

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
FEBRUARY 17, 2005**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, February 17, 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; Fire Chief Reggie Hassler; Police Chief Bill Post; Public Services Director Blake Brown; Public Utilities Director Rick Miller; Finance Director Amy Davis; Human Resources Director Peri Moretz, Development Services Director John Spear and Special Assistant to the Manager Jim Byrne.

ANNOUNCEMENTS

Mayor Burnley observed a moment of silence for U.S. troops deployed around the world and for wisdom for our national, state and local leaders.

Mayor Burnley announced that the Town was awarded a \$40,000 water study grant from the North Carolina Rural Center.

Mayor Burnley announced that the ASU Student Government Association is hosting a dinner for Council on Friday, April 15, 2005.

TENTATIVE AGENDA ADOPTION

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

- Item 4.C. - Deletion of Code Amendment to Weight Limits - Section 71.05.
- Item 4.C. - Addition of Authorization for Mayor to request from DOT that Corridor Alternative #8 (King Street) be removed from consideration.
- Item 5.K. - Scheduling a special public hearing for proposed amendments to the UDO on stormwater requirements for single-family subdivisions.

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

- Minutes: January 4, 2005, Special Meeting
- January 19, 2005, Special Meeting
- January 20, 2005, Regular Meeting
- Tax Releases: January, 2005

Taxpayer	Year	Amount	Description
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DONNIE R. BLAIR	2004	7.86	TURNED IN TAG
THOMAS E. & SALLY M. DAWSON	2004	78.52	PAID TAXES IN CUMBERLAND CO.
ROBERT B. & JOANN PHILLIPS	2004	73.48	DOES NOT LIVE IN TOB
GLENDA B. VANCE	2004	48.02	TURNED IN TAG
DANIEL J. & HEIDI L. SULLIVAN	2004	3.65	SOLD VEHICLE TURNED IN TAG
ANNETTE S. & THOMAS G. MAYO	2004	13.60	LIVES IN GUILFORD CO.
EXPERIENCES INERNATIONAL, INC.	2004	14.08	DOES NOT LIVE IN TOB
KOLASINSKI, CHRISTOPHER ALAN	2004	57.99	SOLD VEHICLE TURNED IN THE TAG
OSCAR INVESTORS MANAGEMENT	2004	29.35	SOLD VEHICLE TURNED IN THE TAG
DEWEY WRIGHT RENTALS	2004	32.16	AMENDED LISTING FILED
PEGGY S. ADAMS BEVERLY S. CHURCH	2004	20.81	MH LISTED UNDER A.POTTER FOR '04
TOTAL		\$379.52	

Tax Refunds: January, 2005

Taxpayer	Year	Amount	Description
SOUTHERN STATES SUBARU OF BOONE	2004	\$24.88	COMPUTER EQUIP.LEASED
VANCE, GLENDA BAIRD	2004	15.08	TURNED IN TAG
CALDWELL, ROBERT PERKINS CALDWELL, SHARON SCHOFIELD	2004	2.08	TURNED IN TAG
KNIGHT, MARY CALDWELL KNIGHT, MICHAEL STEPHEN	2003	1.59	TURNED IN TAG
TOTAL		\$43.63	

Authorized the Mayor to request from DOT that Corridor Alternative #8 (King Street) be removed from consideration.

VOTE:Aye-All
Nay-None

PRESENTATION OF COMMERCIAL DEVELOPMENT APPEARANCE STANDARDS

Community Appearance Chairman Nan Chase presented Council with a draft amendment to the UDO that would regulate commercial development appearance standards. Ms. Chase thanked all the members of the Community Appearance Commission for working on this comprehensive set of regulations that would control color, lighting, retaining walls and other appearance matters for new commercial development in Town. The regulations would also pertain to multi-family units and institutional development. Ms. Chase said the Commission is about to complete the regulations and will present them at the May Quarterly Public Hearing for public comments. Mr. Sean Krause of the Community Appearance Commission said the lighting section is not finished yet but that the Commission is leaning toward requiring downward lighting because of light pollution. Council member Eggers pointed out that downward lighting does not work well for security lighting. Mr. Krause said the regulations will differentiate between security and downward lighting. Ms. Chase also presented photos of the apartment complex and business

across from the First Baptist Church that have fallen into a delapidated state. Ms. Chase hoped the Town would initiate a full housing inspection of the apartments for violations of the Town's Minimum Housing Code. Ms. Chase believed renovations would solve a substandard housing and appearance problem in the downtown area. Council members thanked Ms. Chase and the Community Appearance Commission for the proposed regulations and looked forward to receiving the final draft document.

**ADOPTION OF RESOLUTION - SETTING DATE FOR EDMISTEN ANNEXATION
PUBLIC HEARING**

Development Services Director John Spear said this is the second step in the annexation process for the Walter Edmisten annexation. The 1.195-acre parcel is located off Daniel Boone Drive. On a motion by Council member Eggers, seconded by Council member Clawson, Council moved to adopt the following resolution:

**Certificate of Sufficiency
(Edmisten Annexation)**

To the Town Council of the Town of Boone, North Carolina:

I, Freida Van Allen, Town Clerk, do hereby certify that I have investigated the petition attached hereto and have found as a fact that said petition is signed by all owners of real property lying in the area described there in, in accordance with G.S. 160A-31.

In witness whereof, I have hereunto set my hand and affixed the seal of the Town of Boone, the 17th day of February, 2004.

(SEAL)

Town Clerk

**RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION
OF ANNEATION PURSUANT TO G.S. 160A-31
(Edmisten Annexation)**

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

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

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

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

Section 1. A public hearing on the question of annexation of the area described herein will be held at Council Chambers at 6:30 on March 17, 2005.

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

A parcel of land being a portion of the lands described in deed recorded in Book of Records 1001 at page 180 as conveyed to Walter Baker Edmisten and bounded on the east and southeast by Board of Trustees of the Endowment Fund of Appalachian State University, on the southwest side by State of North Carolina, Appalachian State University, and on the northwest by the balance of the Walter Baker Edmisten lands as described from surveys by Donald H. McNeil,

PLS, L-2809, survey no. 04293, November 04, 2004 as BEGINNING on a point in the northeast boundary line of the lands of Walter Baker Edmisten and the western line of the lands conveyed to the Board of Trustees of the Endowment Fund of Appalachian State University by deed recorded in Book of Records 1001 at page 020, said point also being on the existing city limits line of the Town of Boone and located south 36 degrees 23 minutes 35 seconds EAST 160.66 feet from a 5/8 inch rebar and SOUTH 84 degrees 29 minutes 50 seconds WEST 1,021.63 feet from MONUMENT no. 14 of the Town of Boone city limits; thence with the common line of the Edmisten lands and the lands of the ENDOWMENT FUND, SOUTH 36 degrees 23 minutes 35 seconds EAST 248.42 feet to a 5/8 inch rebar set, the eastern corner of the Edmisten lands thence continuing said line, SOUTH 47 degrees 18 minutes 05 seconds WEST 427.55 feet to a 5/8 inch rebar set in the northeastern line of the lands conveyed to the State of North Carolina, Appalachian State University by deed recorded in DEED BOOK 011 at page 580 (TRACT 1) and being located NORTH 53 degrees 12 minutes 45 seconds WEST 110.29 feet from a 5/8 inch rebar; thence with the western line of the lands of Edmisten and the line of the State of North Carolina, NORTH 53 degrees 12 minutes 45 seconds WEST 144.80 feet to a point in said common line and also the city limits line of the Town of Boone, said point being located SOUTH 53 degrees, 12 minutes 45 seconds EAST 120.53 feet from an existing 1/2 inch rebar in a fence corner and also NORTH 52 degrees 50 minutes 50 seconds 813.44 feet from MONUMENT NO. 16 of the Town of Boone city limits; thence with the existing city limits line as it crosses the lands of Walter Baker Edmisten, NORTH 52 degrees 50 minutes 50 seconds EAST 403.75 feet to MONUMENT NO. 15 of the Town of Boone city limits; thence NORTH 84 degrees 29 minutes 50 seconds EAST 73.58 feet to the BEGINNING and containing 1.195 acres as calculated by the coordinate geometry method and having bearings relative to the North Carolina GEODETIC SURVEY (NAD 83) and all distances being horizontal measurements.

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

Adopted this the 17th day of February, 2005.

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGES 279-280)

VOTE: Aye-All

Nay-None

ADOPTION OF ZONING AMENDMENTS

Development Services Director John Spear presented the following zoning amendments:

RZ2005-1 - Town of Boone has initiated zoning map and text amendments in order to create Neighborhood Conservation Districts in the following neighborhoods: Blanwood Drive, Forest Hills Drive, Grand Boulevard, Grandview Heights and Stadium Drive. Ms. Spear said the Planning Commission unanimously recommended approval of the map and text amendments. Council member Clawson pointed out the text amendment as presented will allow each tenant to receive a parking sticker for more than one vehicle and that she felt allowing more than one vehicle was defeating the attempted purpose of the conservation district. Council member Mason and Spann agreed, citing that it could be a major loophole. Town Attorney Furgiuele said the parking stickers are only a tool to help their department identify occupancy violations. After a lengthy discussion on the matter Council agreed that the situation should be monitored carefully to see whether parking stickers are effective. Mr. Spear said a public education campaign is being

planned by both the Town and ASU on the new regulations. Council member Mason asked if other areas could be included in the Conservation Districts in the future. Mr. Spear said yes, that they could be expanded using the quarterly zoning process. Council member Wilcox asked how much the parking sticker fee would cost. Mr. Spear said he plans to propose a \$5 fee. Council member Wilcox felt the Town should not charge a fee for the parking stickers. On a motion by Council member Mason, seconded by Council member Clawson, Council moved to adopt the zoning text and map amendments as presented (**EXHIBIT A**).

VOTE: Aye-All

Nay-None

RZ 2005-2 Town of Boone has initiated a zoning text amendment in order to revise the procedures for review and approval of subdivisions and to amend current requirements for the design and installation of subdivision site improvements. Development Services Director Spear said this amendment was pulled for further review.

RZ 2005-5 Town of Boone has proposed an ordinance creating a twelve (12)-month moratorium on the issuance of zoning, special use and /or building permits for multi-family developments of twenty-four (24) or more dwelling units. The purpose of this ordinance is to temporarily prohibit construction of large multi-family development projects. Development Services Director Spear said the Planning Commission failed to make a recommendation on the case because two motions to adopt failed. Council member Clawson apologized that the Town could not provide seating for all those that wanted to attend the Quarterly Public Hearing and speak on this matter and hoped, in the future, staff would provide ample accommodations. On a motion by Council member Clawson, seconded by Council member Mason, Council moved to adopt the following ordinance. Before voting, Council member Eggers made the following statement: *The Town Council has recently passed a resolution dealing with the limited availability of water for future developmental use. It requires that a project which is projected to use 3,000 gallons of water per day must come before the Council for approval. Recent actual usage figures for 3 large existing multi-family developments in town show an average of 53.37 gallons per day per bedroom. Assuming this usage, and only two-bedroom units within a project, any project over 28 units would have to come before Council for approval. A project with only 18 3-bedroom units would have to come before Council. Because of our water allotment schedule, the intent of the proposed moratorium should be served without its implementation. This would allow Council to be open-minded if a viable project surfaced which would be desirable to everyone-a project like a redevelopment of a blighted area downtown, where a proposal for combined shops and condominiums might occur. I feel that everyone on this Council agrees with the worthwhile long-range goals which were cited as reasons for the proposed moratoria, but I cannot vote to approve them. I applaud Loretta Clawson's determination to take aggressive action, and to use the words of her analogy, to "cure the disease." I believe we have the tools and commitment in hand to lead Boone to a full recovery without risking the side effects of the medicine-which is the moratoria that have been suggested.* Council member Mason then made the following statement: *Thank you to all who provided input and feedback on the two proposed moratoria at the public hearing, by e-mail or by phone. Whether you support the moratoria or not, there were common concerns expressed*

! Safety

! Need for long term vision and planning

! Need to protect our natural resources

We have had our wake up call with events at White Laurel, the tall cracking retaining walls at Mountaineer Village and the large multi-family development on the hillside above Walmart. We cannot continue with status quo. It is obvious that we do not have the needed ordinances in place in light of the above situations. It is not a matter of if we need to do something, but rather a matter of how. Some already say it is too late. We must act now. We must develop a long range plan for our community, identifying the problems and insuring we have the needed ordinances in place. We must protect our natural resources and preserve what brings people to this community. We need to grow by design, balancing protection of our environment with economic development. The worst thing we could do would be to fail to plan. We cannot have development at any cost. With all this said, the following is my position on the Moratoria: I support this moratorium because as a community, we need to take pause and carefully evaluate how we want to grow, which ties into our current water situation and planning for Boone's future. We need to plan for housing needs with ASU and for the rest of our community and place housing in appropriate areas, not on our prominent hillsides. We cannot afford to destroy our natural resources, the

engine that drives tourism, a major economic development industry. Not to mention the beautiful place that so many of us choose to live. We must grow with a plan and maintain the aesthetic integrity and preservation of our natural resources.

Council member Wilcox said he was against this ordinance because it is a restriction of a whole class of housing and that the Town should be reviewing our zoning map to look at areas where this type of housing can be located. Council discussed at length changing the word “moratorium” to “ordinance” but, in the end, decided to leave the text amendment as it was presented.

ORDINANCE # 05-02

ORDINANCE PROVIDING FOR A TWELVE MONTH MORATORIUM ON THE ISSUANCE OF BUILDING, ZONING, AND/OR SPECIAL USE PERMIT(S) FOR MULTI-FAMILY DEVELOPMENTS OF TWENTY-FOUR OR MORE UNITS

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

WHEREAS, pursuant to N.C. Gen. Stat. Chapter 160A, Article 19, the Town is given the authority to plan and regulate development within its corporate limits and its extra-territorial jurisdiction (“ETJ”); and

WHEREAS, pursuant to N.C. Gen. Stat. Chapter 160A, Article 8, the Town is given authority to prohibit, regulate and abate acts, omissions, or conditions detrimental to the health, safety or welfare of its citizens; and

WHEREAS, the Town Council of the Town of Boone is concerned that the limited remaining water supply of the Town of Boone is inadequate to allow the unfettered development of more large multi-family housing developments; and

WHEREAS, the Town Council of the Town of Boone is concerned that the continued development of large multi-family housing developments, in light of the Town’s limited water supply, may obstruct the development of other enterprises which may better support the quality of life in the community, and which may better strengthen the economic base of the Town; and

WHEREAS, the Town Council of the Town of Boone has been informed that the continued development of large multi-family housing developments will soon lead to numerous vacancies in apartments and housing units already in existence in the Town of Boone, leading to urban blight; and

WHEREAS, the Town Council of the Town of Boone is concerned that the continued unfettered development of large multi-family housing developments will have a negative and deleterious effect on tourism, on the economic vitality of the Town, and on the preservation and protection of single-family neighborhoods within the Town’s planning jurisdiction; and

WHEREAS, the Town Council of the Town of Boone has charged the Town’s Appearance Commission with developing design and aesthetic standards for development within the Town’s planning jurisdiction, including its multi-family developments; has charged the Town’s Planning Commission with reviewing and making recommendations concerning the Town’s Comprehensive Plan for Growth and Development; and has charged the Town’s Public Utilities Department with gathering information concerning the availability of alternative water sources for the Town of Boone; and

WHEREAS, the Town Council of the Town of Boone believes that before further large multi-family developments are created, the Town Council needs a reasonable opportunity to study the impact of such developments, the projected future growth of the Town of Boone and the needs that growth will create, and to make such changes as may be needed to the Town’s Unified Development Ordinance (“UDO”) and zoning map with respect to such developments; and

WHEREAS, the Town Council of the Town of Boone has further concluded that it is in the interests of

promoting the health, safety and welfare of its citizens to prohibit the new construction of large multi-family unit developments until these matters can be fully investigated, studied, and remedied; and

WHEREAS, the Town Council of the Town has been informed that to gather and study the necessary information, and to make such provisions as may be necessary to study the matters described will take approximately one year, and that if new large multi-family unit developments are authorized before the needed studies have been completed and necessary measures adopted, they may prevent the Town from planning and regulating its future development in a way that will provide for the long-term economic vitality of the Town of Boone, and will have a deleterious effect on the health and general welfare of the citizens of Boone;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA, THAT THE TOWN OF BOONE, NORTH CAROLINA HEREBY ADOPTS A TWELVE MONTH MORATORIUM ON THE CONSTRUCTION OF MULTI-FAMILY DEVELOPMENTS OF GREATER THAN TWENTY-FOUR UNITS, FOR THE FOLLOWING PURPOSES AND ACCORDING TO THE FOLLOWING SPECIFICATIONS:

1. Other than those development rights which are vested as the result of the issuance of a special use, and/or conditional use, and/or zoning, and/or building permit, during a twelve-month period beginning with the effective date of this ordinance, no building, zoning or special use permit(s) shall be issued for new construction, or the addition to or expansion of an existing structure(s), which will result in a multi-family development of greater than twenty-four units.
2. During the term of this moratorium, the Town shall study the issue of large multi-family unit development, taking into account the recommendations of the Planning Commission and Appearance Commission, and shall determine, among other things, the following:
 - A. The portions of the Town's planning jurisdiction which are either undeveloped or underdeveloped, and which currently allow multi-family development;
 - B. The population trends for the Town of Boone, and the living unit vacancy trends for the Town of Boone;
 - C. The projected future housing needs for the Town of Boone;
 - D. The relationship, if any, between the development of large multi-family housing projects and the development of single-family housing;
 - E. The relationship between the development of large, multi-family housing projects and tourism and economic development in the Town of Boone;
 - F. The desirability of expanding and the ability of the Town to expand its water supply;
 - G. What steps may be taken to facilitate the long-term development of the Town in such manner as to meet the anticipated housing needs in the Town of Boone, while discouraging inappropriate or unwanted development.
3. During the term of this moratorium, the Town shall provide forums to elicit broad citizen input as to the future development of the Town.
4. Once these studies have been completed, the staff of the Development Services Department and the Public Utilities Department shall propose the necessary actions and language to amend the Town's UDO and Water and Sewer Code, as necessary, to address the future needs of the Town.
5. This moratorium may be amended by majority action of the Boone Town Council. Should the required studies not have been completed within the twelve months designated, the moratorium may be extended by majority vote of the Boone Town Council. Should the required studies and responsive measures be completed in such manner as to allow action in a shorter period than twelve months, the moratorium may be lifted by majority vote of the

Boone Town Council.

This Ordinance is effective the 17th day of February, 2005.

Adopted this 17th day of February, 2005.

Mayor

Attest:

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3, PAGES 258-260)

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

RZ 2005-4 Town of Boone has proposed an ordinance creating a twelve (12) month moratorium on the issuance of zoning, special use and/or building permits for certain steep slope development. Development Services Direct Spear said the Planning Commission failed to register a vote for approval, but presented an alternative motion to have the Planning Commission and staff, along with outside resources, study the issue of steep slope development and to bring recommendations back to Council within 12 months. Council member Clawson made the following statement: *I wish to make this statement as a personal message to Boone citizens as well as request tht this statement be included as a formal part of tonight's meeting record. First I want to thank the dozens and dozens of people who have called or e-mailed or given me a hug in a restaurant to express their support for the two moratoria. While I was not able to get back to all of you personally, I want you to know that I heard you loud and clear. I want the people of Boone to know that I stand firmly in support of the moratorium on steep slope development, but I don't have the votes to support this moratorium tonight. I don't even have a second for a motion to adopt it. I want to set the record straight as to what this moratorium on steep slope development is really all about. Some have said that if we pass the moratorium on steep slopes, it will affect building at the high school. I do not think this is true. The school board hasn't even made a decision what to do yet, and the only way this moratorium affects the school is if the Board intends to place new buildings on fill dirt with very high retaining walls. Don't we want to consider the safety issues associated with putting our children at risk with this kind of building now instead of after its built? Some have said the moratorium might affect Habitat Housing. The only way this moratorium affects habitat housing is if it is built on a very steep slope or with extremely high retaining walls. Don't those living in Habitat Housing deserve the same respect for safe living conditions as all of the rest of us? I am well aware we need to work on the language and the slope calculations in this moratorium, and I was ready to do what it takes to fix these problems. But, again, I don't have the votes to make this happen. It's my understanding that instead of taking immediate action to fix the problems of steep slope development tonight, we'll be presented with a specific plan to address this very serious issues over a longer period of time. I will support this plan, but my question remains: what do we do to stop this type of development over the 6 months or more that we're studying and working on the problem. Everyone at the hearing agreed that something needed to be done. Everyone of the Council members says something must be done. But it takes moral courage to change things in our community, and our moral courage is severely tested here tonight. We are being asked to take an easier course, to bow to the weight of special interests, and to duck our responsibility. The citizens of Boone have a right to expect their elected officials to be responsible for promoting values that area greater than any one special interest. It is only through fighting to promote those values that we will achieve our community goals. This isn't a matter of just knowing the right thing to do; it is a matter of having the courage to do it. So in the coming months, while Council works to study and address the problems of steep slope development, and in the meantime if high retaining walls continue to be built and development continues to crawl up the mountains overlooking our town, please remember that I personally did everything I could to stop this BEFORE it started. As John Wayne once said, "Courage is being scared to death-and saddling up anyway." Remember that tonight the members of this Council had the opportunity to saddle up, and didn't. Council member Spann said he was committed to doing whatever he could to move forward with the study that the Planning Commission has recommended. Council member Mason felt that the Town has a safe guard for this type of development by the recently*

adopted Water Ordinance and the proposed Community Appearance standards and Comprehensive Plan update. Council member Eggers made the following statement: *The White Laurel incident is the first such slope failure in Boone of its kind in the past twenty years since the town has had zoning controls regarding development. The initial draft report of the Department of Environment and Natural Resources (DENR) in cooperation with the North Carolina Division of Emergency Management points to several other factors of concern other than the steepness of the slope at the White Laurel failure.*

! *It occurred during an eight- to ten-inch rain event triggered by Hurricanes Frances and Ivan which created 74 other slide events in other areas of western North Carolina. With regard to the slope movements at White Laurel point to 40-45 degree fill slopes, possible inadequate compaction of the soil, failure of gutter downspout drainage which “may have been underlying contributing factors to the slope movements” and “leaking water lines and poor site drainage cannot be ruled out.”*

*Based on unanimous Council recommendation at the December, 2004, meeting which was prior to the moratorium recommendations, Development Services has responded by submitting a “Recommended Hillside Strategy” for Council’s review which is a proactive effort to address steeply sloping hillsides in Boone. In addition to this study, I would encourage staff to promptly implement stronger permit regulation, including, but not limited to, application of commercial development standards in these sensitive areas. I would also suggest that for the future the town consider drafting an addendum to any building permit for a construction site which has the steep slope attributes with which the town is concerned. This disclosure would be much like the termite inspection and the radon or lead-based paint disclosures which are associated with the sale/purchase of a residence. The mere presence of such a requirement would pressure property owners, engineers, grading and building contractors to take extreme measures to address any slope failure possibilities. The Community Appearance Commission has been working diligently for some time to suggest new standards for retaining walls. It is fortunate and timely that we have the benefit of the draft presentation by their chairperson, Nan Chase, tonight. The CAC’s proposals appear to be very comprehensive and could hopefully go a long way to reconcile the very problems we are currently addressing with regard to high retaining walls. Many provisions of the draft proposal seem to also address objectionable aesthetics with regard to multi-family construction for which the current construction state of the development on Meadowview Drive has become objectionable to the citizens of Boone. I share Mr. Lee Stroupe’s comments from the public hearing and his hope that the finished product will be far less offensive in its appearance. Council member Clawson then made a motion to adopt the moratorium ordinance. The motion failed for lack of a second. Council member Mason then made a motion to amend the agenda to include **Development of Steep Slope Study**. Council member Clawson seconded.*

VOTE: Aye-All

Nay-None

DEVELOPMENT OF STEEP SLOPE STUDY

Council member Mason then made a motion, seconded by Council member Clawson, to study the issue of steep slope development, within six months, taking into account the recommendations of the Planning Commission and Appearance Commission, and determining, among other items, the following:

- ! What portions of the Town’s planning jurisdiction is comprised of “steep slopes,” defined herein as slopes with a grade exceeding 20%, and what zoning districts overlay such steep slopes;
- ! Whether the UDO could and should be amended to add more stringent protective measures so as to avoid the replication of the events at White Laurel;
- ! What types of development, if any, steep slopes can best support;
- ! Whether the Town should depend upon the opinions of licensed engineers employed by the persons seeking to develop a steep slope, concerning the integrity and safety of the slope, and of tall retaining walls;
- ! What impact steep slope development has on environmental concerns; and

- ! What steps may be taken to provide long term protection to steep slopes from inappropriate or unwanted development; and
- ! The cause of cracking high retaining walls, the impact of that cracking, and how future such incidents can be avoided.
- ! The Town shall employ a registered professional engineer, competent in geo-technical engineering and experienced in those issues which relate specifically to steep slope development, who shall study the development at White Laurel to determine the cause of the events which occurred there, and make recommendations to the Town Council for measures which, if implemented, will prevent the recurrence of such events.
- ! Once these studies have been completed, the staff of the Development Services Department shall propose the necessary actions and language to amend the UDO as necessary, to address any concerns raised by the engineer, and to implement the recommendations of the engineer.

Council member Eggers said the application of the proposed Community Appearance commercial development standards and an addendum to the building permits should also be included.

VOTE: Aye-All
Nay-None

Mayor Burnley then took the opportunity to make the following statement: *At two recent public meetings, the Town of Boone has been unfairly characterized as failing its obligations to the residents of White Laurel. I am submitting this statement for the record to respond to these allegations. On November 30, 2004, Watauga County Commissioner, Keith Honeycutt, arranged a meeting between representatives of the Town of Boone and Watauga County. Town Manager Greg Young, Jim Byrne, and I represented the Town. Mr. Honeycutt, Manager Rocky Nelson, Emergency Management Director Lisa Danner, and Planning Director Joe Furman were present to discuss the White Laurel problem and who should take the lead in trying to help the residents. We discussed at length, the Town's position based on the fact that White Laurel is out of Boone's corporate limits. We made it clear that by North Carolina General Statutes and case law, the Town cannot expend tax dollars outside its boundaries. We explained that the Extra Territorial Jurisdiction authority is limited to zoning, subdivisions, and building inspections. Further, the White Laurel project was approved subject to the plans as submitted. The water and sewer lines and streets were constructed by the contractor and a private engineering firm signed off on the project. Problems with the water and sewer lines developed within a year and streets were not built to town standards as required. For these reasons, the Town declined the petition to annex. Charges that the Town of Boone is shirking its obligations call for a response to set the record straight.*

Mayor Burnley declared a break at 8:00 p.m. Council reconvened at 8:15 p.m.

APPOINTMENT OF CHRISTMAS TREE FARMS DIRECTIONAL SIGNS

Town Manager Greg Young said several council members have been actively working with the Watauga County Christmas Tree Growers Association to devise language which would allow directional signage. Town Manager Young requested that Council formally approve the Committee consisting of Council members Clawson and Wilcox, the Town Attorney, Dan Meyer of the Boone Chamber of Commerce, a NC Cooperative Extension agent and several members of the Christmas Tree Growers Association. Council member Clawson noted that the next meeting will be on March 22, 2005 at 10:00 a.m. in the Conference Room at the Boone Chamber offices. On a motion by Council member Spann, seconded by Council member Clawson, Council moved to formally approve the committee.

VOTE: Aye-All
Nay-None

ADOPTION OF ORDINANCE AMENDMENT FOR HARDSHIP POLICY FOR WATER AND SEWER USE ORDINANCE

Council member Mason said that she and Town Attorney Furgiuele have been working on an amendment to the Water and Sewer Use Ordinance that will be more responsive to affordable housing projects, such as Habitat for Humanity. On a motion by Council member Wilcox, seconded by Council member Clawson, Council moved to adopt the following ordinance amendment:

PROPOSED AMENDMENT TO SECTION 3-23 OF THE WATER AND SEWER CODE, BY ADDING SUBSECTION "J":

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

VOTE: Aye-All
Nay-None

PLANNING COMMISSION APPOINTMENT

Development Services Director John Spear noted that there is one in-town position vacancy on the Boone Area Planning Commission. On a motion by Council member Clawson, seconded by Council member Spann, Council moved to appoint Matthew Robinson to the position. His term will expire June 30, 2006.

VOTE: Aye-All
Nay-None

PRESENTATION OF RECOMMENDATIONS ON SIDEWALK PRIORITIES

Public Services Director Blake Brown said the Transportation and Greenway Committees met and discussed sidewalk priorities for the upcoming year. Council member Mason suggested placing a sidewalk along Hwy. 105 Extension to connect near the Blue Ridge Bedrooms business. On a motion by Council member Spann, seconded by Council member Eggers, Council moved to accept the following sidewalk priorities for the upcoming year:

1. NC Hwy. 105 from High School Drive to the NC Hwy. 105 By-pass on one or both sides. (Engineering will be completed on both sides to be cost effective.)
2. Shadowline Drive and Dale Street - From the ASU Parking lot to Shadowline Drive to US 321, connecting existing sidewalks.
3. South Water Street - beside Boone Antique Mall to Southern States.
4. Deerfield Road from Blairmont Drive to the entrance to the Greenway Trail Loop.
5. Poplar Grove Road from Waters Street to Poplar Grove Road Connector.

VOTE: Aye-All
Nay-None

ADOPTION OF ORDINANCE - INITIATE LEGAL ACTION AGAINST DELLORIE YOUNG

Town Attorney Sam Furgiuele said Council authorized him, a couple of years ago, to work out a payment plan with Ms. Young, and after receiving \$100 in payments, Ms. Young discontinued her payments leaving a balance of \$1,973. Town Attorney Furgiuele said this ordinance will initiate legal action against Ms. Young for the remaining balance. On a motion by Council member Mason, seconded by Council member Clawson, Council moved to adopt the following ordinance:

ORDINANCE # 05-03

WHEREAS, the Town of Boone (hereafter, "the Town") has duly adopted a Water and Sewer Use Ordinance; and

WHEREAS, N.C. Gen. Stat. § 160A-314 authorizes the Town to establish a schedule of fees for the use of its sewer system, and the Town Council, in accordance with said authority, has established a fee schedule for water and sewer services; and

WHEREAS, pursuant to a request for water and sewer services by Dellorie Young, the Town provided water and sewer services to Dellorie's Young's place of business, "Dellorie's Place," through December 2002, at which time the business ceased operation; and

WHEREAS, at the time she ceased operation, Dellorie Young had an outstanding balance of \$2,073.00 for water and sewer services, based upon application of the Town's established rates for water and sewer services, for which the Town demanded payment in full; and

WHEREAS, at the request of Dellorie Young, the Town agreed to accept regular monthly payments against the balance, but after four payments made in April, May and June 2004, in the total amount of \$100.00, Dellorie Young discontinued her payments to the Town, leaving an unpaid balance of \$1,973.00; and

WHEREAS, pursuant to N.C. Gen. Stat. §§ 160A-314, the unpaid charges for the use of the water and sewer system are the legal obligation of Dellorie Young;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA, PURSUANT TO N.C. GEN. STAT. § 160A-314, AS FOLLOWS:

1. The Town Attorney is ordered to initiate a legal action in the General Court of Justice in Watauga County, North Carolina against Dellorie Young, seeking to recover all outstanding charges for the provision of water and sewer services to the property upon which she operated her business known as "Dellorie's Place, along with attorney's fees, costs, and interest, as available.

Adopted this 17th day of February, 2005.

Mayor

Attest:

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3, PAGE 261)

VOTE: Aye-All

Nay-None

MONTHLY WATER USE STATUS REPORT

Public Utilities Director Rick Miller presented the following status report:

As requested by Town Council, staff and I have compiled the following information concerning water use for the month of January. The Water Treatment Plant recorded a maximum daily demand of 2.206 million gallons on Friday, January 28, and the average daily demand was 1.773 million gallons for the entire month. As adopted in Ordinance 05-01, the Town of Boone Council has appropriated for 25,000 gallons per day usage for year 2004 and 25,000 gallons per day usage for year 2005 to be combined for a total of 50,000 gallons per day for allocation to customers. The Utilities Department approved one project for water service in January, 2005. This project was the Cookout Restaurant, which is proposed to replace the Mountaineer Car Wash on Blowing Rock Road. The Utilities Department estimated the restaurants monthly usage at 1,500 gallons per day and when compared to the Mountaineer Car Wash's' predicted and actual water usages was found to be a less amount, thus not affecting the allotment for 2005 and maintaining

the 50,000 gallons per day.

Council member Eggers suggested sending the figure of 50 gallons a day per capita to the engineers to determine whether or not it would change any of the numbers presented previously.

ADOPTION OF BUDGET AMENDMENTS

On a motion by Council member Clawson, seconded by Council member Mason, Council adopted the following budget amendments:

DESCRIPTION	ACCOUNT #	TO:	FROM:
Transportation/Greenway		010-411-000-545100	\$394,160.
Project E-4955		010-000-000-448025	\$268,800.
Appropriated		010-000-000-499900	107,360.
Reg Authority		010-411-000-549101	5,617.
Gas Revenue		010-000-000-489900	5,617.
Building Demolition		010-411-000-549119	17,277.
Appropriated		010-000-000-499900	17,277.
Police (Police)		010-500-300-525301	681.
Gas Revenue		010-000-000-489900	681.
General Fund		051-451-000-598010	17,125.
Police (Fire Dept.)		010-500-350-501101	17,125.
Appropriated		051-451-000-499900	17,125.
Rural Fire		010-000-000-498051	17,125.
Police-Other Equip.		010-500-301-574000	9,792.
		015-420-000-551125	29,377.
Fund Balance		010-000-000-499900	9,792.
		015-420-000-461516	29,377.

VOTE: Aye-All
Nay-None

SCHEDULING OF PUBLIC HEARING ON STORMWATER REGULATIONS FOR SINGLE-FAMILY SUBDIVISIONS

Council member Eggers said Tim Lormand presented a very informative meeting on stormwater retention yesterday and that he felt that perhaps the Town should relax the single-family subdivision retention requirements. On a motion by Council member Eggers, seconded by Council member Wilcox, Council moved to set a special joint public hearing with the Planning Commission to consider an amendment to the UDO to remove the retention requirement for single-family subdivisions. The joint hearing will be held on Thursday, March 17 at 5:30 p.m.

VOTE: Aye-All
Nay-None

REQUESTED APPEARANCE - LINDA MCKINNEY

Mayor Burnley opened the public hearing at 8:45 p.m. to hear sworn testimony from Linda McKinney, Town

Manager Greg Young, and Public Utilities Director Rick Miller regarding a request for sewer service to property located at 202 Hollar and Greene Lane. Ms. McKinney testified that the septic system is failing at this location and that she would prefer hooking on to the Town's system rather than repairing the failing septic system. Council member Mason asked if we normally do not require water service to be installed, also. Town Manager Greg Young said yes, but Council has granted sewer only in the past, especially in areas where no water is available. Council member Mason then asked if water is available in the area. Public Utilities Director Miller said yes, that it is only 200' away. Council members Spann and Eggers were concerned the Town may be setting a precedent in allowing sewer only in this case. Council member Spann asked Ms. McKinney if she would be willing to tap into our water system. Ms. McKinney said she would rather not at this time. Council member Wilcox asked Mr. Miller if a meter could be placed on her well pump to determine sewer usage. Mr. Miller said yes, that the placement is typical in sewer only cases. There being no further testimony, Mayor Burnley closed the public hearing at 8:52 p.m. Council member Wilcox said, due to extenuating circumstances and the fact that this is a hardship, he made a motion to grant the sewer request, contingent upon Ms. McKinney's paying double sewer rate fees and paying for the tap. Council member Eggers seconded.

VOTE: Aye-All

Nay-None

REQUESTED APPEARANCE - BOSTIC DEVELOPMENT

Mayor Burnley opened the public hearing, recessed from the January 20, 2005 meeting, at 8:53 p.m., to hear sworn testimony from Attorney Claude Smith, Joe Baggett, Steve Johnson, Rick Miller and Jimmy Hodges. Mr. Smith said this was a unique situation in that Bostic has been on the agenda since March, 2004 requesting water for their project. Mr. Smith requested that Council allow Bostic to continue the process since a moratorium has been adopted for multi-family units. Town Attorney Sam Furguele said the moratorium is for building, special use and zoning permits, not water requests. Mr. Smith indicated that Bostic Development has been in the process of obtaining water, he requested that Council exempt the company from the moratorium. Town Attorney Furguele said if Council exempted Bostic, it would be in violation of the moratorium ordinance. Mr. Smith then asked if Council could shorten the moratorium period. Town Attorney Furguele said yes, but they could also extend it after going through a public hearing process. Council then discussed at length the water allocation process and what the NCDRS calculation for this project would estimate. Town Attorney Furguele summarized that the Water Supply Committee chose to use the NCDRS schedule because it is a consistent way to predict future water usage. Council member Mason said the calculation at the last meeting showed 112,800 gallons of water being used at the project each day. Mr. Joe Baggett requested that Public Utilities Director Miller present the water comparison figures from other similar apartment complexes in Boone. Mr. Miller presented the following chart: **(EXHIBIT B)**. Council member Mason asked if Mr. Miller would clarify the NCDRS rate for this project. Mr. Miller said it is 150 gallons of water per bedroom. Council member Mason asked if he could determine the maximum daily demand from a similar apartment project. Mr. Miller responded that he couldn't without reading the meters every day. Mr. Steve Johnson asked that Council look at the average consumption rate from the University Highlands project since it will mirror this project. Mr. Joe Baggett asked that Council compare this project to the University Highlands complex, too, citing that Bostic has made substantial changes to the project design by lowering the units and bringing the project down into the primary pressure zone. Mr. Johnson said he has brought the number of units down by 50% and the number of bedrooms by 20% and that he has tried to accommodate Council's concerns by designing a project that would fit into the community. Council member Eggers pointed out that the Community Appearance Commission is working on new design standards and that he did not know how they could design a project now without knowing the standards. Mr. Johnson noted the design of the project would meet the new standards, but asked again that they be allowed to go through the process. Again, Town Attorney Furguele pointed out that the Development Services Department is prohibited to issue any permits for a multi-family project over 24 units. Mr. Smith said they were not asking for actual permits, but to be allowed to go through the process. Town Attorney Furguele said Council could approve the water request, but not vested rights for building and development permits. Mr. Johnson pointed out they could apply for permits for a 24-unit complex without falling under the moratorium. Town Attorney Furguele agreed, but if the complex used more than 3,000 gallons of water per day, they would still have to get Council

approval. Mr. Jimmy Hodges noted that Bavarian Village is an older apartment complex and should not be used in the comparison since the NC State Building code now requires water saving devices. There being no further testimony, the public hearing closed at 9:49 p.m. Council member Mason said that, based on her estimate of the number of units multiplied by a daily usage of 45.19 gallons of water per day she is figuring that the project will use about 34,000 gallons of water per day. She indicated that based upon the estimate and the fact that the Town has only 50,000 gallons of water per day to allocate this year, she would like to make a motion to deny the water request. Council member Spann seconded. Before voting, Council member Eggers stated that he believes the project does have priority but that the Town does have a water issue at this time. Town Attorney Furguele said the Town may want to devise a customized rate schedule in the future.

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

REQUESTED APPEARANCE - DAVID RISK

Mayor Burnley opened the public hearing at 9:55 p.m. to hear sworn testimony from Tom Adams, Hunter Nichols, Public Utilities Director Rick Miller and Town Manager Greg Young regarding a request for water service to property located off Greenbriar Road. The property is located outside the corporate limits and ETJ. Mr. Adams said that he and David Risk moved a house from the hospital area to Greenbriar Road and were hoping to tap onto Town water because most of the wells in the Greenbriar area are contaminated by the Watauga County landfill. Council member Spann asked Mr. Adams if he knew if their water source would be contaminated. Mr. Adams said he was unsure since he had not actually dug the well, but is assuming it will be since the well across the road is contaminated. Public Utilities Director Rick Miller commented that not all the wells on Greenbriar Road are contaminated. Council member Mason asked about the agreement with the County to provide water to the area. Town Manager Greg Young responded that there is actually only one contaminated well in the area but that there are other wells which have the potential for contamination. According to Mr. Young those other wells are part of the agreement with the County and the Town has fulfilled that agreement. Council member Mason asked if this property is one of the properties identified as possibly being contaminated. Town Manager Young said no. Council member Mason asked if the Town has any documentation for other contaminated wells. Town Manager Young said he was only aware of one contaminated well in the area. Council member Eggers asked if there is proof that the well across the road is contaminated. Mr. David Risk said the well across the road is the contaminated well and that his house is about 300' from that well. Town Attorney Sam Furguele asked if the property is located in the secondary pressure zone. Public Utilities Director Miller said he did not know at the moment. Town Attorney Furguele asked Mr. Adams if he were willing to annex into the Town, to which Mr. Adams said yes. Council discussed at length the request. Hunter Nichols said he has maps Council could review if needed. There being no further testimony Mayor Burnley closed the hearing at 10:12 p.m. Council member Wilcox stated that he feels the Town has a moral obligation to provide water to this area. Council member Eggers agreed, stating that this is a hardship case and the Town should not require annexation. Council member Eggers then made a motion to grant the water request contingent upon the property owner paying all taps fees and providing proof of the contaminated well across the street. Council member Spann seconded.

VOTE: Aye-All
Nay-None

REQUESTED APPEARANCE - HUNTER NICHOLS

Mayor Burnley opened a public hearing at 10:15 p.m. to hear sworn testimony from Hunter Nichols, Conrad Freund, Public Utilities Director Rick Miller and Town Manager Greg Young regarding a request for water service for property located off Greenbriar Road. Mr. Nichols said he wanted to purchase a piece of property from Ms. Bonnie Hampton which adjoins the Risk property. Mr. Nichols said he was told that if he dug a well it would be contaminated and that he plans to construct a four bedroom house. Mayor Burnley asked about the private easements. Public Utilities Director Rick Miller said the property is not adjacent to an existing line so Mr. Nichols

will either have to extend the line or obtain a private easement to run a service line to his property. Council member Mason asked if the Town has any plans to run the line farther down Greenbriar Road. Town Manager Greg Young said he has not received any notification from the County about migration of contaminants from the landfill, but if Council wants to extend the line farther down in the future it should also include hydrants for fire protection. Council member Mason said the Town should not keep granting water requests without convincing evidence that all the wells in the area are contaminated. Council member Eggers said this request is farther away from the actual contaminated well. Town Manager Greg Young said he could obtain information from the Council to acquire a status report on the contamination area and to determine if contaminant migration has occurred. Council member Mason made a motion at 10:35 p.m. to recess the public hearing until the March 17, 2005 meeting. Council member Spann seconded.

VOTE: Aye-All
Nay-None

REQUESTED APPEARANCE - JENNIFER WILSON

Ms. Jennifer Wilson of the Watauga County Children's Council appeared before Council to request approval of a special events permit for the 2005 Children's Fair. The fair will be held on Howard Street (from Depot to Water Street), Saturday, April 23, 2005. Ms. Wilson requested that Council waive the \$1,500 fee. Ms. Wilson said the event draws over 1,000 persons in attendance and it provides children and families an event that is completely free. After some discussion, Council member Eggers made a motion to approve the special events permit contingent upon a fire plan being provided to the Fire Department, proof of liability insurance and payment of actual costs to close the street, up to \$200. Council member Mason seconded.

VOTE: Aye-All
Nay-None

REQUESTED APPEARANCE - MATTHEW WASSON

Mr. Matthew Wasson, Conservation Director for Appalachian Voices, appeared before Council to request that Council adopt a resolution to send to the NC Congressional delegation regarding the Clean Smokestacks Act. Mr. J.W. Randolph and David Harmon both discussed clean air issues and felt it was time that citizens take a stand for clean air. After little discussion, on a motion by Council member Clawson, seconded by Council member Mason, Council moved to adopt the following resolution:

A Resolution to the Honorable Members of North Carolina's Congressional Delegation from the Town of Boone

WHEREAS, clean air is vital to the health and well-being of all North Carolina's citizens, especially our children and senior citizens; and

WHEREAS, the natural beauty of our mountain, coastal, and forested landscapes is a source of pride and inspiration to the citizens of North Carolina and millions of other Americans who visit our state every year; and

WHEREAS, the health of our agriculture, forestry, and tourism industries as well as our recreational and commercial fisheries are important to the economy of North Carolina; and

WHEREAS, air pollution degrades our scenery, harms our health, compromises our commercial and recreational fisheries, and damages our forests, creeks and farms; and

WHEREAS, in 2002, North Carolina's citizens, business leaders, electric utilities and elected officials established a clear, bipartisan, and nearly unanimous agreement to improve our air quality by passing the Clean Smokestacks Act; and

WHEREAS, this legislation will, by 2013, limit the harmful effects of air pollution from our coal-fired power plants by reducing emissions of nitrogen oxides and sulfur dioxides by roughly 78% and 73% respectively; and

WHEREAS, a large portion of North Carolina's air pollution originates from facilities operated by utilities in neighboring states that are not subject to our Clean Smokestacks Act; and

WHEREAS, bills may soon be considered by Congress that would relax utilities' requirements to reduce pollution that were set forth in the 1990 amendments to the federal Clean Air Act and that would also undermine North Carolina's legal authority to seek reductions in pollution that originates in upwind states; and

WHEREAS, relaxing the pollution standards for other states, particularly upwind states, only harms North Carolina's citizens, businesses, and electric utilities and could jeopardize the progress our own state is making toward improving the quality of North Carolina's air; and

WHEREAS, all North Carolinians, including our elected members of Congress, should work together to uphold our Clean Smokestacks Act and reduce air pollution in our state;

NOW, THEREFORE, BE IT RESOLVED that the Town of Boone respectfully urges the honorable members of North Carolina's Congressional delegation to support the health, economy and environment of our town and state by working to reduce pollution as quickly and to a similar extent as is required by our own Clean Smokestacks Act. Please oppose any legislation that would weaken pollution standards for neighboring states, as set forth in the 1990 amendments to the federal Clean Air Act, or that would eliminate North Carolina's authority to seek reductions in the portion of our pollution that originates in upwind states.

Adopted this the 17th day of February, 2005.

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 281)

VOTE: Aye-All

Nay-None

ADJOURNMENT

On a motion by Council member Wilcox, seconded by Council member Spann, Council moved to adjourn at 10:52 p.m.

VOTE: Aye-All

Nay-None

Town Clerk

Mayor