

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
NOVEMBER 18, 2004**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, November 18, 2004 in the Council Chambers, 1500 Blowing Rock Road. Mayor Velma C. Burnley presided. Council members present were Mayor Pro-Tem Loretta Clawson; Graydon Eggers, Lynne Mason, Bunk Spann and Dempsey Wilcox. Town Attorney Sam Furgieuele was also in attendance. Staff present were Town Manager Greg Young; Town Clerk Freida Van Allen; Public Services Director Blake Brown; Development Services Director John Spear; Resource Director Jim Byrne; Personnel Director Peri Moretz; Finance Director Amy Davis; Customer Services Supervisor Christina Jones; Deputy Town Clerk Kim Tester; Police Chief Bill Post and Fire Chief Reggie Hassler.

ANNOUNCEMENTS

Mayor Burnley observed a few moments of silence in support of our troops, our leaders and our country.

TENTATIVE AGENDA ADOPTION

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

- Deletion of Item 6.A. Requested Appearance - Johnny Cooke.
- Addition of Item 6.E. Requested Appearance - Bostic Development.
- Deletion of Item 5.G. Adoption of Ordinance - Glenn Henson and placement of matter under Closed Session.

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

VOTE: Aye-All
Nay-None

CONSENT AGENDA ADOPTION

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

Minutes: October 21, 2004, Regular Meeting
Tax Releases: September, 2004

TAXPAYER	YEAR	AMOUNT	DESCRIPTION
Bruce Terminix Company	2004	\$1.17	Incorrect bill & owner
Allie & Dollie McNeil	2004	51.60	Failed to record value change
Thomas E. Younce	2004	6.06	Turned in plates
Albert & Barbara Greene	2004	186.80	Incorrect transfer
Harold Jones	2004	9.37	Deceased, belongs to A. Morrison
Protection Security Service	2004	30.76	Incorrect situs
Frank W. Petersilie dba PSI	2004	30.01	Turned in tag
Virginia Walker	2004	6.06	Adjusted for bill of sale
William & Sally Atkins	2004	32.80	Excluded
John Cook & Connie Hughes	2004	22.85	Does not live in TOB

Roger & Evelyn Appleton	2004	41.99	Turned in plate
Laura Williams	2004	65.20	Parcel no longer exist, lots join
Laura Williams	2003	63.57	Parcel no longer exist, lots join
TOTAL		\$548.24	

Tax Refunds: September, 2004

TAXPAYER	YEAR	AMOUNT	DESCRIPTION
LAWRENCE, DWAYNE A.	2004	25.04	TURNED IN TAG
YOUNCE, THOMAS E.	2003	17.36	TURNED IN PLATE
TOTAL		\$42.40	

Tax Releases: October, 2004

TAXPAYER	YEAR	AMOUNT	DESCRIPTION
The Webb Co. of NC	2004	\$96.95	Adjust for bill of sale
Margaret K. Sparks	2004	46.25	Sold Vehicle turned in tag
Joyce & Julie Johnson	2004	24.38	Turned in tag
Charles J. Olivieri	2004	8.78	Sold car
Tommy A. Spikes	2004	25.77	Overlap of Tags
Boone Ventures Two LLC	2004	344.80	Clerical Error
Jerry D. & Dawn Boyter	2004	16.45	Sold vehicle
Northwest Glass & Mirror	2004	40.02	Traded vehicle turned in tag
Timothy S. Steele	2004	156.00	Lives in Ashe County
John W. & Nancy Minton	2004	24.24	Sold vehicle turned in tag
Bellsouth Communications	2004	29.87	Exempt
Bob & Annette DeCamara	2004	46.84	Sold vehicle turned in tag
James & Roxanne Knutson	2004	5.73	Sold vehicle
Donald & Maureen Crump	2004	57.08	Rebill wrong situs
Robert J. Marks	2004	5.72	Sold vehicle turned in tag
Julie A. Gausebeck	2004	22.52	Turned in tag
Jerry D. Ray	2004	75.08	Incorrect situs, rebill
Michael & Sara Mayhew	2004	53.36	Turned in tag
Steven Keeble	2004	31.15	Owned by N. Church since 99
Steven Keeble	2003	31.32	Owned by N. Church since 99
Steven Keeble	2002	32.18	Owned by N. Church since 99
Steven Keeble	2001	37.27	Owned by N. Church since 99
Steven Keeble	2000	38.24	Owned by N. Church since 99

TOTAL		\$1250.00	
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Tax Refunds: October, 2004

TAXPAYER	YEAR	AMOUNT	DESCRIPTION
BAYNES, JENNY LYNNE	2004	4.71	SOLD VEHICLE
MILLER INDUSTRIES, INC	2004	5.78	SOLD VEHICLE/TURNED IN TAG
JOHNSON, CHAD GEORGE	2004	8.85	TURNED IN TAG
EHLING, DEBRA JUNE	2004	63.69	INCORRECT FIRE DISTRICT
EHLING, DEBRA JUNE	2004	12.87	INCORRECT FIRE DISTRICT
ELLIOTT, REBECCA ANN	2003	1.03	SOLD VEHICLE/TURNED IN TAG
CASSATA, RICHARD F. & SAWAI	2003	1.51	TURNED IN TAG
COOK, ROBERT H	2003	31.35	TURNED IN TAG
		\$129.79	

Relinquish Clean Water Trust Fund Grant: \$700,000 back to the Clean Water Trust Fund since it was contingent upon receiving a \$1.2 million Army Corp grant. The Army Corp reduced environmental funding last year due to Pentagon costs.

Adoption of Resolution: GHSP Funding

WHEREAS, the Town of Boone has completed an application contract for traffic safety funding; and that the Boone Town Council has thoroughly considered the problem identified and has reviewed the project as described in the contract;

THEREFORE, NOW BE IT RESOLVED, by the Boone Town Council in open meeting assembled in the town of Boone, North Carolina, this the 18th day of November, 2004, as follows:

1. That the project referenced above is in the best interest of the Governing Body and the general public; and
2. That Captain Curtis A. Main is authorized to file, on behalf of the Governing Body, an application contract in the form prescribed by the Governor's Highway Safety Program for federal funding the amount of \$ 4,500 to be made to the Governing Body to assist in defraying the cost of the project described in the contract application; and
3. That the Governing Body has formally appropriated the cash contribution of \$ 1,500 as required by the project contract; and
4. That the Project Director designated in the application contract shall furnish or make arrangement for other appropriate persons to furnish such information, data, documents, and reports as required by the contract, if approved, or as may be required by the Governor's Highway Safety Program; and
5. That certified copies of this resolution be included as part of the contract referenced above; and
6. That this resolution shall take effect immediately upon its adoption.

Adopted this the 18th day of November, 2004.

Mayor

Attest:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 274)

VOTE: Aye-All
Nay-None

PRESENTATION OF FY 03/04 AUDIT REPORT

Mr. Russell Coleman, Governmental Auditor with Cherry, Bekeart & Holland, presented the fiscal year 2003/2004 audit report. Mr. Coleman said that the Town of Boone had been given a clean opinion and that he did not note any failure to comply with laws. Mr. Coleman also reported that the Town of Boone is financially strong with about 5.5 million dollars in unreserved fund balance. He also applauded Town staff for receiving the Certification of Annual Financial Reporting (CAFR) for fiscal year 2002/2003.

PRESENTATION OF TASK FORCE RECOMMENDATIONS

Development Services Director John Spear reminded Council that the Residential Occupancy Task Force was appointed in August, 2004 and that members have met bi-weekly to develop the following report: **EXHIBIT A**. Council member Clawson commended the task force members on their work. Council member Mason agreed; however, she felt that the neighborhood conservation districts were not as inclusive as she had hoped. Council member Mason questioned if more properties could be added to the districts once established. Development Services Director Spear said the Task Force concentrated on areas that have the most complaints but that the boundaries could be defined further once the amendment goes to public hearing. Development Services Director Spear said he hopes to have the regulations in place for the fall 2005 rental season. Council member Mason asked if all residences within a neighborhood conservation district will be required to get parking permits. Mr. Spear said the parking permits will be for rental properties only. On a motion by Council member Mason, seconded by Council member Spann, Council moved to accept the report and schedule it for the February, 2005, Quarterly Public Hearing.

VOTE: Aye-All
Nay-None

ADOPTION OF ZONING AMENDMENTS

Development Services Director John Spear presented the following zoning text amendment:

Case RZ2004-15 Town of Boone has filed a UDO text amendment request which would reduce the regulatory burden for small commercial projects. As proposed, the text would exempt commercial projects involving no more than 2,500 square feet of land disturbing activity from the requirement of providing site specific grading, erosion control and storm water management plans prepared by a design professional. Development Services Director Spear said the Planning Commission unanimously recommended approval of the text amendment. Council member Mason asked why Section 316(b) had been deleted. Development Services Director Spear said that it was redundant. On a motion by Council member Mason, seconded by Council member Wilcox. Council moved to adopt the following zoning amendment:

Section 61. Permits Required.

[b] Zoning permits, special use permits, and sign permits are issued under this ordinance only when a review of the application submitted, including the plans contained therein (such as the grading, soil erosion or drainage plans), indicates that the development will comply with the provisions of this ordinance if completed as proposed. Such plans and applications as are finally approved are incorporated into any permit issued, and except as otherwise provided in Section 80, all development shall occur strictly in accordance with such approved plans and applications. Renovations, remodeling and structural alterations, including additions of a building which are less than fifty percent (50%) of the current market value of both the structure and the land, are exempt from certain provisions of the ordinance including parking, screening, and landscaping requirements. The exemptions shall be noted by the administrator on the issued permit.

Section 142. Repair, Maintenance and Reconstruction

[a] Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted, encouraged, and do not require a zoning permit. Major **repairs, maintenance, or** renovation, i.e., work estimated to cost more than fifty percent (50%) of the appraised valuation of the structure to be renovated may be done only in accordance with a zoning permit issued pursuant to this section.

Section 265. Underground Utilities

[b] Whenever a non subdivided development is constructed in accordance with Section 61, all electric power, telephone, gas distribution, and cable television lines installed to serve the development that are located on the development site outside of a previously existing public street right-of-way shall be placed underground in accordance with the specifications and policies of the respective utility companies. This section shall not apply to a change of use of a structure that is no larger than two thousand eight hundred (2,800) square feet. **The administrator may approve a deviation of the square footage requirement (not to exceed 10%) in accordance with the provisions of Section 51[b].**

Section 274. Plan Approval Required

[a] Town review and approval of both a site specific “Grading Plan,” and a site specific “Soil Erosion and Sediment Control Plan,” is required when land-disturbing activity is proposed; with the exception of single family **and two family** projects of less than twenty one thousand, seven hundred eighty (21,780) square feet (0.5 acre) **or commercial site improvements that involve no more than two thousand five hundred (2,500) square feet of land disturbing activity.**

Section 312. Plan Approval Required

[a] Subject to the requirements of Article IV, Section 64 (Applications to be Complete) a Drainage Plan is required to be submitted with all applications for zoning permits, special use permits, zoning vested right or minor subdivision plat approval **except in any of the following circumstances:**

- [1] **Construction of a single family or two family residence - Land use classification 1.110 or 1.200.**
- [2] **A change of use of a structure that is no larger than two thousand eight hundred (2,800) square feet and does not involve more than two thousand five hundred (2,500) square feet of land disturbing activity. The administrator may approve a deviation of the structure square footage requirement (not to exceed 10%) in accordance with the provisions of Section 51[b].**
- [3] **Commercial site improvements that involve no more than two thousand five hundred (2,500) square feet of land disturbing activity.**

Section 316. Drainage and Storm Water Management Design Standards

[a] Design standards are established for the purpose of promoting sound development practices which respect, preserve and enhance the town’s watercourses and are not intended to prohibit the use of innovative and alternative techniques which can be demonstrated to have the potential for successfully achieving the objectives stated in Section 315. **Applications which are exempt from the Drainage Plan requirements set forth in Section 312[a] are also exempt from the Design Standards contained in Section 316[b][4].**

[b] Design Storm:

- [4] In order to address storm water quality the first ½ inch of runoff from the developed site shall be retained in an “off-line” facility. If off-site flows are routed through the system, the system shall be designed to treat the flow from off-site. The system shall be designed with a provision to prevent floating debris from entering the retention facility. This facility shall be designed to recover its capacity within 72 hours. Sufficient geotechnical evaluation shall be performed to verify that groundwater will not impact the efficiency of the proposed design and that the soil types will permit the evacuation of the retention facility within the 72-hour period. The Facility will also be designed with a mechanism to permit cleaning to insure continued functioning of the system.

In addition to the “off-line” retention, in-line detention shall be provided to insure that the rate of discharge does not exceed the pre-development rate of discharge. In order to demonstrate this, pre and post development hydrographs

will be submitted that demonstrate no increase in flow leaving the site during the 10 year 24 hour storm. Inflow-outflow calculations shall also be submitted for any storm water detention ponds. Individual single family home construction is exempt from this section 316[b][4].

VOTE: Aye-All

Nay-None

ADOPTION OF RESOLUTION OF INTENT TO CLOSE A PORTION OF NORTH HAMPTON ROAD

Town Manager Greg Young reminded Council that in August, 2003, Council agreed to let Scott Porter move a portion of North Hampton Road to make the road safer. Mr. Porter has agreed to execute an agreement turning over the new road bed to the Town once it is constructed. Town Manager Young said this is the first step in the street closing procedures. On a motion by Council member Wilcox, seconded by Council member Eggers, Council moved to adopt the following resolution of intent:

A Resolution Declaring the Intention of the Town Council to Consider the Closing of A Portion of North Hampton Road

Whereas, G.S. 160A-299 authorizes the Town Council to close public streets and alleys; and

Whereas, the Town Council considers it advisable to conduct a public hearing for the purpose of giving consideration to the closing of a portion of North Hampton Road ;

Now, Therefore, Be It Resolved by the Town Council that:

1. A meeting will be held at 6:30 p.m. on the 16th day of December, 2004 in the Council Chambers to consider a resolution closing a portion of North Hampton Road.
2. The Town Clerk is hereby directed to publish this Resolution of Intent once a week for four successive weeks in the Watauga Democrat, or other newspaper of general circulation in the area.
3. The Town Clerk is further directed to transmit by registered or certified mail each owner of property abutting upon that portion of said street a copy of this Resolution of Intent.
4. The Town Clerk is further directed to cause adequate notices of this Resolution of Intent and the scheduled public hearing to be posted as required by G.S. 160A-299.

Upon a motion duly made by Council member Wilcox and duly seconded by Council member Eggers, the above resolution was duly adopted by the Town Council at the meeting held on November 18, 2004, in the Town Council Chambers.

VOTE: Aye-All

Nay-None

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 275)

VOTE: Aye-All

Nay-None

ADOPTION OF RESOLUTION OF INTENT TO CLOSE VIRGINIA STREET

Town Manager Greg Young said the Medical Center requested that the remaining portion of Virginia Street be closed since the Medical Center owns all property surrounding the street. On a motion by Council member Eggers, seconded by Council member Clawson, Council moved to adopt the following resolution of intent:

A Resolution Declaring the Intention of the Town Council to Consider the
Closing of Virginia Street

Whereas, G.S. 160A-299 authorizes the Town Council to close public streets and alleys; and

Whereas, the Town Council considers it advisable to conduct a public hearing for the purpose of giving consideration to the closing of Virginia Street ;

Now, Therefore, Be It Resolved by the Town Council that:

1. A meeting will be held at 6:30 p.m. on the 16th day of December, 2004 in the Council Chambers to consider a resolution closing Virginia Street.
2. The Town Clerk is hereby directed to publish this Resolution of Intent once a week for four successive weeks in the Watauga Democrat, or other newspaper of general circulation in the area.
3. The Town Clerk is further directed to transmit by registered or certified mail each owner of property abutting upon that portion of said street a copy of this Resolution of Intent.
4. The Town Clerk is further directed to cause adequate notices of this Resolution of Intent and the scheduled public hearing to be posted as required by G.S. 160A-299.

Upon a motion duly made by Council member Eggers and duly seconded by Council member Clawson, the above resolution was duly adopted by the Town Council at the meeting held on November 18, 2004, in the Town Council Chambers.

VOTE: Aye-All

Nay-None

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 276)

VOTE: Aye-All

Nay-None

DBDA APPOINTMENT

On a motion by Council member Wilcox, seconded by Council member Mason, Council moved to appoint Fredrick Coffey to a three-year term on the Downtown Boone Development Association. His term will expire 6/30/07.

VOTE:Aye-All
Nay-None

APPROVE APPLICATION FOR REDESIGNATION OF NC DEVELOPMENT ZONE

Council member Wilcox explained that, because of the low income in the area, Boone was designated as NC Development Zone several years ago. Council member Wilcox said being designated a NC Development Zone is useful because of tax credits, especially in the area of job creation. On a motion by Council member Wilcox, seconded by Council member Eggers, Council moved to request re-designation of the NC Development Zone.

VOTE:Aye-All
Nay-None

ADOPTION OF CHANGE ORDER FOR ERNIE CARPENTER CONSTRUCTION ON GRAND BOULEVARD PROJECT

Public Utilities Director Rick Miller said this change order will reduce the final contract price from \$259,078.08 to \$251,639.63 and will add 15 days to the contact. Public Utilities Director Miller said the Grand Boulevard sewer project is complete and he recommended approval of change order#2. On a motion by Council member Eggers, seconded by Council member Mason, Council moved to adopt the following change order: **(EXHIBIT B)**

VOTE:Aye-All
Nay-None

SET DATE OF PUBLIC HEARING ON TRANSPORTATION ISSUES

Public Services Director Blake Brown said a public hearing needs to be scheduled to afford discussion of transportation issues, such as one-waying Oak Street and Bear Trail and the 20-mph speed limit that was instituted on a trial basis. On a motion by Council member Eggers, seconded by Council member Clawson, Council moved to schedule a public hearing on Tuesday, December 14th at 5:00 p.m.

VOTE:Aye-All
Nay-None

ADOPTION OF BUDGET AMENDMENTS

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

DESCRIPTION	ACCOUNT #	TO:	FROM:
Miscellaneous Supplies-Police	010-500-300-519900	\$6,150.	
Contributions & Donations	010-000-000-482200		\$6,150.
Traffic Signs & Posts	010-600-401-514205	4,680.	
Misc. Signs & Supplies-Street	010-600-401-514290	3,519.	
Appropriated Fund Balance	010-000-000-499900		8199.
Capital Outlay-Bear Trail Trip Light	010-600-401-574801	26,444.	
Appropriated Fund Balance	010-000-000-499900		26,444.
Maintenance-Powell Bill	010-600-403-525402	20,000.	

Paving & Resurfacing-Powell Bill	010-600-403-577401	50,000.	
Snow Removal-Powell Bill	010-600-403-577403	6,641.	
Appropriated Fund Balance	010-000-000-442100		36,907.
State Funds-Powell Bill	010-000-000-442100		39734.
Utilities & Engineering-Water	030-700-801-577000	15,000.	
Water Capital Reserve Contribution	030-000-000-498031		15,000.

VOTE: Aye-All
Nay-None

REQUESTED APPEARANCE - CHERNEY DEVELOPMENT COMPANY, INC.

Mr. Tony DiSaniti appeared before Council to request water and sewer service to property located off Highway 105 bypass. Mr. DiSanti said he represents the Brown family who owns the 66-acre tract. The property is zoned B-3, and a portion of it is located in the Town's ETJ. Mr. DiSanti said about 25 acres of the property will be developed as a 325-unit multi-family project with the remaining 40 acres developed as an affordable housing project, including 87 modular homes. Mr. DiSanti noted that, if water and sewer service is granted, the developer will pay all costs for extensions; however, if services are not granted, the project will most likely be absolved. Council member Mason explained that the Town has only about 1,500 available taps remaining before the water treatment facility must be upgraded. Council member Mason pointed out that the majority of this property is outside the Town's ETJ and is in the secondary growth area. If water and sewer services are granted, over 1/3 of the available taps. Mayor Burnley said the Town Council is in the most difficult position ever, but hopes to solve the water supply problem soon. Council member Eggers suggested that the development be phased. After little discussion, on a motion by Council member Mason, seconded by Council member Spann, Council moved to table this request until the February, 2005 Council meeting.

VOTE: Aye-All
Nay-None

Before moving to the next requested appearance, Council member Mason questioned Public Utilities Director Rick Miller about the number of taps installed so far this year to which Mr. Miller responded "150"; he also indicated that he will try to calculate the number of gallons a proposed project will use for future reference.

REQUESTED APPEARANCE - WILLIAM KLEIN

Mr. William Klein of Mid-South Holdings appeared before Council to request water and sewer service to property located off Archie Carroll Road. Mr. Klein said he plans to construct 30 multi-family units to provide affordable housing for professions. Mr. Klein said the property is near the new Food Lion building and that he is willing to pay for all costs associated with the extensions. Council member Mason pointed out that again this property is not in the Town's ETJ or our growth- strategy area. Council member Spann said, while the project has merit, a report from the Water and Sewer Committee is needed before the Town considers extensions. After little discussion, on a motion by Council member Mason, seconded by Council member Eggers, Council moved to table this request until the February, 2005 Council meeting.

VOTE: Aye-All
Nay-None

REQUESTED APPEARANCE - BOSTIC DEVELOPMENT

Mr. Steve Johnson of Bostic Development appeared before Council to request water and sewer service to property located off Hwy. 421. Mr. Johnson reminded Council that the project would entail 372 multi-family units phased over a three-year period. Mr. Johnson said nine-acres of the

project is located in the corporate limits with the remaining portion in the Town's ETJ and primary growth area. Mr. Johnson reiterated that this development will pay over \$200,000 per year in taxes and that students will not use as much water as single-family residences. Mr. Johnson felt this development should have first priority to the water and sewer service since he has appeared before Council three times since February, 2004. Council member Mason commented that part of this development will be on a steep slope, and while she has no problem with development in the primary growth area, she is uncomfortable with development in the rural growth area. Council member Mason felt that not every hillside should be developed. Council member Wilcox pointed out that the Comprehensive Plan is 11 years old and that there are only a few properties remaining in Town on which to put this type of development. Council member Wilcox said this development is not near a neighborhood but near another large development of this type and that he could not think of a better place for this development. Council member Spann questioned if Bostic would be willing to consider a less dense alternative for the project. Mr. Johnson then asked Council Members if they were willing to approve the water and sewer request of up to a 3450' elevation. At that elevation booster pumps and storage tanks would not be needed. Council member Mason asked what elevation the Town can serve with the main pressure zone. Public Utilities Director Rick Miller said 3400' to 3445' is the main pressure zone elevation. Council member Spann said he would like to find a way to make this project work, especially if Bostic would make the project less dense and stay below the 3400' elevation. Mr. Johnson asked how far they expect a developer to prepare for plan development without knowing if water and sewer service will be made available. Council member Mason said that if the project is less dense and stays below the 3400' elevation, she could support it. Council member Clawson felt that it was still too many taps to approve at this time. Public Utilities Director Rick Miller suggested having Bostic present the exact number of units in order to determine the amount of water that would be used. Mr. Miller reminded Council that there are only about 450,000 gallons of water remaining to grant before the State would issue a moratorium. Council member Mason said the Water and Sewer Committee is meeting again in December and hopes to have recommendations to Council by the January meeting; therefore, on a motion by Council member Mason, seconded by Council member Wilcox, Council moved to table this request until the January, 2005 meeting.

VOTE: Aye-All

Nay-None

UNSCHEDULED APPEARANCE - CLYDE BURLESON

Mr. Ralph Leonard of Miller Meadows, LLC appeared before Council to discuss the water retention/detention questions he raised at the October meeting. Mr. Leonard questioned when he should expect some answers from Council. Town Manager Greg Young said he has presented these questions to Tim Lormand of AMEC. Mr. Lormand is currently working with the Town in developing our plans for the State NPDES program. Council member Mason asked if Mr. Lormand could have his answers in by the December meeting. Resource Director Jim Byrne commented that Mr. Lormand would have his response ready by December or January at the latest.

CLOSED SESSION

On a motion by Council member Wilcox, seconded by Council member Mason, Council moved to enter Closed Session at 9:20 p.m. in order to discuss the ASU Violations, McCreary Condemnation and Glenn Henson proposed litigation.

VOTE: Aye-All

Nay-None

On a motion by Council member Spann, seconded by Council member Clawson, Council moved to exit Closed Session at 10:03 p.m.

VOTE: Aye-All

Nay-None

ACTION FOLLOWING CLOSED SESSION

On a motion by Council member Wilcox, seconded by Council member Mason, Council moved to adopt the following lease with Ron McCreary. The lease will be for two years for property located beside our Public Works Center and will be at a cost of \$8,750. In lieu of paying the \$8,750, the Town will apply this amount toward demolition of the old Thrift Food Center.

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

PARKING LEASE AGREEMENT
ADDENDUM TO AGREEMENT APPROVED BY BOONE TOWN
COUNCIL ON JUNE 29, 2004

This Parking Lease Agreement and Addendum to that certain Agreement entered into by the parties and approved by the Boone Town Council on June 29, 2004, (hereinafter "addendum" entered into this 18th day of November, 2004, by Ronald A. McCreary and Kathleen B. McCreary, (hereinafter referred to as "McCreary") and the Town of Boone, (hereinafter "Boone"), and such other persons and entities as may be designated herein, known and referred to collectively as "the parties."

WITNESSETH

THAT WHEREAS, since approval of the parties aforesaid agreement relating to the demolition of an improvement to real property located at 335 East King Street, formerly known as the "McCreary Store" (the property hereafter referred to as "the McCreary Store Property"), there have been certain changes in the expected cost of demolition and removal of demolished materials so as to require the parties to make further agreements regarding their respective rights; and

WHEREAS, the costs of demolition and removal have risen by \$8,750.00 since entry into the aforesaid agreement; and

WHEREAS, Boone has determined its need for additional parking convenient to its Public Services Building, located adjacent to the McCreary Store Property; and

WHEREAS, the parties have agreed that it is in their mutual interests to confirm the promises between them in writing;

FOR AND IN CONSIDERATION of the mutual promises contained herein, which consideration is acknowledged by all of the undersigned as adequate and fair, the undersigned, for themselves, their heirs, executors, administrators, assigns, agents, employees, officers, managers, and successors, agree as follows:

1. Boone shall pay the increased costs of demolition and removal of materials in accordance with the parties prior agreement, to the extent of an additional \$8,750.00.
2. McCreary hereby grants Boone a two-year parking lease, to commence December 15, 2004, and to end December 14, 2006, during which Boone shall be entitled to park such vehicles, in type and number, as it may see fit on the McCreary Store Property.
3. McCreary may terminate this lease before the end of the term upon thirty days written notice to Boone and tender of the pro-rated portion of \$8,750.00 represented by the remainder of the term. Such pro-rated amount shall be calculated by dividing the number of days between the proposed termination date by 730 and multiplying the result time \$8,750.00.
4. 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.
5. Boone agrees to neither make nor arrange for any permanent alterations to the premises without the advance written approval of McCreary.

6. 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. 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 Addendum.
8. This Addendum contains all of the terms and conditions agreed to by Boone and McCreary concerning the lease of the McCreary Store Property. 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.
9. This Addendum 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.
10. 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: _____

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

VOTE: Aye-All
 Nay-None

ADJOURNMENT

On a motion by Council member Clawson, seconded by Council member Mason, Council moved to adjourn at 10:04 p.m.

VOTE: Aye-All
 Nay-None

 Town Clerk

 Mayor