

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
MARCH 16, 2006**

The regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, March 16, 2006 in the Commissioners Board Room, Watauga County Courthouse. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, Janet Pepin, Bunk Spann and Dempsey Wilcox. Council member Rennie Brantz was unable to attend. 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 John Spear; Public Utilities Director Rick Miller; Resource Director Jim Byrne; Police Chief Bill Post, Finance Director Amy Davis; Human Resources Director Peri Moretz, and Fire Chief Reggie Hassler .

ANNOUNCEMENTS

Mayor Clawson made the following announcement:

In conjunction with the statewide “Litter Sweep” campaign issued by Governor Mike Easley for April 17 – April 30, 2006, the Town of Boone will hold a “Spring Boone Clean-Up Day” on Saturday, April 22, 2006. Interested participants may come by the Town of Boone Public Works Department located on 321 East King Street between 9:00am – 2:00pm to pick up cleaning supplies. For more information, contact Marsha Story at 262-4560. Rain Date: Sat., April 29th.

TENTATIVE AGENDA ADOPTION

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

- Adoption of Resolution Directing Clerk to Investigate the Asdrex One, LLC, Annexation Petition.
- Appointment of additional person to Water Study Committee.
- Addition of matter to Closed Session - Legal Advice regarding the development of an additional water source (NCGS 143-318.11a)3).

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

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

CONSENT AGENDA ADOPTION

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

Minutes: February 6, 2006 - Quarterly Public Hearing
 February 16, 2006 - Regular Meeting

Tax Releases: February, 2006

Taxpayer	Year	Amount	Description
HEINZ, SERENA ANN	2005	\$16.95	SOLD CAR
WINKLER, WILLIAM LEE	2005	98.08	INCORRECT SITUS
GRIMES, WILLIAM THOMAS	2005	62.22	INCORRECT SITUS
BOONE DEVELOPMENTS CORP	2005	34.40	ADJ TO BILL OF SALE
MARLIN LEASING CORP	2005	154.26	SOME EQUIP DISPOSED OF '04
SOUTH FORK PROP MGT LTD	2005	48.52	MOVED TO BOONE RURAL FIRE DIST IN '05
WEST JEFFERSON OFFICE EQUIPMENT	2005	41.92	INCORRECT FIRE DISTRICT
TODD, JAMES WHITE	2005	41.92	LIVES IN GASTON COUNTY
STORIE, BRIAN CHRISTOPHER STORIE, RONALD HUNTER	2005	64.16	INCORRECT FIRE DISTRICT
STORIE, BRIAN CHRISTOPHER STORIE, RONALD HUNTER	2004	23.23	INCORRECT FIRE DISTRICT
HARKINS, CATHARINE MEADE	2004	16.03	OVERLAPPED TAGS
TOTALS		\$571.57	

Tax Refunds: February, 2006

Taxpayer	Year	Amount	Description

MINOR'S PRINTING COMPANY	2005	\$10.95	SOLD VEHICLE TURNED IN TAG
FEE, JERRY W	2005	7.46	TURN IN TAG
MILLER PROPERTIES INC MILLER, RICK N	2005	40.50	TURN IN TAG
RIGGAN, LARRY EDWARD	2005	1.49	TURN IN TAG
GORSUCH, PAMELA SIMMONS	2004	18.44	INCORRECT SITUS
GORSUCH, PAMELA SIMMONS	2003	21.96	INCORRECT SITUS
GORSUCH, PAMELA SIMMONS	2002	3.12	INCORRECT SITUS
TOTAL		\$103.92	

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

ADOPTION OF ZONING AMENDMENT

Case 20060043 - The Boone Town Council has initiated text amendments providing for commercial community event signs and providing for farmers market signs. Development Services Director John Spear reminded Council that the Planning Commission unanimously recommended approval of the text amendment at their February meeting and that Council tabled the amendment until the March meeting. Council member Wilcox said after studying the matter he felt that requiring a permit at least 45 days prior to the event should alleviate a clutter of signs. Council member Wilcox asked if this minor amendment to the proposed text would require an additional public hearing. Town Attorney Sam Furgiuele said no.

On a motion by Council member Wilcox, seconded by Council member Mason, Council moved that the application is consistent with all objectives and policies for growth and development of the 1993 Boone Comprehensive Plan.

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

On a motion by Council member Wilcox, seconded by Council member Spann, Council moved that this application is both reasonable and in the public interest for the following reason:

! In order to make the sign ordinance more consistent and coherent for users.

VOTE: Aye-All

Nay-None

Absent-1 (Brantz)

On a motion by Council member Wilcox, seconded by Council member Mason, Council moved to adopt the following zoning text amendment:

Section 322. Definitions

Agricultural Sign: A temporary sign posted to direct the public to an agricultural exposition, festival or event, as those terms are described, when such exposition, festival or event is taking place within the corporate or planning limits of the Town, or within Watauga County. An agricultural exposition, festival or event is an event which involves at least ten separate participants involved in the cultivation of land, who for a period of time not exceeding six weeks per year, provide tours and/or on-site sales or samples of agricultural products resulting from that cultivation to area tourists.

Community Event Signs: An annual temporary sign, other than a commercial sign, posted to direct patrons to community events for public agencies, schools, churches, civic-fraternal organizations or similar non-commercial organizations, or an annual temporary sign posted to direct patrons to a commercial event, when that event, as determined by the Boone Town Council, provides a significant economic benefit to the Town as a whole, is open to all citizenry of the Town of Boone and its planning jurisdiction, portrays the Town of Boone in a positive light, and which has received the written endorsement of a non-profit group whose mission includes promoting the economic vitality of Boone, such as, but not limited to, the Downtown Business Development Association, the Boone Chamber of Commerce, or the High Country Host.

Farmer's Market Sign: A temporary sign posted to direct the public to a farmer's market, when such farmer's market is taking place within the corporate or planning limits of the Town. A "farmer's market" is a one-day event, which can take place from week to week, but in the aggregate no more than two days each week, which involves individual participants selling retail products, at least fifteen of whom sell products which derive from the cultivation of land, and which takes place under the sponsorship of a non-profit organization.

Section 324. Signs Which Do Not Require a Permit

[a] No permit is necessary for these signs, provided they are not prohibited as defined in Section 326 and provided that they comply with the conditions described herein.

[8] Temporary Signs, other than Agricultural Signs, Community Event Signs, and Farmer's Market Signs.

Section 338. Temporary Sign Regulations

[a] Temporary signs must conform to all regulations of this section not otherwise superseded by this Article. No type of temporary sign, other than an agricultural sign whose placement is approved by the North Carolina Department of Transportation, may be placed in the public right-of-way. Temporary signs, other than agricultural signs, community event signs, and farmer's market signs, shall not be required to obtain a sign permit.

[1] Community event signs are permitted for public agencies, schools, churches, civic-fraternal organizations or similar non-commercial organizations, or for commercial events when approved by the Boone Town Council.

a. Signs for non-commercial community events may be erected provided that:

- 1. Such groups shall be non-profit corporations or associations organized and operated for charitable purposes that are licensed as non-profit groups with the North Carolina Secretary of State.*
- 2. Any funds being raised by the community event must be used for charitable or non-profit purposes.*
- 3. All community events must occur within Watauga County. A community event that does not occur within Watauga County may receive permission to displaysigns with the approval of the Boone Town Council.*
- 4. A no fee Community Event Sign Permit Application must be completed by the sponsor of the event and approved by the Development Services Department. The sponsor must organize all aspects of a community event. A representative of the organization must sign the permit application and will be jointly responsible with the organization for insuring that the regulations are followed.*

b. Signs for commercial community events may be erected, provided that:

- 1. An application is properly completed and delivered to the Town of Boone Development Services Department at least forty-five days before the event.*
- 2. The event is approved by the Boone Town Council as a "community event."*

3. *As determined by the Boone Town Council, the event provides a significant economic benefit to the Town as a whole, and portrays or places the Town of Boone in a positive light.*
 4. *The event is open to all citizenry of the Town of Boone and its planning jurisdiction.*
 5. *The event has received the written endorsement of a non-profit group whose mission includes promoting the economic vitality of Boone, such as, but not limited to, the Downtown Business Development Association, the Boone Chamber of Commerce, or the High Country Host.*
 6. *The sponsor of the event has completed a Community Event Sign Permit Application and paid the appropriate fee, and the application is approved by the Development Services Department. A representative of the organization must sign the permit application and will be jointly responsible with the organization for insuring that these regulations are followed.*
- c. *All community events, whether non-commercial or commercial are subject to the following requirements:*
1. *Each community event is allowed to display no more than twelve (12) off-premise signs that do not exceed four (4) square feet in area and four (4) feet in height. Only one sign per lot is allowed with the permission of the property owner or registered agent. One (1) off-premise banner and one (1) banner at the event site are allowed. Each banner may not exceed twenty-four (24) square feet.*
 2. *A community event may display allowable signage annually.*
 3. *The signs are not illuminated.*
 4. *The signs may not be displayed earlier than seven (7) days prior to the event and must be removed within forty-eight (48) hours after the event.*
- d. *An event which does not take place in Watauga County may still be designated a "community event" when the event is approved by the Boone Town Council based upon a determination that the event nevertheless significantly contributes to the economic vitality and heritage of Boone.*
- e. *The Boone Town Council recognizes the following as community events:*
- The Highland Games*
 - The Blowing Rock Celtic Festival*
 - Trade Days*
 - Watauga High School Project Graduation*
 - Boone Bluegrass Festival*

*Gospel Singing Jubilee
Sugar Grove Music Festival*

[8] *Farmer's Market Sign Regulations.*

- a. *A permit must be applied for by delivery of a completed application and payment of such fee as established by the Boone Town Council, no less than ten days prior to the first day of operation. The application for a permit must state all dates the farmer's market will operate during the calendar year in question, and must disclose the name and address of the sponsoring non-profit organization. The person signing the application is jointly responsible with the sponsoring organization for compliance with this Article. Only one fee shall be due for each calendar year of operation of a farmer's market.*
- b. *A farmer's market may display no more than eight (8) off-premises signs that do not exceed four (4) square feet in area and four (4) feet in height. Only one sign is permitted per lot, and off-premises signs may be posted only with the permission of the person with the legal authority to grant such permission. .*
- c. *Farmer's market signs may not be illuminated.*
- d. *Farmer's market signs may be displayed only during daylight hours on each day of operation.*
- e. *Signs must comply with all relevant North Carolina Department of Transportation requirements as to location and placement, and the applicant is responsible for compliance with DOT requirements.*

VOTE: Aye-All

Nay-None

Absent-1 (Brantz)

ACCEPTANCE OF PROPOSAL - GEOLOGIC HAZARDS MAP

Development Services Director John Spear requested permission to proceed with development of a geologic hazards map. Development Services Director Spear summarized that eight requests for proposals were sent out after the last meeting and that four proposals were received by the Town. These four proposals were evaluated by Mayor Clawson, Steep Slope Task Force member Loren Raymond, Greg Young, John Spear and GIS Technician Chris Miller based upon firm qualification, experience of the project team, proposed project approach and schedule, experience with similar projects and the quality of the end product (GIS Hazards Map). Mr. Spear recommended that Trigon Engineering's proposal be accepted. Mr. Spear said that Trigon can meet the four-week schedule at a rate not to exceed \$28,000; however, Trigon offered to reduce the not-to-exceed rate to \$25,000 if the company is allowed an eight-week schedule. Council member Mason said she felt the four-week schedule may be rushing the process and felt that the Town should take the time to develop a good map and policies. Council members Spann

and Pepin agreed. After very little discussion, on a motion by Council member Mason, seconded by Council member Spann, Council moved to accept the eight-week proposal from Trigon Engineering at a cost not to exceed \$25,000.

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

ADOPTION OF RESOLUTION - DIRECTING CLERK TO INVESTIGATE DUNBAR ANNEXATION

Development Services Director John Spear said this contiguous annexation request is for a ½-acre parcel located off Highway 421 South. Development Services Director Spear said the property is owned by R.R. and Joyce Dunbar and that this is the first step in the petition annexation process. On a motion by Council member Wilcox, seconded by Council member Mason, Council moved to adopt the following resolution:

**RESOLUTION DIRECTING THE CLERK TO INVESTIGATE
A PETITION RECEIVED UNDER G.S. 160A-31**

WHEREAS, a petition requesting annexation of an area described in said petition was received on March 16, 2006 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 16th day of March, 2006.

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2 PAGE 309)

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

ADOPTION OF AGREEMENT - VAUGHN & MELTON - SIDEWALK IMPROVEMENTS

Public Services Director Blake Brown presented a contract from Vaughn and Melton, engineers from Asheville, for the design and utility coordination for new sidewalks. The designs are for sidewalks to be located at:

- ! Highway 105 (on both sides of the road from High School Drive to Highway 105 bypass).
- ! Rivers Street (north side of Rivers Street from Waters Street to Poplar Grove Road Connector and south side of Rivers Street from Waters Street to Moretz Drive).
- ! Waters Street (west side from King Street to Rivers Street).
- ! Deerfield Road (north side of road from State Farm Road to Blairmont Drive).

Public Services Director Brown said the total cost for design is \$38,000. Mayor Clawson questioned the time frame for the project. Mr. Brown hoped that design would be completed by late spring; then the plans would go back to the Transportation Committee for prioritizing. Mayor Clawson asked the Town Attorney if the contract met his approval. Town Attorney Sam Furgiuele said yes. On a motion by Council member Pepin, seconded by Council member Mason, Council moved to accept the following contract: **EXHIBIT A.**

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

ADOPTION OF AGREEMENT - VAUGHN & MELTON - GREENWAY IMPROVEMENTS

Town Manager Greg Young explained that the contract adopted by Council with Kimley, Horne at the last meeting was not accepted by Kimley, Horne. Town Manager Young said Kimley, Horne could not accept all terms of the contract, so he contacted Vaughn and Melton to see if they would be interested in providing the greenway design. Vaughn and Melton agreed to provide the design for \$57,000 within four months, since the Town is under a contract with DOT for funding. DOT representatives have received a copy of the proposed contract, so the Town

Manager recommended approval of the contract contingent upon DOT approval. Town Manager Young said the Town Attorney has reviewed the contract and found a few typographical errors. On a motion by Council member Pepin, seconded by Council member Mason, Council moved to adopt the following contract, contingent upon DOT approval of same:

CONTRACT - PHASE I DESIGN

BOONE GREENWAY ALTERNATIVE TRANSPORTATION PLAN

Vaughn and Melton (V&M or “the Consultant”) is pleased to submit this agreement (the “Agreement”) to The Town of Boone (“the Client”) for design of Phase One of the Boone Greenway Alternative Transportation Plan. Our project understanding, scope of services, schedule, and fee are below.

Project Understanding

The Town of Boone [Town], as a result of its Alternative Transportation Improvements Feasibility Study prepared by V&M, plans to widen Wilson Road between N.C. Highway 105 and Winklers Creek Road to accommodate bike lanes and curb and gutter on the west side. This project will include modification to the Hodges Creek culvert. The Wilson Drive and Winklers Creek Road traffic signal will be modified to add pedestrian heads. Likewise, crosswalks and handicap ramps will be added to the four corners of the intersection. The signal at NC 105 and Wilson Drive will need modification to accommodate the crosswalks and future right turn lane proposed by NCDOT. This project will involve engineering design services to develop roadway plans to construct the bike lanes. V&M will design the project in conformity with the grant conditions funding the Project. The Town will furnish V&M all grant documents in its possession for its review. V&M will collect whatever information is needed to complete its design, and the Town agrees to provide any information in its possession needed and requested by V&M.

Scope of Services

Task 1 – Preliminary Design - Hourly Rate Not to Exceed \$10,000.

A. Preliminary Roadway Plans

Preliminary roadway plans will be developed from the preferred design developed in the Feasibility Study prepared by Kimley Horn & Associates and other pertinent design information resulting from the project planning to date. The plans will consist of cover/general notes, preliminary roadway plans, cross sections, major utility relocations (only adjustments to surface utilities such as valves, vaults, and manhole rims), permanent pavement markings, storm drainage improvements, maintenance and traffic control plans, and erosion control. Preliminary Roadway plans will be developed to the stage at which approximately 75% of the final roadway design for the project is complete. V&M will submit six copies of the preliminary roadway plans following the drawing standards of the Town of Boone. V&M will utilize NCDOT standard details for roadway, utility and drainage elements, and pavement markings. The intent of the drainage design will be to substantially maintain the existing drainage patterns collection and

conveyance. It is assumed that stormwater improvements downstream of the roadway work will not be required.

NCDOT has plans to add an eastbound right-turn lane on NC 105 at Wilson Drive. The project is currently on hold, however, we will copy NCDOT on the proposed Wilson Drive widening, pavement marking layout, and signal design. We will review their comments with the Town and incorporate them into the design as directed by the Client.

B. Utility Coordination

V&M will contact and attend one joint meeting (if needed) with utility agencies/companies whose utilities are or may be proposed to be located within the project limits. V&M will request that the utilities provide plans that define the location and description of existing utilities and easements within the project limits and coordinate with them on suitable relocations. The proposed utility relocations will be incorporated into the Preliminary Roadway plans if submitted by the utility owner at least two weeks prior to scheduled submittal of roadway plans to the Town.

As a part of the utility coordination process, up to five subsurface utility pits (soft digs) using vacuum excavation may likely be required. These soft digs will be conducted on an hourly basis as an additional service if needed. V&M will coordinate soft digs only after confirmation/direction by the Town.

C. Culvert Research

The Hodges Creek culvert must be addressed to accommodate the bike lanes and curb and gutter. Research will be conducted to determine options to addressing the relationship between the road and the culvert without altering the existing hydraulic opening and culvert headwall/wing walls. Since the culvert is in the floodway, it is preferable that modification to the culvert does not alter the hydraulic opening as this could trigger a flood study and natural resource permitting. As a last resort, the culvert would need to be extended to accommodate the proposed bike lanes and curb and gutter.

To facilitate the research, V&M will prepare a geotechnical report for the area immediately surrounding the culvert on the western side of Wilson Road. The report is to include results from a site visit with either hand auger or soil borings. The report will provide only enough information for design of the wall and foundation.

This scope assumes a segmental block retaining wall, or equivalent, over the existing corrugated metal pipes will be appropriate for the project and modification or relocation of the existing headwall will not be required. V&M will prepare the design and construction plans for the wall based on their review of the existing conditions and proposed transportation improvements.

Task 2 – Final Design Phase - Hourly Rate not to exceed \$12,000

A. Right-of-Way Plans

V&M will revise the Preliminary plans in conformance with the Town's review comments. The right-of-way plans will be developed to the stage at which approximately 90% of the final design for the Project is complete. V&M will show pertinent right-of-way information on the plans, which consists of:

- The general outlines of improvements, roads, and streams within and adjacent to the area to be acquired;*
- Temporary pavements/roads needed for traffic control;*
- Easement areas, temporary and permanent, needed to perform utility work (overhead and underground);*
- Proposed location of signs, structures, trees, etc. Temporary easements will be shown only if the Town is to perform the relocation;*
- Areas needed for erosion control, i.e., sediment control basins, check dams, etc.;*
- The existing deed title lines, right-of-way lines, proposed property lines and easement lines within the Project limits. Fee simple, right-of-way and/or easements will be sufficient to encompass all improvements, and landscaping;*
- The location of construction limits;*
- The location of construction easements beyond the proposed property lines will be delineated with straight lines and labeled "e" for easement. The construction easement lines will be referenced to the baseline stationing and will include an offset distance at each break in the easement line and at property lines;*
- The Town tax code designation, the deed book and page number, parcel number and street address of parcels; and the names of property owners;*
- An exhibit for each property that requires a permanent storm drainage easement (PSDE); and*

V&M will prepare a right-of-way summary list that consists of tabulating fee simple, permanent and/or temporary easements, underlying fee simple land currently maintained as right of way, and area remaining required for the Project. V&M will include the property owner's name, address and tax code on the table.

B. Final Plans

Final plans will consist of: cover/general notes, typical sections, roadway, storm drainage design and details, traffic control plans, pavement markings, erosion control details, and utility relocation plans (design to be provided by the utility owner). Final plans will be developed from the approved preliminary roadway and right-of-way plans. The plans will include sufficient dimensions and distance references to allow for field construction staking without the need to scale the drawings for distance or elevation data. Final plans will include road cross-sections at 50 foot stationing. V&M will make one set of revisions based on the Town's comments and submit one set of reproducible final roadway plans following the drawing standards of the Town of Boone.

V&M will prepare a pre-construction-level opinion of probable construction cost using current local and/or NCDOT unit costs for highway construction. Right-of-way and/or easement acquisition costs will not be included.

V&M assumes that an Erosion Control Permit is not required as less than one acre of impact is anticipated.

C. Final Design Project Coordination Meetings

V&M will schedule and attend up to one project meeting with the Town (if needed), to discuss key aspects of the final design and/or the review and/or approval of the Final Plans.

D. Bid Document Preparation and Contractor Notification

V&M will prepare and assemble construction bidding documents, including specifications for the subject Work and the construction contract, based on “Standard General Conditions of the Construction Contract” (EJCDC No. C-700, 2002 edition) prepared by the Engineers Joint Contract Documents Committee. Additionally, V&M will issue bid packages for the submittal of quotations to perform the work and conduct pre-bid meetings with potential bidders. We will tabulate the bids received and evaluate the compliance of the bids received with the bidding documents. We will prepare a written summary of this tabulation and evaluation. V&M will notify the Contractor selected to begin work.

*The project design will utilize **NCDOT Standard Specifications**, and **NCDOT Roadway Standard Drawings** when feasible, however V&M will prepare project construction special provisions to correlate with any non-standard proposed project elements.*

E. Traffic Signal Modifications

Our proposed scope of services, schedule and fee, based on discussions with you are described below, and is based on the following assumptions:

- *The proposed traffic signal upgrades are related to the addition of pedestrian facilities, and the existing vehicle signal phasing will not change at the intersection of Wilson Road and Winkler’s Creek Road or Wilson Road and NC 105.*
- *The traffic signal at both intersections are owned and maintained by NCDOT.*
- *This project will not require any signal interconnect design modifications.*
- *We will obtain electronic versions of the existing signal plans in Microstation or AutoCAD format.*

The base data we will rely on for our signal designs will be the electronic files of the existing signal plans and the proposed improvements provided by NCDOT. We will coordinate with NCDOT Central and Division offices to obtain the electronic files. If the existing signal plan files are unavailable, we will require survey data collected specifically for the signal design. We will collect, but not prepare all base survey data deemed to be reasonably necessary for the design.

F. *Site Visit and Meeting with NCDOT and/or the Town of Boone*

We will conduct one site visit and meet with the Town and NCDOT on site to review site issues and to discuss the designs. We will make adjustments and revisions to our design parameters as requested in this conference. We will obtain available data pertinent to the design from the Town of Boone and from NCDOT as available.

Task 3 - Traffic Signal Designs - Hourly rate not to exceed \$25,000

***Traffic Signal Upgrade Design (subcontracted to Rummel, Klepper & Kahl (RK&K):
Winkler's Creek Road and Wilson Drive***

We will design an upgrade to this existing wood pole traffic signal to accommodate the proposed pedestrian crosswalks and signal heads. Based on the data provided by the Town and NCDOT, we will design the traffic signal in conformance to NCDOT standards.

The signal plans will be prepared in English units and will consist of following items:

Intersection Layout Plan. *This plan will include the overall layout of the intersection showing all items proposed for construction. Items on the plans will include intersection striping and marking location as a reference (not to be considered a pavement marking plan); detector loop design and location; identification of conduit runs; signal head placement; pole location; location of controller cabinet and pull boxes; phasing diagram; a timing chart; a loop and detector unit chart; a sequence diagram; a signal equipment chart; and signal equipment and sign legends. The scope of this work consists of design modifications to the signal plan to reflect the addition of pedestrian signal heads.*

Intersection Timing and Phasing Plans. *We will prepare a phasing plan and develop the isolated traffic signal timing to be implemented for the subject intersection. These timing plans will be based on existing traffic data. The proposed isolated signal timing will be shown on the signal plan. We will develop the pedestrian timing to be implemented for the subject intersection. The proposed pedestrian timing will be shown on the signal plan.*

Electrical Details Plan. *This plan will include details for: the signal monitor programming detail, load resistor installation detail, back-up protection notes, and equipment information notes. We will also provide a field connection hook-up chart and electrical detail notes.*

Traffic Signal Upgrade Design: NC 105 and Wilson Drive

We will design an upgrade to the existing wood pole traffic signal to accommodate the proposed bike lanes on Wilson Road and the associated lane shifts. In addition the design will include pedestrian crosswalks and signal heads. The location of the crosswalks on NC 105 and Wilson Road will be sited to accommodate the future addition of a right-turn lane on NC 105 proposed by NCDOT.

Signal plans will be prepared in English units and will consist of the following items:

Intersection Layout Plan. This plan will include the overall layout of the intersection showing the items proposed for construction. Items on the plans will include intersection striping and marking location (not to be considered a pavement marking plan); detector loop design and location; identification of conduit runs; signal head placement; pole location; location of controller cabinet and pull boxes; phasing diagram; a timing chart; a loop and detector unit chart; a table of operation; a stop bar location diagram; a pole location diagram; and signal head and sign legends.

Intersection Timing and Phasing Plans. We will prepare a phasing plan and develop the isolated traffic signal timing to be implemented for the subject intersection. These timing plans will be based on existing traffic data. The proposed isolated signal timing will be shown on the signal plan. We will develop the pedestrian timing to be implemented for the subject intersection. The proposed pedestrian timing will be shown on the signal plan.

Electrical Details Plan. This plan will include details for: the signal monitor programming detail, load resistor installation detail, back-up protection notes, and equipment information notes. We will also provide a field connection hook-up chart and electrical detail notes.

A. *Coordination and Plan Submittal and Review*

We will coordinate with the Division Traffic Engineer office of NCDOT to present the initial design concepts and recommendations and seek their input and initial approval. We will make adjustments and revisions to our design parameters as requested in this initial conference.

We will prepare and submit to NCDOT Division Traffic Engineer and the Town the 90% signal and electrical plans. The Division Traffic Engineer will coordinate with the Signal and Geometric unit of NCDOT for their review, comments, and approval. Upon receipt of 90% review comments for the Division Traffic Engineer, we will revise our plans if needed. We will sign, seal, and submit the 100% signal and electrical plans to NCDOT and the Town.

Additional revisions requested by NCDOT or the Town or changes in site conditions, development plans or roadway plans have not been included in the fee contained within this agreement.

Task 4 – Construction Administration & Inspection - Hourly rate not to exceed \$10,000

V&M will administer a public bid process to identify and select a contractor to construct the proposed improvements. The associated Bid Phase services are generally outlined below:

A. *Bid Preparation*

V&M will prepare and assemble construction bidding documents, including specifications for the subject Work and the construction contract, based on “Standard General Conditions of the Construction Contract” (EJCDC No. C-700, 2002 edition) prepared by the Engineers Joint Contract Documents Committee. We recommend EJCDC as standard industry documents, but

recommend the Town's attorney review and approve the bidding documents. Additionally, V&M will issue bid packages for the submittal of quotations to perform the work and conduct pre-bid meetings with potential bidders. We will tabulate the bids received and evaluate the compliance of the bids received with the bidding documents. We will prepare a written summary of this tabulation and evaluation. After first notifying Client of the date work is to begin and Client approving that date, V&M will notify the Contractor selected to proceed with construction.

B. Pre-Construction Activities

Conduct a Pre-Construction Conference prior to commencement of Work at the Site.

C. Construction Phase

V&M will provide profession construction phase services for the subject project for the purpose of assisting Client in ensuring that the construction is completed in substantial compliance with V&M's design. The parties understand and agree that V&M's services are not intended to guarantee the work of the Contractor(s), but it is the intention of the parties that V&M bring its expertise and best judgment to monitoring the construction, the Contractor's compliance with its contract, including building in substantial conformity with V&M's design, and the Contractor's use of sound construction methods and materials. So long as V&M exercises its best judgment and ordinary skill in performing these tasks, it has met its responsibilities under this contract.

Visits to Site and Observation of Construction.

V&M will provide on-site construction observation services during the construction phase of the Project. Observations will vary depending on the type of work being performed by the Contractor, the location, and the Contractor's schedules.

V&M will make visits to the Site at intervals, as needed in order to observe the progress of the Work. Observations will be of a nature, in terms of frequency and methods, adjudged by V&M as reasonably necessary to determine whether Contractor is proceeding in accordance with the contract, and V&M shall keep client informed of the general progress of the work. In the event V&M concludes, based upon these observations, that Contractor is not complying with its contract with Client, it will promptly inform Client of same and will make recommendations as to appropriate action to be taken. In the event liquidated damages are appropriate with regard to any particular perceived breach of contract by the Contractor, V&M will notify the Contractor, in compliance with the construction contract and on behalf of Client, of what behavior will result in the imposition of liquidated damages, and if such damages **are** imposed, of their imposition.

By this contract and its observations of construction, V&M does not thereby acquire supervisory authority and control over the Contractor or authority over the Contractor's means, methods, techniques, equipment choice and usage, sequences, schedules, or procedure of construction, for safety precautions and programs incident to the Contractor's work, nor for any failure of the Contractor to comply with laws and regulations applicable to the Contractor's performance, but V&M shall promptly report to Client any concerns relative to any of these matters, particularly as they relate to the Contractor's ability to properly, and in compliance with the contract, complete the construction contract.

Clarification and Interpretations.

V&M will issue necessary clarification and interpretation of the contract documents to Client as requested. Field Orders authorizing variations from the strict requirements of the construction contract will only be made after consultation with the Client.

Change Orders.

V&M will recommend Change Orders to Client, as appropriate, and will review and make recommendations related to Change Orders submitted or proposed by the Contractor.

Applications for Payment.

V&M will review applications by the Contractor for payment and accompanying supporting documentation and recommend to Client the amounts the Contractor should be paid, based upon its analysis of the extent to which the Contractor has completed its work, and its judgment as to whether the Contractor is building in compliance with the construction contract. In the case of unit price work, V&M's recommendation of payment will include final determinations of quantities and classifications of Contractor's work, based on observations and measurement of quantities provided with pay requests. Before recommending payment to Client, V&M will obtain from the Contractor the written lien waiver of any sub-Contractor involved in the construction of the Project.

Recommendations with Respect to Defective Work.

V&M will recommend to Client that Contractor's work be disapproved and rejected while it is in progress if, on the basis of its observations, V&M believes that such work will not produce a completed Project that conforms generally to Contract Documents or if a stoppage will protect the integrity of the design concept of the completed Project as a functioning whole.

Inspections and Tests.

V&M will require such special inspections or tests of Contractor's work as V&M deems appropriate, receive and review certificates of inspections which are required by the contract documents, and promptly report to Client any inspection or test results which suggest to V&M that the Contractor(s) is not constructing the Project in accordance with Contract Documents or that the Project design needs to be altered in some non-minimal way.

Shop Drawings and Samples.

V&M will review and approve or take other appropriate action with respect to Shop Drawings and Samples and other data which Contractor is required to submit, in order to facilitate the construction of the Project in accordance with V&M's design, and to determine, to the extent reasonably feasible, whether Contractor is constructing the Project in conformity with the Contract Documents. Should V&M conclude from such drawings, samples or other data, that the Contractor is significantly deviating from the Contract Documents, it shall promptly inform Client of same and will offer Client its recommendations.

Substitutes and “or-equal.”

V&M will evaluate and determine the acceptability of materials and equipment proposed by Contractor and their compliance with applicable construction codes, and shall promptly inform Client of Contractor’s use of materials or equipment which predictably will result in construction not in compliance with the Contract Documents or applicable codes.

Disagreements between Client and Contractor.

As necessary and if requested by either Client or Contractor, V&M will render written opinions on all claims of Client and Contractor relating to the acceptability of Contractor’s work or the requirements of the Contract Documents pertaining to Contractor’s work. In rendering such opinions, V&M shall be fair and not show partiality to Client or Contractor, and Client agrees that V&M’s opinion can be used in any forum convened to resolve or decide any dispute between Client and the Contractor. V&M will ensure that the construction contract commitments of Contractor contains a parallel commitment.

Limitations of Responsibilities.

V&M is responsible for its own performance and the performance of any sub-contractor which it employs to discharge its responsibilities under the contract. V&M is not responsible for the acts or omissions of the Contractor, or any of the Contractor’s subcontractors, suppliers or any other individual or entity performing or furnishing the Work, unless V&M itself has employed or hired that individual or entity. V&M shall not have the authority or responsibility to stop the work of the Contractor, but is responsible for promptly notifying Client of any occurrences which might lead Client to direct the stopping of work. Should Client so direct, V&M shall promptly inform the Contractor of that decision.

Substantial Completion.

V&M will promptly, after notice from Contractor that Contractor considers the entire Work ready for its intended use, and in the company of Client and Contractor, conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory construction of all items with the exception of those identified on a final punch list prepared by V&M and Contractor, and approved by Client. If V&M believes the work is not substantially complete, it will notify Contractor and Client of its conclusion, and will recommend to Client and Contractor available options to bring the construction into substantial conformity with the contract documents. If V&M believes the work is substantially complete, it will so advise Client of its conclusion, and absent written objection by Client, after Client has its own opportunity to inspect the construction, will notify the Contractor that either the construction is substantially complete or that the Client requires further action by the Contractor.

Final Notice of Acceptability of the Work.

V&M will conduct a final site visit to determine if the completed Work of Contractor is in accordance with the Contact Documents and final punch list, and if V&M reaches the conclusion that the construction is substantially in accordance with the Contract documents, recommend to the Client that final payment be made to Contractor. However, V&M shall nevertheless notify the Client in writing of any respects or conditions **of which it is aware** which deviate from the contract documents, even if it considers such deviations minimal or insignificant.

Schedule

We will provide our services based on the following schedule. Time is of the essence.

! Design Phase - 4 months

! Construction Administration & Inspection - 4 months

Fee and Billing

V&M will perform the services described in the Scope of Services at hourly rates not to exceed specified amounts. The hourly rate schedule is based on Attachment A.

All permitting, application, and similar project fees will be paid directly by the Client.

Fees will be invoiced monthly based upon the percentage of services completed as of the invoice date. Payment will be due within 45 days of the date of the invoice.

Closure

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the terms and conditions in the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, the term "the Consultant" shall refer to Vaughn and Melton, and the term "the Client" shall refer to The Town of Boone.

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute both copies of this Agreement in the spaces provided below, retain one copy, and return the other to us. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

VOTE: Aye-All

Nay-None

Absent-1 (Brantz)

ADOPTION OF RESOLUTION - INTENT TO CLOSE SWEET WATER DRIVE

Town Manager Greg Young said this was the first step in the street closing procedures. This request was initiated by Wayne Hampton at the February Council meeting. On a motion by Council member Pepin, seconded by Council member Spann, Council moved to adopt the following resolution:

**A Resolution Declaring the Intention of the Boone Town Council
to Consider the Closing of Sweet Water Drive.**

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

WHEREAS, the Town Council considers it advisable to conduct a public hearing for the purpose of giving consideration to the closing of Sweet Water Drive;

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

1. A meeting will be held at 6:30 p.m. on the 20th day of April, 2006, in the Council Chambers to consider a resolution closing that portion of Sweet Water Drive.
2. The Town Clerk is hereby directed to publish this Resolution of Intent once a week for four successive weeks in the Watauga Democrat.
3. The Town Clerk is further directed to transmit by registered or certified mail to each owner of property abutting upon that portion of said street a copy of this Resolution of Intent.
4. The Town Clerk is further directed to cause adequate notices of this Resolution of Intent and the scheduled public hearing to be posted as required by G. S. 160A-299.

Upon a motion duly made by Council member Pepin, and seconded by Council member Spann the above resolution was duly adopted by the Town Council at the meeting held on the 16th day of March, 2006.

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2 PAGE 310)

VOTE: Aye - All

Nay - None

Absent-1 (Brantz)

ABC BOARD APPOINTMENT

On a motion by Council member Mason, seconded by Council member Spann, Council moved to appoint Paige Murray to another three-year term on the ABC board. His term will expire March

30, 2009.

VOTE: Aye-All

Nay-None

Absent-1 (Brantz)

ADOPTION OF CONTRACT - HOBBS, UPCHURCH FOR INSPECTION OF WATER TANK

Public Utilities Director Rick Miller said this contract is for the inspection of the Highway 194 water tank. Public Utilities Director Miller said the concrete on the outside of the tank is deteriorating and that the inside of the tank needs to be inspected. Mr. Miller reported that the tank was repaired in 1998, but that a tank liner was not installed at this time. Council member Pepin asked how much the inspection would cost. Mr. Miller said \$4,500. After little discussion, on a motion by Council member Mason, seconded by Council member Pepin, Council moved to adopt the following contract:

*RE: Proposal for Tank Inspection
Rainbow Trail/HWY 194 Tank
HUA Project # BN0601*

Dear Mr. Young:

Hobbs, Upchurch and Associates, P.A. (ENGINEER) appreciates the opportunity to submit this proposal for engineering services to the Town of Boone (OWNER) for the inspection and evaluation of the Rainbow Trail/HWY 194 Tank. Our Scope of Services is presented herein.

Scope of Engineering Services

Listed below is the Scope of Services divided into three (3) categories to be provided for the execution of this project:

TANK INSPECTION:

Hobbs, Upchurch & Associates will subcontract a crew of divers to inspect the interior and exterior of the prestressed concrete tank for the following:

All inspections are done according to ASNT/NACE standards

- 1. All disinfection and cleaning procedures and training have been standardized by Southeastern Underwater Services, Inc (SUSI) in compliance with industry standards.*
- 2. Inspection reports include a color video tape indicating where each feature or problem area may be found. The video tapes are narrated live by the divers, by inspection personnel or your personnel (in the control trailer) at the time the video is recorded. One copy of each of the hand written inspection work sheets are provided with the video. The inspection procedure includes the following checklist:*

Exterior Reservoir Overall Appearance & Condition

Exterior Ladder

Entry Hatch

Side Vents & Screens

Interior Ladder

Roof Vents & Screens

Floor and Coating

Interior Walls and Coating

Installed Sensors

Manual Level Indicator

Chlorine Injection System

Floor-to-Wall Seams

Overflow

Fill/Discharge

Man Entry

Scour/Drain

Ceiling

Floor Seams and Integrity of Previous Repairs

Support Columns

Measurement and Sampling of Bottom Sediment or Debris

All aspects and requirements of this proposal will be followed in the inspection. For the total time divers are inside the tank, the job will be on video and can be viewed by your personnel. Any portions of the job will be recorded at your request, or in your absence, the areas of interest listed above will be recorded with particular attention to areas in need of further maintenance. This fee proposal does not cover repairs, but the inspection crew will be prepared to give you an estimate and accomplish repairs at the time of inspection.

REPAIRS:

Upon OWNER approval, the material used for leak repair is a two-part underwater epoxy. The epoxy chemically bonds to the surface, displaces water and remains intact with greater bond than the original coating. All of the repair, sealing and coating materials meet or exceed the following standards:

NSF 60 & 61 - Approved for use in, or in contact with, potable water

EPA - Approved for use in, or in contact with, potable water

USDA - Approved for use in, or in contact with, potable water

For leaks or cracks in concrete reservoirs, a dye injection leak detection and epoxy repair procedure is utilized. The first stage of repair is to perform a leak detection using a FDA-approved dye which is injected around suspected cracks or seams. Once the exact leak areas are located, they are filled with epoxy.

EVALUATION:

Hobbs, Upchurch & Associates will provide a detailed evaluation of the findings of the

inspectors and propose possible scenarios for refurbishment or replacement of the tank including a preliminary cost estimate for all scenarios.

ADMINISTRATION:

HUA shall provide a scope for the underwater inspectors, manage all scheduling with the underwater inspectors and onsite supervision during the inspection to assist with decisions regarding possible repairs to be made at the time of inspection.

Proposed Fee

In consideration for the ENGINEER's services, the OWNER (Town of Boone) agrees to pay the ENGINEER a Lump Sum Fee of \$4,500.

ADDITIONAL SERVICES

Any work not specifically listed in this proposal will be performed on an as needed basis. Additional services will be negotiated prior to the completion of work or in accordance with the attached Hourly Rate Schedule.

STANDARD TERMS AND CONDITIONS

In the event the ENGINEER has not performed according to the terms of the Agreement, for any reason, including but not limited to substantial and unjustified delays in work without approval of the OWNER, the ENGINEER is found incapable of performing the class of work specified, or other breach of the terms of the agreement, the OWNER may in its sole discretion declare the ENGINEER in default of the terms of this Agreement. Upon declaration by the OWNER of default of the ENGINEER, the OWNER shall furnish written notice of such default at the last known address which the ENGINEER has provided to the OWNER. If the ENGINEER has not satisfied such default within ten (10) days from the date of the default, the OWNER shall consider the Agreement terminated and in such termination agree to pay the ENGINEER for work performed, with the OWNER reserving unto itself any and all rights to damages or other relief allowable by law. The failure of the OWNER at any time to require performance by the ENGINEER of any provision hereof shall in no way affect the right of the OWNER hereafter to enforce same.

Payment shall be made on the basis of monthly invoices submitted to the OWNER by the ENGINEER as the project progresses. All invoices are due and payable upon receipt in accordance with the aforementioned "Payment Schedule." Owner shall pay each invoice in full within 30 days of the date of the invoice. Invoices are subject to review prior to payment by OWNER to ENGINEER.

VOTE: Aye-All

Nay-None

Absent-1 (Brantz)

DISCUSSION OF SEWER MAIN PROJECT - OLD BRISTOL ROAD REPLACEMENT

Public Utilities Director Rick Miller presented the following information:

As you are aware, the Old Bristol Road sewer main replacement project is due to be completed this fiscal year. The Town of Boone entered into a contract with Hobbs Upchurch and Associates to design and permit the project at the November Town Council meeting. I have been in contact with the engineer who has completed the design, acquired the permit, and is ready to bid the project. However, it has been brought to my attention the estimated cost has increased dramatically. This project was originally estimated to cost \$190,000.00 three years ago and this is the amount included in the Sewer Operations budget. I instructed the engineer to reevaluate this estimate before requesting bids to assure it is still within our budgeted amount. Attached is the engineer's estimate reflecting an additional \$322,862.00 which will be required to complete the entire project as planned. This estimate does not include an asphalt overlay for the street.

This memorandum is to serve as written request to Council for guidance regarding your wishes on proceeding with this project. Several choices are available for Council's consideration. Monies can be appropriated from Sewer Reserves if Council wishes to complete the entire project, or I can instruct the engineer to bid only a portion of the project and stay within our budgeted amount, or the project can be delayed until next fiscal year. This project is included in the five-year Capital Improvement Plan Council approved and committed to in 2003. I have contacted the regulatory agencies and have been advised that we may complete only a portion of the project if we wish, but if a sanitary sewer overflow occurs in the area not completed, no leniency will be considered towards the Town.

Of the options available, I recommend to you that the budgeted monies be carried over and project construction be postponed until next fiscal year. Also, since this is the second project to estimate over budget, I suggest to you that the Capital Improvement Plan be reevaluated as well to determine if our priorities are the same and to determine if the estimates are still accurate.

Council member Mason asked if there are problems with the lines. Public Utilities Director Miller said that occasionally there are sewer spills. Council member Wilcox suggested going out to bid now and awarding the bid after July 1st. Council member Mason asked if there is a sewer spill now, would the state be lenient with the fines. Mr. Miller said yes since we are planning to replace the line next year. Council member Spann asked why the dramatic increase in the project cost. Mr. Miller said that iron and concrete prices are on the increase and that engineering and asphalt prices were not included in the original estimate. Council member Pepin asked about updating the Capital Improvement Plan. Mr. Miller said he would obtain a price estimate from an engineering firm on the cost to update the plan. On a motion by Council member Wilcox, seconded by Council member Spann, Council moved to initiate the bid process for the Old Bristol Road sewer main project this fiscal year, allocate funds for next fiscal year, and ask bidders to guarantee their bid prices for sixty-days. Council member Spann seconded.

VOTE:Aye-All

Nay-None

Absent-1 (Brantz)

DISCUSSION OF SEWER SERVICE REQUESTS

Public Utilities Director Rick Miller presented the following information:

In light of the Town's raw water issues, my staff and I are observing an increase in sewer-only service requests from the citizens of Boone. In the past, these requests have been forwarded to Town Council for consideration and were usually in areas where water service is not available. For the most part, the sewer-only service requests we are receiving are still in those areas; however, more and more are in areas of town where water mains are installed.

During a recent conversation with the Town Attorney, I questioned as to whether or not these requests should be presented to Town Council, I was then made aware that while Town Council had allowed these type requests in the past, the Town of Boone Water and Sewer Use Ordinance defines authority to approve sewer-only connections from Appalachian State or water and sewer applicants who were denied water service because of allocation problems.

Therefore, I am requesting from Council guidance regarding your wishes on proceeding with sewer-only service requests. Once I have received a consensus from you, my staff and I will adjust requirements for this type of request.

Town Attorney Sam Furgiuele pointed out that the water and sewer code allows sewer only connections only to Appalachian State University. Ordinance 05-01 allows for sewer connections only if water service is denied. Council member Mason said the Town may review this section when the water and sewer code is revised, but at this time she is not comfortable in changing policy. Council agreed.

MONTHLY WATER USE STATUS REPORT

Public Utilities Director Rick Miller presented the following monthly water use status report:

As requested by the Town Council, staff and I have compiled the following information concerning water use for the month of February. The Water Treatment Plant recorded a maximum daily demand of 2.032 million gallons on Wednesday, February 22, 2006, and the average daily demand was 1.793 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 2006 for allocation to customers. Council chose to allocate 16,441 gallons from 2006 leaving a balance of 8,559 gallons for allocation. Eight previously approved allocations did not contact us within the one-year period and did not acquire all necessary permits, as required in Ordinance 05-01. These water allocations totaled 16,965 gallons per day and combined with the 2006 balance, created a total of 25,752 gallons per day that can be allocated for use in 2006. The total water allotment remaining for the year 2006 has not broken the sixty percent threshold. All future water service requests in excess of 3000 gallons per day usage will be forwarded to Town Council as required in Ordinance 05-01. Since the last Town Council meeting, the Utilities Department has approved five projects that subtracted from the

2006 allotment.

As you can see in the attached chart, the Public Utilities Department now has 18,943 gallons per day remaining for allotment in 2006. Also, be reminded that all calculations are based on 60% of the North Carolina Discharge Rate Schedule.

			Approved Water Connections			
			2006			
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						25000
		4165	John Cook	May-05	8038	16962
			CataCorner Investments	Jul-05	7296	9666
			CAT Tractor	Oct-05	1107	8559
			2005 Balance Carry Over	Jan-06	228	8787
**Relinquished		Previously	Approved Allocations	Feb-06	16965	25752
Bob Young	Feb-06	450				25302
Sarvos Properties	Feb-06	2100				23202
William Klein	Feb-06	540				22662
Andy Garrett	Feb-06	90				22572
Charles Ulery	Feb-06	2985				19587
Eric Woolridge	Feb-06	540				19047
Ray Howell	Feb-06	104				18943

ADOPTION OF RESOLUTION - DIRECTING CLERK TO INVESTIGATE ASDREX ONE LLC ANNEXATION

Development Services Director John Spear said this non-contiguous petition annexation request is similar to the Dunbar request, in that both annexations were required as conditions to water and sewer service approvals. Development Services Director Spear said the two-acre parcel is located on the west end of King Street in the ETJ and is currently zoned R-3. On a motion by Council member Wilcox, seconded by Council member Pepin, Council moved to adopt the following resolution:

RESOLUTION DIRECTING THE CLERK TO INVESTIGATE

A PETITION RECEIVED UNDER G.S. 160A-58.1

WHEREAS, a petition requesting annexation of an area described in said petition was received on March 16, 2006 by the Town Council; and

WHEREAS, G.S. 160A-58.2 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 16th day of March, 2006.

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 2, PAGE 311)

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

WATER STUDY COMMITTEE NOMINATIONS

Council member Spann nominated Joseph Montemurno to serve on the Water Study Committee. Since Mr. Montemurno's application was unavailable, Council member Spann recommended appointment at the April meeting.

Mayor Clawson declared a break at 7:30 p.m. Council reconvened at 7:41 p.m.

REQUESTED APPEARANCE - APPALACHIAN SKATE PARK COUNCIL

Council member Mason introduced Buzz Berry of the Appalachian Skate Park Council who requested an in-kind donation in the development of a new skate park. Mr. Berry said the proposed skate park is located near the Watauga County Swim Complex and that the property is currently used as basketball courts. He also indicated that the size of Phase I of the park is 110' x 90' and that the Appalachian Skate Park Council will seek approval from the Board of Commissioners on March 21, 2006. Mr. Berry requested that the Town commit to re-paving the basketball courts for skating. Council member Pepin asked if there are special paving requirements for a skate park. Mr. Berry said no, that the pavement needs to be smooth. Council member Spann asked if there is an estimate on how much this improvement would cost the Town. Public Services Director Blake Brown estimated that it would cost a little more than \$5,000. Council member Pepin asked if the Town paves the park would the Town be liable for injuries. Mr. Berry read over NCGS 99(e)(5) which releases the Town from any liability. Town Attorney Sam Furgiuele suggested adopting an ordinance to cover negligence and requiring that all skaters in Town wear helmets and knee and elbow pads. Mr. Berry pointed out that the Appalachian Skate Park Council will oversee and maintain the park. After little discussion, on a motion by Council member Mason, seconded by Council member Spann, Council moved to approve the in-kind paving donation and to develop an ordinance requiring all skaters in Town wear helmets and knee and elbow pads. Council member Spann seconded.

VOTE: Aye-All

Nay-None

Absent-1 (Brantz)

REQUESTED APPEARANCE - LEE LIEBESKIND - SAHA GENERAL MANAGER

Mr. Lee Liebeskind, General Manager of SAHA (Horn-in-the-West), appeared before Council to request a sublease of Town property to Appstate.net for a wireless internet system. Mr. Liebeskind said the wireless internet is for the Horn's seasonal employees and that Appstate.net has guaranteed a password on the network so that only SAHA employees would be able to utilize the wireless internet system. Town Attorney Sam Furgiuele said an actual sub-lease document must be prepared and executed. On a motion by Council member Wilcox, seconded by Council member Mason, Council moved to initiate a sub-lease with SAHA.

VOTE: Aye-All

Nay-None

Absent-1 (Brantz)

REQUESTED APPEARANCE - MR. DAN MINTON

Town Attorney Sam Furgiuele opened the public hearing at 8:07 p.m. to hear sworn testimony from Dan Minton on his request for extension of water allocation. Mr. Minton explained that his project was granted water and sewer service in March, 2005 and that a special-use permit was

issued on May 5, 2005 with a four-year vested right. Council member Spann questioned the length of the needed extension. Mr. Minton requested that it coincide with the special-use permit, but that building plans are being submitted March 17, 2006. Council member Mason asked Mr. Minton if he was willing to pay the availability fees in order to secure the water extension. Mr. Minton said yes. There being no further testimony, the public hearing closed at 8:09 p.m. On a motion by Council member Wilcox, seconded by Council member Mason, Council moved to extend the water rights to Mr. Minton's project for one year.

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

REQUESTED APPEARANCE - LYNHILL DAYCARE

Town Attorney Sam Furgiuele opened the public hearing at 8:10 p.m. to hear sworn testimony from Gary Waters, Joanne Waters, Development Services Director John Spear and Public Utilities Director Miller on a request for water service to the Lynhill Day Care located at 565 Hodges Gap Road. Mr. Gary Waters, Treasurer of the corporation and son of Mrs. Joanne Water, said he was requesting water service because the State of NC Division of Environmental Health and Natural Resources (DEHNR) had discovered elevated lead and copper samples in their water supply. Council member Pepin asked what was causing the increase in lead. Mr. Waters responded that he thought it was the copper piping. Council member Pepin then questioned if obtaining Town water would alleviate the situation. Mr. Water testified that he was unsure. Council member Mason questioned where the water tests were conducted. Mr. Waters said the inside and outside spigots. Council member Mason asked if the test results are available for inspection. Mr. Water said he did not have them with him. Public Utilities Director Rick Miller said he was contacted by Bert King of DEHNR, who called the situation a "hardship" and felt that digging another well would not solve the lead problem. Council member Mason questioned the source of the lead and asked if the request was for water only. Public Utilities Director Miller said Mr. King did not reveal the lead source and that the request is for water only, since sewer service is not available. Mrs. Joanne Waters testified that the lines inside the structure are vinyl and that she believed the problem to be in the well. Council member Wilcox again asked if obtaining Town water would alleviate the problem. Mrs. Water said yes. Town Attorney Sam Furgiuele questioned if the applicants had read the memo written by Public Utilities Director Rick Miller dated March 8, 2006. Both said no and then proceeded to review the memorandum. Council member Mason questioned in what growth area this property is located. Development Services Director John Spear said it was located in the secondary growth area and that properties near are annexed into the Town limits. Council member Pepin questioned if the applicants are willing to annex into Town. Mrs. Waters said yes, if it is necessary to receive water. Town Attorney Furgiuele questioned if the property is one or two properties. Mrs. Water said they are two separate properties. Development Services Director Spear said, in that case, only the daycare will have to annex. There being no further testimony, the public hearing closed at 8:36 p.m. On a motion by Council member Mason, seconded by

Council member Spann, Council moved to grant 693 gallons of water because of a hardship condition, contingent upon written verification from DEHNR officials about contamination, and that the property annex.

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

REQUESTED APPEARANCE - MR. STERLING CARROLL

Town Attorney Sam Furgiuele opened the public hearing at 8:40 p.m. to hear sworn testimony from Sterling Carroll and Public Utilities Director Rick Miller on a request for water and sewer service to property located off Old Highway 421 across from the Food Lion. Mr. Carroll is proposing a 9,000 square foot commercial building that will house some retail space. Council member Mason pointed out that this property is located outside the Town limits and ETJ area. Council member Spann questioned if the property can be annexed. Public Utilities Director Miller said no, that it is part of a minor subdivision. Mr. Carroll testified that the lot will not perk for a septic tank but that water may be accessible on the property. Town Attorney Sam Furgiuele said this is one of those cases in which a sewer-only request could be granted. There being no further testimony, the public hearing closed at 8:44 p.m. Council member Mason said that since the property is located in the County, she can not support this request at this time and that the Town should make decisions based on good growth development policies. Having said that, on a motion by Council member Mason, seconded by Council member Spann, Council moved to deny the request for water service.

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

Town Attorney Sam Furgiuele opened the public hearing at 8:47 p.m. to hear sworn testimony from Sterling Carroll and Public Utilities Director Rick Miller on a request for sewer service to property located off Old Highway 421 across from the Food Lion. Mr. Carroll requested sewer service only to his property. Council member Wilcox questioned if sewer service is available to the property. Public Utilities Director Miller said yes. There being no further testimony, the public hearing closed at 8:48 p.m. Council member Wilcox felt the Town should provide Carroll sewer service since the Town received an economic development grant to install the lines. On a motion by Council member Pepin, seconded by Council member Wilcox, Council moved to grant the sewer-only request. Before voting, Council member Mason reiterated that this property is not located in the Town's primary or secondary growth area and that public utilities should not be extended. Council member Wilcox pointed out that this is a tap-on request, not an extension.

VOTE: Aye-3 (Pepin, Spann, Wilcox)
Nay-1 (Mason)
Absent-1 (Brantz)

CLOSED SESSION

On a motion by Council member Wilcox, seconded by Council member Pepin, Council moved to enter closed session at 8:53 p.m. pursuant to NCGS 143-318.11a)3) in order to discuss the following matters:

- ! ASU violations.
- ! Legal issues about Rivers Street.
- ! Legal advice regarding the development of an additional water source.

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

On a motion by Council member Pepin, seconded by Council member Mason, Council moved to exit closed session at 9:49 p.m.

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

ADJOURNMENT

On a motion by Council member Mason, seconded by Council member Spann, Council moved to adjourn at 9:50 p.m.

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

Town Clerk

Mayor