

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
SEPTEMBER 20, 2007**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, September 17, 2007, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro Tem Lynne Mason, Rennie Brantz, Janet Pepin, Bunk Spann, and Dempsey Wilcox. Town Attorney Sam Furguele was also present. Staff members present were Town Manager Greg Young, Deputy Town Clerk Kimberly Tester, Special Assistant to the Town Manager Jim Byrne, Police Chief Bill Post, Fire Chief Reggie Hassler, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, Human Resources Director Peri Moretz, and Development Services Director John Spear.

ANNOUNCEMENTS

Mayor Clawson called the meeting to order and welcomed all in attendance. She noted that anyone wanting to speak during the public comment session would need to sign the public comment sign-up sheet.

Mayor Clawson read the following statement: *“In conjunction with the statewide ‘Fall Litter Sweep’ campaign issued by Governor Mike Easley for September 15-29, 2007, the Town of Boone will hold a ‘Fall Boone Clean-Up Day’ on Saturday, September 22, 2007. Interested participants may come by the Town of Boone Public Works Department located at 321 East King Street from 9:00 a.m. until 2:00 p.m. to pick up cleaning supplies. For more information, contact Marsha Story at 262-4560.”*

TENTATIVE AGENDA ADOPTION

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

1. Item 4. C. - Additional Mutual Aid Agreements - Deep Gap and Meat Camp Fire Departments.
2. Item 4. D. - Additional Automatic Aid Contract - Meat Camp Fire Department.
3. Item 6. H. - Adoption of Amendment to Water & Sewer Code Regarding the Transfer of Availability Fees for Governmental Entities.
4. Item 8. A. - Public Comment - Mr. Terry Hamilton.

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

VOTE: Aye - All
 Nay - None

CONSENT AGENDA ADOPTION

Upon a motion by Council member Brantz, seconded by Council member Wilcox, Council moved to adopt the following consent agenda items:

Minutes: August 9, 2007 - Quarterly Public Hearing.
 August 16, 2007 - Regular Meeting.
 August 21, 2007 - Special Meeting.

Tax Releases & Refunds: July 2007.

TAX RELEASES

Taxpayer	Year	Amount	Description
PARLIER, GLORIA D.	2007	31.84	TURN IN TAG
TOYOTA OF BOONE INC.	2007	153.70	GROSS RENTALS

PUGLIA, JOYCE MASON	2007	59.05	SOLD VEHICLE-TURNED IN TAG
HAMPTONS BODY SHOP, INC.	2007	3.075	SOLD TRAILER
HAMPTONS BODY SHOP, INC.	2007	1.85	TURN IN TAG
BURMEISTER, MARLENE GRACE	2006	1.6523	SOLD VEHICLE
AUDIO GROOVES	2006	3.79	ADJ FOR BILL OF SALE
TOTAL		254.95	

TAX REFUNDS

Taxpayer	Year	Amount	Description
JONES, SUE BAIRD JONES, KIMBERLY MICHELLE	2006	3.83	SOLD VEHICLE
ROMINGER, LOIS ESTELL	2006	4.74	TURN IN TAG
TOTAL		8.57	

Adoption of Mutual Aid Agreement - Avery County Firemen's Association, Blowing Rock, Beaver Dams, Foscoe and Meat Camp Fire Departments.

MUTUAL AID AGREEMENT FOR FIRE PROTECTION

NORTH CAROLINA WATAUGA COUNTY

THIS AGREEMENT, made and entered into the 20th day of September, 2007, by and between the **Town of Boone**, a municipal corporation existing of Watauga County, North Carolina and the **Avery County Firemen's Association, Blowing Rock, Beaver Dams, Foscoe, Deep Gap, and Meat Camp Fire Departments**, a corporation existing under the laws of the State of North Carolina, hereinafter referred to as "the corporation".

WITNESSETH:

THAT, WHEREAS, the General Assembly of North Carolina did enact into law an act to authorize mutual aid assistance between fire departments whereby full authority may be exercised for fire departments to send firefighters and apparatus beyond the territorial limits which they normally serve, said act having been codified as Chapter 69, Section 40, of the General Statutes of North Carolina;

WHEREAS, the purpose of this agreement is to provide each of the parties hereto, through their mutual cooperation, a predetermined plan by which each of them might render aid to the other in case of conflagration, civil disorder, or natural disaster, any of which demand fire services to a degree beyond the existing capabilities of either party;

WHEREAS, it is deemed to be in the public interest for the parties hereto to enter into an agreement for mutual assistance in fire protection and in order to increase fire defenses and to

assume proper fire control, as well as providing reserves needed to assure the community of adequate protection;

WHEREAS, by action of the Town Council of the Town of Boone on the 20th day of September, 2007, and also by appropriate action on behalf of “the corporation”, this agreement for reciprocal mutual aid assistance was duly authorized;

NOW, THEREFORE, in consideration of the mutual covenants contained herein by and between the parties hereto, it is hereby agreed as follows:

5. Should it become necessary to activate the terms of this agreement as herein set forth, due to conflagration, civil disorder, or natural disaster, the Chief of the Fire Department of “the corporation” shall have the implicit authority, upon notification by one of the parties to the other that an emergency does in fact exist and that aid is needed, to order available apparatus, equipment, and manpower into action to assist the requesting party as may be required.
6. It shall be the responsibility of the chief of the fire department of the responding party that all personnel responding to the request for assistance are responsible persons.
7. Each party to this agreement shall assume all liability and responsibility for the death of or injury to any personnel of their own command responding to the request for mutual aid.
8. The party responding under the terms of this agreement shall assume no responsibility or liability for property damaged or destroyed at the actual scene of any civil disorder, conflagration, or natural disaster due to fire fighting and rescue operations, fire control tactics and strategy or other operations as may be required or ordered; said liability and responsibility shall rest solely with the party requesting such aid and within whose boundaries the property shall exist, or the incident occur.
9. The party responding to the request for mutual aid under the terms of this agreement shall assume all liability and responsibility for damage to its own apparatus and/or equipment. The party responding shall also assume all liability and responsibility for any damage caused by its own apparatus while in route to or returning from a specific location.
10. The party who requests mutual aid shall in no way be deemed liable or responsible for the personal property of the members of the fire department of the responding party which may be lost, stolen, or damaged while performing their duties under the response terms herein.
11. Each party to this agreement shall assume all costs of salaries, wages, bonuses, or other compensation for its personnel that responds for duty under the terms of this agreement and shall also assume all costs involving the use of apparatus, equipment, and tools used specifically in response to the request for aid and shall make no charge for such use to the party requesting assistance; however, any special extinguishing agents used by the responding party from its own supply shall be paid for by the party requesting the aid upon receipt of an itemized statement of costs for such extinguishing agents.
12. Upon receipt of a request for assistance by the chief of the fire department from the requesting party, and upon a determination by the chief of the fire department of the responding party that the request may be honored without impairing the capacity to provide fire protection within its own jurisdiction, the chief of the fire department may take such steps as necessary to furnish apparatus, manpower, and assistance to the requesting party as he deems appropriate. Such response shall remain solely the decision of the chief of the fire department of the responding party.
13. The chief of the fire department in whose community the emergency exists, and who places the request for assistance, shall in all instances be in command of the emergency as to the aspects of strategy, fire control tactics, and overall direction of the operations. All orders or directions regarding the operations of the responding party shall be relayed to the chief firefighting officer in command of the responding party.
14. Neither party to this agreement shall be bound to dispatch apparatus, equipment, or personnel to the assistance of the other but every effort should be made to furnish such assistance if, in the judgement of the chief of the fire department of either party, such dispatch would not impose upon his own respective community a serious impairment to the fire defenses and fire protection.

15. Either party may, at any time, terminate this agreement, through its respective fire chief, upon the serving of a thirty-day written notice to the fire chief of the other party.
16. When fire department personnel are sent to another community pursuant to this agreement, the jurisdiction, authority, rights, privileges, and immunities, including coverage under Workers' Compensation laws, which they have in the sending fire department shall be extended to and include the area in which like benefits and authorities are or could be afforded to fire department personnel of the requesting fire department and shall also be extended to the area located between their respective communities when said personnel are acting within the scope of the authority conferred by this agreement.

IN WITNESS THEREOF, Town of Boone has caused this instrument to be signed in its corporate name by its Mayor, attested by its Town Clerk, and its corporate seal affixed, and **Avery County Firemen's Association, Blowing Rock, Beaver Dams, Foscoe, Deep Gap, and Meat Camp Fire Departments** has likewise caused this instrument to be signed in its corporate name and its corporate seal affixed, all on the day and year first above written and this agreement is executed in duplicate.

ATTEST: _____ Town Clerk	TOWN OF BOONE By Mayor
ATTEST: _____ Secretary	AVERY COUNTY FIREMEN'S ASSOCIATION By President
ATTEST: _____ Secretary	BLOWING ROCK FIRE DEPARTMENT
ATTEST: _____ Secretary	By President
ATTEST: _____ Secretary	BEAVER DAMS FIRE DEPARTMENT
ATTEST: _____ Secretary	By President
ATTEST: _____ Secretary	FOSCOE FIRE DEPARTMENT By President
ATTEST: _____ Secretary	DEEP GAP FIRE DEPARTMENT By
ATTEST: _____ Secretary	MEAT CAMP FIRE DEPARTMENT By

Adoption of Fire Protection Contract for Automatic Aid - Foscoe, Blowing Rock, and Meat Camp Fire Departments.

FIRE PROTECTION CONTRACT FOR AUTOMATIC AID

**STATE OF NORTH CAROLINA
COUNTY OF WATAUGA**

THIS AGREEMENT, made and entered into the 20th day of September, 2007, by and between the Town of Boone, a municipal corporation of Watauga County, North Carolina hereinafter referred to as the party of the **FIRST PART**, and **Foscoe, Blowing Rock, and Meat Camp Fire Departments**, corporations existing under the laws of the State of North Carolina, hereinafter referred to as the part of the **SECOND PART**.

WITNESSETH:

WHEREAS, the **Boone Fire Department** (the party of the **FIRST PART**) wishes to increase its Fire Insurance Boundary to six (6) miles, wherever possible, and in accordance with the rules as set forth and administered by the North Carolina Department of Insurance, Office of the State Fire Marshal;

WHEREAS, the part of the **FIRST PART** is therein required to have a contract with the adjoining districts, thereby demonstrates their willingness and assurances of participation or rendering automatic aid;

WHEREAS, the County has written automatic aid protocols which is maintained and utilized by the Watauga County Telecommunications Center, and is utilized on all structure fires whereby it simultaneously dispatches the closest automatic aid department;

WHEREAS, that the **Foscoe, Blowing Rock, and Meat Camp Fire Departments** (party of the **SECOND PART**) hereby contracts and agrees that:

Except as to the extent specified in that certain agreement dated September 20, 2007 between **Town of Boone** and **Foscoe, Blowing Rock, and Meat Camp Fire Departments**, the party of the **SECOND PART**, when alerted for automatic aid, will respond with a piece of fire apparatus capable of carrying a minimum of 1,000 gallons of water to the party of the **FIRST PART** to a specified location for structure fire protection.

IN WITNESS THEREOF, **Town of Boone** has caused this instrument to be signed in its corporate name by its Mayor, attested by its Town Clerk and its corporate seal affixed, and **Foscoe, Blowing Rock, and Meat Camp Fire Departments**, have likewise caused this instrument to be signed corporate name and in its corporate seal affixed, all on the day and year first above written and this agreement is executed in duplicate.

ATTEST:

TOWN OF BOONE

Town Clerk

By
Mayor

ATTEST:

FOSCOE FIRE DEPARTMENT

Secretary

By
President

ATTEST:

BLOWING ROCK FIRE DEPARTMENT

Secretary

By
President

ATTEST:

MEAT CAMP FIRE DEPARTMENT

By

Adoption of Ordinance Amendment to Ordinance 07-03.

AMENDMENT TO ORDINANCE #07-03 ITEM 4.G.

**AN ORDINANCE CREATING THE HISTORIC
PRESERVATION COMMISSION OF BOONE**

WHEREAS, the historic heritage of the State of North Carolina is one of our most valued and important assets; and

WHEREAS, the North Carolina General Assembly General Statutes authorize towns to safeguard the heritage of the town by establishing Historic Preservation Commissions to help preserve any districts or landmarks therein that embody important elements of its culture, history, architectural history, or prehistory and to promote the use and conservation of such district or landmark for the education, pleasure, and enrichment of the residents of the town and the State as a whole; and

WHEREAS, the Town Council of Boone desires to safeguard the heritage of the Town by determining what steps may be taken to preserve and regulate and preserve historic landmarks and historic districts; and

WHEREAS, the Town Council of Boone does therefore desire to create a commission to be known as “The Historic Preservation Commission of Boone” to perform certain duties pursuant to North Carolina General Statute Chapter 160A, Article 19, Part 3C and the provisions of this ordinance;

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF
BOONE AS FOLLOWS:**

1. There is hereby established “The Boone Historic Preservation Commission” (“Commission”) pursuant to the authority of Chapter 160A, Article 19, Part 3C of the North Carolina General Statutes.
2. The Commission shall consist of five members appointed by the Town Council, and by appointment by the Town Council and without the necessity of an amendment of this ordinance, that number may be increased to a maximum of seven. All members shall reside within the planning jurisdiction of Boone. A majority of the members of the Commission shall have a demonstrated special interest, experience, or education in history, architecture, archaeology, or related fields.
3. Each member of the Commission shall serve a term of four years, except initial terms will be for two, three, and four years, so that turnover on the Commission is staggered. Each member may be appointed and reappointed for two full consecutive four-year terms, but thereafter, a member shall be ineligible for reappointment until one calendar year has elapsed from the date of the termination of his or her second full four-year term.
4. The powers of the Historic Preservation Commission are as follows:
 - A. As a guide for the identification and evaluation of landmarks, the Commission shall, at the earliest possible time and consistent with resources available to it, undertake an inventory of properties of historical, architectural, prehistorical, and cultural significance within the Town of Boone’s Planning Jurisdiction;
 - B. Report to the Town Council areas, if any, suitable for designation as “historic districts,” describing the significance of the buildings, structures, features, sites, or surroundings included in any such proposed district, and a description of the boundaries of such district; and report to the Town Council individual structures, buildings, sites, areas, or objects, if any, suitable for designation as “Landmarks,” significance of each structure, building, site, area, or object proposed to be designated as a “Landmark;”
 - C. Prepare for submission to the North Carolina Department of Cultural Resources Division of Archives and History, and submit, upon the action of the Town Council authorizing it to do so, an inventory of properties of historical,

- architectural, prehistorical, and cultural significance within the Town's planning jurisdiction;
- D. Develop and recommend to the Town Council an ordinance incorporating those features and actions allowable under N.C. General Statute Chapter 160A, Article 19, Part 3C, which the Commission believes will best accomplish the goals of the Town of the conservation and preservation of historic districts and landmarks, including what further powers it believes should be conferred upon the Commission itself pursuant to North Carolina law and in order to accomplish those goals;
 - E. Create and conduct an education program with respect to possible historic districts and landmarks within the Town's jurisdiction;
 - F. Prepare and recommend the official adoption of a preservation element as part of the Town of Boone Comprehensive Plan; and
 - G. ~~Negotiate~~ **Communicate** at any time with the owner of a building, structure, site, area, or object for its preservation, when such action is appropriate.
5. Prior to any official action or undertaking the above-described duties, the Commission shall adopt rules of procedure governing its meetings and the conduct of official business, and bylaws governing terms of office, the election of officers, and related matters. A public record shall be kept of the Commissioner's resolutions, proceedings, and actions.

Adopted this 15th day of March, 2007.

ATTEST:

Mayor

Town Clerk

VOTE: Aye - All
 Nay - None

PUBLIC HEARING - DEN-MAC LLC ANNEXATION

Mayor Clawson opened the public hearing for the Den-Mac LLC Annexation at 6:33 p.m. There being no one present to speak, Mayor Clawson closed the public hearing at 6:34 p.m.

ADOPTION OF ORDINANCE - DEN-MAC LLC ANNEXATION

Development Services Director John Spear stated the request by Virgil Freeman for a non-contiguous annexation of property that is located outside the town's corporate limits but inside the extra-territorial jurisdiction. He stated this is the final step in the annexation process. Upon a motion by Council member Brantz, seconded by Council member Pepin, Council moved to adopt the following ordinance:

Ordinance 07-08

**AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE
 TOWN OF BOONE, NORTH CAROLINA
 (Den-Mac LLC)**

WHEREAS, the Town Council has been petitioned under G.S. 160A-58.1 to annex the area described below; and

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

WHEREAS, the Town Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at Council Chambers at 1500 Blowing Rock

Road at 6:30 p.m. on September 20, 2007 after due notice by Watauga Democrat on September 7, 2007; and

WHEREAS, the Town Council finds that the area described therein meets the standards of G.S. 160A-58.1(b), to wit:

- a. The nearest point on the proposed satellite corporate limits is not more than three (3) miles from the corporate limits of the Town;
- b. No point on the proposed satellite corporate limits is closer to another municipality than to the Town;
- c. The area described is so situated that the Town will be able to provide the same services within the proposed satellite corporate limits that it provides within the primary corporate limits;
- d. No subdivision, as defined in G.S 160A-376, will be fragmented by this proposed annexation;
- e. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, does not exceed ten percent (10%) of the area within the primary corporate limits of the Town, and

WHEREAS, the Town Council further finds that the petition has been signed by all owners of real property in the area who are required by law to sign; and

WHEREAS, the Town Council further finds that the petition is otherwise valid, and that the public health, safety, and welfare of the Town and of the area proposed for annexation will be best served by annexing the area described;

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

Section 1. By virtue of the authority granted by G.S. 160A-58.2, the following described non-contiguous territory is hereby annexed and made part of the Town of Boone, as of December 31, 2007.

Beginning in the Southwester corner of Parcel I, Den-Mac, LLC Subdivision as per the plat thereof recorded in Plat Book 15, at Page 146, Watauga County, Registry, and being a point in the Northern boundary line of the New River Capital, Inc. parcel as described in Deed Book 317, at Page 638, Watauga County, Registry, also being the Southeastern corner of the Den-Mac, LLC parcel as described in Book of Records 1296, at Page 402; thence N.69E14'23"W. along the Northern boundary line of said New River Capital, Inc. and the Southern Boundary line of said Den-Mac parcel, 60.84'; thence N.21E53'16"E. along the Eastern boundary line of said New River Capital parcel and the Western boundary line of said Den-Mac parcel 277.61' to a point in the centerline of Brook Hollow Road (NCSR 1614) 50' R/W; thence Northeasterly along the centerline of said Brook Hollow Road the following two courses and distances, (1) N.77E16'21"W., 73.63' and (2) N.77E09'53"E., 308.36' to intersect the centerline of Bamboo Road, 60' R/W, (NCSR 1514), also being a point on a concave curve to the Northeast which center bears S.81E02'22"E., 325.00', and having a central angle of 89E13'53"; thence Southeastwardly along the arc of said curve and the centerline of said Bamboo Road, 506.15'; thence S.87E49'56"E. continuing along the centerline of said Bamboo Road, 27.63' to the Southeastern corner of said Parcel I and the Northeastern corner of aforementioned New River Capital Parcel, Inc.; thence Westerly along the Southerly boundary line of said Parcel I in common with said Northern boundary line of the New River Capital, Inc. parcel and departing from the centerline of said Bamboo Road the following six courses and distances (1) S.85E36'39"W., 46.84', (2) S.86E32'12"W., 62.66', (3) S.86E36'08"W., 128.41', (4) S.57E26'25"W., 150.93', (5) N.83E00'21"W., 262.64', and (6) N.69E14'23"W., 108.17' to the Point of Beginning and containing 4.47 Acres as computed by coordinate geometry according to a survey performed by Municipal Engineering Services Company, P.A. d/b/a Skyline Surveyors in January 2006 under the direct supervision of Walter R. McCracken, III, PLS, L-3832, Drawing Dated 25 June 2007, Job No.B06019, Description Dated 25 June 2007.

Section 2. Upon and after December 31, 2007, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in the Town of Boone and shall be entitled to the same privileges and benefits as other parts of the Town of Boone. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

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

ATTEST:

Mayor

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 3, PAGES 338-339)

VOTE: Aye - All
Nay - None

ADOPTION OF ENCROACHMENT AGREEMENT - OUR DAILY BREAD

Public Works Director Blake Brown described the encroachment as a replacement of the roof overhand and posts in front of Our Daily Bread Restaurant, including rock facing on each column from three feet to five feet high, a bench between the two center posts, and the placement of a small awning over the second-story windows. Mr. Bill Dixon, project architect, stated that the current structure is over fifteen years old. He stated that the new overhang and columns will enhance the appearance of the business and the downtown area. Upon a motion by Council member Mason, seconded by Council member Wilcox, Council moved to adopt the following encroachment agreement:

ENCROACHMENT AGREEMENT

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

THIS ENCROACHMENT AGREEMENT, made and entered into this the 20th day of September, 2007, by and between the TOWN OF BOONE, party of the first part; and Two Dawgs Rental, LLC party of the second part,

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

THAT WHEREAS, the party of the second part desires to encroach on the right-of-way of the public road designated as King Street with the following: stone support pillars, new canopy and roof overhand for Our Daily Bread Restaurant; and

WHEREAS, it is to the material advantage of the party of the second part to effect this encroachment, and the party of the first part in the exercise of authority conferred upon it by stature, is willing to permit the encroachment within the limits of the right-of-way as indicated, subject to the conditions of this agreement.

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

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

That the party of the second part agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and other warning devices for the protection of traffic in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and Amendments or Supplements thereto. Information as to the above rules and regulations may be obtained from the Public Services Department of the party of the first part.

The party of the second part shall be responsible for all liability associated with the encroaching facility. The party of the second part agrees to indemnify and hold harmless the party of the first part from and against all claims, damages, losses and expenses, including court costs and attorney fees, arising out of or in any way related to the encroaching facility.

It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such facilities, within the highway or street rights-of-way limits, in carrying out its construction and maintenance operations.

The party of the second part agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the Department of Public Services of the party of the first part. The party of the second part agrees to exercise every reasonable precaution during construction and maintenance to prevent eroding of soil; silting or pollution to the rivers, streams, lakes, reservoirs, other water impoundments; ground surfaces or other property; or pollution of the air. There shall be compliance with applicable rules and regulations of the North Carolina Sedimentation Control Commission, and with ordinances and regulations of various counties, municipalities and other official agencies relating to pollution prevention and control. When any installation or maintenance operation disturbs the ground surface and the existing ground cover, the party of the second part agrees to remove and replace the sod or otherwise reestablish the grass cover to meet the satisfaction of the Division of Engineer of the party of the first part.

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

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

Provided the work referred to in this agreement is being performed on a completed

public street open to traffic; the party of the second part agrees to give written notice of when work will begin to the Department of Public Services or the party of the first part.

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

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

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

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

VOTE: Aye - All
 Nay - None

ADOPTION OF AMENDMENTS TO WATER & SEWER CODE - AFFORDABLE HOUSING DEFINITIONS

Town Attorney Sam Furgiuele presented the following definitions as recommended by the Affordable Housing Task Force. He explained that the proposed definitions will be considered for inclusion in both the Unified Development Ordinance and the Town Code of Ordinances at a later date. After a brief discussion, Council member Spann, seconded by Council member Brantz, moved to adopt the following amendments to the Water & Sewer Code:

Section 1.3 Definitions

Affordable Owner-Occupied Dwelling Unit:

An affordable owner-occupied dwelling unit is a room or group of rooms within a dwelling forming a single, independent, habitable unit containing independent kitchen, sanitary, and sleeping facilities, which complies with the Town of Boone Minimum Housing Code, and which has been sold or will be offered for sale for a gross price at which the monthly gross principal and interest payment, in a mortgage financing 90% of the purchase price, amortized over a period of thirty years and calculated with interest at the legal rate, is no more than fifty percent of the monthly Area Median Income for a family of four, as established annually by the United States Department of Housing and Urban Development, and, if sold, the purchaser of which is a family in need of housing protection.

Affordable Owner-Occupied Housing Development:

An affordable owner-occupied housing development is one in which fifty percent or more of the included dwelling units are, or upon completion of the development, will be, affordable owner-occupied dwelling units, as that phrase is defined herein.

Affordable Rental Dwelling Unit:

An affordable rental dwelling unit is a room or group of rooms within a dwelling forming a single, independent, habitable unit containing independent kitchen, sanitary, and sleeping facilities, which complies with the Town of Boone Minimum Housing Code, for which the

monthly gross rental payment is no more than fifty percent of the of the monthly Area Median Income for a family of four, as established annually by the United States Department of Housing and Urban Development, and which is occupied by a family in need of housing protection.

Affordable Rental Housing Project:

An affordable rental housing project is one in which fifty percent or more of the included dwelling units are, or upon completion of the project, will be, affordable rental dwelling units, as that phrase is defined herein.

Family in Need of Affordable Housing:

A family in need of housing protection is one or more individuals related by blood, marriage, or adoption, living with each other in a “common law” or spousal relationship without the benefit of marriage, or as “domestic partners,” occupying a premises and living as a single, non-profit housekeeping unit, including domestic servants, live-in help, including: [a] a single person or married couple; [b] a single person or married couple’s biological, foster, or adopted child, a step-child, or other legal ward; [c] a single person or married couple’s parents, siblings, and persons preceding or succeeding generation denoted by the prefixes of grand, great, or great-great; [d] spouses of any persons named in the above groups; [e] cousins, who are defined to be relatives who are decedents from a common grandparent, with an aggregate current income and aggregate income for the previous twelve months equal to or less than the Area Median Income, as established annually by the United States Department of Housing and Urban Development, and for which the head of the household is not claimed as a dependent o the federal tax return of any other persons currently or in the most recently completed federal tax year, and for which any other adult occupant(s) is not and can not be currently claimed as a dependent(s) for federal tax purposes by any person(s) not residing in the dwelling unit.

VOTE: Aye - All
 Nay - None

REPORT FROM OUTSIDE AGENCY FUNDING COMMITTEE - HUNGER COALITION REQUEST

Town Manager Greg Young stated that the Outside Agency Funding Committee had met and discussed the request from the Hunger Coalition for \$15,000 from the FY2007-2008 budget. He explained that after reviewing the application and information using the guidelines for outside agency requests, the Committee rated the application in the median range. Mr. Young relayed that since the 2007-2008 budget has been adopted and the funding already allocated, the Committee recommended allocation by the Council only if funds become available within the existing appropriation. Council member Wilcox questioned the phrase “funds available” in the recommendation. Mr. Young stated that would mean funds allocated to, but not used by, another non-profit agency. Council member Pepin asked if any other funds are available that can be used to supplement the outside agency fund. Mr. Young stated that until the audit is completed, it is not known what funds are available. Upon a motion by Council member Pepin, seconded by Council member Wilcox, Council moved to table the request until the results of the financial audit are available.

VOTE: Aye - All
 Nay - None

UPDATE ON JONES HOUSE CENTENNIAL CELEBRATION

Council member Brantz explained that as part of the Jones House Centennial Celebration in 2008, an interview with Ms. Mazie Levenson, daughter of the late Dr. John Walters Jones, be conducted to record her history and knowledge of the Jones House and the town of Boone to create a Historical Brochure and Photographic Exhibit for the Jones House. He stated the amount of funding requested for the interview process of Ms. Levenson to be \$950 to cover the following costs:

- Transportation to Winston-Salem (3 trips @ .28 per mile) = \$145
- Student hours @ 12.57 per hour:
 - Preparation 16 hours
 - Interview 6 hours
 - Transcription 18 hours
 - Driving time 12 hours
 - Video editing 12 hours = \$805
 - Total = \$950**

Council member Brantz stated that this project is endorsed by both the Jones House Advisory Board and the Historical Commission. Cherry Jones, Director of the Jones House, stated that the Centennial Celebration will be held on Friday, July 4, 2008 and will be part of an all-day celebration. Upon a motion by Council member Wilcox, seconded by Council member Spann, Council moved to approve the request to fund \$950 for the interview process with Mazie Levenson for the Jones House Centennial Celebration.

VOTE: Aye - All
 Nay - None

MONTHLY WATER 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 August. The Water Treatment Plant recorded a maximum daily demand of 2.109 million gallons on Thursday, August 23, 2007, and the average daily demand was 1.887 million gallons for the entire month.

Attached you will find a chart that depicts a comparison of the maximum daily demands for the month of August since 1995. Included is an average trend line that illustrates the extent the maximum daily demand has increased during the last thirteen years.

As adopted in Ordinance 05-01, the Town of Boone Council has appropriated for 25,000 gallons per day usage for year 2007 for allocation to customers. Council chose to allocate 4,800 gallons from 2007 and after adding back the 6,788 gallons carried over from 2006, a balance of 25,943 gallons remaining for allocation in 2007. At the last Town Council meeting, Council chose to allocate 8.856 gallons per day to one project and since then the Public Utilities Department approved three projects that subtracted 675 gallons per day from the 2007 allotment. The total water allotment remaining for the year 2007 has broken the sixty percent threshold. All future water service requests in excess of 500 gallons per day usage will be forwarded to Town Council as required in Ordinance 05-01.

As you can see in the attached “Approved Water Connections” chart, the Public Utilities Department now has 6,181 gallons per day remaining for allotment in 2007 and 15,991 gallons remaining for 2008.

			Approved Water Connections			
			2007			
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						25000
			Watauga County	11/06	4800	20200

			2006 Balance Carry Over	01/07	6788	26988
Park Street Subdivision	01/07	850				26138
Steven Airey	01/07	195				25943
Boone Mall	01/07	439				25504
Sarvos Properties	02/06	2100				27604
			Jamus FLP	02/06	4209	23395
Mauldin Chiropractic	02/07	69				23326
Ross Chrysler	02/07	60				23266
A-Z Enterprises	02/07	900				22366
			Fatbellies LLC	03/06	3750	18616
High Country Bank	03/07	450				18166
Enterprise Leasing	03/07	45				18121
James Maltba	03/07	31				18090
Dana Willet	06/05	450				18540
Dana Willet	07/05	150				18690
HW Partners	05/07	45				18645
Hoan Nguyen	05/07	283				18362
			CCC&TI	06/06	1650	16712
Jeff Templeton Rentals	07/07	490				16222
ECHO Prop LLC	07/07	270				15952
Karl Pond	07/07	90				15862
Winklers Creek Assoc.	07/07	150				15712
			Andrew Wade	08/07	8856	6856
Dogwood Plaza	08/07	300				6556
Richard Tazwell	08/07	90				6466

Watauga County DSD	08/07	285				6181
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						25000
			Watauga County	11/06	4800	20200
			Jamus FLP	02/07	4209	15991

ADOPTION OF BUDGET AMENDMENTS

Upon a motion by Council member Brantz, seconded by Council member Mason, Council moved to approve the following budget amendments:

DESCRIPTION	ACCOUNT #	TO:	FROM:
Capital Outlay-Office Equipment (GF)	010-401-000-571000	\$72,294.00	
Capital Outlay-Office Equipment (WS)	030-700-801-571000	\$14,807.00	
Loan Proceeds (General Fund)	010-000-000-492000		(\$72,294.00)
Loan Proceeds (Water & Sewer Fund)	030-000-000-492000		(14,807.00)
Maintenance & Repair-Vehicles (FD)	010-500-350-525301	\$361.00	
Miscellaneous Revenue (GF)	010-000-000-489900		(\$361.00)

VOTE: Aye - All
 Nay - None

AMENDMENT TO WATER & SEWER ORDINANCE - WHS AVAILABILITY FEES

Council member Mason explained this request as an amendment to Article I, Section 1-3, regarding the transfer of availability fees. She noted that the current ordinance allows transfers for commercial uses. She referenced a draft prepared by Town Attorney Sam Furgiuele which proposes a definition for local government user and differentiates between a government user and a commercial user (all proposed changes in bold print). Council member Mason stated this would allow the transfer of availability fee credit from the current high school location to the new site. Upon a motion by Council member Wilcox, seconded by Council member Mason, Council moved to adopt the following amendment to Article I, Section 1-3 and Article III of the Water & Sewer Code:

**ARTICLE I
COVERAGE AND DEFINITIONS**

...

Section 1-3. Definitions.

...

Local Government User shall mean one of the following entities, as it relates to each entities connection to the Water and Sewer system of the Town of Boone, North Carolina: the Town of Boone, North Carolina; Watauga County, North Carolina; the Watauga County Board of Education.

**ARTICLE III
WATER SYSTEM REGULATIONS**

...

I. Variance for Commercial Customer.

A variance from the provisions of this Section (Availability Fee) may be granted by the Town Manager or his designee whenever strict enforcement of said provisions would result in a hardship to the Customer, and if by granting the variance the intent of this section will be satisfied. A full or partial variance may be granted only when all of the following requirements are met.

1. *The party requesting the Variance is an existing **commercial** customer of the Town and has been in business since Feb. 25, 198 or has paid an availability fee.*
2. *The commercial Customer requesting the Variance is relocating the business to another location within the Town of Boone.*
3. *The demand on the Town's water and/or sewer system at the commercial customer's previous location will be substantially reduced or will be eliminated, causing the net effect of the move to have less impact on water and/or sewer use than would the opening of a similar new business.*
4. *The intent of this section will be satisfied by the granting of the variance.*
5. *The owner of the property at the customer's previous location must give the Town a written Release releasing all right, title and interest in the Availability Fee for which a variance is granted.*
6. *All of the conditions set forth herein must be satisfied within two (2) years after the customer closes its business at its previous location.*
7. *The credit given shall not be greater than the Availability Fee actually paid by the customer.*

In the event a variance is granted, the dollar value of the credit shall be calculated by (a) using the customer's availability fee paid at the previous location or (b) using the customer's actual usage at the previous location. Further, if the customer disagrees with the manner in which the Town calculates the demand at the new location, the customer may request that the Town measure the actual usage at the new location for a 24 month period, and re-calculate the Availability Fee based upon an average of the three (3) highest months during that 24 month period. This re-calculation may result in a refund to the customer or in a payment to the Town.

J. Variance for Local Government Uses.

A variance from the provisions of this Section (Availability Fee) may be granted by the Town Manager or his designee whenever strict enforcement of said provisions would result in a hardship to a Local Government User, and if by granting the variance the intent of this section will be satisfied. A full or partial variance may be granted only when all of the following requirements are met.

1. *The Local Government User requesting the Variance is an existing customer of the Town.*
2. *The Local Government User requesting the Variance is relocating the governmental functions for which the water and/or sewer use is currently utilized ("the former location") to another location within the Town of Boone.*
3. *The owner of the property at the former location, which may be the Local Government User itself, must give the Town a written release and acknowledgment relinquishing all right, title, and interest in water and/or sewer services at the former location, acknowledging that no new connections to the water and/or sewer system will be allowed at the former location without the payment of the appropriate Availability Fee for the proposed use for the former location, and acknowledging that no new connections to the water and/or sewer system will be allowed at the former location without a new approval, in*

accordance with the Town of Boone Water and Sewer Use Ordinance, of a water and/or sewer connection there.

4. *No new application for a water and/or sewer connection(s) to the former location may be submitted until the nature of the new use at the former location is certain.*
5. *The credit given upon the granting of the variance under this section shall not be greater than the Availability Fee actually paid by the Local Government User at the former location.*

In the event a variance is granted, the dollar value of the credit shall be calculated by (a) using the Local Government User's availability fee paid at the previous location or (b) using the Local Government User's actual usage at the previous location.

K. *Low Income Housing.*

...

VOTE: Aye - All
 Nay - None

REQUESTED APPEARANCE - MR. SCOTT HAMILTON

Mr. Scott Hamilton appeared before the Town Council to present a power-point presentation (**copy permanently on file at Town Hall**) regarding the AdvantageWest Economic Development Group and an overview of the programs offered by the group. Council thanked Mr. Hamilton for the informative presentation.

REQUESTED APPEARANCE - MS. NANCY REIGEL

Ms. Nancy Reigel, of the Watauga County Summit on Youth Leadership Team, appeared before the Town Council to present a power-point presentation (**copy permanently on file at Town Hall**) on "Building a Strategic Community to Address Youth Issues in Watauga County." She pointed out that Council member Pepin is the Town of Boone representative on the design team. She also appeared before the Council to request a \$5,000 commitment from the Town of Boone for this initiative. She listed amounts committed from other entities such as \$15,000 from the High Country United Way, \$20,000 from the Watauga Board of Commissioners, and various amounts from other sources. Ms. Reigel explained that a total amount of \$60,000 is necessary to conduct local research to assess the local landscape of programs and agencies serving youth in the community. Upon a motion by Council member Pepin, seconded by Council member Spann, Council moved to approve a \$5,000 commitment from the Town of Boone to the Watauga County Summit on Youth Leadership Team for support of the "Building a Strategic Community to Address Youth Issues in Watauga County" program contingent on the availability of funds from the Town of Boone 2007-2008 budget.

VOTE: Aye - All
 Nay - None

REQUESTED APPEARANCE – MR. NATHAN SMITH ASU STUDENT GOVERNMENT ASSOCIATION

Mr. Nathan Smith, Director of Civic Engagement for the ASU Student Government Association, appeared before the Council to present a draft proposal (**copy permanently on file at Town Hall**) for a Town of Boone and Appalachian State University Town and Gown Committee. He explained that the committee will be a recommending body comprised of officials from both the Town and ASU, along with student representatives and members of the community to discuss issues affecting all involved. Council member Brantz questioned how membership for the committee will be established. Mr. Smith stated that each entity involved will appoint members, for example, Mayor Clawson will be responsible for appointing someone from the Town; Chancellor Peacock will be responsible for appointing an ASU representative. Council member

Mason asked how the group anticipated deciding what issues will merit discussion. Mr. Smith stated that the chairperson of the committee will determine what issues will be considered. Upon a motion by Council member Spann, seconded by Council member Mason, Council moved to approve the participation of the Town of Boone in the Town of Boone and Appalachian State University Town and Gown Committee as described in the proposal presented by Mr. Nathan Smith.

VOTE: Aye - All
 Nay - None

Mayor Clawson declared a break at 8:24 p.m. Council reconvened at 8:36 p.m.

REQUESTED APPEARANCE - MR. KRIS FOWLER

Mr. Kris Fowler appeared before the Council to request approval of a Special Event permit for the 3rd Annual Watauga County Toy Run and to request a waiver of the application fee. He announced that the event is scheduled for Saturday, November 3, 2007, from 10:00 a.m. until 3:00 p.m.; also, the route will begin at the Boone Mall, proceed throughout Watauga County and return to the Boone Mall parking lot. He requested assistance from the Boone Police Department from the mall to the town limits. Furthermore, he stated that proceeds from this event will be used to provide toys during the Christmas holiday for children of incarcerated persons at the Watauga County Detention Center. Council member Mason asked if Mr. Fowler knew of any major events scheduled for that date, such as an ASU home football game. Mr. Fowler stated he chose that date because there are no other big events currently scheduled to occur that day. Upon a motion by Council member Wilcox, seconded by Council member Brantz, Council moved to approve the Special Event permit for the 3rd Annual Watauga County Toy Run on November 3, 2007, and to waive the \$250 application fee.

VOTE: Aye - All
 Nay - None

REQUESTED APPEARANCE - MS. TUESDAE RICE

Ms. Tuesdae Rice of the Downtown Boone Development Association appeared before Council to request approval of a Special Event permit for the 2007 Kraut Creek Festival to be held on Saturday, September 22, 2007, from 10:00 a.m. until 5:00 p.m. Ms. Rice requested assistance from the Boone Public Works Department in closing off Howard Street for the event. She further noted that along with the assistance of an on-duty Boone Police Officer, the DBDA is paying for another officer to be present during the event. Council member Mason urged Ms. Rice to consider implementing zero waste practices for future events. Upon a motion by Council member Pepin, seconded by Council member Brantz, Council moved to approve the Special Event permit for the 2007 Kraut Creek Festival on September, 22, 2007, and to add the annual Kraut Creek Festival to the list of events that do not require Council approval on a yearly basis.

VOTE: Aye - All
 Nay - None

REQUESTED APPEARANCE - BELLSOUTH/AT&T

Town Attorney Sam Furgiuele opened a public hearing at 8:47 p.m. to hear sworn testimony from Ken Hopkins, of Skidmore Builders, and Rick Miller, Director of Public Utilities for the Town of Boone, in regard to a request for water service to property located at 260 Bamboo Road. Mr. Hopkins stated that the BellSouth/AT&T facility houses a work center where service technicians meet before and after their completing their service schedule. He stated that there is one manager in attendance at the center all day. Furthermore, he described the facility as 2000 square feet with two restrooms (sink and toilet) and a utility sink. Mr. Hopkins stated that sedimentation from the well system is clogging up the toilets and the use of filters to alleviate the problem does not work. He testified that due to the problem with the sedimentation, there is not

enough water to flush the toilets in the restrooms. Mr. Hopkins noted that the facility is not experiencing any problems with the septic system. In response to a question from Council member Brantz, Public Utilities Director Rick Miller stated that the septic system is adequate to accommodate connection to the Town water system. He also pointed out that the facility is located near a 12-inch water line. With no further public testimony, Mr. Furgiuele closed the public hearing at 8:53 p.m. Council member Mason stated that since the property is located in the ETJ and a hardship situation exists, she would support approval of the request. Upon a motion by Council member Mason, seconded by Council member Spann, Council moved to approve the request for water service at 260 Bamboo Road in the amount of 210 gallons per day.

VOTE: Aye - All
 Nay - None

REQUESTED APPEARANCE - CAMBRIDGE VENTURE PARTNERS

Town Attorney Sam Furgiuele opened a public hearing at 8:54 p.m. to hear sworn testimony from Richard Koehler, of Cambridge Ventures Partnership, and Rick Miller, Director of Public Utilities, regarding a request for water service to property on Chase Hill Drive. Mr. Koehler explained the project as a low-density, 2- or 3-bedroom condominium complex to be developed in three phases, with the first phase to contain 24 units. He stated the condos will be marketed to young professionals and graduate students with a price range between \$180,000 to \$190,000. Mr. Koehler stated that green-building techniques, which will include energy-efficient appliances, proper insulation, and water conservation methods, will be used in construction of the complex. He stated that the developer is also working with an engineer on the project due to the proximity to the New River; streambank restoration, as permitted by NCDENR, is also planned during the development of the complex. Council member Mason inquired if the developer will be willing to pay the cost to upgrade the water main. Mr. Koehler stated he would be willing to pay the cost to upgrade the water line. Public Utilities Director Rick Miller, being duly sworn, explained the calculation of 9,000 gallons per day as based on sixty bedrooms at 150 gallons per bedroom. Mr. Miller explained that if the project water mains are approved as publicly owned, the lines will have to be upgraded. With no further public testimony, Mr. Furgiuele closed the public hearing at 9:02 p.m. Upon a motion by Council member Pepin, seconded by Council member Wilcox, Council moved to approve the request by Cambridge Venture Partnership for a 9,000-gallons-per-day allocation, with 4,500 gallons taken from the 2007 allocation amount and 4,500 gallons from the 2008 allocation amount, for a 24-unit multi-family condominium complex located off Chase Hill Drive, and that if an upgrade of the water main is necessary, all costs will be paid by the developer.

VOTE: Aye - All
 Nay - None

PUBLIC COMMENT

Mr. Terry Hamilton, on behalf of the Southern Appalachian Historical Association, appeared before the Council to express his sincere appreciation of its support and that of the citizens of Boone in preserving the local heritage. He also commended the employees of the Town for their effort in this endeavor.

Mr. Phil Templeton appeared before Council to request copies of invoices from Town Attorney Sam Furgiuele received by the Town. He stated that he had made the same request in March of this year but received invoices in which much of the information contained therein was redacted. Mr. Templeton contended that according to N.C.G.S. 132.11, attorney/client privilege does not extend to copies of invoices, only correspondence. He formally requested copies of the invoices from the same time period as requested in March without any redaction.

CLOSED SESSION

Upon a motion by Council member Wilcox, seconded by Council member Mason, Council moved to enter Closed Session at 9:07 p.m. pursuant to NCGS 143-318.11a)3)5) in order to discuss the following matters:

- Update on Howard Street Property Acquisition
- Update on Settlements:
 - Weber Hodges
 - Boone Ford Lincoln & Mercury, Inc.
 - Robert Disney
- Property Acquisition - Water
- Consultation Regarding Legal Status of Community Garden Lease
- Templeton Medical Clinic Litigation
- Legal Advice:
 - ASU Interconnect Agreement
 - ASU Sewer Maintenance Agreement

VOTE: Aye - All
 Nay - None

Upon a motion by Council member Spann, seconded by Council member Mason, Council moved to exit Closed Session at 10:33 p.m.

VOTE: Aye - All
 Nay - None

ACTION FOLLOWING CLOSED SESSION

Upon a motion by Council member Mason, seconded by Council member Spann, Council moved to grant authority to Town Manager Greg Young to execute an engagement letter to retain Mr. Anthony Fox of the law firm, Parker, Poe, Adams, & Bernstein, LLP, to represent the Town of Boone in the Templeton litigation lawsuit.

VOTE: Aye - All
 Nay - None

ADJOURNMENT

On a motion by Council member Spann, seconded by Council member Brantz, Council moved to adjourn the meeting at 10:36 p.m.

VOTE: Aye - All
 Nay - None

Deputy Town Clerk

Mayor