

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
APRIL 19, 2011**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Tuesday, April 19, 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, Assistant to the Manager Jim Byrne, Finance Director Amy Davis, Human Resources Director Peri Moretz, Police Chief Dana Crawford, Planning and Inspections Director Bill Bailey, Assistant Fire Chief Mike Teague, Public Works Director Blake Brown and Public Utilities Director Rick Miller.

TENTATIVE AGENDA ADOPTION

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

1. Addition of Item to Closed Session - Legal Advice regarding Modification of Conditional Zoning Permit.

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

VOTE: Aye-All
Nay-None

CONSENT AGENDA ADOPTION

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

- March 2, 2011 - Special Meeting
- March 10, 2011 - Special Meeting
- March 15/17, 2011 - Regular Meetings
- March 21, 2011 - Special Meeting
- March 28, 2011 - Special Meeting
- March 29, 2011 - Special Meeting
- March 30, 2011 - Special Meeting

Tax Releases & Refunds: March 2011

**TAX REFUNDS
MARCH 2011**

Taxpayer	Year	Amount	Description
CAB EAST LLC	2010	62.49	TURN IN TAG
CASPER, MEREDITH LEIGH	2010	5.20	TURN IN TAG
BEVILLE, PATRICK ALLEN	2010	3.11	TURN IN TAG
		70.80	

TAX RELEASES

Taxpayer	Year	Amount	Description

HORINE, LAWRENCE E & MARY	2010	73.22	DOUBLE BILLED
JONI WEBB PETSCHAUER LIVING TRUST PETSCHAUER, JONI WEBB	2010	48.48	SOLD VEHICLE
FLYNT, STEFANIE DAWN FLYNT, GUY RICHARD	2010	11.51	ADJ FOR BILL OF SALE
TAYLOR, KENNETH BRYAN	2010	1.85	TURN IN TAG
MCGUIRE, TERESA ANN	2010	34.71	INCORRECT SITUS
YATES, HENRY PERRY JR & ANNE	2010	3.70	TURN IN TAG
HANS J VAN HEULE DC PA	2010	344.99	BUSINESS WAS SOLD
M.R. ENGLERT ENT INC.	2010	38.48	INCORRECT SITUS
GRIMES, MARIE M	2002	29.25	SOLD IN 2000
		586.19	

Adoption of Code Amendment - Chapter 92: Fire Prevention.

§ 92.58 SERVICE AND PERMIT FEE SCHEDULE.

SERVICE AND PERMIT FEE SCHEDULE

Special User Permit for Special Event or Time Period Fees

Special Event or Time Period	Fee
Fireworks for public display	\$50.00
Tents or air structures	20.00

SERVICE AND PERMIT FEE SCHEDULE

Temporary kiosks or displays for merchandising	\$10.00
Insecticide fogging or fumigation	20.00
Blasting permits (explosives)	
90 days	50.00
48 hours	20.00
Special assemblies such as gun shows, crafts shows, etc.	20.00
Any other special function requiring Fire Prevention Bureau inspection and approval	20.00

Special Tests, Inspections and Services Fees

<i>Special Test, Inspection or Service</i>	<i>Fee</i>
Fire flow test	\$50.00 100.00
Copies of fire reports	2.00
Sprinkler certification test (existing systems)	20.00
Fire alarm testing (existing systems)	20.00

Standpipe certification test (existing systems)	20.00
Grease removal test (existing systems)	20.00
Fixed fire suppression systems (existing systems)	20.00
Day care inspection (other than annual user permit)	20.00
Annual inspection permit	30.00
Annual inspection permit (multi-tenant up to two buildings)	40.00
Multi-tenant inspection (three or more buildings)	50.00
Occupancy permit inspection (ABC)	20.00
Certificate of occupancy inspections	20.00
Underground storage tanks	
Removal (per tank)	50.00
New installations (per tank)	50.00

SERVICE AND PERMIT FEE SCHEDULE

Hydrant installations (private contractors only)	30.00
New sprinkler systems (per square feet)	.01
Sprinkler renovations	20.00
Standpipes	20.00
New alarm systems	50.00
Alarm system renovations	20.00
Fixed fire suppression systems	50.00
Renovations to these systems	20.00
Reinspection (per visit)	20.00
Any other inspection required or requested (minimum charge)	20.00

(Am. Ord. passed 3-17-05)

§ 92.59 APPARATUS FEE SCHEDULE.

APPARATUS FEE SCHEDULE

Class A engine	\$ 100.00 150.00
Tower Aerial	200.00
Tanker	50.00 75.00
Squad	100.00 150.00
Utility service vehicle	50.00
Car/pick up	25.00
Haz-Mat trailer (per Watauga County)	200.00

Adoption of Watauga County’s Analysis of Impediments to Fair Housing. **(permanently on file in the April 19, 2011 Boone Town Council packet.)**

Adoption of Sealing of 2010 Closed Session Minutes.

Approval of Encroachment Agreement - Art of Oil

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made and entered into this the 19th day of April, 2011, by and between the TOWN OF BOONE, party of the first part; and Meredith Whitfield dba Art of Oil, 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 818 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 part expressly waives all claims of liability or responsibility against the party of the first part 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.

VOTE:Aye-All

Nay-None

DISCUSSION AND ACTION ON TABLE OF PERMITTED USES

Council member Mason suggested that Council plan to discuss the table of permitted uses at a regular Council meeting. Council member Mason suggested taking the first half hour of the first regular Council meeting to discuss the Table of Permitted Uses with two members of the Planning Commission. Council members Ball and Leigh volunteered to attend the May 9, 2011 Planning Commission to keep dialogue flowing between the two boards. On a motion by Council member Mason, seconded by Council member Ball, Council moved to add as an agenda item “**Discussion of Table of Permitted Uses,**” to request that two Planning Commission members attend the May 19, 2011 Town Council meeting, and to ask that two members of Council attend the monthly Planning Commission meeting until such time as the Table of Permitted Uses is completely updated.

VOTE:Aye-All

Nay-None

SCHEDULING OF SPRING QUARTERLY PUBLIC HEARING ZONING MAP AMENDMENTS

Planning and Inspections Director Bill Bailey presented one zoning map amendment for scheduling at the Spring Quarterly Public Hearing. The map amendment, from Watauga County, is to modify a conditional district zoning plan to include an alpine tower and indoor training facility for baseball and softball. On a motion by Council member Brantz, seconded by Council member Phillips, Council moved to send Case 20110133 - Watauga County to the Spring Quarterly Public Hearing scheduled for May 2, 2011.

VOTE:Aye-All

Nay-None

PRESENTATION OF PLANNING & INSPECTIONS MONTHLY REPORT

Planning and Inspections Director Bill Bailey presented the Planning and Inspections Monthly Report (**permanently on file in the April 2011 Town Council Packet.**)

APPOINTMENT OF ABC BOARD CHAIR

Mayor Clawson opened the floor for nominations. Council member Phillips nominated Ron Holste. Council member Leigh nominated Pat Wilkie. The following votes were cast:

Ron Holste: 3 (Brantz, Mason, Phillips)

Pat Wilkie: 2 (Ball, Leigh)

APPROVAL OF NEIGHBORHOOD CONSERVATION DISTRICT PARKING STICKERS

Planning and Inspection Director Bill Bailey said this formal action will confirm discussion made at the recent Planning Retreat regarding a five dollar fee for neighborhood conservation parking stickers. On a motion by Council member Brantz, seconded by Council member Mason, Council moved to adopt a \$5 fee for the neighborhood conservation district parking stickers.

VOTE: Aye-All

Nay-None

ADOPTION OF WATER AND SEWER CODE AMENDMENT

Town Attorney Sam Furgiuele explained that over the past five years staff has experienced problems with the current language of the code. Mr. Furgiuele hoped that the amendments will adequately define who an applicant is and streamline an appeal process. Council discussed at length why an applicant must apply in person for water and/or sewer service. On a motion by Council member Brantz, seconded by Council member Ball, Council moved to adopt the following water and sewer code amendments:

ARTICLE III

WATER AND SEWER SYSTEM REGULATIONS

Section 3-1. Application for Service and Payment of Initial Fees and Deposits.

- A. Water or sewer service shall only be supplied to a person who has fully completed an application for service and who has met all other requirements of the Town for service, including the payment of such fees and deposits as may be required.
- B. Applicants for service shall apply, in person, at the designated office of the Town. All applications for service must be made in the name of a natural person or other legal entity. In the case of legal entities, such as corporations, limited liability companies, and general partnerships, the applicant must be duly registered to do business in the State of North Carolina and be in good standing with the North Carolina Secretary of State. Any application for service by an entity other than a natural person must be personally guaranteed by a natural person residing in Watauga County, North Carolina, or the applicant must pay a deposit twice the normal deposit for service of the kind applied for, based on the rates established in Appendix "A" hereto.
- C. Any person filing an application for service must provide satisfactory proof of identity, and if filing an application on behalf of another person or non-human legal entity, must provide the Town with proof that the applicant is authorized to establish an account in the

name of the entity. In addition, the applicant must provide satisfactory evidence, such as, but not limited to, a tax bill, deed or lease, that the entity in whose name the account is established is either the owner of the property in question or has the legal right to possession of the property.

- D. An applicant for water or sewer service for property not previously provided water and/or sewer service by the Town, or where the use of the property has changed, must pay all required availability fees and tap-on fees before service will be provided.
 - 1. Availability fees shall be calculated based upon the published availability fees then in effect at the time a building permit and/or zoning permit is issued, whichever is later, plus additional charges to reflect actual time and materials involved in the provision of services, including the cost of installing any needed lines or meters, which must be paid before service can be initiated.
 - 2. No applicant may be approved by any Town Department for occupancy of the property in question until all required availability fees have been paid.
- E. The Town may reject any application for service which involves excessive service cost, or which may affect the supply of service to other customers, or for other good and sufficient reason.
- F. The Town may reject any application for service when the applicant is delinquent in the payment of either water or sewer bills or associated fees incurred for service previously supplied by the Town at any location. Furthermore, when the owner of the premises has received water or sewer service and has not paid for the same, the Town shall not be required to provide service to anyone that premises until all delinquent water or sewer bills, or associated fees have been paid.
- G. The Town shall refuse service if the customer's lines or piping are installed in such manner that they may not prevent cross-connections or backflow.
- H. The Town of Boone will only provide service outside the corporate limits of the Town to new applicants in accordance with Section 6-6 of this Ordinance and until its expiration, Ordinance 11-01, as amended.

Section 3-2. Classification of Service.

- A. All services are classified under two categories, residential and commercial. Schools and churches shall be classified as commercial users.
 - 1. Residential service shall be service to any residential customer or buildings with a meter size up to 1".
 - 2. Commercial service shall be service to any non-residential customer or building regardless of meter size, or to any single family or multi-family residential property with a meter size greater than 1".

Section 3-3. Rate Schedule and Deposits.

- A. All customers will be charged a deposit and billed at the rates currently in effect and approved by the Town Council of Boone. Said rates and deposits are subject to change at any time.

- B. The schedule for deposits and monthly service rates is attached hereto as Appendix A.
- C. A property owner who has a water and/or sewer account with the Town of Boone may sign a “Waiver of Deposit and Personal Guarantee” to establish residential service without payment of a deposit if said property owner has had an account with the Town for at least two years and has timely paid the bill every month for the previous 24 months. To be eligible to sign a “Waiver,” an applicant must provide satisfactory proof of identity, and if acting on behalf of another person or non-human legal entity, the applicant must also provide the Town with proof that the applicant is authorized to act in the name of the other person or entity. In addition, the applicant must provide satisfactory evidence, such as, but not limited to, a tax bill, deed or lease, that the person or entity in whose name the person is acting is the owner of the property in question. By signing a Waiver of Deposit and Personal Guarantee, such property owner authorizes the Administrator to add to his account any unpaid, past due charges incurred by the user of the residential service. By signing the “Waiver of Deposit and Personal Guarantee,” the property owner/guarantor agrees that in the event that the the user of the residential service fails to pay any bill in full when due, the delinquent account balance owed to the Town will be automatically added to the guarantor’s account.
- D. A separate deposit is required for each meter installed.

Section 3-4. Minimum Monthly Charges.

- A. A minimum charge, as provided in the rate schedule, shall be assessed for each meter installed.
- B. Service furnished for a given property shall be used on that property only.
- C. Each customer’s service must be separately metered at a single delivery and metering point. Each commercial unit shall have a separate meter. All commercial use, including storerooms and stalls for business purposes, shall be metered separately from any residential use, whether both uses are in existence at the time of the application for service or are subsequently commenced.

Section 3-5. Connection of Service by Town.

- A. The Town shall only be required to run a service line from the Town’s distribution line to the customer’s nearest property line if the property line is adjacent to a public right of way. When the customer’s nearest property line is not adjacent to a public right of way, the customer is solely responsible for installing and maintaining all piping and other required facilities, and for acquiring and providing proof of all necessary easements from the customer’s property to the appropriate public right of way. In every case it is the customer’s responsibility to connect and maintain all piping and facilities from the meter to the customer’s plumbing system.
- B. Irrespective of paragraph A, if the customer provides all needed easements in favor of the Town, the Town may install its meter at the property line, or if mutually agreed upon, on the customer’s property. However, the Town shall have no responsibility to install a meter inside the property line or to extend or maintain its lines across the customer’s property.
- C. When the Town installs two or more meters on the same property for different customers, they shall be closely grouped, but shall be labeled so as to identify to which customer each meter applies.

- D. The Town is not responsible for inspecting the customer's piping or plumbing apparatus and facilities and is not responsible for the condition of that piping, plumbing or facilities. A customer's piping or plumbing apparatus and facilities consists of all piping or apparatus from the customer's side of the meter on the customer's property or on property the customer has crossed.
- E. The Town is not liable for damage of any kind whatsoever resulting from water or the use of water on the customer's premises, unless such damage results directly from negligence on the part of the Town and is covered by the Town's liability insurance coverage. The Town is not responsible for damage done by or resulting from any defect in the piping, facilities, fixtures or appliances on the customer's premises. The Town is not responsible for damage caused, wholly or in part, by the negligence of the customer or third parties, or damage caused by forces beyond the control of the Town.
- F. To the extent practicable, the Town will notify the customer of any anticipated interruption of service, but any failure on the part of the Town to give such notice will not create any liability on the part of the Town.

Section 3-6. Availability Fee.

A. Policy Statement.

Each new demand on the Town's water and/or sewer system uses up a portion of the remaining capacity of the Town's water and/or sewer plants. Eventually these new demands create the need to build additional plant capacity. This section codifies the Town's policy that customers who create additional demands for water and/or sewer service should fund the cost of constructing additional plant capacity required to meet these demands.

B. Applicability.

The Availability Fee shall be paid:

1. By all new customers to the Town's water and/or sewer system that place an additional demand on said system; and
2. By all existing customers to the Town's water and/or sewer system that place an additional demand on said system through an expansion or a modification of an existing structure or use.

C. Measurement of New Demand.

The new demand placed on the system by the customer shall be determined according to the schedule set forth in Appendix "B."

D. Determination of the Availability Fee.

1. The amount of the Availability Fee for the water system shall be determined by multiplying the customer's new demand in the terms of the measured daily flow rate by the rate currently in effect per gallon.
2. The amount of the Availability Fee for the sewer system shall be determined by multiplying the customer's new demand in terms of the measured daily flow rate by the rate currently in effect per gallon.

E. Capital Reserve Fund.

All Availability Fees collected by the Town from customers that place additional demands on the Town's water or sewer system shall be placed in the Town's Water Reserve Fund and shall be earmarked for the construction of additional system capacity.

F. Transferability.

The Availability Fee attaches to the real property receiving water and/or sewer service. The Availability Fee paid by the customer automatically transfers to the new owner at the time the property is sold or transferred. The Availability Fee cannot be transferred to a different lot except when an owner combines adjoining lots for a single residential or commercial purpose.

G. Credit.

Any property owner who makes an offsite improvement to the Town's water and/or sewer system infrastructure after March 27, 1997, shall be entitled to a credit toward that customer's availability fee according to the conditions set forth below.

1. The credit only applies to "offsite" water and sewer infrastructure improvements, not "onsite" improvements. The terms "onsite improvements" means those improvements made on the owner's property.
2. The credit only applies to the property for which the offsite improvements are made. The credit cannot be transferred to any other property.
3. This credit shall expire and become null and void three (3) years after the completion of the offsite improvements.
4. The property owner may be granted a maximum credit of 50% for every dollar spent on offsite improvements to be applied towards that customer's availability fee. This credit is based upon the customer's investment in the Town's water and/or sewer system infrastructure calculated at the market rate in effect at time of the investment. Expenses the customer is entitled to include within this credit are actual labor and material costs. However, the customer shall not include secondary or indirect costs such as engineering fees. The Town will not give a credit for more than the existing market rate for labor and materials.

5. It shall be the responsibility of the customer to provide the Town with all necessary documentation to prove the actual expenses incurred in making the offsite improvements.
6. The availability fee credit will be based upon the availability fee rate in effect at the time an application for a credit is submitted.
7. In no event shall any payment be made from the Town to the customer for this credit.

H. Variance.

A variance from the provisions of this section (Availability Fee) may be granted by the Town Manager or his designee whenever strict enforcement of said provisions would result in a hardship to the Customer, and if by granting the variance the intent of this section will be satisfied. A full or partial variance may be granted only when all of the following requirements are met:

1. The party requesting the Variance is an existing commercial customer of the Town and has been in business since February 25, 1988 or has paid an availability Fee.
2. The commercial Customer requesting the Variance is relocating the business to another location within the Town of Boone.
3. The demand on the Town's water and/or sewer system at the commercial customer's previous location will be substantially reduced or will be eliminated, causing the net effect of the move to have less impact on water and/or sewer use than would the opening of a similar new business.
4. The intent of this section will be satisfied by the granting of the variance.
5. The owner of the property at the customer's previous location must give the Town a written Release releasing all right, title and interest in the Availability Fee for which a variance is granted.
6. All of the conditions set forth herein must be satisfied within two (2) years after the customer closes its business at its previous location.
7. The credit given shall not be greater than the Availability Fee actually paid by the customer.

In the event a variance is granted, the dollar value of the credit shall be calculated by (a) using the customer's availability fee paid at the previous location or (b) using the customer's actual usage at the previous location. Further, if the customer disagrees with the manner in which the Town calculates the demand at the new location, the customer may request that the Town measure the actual usage at the new location for a 24 month

period, and re-calculate the Availability Fee based upon an average of the three (3) highest months during that 24 month period. This re-calculation may result in a refund to the customer or in a payment to the Town.

I. Low Income Housing.

The Town will grant a credit of 50% of the availability fee for the construction of low income housing when the construction is undertaken by a 501(C)(3) non-profit corporation, and the housing will be occupied by persons or families with incomes at or below 60% of the area median income, and there are contractual limitations on the free transferability of property, if it is to be owned, or legal limitations on the conversion of the housing to use by persons or families with incomes higher than 60% of the area median income, if it is to be leased so that at a minimum the development or construction may only be used to provide housing to persons or families with incomes as described for a period of at least ten years.

Section 3-7. Customer's Responsibilities.

- A. A customer shall arrange for piping on the premises to be installed so that the connections to the Town's lines or mains are conveniently located.
- B. When a meter is installed on the premises of a customer, the customer shall provide a suitable place to locate the meter so that it is unobstructed and accessible at all times to the meter reader.
- C. The customer shall furnish and maintain a private cutoff valve on the customer's side of the meter.
- D. The customer shall maintain all Town piping, apparatus, and facilities within the customer's control in proper condition.
- E. The customer shall protect any Town property placed on the customer's property and shall only permit access to it by authorized representatives of the Town.
- F. The customer shall provide the Town's representatives access to the customer's property, as necessary for the Town to maintain the Town's water and/or sewer lines, to install or remove Town property, to read or test the customer's water and/or sewer meter(s), and for any other purpose reasonably necessary for the Town to efficiently provide service to the customer, and to maintain and protect its system.
- G. If so requested, every customer shall grant or convey to the Town a perpetual easement and right of way across the customer's property wherever said perpetual easement and right of way is reasonably needed by the Town to effectively furnish and maintain service to the customer. The refusal of a customer or applicant for service to grant or convey the Town an easement is a basis for denying or discontinuing service to a customer.
- H. The customer is responsible for keeping the Town informed at all times of the customer's current billing address.
- I. In the event that any loss or damage to the property of the Town is caused by the

customer, the customer's invitees, or the customer's agents or employees, or in the event the negligence or any wrongful act by the customer, the customer's invitees or the customer's agents or employees results in any accident or injury to persons or property for which the Town is held responsible, the customer must pay the cost of the necessary repairs or replacements to the Town; and the customer shall assume any liability otherwise resulting from the customer's wrongful actions or omissions. The actual amount of such loss or damage and/or the actual cost to the Town of repairs shall be added to the customer's bill; and if not timely paid, service may be discontinued by the Town.

- J. By applying for and accepting service from the Town, the customer agrees to hold the Town harmless from liability for any damages that may occur due to a temporary discontinuance or interruption of service by the Town for emergency reasons, whether or not the customer receives prior notification of the discontinuance or interruption.

Section 3-8. Meter Reading - Billing - Collecting.

- A. Meters will be read, weather and other considerations permitting, and bills shall be rendered monthly, but the Town reserves the right to vary the dates or length of period covered.
- B. Charges for water and sewer will be figured in accordance with the Town's published rate schedule then in effect, attached as Attachment "A," based on the amount of water consumed or estimated, and actual or estimated sewer use for the period covered by the meter readings.
- C. Charges for service commences when the meter is installed and the connection made, whether any water is immediately used or not.
- D. A separate bill, including appropriate base charges, will be issued for each separate meter even if more than one meter is in the same customer's name.
- E. Bills are due when rendered and become delinquent twenty (20) days following the date of the bill. Bills not paid prior to the delinquent date are subject to the late fee currently in effect and subject the customer to an immediate termination of service.
- F. A claimed failure to receive a bill does not prevent a bill from becoming delinquent or relieve the customer from timely payment, late charges, or the other Town remedies contained in this Article.
- G. At the request of a customer and deposit of the actual cost of testing, the Town will test a customer's meter. If the meter is found to register use more than ten per cent (10%) higher than the correct volume, no charge for the testing will be made, and the customer's deposit for the test will be refunded. If testing indicates that the meter registers use within ten percent (10%) higher of the actual use or less, the deposit shall be retained.
- H. If the seal of a meter is broken, other than by the Town's representative, or if the meter fails to register correctly or is stopped for any cause, the customer shall be required to pay a bill for each period for which no reliable meter reading was made in an amount estimated from the record of the customer's previous twelve bills for which use was reliably measured, if available, and/or from other appropriate data.

Section 3-9. Involuntary Discontinuance of Service.

- A. The Town reserves the right to discontinue or interrupt service temporarily to make emergency repairs, due to an insufficient supply of water or treatment capacity, or due to any other cause which threatens the safe and effective delivery of service to the Town's customers. In such event, the Town will make a good faith effort, as practical, to notify affected customers before service is discontinued or interrupted.
- B. The Town will discontinue residential service in which the water and/or sewer bill is delinquent. The Town may lock or remove the meter any time service is discontinued.
- C. The Town will discontinue service to any commercial establishment in which the water and sewer bill is delinquent. The Town may lock or remove the meter any time service is discontinued.
- D. In addition to discontinuance of service for non-payment, the Town may suspend service to prevent fraud or abuse by a customer, or for any violation by the customer to comply with the provisions of this Code.
- E. The Town reserves the right, upon action by the Town Council, to discontinue its water and/or sewer service to any customer whose property is outside the corporate limits of the Town of Boone, upon giving a minimum sixty (60) day written notice of its intent to terminate water and/or sewer service.
- F. Upon discontinuance of service for nonpayment, any deposit made by the customer on the unpaid account or any other account shall be applied by the Town to the account relating to the discontinued service. If the deposit on the account in question exceeds the arrearage, any surplus will be refunded to the customer. If the deposit(s) is not sufficient to pay the arrearage in full, the Town may proceed to collect the balance in the usual way provided by law for the collection of debts. If a deposit from a second account is applied to the delinquency on an unpaid account, the customer will be required to supplement the deposit on the second account to the level required by Attachment "A" in order to maintain service on the second account.

Section 3-10. Procedures for Discontinuation of Service and Customer's Appeal Rights.

- A. Before the Town cuts off a customer's water or sewer service, the Town will send the customer a notice explaining the basis for the action, the date service will be terminated, and the customer's appeal rights. Said notice may be included in the monthly bill for water or sewer service.
- B. Within five (5) days of the date of mailing of a disconnection notice, or within ten (10) days of the date of mailing of the bill containing the stated disconnection information if the information is included with the normal monthly bill, the customer may request in writing a hearing to either dispute the circumstances for which disconnection is threatened, or if the customer believes the bill is in error, to dispute the amount of the bill.
- C. If the customer files a timely request for a hearing, prior to disconnecting service, the Town will conduct a hearing on the request, presided over by a Town employee, as designated by the Town Manager, who was not involved in the original decision to

discontinue service.

- D. The hearing will be conducted within three business days of the Town's receipt of the request, and may be held by telephone, or at the request of the customer and option of the Town, in person. The hearing may not be delayed in the case of non-payment of a bill or a dispute as to the amount of a bill unless the customer pays the Town a deposit equal to the amount of the disputed bill.
- E. At the hearing, the customer will be given an opportunity to present the facts and other matters which the customer maintains should prevent the disconnection of service. The customer may be represented by an attorney, shall have the opportunity to examine any documents relied upon by the Town in disconnecting service, and shall be given the opportunity to cross-examine any witnesses who testify against the customer. Within twenty-four hours following the hearing, the Town employee conducting the hearing will issue a decision affirming the action by the Town, reversing the action by the Town or modifying the action by the Town by allowing any past due amount to be paid in monthly payments totally no more than four. The decision may be communicated to the customer verbally or in writing, but if verbally, will be followed within five days by a written communication setting out the decision.
- F. The decision by the Town employee conducting the hearing shall constitute the final decision by the Town.
 - 1. If the decision upholds the Town's determination that facts exist which justify the discontinuation of service, unless the customer makes immediate payment of all amounts for service incurred through the date of the decision, service may be disconnected as soon as the decision is made and an attempt to communicate the decision to the customer is made by contacting the customer at the telephone number or e-mail address provided by the customer for that purpose at the hearing.
 - 2. If the employee conducting the hearing concludes that the discontinuation of service is justified, but circumstances beyond the control of the customer exist which make unfair a demand for immediate full payment of all amounts for service incurred through the date of the decision and that the customer should be entitled to pay the delinquent or disputed amount in monthly payments totaling no more than four, should any such monthly payment be themselves delinquent, discontinuation of service may occur without further process.
 - 3. If the employee conducting the hearing determines that the Town's action or charges were in error, the customer's account shall be adjusted appropriately.
- G. Pursuit of the aforesaid appeal shall not prevent a customer from seeking an adjustment in a bill by the Town Manager or Town Council in amounts authorized by this ordinance, but such requests shall not stay a discontinuation of services unless they are requested prior to the hearing provided in this section.

Section 3-11. Service Termination.

Disconnection of water or sewer service shall be effected only by authorized agents of the Town or by persons specifically authorized to do so.

Section 3-12. Reinstatement of Service.

- A. No person other than a duly authorized agent or employee of the Town may cause or allow a reconnection of water and/or sewer service.
- B. Before service will be reinstated after it has been disconnected for non-payment of outstanding charges, the customer shall be required to make full payment of all charges owing the Town. In addition, the customer shall also increase the deposit with the Town to an amount equal to two times the average monthly bill in the previous twelve months, or the average monthly bill for the full period of service if service has been in effect for less than twelve months. If a customer with a delinquent account files for bankruptcy protection and duly notifies the Town of such filing, pending final action by the bankruptcy court, no demand will be made for payment of delinquencies incurred prior to the bankruptcy filing. However, any delinquencies for service provided after the bankruptcy filing shall result in a discontinuation of service, and the Town shall require a deposit equal to two times the average monthly bill in the previous twelve months, or the average monthly bill for the full period of service if service has been in effect for less than twelve months, before service will be reinstated.
- C. Service will not be reinstated after it has been disconnected for fraud or misconduct on the part of the customer, such as engaging in one or more of the acts identified in Section 3-15, without the approval of the Town Council.
- D. Service will not be reinstated until the customer pays the reconnection fee authorized in Exhibit "A."

Section 3-13. Termination of Service at Customer's Request.

- A. A request that service be terminated, for a change in occupancy or other reason, shall be submitted to the Town Utility Billing and Collections, in writing or in person, at least three days before the requested termination date.
- B. The customer shall be responsible for all water consumed and sewer usage, and for the pro-rated monthly service charge up to the time service is terminated, or until three days following receipt of the request for termination, whichever occurs sooner.
- C. When all charges for service and usage are paid in full, the customer's deposit shall be refunded in due course.
- D. If all charges for service and usage are not paid in full, the customer's deposit may be applied, to the extent needed, toward those charges.

Section 3-14. Complaints.

Any customer who disputes the amount of a deposit refund shall be entitled to a hearing, following the procedures outlined in Section 3-10.

Section 3-15. Prohibited Activities.

- A. Neither a customer nor any other person shall:
1. Supply or sell water from the Town's system to other persons or carry water away from any hydrant, public water fountain, or other such public outlet without specific authorization from the Town;
 2. Manipulate, tamper with or harm in any manner whatsoever any water line, sewer line, main or appurtenance or any other part of the water or sewer system, including, but not limited to, any testing or inspection device used to measure the character or concentration of wastes discharged into the sanitary sewer system;
 3. Tamper with a meter so as to alter the true reading for the amount of water consumed;
 4. Attach, cause to be attached, or allow to be attached, any connection to the Town's water or sewer line; at a location where use is not measured by a meter; and
 5. Intentionally make any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this Chapter.

Section 3-16. Collection of Damages due the Town; Other Remedies.

- A. The Town may initiate collection actions to recover unpaid charges for service, damages for services improperly obtained, damage for loss or injury to any personal or real property utilized in the treatment or delivery of water or sewer services to the public, or for any other reason authorized by the Town Council.
- B. Upon approval of the Town Council, the Town may initiate a civil action to recover unpaid charges for service, damages for services improperly obtained, damage for loss or injury to any personal or real property utilized in the treatment or delivery of water or sewer services to the public, or for any other reason authorized by the Town Council. In such action, the Town is authorized to seek the recovery of its costs and expenses in pursuing such civil action, including its reasonable attorney's fees.
- C. The Town may initiate criminal prosecution against any person who tampers with a meter or other measuring device, or commits any other criminal act relating to the Town's water and/or sewer system.

Section 3-17. Abridgment or Modification of Rules.

- A. No promise, agreement or representation of any employee of the Town shall be binding upon the Town except as it shall have been agreed upon in writing, signed and accepted by the Town Manager.
- B. No modification of rates or any of the rules and regulations shall be made by any agent of the Town, except as authorized by the Town Council.

...

Section 4-2. Application of Article III to Sewer Service.

All provisions of Article III regarding water service also apply to sewer service, unless contravened by this Article, in which case, the provisions of Article IV control. However, the Town of Boone will not accept any new accounts for private water system discharge into its sanitary sewer system unless specifically authorized by the Town Council.

...

Section 4-20. Sewer Bills for Discharge from Private Water Systems.

- A. Sewer bills for all private water systems shall be computed by either (a) meter or (b) the owner may accept the NRCD flow chart used to figure water and sewer availability fees as a means of obtaining discharge averages.
- B. All private water systems must, within sixty (60) days of notice, inform the Town as to which method of measurement they wish the Town to use for their sewer bill. If at the end of sixty (60) days, the Town has not heard from the owner, the service will be disconnected from the Town’s system.

VOTE: Aye-All
Nay-None

ADOPTION OF RESOLUTION - CLARIFICATION OF MSD BOUNDARY

Town Attorney Sam Furgiuele said this resolution will clarify the MSD boundary. After little discussion, on a motion by Council member Ball, seconded by Council member Brantz, Council moved to adopt the following resolution:

RESOLUTION

WHEREAS, the Town of Boone (hereafter, “the Town”) has established a municipal service district (hereafter “MSD”) in its downtown; and

WHEREAS, the Town is a member of the North Carolina Main Street Program and may in the future participate and subscribe to other associations and organizations whose purposes include the preservation and revitalization of downtown; and

WHEREAS, the Town is committed to preservation of the vitality of the downtown business district and the revitalization of its downtown; and

WHEREAS, in recent years confusion has arisen, partly deriving from the variety of nomenclature used to denominate or designate the downtown, and partly as the result of varying perceptions among elected officials, contracting partners, members of the public and others regarding the boundaries of the downtown; and

WHEREAS, the downtown has been identified by such labels as “Downtown Boone,” “Traditional Downtown Boone,” “Historic Boone,” “Historic Downtown,” “Uptown,” “Downtown,” “King Street,” and “Main Street,” among others; and

WHEREAS, in order to eliminate confusion and better define the target area for all Town purposes and efforts, such as downtown revitalization and preservation, the Town Council of the

Town of Boone wishes to designate and identify the location of the downtown and thus fix its boundaries;

NOW, THEREFORE, BE IT RESOLVED that by whatever name by which it is referred and for whatever Town purposes which may currently or in the future exist, including but not limited to the Town's participation in the Main Street Program or other downtown revitalization program, the Town's contract with the Downtown Boone Development Association or other non-profit organization, the Town's fundraising efforts for downtown revitalization, or the Town's planning for the future improvement, growth, development or preservation of the downtown, the area and boundaries of downtown Boone shall be considered identical to the area and boundaries of the MSD. Hereafter, said area and boundaries will be considered to have changed only as the area or boundaries of the MSD are changed.

ADOPTED this the 19th day of April, 2011.

ATTEST:

Loretta Clawson, Mayor
Town of Boone

Frieda Van Allen
Clerk to the Board

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 159)

VOTE: Aye-All
Nay-None

APPROVAL OF CODE AMENDMENT - CHAPTER 110: TAXICABS

Town Attorney Sam Furgiuele explained that this amendment will expand the definition of taxi. After little discussion, on a motion by Council member Mason, seconded by Council member Brantz, Council moved to adopt the following code amendment:

CHAPTER 110: TAXICABS AND OTHER VEHICLES FOR HIRE

Section

- 110.01 Definition
- 110.02 Permit required
- 110.03 Application
- 110.04 Investigation
- 110.05 Conditions of permit; issuance and fee
- 110.06 Revocation
- 110.07 Display of permit, schedule of fares, driver's photograph
- 110.08 Signs identifying vehicle as taxi
- 110.09 Nontransferability of permit

§ 110.01 DEFINITIONS.

TAXICAB when used in this chapter shall be defined as any motor vehicle seating nine or fewer passengers operated upon any street or highway on call or on demand, accepting or soliciting passengers indiscriminately for hire between such points along streets or highways as may be directed by the passenger so being transported.

OPERATOR OF A BUSINESS INVOLVING VEHICLES FOR HIRE when used in this chapter shall mean an owner or manager of a business, other than one all of whose vehicles are regulated under N.C. Gen. Stat. Chapter 62, operated by a Regional Transportation Authority created or operating under N.C. Gen. Stat. Chapter 160A, Articles 26 or 27, or any transportation service operated by a governmental entity, which involves one or more vehicles for hire operated at any

time within the corporate limits of the Town, including a taxicab business, whether or not the individual actually drives such vehicle, and whether or not the business is engaged in other activities. If such business is owned by a corporation, it shall be every person given corporate authority for making decisions regarding the day to day functioning of the business. If such business is owned by a limited liability company, it shall be every member-manager of the limited liability company.

VEHICLE FOR HIRE when used in this chapter shall mean any motor vehicle, including but not limited to a taxicab, accepting or soliciting one or more passengers for hire between any two locations, during at least a portion of which it is operated upon a public street or highway, other than those vehicles regulated under N.C. Gen. Stat. Chapter 62, vehicles owned and operated by a Regional Transportation Authority created or operating under N.C. Gen. Stat. Chapter 160A, Articles 26 or 27, or vehicles owned and operated by a governmental entity.

§ 110.02 PERMIT REQUIRED.

Every operator of a business involving vehicles for hire is required to obtain a permit from the Town prior to operating said business. Every driver of a vehicle for hire, including a taxicab, operating over any public street within the corporate limits of the town is required to obtain a permit from the town prior to engaging in said activity.
Penalty, see § 10.99

§ 110.03 APPLICATION.

The application required of each applicant to operate a business involving vehicles for hire or to drive a vehicle of hire, including a taxicab, shall be made upon a form furnished by the town for such purpose and shall, among other things, require the full name, any other name by which the person has been known, complete physical and mailing address, physical condition, physical description, full name and contact information for every former employer within the last ten years, court record, chauffeur's license number, if applicable, and such other identifying information as may be needed to conduct a State or national background check. Such application shall be signed and sworn to by the applicant in front of a North Carolina Notary Public. Each applicant shall further appear at the office of the Police Department for the purpose of having his or her fingerprints taken and photograph made, both of which shall constitute a part of the application. Each applicant shall be required to sign a form consenting to the check of his criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories in order to conduct such check.

§ 110.04 INVESTIGATION.

The Chief of Police or his designee shall investigate the facts stated in each application, and in addition may subject such an applicant to a national criminal history background check, including through the use of FBI records. All information collected pursuant to the investigation shall be privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes. The applicant must pay the fee, if any, for any such background check. The Chief of Police or designee may also require an applicant to submit to a controlled substance examination for which the applicant must pay the actual costs. Following his investigation, the Chief of Police or his designee shall report his findings and recommendations to the Town Council, but any privileged or confidential information shall only be shared with the Town Council in a properly called closed session.

§ 110.05 CONDITIONS OF PERMIT; ISSUANCE AND FEE.

(A) The Town Council may refuse to issue the permit if it finds, as the result of information which it concludes is reliable, that the applicant:

- (1) Has been convicted of a felony against the State of North Carolina, or has been convicted of any offense against another state which would have been a felony if

committed in this North Carolina;

- (2) Has violated of any federal or State law relating to the use, possession, or sale of alcoholic beverages or narcotic or barbiturate drugs;
- (3) Is addicted to or an habitual user of alcoholic beverages or narcotic or barbiturate drugs;
- (4) Has violated any federal or State law relating to prostitution;
- (5) Is not a citizen of the United States or permanent resident alien;
- (6) Is in habitual violation of traffic laws or ordinances; or
- (7) Is not a careful and prudent driver.

This section, however, shall not prohibit the Town from issuing a permit to a person who, although not fully meeting each of the foregoing criteria, has otherwise demonstrated the ability to safely engage in the business of transporting passengers for hire, as demonstrated to the town Police Department and determined by the Town Council.

(B) If the Town Council approves the issuance of a permit to the applicant, no permit may be issued until the applicant:

- (1) Pays a fee in the amount of \$15.00;
- (2) Pays any other amounts due in connection with the investigation of the application;
- (3) If the applicant is the operator of a business involving vehicles for hire, shows that he has policies in place by which he will maintain control over each driver working in the business with respect to the fares to be charged and the drivers behavior while transporting passengers; and
- (4) Meets the following requirements, as applicable:
 - (a) If the applicant is an operator of a business involving taxicabs, files with the town proof of financial responsibility as required by G.S. § 20-280 maintained on all vehicles to be used for hire;
 - (b) If the applicant is a driver of a taxicab, files with the town proof of financial responsibility which meets the requirements of G.S. § 20-280 on each vehicle which the driver will operate;
 - (c) If the applicant is an operator of a business involving vehicles for hire other than taxicabs, files with the town a certificate of insurance from a carrier duly authorized to do business in the State of North Carolina, certifying that there is in effect a policy of liability insurance insuring the owner and operator of the business, his agents and employees while in the performance of their duties, against loss from any liability imposed by law for damages, including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident and arising out of the ownership, use or operation of such vehicles, to limits (exclusive of interests and costs) with respect to each such motor vehicle as follows: thirty thousand dollars (\$30,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, sixty thousand dollars (\$60,000) because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars (\$25,000) because of injury to or destruction of property of others in any one accident;
 - (d) If the applicant is a driver of a vehicle for hire other than a taxicab, files with the

town a certificate of insurance from a carrier duly authorized to do business in the State of North Carolina certifying that there is in effect a policy of liability insurance insuring him while in the performance of his duties, on each vehicle which he will operate, against loss from any liability imposed by law for damages ,including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident and arising out of the ownership, use or operation of such vehicles, to limits (exclusive of interests and costs) with respect to each such motor vehicle as follows: thirty thousand dollars (\$30,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, sixty thousand dollars (\$60,000) because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars (\$25,000) because of injury to or destruction of property of others in any one accident.

§ 110.06 REVOCATION.

(A) At any time after the issuance of a permit to any person to operate a business involving vehicles for hire or to drive a vehicle for hire, the Town Council may revoke such permit:

- (1) If the person holding such permit, or any driver employed by such person is convicted of a felony, or
- (2) The person holding such permit, or any driver employed by such person:
 - (a) Violates any federal or State statute relating to the use, possession or sale of intoxicating liquors;
 - (b) Violates any federal or State statute relating to the use, possession or sale of narcotic drugs;
 - (c) Repeatedly violates any traffic laws or ordinances;
 - (d) Violates any State or federal statute relating to prostitution;
 - (e) Becomes an habitual user of intoxicating liquors or narcotic drugs; or
 - (f) The operator of the business fails to maintain a policy of liability insurance as required by G.S. § 20-280 and this Chapter.

§ 110.07 DISPLAY OF PERMIT, SCHEDULE OF FARES, DRIVER'S PHOTOGRAPH.

All drivers and operators of businesses involving vehicles for hire shall prominently display in each vehicle for hire , so as to be visible to the passengers, the permit, the schedule of fares, and a photograph of the driver.

Penalty, see § 10.99

§ 110.08 SIGNS IDENTIFYING VEHICLE AS VEHICLE FOR HIRE OR TAXICAB.

Every person operating a business involving vehicles for hire or driving a vehicle for hire shall have permanent signs at conspicuous places on each taxicab or vehicle for hire showing that it is a taxicab or vehicle for hire.

Penalty, see § 10.99

§ 110.09 NON-TRANSFERABILITY OF PERMIT.

A permit issued under this Chapter is not transferable.

VOTE: Aye-All

Nay-None

DISCUSSION OF COMMERCIAL STREET SETBACKS

Town Attorney Sam Furgiuele said that Council discussed this issue briefly at the Planning Retreat and that staff needs direction from Council regarding its intentions. Council discussed at length the minimum and maximum setback, links to the type of roadway, and traditional zones. On a motion by Council member Mason, seconded by Council member Ball, Council moved to direct the Planning Staff to proceed with the development of commercial street setbacks that include minimums and maximums; to include some flexibility based on uses; and to link the height of buildings to street setbacks, the types of uses proposed, and the size of the corridors. It was proposed that staff should also regard secondary height allowed at the street setback but keep the interior setbacks, especially when related to R-1, R-2, R-4 and R-A zones. This action will generally try to force development toward the street, which will, in turn, make Boone more green and walkable.

VOTE:Aye-All

AWARDING OF BID - STORM DRAINAGE IMPROVEMENTS

Facilities Maintenance Supervisor Eric Gustaveson presented the bid minutes on the Delmar Street and Daniel Boone Drive stormwater project. Mr. Gustaveson said that Greene’s Construction is the low bidder at \$110,685. On a motion by Council member Ball, seconded by Council member Phillips, Council moved to award the bid to Greene’s Construction in the amount of \$110,685.

VOTE:Aye-All
Nay-None

ADOPTION OF TDA RELATED EXPENDITURES

Finance Director Amy Davis estimated that the Town will receive about \$375,000 next year from TDA funds. Council member Mason said those funds should be used toward tourism related expenditures. After little discussion, on a motion by Council member Mason, seconded by Council member Brantz, Council moved to adopt the following list of expenditures:

Tourism Supported Expenditures Budgeted for FY 2011/2012

- Community Appearance
- Downtown Coordinator
- Greenway Expansion
- Howard Street
- Jones House
- July 4th Celebration
- Maintenance - Greenway
- Seasonal Decorations
- Sidewalk Construction
- USPS King Street Building
- Watauga County Arts Council - Folklorist Position

TOTAL

VOTE:Aye-All
Nay-None

Mayor Clawson declared a break at 8:02 p.m. Council reconvened at 8:12 p.m.

SCHEDULING OF SPECIAL MEETINGS - BUDGET WORKSHOPS AND BUDGET PUBLIC HEARING

On a motion by Council member Ball, seconded by Council member Leigh, Council moved to schedule the budget workshops for Wednesday, June 8th from 12:30 p.m. until 8:00 p.m. for Thursday, June 9th from 9:00 a.m. until 5:00 p.m., and for Friday, June 10th if needed.

VOTE: Aye-All
Nay-None

On a motion by Council member Ball, seconded by Council member Phillips, Council moved to schedule the budget public hearing for Thursday, June 16th at 6:30 p.m.

VOTE: Aye-All
Nay-None

SCHEDULING OF SPECIAL MEETING - WATER USE COMMITTEE

On a motion by Council member Ball, seconded by Council member Mason, Council moved to schedule a Water Use Committee meeting for Monday, May 9th at 5:30 p.m.

VOTE: Aye-All
Nay-None

MONTHLY WATER USE STATUS REPORT

Public Utilities Director Rick Miller presented the monthly water-use status report. **(Permanently on file in the April 2011 Boone Town Council meeting packet.)**

APPROVAL OF BUDGET AMENDMENTS

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

DESCRIPTION	ACCOUNT#	TO:	FROM:
Pedestrian Planning Grant Funds	010-411-000-545101	\$45,000.	
NC DOT Pedestrian Planning Grant Funds	010-000-000-442100		\$31,500.
Appropriated Fund Balance	010-000-000-499900		13,500.
Overtime - Street Department	010-600-401-501201	\$8,000.	
Overtime - Fleet Maintenance	010-600-404-501201	10,000.	
Appropriated Fund Balance	010-000-000-499900		\$18,000.
Misc. Supplies - Street Department	010-600-401-519900	\$455.	
Maint. & Repairs-Vehicles Fire Department	010-500-350-525301	4,268.	
Misc. Revenue - General Fund	010-000-000-499900		\$4,723.
Powell Bill - Paving & Resurfacing	010-600-403-577401	\$14,268.	
State of NC - Powell Bill Funds	010-000-000-442100		\$14,268.

Capital Outlay of Land - Public Utilities	030-700-801-575021	\$4,389.	
Appropriated Fund Balance - Water & Sewer	030-000-000-499900		\$4,389.

VOTE: Aye-All
Nay-None

REQUESTED APPEARANCE - NELSON GARCIA

Mr. Nelson Garcia appeared before Council to request a taxi permit for his new business called Text N Taxi. Mr. Garcia said he would have only one taxi at the start. Police Chief Dana Crawford reported that Mr. Garcia is in compliance with all aspects of the taxi ordinance. On a motion by Council member Ball, seconded by Council member Phillips, Council moved to approve the taxi permit for Text N Taxi.

VOTE: Aye-All
Nay-None

REQUESTED APPEARANCE - JAMMIE PRICE

Dr. Jammie Price and Dr. Cameron Lippard appeared before Council to present a report on **Big Boxes and Living Wages**. Dr. Price and the ASU students in attendance summarized that Walmart employees do not earn enough money to survive in Watauga County. Dr. Price requested that Council consider adopting a living wage ordinance which would force Walmart and other businesses to provide higher wages in order for people to be able to reside in Watauga County. Dr. Cameron also presented a report on the lack of affordable housing in Watauga County. Council member Leigh commented that low wages in Watauga County are not just because of Walmart and suggested that a broader issue may be to blame. Council thanked both Dr. Price and Lippard and all the ASU students in attendance for bringing this matter before them.

REQUESTED APPEARANCE - ERIC WOOLRIDGE

Mr. Eric Woolridge, Recreation Planner for Watauga County, appeared before Council to present the Boone Area Outdoor Recreation Plan. Mr. Woolridge said his goal is to make Boone and Watauga County a premier outdoor recreation area. Mr. Woolridge said there are five areas in which the County and Town can collaborate on recreation projects. The projects are:

1. South Fork New River Greenway. Connect the Boone Greenway to Bamboo Road and the Brookshire Park.
2. Middle Fork New River Greenway . Link the Boone Greenway to the Middle Fork Greenway.
3. New River Paddle Trail: Boone Access. Install signage and kiosks.
4. Fishing. Explore trout stocking in the New River near the Boone Greenway and install a kids' fishing pier at the Winkler Creek Reservoir.
5. Disc Golf. Explore the development of a disc golf course at the Winkler Creek Reservoir.

Mr. Woolridge felt the first three projects would be attainable; however, the Town would need to grant permission for the use of the Winkler Creek reservoir property. Mayor Clawson felt there may be safety and security issues with the use of the reservoir. Council member Mason questioned how other municipalities are allowed to use water sources for recreational purposes. Public Utilities Director Rick Miller commented that he is awaiting clarification from the US Homeland Security regarding the recreational use of the reservoir. Mr. Miller clarified that if the reservoir is used for recreational purposes, additional liability insurance will be required. Assistant to the Manager Jim Byrne commented that the Town of Boone has received numerous grants to protect the New River watershed and then in turn to allow development within the watershed may jeopardize future grant applications. After a lengthy discussion regarding the use of the reservoir, Council agreed that the Town could not commit to exploring the Winkler's Creek reservoir as a passive recreation area until answers are provided as to Town's legal obligation regarding the use of the land.

REQUESTED APPEARANCE - BING OLIVER

Mr. Bing Oliver appeared before Council to request approval of a special events permit for the Boone Cyclovia scheduled for Sunday, June 26, 2011 from 9:00 a.m. to 4:00 p.m. Mr. Oliver requested that the Town close a portion of Howard Street (from Waters to Depot) and a portion of South Depot Street (from the intersection of Howard Street to Rivers Street), waive the \$1,500 event fee and provide police support and barriers for the event. Mr. Oliver said that Rivers Street (from South Depot to Stadium Drive) will also be closed; however, the North Carolina Department of Transportation must grant permission for that closing. Mr. Oliver said this free community-wide event will have music, vendors, organized fitness activities, booths and tents and will encourage residents to live a healthy life-style and participate in healthy activities. After little discussion, on a motion by Council member Mason, seconded by Council member Leigh, Council moved to grant approval of the 2011 Boone Cyclovia special event permit, to waive all fees in connection with the closure of Howard and Depot Street, to coordinate with Appalachian State University the placement of concrete barriers on Rivers Street, and to provide those barriers for Rivers Street if needed.

VOTE:Aye-All

Nay-None

Mayor Clawson declared a break at 10:20 p.m. Council reconvened at 10:33 p.m.

WATER AND SEWER REQUEST - FAISON KUESTER

Town Attorney Sam Furgiuele opened a public hearing at 10:34 p.m. to hear sworn testimony from Faison Kuester, Matt Langston, James Milner, Public Utilities Director Rick Miller and Planning and Inspections Director Bill Bailey on a request for water and sewer service to property located at 152 and 176 Winkler Meadows. Mr. Faison Kuester, Developer, testified that he is the owner and manager of Greenway Commons and that he plans to develop these two lots into a 30-unit apartment complex known as Greenway Cove. Mr. Kuester said this project will need 10,800 gallons of water per day. Council member Brantz asked if the single-family neighborhood is aware of the project. Mr. Kuester answered, "not yet," but that he plans to contact the neighborhood. Council member Brantz then asked about a traffic study and if AppalCART has a bus stop near the project. Mr. Matt Langston, Engineer for the project, said that the project is so small it will not warrant a traffic study and that AppalCART stops at the intersection of Winklers Creek Road. Council member Brantz asked if any studies on the need for student housing have been conducted by Kuester. Mr. Kuester said that he did conduct a marketing study that should be complete in a couple of weeks. Council member Ball asked if the outcome of the study will change Kuester's decision to build student housing. Mr. Kuester responded, "Probably not" and said there is still a strong market for student housing in the Boone area. Council member Leigh pointed out that the Comprehensive Plan does not encourage development in 01 and 02 sectors, as this property is located within those sections. Planning and Inspections Director Bill Bailey agreed with Ms. Leigh's statement. Mr. James Milner, a local

Boone real estate agent, testified that if the Town approves this development, there will be another student housing project within a town that has a rental occupancy rate of 79%. Mr. Milner asked that the Town Council be good stewards of the remaining available water. Mr. Kuester rebutted that all of his current housing developments are over 90% leased for the fall semester and that well managed properties are in demand and will be leased for a continual growing university. There being no further comments, the public hearing closed at 11:03 p.m. Council member Mason said the property is zoned R-3, is located within the primary growth area, and is within walking and biking distance of ASU. Council member Leigh expressed her reservations about the project and its non-compliance with the Boone 2030 plan. Council members Ball and Brantz agreed and said they would like to hear from the neighborhood regarding the matter. On a motion by Council member Leigh, seconded by Council member Ball, Council moved to deny this request based upon the fact that the property is located within sectors that are not suited to multi-family development and upon concerns with the neighborhoods.

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

WATER AND SEWER REQUEST - JASON GASTON

Town Attorney Sam Furgiuele opened a public hearing at 11:11 p.m to hear sworn testimony from Jason Gaston, Randy Dixon, Planning and Inspections Director Bill Bailey, and Public Utilities Director Rick Miller on a request for water and sewer service to property located near 140 High School Drive. Mr. Jason Gaston, Engineer for the project, testified that the 15.45 acres is zoned B-3, R-3 and R-A and is located off High School Drive. Mr. Gaston said the commercial, mixed-use and multi-family project will be terraced and will need 32,814 gallons of water per day, even though he predicts much less water will be used. Mr. Gaston showed the Town Council drawings of the proposed projects. Mr. Gaston said this project will require approval from several Town boards and will require a Special-Use Permit. Council member Ball asked about the elevation of the parking area. Mr. Gaston testified that a portion of the project will be in the viewshed and that the parking will be 80 to 100 feet higher than Highway 105. Council member Mason asked when the portion of land lying outside the town limits will be annexed. Mr. Gaston said that would be last and that 9.3 acres will be conveyed to a conservation easement. Mr. Randy Dixon, a partner in Mountaineer Crossing, LLC, owners and developers of the property and project, testified that the project is scheduled to be completed once all approvals are given. Council member Mason asked if the property is located within the primary pressure zone. Public Utilities Director Rick Miller said yes and that it can be served by both water and sewer service. Council member Brantz asked about stormwater facilities. Planning and Inspections Director Bill Bailey said that a very extensive system will be in place and handled on-site. There being no further public comments, the public hearing closed at 11:49 p.m. After very little discussion, on a motion by Council member Mason, seconded by Council member Ball, Council moved to approve the water and sewer request contingent upon the following conditions:

1. That the unzoned area of the multi-family housing area, as presented on the maps, be developed to R-3 standards.
2. That the unzoned property, as presented on the maps as R-A, be placed in a conservation easement.
3. That all properties outside the corporate limits be annexed and zoned.

VOTE: Aye-All
Nay-None

CLOSED SESSION

On a motion by Council member Brantz, seconded by Council member Ball, Council moved to enter Closed Session at 11:58 p.m. pursuant to NCGS 143-318.11a)3)5) in order to consider a settlement offer for a pruning violation from Templeton Properties; to hear legal advice on the illegal subdivision of property; and to discuss the Board of Adjustment appointment by Watauga County, the raw water intake, the threat of legal action against the Town, the use of the Jones House for the DBDA office, and the modification of a conditional zoning permit; and to receive an update regarding possible King Street property acquisition.

VOTE: Aye-All
Nay-None

On a motion by Council member Brantz, seconded by Council member Mason, Council moved to exit Closed Session at 1:58 a.m.

VOTE: Aye-All
Nay-None

ACTION FOLLOWING CLOSED SESSION

On a motion by Council member Ball, seconded by Council member Mason, Council moved to continue Closed Session until Thursday, April 21, 2011.

VOTE: Aye-All
Nay-None

On a motion by Council member Ball, seconded by Council member Leigh, Council moved to engage a consultant to aid with water issues both locally and in Raleigh, NC.

VOTE: Aye-All
Nay-None

RECESS

On a motion by Council member Ball, seconded by Council member Leigh, Council moved to recess the meeting at 2:00 a.m. until Thursday, April 21, 2011 at 6:30 p.m.

VOTE: Aye-All
Nay-None

CALL TO RECONVENE

A recessed meeting from Tuesday, April 19, 2011 was called to order at 6:30 p.m., Thursday, April 21, 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 Kimberly Brown, Assistant to the Town Manager Jim Byrne, Police Chief Dana Crawford, Fire Captain Mike Teague, Public Works Superintendent Eric Gustaveson, Public Utilities Director Rick Miller, Finance Director Amy Davis, Human Resources Director Peri Moretz, and Planning Director Bill Bailey.

ANNOUNCEMENTS

Mayor Clawson stated that any persons wishing to address the Council should sign in to speak during the Public Comment period. Mayor Clawson recognized area artist Joe Miller whose artwork is featured in the Town Council Chambers.

TENTATIVE AGENDA ADOPTION

Town Manager Greg Young announced that there were no changes to the agenda. Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to adopt the agenda, as presented.

VOTE: Aye - All

Nay - None

PUBLIC COMMENT

There was no one present to speak under public comment.

BOARD APPOINTMENT - AFFORDABLE HOUSING TASK FORCE

There were no applications submitted for the vacancy.

BOARD APPOINTMENT - DBDA BOARD OF DIRECTORS

Mayor Clawson noted that three applications had been submitted by Leigh Jacobs, Jill Reeves, and Marsha Walpole. It was the consensus of the Council to delay appointments until further discussion can occur on the board make-up.

BOARD APPOINTMENT - OUTSIDE AGENCY FUNDING COMMITTEE

There were no applications submitted for the vacancy.

BOARD APPOINTMENT - PEDESTRIAN PLAN STEERING COMMITTEE

There were no applications submitted for the vacancy.

BOARD APPOINTMENT - BOONE TOURISM DEVELOPMENT AUTHORITY COMMITTEE

Council Member Mason informed the Council that Chairman Jim Wooten is no longer eligible to serve on the Boone TDA Board since he is no longer affiliated with a lodging business in Boone. Wright Tilley, Executive Director of the Watauga County TDA, confirmed that Mr. Wooten has submitted his resignation for service on this board. Mayor Clawson noted that an application had been received from Mr. Jerry Lamonds who is the General Manager of the Comfort Inn. Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to appoint Jerry Lamonds to the Boone Tourism Development Authority Board with his term expiring on October 31, 2013.

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

Nay - 1 (Leigh)

Council Member Mason moved to amend the agenda in order to appoint a chairperson to the Boone TDA Board. Council Member Brantz seconded the motion.

VOTE: Aye - 2 (Mason, Brantz)

Nay - 3 (Phillips, Leigh, Ball)

The motion failed. It was the consensus of the Council to direct the Clerk to put the appointment of the Boone TDA Board chairperson on the next regular meeting agenda. Furthermore, Council directed the Clerk to notify the members of the committee of the open chair position.

BOARD APPOINTMENT - WATER STUDY COMMITTEE

There were no applications submitted for the vacancy.

PRESENTATION OF DBDA QUARTERLY REPORT

Pilar Fotta, Interim Director of the DBDA, presented the following report:

January - March 2011 DBDA Quarterly Report

ECONOMIC RESTRUCTURING:

*Facade and Sign Improvements: Lucky Penny, Did Someone Say Party (in progress), 641 RPM (sign)

*Parking Appeals Meetings

*Installation of informational Kiosk

*Web-site maintenance

PROMOTION:

*Art Crawl January, February, March, (April)

*Easter EggStravaganza (April)

*Doc Watson Celebration planning

DESIGN:

*Doc Watson Sculpture Project

- Currently over \$42,000 raised
- Celebration June 24, 2011
- Received recognition from North Carolina Arts Council for the project

*Community Choice Sculpture Selection (Working with business owners)

*New Spring Banners on King & Depot Street

ORGANIZATION:

*Membership Meeting (January)

*Regular BOD and Committee Meetings

*Council Meetings and Planning

*Board of Directors Retreat (April)

*Provided Town Manager with current proof on insurance/bonds. (April)

*Provided Town Manager with all requested employee information, as well as other items requested.

Council Member Leigh asked that the quarterly reports be provided to the Council prior to the meetings so that the Council members have adequate time to review the information.

JOINT DISCUSSION WITH DBDA BOARD OF DIRECTORS

Members of the DBDA Board of Directors present were Dempsey Wilcox-President, Jason Berry -Treasurer, Andy Stallings-Board Member, and Pilar Fotta-DBDA Interim Director.

■ **CLARIFICATION OF DEFINITIONS/TERMS**

Stakeholder - Discussion ensued regarding the definition of this term. DBDA Board Director

Dempsey Wilcox stated that the DBDA Board had discussed the term and developed the following qualifications for determining a “stakeholder:”

1. Property owner.
2. Resident of the Municipal Service District for at least two years.
3. Business owner (that holds a valid business or privilege license).

Discussion ensued regarding whether a stakeholder means that the person or business has voting privileges or should be considered “an interested party.” Further discussion occurred regarding membership requirements and possible different types of voting/membership classes. It was the consensus of the Council to limit the number of proxy votes that one person can represent.

Program-Based Budget - A budget based on an issue or event.

Public Art - Discussion ensued regarding the difference between art which is on display for the public to view and art that is on display on public property. There was also discussion regarding the featured local artists and the upcoming Doc Watson statue dedication. Town Manager Greg Young cautioned the Council regarding issues about insuring art on public and private property. It was the consensus that this term will need further discussion in the future.

Promotion - Mr. Wilcox stated that the DBDA Board would like to use the Main Street Program four-points approach in regard to promotion.

Physical Improvement/Infrastructure/Streetscape - It was the consensus of the Council to define infrastructure as basic needs or anything below ground, such as utility lines or sidewalks. Furthermore, the Council decided to define “streetscape” as anything above and beyond infrastructure, such as benches, street-lighting, and pavers. Council agreed that the term “public art” should be separate from any definitions regarding infrastructure or streetscapes.

■ DISCUSSION OF PRIORITIES

DBDA Board of Directors President Dempsey Wilcox presented the following priorities from the Board:

- 1.) Maintain Relationship with the NC Main Street Program which utilizes the National Main Street Center’s “Four Point” or “Main Street Approach” for Downtown Revitalization. This is one of the most well-known and successful revitalization programs. It has been successful in more than 1,700 towns and cities throughout the United States.
- 2.) Continue all existing activities, events, and activities currently being run by the DBDA:
 - Art Crawl (with modifications)
 - Downtown Boo
 - Easter EggStravaganza
 - Public Art
 - Rosen Outdoor Community Choice Sculptures
- 3.) Develop Budget for fiscal 2011-2012 when new Board is in place
- 4.) Streetscape - Design Improvements
- 5.) Historic Preservation
- 6.) Parking
- 7.) Develop Working Partnerships
- 8.) New Events

Mr. Wilcox stated that the first two priorities are considered short-term goals.

■ **DISCUSSION OF BY-LAWS**

Mr. Wilcox stated that the DBDA Board of Directors is still in the process of incorporating all of the requested and discussed changes into the by-laws. It was agreed to further discuss the by-laws at a later meeting.

■ **DISCUSSION OF COMPOSITION OF BOARD**

Discussion ensued regarding the need for balance and diversity on the DBDA Board of Directors. Council directed to the Town Attorney to work on a modification to the board application in order to address needed information to make these appointments. It was further agreed by the Council that the Town Council members should be ex-officio, non-voting members of the DBDA Board of Directors.

■ **DISCUSSION OF INTERIM CONTRACT**

It was the consensus of the Council to continue discussions regarding the interim contract at a later meeting.

Upon a motion by Council Member Ball, seconded by Council Member Mason, Council moved to schedule a special meeting beginning at 6:00 p.m. on Thursday, May 19, 2011, in order to discuss the DBDA By-Laws and the interim contract and to begin the regular meeting of the Council that night at 7:00 p.m.

VOTE: Aye - All
Nay - None

CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to enter into Closed Session at 9:30 p.m. pursuant to G.S. 143-318.11(a)(3)(5) in order to discuss the following:

- A. Consideration of Settlement Offer for Pruning Violation - Templeton Properties.
- B. Legal Advice - Illegal Subdivision of Property.
- C. Legal Advice - Board of Adjustment Appointment by Watauga County.
- D. Update Regarding Possible King Street Property Acquisition.
- E. Legal Advice - Raw Water Intake.
- F. Legal Advice - Threat of Legal Action Against Town.
- G. Legal Advice - Use of Jones House for DBDA Office.
- H. Legal Advice - Regarding Modification of Conditional Zoning Permit.

VOTE: Aye - All
Nay - None

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to exit Closed Session at 11:34 p.m.

VOTE: Aye - All
Nay - None

POSSIBLE ACTION FOLLOWING CLOSED SESSION

Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to schedule a special meeting for Tuesday, April 29, 2011, at 5:00 p.m. in order to discuss a possible amendment to Ordinance #11-01 to make additional water reservations for the old Watauga High School property.

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

ADJOURNMENT

On a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to adjourn the meeting at 11:45 p.m.

VOTE: Aye - All

Nay - None

Town Clerk

Mayor

Deputy Town Clerk