

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
SEPTEMBER 20, 2011**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Tuesday, September 20, 2011 in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, Andy Ball, Jamie Leigh, Rennie Brantz, and Stephen Phillips. 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, Planning and Inspections Director Bill Bailey, Planner Jane Shook, Fire Chief Jimmy Isaacs, Public Works Director Blake Brown, Public Utilities Director Rick Miller, and Human Resources Director Peri Moretz.

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.

Mayor Clawson announced the information for the 5th Annual Fun in the Park Day on October 1, 2011, from 10:00 a.m. to 2:00 p.m. at the Boone Jaycee Park. The theme is "Green Your Routine."

TENTATIVE AGENDA ADOPTION

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

1. Move Item 6.F. Review and Approval of DBDA By-Laws to Thursday, September 22nd meeting.
2. Addition of Item 6.U. - Approval of Budget Amendments.
3. Addition of Item 6.V. - Scheduling of Special Meeting - Review of Noise Ordinance.
4. Move Item 13.D. - Requested Appearances - Brian Williams to last item, 13.H.
5. Addition of Requested Appearance - Gunther Doerr/ASU as Item 13.D.

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

Minutes: August 1, 2011 - Quarterly Public Hearing.
August 16/18, 2011 - Regular Meeting.
August 30, 2011 - Special Meeting.
August 30, 2011 - Special Meeting.

Adoption of Agreement - Month-to-Month Extension of Lease & Contract between Town of Boone and Watauga County Arts Council, Inc.:

**STATE OF NORTH CAROLINA
COUNTY OF WATAUGA**

**AGREEMENT FOR MONTH TO MONTH EXTENSION OF
LEASE AND CONTRACT BETWEEN TOWN OF BOONE
AND THE WATAUGA COUNTY ARTS COUNCIL, INC.**

THIS AGREEMENT ("Agreement") is entered effective the 1st day of July, 2011, by and between the TOWN OF BOONE, a North Carolina municipality (hereafter referred to as

“the Town”) and the WATAUGA COUNTY ARTS COUNCIL, INC., a North Carolina non-profit corporation (hereafter referred to as “the Arts Council”), collectively referred to as “the Parties.”

WITNESSETH:

THAT, WHEREAS, the Town is a municipal corporation organized pursuant to the laws of the State of North Carolina and located in Watauga County, North Carolina; and

WHEREAS, the Town is the owner of that certain improved real property commonly known as and referred to herein as “the Jones House;” and

WHEREAS, the Town and the Arts Council have been parties to that certain lease affording the Arts Council the possession and use of a portion of the Jones House, which lease expired by its terms on June 30, 2011 (hereafter, “the lease”); and

WHEREAS, the Town and the Arts Council have been parties to that certain contract relating to the operation of the Jones House, which contract expired by its terms on June 30, 2011 (hereafter, “the contract”); and

WHEREAS, the Town Council of the Town, by action taken at its special meeting on July 1, 2011, authorized the extension of both the lease and contract on an interim basis, month-to-month, subject to their existing terms and conditions, with certain additional provisions related to the temporary placement by the Town of the office by the director of the Downtown Boone Development Association (“DBDA”) in the Jones House and the resulting displacement of a copier; and

WHEREAS, said additional provisions were that the Town Manager or his designee were to investigate alternative solutions to the placement of the copier in the Jones House Community Center, including locating the copier in the Arts Council Director’s office, with the addition of a smaller copier for staff use, or on the first floor at the rear of the building, with the possible placement of the copier in gallery space to be the last option available, and that the Town would consult with the Jones House Advisory Board on the matter; and

WHEREAS, said additional provisions are now moot by the removal of the copier in question from the Jones House, but pursuant to the action of the Town Council must nevertheless be recited herein; and

WHEREAS, as its August 16, 2011, regular meeting the Town Council directed that a written agreement for the extension of the lease and contract be executed so as to enable the Town Manager to authorize payment to the Arts Council on a continuing basis during the life of the extension, in an amount each month equal to one twelfth (1/12) the amount previously paid pursuant to the contract, and for the Arts Council to pay the Town the previously approved rental payment of fifty dollars (\$50.00) per month for the life of the extension;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration passing from each party to the other, the receipt of which is hereby respectively acknowledged by each of the parties hereto, the parties agree and contract as follows:

ARTICLE I. Terms: Except to the extent modify by this Agreement, the terms and conditions of the lease and contract are hereby extended.

ARTICLE II. Term: The term of this Agreement is indefinite and commence in its effect on July 1, 2011, and it shall continue until terminated by action of either party or it is replaced with a new contract or lease.

ARTICLE III. Consideration: In consideration of the Arts Council’s performance of the duties and responsibilities set out in the contract, the Town will pay the Arts Council the monthly sum of three thousand, three-hundred and seventy-four, and fifty/hundredths dollars (\$3,374.50), and for its continued possession and use of a portion of the Jones House as set out in the lease, the Arts Council shall pay the Town the monthly sum of fifty dollars (\$50.00).

ARTICLE III. Additional provisions: The Town Manager or his designee shall investigate alternative solutions to the placement of the copier in the Jones House Community Center, including locating the copier in the Arts Council Director's office, with the addition of a smaller copier for staff use, or on the first floor at the rear of the building, with the possible placement of the copier in gallery space to be the last option available, and that the Town will consult with the Jones House Advisory Board on the matter.

IN WITNESS WHEREOF, the parties have executed this Agreement and agree to all of the terms and conditions set forth above, effective the day and year first above written.

Approval of Special Event Permits - ASU & WHS Homecoming Parades:

WHS Parade: Friday, October 7th at 5:00 p.m.

ASU Parade: Saturday, October 22nd at 10:00 a.m.

Approval of Mutual Aid Agreements - Various Fire Departments.

MUTUAL AID AGREEMENT FOR FIRE PROTECTION

NORTH CAROLINA WATAUGA COUNTY

THIS AGREEMENT, made and entered into the 20th day of, September, 2011 by and between the Town of Boone, a municipal corporation of Watauga County, North Carolina and Beech Mountain, Banner Elk, Linville, and Zionville Fire Departments, corporation existing under the laws of the State of North Carolina, hereinafter referred to as "the corporation".

WITNESSETH:

THAT, WHEREAS, the General Assembly of North Carolina did enact into law an act to authorize mutual aid assistance between fire departments whereby full authority may be exercised for fire departments to send firefighters and apparatus beyond the territorial limits which they normally serve, said act having been codified as Chapter 69, Section 40, of the General Statutes of North Carolina;

WHEREAS, the purpose of this agreement is to provide each of the parties hereto, through their mutual cooperation, a predetermined plan by which each of them might render aid to the other in case of conflagration, civil disorder or natural disaster, and of which demand fire services to a degree beyond the existing capabilities of either party;

WHEREAS, it is deemed to be in the public interest for the parties hereto to enter into an agreement for mutual assistance in fire protection and in order to increase fire defenses and to assume proper fire control, as well as providing reserves needed to assure the community of adequate protection;

WHEREAS, by action of the Town Council of the Town of Boone on the 20th day of September, 2011, and also by appropriate action on behalf of "the corporation", this agreement for reciprocal mutual aid assistance was duly authorized;

NOW, THEREFORE, in consideration of the mutual covenants contained herein by and between the parties hereto, it is hereby agreed as follows:

1. Should it become necessary to activate the terms of this agreement as herein set forth, due to conflagration, civil disorder or natural disaster, the Chief of the Fire Department of the Town of Boone and the Chief of the Fire Department of "the corporation" shall have the implicit authority, upon notification by one of the parties to the other that an emergency does in fact exist and that aid is needed, to order available apparatus, equipment and manpower into action to assist the requesting party as may be required.
2. It shall be the responsibility of the chief of the fire department of the responding party that all personnel responding to the request for assistance are responsible persons.
3. Each party to this agreement shall assume all liability and responsibility for the death of or injury to any personnel of their own command responding to the request for mutual aid.
4. The party responding under the terms of this agreement shall assume no responsibility or liability for property damaged or destroyed at the actual scene of any civil disorder, conflagration or natural disaster due to fire fighting and rescue operations, fire control tactics

and strategy or other operations as may be required or ordered; said liability and responsibility shall rest solely with the party requesting such aid and within whose boundaries the property shall exist, or the incident occur.

5. The party responding to the request for mutual aid under the terms of this agreement shall assume all liability and responsibility for damage to its own apparatus and/or equipment. The party responding shall also assume all liability and responsibility for any damage caused by its own apparatus while in route to or returning from a specific location.
6. The party who requests mutual aid shall in no way be deemed liable or responsible for the personal property of the members of the fire department of the responding party which may be lost, stolen or damaged while performing their duties under the response terms herein.
7. Each party to this agreement shall assume all costs of salaries, wages, bonuses or other compensation for its personnel that responds for duty under the terms of this agreement and shall also assume all costs involving the use of apparatus, equipment, tools used specifically in response to the request for aid and shall make no charge for such use to the party requesting assistance; however, any special extinguishing agents used by the responding party from its own supply shall be paid for by the party requesting the aid upon receipt of an itemized statement of costs for such extinguishing agents.
8. Upon receipt of a request for assistance by the chief of the fire department from the requesting party, and upon a determination by the chief of the fire department of the responding party that the request may be honored without impairing the capacity to provide fire protection within its own jurisdiction, the chief of the fire department may take such steps as necessary to furnish apparatus, manpower and assistance to the requesting party as he deems appropriate. Such response shall remain solely the decision of the chief of the fire department of the responding party.
9. The chief of the fire department in whose community the emergency exists, and who places the request for assistance, shall in all instances be in command of the emergency as to the aspects of strategy, fire control tactics and overall direction of the operations. All orders or directions regarding the operations of the responding party shall be relayed to the chief firefighting officer in command of the responding party.
10. Neither party to this agreement shall be bound to dispatch apparatus, equipment or personnel to the assistance of the other but every effort should be made to furnish such assistance if, in the judgment of the chief of the fire department of either party, shall dispatch would not impose upon his own respective community a serious impairment to the fire defenses and fire protection.
11. Either party may, at any time, terminate this agreement, through its respective fire chief, upon the serving of a thirty-day written notice to the fire chief of the other party.
12. When fire department personnel are sent to another community pursuant to this agreement, the jurisdiction, authority, rights, privileges and immunities, including coverage under Workers' Compensation laws, which they have in the sending fire department shall be extended to and include the area in which like benefits and authorities are or could be afforded to fire department personnel of the requesting fire department and shall also be extended to the area located between their respective communities when said personnel are acting within the scope of the authority conferred by this agreement.

IN WITNESS WHEREOF, Town of Boone has caused this instrument to be signed in its corporate name by its Mayor, attested by its Town Clerk and its corporate seal affixed, and _____ Fire Department, Inc., has likewise caused this instrument to be signed in its corporate name and its corporate seal affixed, all on the day and year first above written and this agreement is executed in duplicate.

VOTE: Aye - All
Nay - None

PUBLIC COMMENT

There was no one signed up to speak during the public comment period.

DISCUSSION OF TABLE OF PERMITTED USES

Planner Jane Shook began discussion on a draft of Article 25. Basic Definitions and Interpretations (**copy of draft proposal permanently on file in the September 2011 meeting information file.**) She introduced comments made by Planning Commissioner Purpur during review by the Planning Commission (**copy of comments permanently on file in the September 2011 meeting information file.**) Ms. Shook listed several concerns that were discussed: 1) Churches - concern over allowing in residential district due to size and impacts; 2) Itinerant Merchants - how and if they can be regulated; and 3) Micro breweries in the B1 - must look at types of impacts, such as outdoor storage and traffic. She noted that the proposed draft still needs review by the Town Attorney. She also referred to discussion regarding Article 10. Supplementary Uses. She informed the Council that the Planning Commission is requesting to form a small, four-member subcommittee to meet on a weekly basis during the daytime for the purpose of discussing the revisions to the UDO Table of Permitted Uses. Ms. Shook noted that the members who volunteered for the group are Commissioners Brown, Lippard, Simmons, and Woolridge. Council discussed proposing a special joint meeting with the Planning Commission in order to confirm the intent and process regarding revisions to the Table of Permitted Uses. Upon a motion by Council member Ball, seconded by Council member Brantz, Council moved to amend the agenda to take action to set a special joint meeting with the Planning Commission.

VOTE:Aye - All
Nay - None

Upon a motion by Council member Mason, seconded by Council member Ball, Council moved to approve the request from the Planning Commission to form a small, four-member subcommittee, consisting of Commissioners Brown, Lippard, Simmons, and Woolridge, to meet approximately two hours per week during the daytime for the purpose of discussing the revisions to the UDO Table of Permitted Uses and further moved to schedule a special joint meeting with the Planning Commission on Monday, October 10, 2011, at 7:00 p.m. in the Council Chambers in order to confirm the intent and process regarding revisions to the Table of Permitted Uses.

VOTE:Aye - All
Nay - None

ADOPTION OF ZONING MAP AMENDMENT - CASE 20110120 ORCHARD AT PARK STREET

Case 20110120 Orchard at Park Street - Hackett Properties has filed a Zoning Map Amendment Petition for Conditional District Zoning for property located at 232 Park Street (Watauga County PIN 2901-71-1410-000.) The request is to rezone the property of 20.457 acres from R-4 Town Family/Mobile Home District to Conditional District R-3 Multi-Family for a site specific development plan for a multi-family development (use 1.330) containing 48 town homes with 144 bedrooms within four buildings. In addition, the proposed development triggers the requirements for Transitional Zones in accordance with Town of Boone Unified Development Ordinance Section 198. Ms. Shook explained that the Council must wait 30 days to consider the request per UDO Section 383(a) since the Planning Commission did not forward a recommendation at its regular meeting in August. She also pointed out the receipt of a valid Protest Petition for this case. Upon a motion by Council member Ball, seconded by Council member Phillips, Council moved to re-open the public hearing for this request at 7:19 p.m.

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

Public Works Director Blake Brown provided information regarding the possibility of widening Park Street. He advised that the purchase of additional property may be necessary in order to widen the street and create a sidewalk on one side of the street. Ms. Shook entered into evidence as **Exhibit A (copy of exhibit permanently on file in the September 2011 meeting information file)** a letter received from adjacent property owner William Martin which indicates support for the project. Chelsea Garrett, attorney representing Hackett Properties, stated that in addition to the letter from William Martin, additional new evidence submitted by the applicant includes the submission of an aerial photo as **Exhibit B (copy of exhibit permanently on file in**

the September 2011 meeting information file) which shows the subject property with surrounding properties and may give the Council a better idea of how many trees can be preserved. She also noted that Mr. Martin owns a number of tracks west of the Hackett property. Ms. Garrett pointed out on the aerial photo a number of surrounding properties that are occupied by students. Dino Hackett, applicant, entered into evidence as **Exhibits C-Q (copies of exhibits permanently on file in the September 2011 meeting information file)** photographs of properties located to the south of the subject property. He explained that the project will have less impact as the footprint has been reduced from ten acres to four acres. He stated that by decreasing the footprint of the project, a significant number of trees will be preserved. Mr. Hackett stated that the property will be gated. He informed the Council that Appalcart service to the property is not probable but that a stop may be possible at the intersection of Park and Queen Streets. Regarding deed restrictions for the units, Mr. Hackett stated that he is unaware of how to enforce such deed restrictions. Seth Hewett, of 214 Park Street, voiced his concerns about the potential widening of Park Street resulting in loss of part of his front yard and an increase in the amount of traffic congestion in the neighborhood. He stated that he does not support a gated community. Ann Kiefert, of 366 Park Street, voiced her opposition to the project and stated that it will change the character of the neighborhood. Helen Dotson, of 123 Dotson Drive, stated that she opposes the project because it will not fit in with the close-knit community and because of an increase in the amount of traffic. Joan Robinson, of 123 Dotson Drive, voiced her opposition for the project as it will destroy the character of the community. She also voiced her concern regarding an increase in traffic, the loss of trees, and possible effects on the drainage system which could cause flooding. Patrick Sullivan, of 112 Dotson Drive, voiced his opposition for the project, stating that he does not feel this is an affordable housing project. Laura Blalock, of 112 Dotson Drive, stated that she feels that this project will cause an increase in traffic and destroy the character of the community. Mike Curcio, of 158 Dotson Drive, listed policies contained in a staff report from 2003 which support and do not support such a project. He stated that the Council must weigh the information and make a determination on the request. With no other comments, Mayor Clawson closed the public hearing at 8:02 p.m. Council member Mason stated that she cannot support this request as she feels that it will be student housing which is located in the middle of two established single-family neighborhoods. She stated that a gated community will not foster a sense of community. Council member Leigh agreed with Council member Mason's statements and stated that she cannot support the request. Council member Brantz stated that he cannot support the request as he has concerns regarding pedestrian safety and feels that the project imperils the unique sense of community in that area. Council member Phillips suggested that the applicant should have encouraged more cooperation with the surrounding neighborhood. Council member Ball agreed with statements made by the other Council members.

Vote #1

Upon a motion by Council member Ball, seconded by Council member Leigh, Council moved that the proposed amendment to the Town's zoning map is not consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relate to this application because of the high density of the project, the potential for increased noise, traffic congestion, and other adverse effects to the Park and Queen Street neighborhoods, and referenced the following policies of the Comprehensive Plan: Sections 2.3.3.(a) and 2.3.2.(e.)

VOTE:Aye - All
Nay - None

Vote #2

Upon a motion by Council member Ball, seconded by Council member Leigh, Council members moved to deny the proposed amendment to the Town's zoning map and believe denial is both reasonable and in the public interest because of the high density of the project, the potential for increased noise, traffic congestion, and other adverse effects to the Park and Queen Street neighborhoods; and referenced the following policies of the Comprehensive Plan: Sections 2.3.3.(a) and 2.3.2.(e.)

VOTE:Aye - All
Nay - None

PLANNING & INSPECTIONS MONTHLY STATUS REPORT

Planning and Inspections Director Bill Bailey presented the Planning and Inspections Monthly

Report (permanently on file in the September 2011 Town Council Packet.)

ADOPTION OF RESOLUTION - HELEN WINKLER YOUNT ESTATE ANNEXATION

Planner Jane Shook stated that this is the second step in the annexation process for the request by Richard W. Winkler, administrator for the Estate of Helen W. Yount, for portions of two parcels of land located off NC Highway 105, High School Drive, and Temple Drive. Upon a motion by Council member Ball, seconded by Council member Brantz, Council moved to adopt the following:

**RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION
OF ANNEXATION PURSUANT TO G.S. 160A-31
(Helen Yount Estate)**

WHEREAS, a petition requesting annexation of the area described therein has been received; and

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

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

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

Section 1. A public hearing on the question of annexation of the area described herein will be held at Council Chambers at 6:30 on October 18, 2011.

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

A 10.011 acre tract of land to be annexed into the Town of Boone, located south of NC Highway 105 and southwest of High School Drive, being a portion of the land now or formerly owned by Helen Winkler Yount (Book of Records 130 page 632), and a portion of the land now or formerly owned by Helen Winkler Yount and husband, Robert R. Yount (Deed Book 208 page 969), with the perimeter having been surveyed by me, Heath E. Huovinen, P.L.S.L-4658, on July 7, 2011, and being more particularly described as: BEGINNING on an existing 1/2 inch conduit, the southeast corner of the property described in herein and the southwest corner of the Watauga County tract described in Book of Records 1352 at page 115, said beginning corner hds NCGS NAD '83 (1986) coordinates of N=901,51 1.85 feet and E=1,209,855.00 feet, THENCE from the beginning and with the line of Larry Ray Austin and Janis H. Austin (Book of Records 372 page 730) North 61 degrees 20 minutes 30 seconds West 261.99 feet to an existing 1/2 inch conduit; THENCE with the same North 82 degrees 40 minutes 50 seconds West 165.84 feet to an existing 1/2 inch conduit, the common corner between the Austin tract and Helen W. Warnock and Douglas W. Greene tract (Book of Records 166 page 749); THENCE with the Warnock/Greene line South 74 degrees 10 minutes 05 seconds West 114.55 feet to an existing 1/2 inch conduit; THENCE with the same South 67 degrees 51 minutes 40 seconds West 202.34 feet to an existing 1/2 inch conduit, the southeast corner to Malinda Roberts Wilcox and Frank Wilcox (Book of Records 395 page 127); THENCE with the Wilcox line North 0 degrees 34 minutes 55 seconds East 831.75 feet to a point located South 0 degrees 34 minutes 55 seconds West 62.13 feet from an existing 1-1/2 inch pipe in the Wilcox line and southwest corner to Mountaineer Crossing, LLC (Book of Records 1567 page 829); THENCE with the existing limits of the Town of Boone through the Yount tract South 68 degrees 09 minutes 50 seconds East 669.51 feet of the aforementioned Watauga County tract, said point is located South 59 degrees 45 minutes 10 seconds East 142.80 feet from an existing 5/8 inch rebar, a corner in the line between Helen Winkler Yount (Book of Records 130 page 632) and said Watauga County tract; THENCE with the line of the Watauga County tract; South 59 degrees 45 minutes 10 seconds East 58.51 feet to an existing concrete monument; THENCE continuing with the same South 1 degrees 08 minutes 45 seconds East 592.07 feet to the BEGINNING being described using bearings and distances relative to NCGS NAD '83(1986) and a combined grid factor of 0.99984924 being applied to horizontal distances.

Section 3. Notice of public hearing shall be published in the Watauga Democrat, a newspaper having general circulation in the Town of Boone, at least ten

(10) days prior to the date of the public hearing.

ATTEST:

Mayor

Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 163)

VOTE: Aye - All
Nay - None

SCHEDULE UDO TEXT AMENDMENTS FOR QPH - ETJ BOARD APPOINTMENTS

Planner Jane Shook presented a draft text amendment for UDO Article III Administrative Mechanisms for the appointment of ETJ members to the Planning Commission and Board of Adjustment. The amendment would allow the appointment of ETJ members to each of these boards by the Watauga County Commissioners. Upon a motion by Council member Brantz, seconded by Council member Mason, Council moved to send the draft UDO text amendment to Article III Administrative Mechanism to the November 2011 Quarterly Public Hearing.

VOTE: Aye - All
Nay - None

SCHEDULING OF SPECIAL MEETING - INTERGOVERNMENTAL RETREAT

Upon a motion by Council member Ball, seconded by Council member Brantz, Council moved to schedule a Special Meeting for the purpose of an Intergovernmental Retreat on Monday, September 26, 2011, at 5:00 p.m. at the Broyhill Inn & Conference Center.

VOTE: Aye - All
Nay - None

Mayor Clawson and Council member Mason stated that they would be unable to attend the special meeting.

Mayor Clawson declared a break at 8:15 p.m. Council reconvened at 8:25 p.m.

APPROVAL OF MEMORANDUM OF UNDERSTANDING - DBDA FOR PURCHASE OF DOWNTOWN THEATER

Town Attorney Sam Furgiuele stated that with the announcement from the Council regarding the possible purchase of the downtown theater, this memorandum of understanding should be adopted by Council. Council member Phillips voiced concern with Section 7 of the memorandum. Upon a motion by Council member Brantz, seconded by Council member Mason, Council moved to approve the following Memorandum of Understanding and authorized Mayor Clawson to execute the document:

**STATE OF NORTH CAROLINA
COUNTY OF WATAUGA**

**MEMORANDUM OF UNDERSTANDING AND AGREEMENT
TOWN OF BOONE
AND THE DOWNTOWN BOONE DEVELOPMENT ASSOCIATION, INC.**

THIS MEMORANDUM OF UNDERSTANDING AND AGREEMENT ("MOU") is entered into this ____ day of _____, 2011, by and between the TOWN OF BOONE, a North Carolina municipality (hereafter referred to as "the Town") and the DOWNTOWN

BOONE DEVELOPMENT ASSOCIATION, INC., a North Carolina non-profit membership corporation (hereafter referred to as “the DBDA”), collectively referred to as “the Parties,” for the purposes of confirming certain agreements and understandings between the Town and the DBDA relative to the possible purchase, financing, repair, restoration and operation of the Appalachian Theater, a property located at 559 West King Street, Boone, NC, currently titled to Cecil B. DeBoone, LLC, and involved in the Chapter 7 bankruptcy of Frank M. Mongelluzzi, together with all personal property within the control of the Trustee and associated with the theater (hereafter, collectively referred to as “the property”).

WITNESSETH:

THAT, WHEREAS, the DBDA wishes to make an offer through the United States Bankruptcy Court to purchase the property for the purposes of its repair, restoration and future operation; and

WHEREAS, the Town and DBDA, as partners in the endeavors described herein, believe that the preservation of the property and its eventual restoration and operation as a community resource will confer important economic benefits upon the Town’s Municipal Service District, (hereafter, the “MSD”) and the Town as a whole, that it will strengthen the economic health and stability of the MSD, and that the purchase, repair, restoration and operation of the property constitutes “revitalization,” as that term is defined under State law, and is thus an appropriate use of MSD taxes; and

WHEREAS, the DBDA is unable, without the assistance of the Town, to obtain sufficient funding to make an appropriate offer on the property, and the Town is willing to make public funds available for the limited purpose of attempting to acquire the property so that the DBDA may use its resources and skills, once the Town has been repaid, to effect the full repair and restoration of the property and to accomplish the further public purposes of the Town by developing and recommending guidelines for the future operation of the restored property; and

WHEREAS, the Board of Directors of the DBDA, in order to demonstrate to the Town the importance of the property to the future vitality of the MSD, and in an attempt to enhance the likelihood of the success of this undertaking, has proposed and offered to the Town, should the DBDA be unable through its commitment of a portion of currently available MSD funds to repay the Town, or should it appear that its future ability to repay the Town within the time frame described will be inadequate, that it will support and advocate for an increase in the MSD taxes collected of 50% or more, if necessary through a rate increase, so long as the additional taxes collected are fully utilized by the Town to reduce the DBDA’s indebtedness relative to this property or to accomplish the DBDA’s goals relative to the property; and

WHEREAS, the parties have agreed to certain measures and terms, some of which will require further specific cooperation and agreements, but wish now to confirm by this MOU the general terms to which they have agreed;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, respectively acknowledged by each of the parties hereto as fair and adequate, the parties agree as follows:

1. Within thirty days, the Town will make available six hundred-and-seventy-five thousand dollars (\$675,000.00) to apply toward the purchase of the property, considered with such interest as may be charged, a loan by the Town to the DBDA (hereafter, “the loan”). Within five days, the DBDA will deposit into the client trust account of Town Attorney, Samuel F. Furgiuele, Jr., thirty thousand dollars (\$30,000.00) as earnest money toward the purchase of the property, and if the offer is accepted, the DBDA will authorize or pay an additional forty-five thousand dollars (\$45,000.00) of its funds to be applied toward the purchase.
2. Following the approval of this MOU by both parties, the Town will transmit to the United States Bankruptcy Court, through the Trustee, an offer for the property of seven hundred and fifty thousand dollars (\$750,000.00). If the offer is accepted, the parties agree that title to the property shall be placed in the Town until the loan is repaid in full.

3. The DBDA will repay the loan to the Town according to the following terms: The DBDA promises to pay to the Town the principal sum of six hundred-and-seventy-five thousand dollars (\$675,000.00), with interest from the date that these funds are first transmitted to the United States Bankruptcy Court or the person or persons to whom that Court directs, at the rate of one per cent (1.000%) per annum on the unpaid balance until paid in full or until default, in annual payments of forty thousand dollars (\$40,000.00) each, plus such amounts as are described herein, for three (3) years or until paid in full, whichever occurs first, unless payment of the full balance is demanded by Town on the occurrence of an event to be described herein. If not paid sooner, the full balance of remaining principal and accrued interest shall be due and payable three years from the date of the initial transmittal of the loan funds. Each installment shall, unless otherwise provided, be applied first to payment of interest then accrued and due on the unpaid principal balance, with the remainder applied to the unpaid principal. Each installment shall be paid by means of the Town withholding the appropriate portion of the proceeds of MSD taxes, and the withholding of such proceeds is hereby authorized until such time as the loan is fully repaid. Unless otherwise provided, this loan may be prepaid in full or in part at any time without penalty or premium. Partial prepayments shall be applied to installments due in reverse order of their maturity. In the event of: (a) default in payment of any installment of principal or interest hereof as the same becomes due and such default is not cured within ten (10) days from the due date; or (b) default under the terms of this MOU, and such default is not cured within fifteen (15) days after written notice to the DBDA, then in either such event the Town may, without further notice, declare the remainder of the principal sum, together with all interest accrued thereon, at once due and payable. Failure to exercise this option shall not constitute a waiver by the Town of its right to exercise the same at any other time. The unpaid principal of this loan and any part thereof, accrued interest and all other sums due under this loan, if any, shall bear interest at the rate of one per cent (1.000%) per annum after default until paid.

The DBDA hereby waives protest, presentment, notice of dishonor, and notice of acceleration of maturity, and agrees to continue to remain bound for the payment of principal, interest and all other sums due notwithstanding any change or changes by way of release, surrender, exchange, modification or substitution of any security for this loan or by way of any extension or extensions of time for the payment of principal and interest; and the DBDA waives all and every kind of notice of such change or changes and agrees that the same may be made without its notice or consent .

4. At the time the loan is paid in full, the Town shall transfer title to the property to the DBDA or a newly created non-profit organization to which the parties may subsequently agree shall own and operate the property, by non-warranty deed and bill of sale as to personal property, reserving for itself a reversionary interest in the property should certain contingencies occur such as the failure of the DBDA or non-profit to operate the property for a valid public purpose, said contingencies to be the subject of further agreement between the Town and DBDA. Said deed shall contain, at least, restrictions regarding the restoration, maintenance and future operation of the property to ensure that the property shall be used in perpetuity for a public purpose and to preserve the cultural, historical and economic value of the property for the benefit of the MSD and the citizens of Boone. The expectation and agreement of the parties is that the "restoration" of the property will strive, to the extent feasible, to reproduce the original "Art Deco" look of the theater consistent with its original design.
5. The DBDA shall have the sole responsibility for the repair and restoration of the property. Following closing, should the offer be successful, the DBDA will promptly undertake the necessary steps to prevent further leaking from the roof and will take such additional measures as are needed to prevent a further deterioration of the property.
6. It is anticipated by the parties that should the offer to purchase the property be accepted, the DBDA will promptly undertake to establish a fund-raising campaign to retire the debt created by this loan, and to repair, restore and at least initiate the operation of the restored property. Details of the fundraising campaign shall be disclosed on a regular and no less than quarterly basis by the DBDA to the Town Council. Funds thus obtained shall be used by the DBDA first to pay for repairs needed to prevent further deterioration or damage to the property, as agreed upon by the parties; second, to improve the

appearance of the facade of the property, again to a degree agreed upon by the parties; and third, to support and perpetuate the fund-raising campaign, including if needed, to support the retention of consultants or staff for this purpose. All additional funds raised shall be used to pay or prepay the remaining balance of the loan, with payments remitted no less frequently made than quarterly.

7. During the time the loan is outstanding, should the Town experience a drastic decrease in revenue, as determined by the Town in its sole discretion, whether by a reapportionment of sales tax within Watauga County, or from other unknown or presently unanticipated cause, the Town may call due the full balance of principal and accrued interest. Thereafter, from notice by the Town, the DBDA shall have six calendar months to fully pay the remaining balance, and should it fail to do so, it will be considered to be in default of its obligations, and its legal and beneficial rights in the property shall terminate without further action by the Town except as herein provided.
8. Should the DBDA default in any non-monetary obligation described hereunder and fail to cure the default within the time afforded it, or should the DBDA fail to meet its monetary obligations, the Town may announce its intention to place the property for sale and shall notify the DBDA of same. Prior to placing the property for sale to the general public, the Town shall provide the DBDA a thirty day period in which to produce a buyer for no less than the remaining balance of the loan, who has been endorsed by the DBDA and who has agreed to restore the property, preserve the restored property and operate it in such fashion, as directed and authorized by the Town and in accordance with the wishes of the DBDA and consistent with this MOU, so that it will serve a public purpose.
9. Once the Town has announced its intention to place the property for sale, and thirty days passes during which the DBDA has neither paid the balance nor produced a buyer endorsed by the DBDA who will pay the balance and agree to the necessary conditions, then the Town may offer the property for sale, through whatever means it deems expedient or desirable, by private or public sale, as it in its sole discretion determines will best effectuate the Town's purposes, and if an offer is received which the Town wishes to accept, it will so notify the DBDA of its intention to accept such offer. The DBDA shall then have a period of thirty (30) days to pay an amount equal to the offer which has been received, and the Town shall transfer the property to the DBDA, retaining reversionary rights. If the DBDA does not offer an amount equal to the offer which has been received, the Town may then sell the property in accordance with the offer which has been received, without restriction as to the future use or preservation of the property, and the Town is hereby authorized to withhold from future MSD funds, up to and including the full amount of MSD funds collected each year, amounts sufficient to fully repay itself the balance of the loan, calculated after crediting all payments made by the DBDA and the net proceeds of any sale.

IN WITNESS WHEREOF, the **parties** have executed this Agreement in duplicate originals, and agree to all of the terms and conditions set forth above, the day and year first above written

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

APPROVAL OF SUBLEASE - SOUTHERN APPALACHIAN HISTORICAL ASSOCIATION INC.

Town Attorney Sam Furgiuele stated that he has reviewed the document and has some objections to items throughout the sublease. After brief discussion, Council member Brantz moved to approve the following sublease agreement with the condition that the Town Attorney and Town Manager be authorized to work out the legal issues within the sublease and to reference the use of the parking lot for Saturday parking:

THIS SUBLEASE DOES NOT BECOME EFFECTIVE UNTIL EXECUTED BY THE NORTH CAROLINA DEPARTMENT OF ADMINISTRATION

STATE OF NORTH CAROLINA

SUBLEASE AGREEMENT

COUNTY OF WATAUGA

THIS SUBLEASE AGREEMENT, made and entered into this the _____ day of August, 2011, by and between, Southern Appalachian Historical Association, Inc., a North Carolina nonprofit corporation ("SAHA"), hereinafter designated as Sublessor, and the State of North Carolina, hereinafter designated as "Sublessee";

WITNESSETH:

THAT WHEREAS, authority to approve and execute this Sublease Agreement was delegated to the Department of Administration by resolution adopted by the Governor and Council of State on the 1st day of September, 1981; and as amended on September 8, 1999 and December 7th, 1999, and

WHEREAS, the parties hereto have mutually agreed to the terms of this Sublease Agreement as hereinafter set out,

WHEREAS, the Town of Boone, in its capacity as owner of the Property, consents to SAHA subleasing the Parking Facilities to Sublessee;

NOW THEREFORE, in consideration of the rental hereinafter agreed to be paid and the terms and conditions hereinafter set forth, Sublessor does hereby let and lease unto Sublessee and Sublessee hereby takes and leases from Sublessor for and during the period of time and subject to the terms and conditions hereinafter set out certain space in the Town of Boone, County of Watauga, North Carolina, more particularly described as follows:

250 parking spaces in the upper and lower parking lots of the Property identified on Exhibit B ("Parking Facilities") located on property legally described on Exhibit A ("Property").

(On behalf of Appalachian State University)

1. Term. The term of this Sublease Agreement shall be for five (5) months commencing on August 1, 2011, or as soon thereafter as the subleased premises are ceded to the Sublessee ("Commencement Date") and ending December 31, 2011.

2. Rent. The Sublessee shall pay to the Sublessor as rental for said premises the sum of \$10,416.65 Dollars for the term, which sum shall be paid in equal monthly installments of \$2,083.33, said rental to be payable within fifteen (15) days from receipt of invoice.

3. Operating Hours. The Sublessee shall have control of all 250 parking spaces during the sublease term, Monday-Sunday, 24 hours per day.

Except: Sublessee shall ask Appalachian State University students ("Authorized Users") to remove their vehicles from the Parking Facilities on Saturdays during the term when the Watauga County Farmers' Markets and other festivals are scheduled to be held on the Property. This also includes two full holiday day operations, which dates shall be provided to Sublessee as soon as practicable after they are known by SAHA.

Except: Sublessee shall publicize to Authorized Users and all Appalachian State University students that the Horn in the West parking lot will no longer be a location where students can take their cars when vacating parking lots on the Appalachian State University campus in response to football games.

4. Permitted Uses. The 250 parking spaces shall be used by Sublessee only for purposes of operating a parking lot for the passenger vehicles of Authorized Users. Sublessee shall not use the Parking Facilities for any other use or purpose without SAHA's prior written consent, which shall be granted or withheld in SAHA's sole and subjective discretion. Sublessee shall comply with all laws, ordinances, codes and regulations regarding the operation of the Parking Facilities. Sublessee shall not create or cause to exist any public or private nuisance or hazardous or

blighted condition on or with respect to the Parking Facilities.

SAHA and its agents, officers, employees and invitees shall retain access to areas through or adjoining the Parking Facilities for the purpose of its business operations.

5. Alterations, Maintenance and Repairs. Sublessee acknowledges the state of repair of the Parking Facilities and that it is acceptable for Sublessee's intended use of the Parking Facilities. Sublessee accepts the Parking Facilities as they are. The Sublessee shall provide the necessary equipment, management and labor to provide basic maintenance of the Parking Facilities, including snow and litter removal and striping. The Town of Boone shall provide the necessary equipment, management and labor to provide more substantial maintenance of the Parking Facilities, including paving and filling cracks and holes in the Parking Facilities. All alterations, repairs, improvements in or installation of signage to the Parking Facilities permitted or required to be made by Town of Boone and Sublessee shall be submitted to SAHA for its written consent prior to the performance of any part of such work. Sublessee shall promptly pay for all labor, material and other services employed in or about such work on the Parking Facilities and shall not permit the Parking Facilities to be encumbered or a lien to be filed upon the premises or in any other way encumber the Parking Facilities or the Town of Boone's title to the Parking Facilities. All additions, alterations, improvements, repairs, and restorations to the premises shall become the property of the Town of Boone.

6. Signage. Sublessee shall be responsible for the cost, installation and maintenance of signage on the Parking Facilities necessary to notify its Authorized Users of the Hours of Use of the Parking Facilities and that violations of the Hours of Use shall result in vehicles being towed at the owner's expense. The size, design, and location of such signage shall be subject to SAHA's approval and the approval of any governmental entities having jurisdiction. At the expiration or earlier termination of this Sublease Agreement, Sublessee shall remove such signs and repair any damage, all at Sublessee's sole cost and expense.

7. Security. Sublessee agrees and acknowledges that SAHA shall not provide any personal or vehicle security of any type for the Parking Facilities. Sublessee, at its option, may provide its own security patrols by the Appalachian State University Police Department.

8. Sublessee Assignment. Sublessee shall not assign nor in any manner transfer this Sublease Agreement, or any interest therein, nor further sublet the Parking Facilities or any part or parts thereof, nor permit occupancy by anyone, except in connection with the Sublessee's use of the Parking Facilities.

9. Responsibility For Personal Property. Sublessor shall not be responsible for any loss or damage to personal property belonging to Sublessee, its servants, agents, subcontractors, guests, patrons, and invitees. The Sublessee shall remove from the demised premises immediately upon the termination of this Sublease Agreement; all property belonging to the Sublessee, and all property brought into or upon Facility premises, by the Sublessee, or others, associated with the Sublessee's use and occupancy of the aforesaid Facility premises, other than permanent fixtures, the removal of which would damage the premises. If the Sublessee fails to remove all such property, the Sublessor shall have the right to remove and store any such property at Sublessee's expense.

10. Indemnification. The State of North Carolina is an immune sovereign and is not ordinarily subject to suit. However the State has enacted the North Carolina Tort Claims Act, pursuant to which the State may be liable for the torts of its officers and employees, within the terms of the act. Accordingly, the State will be primarily liable for any claims within the coverage of the Tort Claims Act. Sublessor agrees to indemnify and hold harmless, the Sublessee, from any claim, suit, damage, liability, injury, expense, or loss, arising out of, or resulting from, the Sublessor's negligent acts or omissions.

11. Insurance. Sublessee agrees to supply Sublessor a certificate of the State of North Carolina Public Officers and Employees Liability Insurance coverage upon request. Sublessor shall maintain insurance coverage satisfactory to the Town of Boone pursuant to SAHA's lease agreement with the Town of Boone.

12. Hold Over. Any holding over by the Sublessee after the expiration of this Sublease

Agreement shall be construed to be a tenancy from month to month and shall otherwise be on the applicable terms and conditions herein specified; however, either party shall give not less than sixty (60) days written notice to terminate the tenancy.

13. Surrender. Upon the expiration or earlier termination of the Term hereof, Sublessee shall surrender the Parking Facilities to SAHA in the condition in which the Parking Facilities were originally received from SAHA, reasonable wear and tear excepted.

14. Availability of Funds. The parties to this Sublease agree and understand that the continuation of this Sublease for the Term, is dependent upon and subject to the appropriation, allocation or availability of funds for this purpose to the agency of Sublessee responsible for payment of said rental. The parties to this Sublease also agree that in the event the agency of Sublessee or that body responsible for the appropriation of said funds, in its sole discretion, determines in view of its total local operations that available funding for the payment of rents is insufficient to continue the operation of the Parking Facilities, it may choose to terminate this Sublease by giving Sublessor written notice of said termination, and this Sublease shall terminate immediately without any further liability to Sublessee.

15. Events of Default. The following events shall be deemed to be events of default by Sublessee under this Sublease Agreement (“Event of Default”):

- (a) Sublessee shall have failed to pay the rent or any other charge provided herein, or any portion thereof, within ten (10) days after the same shall be due and payable;
- (b) Sublessee shall have failed to comply with any other provisions of this Sublease Agreement and shall not cure such failure within thirty (30) days after SAHA, by written notice, has informed Sublessee of such noncompliance;
- (c) Sublessee abandons the Parking Facilities.

16. Notice of Default. In the event of a default pursuant to Paragraph 15 above, SAHA may, by serving ten (10) days written notice upon Sublessee, terminate this Sublease Agreement.

17. Notice. Any and all notices given in connection with this Sublease Agreement shall be deemed adequately given only if in writing and addressed to the party for whom such notices are intended at the address set forth below. All notices shall be sent by personal delivery, FedEx or other overnight courier service, or by first class certified mail. A written notice shall be deemed to have been given to the recipient party on the earlier of (a) the date it is delivered to the address required by this Sublease Agreement; (b) the date delivery is refused at the address required by this Sublease Agreement; or (c) with respect to notices sent by mail, the date as of which the postal service indicates such notice to be undeliverable at the address required by this Sublease Agreement. Any and all notices referred to in this Sublease Agreement, or that either party desires to give to the other, shall be addressed as follows:

For SAHA:

Southern Appalachian Historical Association, Inc.

P.O. Box 295

Boone, NC 28607

For Sublessee:

Vice Chancellor for Business Affairs

Appalachian State University

ASU Box 32003

Boone, NC 28608

With a copy to:

General Counsel, Appalachian State University

ASU Box 32126

Boone, NC 28608

With a copy to:

North Carolina State Property Office of the Governor

Attn: Leasing Manager
1321 Mail Service Center
Raleigh, North Carolina 27699-1321

Any party hereto may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

18. Observance of Laws. The Sublessee and its agents, guests and employees will observe and comply with all laws, ordinances, and regulations adopted or established by the United States, the State of North Carolina, and the Town of Boone and Watauga County.

19. Miscellaneous.

(a) This Sublease Agreement shall be interpreted according to and shall be governed by the laws of the State of North Carolina.

(b) Any changes or modifications of this Sublease Agreement must be in writing, and signed by the parties hereto. This Sublease Agreement supersedes any previous understandings or agreements between the parties relating to the Parking Facilities.

(c) Paragraph headings are for convenience only, and in no way define or limit the scope and content of this Sublease Agreement.

(d) No delay or failure by either party to enforce or exercise any rights or remedies hereunder shall constitute a waiver of such right or remedy, nor shall any single or partial exercise of a right or remedy preclude any other or further exercise of rights and remedies.

(e) This Sublease Agreement may be executed in multiple counterparts, and by use of counterpart signature pages, but all such counterparts shall constitute but one and the same agreement.

(f) This Sublease Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided this paragraph shall not permit any assignment contrary to the provisions of this Sublease Agreement.

20. Warranty. SAHA warrants its exclusive right to sublease under lease with Town of Boone.

21. North Carolina General Statute §133-32 and Executive Order 24, as applicable, prohibit the offer to, or acceptance by, any employee of Sublessee of any gift from anyone with a contract with Sublessee, or from any person seeking to do business with Sublessee. By execution of this Sublease, Sublessor attests, for its entire organization, including its employees or agents, that it is not aware that any such gift has been offered, accepted, or promised by any employees of its organization.

IN WITNESS WHEREOF, the parties hereto have executed this Sublease Agreement on the day and date herein above set forth.

Exhibit A PROPERTY

A certain tract or parcel of land in Boone Township, Watauga County, State of North Carolina, adjoining the lands of James Winkler, Vaughn Hagaman, Farmers Hardware and Supply Company, James Councill, Frank Payne and others, and bounded and described as follows:

BEGINNING on a concrete hub on the West side of Oak Street and corner to Vaughn Hagaman and runs South 46 deg. 30 min. West 266 feet to a cement hub; thence South 40 deg. 15 min. East 234 feet to a stake at the black top road near Jim Winkler's old barn; thence South 11 deg. 45 min. West 43 feet to a stake in the black top road leading from US Highway 321 to the Daniel Boone Theater parking lot and the road leading to back stage of the Daniel Boone theater; thence passing below the Jim Winkler old barn South 80 deg. 10 min. East 203 feet to a white oak in the West side of the road and at the bend of said road; thence South 13 deg. 10 min West 200 feet to a stake in the old rail fence 147 feet back of the Daniel Boone theater; thence South 9 deg. 45 min. West 100 feet to a stake; thence South 4 deg. 10 min. East 37 feet to a stake by a chestnut; thence south 60 deg. 10 min. East 1012 feet to a stake by the branch, corner to Jim Winkler; thence North 22 deg. 10 min. East 471 feet to an iron stake; thence South 85 deg. 15 min. East 58 feet to a stake at the branch, corner to Farmers Hardware; thence up said branch as follows: North 10 deg. East 300 feet; North 19 deg. West 250 feet; North 11 deg. 30 min. West 200 feet; North 11 deg. West 150 feet to a stake; North 18 deg. West 150 feet; North 17 deg. West 120

feet to a stake; North 9 deg. West 340 feet to a stake, corner to James Councill and Frank Payne; thence North 88 deg. West 292 feet to a stake at black top road; thence along the East side of black top road South 12 deg. West 100 feet, South 2 deg. East 263 feet to a stake on the East side of said road; thence North 81 deg. West 35 feet to a stake, corner to Jim Winkler, on the West side of black top road; thence North 81 deg. West 119 feet to a stake on the North side of a proposed street; thence North 56 deg. 15 min West 133 feet to a stake in the hollow; thence 28 deg. West 162 feet to a planted rock by a white oak on top of the ridge; thence South 46 deg. 10 min West 450 feet to the BEGINNING; and being the same land described in that certain deed from James B. Winkler and wife, Carrie W. Winkler, to the Town of Boone, Dated June 29, 1957.

EXHIBIT B PARKING FACILITIES

Lower Parking Lot
(67 parking spaces)

Upper Parking Lot
(212 parking spaces)

VOTE: Aye - All
Nay - None

APPROVAL OF ORDINANCE #11-01 AMENDMENTS

Town Attorney Sam Furgiuele stated that these amendments are the result of the Water Committee recommendations approved by Council at the August meeting. Upon a motion by Council member Ball, seconded by Council member Brantz, Council moved to adopt the following amendments to Ordinance #11-01:

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~~ **2013** 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 **remaining** term of this ordinance shall be ~~50,000~~ **110,000** gallons per day, except 2011, in which it shall be 65,000 gallons per day (in addition to any amount reserved for the old Watauga High School property) 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"), and in recognition that the previous reserve amount of 70,000 gallons per day may not be sufficient for this property, there shall be a reserve of 150,000 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 five** thousand

~~(3,000)~~ (5,000) gallons per day or less. **In addition, the Director may approve new applications for water service in the ETJ of the Town in which the predicted water usage is five hundred (500) gallon per day or less.** Once more than two-thirds of the full water allotment for the year has been approved, the Director may **only** 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.~~

6.5. 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.

7.6. 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.

8.7. 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.

9.8. 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.

10.9. 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.

11.10. 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.

12.11. 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.

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

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

Amended and effective this the 26th day of April, 2011.

Amended and effective this the 17th day of May, 2011.

Amended and effective this the 20th day of September, 2011.

VOTE: Aye - All

Nay - None

ADOPTION OF RESOLUTION - WATAUGA AQUATIC ECOSYSTEM RESTORATION PROJECT

Assistant to the Manager Jim Byrne presented a resolution for Council's approval which authorizes participation in the Watauga Aquatic Ecosystem Restoration project and authorizes the Mayor to execute all pertinent documentation. Upon a motion by Council member Brantz, seconded by Council member Ball, Council moved to approve the following resolution:

**RESOLUTION
TOWN OF BOONE, NORTH CAROLINA
WATAUGA AQUATIC ECOSYSTEM RESTORATION PROJECT**

AN RESOLUTION AUTHORIZING PARTICIPATION AND RATIFYING PRIOR PARTICIPATION OF THE TOWN OF BOONE, WATAUGA COUNTY, NORTH CAROLINA, WITH THE DEPARTMENT OF THE ARMY, CORPS OF

ENGINEERS, FOR THE CONSTRUCTION OF THE WATAUGA AQUATIC ECOSYSTEM RESTORATION PROJECT, AND AUTHORIZING THE MAYOR OF THE TOWN OF BOONE, NORTH CAROLINA, AND OTHER APPROPRIATE TOWN OFFICIALS, TO ACT FOR AND ON BEHALF OF THE TOWN OF BOONE, NORTH CAROLINA, IN EXECUTING, ACCEPTING OR OTHERWISE APPROVING ALL DOCUMENTS, AGREEMENTS, INSTRUMENTS, OR OTHER NECESSARY PAPERS REQUIRED BY THE DEPARTMENT OF THE ARMY TO IMPLEMENT SAID PARTICIPATION IN THE PROJECT.

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

Section 1: The Town of Boone, North Carolina, authorizes its Mayor, by and through its authorized officers and officials, to participate with the Department of the Army, Corps of Engineers, in the construction of the Watauga Aquatic Ecosystem Restoration Project, an ecosystem restoration project authorized by Section 206 of the Water Resources Development Act of 1996, which project is located in Watauga County, North Carolina.

Section 2: The Mayor, Town of Boone, North Carolina and other appropriate Town of Boone, North Carolina officials, including the Town of Boone, North Carolina's Attorney, are authorized to execute on behalf of the Town of Boone, Watauga County, North Carolina, all documents necessary to implement participation by the Town of Boone, North Carolina in the construction of an Ecosystem Restoration Project, being a stream restoration project, in the South Fork of the New River area of Town of Boone, Watauga County, North Carolina, in conjunction with the Department of the Army, Corps of Engineers, including but not limited to the Project Partnership Agreement between the Department of the Army and the Town of Boone, North Carolina, for the construction of the Watauga Aquatic Ecosystem Restoration Project, that provides, among other things, that the Town of Boone, North Carolina shall:

a. Provide without cost to the United States Government all lands, easements, and rights-of-way including suitable borrow and dredge material disposal areas, all modifications, relocations and alterations of structures including but not limited to buildings, utilities, including relocations of on-site underground utilities, roads, bridges, sewers and water supply facilities and repair or replacement of all intakes, drains, and appurtenant facilities necessary for the construction, operation and maintenance of the Project;

b. Hold and save the United States Government free from damages due to the construction, operation and maintenance of the Project, exclusive of damages due to the fault or negligence of the United States Government or its contractors;

c. Operate, maintain, replace and rehabilitate the Project upon completion, and as constructed, in accordance with the regulations or directions by the Secretary of the Army and all without cost to the United States Government;

d. Pay its percentage share of total project costs as required by The Water Resources Development Act of 1986, (Public Law 99-662), and by the Project Partnership Agreement;

e. Prevent obstruction of or encroachment on the Project that would reduce the level of protection it affords or that would hinder operation and maintenance thereof; AND

f. Comply with the provisions of the Uniform Relocations Assistance and Real Property Acquisitions Policies Act of 1970, Public Law 91-646, approved 2 January 1971; and Section 221, Public Law 91-611, approved 31 December 1970, as amended.

Section 3: The Town of Boone, North Carolina hereby approves and ratifies all prior participation and acts of the Town of Boone, North Carolina, by and through its officials, with the Department of the Army, Corps of Engineers, in relationship to said Project.

Section 4: The Town of Boone, North Carolina and other appropriate Town of Boone, North Carolina officials are hereby authorized to purchase, or otherwise acquire from private property owners, in the name of the Town of Boone, North Carolina, and in accordance with said Agreement, any and all interests in real property necessary for the construction, operation and

maintenance of the property.

Duly passed in accordance with the laws of the State of North Carolina, this 20th day of September, 2011.

ATTEST:

Mayor

Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 164-165)

VOTE: Aye - All
Nay - None

APPROVAL OF CONTRACT - CBDG ADMINISTRATIVE CONTRACT

Assistant to the Manager Jim Byrne appeared before the Council to request approval of a CBDG administrative contract with the Boone Housing Authority. Upon a motion by Council member Mason, seconded by Council member Phillips, Council moved to approve the following contract:

STATE OF NORTH CAROLINA
WATAUGA COUNTY

CONTRACT

THIS CONTRACT, made and entered into this 20th day of September, 2011, by and between the Town of Boone, a body politic, organized and existing under virtue of the laws of the State of North Carolina, party of the first part, and the Boone Housing Authority, a body politic, organized and existing under virtue of the laws of the State of North Carolina, party of the second part.

WITNESSETH:

WHEREAS, the party of the first part is recipient of a \$600,000 CBDG Grant # 10-C-2228; and

WHEREAS, it is the desire of the party of the first part to contract with the party of the second part to provide technical assistance functions of said CBDG Grant for an administrative fee of \$60,000; and

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

GENERAL PROVISIONS:

13. The party of the second part shall assist in the performance of the following services:
14. Prepare a project environmental review, and obtain release of funds.
15. Should the project mandate the submission of an amendment, prepare the amendment in accordance with guidelines established by the Department of Commerce.
16. Assist in preparation of proposals and bids, contract preparations and awards, project work inspections, and general administration duties.
17. Be responsible to the town for compliance of monitoring visits, annual audits, and general program compliance.

18. Provide budget information to the Town of Boone, and comply with conditions under attachment 'A'

Perform all duties necessary to satisfactory complete all grant activities. The duties will include, but are not limited to: cost estimates, supervision, and general administrative duties in accordance with North Carolina and Federal regulations. This contract can be terminated without cause by either party giving 10-days written notification. The party of the first part will compensate the party of the second part for the percentage of project completion at termination. The contract can also be terminated if the party of the second part fails to comply with the terms of the contract.

IN WITNESS WHEREOF, the parties of this Contract have executed it in duplicate originals, the day and year first written above.

VOTE:Aye - All
Nay - None

PUBLIC WORKS REQUEST - CORRECTIVE ACTION FOR FOUR TREES LOCATED IN DOWNTOWN

Public Works Director Blake Brown appeared before the Council to request permission to take corrective action regarding four trees located in the downtown area (**map of trees located permanently on file in the September 2011 meeting information file.**) He stated that the trees are Bradford Pear trees located in front of the post office and the old Farmer's Hardware Shop. Mr. Brown stated that the wind and adverse weather conditions have affected this type of tree and suggested a heartier species of tree for replacement. Council directed Mr. Brown to determine some replacement types and to present the information back to Council. Upon a motion by Council member Mason, seconded by Council member Ball, Council moved to authorize the removal of trees #1 (located in front of post office) and #4 (located in front of old Farmer's Hardware) this fall, to authorize the removal of trees # 2 and #3 (both located in front of the post office) in the spring of 2012, the replacement of all four trees to also take place in the spring unless the trees become a safety risk, and for the presentation of a plan for the replacement species tree type.

VOTE:Aye - All
Nay - None

REQUEST APPROPRIATION OF FUNDS - UPGRADE OF COMMUNICATIONS SYSTEM FOR BOONE PD

Police Chief Dana Crawford presented a request to appropriate funds from the E911 Fund Balance to Capital Outlay to upgrade both communications radio consoles, add VIPER capabilities, and to purchase in-car cameras for the Patrol Division. Chief Crawford explained that the communications consoles are no longer going to be supported by Motorola. He also recommended the upgrade of the radio system in order to be compatible with the VIPER system. Upon a motion by Council member Mason, seconded by Council member Leigh, Council moved to approve the appropriation of \$21,891.50 from the 911 funding and \$19,048.50 from the 50% "public safety needs" funds for the aforementioned request.

VOTE:Aye - All
Nay - None

ADOPTION OF RESOLUTION - RETIREMENT AND SALE OF SERVICE CANINE, DANO

Police Chief Dana Crawford requested the Council's approval of the retirement of Boone Police Service Canine "Dano". He explained that the dog has been diagnosed with a degenerative disease of the lower spine and that local veterinarian Dr. Howard Johnson recommended that Dano be retired immediately. Furthermore, Chief Crawford requested that Dano be declared as surplus property by the Council so that he can be sold to his current handler, Sergeant Scott Mackler. Upon a motion by Council member Ball, seconded by Council member Brantz,

Council moved to approve the request to retire Boone Police Service Canine “Dano” and to adopt the following resolution:

RESOLUTION AUTHORIZING THE DISPOSITION OF CERTAIN PERSONAL PROPERTY BY PRIVATE SALE

WHEREAS, the Town Council of the Town of Boone desires to dispose of certain surplus property of the Town;

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

1. The following described property is hereby declared to be surplus to the needs of the Town: one retired German Shepherd service canine known as “Dano.”
2. The Police Chief is authorized to dispose of the described personal property by private sale at a negotiated price.
3. The minimum price to be accepted for the property is \$1.00.
4. The Town Clerk shall publish notice summarizing this Resolution in accordance with G.S.160A-267.
5. The sale may be consummated not earlier than 10 days from the date of the publication.

ADOPTED this 20th day of September, 2011.

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 166)

VOTE: Aye - All
Nay - None

DISCUSSION OF ADDITION TO TABLE OF PERMITTED USES - MICROBREWERIES AND WINERIES IN COMMERCIAL DISTRICT

Council discussed the possibility of the admission of micro-breweries and wineries to the list of permissible uses in commercial districts B-1, B-2, and B-3 as both a primary and secondary use. The following persons spoke in favor of the addition of micro-breweries and wineries within the commercial districts: Jeff Walker-Boone Brewing Company, Seth Cohen-ASU professor, and Justin White, who is interested in the possibility of operating a micro-brewery or winery. Upon a motion by Council member Phillips, seconded by Council member Ball, Council moved to direct the Planning Staff to further discuss micro-breweries and wineries as a category for review for inclusion in the Table of Permitted Uses and to examine such related issues as size limitations, exhaust, outdoor storage, and distribution.

VOTE: Aye - All
Nay - None

DISCUSSION AND POSSIBLE ACTION - TO SELL BEER AND WINE BY THE GLASS

Council member Phillips asked that this matter be rescheduled to another time so that more information can be supplied. Upon a motion by Council member Phillips, seconded by Council

member Ball, Council moved to table consideration of this request until the October regular meeting so that more information can be provided.

VOTE: Aye - All
Nay - None

REQUEST FOR FUNDS AND SUPPORT - FIRST ANNUAL BOONE HERITAGE FESTIVAL

Council member Brantz presented a request for support in the amount of \$2,000 for the First Annual Boone Heritage Festival. He explained that the festival will be held on Saturday, October 8th, from 9:00 a.m. until 4:00 p.m. at the Hickory Ridge Living History Museum in the Daniel Boone Park. He stated that the festival will include musical performers, crafts, games, children’s activities and an afternoon square dance. Michelle Ligon, who is helping to coordinate the event, stated that a number of local businesses have agreed to offer sponsorship of the event. Upon a motion by Council member Brantz, seconded by Council member Mason, Council moved to approve a request for \$2,000 to support the First Annual Boone Heritage Festival.

VOTE: Aye - All
Nay - None

PUBLIC UTILITIES REQUEST - INCREASE DEPOSIT COSTS FOR 3/4" CONSTRUCTION WATER METER

Public Utilities Director Rick Miller appeared before the Council to request an increase in the deposit required for a 3/4" construction water meter. He explained that the cost to replace or rebuild the meters once they are damaged at a site has increased in the past few years and that the current \$250 deposit does not cover these costs any longer. Upon a motion by Council member Leigh, seconded by Council member Ball, Council moved to approve a request for an increase in the deposit fee of a 3/4" construction water meter in the amount of \$500.00

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 September 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:

MISCELLANEOUS SUPPLIES (POLICE DEPT)	010-500-300-519900	\$195.00	
MISCELLANEOUS REVENUE- GENERAL FUND	010-000-000-489900		(\$195.00)
MAINTENANCE & REPAIR- VEHICLES (POLICE DEPT)	010-500-300-525301	\$3,963.00	
MISCELLANEOUS REVENUE- GENERAL FUND	010-000-000-189900		(\$3,963.00)
MUNICIPAL SERVICE DISTRICT PROJECTS	050-450-000-553104	\$30,000	
DBDA-RETURN OF 50% MSD FUNDS	050-450-000-467320		(\$30,000)

CAPITAL OUTLAY OTHER EQUIPMENT E-911	011-500-304-574000	\$114,238.00	
APPROPRIATED FUND BALANCE-50% REMAINING FUNDS FOR PUBLIC SAFETY	011-500-000-499900		(\$92,346.00)
APPROPRIATED FUND BALANCE-E-911 SURCHARGE	011-500-000-499900		(\$21,892.00)

VOTE:Aye - All
Nay - None

SCHEDULING OF SPECIAL MEETING - NOISE ORDINANCE

Upon a motion by Council member Brantz, seconded by Council member Mason, Council moved to schedule a Special Meeting on Monday, October 17, 2011, at 7:00 p.m. in order to further discuss and review the Noise Ordinance.

VOTE:Aye - All
Nay - None

RECESS

On a motion by Council member Brantz, seconded by Council member Ball, Council moved to recess the meeting at 9:51 p.m. until Thursday, September 22, 2011 at 6:30 p.m.

VOTE:Aye - All
Nay - None

A recessed meeting from Tuesday, September 20, 2011 was called to order at 6:30 p.m. on Thursday, September 22, 2011 in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were 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, Planning & Inspections Director Bill Bailey, Public Utilities Director Rick Miller, Public Works Director Blake Brown, Fire Chief Jimmy Isaacs and Police Chief Dana Crawford.

TENTATIVE AGENDA ADOPTION

Town Manager Greg Young explained that the adoption of the DBDA by-laws will be removed from this agenda and discussed at the October meeting. On a motion by Council member Brantz, seconded by Council member Leigh, Council adopted the agenda as amended.

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

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Clawson announced one resident vacancy on both the Board of Adjustment and Planning Commission and three open positions on the Tree Board.

AFFORDABLE HOUSING TASK FORCE

There were no applications submitted for the vacancies.

BOARD OF ADJUSTMENT

Council member Ball nominated Virginia Roseman to the vacant resident position on the Board of Adjustment. There being no further nominations, Council appointed Virginia Roseman to the Board of Adjustment. Her term will expire June 30, 2013.

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

COMMUNITY APPEARANCE COMMISSION

There were no applications submitted for the vacancies.

GREENWAY PARKS & GARDEN COMMITTEE

Council member Brantz nominated Jamie Goodman to a vacant position on the Greenway Parks and Garden Committee. There being no further nominations, Council appointed Jamie Goodman to the Greenway Parks and Garden Committee. Her term will expire July 31, 2014.

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

HISTORIC PRESERVATION COMMISSION

Council member Brantz nominated Bill Bake to a vacant position on the Historic Preservation Commission. There being no further nominations, Council appointed Bill Bake to the Historic Preservation Commission. His term will expire June 30, 2015.

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

OUTSIDE AGENCY FUNDING COMMITTEE

There were no applications submitted for the vacancies.

TREE BOARD

There were no applications submitted for the vacancies.

BOONE TOURISM DEVELOPMENT AUTHORITY

Council member Brantz nominated Virginia Roseman to a vacant resident position on the Boone TDA. Council member Ball nominated Anne Peecook to a vacant owner/operator of a taxable tourist accommodation position on the Boone TDA. There being no further nominations, Council appointed Virginia Roseman as a resident representative on the Boone TDA. Her term will expire August 31, 2014. Council also appointed Anne Peecook as an owner/operator of a taxable tourist accommodation representative on the Boone TDA. Her term will also expire August 31, 2014.

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

WATER USE COMMITTEE

There were no applications submitted for the vacancies.

REQUESTED APPEARANCE - TRENT MARGRIF

Mr. Trent Margrif, a member of the Historic Preservation Commission, appeared before Council to present an update on the design guidelines the Commission was tasked to complete. Mr. Margrif requested permission to conduct a forum on October 11th to present the design guidelines and take comments from the public. Council member Leigh felt that Town Council and the Town Attorney should review the design guidelines before the public forum. After little discussion, on a motion by Council member Brantz seconded by Council member Leigh, Council moved to review the design guidelines and to discuss the guidelines at the October 20th Council meeting.

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

REQUESTED APPEARANCE - JAMES M. DEAL, JR.

Mr. James M. Deal, Jr. appeared before Council to request permission to modify the Conditional District zoning permit for the Courtyard by Marriott project. Mr. Deal requested permission to go beyond the “non-disturbance” line and to increase the berm area. Mr. Deal said increasing the berm area will allow for better soil placement which will allow landscaping trees to grow bigger and faster. Ms. Lynne White, a neighbor to the project, said her only concern was the UDO requirement that the buffer be completely grown within three to five years. Ms. White requested that the trees on the east end of the berm be at least 20-feet tall at planting. Council discussed at length the plantings to be placed on the property, especially the berm area. Planning and Inspections Director Bill Bailey explained that the maximum screening possible will be placed along the berm area. Town Attorney Sam Furgiuele explained Council’s options regarding the request for modifications. After little discussion, on a motion by Council member Leigh, seconded by Council member Ball, Council moved to deem this an insignificant deviation that will allow the developer to go beyond the temporary “non-disturbance” line, under the supervision and guidelines of the Planning and Inspections Department, to build this wall in a different manner than was originally perceived.

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

REQUESTED APPEARANCE - BOB BARNES

Mr. Bob Barnes, owner of Austin Barnes Funeral Home, appeared before Council to request clarification of the Town’s parking violation policy for funeral services. Mr. Barnes explained that at a recent funeral service several cars in the funeral procession were ticketed while parked in Town parking spaces at the First Baptist Church. Mr. Barnes also pointed out visitors who park on Queen Street during afternoon services must pay the parking meters or face a parking violation. Mr. Barnes requested that Council consider a special waiver for parking during a funeral service. Town Manager Greg Young voiced his concern about duplication of the waiver forms and said that the Town could make exceptions if it knows when the funeral services are scheduled. On a motion by Council member Brantz, seconded by Council member Leigh, Council moved to authorize the Town Manager to facilitate a satisfactory arrangement of parking waivers for funeral homes during services held in the Town of Boone.

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

REQUESTED APPEARANCE - GUNTHER DOERR

Mr. Gunther Doerr, ASU Police Chief, appeared before Council to request an alteration to the normal traffic pattern of Stadium Drive on the remaining home ASU football games. Mr. Doerr also requested that Council allow ASU to close a portion of Stadium Drive immediately following the football game in order to get pedestrians out of the stadium area. Mr. Doerr said these changes will not require any additional manpower from the Town of Boone. Mr. Doerr said shifting both lanes of Stadium Drive to exit onto Rivers Street will improve traffic flow and

closing a portion of Stadium Drive will enhance pedestrian safety. Police Chief Dana Crawford suggested testing this traffic alteration. Council member Ball agreed and asked Police Chief Crawford to report results to Town Council at its October meeting. On a motion by Council member Brantz, seconded by Council member Ball, Council moved to approve this pilot test of the recommended traffic patterns as presented by ASU and to give the Town Manager the authority to make minor changes through the course of this pilot program.

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

REQUESTED APPEARANCE - VALOR ENGINEERING

Mr. Jason Gaston, Engineer with Valor Engineering, appeared before Council to request the following changes within the UDO and Planning and Inspections Department:

1. Sections 64.b.1 and 64.b.2 of UDO - Request to shorten the time allowed to review zoning applications from 20 days to 10 days. Mr. Gaston felt that 20 days to review applications, plans, etc. is too long and that several of his clients, such as Doug McGuire, Temple of the High Country and Watauga Medical Center, felt the same. Planning Director Bill Bailey voiced his concern over shortening the time to review plans and said shortening the time allowed for review will have an adverse impact on all Town departments.

2. Changes to the Town of Boone Public Meeting Schedule & Development Review Deadlines calendar by having all zoning amendments in two months before a Quarterly Public Hearing instead of one month. Mr. Gaston said this change would provide the applicant and staff more time, especially during a conditional district rezoning process. Director Bailey agreed this change would be helpful to all involved.

2. Changes to the Town of Boone Fee Schedule. Mr. Gaston said if UDO changes are made to speed up the review process an increase in the fees is appropriate. Director Bailey said that while he agreed with the fee increase, it should be based upon something besides the change in review time.

After a lengthy discussion regarding these changes, Council member Ball made a motion to forward these recommendations for discussion to the Spring 2012 planning retreat and to invite members of the Planning Commission and Board of Adjustment to attend and discuss these recommendations also. Council member Leigh seconded.

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

Mayor Clawson declared a break at 8:26 p.m. Council reconvened at 8:37 p.m.

REQUESTED APPEARANCE - JIM ROBERTS

Mr. Jason Gaston, engineer with Valor Engineering, appeared before Council to request an encroachment agreement for a 50'x30' concrete pad. Mr. Gaston said the pad will be used by a mobile MRI unit. On a motion by Council member Phillips, seconded by Council member Brantz, Council moved to adopt the following encroachment agreement:

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made and entered into this the 22nd day of September, 2011, by and between the TOWN OF BOONE, party of the first part; and HWKF, LLC, 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 194 Doctors Drive with the following: Curb & Gutter; Grate Inlet (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 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

Absent-1 (Mason)

REQUESTED APPEARANCE - BILL DIXON

Mr. Bill Dixon, architect, appeared before Council to request Town Council's consideration of a partnership for the development of the Scottish Inn property. Mr. Dixon reminded Council that the property owner is in discussion with Olive Garden and a major hotel for redevelopment of the property. Mr. Dixon explained that Boone Creek is a major factor in the redevelopment of that property. Mr. Dixon said the property owner can either culvert the creek or open up "daylight" the creek. Mr. Dixon said daylighting the creek is the preferred option; however, it is

very expensive especially in an urban setting. Mr. Dixon presented several different options for the redevelopment of the property. Mr. Dixon asked if the Town would be willing to partner with the property owner to secure grants from FEMA or Clean Water Management Trust Fund to daylight the creek. Council members felt that daylighting the creek would be the best option. Assistant to the Manager Jim Byrne pointed out that, at this point, FEMA has no funding for project. Mr. Byrne also pointed out that there are legal issues about this property which the Town Attorney would need to address. Mr. Byrne said the Town might be able to secure an Army Corps grant; however, voluntary participation of adjoining property owners will be necessary. Mr. Byrne also pointed out that permitting for this type of project will take several years. Town Manager Greg Young explained that the Town of Boone has not reserved money for this type of project. Mr. Damon Malletere, owner of the property, said he will need to let Olive Garden know within the next 60 days if the project can proceed. Mr. Malletere said there was no way he could open up the creek without Town assistance. Mr. Malletere plans to attend the October Council meeting to discuss this project again.

REQUESTED APPEARANCE - BRIAN WILLIAMS

Mr. Brian Williams, Chairman of the Community Appearance Commission, appeared before Council to request an UDO text amendment to change the current quorum requirement of four members to a majority of Community Appearance Commission members. Mr. Williams said because of the current low membership the Commission is having difficulty in obtaining a quorum. Council discussed at length whether to be more diligent in recruiting members or to add members of the Planning Commission and Historic Preservation Commission to the Community Appearance Commission. On a motion by Council member Brantz, seconded by Council member Phillips, Council directed the Town Attorney to prepare a UDO text amendment to change the quorum requirement for the Community Appearance Commission to reflect a majority of current Community Appearance Commission members.

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

WATER AND SEWER REQUEST - JOHN WINKLER

Town Attorney Sam Furgiuele opened a public hearing at 9:37 p.m. to hear sworn testimony from Jason Gaston and Planning and Inspections Director Bill Bailey on a water and sewer request for property located at the corner of Clement Street and Blowing Rock Road. Mr. Jason Gaston, engineer for John Winkler, said his client is awaiting the proposed corridor overlay district options before submitting final plans for the property. Council member Ball asked when the overlay options will be presented. Planning and Inspections Director Bill Bailey said the draft overlay options will be presented in November and will be presented for public hearing in February 2012. There being no further comments, the public hearing closed at 9:43 p.m. On a motion by Council member Brantz, seconded by Council member Phillips, Council moved to table this request until the February 23, 2012 Town Council meeting.

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

CLOSED SESSION

On a motion by Council member Brantz, seconded by Council member Ball, Council moved to enter Closed Session at 9:46 p.m. pursuant to NCGS 143-318.11a)3) in order to discuss legal advice on the Templeton properties appeal and the Board of Adjustment zoning interpretation and to consider the counter proposal from the Gang of Give LLC.

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

On a motion by Council member Ball, seconded by Council member Brantz, Council moved to excuse Mayor Clawson from the meeting at 10:45 p.m. as Council began discussion of the Templeton properties appeal.

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

On a motion by Council member Ball, seconded by Council member Brantz, Council moved to exit Closed Session at 11:03 p.m.

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

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
Absent-1 (Mason)

Town Clerk

Mayor

Deputy Town Clerk