented at the next two workshops; however, the final text amendment will not be presented until the Fall Quarterly Public Hearing in November. There being no further testimony, the public hearing closed at 8:24 p.m. On a motion by Council member Brantz, seconded by Council member Leigh, Council moved to table this request until the July, 2011 Council meeting.

CLOSED SESSION

On a motion by Council member Brantz, seconded by Council member Ball, Council moved to enter into Closed Session at 8:26 p.m., pursuant to NCGS 143-318.11a) 3)5) in order to discuss a settlement offer by the Gang of 5, LLC, a settlement offer by Monte Green, legal advice on the raw water intake, property acquisition on the New Market Road connector project, legal advice on 911 consolidation, and legal advice regarding threatened legal action against Town.

VOTE:Aye-Aye
Nay-None

POSSIBLE ACTION FOLLOWING CLOSED SESSION

On a motion by Council member Phillips, seconded by Council member Leigh, Council moved to appoint the Town Manager, Police Chief, Fire Chief, Communications Supervisor and Mayor to the County's 911 Committee.

VOTE: Aye-All
Nay-None

On a motion by Council member Brantz, seconded by Council member Ball, Council moved to accept the settlement agreement from Monte Green of \$8,500 to be made in four monthly payments as long as Mr. Green complies with the Town's landscape plan and all parties involved release the lawsuit.

VOTE: Aye-All
Nay-None

ADJOURNMENT

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

VOTE: Aye-All
Nay-None

Town Clerk

Mayor

Deputy Town Clerk