

**MINUTES - REGULAR MEETING  
BOONE TOWN COUNCIL  
DECEMBER 17, 2009**

An organizational meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, December 17, 2009, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro Tem Lynne Mason, Andy Ball, Jamie Leigh, and Stephen Phillips. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Deputy Town Clerk Kimberly Brown, Assistant to the Town Manager Jim Byrne, Police Chief Dana Crawford, Fire Chief Reggie Hassler, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, Human Resources Director Peri Moretz, Planning Supervisor Ricky Hurley, and Planner Jane Shook.

District Court Judge Greg Horne presided over the swearing-in ceremonies. Official oaths precede this page.

**ANNOUNCEMENTS**

Mayor Clawson presented Janet Pepin with a plaque commemorating her service as a Boone Town Council member.

Mayor Clawson presented Liz Aycocock with a plaque commemorating her service as a member of the Boone Town Council.

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

**TENTATIVE AGENDA ADOPTION**

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

1. Addition of Item 6.F. - Adoption of Official Meeting Notice.
2. Deletion of Item 9.F. - Presentation of Affordable Housing Text Amendment.
3. Addition of Item 9.U. - Discussion of DBDA Survey.
4. Addition of Item 9.V. - Approval of Lease Agreement - Ronald A. & Kathleen B. McCreary.
5. Deletion of Item 11.A. - Albert Gersing Water & Sewer Request.

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

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

**CONSENT AGENDA ADOPTION**

Council Member Mason asked that the following sentence from the November 19, 2009 regular meeting minutes be amended as follows: *Council Member Mason agreed and pointed out that the newly adopted Land Use Master Plan also discourages the placement of water and sewer lines ~~outside the Town's jurisdiction~~ in this area.*

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

Minutes:       November 2, 2009 - Quarterly Public Hearing.  
                  November 5, 2009 - Special Meeting.  
                  November 19, 2009 - Regular Meeting.

Tax Releases & Refunds:   October 2009.

**TAX RELEASES**

**OCTOBER 2009**

<b>Taxpayer</b>	<b>Year</b>	<b>Amount</b>	<b>Description</b>
CT RENTAL LLC	2009	78.53	SUBJECT TO GROSS RENTALS
TILLEY, HAROLD CRELLIN	2009	17.67	TURN IN TAG
ROY, CHRISTINE LILLIAN	2009	2.98	TURN IN TAG
HARTLEY, GWYN	2009	49.65	INCORRECT SITUS
SUMPTER, WALTER PENN SUMPTER, MIRIAM ULMER	2009	555.00	INCORRECT SITUS
GRAHAM, JAMES B TRUSTEE GRAHAM, MARY AUSTIN TRUSTEE	2009	1054.13	BLDG SOLD TO DOT
MATTERN, DANA ALAN	2009	34.82	INCORRECT SITUS
TRIVETTE, HENRY WALTER TRIVETTE, JANET GREENE	2009	2.04	SOLD BOAT TRANSFERRED TO TENNESSEE
RUSSELL, JEANNE YOUNG	2009	.68	TURN IN TAG
ENTERPRISE LEASING CO SE	2009	61.42	RENTAL/EXEMPT
WESTERN YOUTH NETWORK	2009	3.70	EXEMPT
HATCH, ERIC J AND CAROLE	2009	39.49	TURN IN TAG
BLACKHAM, JEFFREY ALAN	2009	11.03	TURN IN TAG
STANLEY, DENISE WARDEN STANLEY, JAMES CHARLES	2009	45.70	TURN IN TAG
MARSH, ANDREA MICHELLE MARSH, RONALD DAVID	2009	58.09	NOT IN TOB
EVANS, NATHAN WALLACE GEIS, CHRISTOPHER R	2009	82.07	SOLD SAME MONTH AS TAG SURRENDER
ADVANCE STORES COMPANY INC HENSLEY, JANICE PARIS	2009	116.77	DOUBLE BILLED
ADVANCE STORES COMPANY ADVANCE AUTO PARTS BOONE	2009	173.10	DOUBLE BILLED
HUFF, WILLIAM TODD HUFF, PENNY WARD	2008	75.71	INCORRECT SITUS
UPCHURCH, RONALD GRAY	2008	45.03	2 TAGS-SAME EXPIRATION DATE
		<b>2507.61</b>	

**TAX REFUNDS  
OCTOBER 2009**

<b>Taxpayer</b>	<b>Year</b>	<b>Amount</b>	<b>Description</b>
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KAUDELKA, WALTER K KAUDELKA, JEANNE V	2009	8.35	TURN IN TAG
RUSSELL, JEANNE YOUNG	2009	7.28	TURN IN TAG
FERRELL, JEREMY CHANDLER	2009	3.48	TURN IN TAG
VANACORE, JEFFREY CHAD	2008	12.86	SOLD VEHICLE
DYER, JACQUELINE TEAGUE	2008	5.93	SOLD VEHICLE
TRAILWAY CLEANERS INC.	2008	10.15	SOLD VEHICLE
		<b>48.05</b>	

Adoption of Resolution - Service Appreciation for Janet Pepin:

### RESOLUTION

**WHEREAS, Janet Pepin** has served this community well for many years in numerous capacities, including 4 years as a member of the Boone Town Council; and

**WHEREAS,** these years of service have been marked by exemplary dedication to the best interest of the community as she has worked constantly for the betterment of its economic, cultural, and aesthetic development; and

**WHEREAS,** the Town has benefitted greatly because of her particular interest and work in the areas of Water & Sewer , Utility Mapping, E911, Vehicle Committee, Cablevision Committee, Historic Preservation Commission, and Citizens for Responsible Pet Population; and

**WHEREAS,** through the performance of her duties and responsibilities as a member of the Town Council she has made excellent and constructive contributions to municipal government in our Town; and

**WHEREAS,** she has earned the admiration and high regard of those with whom she has come into contact and the affection of her fellow public servants, who are proud to call her “friend”;

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council for the Town of Boone does hereby express our sincere appreciation and thanks, as well as that of our citizens to **Janet Pepin** for her distinguished service to the community;

**BE IT FURTHER RESOLVED** that a copy of this resolution shall be forwarded to **Janet Pepin** with sincere best wishes for continued success and many happy years ahead.

Adopted by unanimous vote of the Town Council on the 17<sup>th</sup> day of December, 2009.

Mayor

ATTEST:

Clerk

**(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 126)**

Adoption of Resolution - Service Appreciation for Liz Aycock:

### RESOLUTION

**WHEREAS, Liz Aycock** has served this community well for many years in numerous capacities, including 1 ½ years as a member of the Boone Town Council; and

**WHEREAS**, these years of service have been marked by exemplary dedication to the best interest of the community as she has worked constantly for the betterment of its economic, cultural, and aesthetic development; and

**WHEREAS**, the Town has benefitted greatly because of her particular interest and work in the areas of Personnel, Finance, Purchasing, Public Records, DBDA, Outside Agency Funding Review, Affordable Housing Task Force, and Greenway Committee; and

**WHEREAS**, through the performance of her duties and responsibilities as a member of the Town Council she has made excellent and constructive contributions to municipal government in our Town; and

**WHEREAS**, she has earned the admiration and high regard of those with whom she has come into contact and the affection of her fellow public servants, who are proud to call her “friend”;

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council for the Town of Boone does hereby express our sincere appreciation and thanks, as well as that of our citizens to **Liz Aycock** for her distinguished service to the community;

**BE IT FURTHER RESOLVED** that a copy of this resolution shall be forwarded to **Liz Aycock** with sincere best wishes for continued success and many happy years ahead.

Adopted by unanimous vote of the Town Council on the 17<sup>th</sup> day of December, 2009.

Mayor

ATTEST:

Clerk

**(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 127)**

Annual Certification of Firemen: Boone Fire Department.

Adoption of Official Meeting Notice:

***PUBLIC NOTICE***

*The public will take notice that the Boone Town Council holds its regularly scheduled meetings at the Council Chambers, 1500 Blowing Rock Road, Boone, NC on the following dates:*

***THIRD (3<sup>RD</sup>) TUESDAY AND THURSDAY OF EACH CALENDAR MONTH  
(WHICHEVER DAYS FALLS FIRST)***

*Closed Sessions, if necessary, will be held on the Third (3<sup>rd</sup>) Thursday of each calendar month, at the end of each regularly scheduled meeting.*

*Persons wishing to appear on the Town Council meeting agenda must notify the Town Clerk (268-6200) by 9:00 a.m., one week before the meeting. No agenda item will be added for action after this time, unless approved by a majority vote of the Boone Town Council.*

*Agendas are posted on this bulletin board as soon as prepared.*

**NOTE:** *Special meetings are called as necessary and are posted and delivered to local news media forty-eight (48) hours in advance.*

*Adopted: December 22, 1987*

*Amended: 3/88; 3/90; 12/91; 9/98; 11/03; 12/09*

VOTE: Aye - All

Nay - None  
Absent - 1 (Brantz)

**PUBLIC HEARING - CCC&TI, HOSPITALITY HOUSE & WATAUGA COUNTY**

Mayor Clawson opened a public hearing at 6:50 p.m. to in order to receive public comment regarding the CCC&TI, Hospitality House, and Watauga County annexation petition. Planner Jane Shook stated that this is the final step in the annexation process for this property. There being no one signed up to speak, Mayor Clawson closed the public hearing at 6:51 p.m.

**PUBLIC COMMENT**

Greg Simmons, of 310 Daniel Boone Drive Extension, appeared before the Council to voice the concerns of several of the residents in the neighborhood adjacent to the new Watauga High School site. He pointed out the unsightly chain-link fencing along the western side of the school property. He also informed the Council of concerns regarding stormwater management in the Delmar Street area. Mayor Clawson stated that the Town appreciates hearing the concerns of its citizens and will investigate the issues brought forth by Mr. Simmons.

**ELECTION OF MAYOR PRO-TEM**

With no other nominations, Council Member Ball moved to elect Council Member Mason to serve as Mayor Pro-Tem. Council Member Phillips seconded the motion.

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

**COUNCIL LIAISON APPOINTMENTS**

Mayor Clawson presented the following list of Town Council assignments and liaisons:

**2009-2011 COUNCIL ASSIGNMENTS AND LIAISONS**

Loretta Clawson	Region D Council of Governments*; High Country Council of Government RPO
Rennie Brantz	Watauga County Solid Waste Committee*; Recycling; Fire Department; Vehicle Committee; Jones House*; Historic Preservation*; Zero-Waste; Outside Agency Funding; Horn in the West Board
Jamie Leigh	Personnel; Finance; Purchasing; Public Records; DBDA*; Greenway Committee; Outside Agency Funding Review; Affordable Housing Task Force; Mountain Keepers
Andy Ball	Water and Sewer; Utility Mapping; E911; Vehicle Committee; Cablevision Committee; Historic Preservation; High Country RPO Backup
Lynne Mason	Development Services; Affordable Housing Task Force; TDA*; Transportation Committee; Walk Boone; Zero-Waste; Smart Growth; Master Plan Advisory; DBDA*
Stephen Phillips	AppalCART*; Police Department; Transportation Committee; Greenway Committee; Parks & Recreation*; Smart Growth; Master Plan Advisory; ASU/Town Gown Committee

\* Requires a Councilmember to serve on respective board/commission.

Effective: December 17, 2009

## **CONSIDERATION OF REZONING REQUESTS**

**Case 20090644 - Boone Exchange Partners** - John Fischer, Ellen Jo Kraemer, and Drew Taylor of Boone Exchange Partners, LLC have filed a Conditional District Map Amendment request for properties located at 285, 319, and 335 Old Bristol Road and further identified as Watauga County parcel number 2901-50-3562-000 and 2901-50-2691-000. The request is to rezone the property from R-2, Two-Family Residential and B-3, General Business, to Conditional District B-3 (CD) General Business to allow the expansion of the Exchange Apartments. Planning Supervisor Ricky Hurley presented the following information regarding the Planning Commission action on this request:

### ***Planning Commission First Motion and Vote:***

*Commission Member Milstead made a motion that the proposed amendment to the Town's zoning ordinance and map is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because the proposed rezoning promotes high density development downtown and walkability. Commission Member McRae seconded the motion.*

**VOTE:**           Aye - All  
                      Nay - None

### ***Planning Commission Second Motion and Vote:***

*Commission Member Vincent made a motion to recommend approval for the following reasons: promotion of high density and walkability. Commission Member Marland seconded the motion.*

**VOTE:**           Aye - All  
                      Nay - None

Town Attorney Sam Furguele stated that the main point of discussion at the Planning Commission meeting regarding this request was traffic. Public Works Director Blake Brown listed the following two options in regard to the traffic concerns for this project:

1. Installation of two speed humps with one speed hump located on Old Bristol Road at the Lovill House Inn and the other speed hump located near the project. The cost of each speed hump is estimated at \$350-\$400.
2. Installation of a three-way stop at the intersection of Greene Street and Old Bristol Road.

Mr. Brown stated that the realignment of the Old Bristol Road and Pinnacle Drive intersection would also help to relieve traffic issues in that area. Council Member Mason suggested that the Town should recommend a speed-limit reduction for the stretch of Highway 421 in that area. In response to questions from Council Member Mason, Drew Taylor indicated that the applicant is agreeable to reimbursing the Town for the costs of the installation of two speed-humps on Old Bristol Road. He also stated that he is agreeable to discussing the issue of relocating the entrance and exit for the project on King Street. It was agreed to by the applicant and the Council to have the issue of relocating the entrance/exit for the project brought before the Transportation Committee for discussion and a recommendation. Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to approve the conditions recommended by the staff along with the following conditions for the project:

- § Where there is a conflict between the application information and the plans, the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO. Any commitments and representations concerning the proposed project made by the applicant or his/her representatives at the public hearing shall also become a condition of the permit and a basis for a stop-work order and/or permit revocation if violated.
- § Final plans shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.
- § If it is determined by the Transportation Committee that the installation of two speed-humps is appropriate, the cost of the installation of two speed-humps will be the responsibility of the applicant.
- § If it is determined by the Transportation Committee that the project entrance/exit be located on King Street for safety reasons, the applicant will relocate the proposed entrance/exit for the project to the King Street side of the property.

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

Drew Taylor agreed to the conditions as listed by the Council.

Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because:

§ The subject property is located in the Primary Growth Area as identified on the Growth Strategy Map.

§ The project is consistent with policies of the Land Use Master Plan.

§ The project is consistent with Policy 2.3.3 Housing and Neighborhoods of the Town's Comprehensive Plan.

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

Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to approve the proposed amendment to the Town's zoning ordinance with the prior approved conditions and believe approval is reasonable and in the public interest because the project is in conformity with the Land Use Master Plan, provides housing that this close to the ASU campus, and is in harmony with the surrounding area.

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

**Case 200900645 Poplar Cove** - John Winkler/Poplar Cove, LLC has filed a Conditional District Map Amendment request for property located approximately 400 feet southwest of the intersection of Poplar Grove Road and Poplar Grove Connector Road. The property is further identified as Watauga County parcel number 2900-59-2242-000. The request is to rezone the property from R-1, Single-Family Residential, to Conditional District R-3, Multiple-Family Residential, to allow an architecturally-integrated subdivision consisting of 15 multiple-family units, 12 single-family units and one duplex. Planning Supervisor Ricky Hurley presented the following information regarding the Planning Commission action on this request:

***Planning Commission First Motion and Vote:***

*Commission Member Woolridge made a motion that the proposed amendment to the Town's zoning ordinance and map is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because housing diversity, housing downtown, and location near infrastructure. Commission Member McRae seconded the motion.*

VOTE: Aye - All  
Nay - None

***Planning Commission Second Motion and Vote:***

*Commission Member Woolridge made a motion to recommend approval for the following reasons: housing diversity, housing downtown, and location near infrastructure with additional conditions as agreed upon by the applicant/property owner being 1) conditions beginning on page 7 of the staff report, 2) R-1 zoning restrictions for occupancy, 3) inclusion of property within Neighborhood Conservation District, 4) no left-turns from Poplar Grove Rod into the development. Commission Member Milstead seconded the motion.*

VOTE: Aye - All  
Nay - None

Mr. Hurley stated that a valid protest petition was received regarding this request. Mayor Clawson noted that there were some members of the audience who wished to speak to this case.

Upon a motion by Council Member Phillips, seconded by Council Member Ball, Council moved to receive additional public comment for this request at 7:26 p.m.

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

Barney Hodgson, of 290 The Meadows, pointed out that Poplar Grove Road is not designed for a large amount of traffic and is already a dangerous road. He stated that he feels the project is too dense for the adjacent neighborhoods and will be difficult to maintain as “affordable housing.” Mr. Hodgson indicated that noise from the project is a concern for adjacent neighborhoods.

Sandy Hayes, of 224 The Meadows, stated that this project is proposed to meet the needs of “affordable housing,” not student housing. She stated that the developer is unwilling to make this a condition of a restrictive covenant for the project. Ms. Hayes asked the Council to continue to protect and preserve existing single-family neighborhoods.

John Winkler, the project developer, explained he did not put a condition regarding owner-occupied housing in a restrictive covenant because he did not want to limit his ability to rent units if he is unable to sell them. He also informed the Council that he is considering the idea of participating in the cost of installing sidewalk from the project site along Poplar Grove Road to Water Street.

Jason Gaston, the project engineer, presented the Council with a list of facts and statistics regarding the project. He specifically noted item #1, which gives information about a traffic study provided by Davenport Engineering for the project and indicates that Poplar Grove Road has sufficient capacity to support the project and #4 which identifies the maximum number of lots allowed for the property as 40 lots for the R-1 zoning and 64 lots as R-3 zoning per Sections 210 and 200 of the UDO. He pointed out the proposed number of lots for the project as 29 lots. In response to questions concerning the entrance to the project, Mr. Gaston stated that the project cannot share an entrance with the Watauga County property which houses the social services offices. He pointed out that the current entrance to the County’s property does not meet NC DOT standards and if residential access were added to the use, the change would result in the need for an upgrade to the entrance. Mr. Gaston stated that such an upgrade would prohibit delivery trucks from making a left-turn from Poplar Grove Road into the Watauga County complex. Mr. Winkler stated that Jim Deal, on behalf of Watauga County, is planning to meet with the NC DOT officials to further discuss the idea of a consolidated entrance. In regard to a question about a privacy fence between the project and adjacent properties, Mr. Gaston stated the project will meet buffer requirements as set forth in the UDO. Council Member Mason inquired as to how Mr. Winkler plans to market this project as “affordable housing.” Mr. Winkler stated that he is planning to contact some of the larger employers in the area such as ASU and the Watauga Medical Center so that this project can be an option for the housing needs of their employees. He also suggested the use of incentives such as tax credits for first-time home buyers. Town Attorney Sam Furgiuele stated that the developer is limited by the regulations contained in the Fair Housing Act. Larry Greene, the project architect, stated that the design of the project has resulted in a reduced mass of structures. He indicated that the development will utilize natural materials and colors as to blend in the surroundings.

Next to speak was Jason Triplett, of Wachovia Bank and a member of the Economic Development Commission, who stated that one of the top priorities of the EDC is the need for work-force housing.

John Winnett, who has property adjacent to the entrance to this property, stated that he has safety concerns regarding the project.

Bunk Spann, chair of the Boone Area Planning Commission, stated that the Commission members discussed at length the impact of traffic from the project and access to the project, specifically left-turns from Poplar Grove Road. He indicated that the members of the Planning Commission were satisfied with the prohibition of left-turns into the development from the road. He stated that the commissioners felt that the opportunity for affordable housing is important for the area and that the density of the project is appropriate for the size of the lot. Furthermore, he stated that discussion ensued concerning the installation of a sidewalk from the project along Poplar Grove Road to the intersection with Water Street. In regard to the discussion of a possible conservation easement from the developer, Mr. Winkler stated that he intends to give

the Town a conservation easement but does not want that as a condition of the permit due to tax-credit issues. With no further persons wishing to address the request, Mayor Clawson closed the public comment period at 8:33 p.m.

Council Member Leigh stated that she knows that a need for affordable housing does exist in this area; however, she reminded the Council that she promised to protect and preserve single-family neighborhoods when she was elected to office. Council Member Leigh agreed that a balance of the two needs must be created but feels that there is no guarantee that this project will fulfill the promise to provide affordable housing opportunities. Council Member Ball stated that he feels that this location is not the right location for this project. He also pointed out safety issues with the traffic situation and the lack of a sidewalk in that area. Council Member Mason stated that although she needs more information about some of the issues in regard to this project, she feels that the developer is making an earnest effort at providing affordable housing. She noted that the projected density for the project is well below the intended density that is allowed in the R-1 zone. Council Member Mason suggested that the traffic concerns that have been brought up in relation to Poplar Grove Road should be placed on the next intergovernmental retreat for further discussion. Upon a motion by Council Member Leigh, seconded by Council Member Ball, Council moved that the proposed amendment is not consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because it does not adequately protect and preserve existing contiguous single-family neighborhoods, it is not likely to result in affordable workforce housing, and traffic and pedestrian safety would be compromised.

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

Mayor Clawson stated that the protection of single-family neighborhoods is one of the most important issues facing the Town and that she also promised to protect and preserve these neighborhoods as part of her election to office. With that statement, Mayor Clawson cast the tie-breaking vote in favor of the motion.

Upon a motion by Council Member Leigh, seconded by Council Member Ball, the Council moved to deny the proposed amendment to the Town's zoning ordinance and believe denial is reasonable and in the public interest because this project does not adequately balance the interests of the community at large with regard to protection and preservation of R-1 neighborhoods, the probability that affordable, workforce housing will be achieved, and maintaining a safe pedestrian and vehicle environment.

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

Mayor Clawson declared a break at 8:54 p.m. Council reconvened at 9:05 p.m.

**ADOPTION OF ANNEXATION ORDINANCE - CCC&TL, HOSPITALITY HOUSE, WATAUGA COUNTY ANNEXATION**

Before consideration of this item, Council Member Mason asked to be excused from voting since she is an employee of the Hospitality House. Upon a motion by Council Member Ball, seconded by Council Member Leigh, Council moved to excuse Council Member Mason from the discussion of this request.

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

Planner Jane Shook stated that the adoption of the annexation ordinance is the last step in the process for this annexation petition. Council Member Phillips asked if the Council should be concerned that this property, once annexed, will be a tax-exempt property but will receive Town services. Council Member Ball stated that he feels the amount of taxes provided by this property would be a minuscule amount. Council Member Leigh agreed and pointed out that services provided by the Hospitality House are valuable and serve the needs of the greater community. Upon a motion by Council Member Leigh, seconded by Council Member Ball, Council moved to adopt the following annexation ordinance:



756 and also recorded at Plat Book 12 at Page 260 (Tract 1), both being recorded in the Watauga County Registry of Deeds, and POINT OF BEGINNING also is located South 72 degrees 13 minutes 50 seconds West 1,271.95 feet (horizontal distance) from N.C.G.S. Grid Monument "Hills"; thence from the POINT OF BEGINNING and with the New River Capital, Inc. property and aforementioned Hospitality House of The Boone Area, Inc. property South 66 degrees 56 minutes 05 seconds West 189.66 feet to a 5/8 inch rebar found, being a common corner with that property belonging to the Hospitality House of The Boone Area, Inc., New River Capital, Inc. and that property belonging to Boone-White Laurel, Inc., a deed of which is recorded at Book of Records 389 at Page 164 and at Plat Book 14 at Page 207, both being recorded in the Watauga County Registry of Deeds; thence continuing with the Hospitality House of the Boone Area, Inc. property and the Boone-White Laurel, Inc. property South 66 degrees 44 minutes 54 seconds West 21.20 feet to a 5/8 inch rebar found, being a common corner between two parcels owned by Boone-White Laurel, Inc., the aforesaid tract and a parcel recorded at Book of Records 389 at Page 164 and at Plat Book 14 at Page 208, both being recorded in the Watauga County Registry of Deeds; thence continuing with the Hospitality House of the Boone Area, Inc. property and the Boone-White Laurel, Inc. property South 66 degrees 51 minutes 54 seconds West 93.80 feet to a 3/8 inch rebar found in concrete, being a common corner with the aforementioned Hospitality House of the Boone Area, Inc. property and the Boone-White Laurel, Inc. property (Book of Records 389 Page 164 and Plat Book 14 Page 208) and that property belonging to Southern Agricultural Insecticides, Inc., a deed of which is recorded at Deed Book 137 at Page 160 in the Watauga County Registry of Deeds; thence continuing with the Hospitality House of the Boone Area, Inc. property and the Southern Agricultural Insecticides, Inc. property for one call: North 26 degrees 33 minutes 14 seconds West 279.84 feet to an existing 1/2 inch iron pipe, and being a common corner with the aforementioned Southern Agricultural Insecticides, Inc property and that property belonging to Caldwell Community College and Technical Institute, a deed of which is recorded at Book of Records 350 at Page 581 and also recorded at Plat Book 20 at Page 361, all being recorded in the Watauga County Registry of Deeds; thence continuing with Southern Agricultural Insecticides, Inc property and that property belonging to Caldwell Community College and Technical Institute for three calls: continuing along the same bearing (North 26 degrees 33 minutes 14 seconds West) 349.81 feet to an existing 1/2 inch iron pipe, and still continuing along the same bearing 27.96 feet for a total distance along this bearing of 657.61 feet to a point; North 26 degrees 38 minutes 29 seconds West 32.10 feet to a point; North 26 degrees 33 minutes 00 seconds West 33.71 feet to a point in the south fork of the New River; thence continuing with the south fork of the New River North 81 degrees 19 minutes 00 seconds East 76.94 feet to a point, being a common corner with that property belonging to Caldwell Community College and Technical Institute, a deed of which is recorded at Book of Records 350 at Page 581 and also being recorded at Plat Book 20 at Page 361 and a corner with that property belonging to Watauga County, a deed of which is recorded at Deed Book 153 at Page 756 and also being Tract 1 of "Subdivision for Watauga County", a plat of which is recorded at Plat Book 12 at Page 260, all being recorded in the Watauga County Registry of Deeds; thence continuing with the south fork of the New River and with the Watauga County property for two calls: North 81 degrees 19 minutes 00 seconds East 322.47 feet to a point; North 84 degrees 31 minutes 00 seconds East 159.38 feet to a point in the south fork of New River, being a common corner with the Watauga County property and that property belonging to Republic Waste Industries, Inc., a deed of which is recorded at Book of Records 350 at Page 769 in the Watauga County Registry of Deeds; thence continuing with the Republic Waste Industries, Inc. property for three calls: South 04 degrees 58 minutes 20 seconds East 18.37 feet to a point; South 04 degrees 46 minutes 28 seconds East 73.57 feet to a point; South 04 degrees 45 minutes 35 seconds East 455.14 feet to a railroad spike found, being a common corner with the aforementioned Watauga County property; Republic Waste Industries, Inc. and that property belonging to New River Capital, Inc., a deed of which is recorded at Book of Records 317 at Page 638 in the Watauga County Registry of Deeds; thence continuing with the Watauga County property and the New River Capital, Inc. property South 04 degrees 22 minutes 12 seconds East 14.98 feet to a Mag Nail set, being a common corner with the Watauga County property, the New River Capital, Inc. property and The Hospitality House of the Boone Area, Inc. property, a deed of which is recorded at Book of Records 1347 at Page 400 and also at Plat Book 20 at Page 361, all being recorded in the Watauga County Registry of Deeds; thence continuing with the Hospitality House of the Boone Area, Inc property and the New River Capital, Inc. property South 04 degrees 45 minutes 02 seconds East 43.12 feet to the POINT OF BEGINNING containing 6.441 acres by coordinates.

As surveyed by Western Carolina Surveyors, P.A., PETER E. FLEMING, P.L.S., the 3<sup>rd</sup> day of September, 2009 and being REVISED this the 1<sup>st</sup> day of October, 2009 and being their JOB #8572-ANNEX.

Section 2. Upon and after December 31, 2009, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the Town of Boone and shall be entitled to the same privileges and benefits as other parts of the Town of Boone. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the Town of Boone shall cause to be recorded in the office of the Register of Deeds of Watauga County and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described herein in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the County Board of Elections as required by G.S. 163-288.1.

		Attest:
Loretta Clawson, Mayor		Freida Van Allen, Town Clerk

**(ORDINANCE TO BE TYPED IN BOOK 3, PAGES 392-394)**

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

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

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

**ADOPTION OF RESOLUTION - SET PUBLIC HEARING DATE FOR WATAUGA COUNTY ANNEXATION**

Planner Jane Shook stated that this is the second step in the process for the petition for voluntary contiguous annexation submitted by Watauga County for property that is located off Brookshire Road. She pointed out that the annexation of this property is also a condition for a water allocation granted by the Council. Upon a motion by Council Member Mason, seconded by Council Member Leigh, Council moved to adopt the following resolution:

**RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEATION PURSUANT TO G.S. 160A-31**  
**(Watauga County – Brookshire Property)**

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

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

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

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

Section 1.       A public hearing on the question of annexation of the area described herein will be held at Council Chambers at 6:30 on January 19, 2010.

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

A tract of land located on the West side of Brookshire Road on the waters of the South Fork of the New River, in New River Township, Watauga County, North Carolina, and more particularly described as follows:

Beginning at a point in the South Fork of the New River and a corner of the existing Town of Boone limits; thence with the Town of Boone limits for six lines

S 50° 23' 51" W 335.01' to a point; thence S 50° 54' 26" W 197.18' to a point; thence S 49° 28' 21" W 63.47' to a point; thence S 50° 40' 04" W 46.31' to point in Brookshire Road; thence with said Brookshire Road for twenty six lines N 58° 34' 21" W 40.72' to a point; thence N 19° 19' 33" W 120.94' to a point; thence with a curve to the right having a radius of 146.79 and a chord bearing of N 06° 02' 00" E distance of 102.45' to a point; thence N 16° 53' 23" E 27.82' to a point; thence With a curve to the left having a radius of 237.86' and chord bearing of N 07° 07' 56" E distance of 68.44' to a point; thence N 02° 41' 07" W 125.01' to a point; thence With a curve to the left having a radius of 232.41' and a chord bearing of N 31° 40' 56" W distance of 199.10' to a point; thence N 48° 12' 11" W 29.70' to a point; thence with a curve to the right having a radius of 110.66' and chord bearing of N 21° 50' 31" W distance of 86.85' to a point; thence N 07° 19' 15" W 15.45' to a point; thence with a curve to the left having a radius of 207.95' and a chord bearing of N 18° 15' 37" W distance of 50.84' to a point; thence N 28° 45' 58" W 56.48' to a point; thence N 32° 48' 53" W 85.81' to a point; thence N 31° 48' 01" W 55.82' to a point: thence with a curve to the right having a radius of 278.26' and a chord bearing of N 18° 20' 41" W distance of 97.26' to a point; thence N 07° 17' 52" W 79.16' to a point; thence with a curve to the right having a radius of 190.75' and a chord bearing of N 22° 22' 15" E distance of 169.22' to a point; thence N 42° 34' 19" E 43.02' to a point; thence with a curve to the left having a radius of 244.80' and a chord bearing of N 29° 49' 54" E distance of 85.49' to a point; thence N 21° 46' 42" E 30.65' to a point; thence with a curve to the left having a radius of 237.04' and a chord bearing of N 29° 35' 38" E distance of 49.51' to a point; thence N 13° 46' 07" E 10.92' to a point; thence N 39° 59' 13" E 41.42' to a point; thence N 06° 29' 53" E 160.84' to a point; thence N 06° 22' 15" E 115.25' to a point; thence N 03° 54' 05" E 62.30' to a point; thence leaving said Brookshire Road for seven lines N 84° 18' 22" E 187.61' to a point; thence S 49° 02' 56" E 10.22' to a point; thence S 59° 52' 14" E 162.53' to a point; thence N 75° 54' 21" E 99.89' to a point; thence S 78° 00' 16" E 118.00' to a point; thence N 89° 43' 54" E 559.15' to a point; thence S 46° 35' 37" E 134.32' to a point in the South Fork of the New River; thence with said South Fork of the New River for nineteen lines S 66° 53' 02" W 84.08' to a point; thence S 70° 14' 27" W 99.32' to a point; thence S 73° 49' 46" W 45.41' to a point; thence S 74° 51' 28" W 124.64' to a point; thence S 51° 06' 03" W 167.00' to a point; thence S 33° 59' 16" W 106.79' to a point; thence S 36° 22' 52" W 176.99' to a point; thence S 41° 40' 59" W 123.18' to a point; thence S 50° 43' 08" W 102.31' to a point; thence S 21° 07' 10" W 80.78' to a point; thence S 12° 34' 20" W 78.91' to a point; thence S 05° 07' 33" E 65.13' to a point; thence S 13° 45' 56" E 98.12' to a point; thence S 22° 38' 39" E 92.16' to a point; thence S 28° 52' 55" E 96.21' to a point; thence S 30° 19' 30" E 190.24' to a point; thence S 16° 03' 44" E 59.63' to a point; thence S 14° 49' 10" W 87.66' to a point; thence S 19° 51' 48" W 86.37' to the point of beginning containing 31.037 ∇Acres.

Section 3. Notice of the public hearing shall be published in the Watauga Democrat, a newspaper having general circulation in the Town of Boone, at least ten (10) days prior to the date of the public hearing.

	Mayor
ATTEST:	
Town Clerk	

**(RESOLUTION TO BE TYPED IN BOOK 3, PAGES 128)**

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

**DISCUSSION OF SPENDING PRIORITIES - DOWNTOWN STREETScape PLAN**

Council Member Mason stated that since the Council adopted an official downtown streetscape plan at the last regular meeting, a budget should be created regarding spending priorities. She reminded the Council of the \$20,000 budgeted for this project and that the DBDA had also budgeted \$20,000 for downtown streetscape improvements. Brief discussion ensued concerning the replacement of the trash containers with the “big-belly” containers, placing them in strategic locations throughout downtown. Several members of the Council stated that regular trash



any cost to the party of the first part.

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

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

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

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

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

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

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

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

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

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

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

TOWN OF BOONE

BY: \_\_\_\_\_

Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

BY: \_\_\_\_\_  
President/Member-Manager/Owner

\_\_\_\_\_  
Printed Name: Party of the Second  
Part

ATTEST:

\_\_\_\_\_  
Secretary/Witness

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

**APPROVAL OF ENCROACHMENT AGREEMENT - US & THEM PROJECTING SIGN**

Planner Jane Shook presented an encroachment agreement for a projecting sign for Us & Them located at 132 Appalachian Street. Upon a motion by Council Member Phillips, seconded by Council Member Ball, Council moved to approve the following encroachment agreement:

STATE OF NORTH CAROLINA  
COUNTY OF WATAUGA  
TOWN OF BOONE

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made and entered into this the 17th day of December 2009, by and between the TOWN OF BOONE, party of the first part; and Sei Ray Ho dba Us & Them, party of the second part.

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

THAT WHEREAS, the party of the second part desires to encroach on public land designated as sidewalk located at 132 Appalachian Street with the following: a projecting sign (hereinafter referred to as “the facilities”).

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

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

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

That the party of the second part agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and other warning devices for the

protection of the public and in the case of encroachment into a street right of way, in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and amendments or supplements thereto. Information as to the above rules and regulations may be obtained from the party of the first part.

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

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

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

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

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

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

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

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

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

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

TOWN OF BOONE

BY: \_\_\_\_\_

Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

BY: \_\_\_\_\_  
President/Member-Manager/Owner

\_\_\_\_\_  
Printed Name: Party of the Second Part

ATTEST:

\_\_\_\_\_  
Secretary/Witness

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

**REQUEST PERMISSION TO APPLY FOR ENERGY GRANT FUNDS**

Assistant to the Manager Jim Byrne appeared before the Council to request permission to apply for energy grant funds. He stated that the grant will provide funds to pay an engineer to develop a plan which will help the Town be competitive for stimulus funds to upgrade the Town’s physical plants. Mr. Byrne stated that no Town match in funds is required. Upon a motion by Council Member Mason, seconded by Council Member Leigh, Council moved to grant permission for the Town to apply for energy grant funds.

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

**APPROVAL OF MONITORING CONTRACT**

Assistant to the Manager Jim Byrne appeared before the Council to request approval of a monitoring contract for the Winkler’s Creek project. He stated that in order to insure compliance with State and Federal Environmental regulation and to insure protection of Winkler’s Creek, the Town agreed to third-party monitoring while the raw water inlet is restored. He stated that the lowest bid submitted for the project was from the National Committee for the New River in the amount of \$48,000. Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to approve the monitoring contract with the National Committee for the New River in the amount of \$48,000 subject to review by the Town Manager and the Town Attorney.

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

**APPROVAL OF RELEASE OF BUDGET APPROPRIATION - BOONE HOUSING AUTHORITY 3<sup>RD</sup> & 4<sup>TH</sup> QUARTER**

Assistant to the Manager Jim Byrne appeared before the Council to request the release of the Boone Housing Authority 4<sup>th</sup> quarter allocation. He stated that the Housing Authority receives an annual allocation from the Town of \$55,487, which is released on a quarterly basis. Mr. Byrne explained that Housing Authority has received approximately \$250,000 in housing grants and is currently applying for a similar amount of funding, all of which require matching funds. He stated that the Housing Authority needs approximately \$23,000 in January to meet its requirements for the housing grant programs. Mr. Byrne stated that the Housing Authority is scheduled to receive its 3<sup>rd</sup> quarter allocation of \$13,871.50. He made a request to receive the 4<sup>th</sup> quarter allotment of \$13, 871.50. Upon a motion by Council Member Leigh, seconded by Council Member Ball, Council moved to release the 4<sup>th</sup> quarter allocation in the amount of \$13,871.50 to the Boone Housing Authority.

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

**UPDATE ON POTENTIAL FUNDING OPPORTUNITIES**

Assistant to the Manager Jim Byrne stated that he has been meeting with the Town's lobbyist in order to secure funding for environmental restoration projects for the 2011 budget. He stated that Mayor Clawson is also scheduled to meet with congressional officials in the next couple of months to discuss funding opportunities for the Town.

**APPROVAL OF ADMINISTRATIVE FUNDS - RURAL CENTER GRANT - ASU INTERCONNECT PROJECT**

Assistant to the Manager Jim Byrne appeared before the Council to request \$4,000 in administrative funds budgeted for Rural Center Grant #2008-182-40101-112, which funded the Town's portion of the cost of design and construction of the Boone-ASU water interconnection project. He stated that the project is now complete and was completed under the projected budget. Upon a motion by Council Member Mason, seconded by Council Member Leigh, Council moved to approve \$4,000 in administrative funds for Rural Center Grant #2008-182-40101-112 - Boone/ASU Water Interconnection project.

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

**ADOPTION OF CODE AMENDMENT - CHAPTER 97: SMOKING**

Town Attorney Sam Furgiuele presented the code amendment to the Town of Boone Code of Ordinances Chapter 97: Smoking. Council Member Leigh requested a definition be included for the term "child". Upon a motion by Council Member Leigh, seconded by Council Member Mason, Council moved to adopt the following code amendment to the Code of Ordinances Chapter 97: Smoking to become effective on January 2, 2010.

**CHAPTER 97: SMOKING**

Section

- 97.01 Findings, Purpose and Authority
- 97.02 Definitions
- 97.03 Prohibition of Smoking in All Places Where Smoking Is Prohibited under North Carolina Law
- 97.04 Prohibition of Smoking in Places in Addition to Those Where Smoking Is Prohibited under North Carolina Law
- 97.05 Smoking Refuse.
- 97.99 Penalties and Enforcement.

**§ 97.01 FINDINGS, PURPOSE AND AUTHORITY**

(a) Findings: The Town seeks to protect the health and well-being of its employees and the general public. The Town has concluded that second hand smoke has been proven to cause cancer, heart disease, and asthma attacks in both smokers and nonsmokers. In 2006, a report issued by the United States Surgeon General concluded based upon the scientific evidence that there is no risk-free level of exposure to second hand smoke.

(b) Intent: The Town seeks to protect the health and well-being of children by banning, to the extent possible, smoking in their presence. It is further the intent of the Town to protect the health of all individuals in public places, places of employment, and working in or visiting Town buildings from the risks related to secondhand smoke. It is further the intent of the Town to protect the health of individuals driving or riding in Town-controlled passenger vehicles assigned permanently or temporarily to Town employees for official Town business.

(c) Authority: This Chapter is adopted pursuant to the authority provided in N.C. Gen. Stat. § 130A-491, et seq.

**§ 97.02 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BAR** – An establishment with a permit to sell alcoholic beverages pursuant to subdivision (1), (3), (5), or (10) of N. C. Gen. Stat. § 18B-1001.

**CHILD CARE FACILITY** – Any nursery, day care center, preschool, or other facility engaged in the practice of providing care for children.

**CIGAR BAR** – An establishment with a permit to sell alcoholic beverages pursuant to subdivision (1), (3), (5), or (10) of N. C. Gen. Stat. § 18B-1001 that satisfies all of the following:

- a. Generates sixty percent (60%) or more of its quarterly gross revenue from the sale of alcoholic beverages and twenty-five percent (25%) or more of its quarterly gross revenue from the sale of cigars;
- b. Has a humidor on the premises; and
- c. Does not allow individuals under the age of 21 to enter the premises.

However, revenue generated from other tobacco sales, including cigarette vending machines, shall not be used to determine whether an establishment satisfies the definition of cigar bar.

**EMPLOYEE** – A person who is employed by an employer, or who contracts with an employer or third person to perform services for an employer, or who otherwise performs services for an employer with or without compensation.

**EMPLOYER** – An individual person, business, association, political subdivision, or other public or private entity, including a nonprofit entity, that employs or contracts for, or accepts the provision of services from one or more employees.

**ENCLOSED AREA** – An area with a roof or other overhead covering of any kind, and walls or side coverings of any kind, regardless of the presence of openings for ingress and egress, on all sides or on all sides but one.

**GROUNDS** – An unenclosed area owned, leased, or occupied by a local government, including the Town.

**LOCAL GOVERNMENT** – A local political subdivision of North Carolina, including the Town of Boone, or an authority or body created by an ordinance, joint resolution, or rules of any such entity.

**LOCAL GOVERNMENT BUILDING** – A building owned, leased as lessor, or the area leased as lessee and occupied by the Town of Boone or other local government.

**LODGING ESTABLISHMENT** – An establishment that provides lodging for pay to the public.

**LOCAL VEHICLE** – A vehicle owned, leased, or otherwise controlled by a local government, including the Town, and assigned permanently or temporarily by a local government to local government to an employee(s), agency, institution, or facility for official local government business, designed, used or intended for use carrying passengers.

**PLACE OF EMPLOYMENT** – Any enclosed area under the control of an employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias and hallways. A private residence is not a place of employment unless it is used as a child care facility or health care facility.

**PRIVATE CLUB** – A country club or an organization that maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member's guest, and is either incorporated as a nonprofit corporation in accordance with Chapter 55A of the General Statutes or is exempt from federal income tax under the Internal

Revenue Code as defined in N. C. Gen. Stat. § 105-130.2(1). For the purposes of this Chapter, private club includes country club.

**PRIVATE RESIDENCE** – A private dwelling that is not a child care facility, as defined in N. C. Gen. Stat. § 110-86(3), and not a long-term care facility, as defined in N. C. Gen. Stat. § 131E-114.3(a)(1).

**PRIVATE VEHICLE** – A privately owned vehicle that is not used for commercial or employment purposes.

**PUBLIC PLACE** – An enclosed area to which the public is invited or in which the public is permitted.

**RESTAURANT** – A food and lodging establishment that prepares and serves drink or food as regulated by the Commission pursuant to Part 6 of Article 8 of North Carolina General Statutes Chapter 130A.

**SERVICE LINE** – Any line at which one or more persons is waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

**SMOKING** – The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.

**SPORTS ARENA** – Gymnasiums, health spas, arenas, swimming pools, roller and ice rinks, stadiums and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

**STATE GOVERNMENT** – The political unit for the State of North Carolina, including all agencies of the executive, judicial, and legislative branches of government.

**STATE GOVERNMENT BUILDING** – A building owned, leased as lessor, or the area leased as lessee and occupied by State government.

**STATE VEHICLE** – A passenger-carrying vehicle owned, leased, or otherwise controlled by the State and assigned permanently or temporarily to a State employee or State agency or institution for official State business.

**TOBACCO SHOP** – A business establishment, the main purpose of which is the sale of tobacco, tobacco products, and accessories for such products, that receives no less than seventy-five percent (75%) of its total annual revenues from the sale of tobacco, tobacco products, and accessories for such products, and does not serve food or alcohol on its premises.

**TOWN** – The Town of Boone, North Carolina, a municipal corporation.

**TOWN OF BOONE VEHICLE** – A vehicle owned, leased, or otherwise controlled by the Town of Boone and assigned permanently or temporarily to an employee(s) of the Town of Boone, its agencies, institutions, or facilities for official town business, designed, used or intended for use carrying passengers.

**§ 97.03 PROHIBITION OF SMOKING IN ALL PLACES WHERE SMOKING IS PROHIBITED UNDER NORTH CAROLINA LAW**

- (A) Smoking is prohibited in all places where smoking is prohibited under State law, including but not limited to:
- (1) State government buildings and vehicles.
  - (2) State government buildings except when used for medical or scientific research to the extent that smoking is an integral part of the research, but in such instances confined to the area where the research is being conducted.
  - (3) State vehicles.
  - (4) All enclosed areas of restaurants, lodging establishments, and bars, except:

- (a) In a designated smoking guest room in a lodging establishment, provided that no greater than twenty percent (20%) of a lodging establishment's guest rooms may be designated smoking guest rooms;
- (b) A cigar bar if smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited pursuant to North Carolina Chapter 130A, provided that a cigar bar that begins operation after July 1, 2009 may only allow smoking if it is located in a freestanding structure occupied solely by the cigar bar and smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited, and otherwise complies with State law; or
- (c) A private club.

**§ 97.04 PROHIBITION OF SMOKING IN PLACES IN ADDITION TO THOSE WHERE  
SMOKING IS  
PROHIBITED  
UNDER NORTH  
CAROLINA LAW**

- (A) Exemptions. The following provisions shall not be read or interpreted to restrict or prohibit smoking in the following places:
  - (1) A private residence as defined above.
  - (2) A private vehicle.
  - (3) A tobacco shop if smoke from the business does not migrate into an enclosed area where smoking is prohibited under State law except for a tobacco shop that began operation after July 1, 2009, which is exempt only if it is located in a freestanding structure occupied solely by the tobacco shop and smoke from the shop does not migrate into an enclosed area where smoking is prohibited pursuant to State law and it otherwise complies with the reporting requirements under State law.
  - (4) All of the premises, facilities, and vehicles owned, operated, or leased by any tobacco products processor or manufacturer, or any tobacco leaf grower, processor, or dealer.
  - (5) A designated smoking guest room in a lodging establishment so long as no greater than twenty percent (20%) of the lodging establishment's guest rooms are designated smoking guest rooms.
  - (6) A cigar bar if smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited pursuant to State law, except for a cigar bar that began operation after July 1, 2009, which is exempt only if it is located in a freestanding structure occupied solely by the cigar bar and smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited pursuant to State law, and it otherwise complies with the reporting requirements under State law.
  - (7) A private club.
  - (8) A motion picture, television, theater, or other live production set, but this exemption applies only to an actor or performer portraying the use of tobacco products during the production.
- (B) In addition to those places where smoking is prohibited under North Carolina law, and except for those places exempted under § 97.04 (A), smoking is prohibited in the following locations:

- (1) Inside all enclosed areas of every public place except for an enclosed area of a public place in which:
  - (a) Signs clearly establish and designate the boundaries for smoking, and
  - (b) The public place has at least two established and designated areas for the public, including at least one in which no smoking is permitted, and
  - (c) The no-smoking and smoking areas are equipped with separate ventilation systems so that air containing smoke is kept out of all no-smoking areas.
- (2) Inside all local government and Town buildings.
- (3) On the following grounds and locations:
  - (a) On all sidewalks in front of any Town or other local government building;
  - (b) On every Town and local government owned sidewalk within a six foot radius of any public entrance to a public place during all times when the public place is open to the public;
  - (c) Within a six foot radius of any public entrance to any Town or local government building;
  - (d) Within a six foot radius of any child who is on local government or Town grounds;
  - (e) In or on every local government and Town location primarily used for or by children, even when no child is present;
  - (f) Within or on the grounds of any Town park or garden, including but not limited to the Greenway trail system, Daniel Boone Native Gardens, Strawberry Hill Arboretum, Horn in the West property, and Jimmy Smith Park;
  - (g) On the grounds of the Jones House and the downtown post office;
  - (h) At any other Town or local government place or location designated and posted as a “no smoking area;” and
  - (i) Within any area designated and posted by the owner or tenant of private property as a no-smoking area.
- (4) In any local government or Town of Boone vehicle;

#### **§ 97.05 SMOKING REFUSE.**

- (A) It shall be unlawful for anyone to deposit any portion of a cigarette, cigar, smoking device, or any refuse related to smoking on Town property, except in a receptacle designated for that purpose.

#### **§ 97.99 PENALTIES AND ENFORCEMENT.**

- (A) After an initial warning, any person continuing to smoke in violation of this Chapter shall be guilty of an infraction, and the person committing the infraction is subject to a fine of fifty dollars (\$50.00). Conviction of an infraction under this section shall have no consequence other than payment of the penalty, and a person smoking in violation of this Chapter, excluding § 97.05, shall not be assessed court costs.

- (B) The director of the Appalachian District Health Department may take the following actions and may impose the following administrative penalty on a person who manages, operates, or controls a public place or place of employment and fails to comply with the provisions of this ordinance:
- (1) First violation. – Provide the person in violation with written notice of the person's first violation and notification of action to be taken in the event of subsequent violations.
  - (2) Second violation. – Provide the person in violation with written notice of the person's second violation and notification of administrative penalties to be imposed for subsequent violations.
  - (3) Subsequent violations. – Impose on the person in violation an administrative penalty of not more than two hundred dollars (\$200.00) for the third and subsequent violations. Each day on which a violation of this chapter occurs shall be considered a separate and distinct violation.
- (C) Violation of §97.05 shall be enforced as follows:
- (1) After an initial written warning, a second violation of this chapter within any twelve month rolling period by any person shall subject the offender to a civil penalty in the amount of \$50.00, and each subsequent violation within a twelve month rolling period shall subject the offender to a civil penalty for each violation of \$100.00. In addition to the civil penalties, a fourth and any subsequent violation within a twelve month rolling period shall be punishable as an infraction punishable by a fine in the amount of \$50.00. Violators shall be issued written notice of any violation. If a violator does not pay any civil penalty incurred under this paragraph within thirty days, the Town may recover such penalty in a civil action, along with court costs and attorney's fees incurred by the Town, and this paragraph may also be enforced by appropriate equitable remedies issuing from a court of competent jurisdiction.

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

**DISCUSSION OF TOWN'S RECYCLING CENTER PILOT PROGRAM**

Public Works Director Blake Brown appeared before the Council to request review and consideration of the future status of the Town's recycling center pilot program located in the Horn in the West parking lot on Horn in the West Drive. He presented a report from GDS Inc. summarizing the tonnage collected, maintenance, and concerns regarding the recycling center pilot program which began in mid-October of this past year. He pointed out that the report included the costs for container rental and hauling, as well as the costs for purchasing the containers. Upon a motion by Council Member Leigh, seconded by Council Member Mason, Council moved to approve \$5,670 in funds to continue the recycling center pilot program through the end of the fiscal year (June 30, 2010).

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

**ANNOUNCEMENT OF BOARD VACANCIES**

Mayor Clawson announced the following board vacancies:

- §       1 resident position on the Planning Commission
- §       1 position on the Affordable Housing Task Force
- §       1 resident position on the Boone Board of Adjustment.

She stated that the Clerk will advertise these vacancies in the usual venues.

**BOARD APPOINTMENT - BOARD OF ADJUSTMENT**

Mayor Clawson noted that no applications had been submitted for the board vacancy. She asked the Clerk to continue to advertise the vacancy in the usual venues.

**BOARD APPOINTMENT - COMMUNITY APPEARANCE COMMISSION**

Mayor Clawson noted that no applications had been submitted for the board vacancy. She asked the Clerk to continue to advertise the vacancy in the usual venues.

**BOARD APPOINTMENT - TREE BOARD**

Mayor Clawson noted that no applications had been submitted for the board vacancy. She asked the Clerk to continue to advertise the vacancy in the usual venues.

**MONTHLY WATER STATUS REPORT**

Public Utilities Director Rick Miller presented the monthly water-use status report (copy permanently on file in the December 2009 Town Council meeting packet.)

**DISCUSSION OF DBDA SURVEY**

Mayor Clawson requested that the Council reconsider the issue of conducting a survey for input from the members of the Municipal Service District as it relates to the contract renewal with the DBDA. She pointed out information contained in the meeting supplement packet which informs the Council that the ASU Communications Department’s Research Methods class is able to conduct the survey as a class project at no costs to the Town other than the cost of supplies and out-of-pocket expenses. Mayor Clawson reminded the Council of the two proposals received from private companies for conducting the survey and the cost estimates included in the proposals. If directed by the Council to conduct the survey, the class will require 6-8 weeks to complete the project with the results available by the end of February at the earliest. She indicated that the results should be available for consideration at the Town’s annual retreat. Upon a motion by Council Member Leigh, seconded by Council Member Ball, Council moved to grant permission to the ASU Communications Department’s Research Methods class to conduct a survey for input from the members of the Municipal Service District as it relates to contract renewal with the Downtown Boone Development Association.

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

**APPROVAL OF LEASE AGREEMENT - RONALD A. & KATHLEEN B. MCCREARY**

Town Manager Greg Young presented a lease agreement for renewal between the Town of Boone and Ronald and Kathleen McCreary for the property located adjacent to the Town’s Public Works building and used as parking for Public Works personnel. He stated that the term and length of the lease agreement is the same as contained in the expired lease. Upon a motion by Council Member Mason, seconded by Council Member Leigh, Council moved to adopt the following lease agreement:

STATE OF NORTH CAROLINA  
COUNTY OF WATAUGA

**LEASE AGREEMENT**

This LEASE AGREEMENT, entered into effective this 17<sup>th</sup> day of December, 2009, by Ronald A. McCreary and Kathleen B. McCreary, (hereinafter referred to as “McCreary”) and the Town of Boone, a North Carolina Municipal Corporation, (hereinafter “Boone”), FOR AND IN CONSIDERATION of the mutual promises contained herein, which consideration is acknowledged by the undersigned as adequate and fair, the undersigned, for themselves, their governing boards, officers, and employees, agree as follows:

1. **Premises:** The premises consist of the entire property owned by McCreary, but still titled to Thrift Food Stores, adjacent to King Street, Boone, North Carolina, adjacent to the

Boone Public Services Building, and previously the property upon which the “McCreary Store” was situated, known as Watauga County tax parcel number 2910-28-2322-000.

2. **Parties:** The parties confirm and affirmatively declare that they have the right, free and clear from the claims, property interests, etc. of any third parties, to enter this Agreement.
3. **Term:** The term of this agreement shall be three (3) years commencing on December 17, 2009 and ending on December 16, 2012. The lease has three periods as follows: December 17, 2009 through December 16, 2010; December 17, 2010 through December 16, 2011; December 17, 2011 through December 16, 2012.
3. **Rent:** The rent for the foregoing shall be ten thousand dollars (\$10,000.00) per annum with payment due at the beginning of each lease year. Annual rent increases will be in the amount reflecting the increase in the consumer price index (CPI) published by the United State Department of Labor, Bureau of Labor Statistics during the calendar year 2009 and 2010. For example, if the increase in the consumer price index is four percent (4.00%), annual rent shall be ten thousand, four hundred dollars (\$10,400.00) for the second year. The same calculation will be used for third year rent using 2011 calendar year CPI.
4. **Repairs and Maintenance:** During the term of its use, Boone shall be responsible for all repairs necessary to maintain the aforesaid premises in a safe and useable condition.
5. **Condition of Premises:** Boone accepts the leased premises in their current condition. Boone shall provide all maintenance necessary to keep the premises in good condition for the purposes of parking. Any repairs made to the premises by Boone shall be done in a workmanlike manner and shall become the property of McCreary.
6. **Right of Reentry:** McCreary reserves the right and may enter the premises at any reasonable time for the purpose of inspecting said premises, making such repairs as McCreary, in its sole discretion, desires to make, and for any other purpose in any way related to McCreary’s ownership of the premises so long as they do not interfere with Boone’s use of the premises.
7. **Alterations:** Boone agrees to neither make nor arrange for any permanent alterations to the premises without the advance written approval of McCreary.
8. **Indemnification:** Boone shall indemnify and hold harmless McCreary from any and all claims, actions, damages, and liability associated with personal injury and/or damage to property, or associated with any act or omission of Boone, its agents, employees or invitees, or associated with Boone’s use of the premises in connection with this Agreement.
9. **Modification of Lease:** This Lease Agreement contains all of the terms and conditions agreed to by Town and County concerning the Lease of the above-described premises. There are no oral terms or conditions agreed to by the parties hereto which are not contained in this written agreement. There shall be no modification of this Lease Agreement unless the modification is in writing and signed by both parties.
10. **Venue and Construction:** This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, and venue of any dispute between the parties shall be in Watauga County, North Carolina.
11. **Notices:** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered to the following addresses:  
  
If to Boone, to:           Greg Young  
                                    Town Manager  
                                    Town of Boone  
                                    P.O. Drawer 192  
                                    Boone, NC 28607  
  
If to McCreary, to:       Ronald A. McCreary  
                                    301 University Circle  
                                    Boone NC 28607
12. **Headings:** The headings used in this Agreement have been prepared for the convenience of reference only and shall not control, affect the meaning, or be taken as an interpretation of any provisions of this Agreement.

**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.

This 17<sup>th</sup> day of December, 2009

\_\_\_\_\_  
Ronald A. McCreary

\_\_\_\_\_  
Kathleen B. McCreary

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

**REQUESTED APPEARANCE - PERI MORETZ/BLUE STAR MOTHERS**

Peri Moretz, on behalf of the Blue Star Mothers, appeared before the Council to request adoption of the Military Community Covenant which is a formal affirmation of support by state and local communities for service members and their families. Ms. Moretz informed the Council that at the 2009 Annual Conference, the North Carolina League of Municipalities voted to adopt the Community Covenant and to urge its adoption by every city, town, and village in North Carolina. Upon a motion by Council Member Ball, seconded by Council Member Mason, Council moved to adopt the following:

***NORTH CAROLINA ARMED FORCES  
COMMUNITY COVENANT***

***Together,  
We are committed to building strong communities.***

*We, the Community recognize...*

- § *The commitment service members and their families are making every day.*
- § *The strength of service members comes from the strength of their families.*
- § *The strength of families is supported by the strength of the community.*
- § *The strength of the community comes from the support of employers, educators, civic and business leaders, and citizens.*

***We, the community are committed to building partnerships that support the strength, resilience, and readiness of service members and their families.***

***We, the undersigned, support the Armed Forces Community Covenant.***

Attest:

Mayor

Clerk

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

**REQUESTED APPEARANCE - MIKE CURCIO/GREENWAY, PARKS & GARDENS COMMITTEE**

Mike Curcio, chair of the Greenway, Parks & Gardens Committee, appeared before the Council to request approval of a Mission Statement for the committee. Upon a motion by Council Member Phillips, seconded by Council Member Ball, Council moved to approve the following statement as the Mission Statement of the Greenway, Parks & Gardens Committee:

“The Greenway, Parks & Gardens Committee investigates and advocates for the maintenance, procurement, and promotion of greenways, parks, green spaces, and gardens inside the Boone town limits.”

VOTE:       Aye - All

Nay - None  
Absent - 1 (Brantz)

**REQUESTED APPEARANCE - TUESDAE RICE/DOWNTOWN BOONE  
DEVELOPMENT ASSOCIATION**

Tuesdae Rice, director of the Downtown Boone Development Association, presented a power-point entitled: "A Review of the Results from Town of Boone Council 13-Point Plan." (A copy of the power-point presentation is permanently on file in the December 2009 Town Council meeting packet.) She also requested the renewal of the contract between the Town of Boone and the DBDA for a six-month period. Council Member Mason stated that the DBDA has made an effort to address the concerns of the Council. Upon a motion by Council Member Phillips, seconded by Council Member Mason, Council moved to adopt the following contract:

**STATE OF NORTH CAROLINA**

**COUNTY OF WATAUGA**

**AGREEMENT BETWEEN**

**TOWN OF BOONE**

**AND THE DOWNTOWN BOONE DEVELOPMENT ASSOCIATION, INC.**

**THIS AGREEMENT** ("Agreement") is entered into this 17th day of December, 2009, 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."

**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 has established a Municipal Service District pursuant to N.C. Gen. Stat. § 160A-535, et seq., (hereafter, "the District") from which it collects a Municipal Service District tax the authorized purposes of which are identified under State law; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 160A-536(d), the Town is authorized to enter into contracts to administer, in whole or in part, the Municipal Service District tax; and

**WHEREAS**, the Town is a participant in the North Carolina Main Street Program administered by the North Carolina Department of Commerce (hereafter, "the Main Street Program"); and

**WHEREAS**, the DBDA is a North Carolina Non-Profit Corporation, duly organized pursuant to the laws of the State of North Carolina and authorized by law to enter into agreements for the purposes for which it was created, including the promotion, encouragement and assistance in the revitalization and economic health and stability of the Town's Municipal Service District; and

**WHEREAS**, the DBDA desires to enter this contract to engage in activities for which Municipal Service District taxes are authorized, and to act as the Town's agent and representative, to the extent described herein, in meeting the Town's requirements and responsibilities for its continued participation and success in the Main Street Program; and

**WHEREAS**, the Town wishes to contract with the DBDA for the provision of certain activities for which the expenditure of Municipal Service District taxes are authorized; and the Town further wishes to continue its participation in the Main Street Program and wishes to contract with the DBDA to act as its agent and representative, to the extent described herein, in meeting all of its requirements and responsibilities for its continued participation and success in the Main Street Program; and

**WHEREAS**, the parties wish to confirm their agreements and commitments in writing;

**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:

1. **Term**: The term of this Agreement shall be six (6) months, commencing on **January 1, 2010** and ending on **June 30, 2010**, but in accordance with the provisions herein, it may be renewed from time to time by the parties. Renewal of this Agreement for any additional periods of time, however, shall only be effective with the approval of the Boone Town Council and the duly elected Board of Directors of the DBDA.
2. **Consideration**: In consideration of the DBDA's performance of the duties and responsibilities set out herein, the Town will pay the DBDA **the remaining** one-half (½) of the Municipal Service District taxes paid to the Town in fiscal year 2008/2009, less any expenses incurred by the Town in the collection of those taxes (hereafter, "the funds").
3. **Responsibilities of the DBDA**: The DBDA shall utilize the funds solely for the following purposes, but may expend funds from other sources as it sees fit so long as they are expended in accordance with pertinent law and the DBDA's own by-laws.
  - A. The DBDA may use the funds to create, coordinate and administer District revitalization projects which provide for services or functions, such as additional garbage pick up, which are in addition to or to a greater extent than those provided or maintained by the Town for the entire town, but such expenditures shall be subject to advance review and permission by the Town's Town Manager;
  - B. The DBDA shall use the funds to create, coordinate and administer District revitalization projects which at a minimum include:
    1. Promotion and developmental activities, such as sponsoring festivals and markets in the downtown area, promoting business investment in the downtown area, helping to coordinate public and private actions in the downtown area, and developing and issuing publications on the downtown area designed to improve the economic well-being of the downtown area;
    2. Administering any District revitalization project specifically requested by the Town;

3. Acting as a clearing house for information concerning the availability of properties within the District for purchase or rent, by creating a repository of such information to which District property owners may contribute, as they may wish, and which shall be in a format which will make it broadly available to the public and to persons potentially interested in investment in the District;
  4. Without limiting the right of the Town to directly participate therein, participating in all activities requested or required by or of the Town and by the North Carolina Department of Commerce in order for the Town to continue to participate in good standing in the North Carolina Main Street Program, and for the Town to derive all available benefits from its continued participation in the Main Street program;
  5. Without limiting the right of the Town to directly participate therein, maintaining all information requested or required by or of the Town in order for for the Town to continue to participate in good standing in the North Carolina Main Street Program, and for the Town to derive all available benefits from its continued participation in the Main Street program;
  6. Without limiting the right of the Town to directly participate therein, timely submitting all information requested or required by or of the Town and by the North Carolina Department of Commerce to the Town and to the North Carolina Department of Commerce in order for the Town to continue to participate in good standing in the North Carolina Main Street Program, and for the Town to derive all available benefits from its continued participation in the Main Street program; and
  7. Reporting to the Town Council the duly adopted collective views of its membership and its Board of Directors as to those actions and policies which the Town may consider within the District to improve the District's economic well-being.
4. **Activities to Serve entire Municipal Service District:** All activities of the DBDA with the funds shall be undertaken in such manner, insofar as possible, as to provide benefits to and throughout the entire District.
  5. **Compliance with Laws:** The DBDA shall comply with all pertinent federal, State, county and Town laws, regulations and ordinances, including but not limited to all North Carolina and federal laws relating to the operation of non-profit membership corporations, including but not limited to those laws which govern the conduct of the annual meetings of its membership and the selection of its directors and officers. In addition, and not by way of exclusion, in any and all its actions and activities, the DBDA shall comply with and hereby certifies its compliance with the Americans with Disabilities Act, as amended, Title VII of the Civil Rights Act of 1964, as amended, the Fair Labor Standards Act, as

amended, the Occupational and Health Safety Act, as amended, the North Carolina Employment Security Act, as amended, and the North Carolina Worker's Compensation Act, as amended, to the extent each such law applies to the DBDA or any the activity.

6. **Compliance with its By-laws and Organizational Reporting to the Town:** The DBDA will operate and act in accordance with its duly adopted by-laws, including but not limited to the provisions which govern the conduct of the annual meetings of its membership, the notice and quorum requirements for meetings of its board of directors, the selection of its directors and officers, and its prohibition on legislative advocacy. Contemporaneous with the execution of this Agreement, the DBDA shall provide the Town with its current by-laws and a roster of its current board of directors and officers, including their names, addresses, terms and class of membership, and it shall seasonably notify and provide a copy to the Town of any changes in its by-laws or in its board of directors or officers. So long as the DBDA receives Municipal Service District funds, its by-laws shall provide that a member of the Town Council, appointed by the Town Council for a one year term, shall serve as an ex-officio member of its Board of Directors. In addition, so long as it receives Municipal Service District funds, the DBDA shall invite and include in its membership all property owners within the Municipal Service District and all Municipal Service District taxpayers. Should the DBDA' corporate status be revoked by the North Carolina Secretary of State, or should the DBDA's non-profit status be revoked by the United States Internal Revenue Service or otherwise, the DBDA shall immediately notify the Town, and this Agreement shall immediately terminate.
7. **Reporting on its Activities:** At least thirty days prior to the end of the contract period and at such additional times as may be requested by the Town, the DBDA shall report to the Town on its expenditure of Municipal Service District funds and shall submit its proposed work plan for the next anticipated contractual period. Said reports shall include at a minimum descriptions of activities of the DBDA which have taken place during the ending contract period and those activities which are planned for the anticipated contract period. In addition, the report shall disclose all measurable outcomes from the activities of the DBDA which have been supported by the expenditure of the funds during the contract period, and the measurable outcomes anticipated during the anticipated contractual period.
8. **Financial Reporting:** The DBDA shall operate in accordance with generally accepted accounting principles and shall provide the Town with its annual audit as it becomes available, but no later than September 1 each year. The audit must disclosed itemized expenditures by funding source, including such things as expenditures for each specific fringe benefit, rent, capital expenditures, etc. Financial information shall be provided in a form acceptable to the Town and shall include, among other things, an accounting for all funds from all sources received or collected by the DBDA during the reporting period. In addition, the DBDA shall provide such records, verification of the expenditure of the funds, and other such information as requested by the Town. Should the DBDA at any

time be advised by a funding, taxing or other governmental entity, or by its accountants, of any misappropriation of funds from any source, or of any malfeasance or misfeasance, it shall immediately report such advice to the Town. Should the DBDA itself discover or determine any wrong doing, misappropriation, malfeasance or misfeasance, it shall immediately report such matter to the Town.

9. **Accountability**: All records of the DBDA shall be available for inspection by the Town Manager or the Town Manager's designee.
10. **Indemnity**: The DBDA is responsible for the proper expenditure of all Municipal Service District tax funds, and it shall indemnify and reimburse the Town for any misuse of said funds.
11. **Default**: If the DBDA defaults in the performance of any of its duties under paragraph 3 of this Agreement, all of which are deemed material, or violates any of the terms of paragraphs 4, 5, 6, 7, 8, 9 or 10 of this Agreement, all of which are deemed material, the Town may immediately terminate the Agreement or suspend the payment of the funds, at its choice, without prior notice or an opportunity for the DBDA to cure its violation. Should the Town provide notice of default or notice of termination by the Town for any breach of the Agreement, the provision of such notice shall not be interpreted as a waiver of the enforcement of this or any other provision of the Agreement, and it shall not create any future requirement for notice prior to suspension of payments or termination of the Agreement. On the date specified in any such notice of default or notice of termination, this Agreement shall terminate. Should this Agreement be terminated, with or without notice, prior to the full expenditure of the funds by the DBDA, any unexpended Municipal Service District funds shall be immediately and fully remitted to the Town.
12. **Modification of Agreement, Merger**: This Agreement contains all of the terms and conditions agreed upon by the Town and the DBDA. All discussions between them have been merged into this Agreement, and there are no oral terms or conditions agreed upon by the parties hereto which are not contained in this written Agreement. There shall be no modification of this Agreement unless the modification is in writing and signed by both parties.
13. **Waiver**: The Town's failure to strictly enforce any of its rights under this Agreement shall not constitute a waiver of such rights, and the parties agree that this provision may itself not be waived by the conduct of the parties, but only by a written instrument executed by each.
14. **Relationship of Parties**: Each party shall be considered to be an independent contractor in relation to the other, and neither shall be construed to be an agent or representative of the other party except as otherwise provided herein with regard to the North Carolina Main Street Program. Therefore, neither party shall have any liability to a third party for the acts or omissions of the other party. In addition, neither party, nor any of its employees, agents, or contractors, shall be deemed to be employees or agents of the other party. Neither party, nor any of that party's employees, agents or contractors, shall be

entitled to compensation for services, worker's compensation, or employee benefits from the other party by virtue of this Agreement or actions taken in furtherance of the Agreement.

15. **Assignments:** The DBDA shall not assign any of its duties under this Agreement or its right to compensation from the Town to any other person or entity without the written consent of the Town, but the Town shall have no responsibility, express or implied, to approve any proposed assignment.
16. **Force Majeure:** In the event that either party shall be interrupted or delayed in completing performance of its obligations hereunder by an act of God or any other occurrence which is wholly beyond the control of the parties hereto, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.
17. **Partial Invalidity:** If any term, covenant, condition or provision of this Agreement shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.
18. **Headings and Construction of Agreement:** The headings used in this Agreement have been prepared for the convenience of reference only and shall not control, affect the meaning, or be taken as an interpretation of any provisions of this Agreement. This Agreement has been prepared on the basis of mutual understanding of the parties and shall not be construed against either party by reason of such party being the drafter hereof.
19. **Entirety of Agreement:** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to said matter. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, and that no other Agreement, statement, or promise not contained in this Agreement shall be valid or binding.
20. **Governing Law and Venue:** This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, and venue of any dispute between the parties shall be in Watauga County, North Carolina.
21. **Execution:** Each party represents and warrants to the other that all necessary authorizations and approvals required for execution and performance of this Agreement have been given and obtained, and that the undersigned individual is duly authorized to execute this Agreement and bind the party for which it signs.
22. **Notices:** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested; to the following addresses:

If to the Town, to:     Greg Young  
                                  Town Manager  
                                  Town of Boone

P.O. Drawer 192  
Boone, NC 28607

If to the DBDA, to: President  
The Downtown Boone Development Association, Inc.  
PO Box 362  
Boone NC 28607

**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.

**Town of Boone, by**

\_\_\_\_\_  
Loretta Clawson, Mayor

Attest: \_\_\_\_\_ (Seal)  
Town Clerk, Town of Boone

**Downtown Boone Development Association, Inc., by**

\_\_\_\_\_  
President

Attest: \_\_\_\_\_ (Seal)  
Secretary, Downtown Boone Development Association, Inc.

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

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

**WATER & SEWER REQUEST - KUESTER GREENWAY LLC**

Town Attorney Sam Furgiuele opened a public hearing at 11:14 p.m. to hear sworn testimony from Matt Langston, of Landworks Design from Charlotte, NC; Development Services Planner Jane Shook; and Public Works Director Blake Brown regarding a request for water allocation in the amount of 12,600 gallons-per-day to property located beside 579 Greenway Road. Mr. Langston explained that the project consists of 24 multi-family units totaling 84 bedrooms. In response to a question regarding the flood area, Mr. Langston pointed out, on the map provided in the Council packet, the portion of the property located in the flood area, which consists of a portion of the proposed parking area. He stated that the information regarding the portion of the property located in the flood area has been submitted to the Development Services Department.

Development Services Planner Jane Shook stated that the information submitted for the project is still under review by staff. With no other testimony, Mr. Furgiuele closed the public hearing at 11:20 p.m. Council Member Mason voiced her concern about constructing student housing farther away from the campus and the resulting impact on traffic. Additionally, she stated that she is concerned with the large parking lots associated with student-housing developments. In order to receive testimony regarding the status of the portion of the Greenway Trail adjacent to the project, Council Member Phillips moved to re-open the public hearing at 11:22 p.m. Council Member Ball seconded the motion.

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

Public Works Director Blake Brown stated that he has not recently viewed the plans for the Greenway Trail section adjacent to this project. He noted that a 60-ft. right-of-way is necessary to accommodate the bike lanes, curb and guttering, and sidewalk requirements. With no further testimony offered, Mr. Furgiuele closed the public hearing at 11:28 p.m. Upon a motion by Council Member Phillips, seconded by Council Member Leigh, Council moved to allocate 12,600 gallons-per-day from the 2009 allocation to the proposed project located beside 579 Greenway Road and further moved to direct the Development Services Staff to advocate before the Board of Adjustment the reservation of area for future Greenway Trail expansion into the project design.

### **CLOSED SESSION**

Upon a motion by Council Member Ball, seconded by Council Member Phillips, Council moved to enter Closed Session at 11:32 p.m. pursuant to NCGS 143-318.11a)3) in order to discuss the following matters:

- Legal Advice - Water Intake Project.
- Legal Advice - Boundary Mitigation.

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

Upon a motion by Council Member Phillips, seconded by Council Member Leigh, Council moved to exit Closed Session at 12:36 a.m.

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

### **ACTION FOLLOWING CLOSED SESSION**

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

#### **RESOLUTION AUTHORIZING PURCHASE OF PROPERTY**

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

WHEREAS, pursuant to N.C. Gen. Stat. §§ 160A-11, 160A-12, and 160A-20.1, the Town is authorized, by action of the Boone Town Council, to enter into contracts for the purchase of real estate; and

WHEREAS, the Town wishes to ratify a contract which it previously authorized in closed session , between the Town and the James C. Watson Living Trust dated January 26, 2000, and the Lois C. Watson Living Trust dated January 26, 2000; and

WHEREAS, the Town further wishes to authorize the payment of \$85,000.00 for the purchase of the property involved, a description of which is attached as Exhibit "A" and incorporated by reference herein; and

WHEREAS, the Town Council further wishes to authorize its Town Manager, Gregory E. Young, to execute all required closing documents to complete this transaction:

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA, THAT certain contract between the Town and the James C. Watson Living Trust dated January 26, 2000, and the Lois C. Watson Living Trust dated January 26, 2000, is hereby approved and ratified, and that in accordance therewith, the Town Manager is authorized to make payment, in accordance with the contract, of \$85,000.00 to the seller, along with all other closing and associated costs and to execute all necessary closing documents on behalf of the Town.

ADOPTED this 17<sup>th</sup> day of December, 2009, by action taken in open session, by the Town of Boone Town Council.

ATTEST:

Mayor

Clerk

**(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 129)**

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

**ADJOURNMENT**

On a motion by Council Member Leigh, seconded by Council Member Ball, Council moved to adjourn the meeting at 12:37 a.m.

VOTE:       Aye - All  
              Nay - None

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Deputy Town Clerk

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Mayor