

**MINUTES - REGULAR MEETING  
BOONE TOWN COUNCIL  
JANUARY 20, 2005**

The regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, January 20, 2005 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 Furgiuele was also present. Staff present were Town Manager Greg Young; Town Clerk Freida Van Allen; Public Services Director Blake Brown; Development Services Director Blake Brown; Public Utilities Director Rick Miller; Resource Director Jim Byrne; Police Chief Bill Post, Finance Director Amy Davis and Fire Chief Reggie Hassler .

**ANNOUNCEMENTS**

Mayor Burnley requested a few moments of silence to pray for our troops, world leaders and natural disaster victims and their families.

Public Utilities Director Rick Miller presented a 22-year service award to Larry Isenhour who recently retired as the Water Plant Superintendent. Mr. Miller presented highlights of Mr. Isenhour's career including being presented the 1992 Class-A Surface Operator of the Year Award.

**TENTATIVE AGENDA ADOPTION**

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

- Item 5.Q. -One additional budget amendment.
- Item 5.R. - Reappointment of Water Study Committee.

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

VOTE: Aye-All  
Nay-None

**CONSENT AGENDA ADOPTION**

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

Minutes: Special Meeting - December 14, 2004  
Regular Meeting - December 16, 2004  
Special Meeting - December 21, 2004  
Tax Releases: December, 2004

<b>Taxpayer</b>	<b>Year</b>	<b>Amount</b>	<b>Description</b>
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BRIAN F. & DIANE L. GRIFFITH	2004	21.00	INCORRECT FIRE DISTRICT
KRISTIN A. ROSBOROUGH	2004	24.90	MOVED TO TEXAS
WATAUGA COUNTY FIRE & RESCUE	2004	105.12	EXEMPT
LUKE J. TURNER	2004	39.59	ADJ. FOR BILL OF SALE
ROBERT T. SPEED	2004	59.92	NOT A RESIDENT OF TOB
JUANITA WILSON LIFE ESTATE (50%) / WANDA FAFRAGE (50%)	2004	89.60	OA EXEMPTION. JUANITA 50% OWNERSHIP
JOHN L. PATTERSON	2004	36.52	DOES NOT LIVE IN TOB
RACHEL E. SEUFFERT	2004	5.52	DONATED VEHICLE TURNED IN TAG
LLOYD E. TURRISI	2004	23.01	WRONG SITUS
JAMES R. MILNER III	2004	10.93	TURNED IN TAG
JAMES T. JONES	2004	52.48	DOES NOT LIVE IN TOB
FLEET CAP LEASING	2004	13.48	TAXED INCORRECTLY, OFF OF LEASE
CYNTHIA H. WEAVER	2004	32.07	BILL OF SALE
ANDREW S. WATSON	2003	1.84	SOLD VEHICLE
JAMES B. BROWN	2003	121.80	DOES NOT LIVE IN TOB
<b>TOTAL</b>		<b>\$637.78</b>	

**MSD TAX RELEASES  
DECEMBER, 2004**

<b>Taxpayer</b>	<b>Year</b>	<b>Amount</b>	<b>Description</b>
ROBERT T. SPEED	2004	31.46	NOT A RESIDENT OF TOB
<b>TOTAL</b>		<b>\$31.46</b>	

Tax Refunds: December, 2004

<b>Taxpayer</b>	<b>Year</b>	<b>Amount</b>	<b>Description</b>
MORRISON, JAMES FRANKLIN	2004	3.23	SOLD VEHICLE TURNED IN TAG
WIGGINS, ERNEST AUGUSTIN II	2004	7.00	TURNED IN TAG
BOONE DERMATOLOGY CLINIC PA	2004	31.84	SOLD VEHICLE TURNED IN TAG
TRAVIS, CAROLYN BOWDEN	2004	12.35	TURNED IN TAG
<b>TOTAL</b>		<b>\$54.42</b>	

2004 Annual Certification of Firemen: **EXHIBIT A**

VOTE: Aye-All  
Nay-None

**PRESENTATION OF WATER STUDY COMMITTEE RECOMMENDATIONS**

Public Utilities Director Rick Miller presented the ordinance proposed by the Water Study Committee. On a motion by Council member Mason, seconded by Council member Clawson, Council moved to include the word “ordinarily” before the words “no service extensions” in the first sentence of Section 4 and to include the sentence “Any exception to this provision shall only be approved upon action, by majority vote, of the Boone Town Council acting in its quasi-judicial capacity.”

VOTE: Aye-All  
Nay-None

Council member Eggers felt the words “will be granted” in Section 3 and “may be considered” in Section 4 are conflicting and suggested that “will be granted” be used in Section 4 to be consistent. After a lengthy debate Town Attorney Sam Furgiuele offered a change to the first sentence of Section 3 that so it will read “During the term of this Ordinance, ordinarily no request for service connection to property which is outside the corporate limits will be granted.” Council agreed to this change. Council then discussed at length whether to use the 150,000 or

180,000 figure as gallons of water remaining to be allocated. After another lengthy debate, on a motion by Council member Clawson, seconded by Council member Mason, Council moved to use the 150,000 figure. Before voting, Council agreed that, if water taps previously approved were not constructed, then those taps should be added back into the “gallons allocated”. Council members Eggers and Wilcox felt that the 150,000 figure is too conservative and that the Discharge Rate Schedule being used is more aggressive than the actual use. They felt that the 180,000 figure should be used.

VOTE: Aye-3 (Clawson, Mason, Spann)  
Nay-2 (Eggers, Wilcox)

Finally with the above revisions incorporated on a motion by Council member Mason, seconded by Council member Clawson, Council moved to adopt the following ordinance:

### **ORDINANCE 05- 01**

WHEREAS, the Town of Boone has adopted a water system hydraulic analysis and master plan completed by W.K. Dickson; and

WHEREAS, the water system hydraulic analysis and master plan has revealed that the Town of Boone has a very limited remaining capacity in its water distribution system; and

WHEREAS, the Town of Boone has begun planning for alternative raw water sources and possible water treatment plant expansion, but at this time does not know whether, to what extent, and within what time frame the Town may be able to add to its raw water sources; and

WHEREAS, The Town of Boone Water and Sewer Use Ordinance provides for the provision by the Town of water and sewer services both within the corporate limits and outside the corporate limits, including with the extra-territorial jurisdiction (ETJ) of the Town and beyond the boundaries of the Town and its ETJ; and

WHEREAS, during its planning process and until new sources for raw water are developed, the Town must closely monitor and prioritize the distribution of water to new applicants for water service; and

WHEREAS, the Town of Boone’s water system was designed to provide water service only in the primary pressure zone, but through *ad hoc* decisions made with respect to individual requests, water service has at times been extended into the secondary pressure zone without the Town having studied the overall effects and costs of the general extension of water services into the secondary pressure zone, and those extensions have caused unexpected construction, engineering and fire protection problems; and

WHEREAS, the Boone Town Council desires to amend the existing policies in the Town of Boone Water and Sewer Use Ordinance so as to establish priorities for the availability of water to new customers and to afford itself the necessary time within which to determine the future ability of the Town to serve the needs of its citizens and to assess the desirability of permanently amending the Water and Sewer Code to prioritize the future distribution of services;

NOW, BE IT THEREFORE RESOLVED that pursuant to its police powers created under N.C. Gen. Stat. § 160A-174, in order to provide for the health and welfare of the citizens of Boone, and pursuant to N.C. Gen. Stat. § 160A-312, which confers upon the Town the authority to protect and regulate its water distribution system through the adoption of reasonable rules, the Boone Town Council hereby adopts the following policy concerning the provision of water service to new customers. For its stated duration, unless extended, to the extent the following creates any conflict with the Town of Boone Water and Sewer Ordinance, the following provisions supercede and control the provision of water by the Town of Boone:

1. To the extent feasible and during the term of this Ordinance, the Town shall allocate its remaining water usage gallons, estimated at the time of adoption as 150,000 gallons, evenly in yearly increments for a six year period beginning January 1, 2004, with the first two years of allocation available in calendar year 2005, and any unused allocation from a prior calendar year made available in the following calendar year. The Council may

adjust the yearly allocation based on actual usage as it can be determined and/or new information concerning remaining capacity.

2. Within the aforesaid limits, the Town of Boone shall ordinarily provide water service to future customers within the corporate limits on a first-come, first served, basis. However, any requests for water service which involve predicted usage, as established in the North Carolina Discharge Rate Schedule (NCDRS), of over 3,000 gallons per day shall only be approved upon action, by majority vote, of the Boone Town Council acting in its *quasi* judicial capacity. Likewise, in each calendar year in which the Town has allocated two-thirds ( $2/3$ ) of the water allotted for that year, **all** subsequent requests for water connection must be approved by the Boone Town Council, without regard to the predicted usage resulting from the granting of the request. In determining the desirability of approving a connection for water service, the Council shall consider the following:
  - a. Any factor which may make the predicted actual use different from the NCDRS predicted use;
  - b. The amount of water usage in gallons per day previously approved during the calendar year;
  - c. The amount of water usage in gallons per day predicted to be used by the applicant, ordinarily with small requests preferred over large requests;
  - d. Whether in its opinion the application is for a land use which is consistent with the Town's adopted policies concerning growth and development; and
  - e. Such other factors as may be identified by the Town Council in its deliberations which either suggest that a particular project promotes or undermines the public health or safety, or the general welfare of the Town.
3. During the term of this Ordinance, ordinarily no request for service connection to property which is outside the corporate limits will be granted. An applicant whose property is partly or wholly outside the Town limits may petition the Town for annexation, and if the property is annexed, in accordance with the requirements of North Carolina General Statutes and the Town of Boone's ordinances, water services may be extended to such property, in accordance with the provisions of this Ordinance.
4. During the term of this Ordinance, ordinarily no service extensions into the secondary pressure zone shall be approved, but a connection to an existing water main in a secondary pressure zone may be considered where the connection is within the corporate limits as they exist as of the date of the ordinance, and where such connection creates no negative impact on the Town's distribution system, allows adequate pressure to be maintained as may be necessary to comply with the requirements of the Boone Fire Department applicable fire codes, results in no additional costs to the Town, and otherwise complies with the requirements of the Town of Boone Water and Sewer Code for connection to the Town's water system. For purposes of this paragraph, a "connection" is defined as the linking of pipes serving a single dwelling unit to an existing water main. For purposes of this paragraph, an "extension" refers to the continuation of a water main beyond its currently existing limits. Any exception to this provision shall only be approved upon action, by majority vote, of the Boone Town Council acting in its quasi judicial capacity.
5. Any applicant granted the right to connect to the Town's water distribution system must obtain all needed development permits within one year of the approval of the water application, or said approval will expire and the allocated water usage shall return into the overall water census for redistribution. Upon action by the Boone Town Council, the approval of a water application may be extended for a second year upon payment by the applicant of a non-refundable availability fee in the amount of the normal availability fee established by the Town of Boone Water and Sewer Code for use(s) of the type proposed. Previously approved requests which have not been connected shall likewise expire within one year of enactment of this ordinance. However, they, too, may be extended for a second year upon payment by the approved applicant of a non-refundable availability fee in the amount of the normal availability fee established by the Town of Boone Water and Sewer Code for use(s) of the type proposed.
6. Any requests for water services from the Town must comply with all requirements of the

Town of Boone Water and Sewer Code which are not superceded by this Ordinance.

7. The Town of Boone Water and Sewer Department shall provide a monthly report to the Boone Town Council concerning the number and predicted volume of each water connection request approved during the term of this Ordinance.
8. This ordinance shall expire December 31, 2009, unless specifically extended by action of the Boone Town Council, and it may be modified by the Boone Town Council upon majority vote of the Council.
9. This policy shall become effective upon the adoption of this Ordinance.

Adopted this the 20th day of January, 2005.

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Mayor

ATTEST:

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Town Clerk

**(ORDINANCE TO BE TYPED IN BOOK 3, PAGES 254-257)**

VOTE: Aye-All

Nay-None

**DISCUSSION OF TRANSPORTATION COMMITTEE RECOMMENDATIONS**

Public Services Director Blake Brown presented the following Transportation Committee recommendations:

1. The Committee recommended that Bear Trail be re-opened to two-way traffic with speed humps being placed on both ends of the street. Mayor Burnley proposed that an engineer be hired to investigate how much it would cost to construct a two-lane street, including right-of-way acquisitions. After some discussion on a motion by Council member Eggers, seconded by Council member Spann, Council moved to continue the one-way street while an engineering study is being prepared.

VOTE: Aye-All

Nay-None

2. The Committee recommended that the 20-mph speed limit remain in all areas at this time with continued monitoring and enforcement. On a motion by Council member Mason, seconded by Council member Spann, Council moved to accept this recommendation.

VOTE: Aye-All

Nay-None

3. The Committee recommended that Hamby Alley be converted from a two-way street to a one-way street flowing from Coffey Street in a westward direction to College Street. Council discussed at length the possibility of sending additional traffic through the College Street intersection. On a motion by Council member Mason, seconded by Council member Clawson, Council moved to accept this recommendation.

VOTE: Aye-All

Nay-None

4. The Committee recommended that an engineering firm be retained to design, and establish construction and right-of-way acquisition costs for a signalized intersection at Meadowview Drive, Greenway Road and Leola Street. It was suggested that alternative transportation designs be included in the design. Council member Wilcox reminded Council that the Village at Meadowview project will contribute toward some of the cost

since this project will contribute to heavier traffic at that intersection. Council member Mason said Council should keep in mind the residences and businesses along Greenway Road and how this intersection will affect them. On a motion by Council member Clawson, seconded by Council member Wilcox, Council moved to accept this recommendation.

VOTE: Aye-All  
Nay-None

### **INITIATION OF TEXT AMENDMENT - SUBDIVISION REGULATIONS/PLAN APPROVAL**

Planning Director John Spear recommended that a text amendment on the regulation and procedures for subdivision plan approval be sent to the February quarterly public hearing. Council member Mason felt that Section 93(e) should mirror Section 119 of the UDO so that proper notices are given and that the Planning Commission and Town Council get proper training in “quasi-judicial” proceedings. Council member Eggers and Wilcox felt that “bonding” of projects should be continued. After some discussion about whether the text amendment could be ready by the February quarterly public hearing, on a motion by Council member Mason, seconded by Council member Eggers, Council moved to initiate a revised text amendment for the February quarterly public hearing.

VOTE: Aye-All  
Nay-None

### **DISCUSSION OF STORMWATER REGULATIONS**

Town Manager Greg Young presented the following stormwater report from Tim Lormand: **(EXHIBIT B)**. Council discussed at length the dilemma of requiring private developers to meet stormwater regulations while the Town is not yet being required to meet these practices as part of the NPDES Phase II regulations. Council member Mason commented that we need sound water management but that it needs to be with good basis. Town Manager Greg Young said that the UDO is clearly proactive in requiring certain stormwater regulations and suggested having Mr. Lormand prepare amendments to the UDO to relax the stormwater regulations until such time as the Town is required to join the NPDES Phase II program. Mr. Ralph Leonard and Mr. Clyde Burleson suggested the Council exempt single-family subdivisions from stormwater regulations because requiring underground retention is creating cesspools of toxic chemicals. Planning Director John Spear explained the current UDO regulations about retention and detention of water run-off. Council member Spann asked Mr. Spear how he would react about the exemption of single-family subdivisions. Planning Director Spear said retention regulations could be relaxed but not the detention regulations. After some discussion on a motion by Council member Wilcox, seconded by Council member Clawson, Council moved to ask Mr. Lormand to review our UDO requirements and suggest possible amendments at a meeting with Council to be scheduled as soon as possible.

Mayor Burnley declared a break at 8:30 p.m. Council reconvened at 8:45 p.m.

### **ADOPTION OF RESOLUTION - TO INVESTIGATE EDMISTEN ANNEXATION PETITION**

Planning Director John Spear said that this is a contiguous annexation petition by Walter and Marvie Edmisten for a 1.195-acre parcel located off Daniel Boone Drive. Mr. Spear explained that the Edmistens have requested water and sewer service for their 5.226-acre parcel and that the 1.195 acres is outside the corporate limits. According to the Water and Sewer Code, the entire parcel must be in the town limits before service can be provided. On a motion by Council member Wilcox, seconded by Council member Clawson, Council moved to adopt the following resolution directing the Clerk to investigate the annexation petition:

**RESOLUTION DIRECTING THE CLERK TO INVESTIGATE  
A PETITION RECEIVED UNDER G.S. 160A-31  
(Walter Baker Edmisten)**

WHEREAS, a petition requesting annexation of an area described in said petition was received on January 20, 2005 by the Town Council; and

WHEREAS, G.S. 160A-31 provides that the sufficiency of the petition shall be investigated by the Town Clerk before further annexation proceedings may take place; and

WHEREAS, the Town Council of the Town of Boone deems it advisable to proceed in response to this request for annexation;

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

The Town Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the Town Council the result of her investigation.

Adopted this the 20<sup>th</sup> day of January, 2005.

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Mayor

ATTEST:

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Town Clerk

VOTE: Aye-All  
Nay-None

#### **SCHEDULING OF ANNUAL COUNCIL RETREAT**

On a motion by Council member Eggers, seconded by Council member Clawson, Council moved to schedule its annual retreat for Friday, February 25, 2005 in the Burris Room at the Broyhill Inn and Conference Center.

VOTE: Aye-All  
Nay-None

#### **DISCUSSION OF CABLE TV RATES**

Council member Mason expressed her concern over another cable tv rate increase proposed by Charter Communications. Council member Mason pointed out that Charter raised the rates in October, 2004 and that the company has not provided to Council yet the past two quarter subscriber reports and an analysis of the last survey. Council member Mason also pointed out that the Town should probably audit the franchise fees to ensure the Town is being fully reimbursed. Council member Mason requested that the Cable TV Advisory Committee, along with Representative Virginia Foxx and FCC representatives, be contacted about the limited powers municipalities have in regulating these drastic rate increases.

#### **CONSIDERATION OF MORATORIUM - STEEP SLOPE DEVELOPMENT**

Council member Clawson presented the following request:

In the rains this past September, a number of people in the White Laurel Development were evacuated to Red Cross shelters, including two residents of a home, which slid off its foundation. Six homes in this development were condemned, and the newspaper reported that 30 homes were damaged. The problem was instability in the earthen banks and because those slopes were unstable. In a Mountain Times article published last September 2<sup>nd</sup>, writer Alex Turman quotes ASU geology professor Ellen Cowan as saying: One of the concerns with recent construction

projects in Boone is that they, for the most part, occupy steep terrain. Rate of runoff is related to slope. The steeper the slope is, the more concern there is for runoff and erosion. Developing the slopes around Boone is also dangerous because of the inactive fault lines that run through Boone. On these faults, the possibility of unstable foundations or mass erosion is more likely. The writer of this article notes, if the people and the property within the Town of Boone are to be protected from the dangers of unchecked runoff, mass erosion and unstable fault lines, development needs to be curbed all together or the Town of Boone needs to enforce their development from endangering itself or others. The White Laurel development is in the Town of Boone's zoning jurisdiction and engineers for the project said the slopes would hold, and our ordinance standards allowed the project to be approved. Another development that I visited just the other day is Mountaineer Village Apartments. I was very shocked to see one of the huge retaining walls, that Development Services tells me is 46 feet high, already had cracks in it. I do not think this very high wall is in the best interest of the town of Boone. I have similar concerns about the aesthetics and safety of the Meadowview Apartments being built above Wal Mart. We, the Town of Boone Council members, can consider ourselves warned, and it is our job to do something about further steep slope development before someone else loses their property or, worse, their life. For this reason, I move that the Boone Town Council join me in asking our town attorney to draft a 12-month moratorium on slope-side development as a result of these concerns and that this moratorium be placed on the agenda for our public hearing in February and for action at our following meeting for the purpose of studying what went wrong at White Laurel and whether other slopes in our jurisdiction might be susceptible to the same problems. I also ask that we take a closer look at the requirements in our UDO, which allows building on these high slopes with an engineer's certificate, and determine if that requirement is satisfactory for protecting the public.

On a motion by Council member Clawson, seconded by Council member Mason, Council moved to direct the Town Attorney prepare a moratorium on steep slope development for presentation at the February quarterly public hearing. Before voting, Council member Spann thanked Ms. Clawson for her efforts and said steep-slope development is changing Boone's landscape and that Council must address this issue. Council member Eggers and Wilcox questioned how a steep slope would be defined. Council member Mason said it would probably include slope ratios and that the Development Services Department would help in constructing the moratorium language. Council discussed at length how long or short a moratorium should be and engineer certifications.

VOTE:Aye-All  
Nay-None

### **CONSIDERATION OF MORATORIUM - MULTI-FAMILY DEVELOPMENT**

Council member Clawson presented the following request:

The Town of Boone has been receiving permit requests for extremely large student and other apartment complexes at a rapid rate. At our Water Committee meetings, a developer stated to me that the Town was close to, or was already, overbuilt in rental housing. If this is right, the town may stand to soon see many of our apartments eventually empty as renters move into newer complexes, leaving others vacant. While I have heard that these empty student apartments will free up the apartments for affordable housing, I find this very hard to believe. I do not find it convincing that if apartments are left vacant in University Commons, for instance, young professional families will move in. Furthermore, I have always been a strong voice for our residential neighborhoods, and I believe the Town needs to be more aggressive in finding better ways for protection of our traditional neighborhoods and for encouraging more single-family homes to be built. For these reasons, I believe we need to do a study of how our current zoning is meeting our goal of encouraging single family development currently and how it will meet our goals in the future of protecting our tourism industry (the economic lifeblood of our town), growth issues, safety issues like the ones we've experienced in White Laurel, the limitations on our water resources, and storm water and environmental concerns from hillside development. It will take some time to gather and study technical information, and, after that, I would also like to invite citizens to another meeting to talk about the future direction of our town. For these reasons, I move that Council direct our attorney to draft a 1-year moratorium on the construction of any more multi-family residential units with 24 or more units and that the ordinance be placed on the agenda for our February public hearing and for action at our following meeting.

On a motion by Council member Clawson, seconded by Council member Mason, Council moved to direct the Town Attorney to prepare a moratorium on multi-family development for presentation at the February quarterly public hearing. Before voting, Council member Wilcox said he was opposed to this motion because market studies are prepared and that there is an obvious demand for this type of housing. Council member Wilcox said Boone has the infrastructure for this type of development and, if it is not allowed, developers will go into the County to provide this type of housing but that the County does not have the infrastructure to handle the demand. Council member Wilcox felt this moratorium would be bad for the Town, for the environment and for tourism. Council member Eggers felt that the water supply ordinance passed tonight will closely scrutinize large projects and that Council should be careful when regulating supply and demand issues. Council member Spann said the moratorium has merit in that it would give Council time to investigate what direction our citizens want to go. Council member Spann said he was concerned that the Town may be doing harm to the most important asset to our area and that the purpose of the moratorium is to study the matter, noting that the Town is not stopping this type of development forever. Council discussed this topic at great length, finally deciding to prepare the moratorium on the construction of multi-family residential units of 24 or more units.

VOTE: Aye-4 (Clawson, Eggers, Mason, Spann)  
Nay-1 (Wilcox)

### **DISCUSSION OF HARDSHIP POLICY - WATER & SEWER CODE**

Public Utilities Director Rick Miller presented demographic information as requested by Council to determine if the water and sewer hardship policy should be changed. Mr. Miller noted that, based on the current hardship policy 36.29% of water customers fall below the federal poverty level. If the policy is changed to 60% Medium Family Income, 64.4% of water customers would qualify. Council member Mason made a motion to table this matter until next month in order to investigate crafting language that would credit availability fees for non-profit organizations. Council member Wilcox seconded.

VOTE: Aye-All  
Nay-None

### **ADOPTION OF AGREEMENT - DOT/GREENWAY**

Town Manager Greg Young said the Town was successful in obtaining a grant in the amount of \$286,800 for the Phase III Greenway Project. Mr. Young said the total construction cost is \$358,500 which includes right-of-way acquisition. On a motion by Council member Wilcox, seconded by Council member Eggers, Council moved to accept the following agreement:

THIS AGREEMENT, made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, between the DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina, hereinafter referred to as the Department, and the TOWN OF BOONE, a municipal corporation, hereinafter referred to as the Municipality;

#### **WITNESSETH:**

WHEREAS, Section 1201 of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) requires that Surface Transportation Program funds be available for transportation enhancement activities in their statewide transportation improvement programs; and,

WHEREAS, the Municipality has requested enhancement funding for the construction of Phase I: four (4)- foot paved shoulders on Wilson Drive in Boone, Watauga County, North Carolina; and,

WHEREAS, the Department has programmed funding in the 2004-2010 Transportation Improvement Program, as revised, for said improvements under Project E-4955, Watauga County; and,

WHEREAS, the Department and the Municipality have agreed to assume certain responsibilities for said improvements as hereinafter set out and in accordance with the "Enhancement Project Guidelines" attached hereto as Exhibit "A" and made a part of this Agreement.

NOW, THEREFORE, the parties hereto shall execute this Agreement within ninety (90) days of receipt or forfeit the enhancement funds awarded to the Municipality at the October 2004

NCDOT Board of Transportation meeting. This Agreement states the promises and undertakings of each party as herein provided, and the parties do hereby covenant and agree, each with the other, as follows:

1. This project shall consist of the construction of Phase I: four (4)- foot paved shoulders on Wilson Drive. Said project, and the Department's funding participation in the project, shall be restricted to the following eligible items:

Environmental Documentation/Right of Way Certification

Preliminary Engineering

Construction (Bike Lanes, Sidewalk and Curb and Gutter, Drainage, Signal, Asphalt Overlay, Utilities, Traffic Control, Contingency and Permitting

2. The Municipality shall be responsible for administering all work performed and for certifying to the Department that all terms set forth in this Agreement are met and adhered to by the Municipality and/or its contractors and agents. The Department will provide technical oversight to guide the Municipality.

3. The Municipality has submitted to the Department, for review and approval, an overall plan for funding and development (Project Proposal) and a preliminary project implementation schedule. Any modification to said Project Proposal, project description, or preliminary schedule shall be pre-approved by the Department prior to implementation by the Municipality.

4. It is understood and agreed by all parties to this Agreement that the Municipality shall construct, or cause to be constructed, the project within two (2) years of execution of this Agreement. Monthly reports regarding the progress of the project shall be submitted by the Municipality to the Department by the 15<sup>th</sup> of each month. Failure on the part of the Municipality to comply with these provisions will jeopardize funding in the project.

5. Upon execution of this Agreement, and based on the approved project proposal, the Department will request authorization to proceed from the Federal Highway Administration (FHWA). The Municipality shall not contract for, or perform, any work prior to receipt of written authorization from the Department to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be deemed ineligible for reimbursement.

6. If the Municipality contracts with a private firm for engineering/architectural services required to plan or construct the project, it is agreed as follows:

A. The Municipality shall ensure that a qualified firm is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner and at a just and reasonable cost.

B. The Municipality, when procuring professional and engineering services, must adhere to North Carolina Department of Transportation *Rules and Regulations for Major Professional or Specialized Services Contracts*. This policy conforms to N.C.G.S. 143-64, Parts 31 and 32, and Title 23 of the Code of Federal Regulations, Part 172. The Municipality shall comply with the policies and standards for negotiated contracts as contained in the Federal-Aid Policy Guide, Part 172; said policies and standards being incorporated in this Agreement by reference ([www.fhwa.dot.gov/legsregs/legislat.html](http://www.fhwa.dot.gov/legsregs/legislat.html)).

C. The Municipality shall submit all professional services contract proposals to the Department for review and approval prior to execution of the professional services contract by the Municipality. In the event that the professional services contract proposal (engineering) exceeds \$250,000, a pre-negotiation audit must be requested from the Department's External Audit Branch. A pre-negotiation audit of a contract under \$250,000 will be performed by the Department's External Audit Branch if the Municipality requests it.

D. Reimbursement for construction administration costs cannot exceed \$43,020, which equals fifteen percent (15%) of the federal amount of \$286,800.00. This applies to private engineering firms and/or work performed by the Municipality and/or the Department. The Municipality, and/or its agent, shall perform project administration in accordance with all State and Federal policies and procedures.

7. Upon receipt of written notification from the Department to proceed, the Municipality shall prepare the environmental and/or planning document, including any environmental permits, needed to construct the project. All work shall be performed in accordance with Departmental procedures and guidelines. Said documentation shall be submitted to the Department for review and approval.

A. The Municipality shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required to apply for those permits necessary for the construction of the desired improvements. Copies of approved permits should be forwarded to the Department.

B. The Municipality shall advertise and conduct any required public hearings.

C. If any permit issued requires that action be taken to mitigate impacts associated with the improvements, the Municipality shall design and implement a mitigation plan. The Municipality shall bear all costs associated with said mitigation plan, including penalties for violations and claims due to delays.

D. The Municipality shall be responsible for designing an erosion control plan if required by the North Carolina Sedimentation Pollution Control Act of 1973, G.S. 113A-50, *et seq.*, and obtaining those permits required thereby in order to construct the project. During the construction of the improvements, the Municipality, and its contractors and agents, shall be solely responsible for compliance with the provisions of said Act and the plan adopted in compliance therewith.

8. The Municipality shall prepare, or cause to be prepared, the project plans, project specifications and an engineer's estimate of project costs (PS&E package). All work shall be performed in accordance with State and Federal standards and American Association of State Highway and Transportation Official's (AASHTO) specifications, policies, and procedures. Said work shall be submitted to the Department for review and approval. The plans shall be completed to show the design, site plans, landscaping, drainage, and easements.

The preliminary PS&E package is due to the Department within nine (9) months of execution of this Agreement.

1. The final PS&E package due within twelve (12) months of execution of this Agreement. The Department reserves the right to revoke the enhancement funds awarded if the Municipality is unable to submit the PS&E package to the Department for review and approval by the dates noted above. The Department may extend the deadline for PS&E submittal and/or project completion if, in the opinion of the Department, circumstances so warrant an extension of time for the required submittal. Extensions of time granted will be documented in writing. Upon approval of the final PS&E and receipt of written authorization from the Department, the Municipality shall advertise the project for construction.

(C) In the event construction has not begun on the project, or the project has not been let to contract within six (6) months after receiving final approval of final PS&E plans and proposals from the Department, the Municipality shall be responsible for documenting to the Department justification for project delay and that the project remains in compliance with the terms of this Agreement, the approved plans and specifications, and current codes.

9. It is understood by all parties to this Agreement that funding is contingent upon the existence of certifiable right of way. The Municipality, at no expense or liability whatsoever to the Department, shall provide all right of way/property for said project. Acquisition of right of way/property, if necessary, shall be in accordance with the Right of Way Acquisition Policy contained in the Federal-Aid Policy Guide, Part 710, Subpart B, and the North Carolina Department of Transportation Right of Way Manual.

1. All right of way/property for said project shall be acquired by the Municipality within one (1) year of execution of this agreement. If the Municipality fails to acquire all the necessary right of way/property for said project within one year, the Department reserves the right to withdraw funding in this project.

2. If the Municipality enters into a Lease/Encroachment Agreement, the Lease/Encroachment Agreement should be for a minimum period of ten (10) years for the real property where said sidewalk is to be constructed under the terms of this Agreement. The Lease/Encroachment Agreement shall be submitted to the Department's State Right of Way Negotiator for review and approval.

3. If, during acquisition of any properties necessary for this project, underground storage tanks or any contaminated and/or hazardous materials are discovered or become known, the Municipality shall be solely responsible for removal and disposition of said tanks and/or materials in accordance with all applicable state and federal policies, procedures, and guidelines and will save the Department harmless from any legal actions arising therefrom.

4. The Municipality, upon acquisition of all right of way/property necessary for the project, shall provide the Right of Way Agent located at the local NCDOT Office all required documentation (deeds/leases/easement/plans) to secure Right of Way Certification from that office.

(E) If the project is located on State Highway System right of way or property, the Municipality shall secure an Encroachment Agreement with the Department prior to performing any work/improvements on that right of way/property.

(F) If, under the provisions of this Agreement, the property ceases to be used and designated as described in this Agreement as a result of a voluntary action of the Municipality, the

Department may, at the discretion of the Secretary of Transportation, require reimbursement for the amortized value of the Department's initial investment. This provision applies for a period of ten (10) years after the date of Agreement execution.

(G) The Department's initial investment shall be equal to the sum of all state and federal funds expended on the project. The amortized value of the Department's initial investment shall be calculated by dividing the initial investment by the number of years of this provision (10 years), and multiplying the result by the number of years remaining in this provision. Reimbursement to the Department shall be made in one lump-sum payment within sixty (60) days of billing by the Department. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23 and G.S. 105-241.1.

10. The Municipality, at no expense to the Department, shall relocate and adjust any and all publicly or privately-owned utilities in conflict with construction of the project. Said utility work shall be accomplished in accordance with departmental standards, specifications, policies and procedures. A plan showing utility conflicts shall be included in the final plans. It is understood by all parties that any municipally-owned utilities located along the project, and in conflict with the project, shall be relocated at no expense to the Department.

11. Subject to successful completion and approval of the environmental/planning document, right of way certification, and final PS&E package the Department will request construction authorization from the Federal Highway Administration. Upon receipt of written construction authorization from the Department, the Municipality may advertise the project. The Municipality shall follow Federal Highway Administration (FHWA) regulations pertaining to the advertisement of the project and bid procedures in the award of the contract. Said Federal Highway Administration regulations are contained in Federal-Aid Policy Guide, Part 633, Subpart A, and Part 635, Subpart A; said policy being incorporated in this Agreement by reference as fully as if herein set out ([www.fhwa.dot.gov/legregs/legislat.html](http://www.fhwa.dot.gov/legregs/legislat.html)). After the advertisement of the project for construction bids, the Municipality shall submit to the Department and FHWA, tabulated bids received depicting Disadvantaged Business Enterprises (DBE) goals, a Municipal resolution recommending award of the project to the lowest responsible bidder, and a final engineer's estimate. The Department will review the submitted information and provide written approval to the Municipality prior to the contract being awarded by the Municipality.

12. The Municipality shall construct, or cause to be constructed, the project in accordance with the plans and specifications of the project as filed with, and approved by, the Department. During the construction of the project, the procedures set out below shall be followed:

A. The Municipality shall display the Department's Enhancement Program sign in a prominent place at the project site. Upon completion of the project, the Municipality shall erect a permanent sign or plaque denoting the Department's and sponsor/donor's funding participation in the project in a prominent place at, or within, the project site.

B. The Municipality shall perform or cause to be performed the necessary construction engineering, sampling and testing, and supervision of the project required during construction of the project.

C. If the Municipality desires to construct the project, or any portion thereof, with its own forces, a justification shall be submitted to the Department for review and approval.

D. During construction of the project, if any changes in the project plans are necessary, such changes must be approved by the Department prior to the work being performed.

1. The Department and representatives of the Federal Highway Administration shall have the right to inspect, sample or test, and approve or reject, any portion of the project during construction. Prior to any payment by the Department, any deficiencies inconsistent with approved plans and specifications found during an inspection must be corrected. Upon completion of the project, the Department shall be furnished copies of all test reports and certification that all materials and construction were in conformity with the standards and specifications of the Department.

2. If the Municipality withholds retainage from payments due to its contractor(s), the Municipality shall remit the balance of the retainage to the contractor(s) upon satisfactory completion of the contract. The Municipality shall make an inspection of the completed work prior to the release and reimbursement of contractor retainage withheld and notify the Department upon satisfactory completion.

3. The Municipality will be responsible for ensuring that the contractor complies with all of the terms of the contract and any instructions issued by the Department or FHWA as a result of any review or inspection made by said representatives.

H. Letting of contracts for construction and purchase of materials, supplies, and equipment shall comply with N.C.G.S. 136-28.1 and/or N.C.G.S. 143-129.

- I. The Municipality shall maintain records to document quantities for which the contractor is paid during any monthly estimate period.
- J. The Municipality shall maintain all records that establish final documentation of quantities incorporated into the project in accordance with established state and federal procedures.
- K. All project records developed by the Municipality that are not submitted to the Department shall be retained by the Municipality for a period of three (3) years after the final voucher is paid by the Federal Highway Administration.
- L. Failure on the part of the Municipality to comply with any of these provisions will be grounds for the Department to withdraw participation on any or all of the items of work involved.
- M. The Municipality shall also comply with the following federal and state policies: (a) Conflict of Interest; (b) Equal Employment Opportunity; (c) Title VI - Civil Rights Act of 1964; and (d) Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the project. The Municipality shall comply with the Department's policies and procedures regarding participation by DBE firms including, but not limited to, establishing DBE goals for construction contracts, determination of a good faith effort if goals are not met, and reporting DBE participation during planning, design and/or construction of the project.
- N. The Municipality shall be responsible for ensuring that all site layout, construction work, and project documentation are in compliance with applicable city, state and federal permits, guidelines, and regulations, including AASHTO guidelines.
- O. During construction of the project, the Municipality shall provide and maintain adequate signage and other warning devices for the protection of the public in accordance with the approved traffic control project plans and the latest edition of the *Manual on Uniform Traffic Control Devices for Streets*.
13. The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this project. The Department shall not be held liable by the Municipality for any expenses or obligations incurred for the project except those specifically eligible for FHWA Enhancement Funds and obligations as approved by the Department under the terms of this Agreement.
14. The Department shall reimburse the Municipality to the extent of eighty percent (80%) of the approved eligible costs covered under this Agreement up to the maximum federal award of TWO HUNDRED EIGHTY-SIX THOUSAND EIGHT HUNDRED DOLLARS (\$286,800.00). The Municipality shall provide at least twenty percent (20%) matching funds and all costs that exceed the federal award of \$286,800.00.
15. Reimbursement to the Municipality shall be subject to the policies and procedures contained in Federal-Aid Policy Guide Part 140, Subpart G, and Federal-Aid Policy Guide Part 172, which is being incorporated into this Agreement by reference ([www.fhwa.dot.gov/legregs/legislat.html](http://www.fhwa.dot.gov/legregs/legislat.html)). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration, which is to participate in the eligible costs of the project up to the maximum award of \$286,800 maximum federal award, subject to compliance with all applicable federal policy and procedural rules and regulations. Said reimbursement shall be made as follows:
- A. The Municipality may bill the Department on a monthly basis for eligible project costs by submitting an itemized invoice, in duplicate, to the Enhancement Program, 1534 Mail Service Center, Raleigh, NC 27699-1534. Proper supporting documentation, as required by the Department, shall accompany each invoice.
- B. Reimbursement to the Municipality for all invoices submitted shall be made upon approval of each invoice by the Department and the Financial Management Division of the Department.
- C. Reimbursement for construction contract work will be made on the basis of contract unit prices in the construction contract and any approved supplemental agreement.
- D. Construction contract administration will be reimbursed as provided in Provision 4D of this Agreement.
- E. The Municipality agrees that it shall bear all costs of any item for which it is unable to substantiate actual costs or any costs which have been deemed ineligible due to actions of the Municipality.
- F. All invoices must be submitted within one (1) year of completion and acceptance of the project by the Department. Any invoices submitted after this time will not be eligible for reimbursement.
- G. The Municipality shall be responsible for adhering to applicable administrative

requirements of 49 CFR Part 18 ([www.fhwa.dot.gov/legregs/directives/fapg/cfr4918a.htm](http://www.fhwa.dot.gov/legregs/directives/fapg/cfr4918a.htm)) and Office of Management and Budget (OMB) Circular A-102 ([www.whitehouse.gov/OMB/circulars/a102/a102.htm](http://www.whitehouse.gov/OMB/circulars/a102/a102.htm)). If the work is performed by Municipality force account, said invoices shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs as set forth in OMB Circular A-87 ([www.whitehouse.gov/OMB/circulars/a087/a087-all.htm](http://www.whitehouse.gov/OMB/circulars/a087/a087-all.htm)). Reimbursement shall be based on actual costs incurred with the exception of equipment owned by the Municipality. Reimbursement for rates of equipment owned by the Municipality cannot exceed the Department's rates in effect for the time period in which the work is performed. If the work is performed by a contractor, said invoices shall show the contract cost.

H. In accordance with OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations* ([www.whitehouse.gov/OMB/circulars/a133/a133.html](http://www.whitehouse.gov/OMB/circulars/a133/a133.html)), the Municipality shall arrange for an independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.

I. Any costs incurred by the Municipality prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

J. Failure on the part of the Municipality to comply with any of these provisions will be grounds for the Department to terminate participation in the costs of the project.

16. The Municipality agrees that, if the Federal Highway Administration should not participate in certain costs because of noncompliance with Federal and/or State regulations, it will reimburse the Department for such costs caused by actions of the Municipality. Reimbursement shall be made by the Municipality to the Department within sixty (60) days of invoicing by the Department. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23 and G.S. 105-241.1.

17. If the Municipality fails for any reason to reimburse the Department in accordance with the provisions for payment as provided in this Agreement, North Carolina General Statute 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to said Municipality by N.C.G.S. 136-41.1 until such time as the Department has received payment in full.

18. The Municipality and its contractors shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office and shall require its contractor to make such materials available at its office at all reasonable times during the contract period, and for three (3) years from the date of payment of the final voucher by the Federal Highway Administration under this Agreement, for inspection and audit by the Department, the Federal Highway Administration, or any authorized representatives of the Federal Government.

19. Upon completion of the project, the Municipality shall be responsible for the maintenance of all improvements at no expense to the Department.

20. The Municipality agrees to indemnify and hold harmless the Department, to the extent allowed by law, for any third party claims for payment or damages, of any nature, asserted against the Department in connection with this project. Furthermore, the Municipality shall be responsible for ensuring compliance with all State, Federal, and local environmental laws and regulations and ordinances and shall indemnify the Department against any fines, assessments or other penalties resulting from noncompliance by any entity performing work under contract with the Municipality.

21. If, upon completion of the design phase of the project, the Municipality decides to terminate the project, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the project. If the Department decides to terminate the project, the Department shall reimburse the Municipality one hundred percent (100%) of all costs expended by the Municipality and associated with said project. In the event both parties mutually decide to terminate the project, all project costs for said project shall be shared on a 20/80 (Municipality/Department) basis in direct proportion to the matching funds requirement. Reimbursement to the Department shall be made in one lump-sum payment within sixty (60) days of billing. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23 and G.S. 105-241.1.

IT IS UNDERSTOOD AND AGREED that the approval of the project by the Department is subject to the conditions of this Agreement, and that no expenditures of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality, by authority duly given, as evidenced by the attached certified copy of Resolution, Ordinance or Charter Provision, as the case may be.

VOTE:Aye-All  
Nay-None

#### **GREENWAY COMMITTEE APPOINTMENT**

On a motion by Council member Wilcox, seconded by Council member Eggers, Council moved to appoint Jennifer Bryan to the Greenway Committee.

VOTE:Aye-All  
Nay-None

#### **RE-ESTABLISHMENT OF WATER STUDY COMMITTEE AND WATER STUDY COMMITTEE APPOINTMENT**

Council member Clawson made a motion to re-establish the Water Study Committee and to schedule a meeting for February, 2005. Council member Clawson suggested contacting the original members to determine if they are willing to continue to serve. Council member Mason seconded.

VOTE:Aye-All  
Nay-None

Council member Clawson then made a motion to appoint Steve Owen to the Water Study Committee. Council member Spann seconded.

VOTE:Aye-All  
Nay-None

#### **JONES HOUSE BOARD APPOINTMENTS**

Council member Clawson made a motion to appoint Katherine Peters and April Sauls to the Jones House Advisory Board. Their terms will expire 2/28/06.

VOTE:Aye-All  
Nay-None

#### **PLANNING COMMISSION NOMINATION**

Planning Director John Spear pointed out that Mr. Tom Jamison resigned his resident position on the Planning Commission. Mr. Spear said the Planning Commission discussed the opening and had no suggestions for filling the vacancy. Council member Mason suggested that Council solicit applications for the vacancy. Mayor Burnley said she appreciated Mr. Jamison's service and that she would write a letter of thanks.

#### **ADOPTION OF REVISED FEE SCHEDULE - FIRE DEPARTMENT**

Fire Chief Reggie Hassler presented a revised fee schedule for his department. Chief Hassler said the fees were last revised in 1992. Council discussed at length various types of fees and inspections. On a motion by Council member Eggers, seconded by Council member Wilcox, Council moved to table this matter until next month.

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:

<b>DESCRIPTION</b>	<b>ACCOUNT #</b>	<b>TO:</b>	<b>FROM:</b>
McCreary Building Demolition	010-411-000-549119	\$19,500.	
Miscellaneous Revenue	010-000-000-489900		\$19,500.
GHSP Expense	015-420-000-551127	4,500.	
Misc. Supplies - Police Dept.	010-500-300-519900	1,500.	
GHSP Revenue	015-420-000-461518		4,500.
Appropriated Fund Balance	010-000-000-499900		1,500.
Clean Water Mgmt. Revenue	015-420-000-461511	700,000.	
Clean Water Mgmt. Expense	015-420-000-551120		700,000.
Maint. & Repair - Equip. WTP	030-700-804-525201	16,642.	
Appropriated Fund Balance	030-000-000-499900		16,642.
Cap. Outlay-Other Equipment	010-500-300-57400	5,000.	
Public Safety Vehicle Equip.	010-500-300-516400	1,000.	
Capital Outlay-Other Equip.	010-500-350-574000	1,000.	
Contributions & Donations	010-000-000-482200		7,000.
Maint. & Repairs Bldg. & Grounds -Blowing Rock Rd.	010-407-000-525101	16,300.	
Appropriated Fund Balance	010-000-000-499900		16,300.

VOTE: Aye-All  
Nay-None

**REQUESTED APPEARANCE - MR. MATT BLACKBURN**

Mr. Matt Blackburn appeared before Council to request approval of a special events permit to conduct a parade. Mr. Blackburn said there is no real theme to the parade but that it is designed to celebrate the oncoming of spring. Mr. Blackburn said the parade will be held on Saturday, March 19, 2005 at 10:00 a.m. along King Street. Mr. Blackburn said the parade should last no longer than one hour and that he plans to ask ASU clubs to participate. Mr. Blackburn invited Council to participate, too. On a motion by Council member Wilcox, seconded by Council member Clawson, Council moved to grant the special events permit contingent upon Mr. Blackburn's paying the \$250 fee, proper liability insurance, no fireworks and proper attire.

VOTE: Aye-All  
Nay-None

**REQUESTED APPEARANCE - BOSTIC DEVELOPMENT LLC**

The Boone Town Council acting in a quasi-judicial capacity accepted sworn testimony from Joe Baggett, Steve Johnson and Rick Miller. Mayor Burnley opened the hearing at 10:45 p.m.

Mr. Baggett said he has been before Council several times to request water and sewer service to his property located off Hwy. 421.

Mr. Johnson pointed out that the property is located in the primary growth area and that, after

listening to Council concerns, he has sited the entire project in the primary pressure zone for water and sewer taps. Mr. Johnson said this project would help alleviate downtown parking problems since AppalCART will serve the project and reduce traffic through residential neighborhoods. Mr. Johnson said there would be no major clear-cutting since the property is pasture land and there would not be major retaining walls since the property is not very steep. Mr. Johnson indicated that they have not spent money on final design because they are unsure about water and sewer services. Mr. Johnson said that about nine acres are in the corporate limits and that the remaining acreage will be annexed into the Town. Mr. Johnson concluded by saying this project is a great investment for the community.

Council member Wilcox questioned when the apartments would be finished. Mr. Johnson said grading would start in the summer of 2005 with construction being finished by spring of 2006. Leases would be ready for August, 2006.

Council debated at length how much water this project would use. Public Utilities Director Rick Miller noted that the Discharge Rate Schedule suggests 90 gallons of water per day per bedroom. Council member Wilcox asked if we could get usage figures from other large complexes, such as University Highlands or Mountaineer Village. Mr. Miller said he could do that but it would take some time.

Council member Mason asked if the apartments would have laundry facilities and dishwashers. Mr. Johnson said yes. Council member Wilcox indicated that granting water and sewer service would represent a \$50,000 increase to the Town's tax base and that we should investigate actual water usage from similar uses before denying the request.

Council member Clawson noted several times during the discussion that she feels the Town does not have enough available water for this project.

Town Attorney Sam Furgiuele discussed procedural rules that quasi-judicial boards should follow such as opening and closing a public hearing before debating the request. Council member Wilcox asked if Council could continue the hearing to another meeting in order to hear more evidence. Town Attorney Furgiuele said yes.

On a motion by Council member Wilcox, seconded by Council member Eggers, Council moved to continue the hearing until the next meeting in order to receive comparison figures from the Public Utilities Department.

VOTE:Aye-4 (Eggers, Mason, Spann, Wilcox)  
Nay-1 (Clawson)

### **UNSCHEDULED APPEARANCES**

Mr. Susan King of Moretz Street requested the status of the condemned building owned by William Luza and Ailsa Miller. Town Attorney Sam Furgiuele said he just finished reviewing a contract that must be signed for removal of the debris after the structures are burned by the Boone Fire Department.

### **ADJOURNMENT**

On a motion by Council member Wilcox, seconded by Council member Spann, Council moved to adjourn at 11:15 p.m.

VOTE:Aye-All  
Nay-None

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Town Clerk

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Mayor