

**MINUTES - REGULAR MEETING  
BOONE TOWN COUNCIL  
OCTOBER 18, 2007**

The regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, October 20, 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 Furgiuele was also present. Staff members present were Town Manager Greg Young; Town Clerk Freida Van Allen; Human Resources Director Peri Moretz; Assistant to the Manager Jim Byrne; Finance Director Amy Davis; Public Utilities Director Rick Miller; Public Services Director Blake Brown; Police Chief Bill Post; Fire Captain Jimmy Isaacs and Development Services Director John Spear.

**TENTATIVE AGENDA ADOPTION**

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

- Addition of Item 5.I. - Adoption of Resolution - Directing Clerk to Investigate Bellsouth Annexation Petition.
- Addition of 5.J. - Scheduling of Special Water Use Committee Meeting.
- Addition of Item 6.I. - Requested Appearance - Mike Wise & Cherry Johnson - Watauga County Arts Council.
- Addition to Closed Session - Possible Criminal Charges related to assault on a town employee.

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

VOTE: Aye-All  
Nay-None

**CONSENT AGENDA ADOPTION**

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

- Minutes:** September 4, 2007, Special Meeting.  
September 20, 2007, Regular Meeting.
- Tax Releases & Refunds:** August and September, 2007

**TAX RELEASES  
AUGUST, 2007**

<b>Taxpayer</b>	<b>Year</b>	<b>Amount</b>	<b>Description</b>
FOX, JEREMY BURK	2007	\$24.26	TURN IN TAG
WARD, NATHAN LEE	2007	38.37	LIVES IN DEEP GAP
JONES, GARRETT MYRON	2007	233.36	TURN IN TAG
JONES, JIMMY CLINTON	2007	11.58	INCORRECT VALUE
SANDRA S HOUSE MAYAN MINISTRY	2007	26.83	TURN IN TAG
DELLINGER, DANIEL RAY	2007	11.62	TURN IN TAG
MATHEWSON, REBA ANN	2007	24.39	SOLD VEHICLE
YOUNGER, KENNETH GLENN III	2007	37.71	SOLD VEHICLE
YOUNGER, KATHLEEN H			
ISAACS, KENNETH DEAN	2006	14.17	PROPERTY IN RURAL FIRE DISTRICT

		<b>\$422.29</b>	
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**TAX REFUNDS  
AUGUST, 2007**

<b>Taxpayer</b>	<b>Year</b>	<b>Amount</b>	<b>Description</b>
MCGUIRE, ERNEST CLINT	2007	\$45.03	INCORRECT TAX SITUS
GOLDEN, SUSAN LUBETSKY GOLDEN, RACHEL HELEN	2006	14.57	TURN IN TAG
		<b>\$59.60</b>	

**TAX RELEASES  
SEPTEMBER, 2007**

<b>Taxpayer</b>	<b>Year</b>	<b>Amount</b>	<b>Description</b>
KING STREET COMMERCIAL PROPERTY	2007	\$748.88	TRANSFERRED IN ERROR
BEVERLY GUY ACCOUNTING INC GUY, BEVERLY ACCOUNTING INC	2007	30.30	BUSINESS NOT LOCATED IN TOB LIMITS
SULLIVAN, JOHN DUDLEY	2007	38.70	LIVES IN WAKE COUNTY
TRADE PROPERTIES CO	2007	.74	COMMON AREA
HAMILTON, JAMES DAVID	2007	20.94	TURN IN TAG
PAC-VAN, INC.	2007	7.96	NO PROPERTY IN THIS COUNTY
GALAN, HERIBERTO VIVERO	2007	4.39	TURN IN TAG
BELK	2007	221.20	ERROR
TABITHA-SEWS	2007	9.44	INCORRECT SITUS
STERLING NATIONAL BANK	2007	249.78	BPP NOT LOCATED IN COUNTY LEASE TERMINATED 04/06
MINGO TRIBAL PRESERVATION TRUST	2007	50.74	SOLD VEHICLE
SWIFT, BRADLEY LEE	2007	16.47	TURN IN TAG
JOHNSON, ROBERT A. & MARTHA	2007	30.12	TURN IN TAG
NICKLIN, ROBERT CLAIR	2007	6.59	TURN IN TAG
RUPP, MARY GROVE	2007	10.68	SOLD VEHICLE
SINGING NEWS INC, THE	2007	525.03	OUT OF BUSINESS 01/03/06
NANCY BYERLY JONES, PLLC	2007	154.33	BUSINESS LOCATED IN AVERY CO.
WEST JEFFERSON OFFICE EQUIPMENT	2007	30.30	BUSINESS NOT IN TOB LIMITS
WEST JEFFERSON OFFICE EQUIPMENT	2007	136.90	BUSINESS NOT IN TOB LIMITS
WJ OFFICE CITY	2007	51.87	BUSINESS NOT IN TOB LIMITS
SMITH, WAYLON VON	2007	35.15	RESIDENT OF BURKE CO.
NAFF, GEORGE EAKIN III	2007	38.44	NOT IN CITY LIMITS
DUVERNOIS, CANDICE CLINE DUVERNOIS, DAVID ALAN	2007	65.01	INCORRECT SITUS
		<b>\$2483.96</b>	

**MSD TAX RELEASES  
SEPTEMBER, 2007**

<b>Taxpayer</b>	<b>Year</b>	<b>Amount</b>	<b>Description</b>
NANCY BYERLY JONES, PLLC	2007	\$87.59	BUSINESS LOCATED IN AVERY CO.
		<b>\$87.59</b>	

**TAX REFUNDS  
SEPTEMBER, 2007**

<b>Taxpayer</b>	<b>Year</b>	<b>Amount</b>	<b>Description</b>
GOWERS, STEPHEN SCOTT	2006	\$1.68	TURN IN TAG
MCNIEL, JESSE MORGAN	2006	2.31	TURN IN TAG
VILLALPANDO, SHAWN NATHAN	2006	30.22	TURN IN TAG
HARTER, MARK RICHARD	2006	13.08	SOLD VEHICLE
		<b>\$47.29</b>	

**Amendment to Personnel Policy:**

*Section 7. Vacation Leave: Maximum.*

*Vacation leave may accrue without any maximum until December 31 of each year. Any employee who has accrued in excess of 240 hours on December 31 may transfer the excess hours into sick leave, provided that during the course of the calendar year, the employee has actually used no less than five days of vacation leave. Effective ~~the last payroll of the~~ **December 31 of the** calendar year, all other employees with more than 240 hours of accrued leave shall have the excess leave subtracted so that only 240 hours are carried forward to January 1 of the next calendar year. Employees subject to readjustment rights pursuant to Title 38 of the United States Code, as provided in Article VI, Section 28 of this policy, insofar as they have no opportunity to take vacation time in a particular calendar year, shall automatically have excess vacation leave transferred to sick leave.*

*Employees are cautioned not to retain excess accumulated vacation leave until late in the year. Because of the necessity to keep all functions in operation, large numbers of employees cannot be granted vacation leave at the same time. If an employee has excess leave during the latter part of the year and is unable to take such leave because of staffing demands, the employee shall receive no special consideration in having vacation leave scheduled.*

**Adoption of Mutual Aid Agreement: Zionville Volunteer Fire Department.**

THIS AGREEMENT, made and entered into the 18<sup>th</sup> day of October, 2007, by and between the **Town of Boone**, a municipal corporation existing of Watauga County, North Carolina and **Zionville Volunteer Fire Department**, 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 18th day of October, 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:

1. 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.
2. 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.
3. Each party to this agreement shall assume all liability and responsibility for the death of or injury to any personnel of his/her own command responding to the request for mutual aid.
4. 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.
5. 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.
6. 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.
7. 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, 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.
8. 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.
9. 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.

10. 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, shall dispatch would not impose upon his own respective community a serious impairment to the fire defenses and fire protection.
11. 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.
12. 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 **Zionville Volunteer Fire Department**, 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 OF BOONE

\_\_\_\_\_  
Town Clerk

By

Mayor

ATTEST:

ZIONVILLE VOLUNTEER FIRE  
DEPARTMENT

\_\_\_\_\_  
Secretary

By

President

**Adoption of NCDOT Bridge Inspection Agreement:**

This agreement made and entered into this the 18<sup>th</sup> day of October 2007, between the DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina, hereinafter referred to as the DEPARTMENT, and the TOWN OF BOONE, a municipal corporation hereinafter referred to as the MUNICIPALITY;

WITNESSETH:

**WHEREAS**, the Surface Transportation Assistance Act of 1978 provided funding for a Federal Aid Highway Bridge Replacement and Rehabilitation Program; and

**WHEREAS**, the Highway Bridge Replacement and Rehabilitation portion of the law requires that all structures defined as bridges located on public roads must be inspected on a cycle, not to exceed two years in accordance with the National Bridge Inspection Standards (NBIS); and

**WHEREAS**, the Municipality has requested the Department or a Consultant retained by the Department to inspect and analyze all public bridges located on its Municipal Street System in compliance with the National Bridge Inspection Standards; and

**WHEREAS**, the Department and the Municipality are authorized to enter into an agreement for such work under the provisions of G.S. 136-18(12), G.S. 136-41.3, and G.S. 136-66.1; and

**WHEREAS**, the Town Council of the Municipality has approved the herein above reference inspections and has agreed to participate in certain costs thereof in the manner and to the extent as hereinafter set out;

**NOW, THEREFORE**, the Department and the Municipality agree as follows:

1. The Department or a Consulting Engineering firm retained by the Department shall inspect, analyze, and prepare the necessary inspection reports for all bridges on the Municipal Street System in accordance with the National Bridge Inspection Standards.
2. All work shall be done in compliance with the following documents.
  - a. National Bridge Inspection Standards (23 CFR, Chapter 1 Part 650)
  - b. AASHTO Manual for Maintenance Inspection of Bridges – 1994 including all Interim Revisions.
  - c. Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation’s Bridges – December, 1988
3. The Municipality shall be responsible for providing any required traffic control personnel during the work period.
4. The Municipality shall furnish all data in the possession of the Municipality that can be released that will help the Department or its Consultant in the accomplishment of the work including but not limited to appropriate municipal maps showing the location of the bridges, plans for the bridges when available, and any prior inspection reports.
5. During the inspection process, some repairs may be discovered that require immediate attention or repair, or a regulatory sign may be missing, damaged and incorrect. A Prompt Action Notice or Regulatory Sign Notice will be issued in these cases. It is required that the Municipality resolve the Prompt Actions and/or Regulatory Sign Notice within ninety (90) days of issuance.
6. The Municipality shall designate a responsible Municipal official with whom the department or its Consultant will coordinate the work.
7. It is understood by the parties hereto that the Federal Highway Administration, through the Department, is to participate in the costs of the work to the extent of eighty (80%) percent of actual costs, subject to compliance with all applicable federal policy and procedural rules and regulations. All costs not participated in by the Federal Highway Administration shall be borne by the Municipality.
8. Upon completion of the bridge inspection, and analysis work, the Department shall invoice the municipality for accumulated project costs not participated in by the Federal Highway Administration. Upon FHWA final audit, the Department shall invoice/refund the Municipality any differences in the amount previously invoiced and the actual costs not participated in by the Federal Highway Administration. Reimbursement shall be made by the Municipality within sixty (60) days of the invoice date. After the due date, a late payment, penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23 and G.S. 105-24.1 (I).
9. In the event the Municipality fails for any reason to pay the Department in accordance with the provisions for payment hereinabove provided, the Municipality hereby authorizes the Department to withhold so much of the Municipality’s share of funds allocated to said Municipality by the General Statutes of North Carolina, Section 136-41.1, until such time as the Department

has received payment in full.

10. Upon completion of the work the Department shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this agreement. Further, the Department shall make such materials available at its office for three (3) years from the date of payment of the Final Voucher by the Federal Highway Administration under this agreement, for inspection and audit by the Federal Government.

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

**IN WITNESS THEREOF**, this agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given, as evidenced by the attached certified copy of resolution, ordinance or charter provision, as the case may be.

The following resolution was introduced, and Council Member Wilcox moved that it be adopted. The motion was seconded by Council Member Spann, and, upon being put to a vote, the resolution was unanimously carried.

**WHEREAS**, the Town of Boone has requested the Department of Transportation to perform certain work under the Federal Aid Highway Bridge Replacement and Rehabilitation Program, said work to consist of the inspection and analysis of all public bridges on the Municipal Street System in the Town of Boone; and

**WHEREAS**, the Town of Boone proposes to enter into an agreement with the North Carolina Department of Transportation for said work wherein the Department of Transportation or a Consulting Engineering firm retained by the Department of Transportation will inspect and prepare the necessary reports for all public bridges on the Municipal Street System in accordance with the National Bridge Inspection Standards; and

**WHEREAS**, under the proposed agreement the Federal Highway Administration shall reimburse the Department of Transportation for eighty (80) percent of the cost of the work subject to compliance with all applicable federal policy and procedural rules and regulations; and

**WHEREAS**, under the proposed agreement the Town of Boone shall reimburse the Department of Transportation for all costs of the work incurred by the Department of Transportation not paid by the Federal Highway Administration;

**NOW, THEREFORE, BE IT RESOLVED**, that the agreement for the herein above referenced bridge inspection work is hereby formally approved by the Town of Boone and the Mayor and Clerk of this Municipality are hereby empowered to sign and execute the required agreement between the Town of Boone and the Department of Transportation.

This Resolution was passed and adopted the 18<sup>th</sup> day of October, 2007.

I, Freida Van Allen, Clerk of the Town of Boone, North Carolina, do hereby certify that the foregoing is a true and correct copy of excerpts from the minutes of the Town Council of this Municipality;

**WITNESS**, my hand and the official seal of the Town of Boone on this the 19<sup>th</sup> day of October, 2007.

\_\_\_\_\_

Town Clerk  
Town of Boone, North Carolina

VOTE: Aye-All

Nay-None

**DISCUSSION OF PROPOSED TEXT AMENDMENT - WOOLLY WORM FESTIVAL**

Mayor Clawson proposed that a UDO text amendment be prepared to recognize the annual Woolly Worm festival as a community event and that Town Council approve installation of directional signage for the upcoming festival. On a motion by Council member Wilcox, seconded by Council member Spann, Council moved to direct Staff to prepare a text amendment for presentation at the next Quarterly Public Hearing and to allowing directional signage to be placed within the Town of Boone for the upcoming 2007 Woolly Worm festival.

VOTE: Aye-All

Nay-None

**DISCUSSION OF FUNDING REQUESTS - HUNGER COALITION & YOUTH INITIATIVE**

Town Manager Greg Young advised Council that the audit report is not yet complete, but that audit presentation should be made at the November or December Council meeting. Mr. Young said preliminary estimates indicate an increase in the projected undesignated fund balance and that there should be more than enough funds to cover the funding requests made by the Hunger Coalition (\$15,000) and Youth Initiative (\$5,000). Council member Mason made a motion to fund the Youth Initiative since it is a one-time special request for funding and to send the Hunger Coalition's request back to the Outside Agency Funding Committee for specific funding recommendation. Council member Pepin seconded.

VOTE: Aye-All

Nay-None

**DISCUSSION OF SEWER LINE RELOCATION - ASU AT STADIUM DRIVE**

Mr. Greg Lovin, Interim Vice Chancellor for Business Affairs at ASU, appeared before Council to request approval of relocation of a sewerline along Stadium Drive. Mr. Lovin explained that ASU plans to increase the seating in the east stands at Kidd Brewer Stadium by 4,000 seats, an increase which would necessitate new restrooms to support the additional seats. Mr. Lovin said the existing 6" sewerline runs parallel to the stands and that ASU would like to remove or abandon about 500' of that line and construct a new 8" line along Stadium Drive. Mr. Lovin requested that the Town of Boone pay half of the estimated \$100,000 cost since the relocation would also benefit the Town by placing it within a town right-of-way. Council member Mason questioned if this line is scheduled to be replaced in the near future. Public Utilities Director Rick Miller said no that it is not one of the Town's top priorities. Council discussed at length the upgrade of the line and concluded that the sewer maintenance agreement, which is yet to be signed by ASU, should factor into the decision. Council member Wilcox asked about the time frame of the project. Director of Physical Plant Operations Mike O'Connor responded, saying that receiving approval to relocate the line is the first step, with hopes to have the project complete before next fall. Council member Wilcox felt Council should not use granting approval of the project as leverage to ensure execution of get the sewer maintenance agreement. Council member Brantz agreed and suggested moving forward on approving the line relocation and discussing cost-sharing on the project later once the sewer maintenance agreement is signed. On a motion by Council member Wilcox, seconded by Council member Brantz, Council moved to grant approval to ASU for relocation of the sewer line to Stadium Drive and to discuss cost-sharing of the installation costs at a later time.

VOTE: Aye-All

Nay-None

**DISCUSSION OF ELK MOTEL COMMITTEE MEETING**

Town Attorney Sam Furgiuele presented the following information:

*On September 26, 2007, a meeting took place regarding the request by the Elk Motel for a sewer line to be extended to the motel by the Town of Boone. Present at the meeting were Lynne*

*Mason, Rennie Brantz, Rick Miller, Jim Deal, Billy Ralph Winkler, Rocky Nelson, Danny Staley, Director of the Health Department, Andy Blethen from the Health Department, and a third person from that department, Floyd Garrison and me. The representatives of the Health Department emphasized the dire nature of the current disposal system. Mr. Garrison reiterated the great need of the residents and the importance of the facility to the Town, but he stated that he had some difficulty in agreeing to a provision requiring a ten year commitment to continue in operation serving the same population. He articulated a willingness to make such a commitment so long as there was an escape clause if he was no longer able to maintain the facility, either because of death or infirmity. He indicated a willingness to consider an arrangement whereby the Town and County would be repaid if the property were sold within ten years. He expressed some hesitation about any plan which would require him to repay the cost of the sewer line extension over time. He was asked whether he was willing to provide the Town and County managers with financial statements and tax returns relating to the operation of the motel, and he agreed to do so. Lynne raised questions concerning the willingness of the motel to submit to inspections to confirm compliance with the minimum housing code, and Mr. Garrison stated a willingness.*

*Much of the discussion thereafter focused on the offer of Watauga County to share the cost of a sewer line extension upon certain conditions. For one, the County's offer stated that the Town would need to commit to equally share any revenues which the line extension produced, whether as a result of the connection to the Elk Motel, or by virtue of other connections. In the County's written offer, it appeared that the County was asking for an indefinite commitment by the Town to share these revenues, but Jim Deal clarified that the County is asking only that revenues are shared until the County is fully repaid, with interest, for its investment.*

*A second demand by the County from the Town was that in exchange for County support of the line extension to the Elk Motel, the Town commit to a line extension, half at Town cost along with a waiver of availability fees, down Brookshire Road to the County's planned "affordable housing project." The County was unable to reveal the exact number of units it intends to build on Brookshire, estimating that it will be between 24 and 36. Without that information, Rick Miller informed the group that there is no way to determine with certainty the cost of such a line extension. However, based on certain assumptions regarding the number of units and location of the project, Rick distributed estimates of a line extension, which are attached.*

*The County was asked whether it was willing to "de-link" its demand regarding Brookshire Road from the Elk Motel project, and Jim Deal indicated that the County would not separate these two issues. After Jim Deal's departure, Billy Ralph Winkler stated that the County might be satisfied with a general commitment of support by the Town for the Brookshire Road project, with the details to be developed in the future as the project takes shape.*

Council member Mason commented that the current situation at the Elk Motel is that the septic system can not be repaired, replaced or expanded and that the Health Department has valid environmental and public health concerns and feels that this situation should not be tied to another affordable housing project. Council member Mason felt it may be easier if the Town facilitated this project alone by granting Mr. Garrison a loan for the one-third cost the County would have paid. Mr. Garrison could repay the loan in the future, without interest, once the Elk Motel is sold. Council member Pepin asked about the revenues that are anticipated from the project. Public Utilities Director Rick Miller estimated about \$650 per month from the Elk Motel, but stated that the Salvation Army property could tap-on for an additional revenue. Council member Pepin asked if the Salvation Army property owner could pay part of the cost for installation. Council member Wilcox pointed out the Salvation Army would have to pay availability and tap-on fees if connected to the line. Council member Spann asked Mr. Garrison if he could acquire half of the cost of the line installation. Mr. Garrison said he was stretched to come up with the one-third cost. Town Manager Greg Young pointed out that, by agreeing to do this project, over \$200,000 will be allocated out of the water and sewer fund balance and that new priorities must be set. Council member Mason stressed that the Town is losing low-income, affordable housing at an alarming rate and installing this sewerline is one action the Town can take to preserve some low-income housing. On a motion by Council member Wilcox, seconded by Council member Mason, Council moved to instruct the Town Attorney to prepare a contract with Mr. Floyd Garrison for the installation of a sewerline to the Elk Motel Property, based on the following conditions:

1. The Town of Boone will initially pay two-thirds of the installation cost, with Mr.

Garrison paying the remaining one-third cost.

- 2. A lien will be placed against the Elk Motel in order to recoup one-third of the installation if the Elk Motel property is sold.
- 3. Mr. Garrison must petition annexation of the Elk Motel property.

VOTE: Aye-All  
Nay-None

**TDA APPOINTMENTS**

On a motion by Council member Wilcox, seconded by Council member Brantz, Council moved to appoint Sheri Moretz (resident Chamber member) and Ann Peecook (resident taxable tourist accommodations) and reappoint Jim Wooten (county resident taxable tourist accommodations) and Robin Greene (resident) to the Tourism Development Authority. All terms will expire on 10/31/10, with the exception of Ms. Peecook’s, which will expire 10/31/08.

VOTE: Aye-All  
Nay-None

**GREENWAY COMMITTEE APPOINTMENT**

On a motion by Council member Brantz, seconded by Council member Mason, Council moved to appoint Meghan Baker to the Greenway, Parks and Gardens Committee.

VOTE: Aye-All  
Nay-None

**MONTHLY WATER USE STATUS REPORT**

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

*As requested by Town Council, staff and I have compiled the following information concerning water use for the month of September. The Water Treatment Plant recorded a maximum daily demand of 2.202 million gallons on Friday, September 7, 2007, and the average daily demand was 1.976 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 September 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 4,710 gallons per day to two projects and since then the Public Utilities Department approved two projects that subtracted 165 gallons per day from the 2007 allotment. Also at the last meeting Council authorized 4,500 gallons per day from the 2008 allotment for one project. 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 1,306 gallons per day remaining for allotment in 2007 and 11,491 gallons remaining for 2008.*

			Approved Water Connections			
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		2007				
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						25000
			Watauga County	Nov-06	4800	20200
			<b>2006 Balance Carry Over</b>	<b>Jan-07</b>	<b>6788</b>	<b>26988</b>
Park Street Subdivision	Jan-07	850				26138
Steven Airey	Jan-07	195				25943
Boone Mall	Jan-07	439				25504
<b>Sarvos Properties</b>	<b>Feb-06</b>	<b>2100</b>				<b>27604</b>
			Jamus FLP	Feb-06	4209	23395
Mauldin Chiropratic	Feb-07	69				23326
Ross Chrysler	Feb-07	60				23266
A-Z Enterprises	Feb-07	900				22366
			Fatbellies LLC	Mar-06	3750	18616
High Country Bank	Mar-07	450				18166
Enterprise Leasing	Mar-07	45				18121
James Maltba	Mar-07	31				18090
<b>Dana Willet</b>	<b>Jun-05</b>	<b>450</b>				<b>18540</b>
<b>Dana Willet</b>	<b>Jul-05</b>	<b>150</b>				<b>18690</b>
HW Partners	May-07	45				18645
Hoan Nguyen	May-07	283				18362
			CCC&TI	Jun-06	1650	16712
Jeff Templeton Rentals	Jul-07	490				16222
ECHO Prop LLC	Jul-07	270				15952
Karl Pond	Jul-07	90				15862
Winklers Creek Assoc.	Jul-07	150				15712
			Andrew Wade	Aug-07	8856	6856
Dogwood Plaza	Aug-07	300				6556
Richard Tazwell	Aug-07	90				6466
Watauga County DSD	Aug-07	285				6181
			AT&T	Sep-07	210	5971
			Cambridge Venture	Sep-07	4500	1471
Watauga County Landfill	Sep-07	75				1396
Rob Dyer	Sep-07	90				1306
2008						
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						25000
			Watauga County	Nov-06	4800	20200
			Jamus FLP	Feb-07	4209	<b>15991</b>
			Cambridge Venture	Sep-07	4500	11491

**ADOPTION OF BUDGET AMENDMENTS**

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

DESCRIPTION	ACCOUNT #	TO:	FROM:
Contracted Services-Jones House	010-409-000-577000	\$950.00	
Appropriated Fund Balance-GF	010-000-000-499900		(\$950.00)
Expendable Equipment-Street Dept.	010-600-401-514110	\$2,010.00	

Miscellaneous Revenue-GF	010-000-000-489900		(\$2,010.00)
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VOTE: Aye-All  
Nay-None

**ADOPTION OF RESOLUTION - DIRECTING CLERK TO INVESTIGATE BELLSOUTH ANNEXATION PETITION**

Development Services Director John Spear presented a petition for voluntary annexation from Bellsouth as part of water service that was granted by Council in September, 2007. The property is located at 260 Bamboo Road and contains 3.150 acres. Mr. Spear said adopting the resolution is the first step in the annexation process. On a motion by Council member Brantz, 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  
(Bellsouth Annexation)**

WHEREAS, a petition requesting annexation of an area described in said petition was received on October 18, 2007 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 18<sup>th</sup> day of October, 2007.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Town Clerk

**(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 42)**

VOTE: Aye-All  
Nay-None

**SCHEDULING OF WATER COMMITTEE MEETING**

On a motion by Council member Pepin, seconded by Council member Mason, Council moved to schedule a water committee meeting for Thursday, November 8<sup>th</sup> at 5:00 p.m. in order to discuss Stage II water conservation ordinance requirements and to review a report regarding actual water usage of projects approved since Ordinance 05-01 was adopted.

VOTE: Aye-All  
Nay-None

**REQUESTED APPEARANCE - ALAN WATTS**

Mayor Clawson read the following proclamation:

*WHEREAS, the “Boone Bicycle Initiative” encourages the use of bicycles as a viable means of transportation for positive environmental and social change; and*

*WHEREAS, the bicycle as a means of transportation will never become the status quo without the support of the community; and*

*WHEREAS, the Town of Boone’s 2006 Comprehensive Plan encourages “...planned systems of pedestrian ways, bikeways, greenways, and other similar facilities...”; and*

*WHEREAS, congestion and pollution are becoming growing concerns; and*

*WHEREAS, the search for and use of alternative transportation is important for the future of the Town of Boone;*

***NOW, THEREFORE BE IT RESOLVED, I, Loretta Clawson, Mayor of the Town of Boone, do hereby proclaim October 27, 2007 as “Bicycle Appreciation Day” in Boone, North Carolina.***

ATTEST:

Mayor

Deputy Town Clerk

Mr. Alan Watts appeared before Council to present information about a community bike loan program. Mr. Watts said the program will initially be University based with hopes to expand the program town-wide in the future and that bicycle donations will be appreciated. Council thought the program was a great idea.

Mayor Clawson declared a break at 7:59 p.m. Council reconvened at 8:13 p.m.

**REQUESTED APPEARANCE - RICH JACOBS**

Mr. Rich Jacobs, incoming president of the Downtown Boone Development Association, appeared before Council to request the creation of a task force to focus on growth in the downtown area. Mr. Jacobs said the task force will visit Salisbury, Brevard, Morganton and Waynesville to view their downtowns and that the DBDA will coordinate these trips. Mr. Jacobs said the task force will meet on a monthly basis in hopes of revising the Municipal Service District boundaries, conducting a retail inventory and ultimately developing a downtown master plan to be included within a UDO. Council member Spann felt this was the right time for the task force to look at revitalization, especially since the downtown is vital and not yet in crisis. Council members Mason and Pepin voiced concern about the task force duplicating work being done by another group and suggested that the task force coordinate its efforts with the Planning Commission. On a motion by Council member Mason, seconded by Council member Wilcox, Council moved to appoint a Downtown Boone Growth Task Force to consist of the following representatives:

1. One Town Council Member.
2. Director of Development Services.
3. Director of Public Services.
4. One DBDA Board Member.
5. One Representative from ASU.
6. One Boone Area Business Person; and
7. One Boone Resident

VOTE: Aye-All

Nay-None

**REQUESTED APPEARANCE - JOHN WINKLER**

Town Attorney Sam Furgiuele opened the public hearing at 8:32 p.m. to hear sworn testimony from Roger Wright, William A. Bake and Public Utilities Director Rick Miller regarding a request for an additional 5,100 gallons per day of water to the Wilcox-Wright, LLC (part of the Emporium Building). Mr. Roger Wright testified on plans to retrofit the second floor of the Emporium building to include 11 multi-family units totaling 34 bedrooms. Mr. Wright felt this renovation will fit into the Town's plans for mixed-use development. Council member Mason asked if the units would be sold or rented. Mr. Wright said the units, with one to four bedrooms, would be rented. Council member Brantz asked when the project would be completed. Mr. Wright said he hopes to be finished by next spring. Mayor Clawson asked if the units would accommodate student housing. Mr. Wright said the units would be more upscale with higher rent. Council member Spann inquired how much the rent would be per month. Mr. Wright replied between \$1,200 and \$1,4000. Council member Pepin asked Public Utilities Director Rick Miller to explain the usage credit policy. Public Utilities Director Miller explained that, when a business relocates the availability fee will remain with the property, thereby providing a credit. Mr. Miller said the Emporium would be unable to receive a credit since it is one single meter and the apartments will have to be metered individually. Mr. Wright closed his presentation saying that he thought the mixed-use project would fit in well with the proposed Howard Street project. Mr. William A. Bake questioned if the businesses located on the second floor will be displaced. Mr. Wright said yes. There being no further testimony, the public hearing closed at 8:52 p.m. On a motion by Council member Mason, seconded by Council member Wilcox, Council moved to allocate an additional 5,100 gallons per day water from the 2008 water allocations.

VOTE: Aye-All

Nay-None

**REQUESTED APPEARANCE - JOHN WINKLER**

Town Attorney Sam Furgiuele opened the public hearing at 8:53 p.m. to hear sworn testimony from Patrick Carroll regarding a request for an additional 2,260 gallons per day water to the Howard Street Ventures (part of the Emporium Building). Mr. Patrick Carroll testified on plans to retrofit the second floor of the Emporium building to include six multi-family units totaling 15 bedrooms. Mr. Carroll said this is an extension of Mr. Wright's project, with the same type of up-scale, higher rent apartments. On a motion by Council member Wilcox, seconded by Council member Mason, Council moved to allocate an additional 2,250 gallons per day water out of the 2008 water allocation.

VOTE: Aye-All

Nay-None

**REQUESTED APPEARANCE - BRENT BINGHAM**

Town Attorney Sam Furgiuele opened the public hearing at 8:59 p.m. to hear sworn testimony from Michael Trew, William A. Bake, Development Services Director John Spear and Public Utilities Director Rick Miller regarding a request for water and sewer service to property located off Ridgewood Drive. Mr. Michael Trew, Project Engineer, testified that Mr. Bingham plans to construct five 2-bedroom town homes with a need for 1,500 gallons per day water. Mr. Trew said since the lot has a 270-gallon-per-day water allocation already, an additional 1,230 gallons per day is being requested from the Town. Council member Brantz asked how the property will be accessed. Mr. Trew said a new street will be constructed within an old Town right-of-way and once constructed turned over to the Town for maintenance. Council member Brantz then asked about the time frame of the project. Mr. Trew answered that he hopes construction will begin in the spring. Council member Brantz questioned if the project would impact the neighborhood. Mr. Trew answer no, other than an open space being utilized. Council member Wilcox asked if the project would require a special-use permit. Development Services Director John Spear said no. Council member Mason asked if the occupancy would be the same as single-family

residences. Mr. Spear said that no more than two unrelated persons can live in the town home. Council member Brantz asked if the 2" water line would be adequate to serve the town homes. Public Utilities Director Rick Miller said yes. Council member Mason questioned if an easement would be needed to connect to water. Mr. Miller said no that the line would be extended within the town's right-of-way. Mr. William A. Bake, a resident of Ridgewood Drive, testified that he was strongly opposed to the project and its impact on the neighborhood. Mr. Bake felt that the property would be better accessed from Park Street. Council member Mason asked Mr. Bake what his main concerns are about the project. Mr. Bake responded increased traffic, quality of life and property values. Mr. Bill Dixon, architect for the project and a resident of the neighborhood, testified that the project will increase property values and that there is not an access to the property from Park Street. Council member Mason asked about the price of the town homes. Mr. Dixon said they would not be low-income, but not upper scale, probably a mid-range price. Council member Spann asked about the size of the town homes. Mr. Dixon said the units will be 1,500 square feet each. There being no further testimony, the public hearing closed at 9:27 p.m. On a motion by Council member Brantz, seconded by Council member Pepin, Council moved to grant water (1,230 gpd from the 2007 allocation) and sewer service to the project.

VOTE: Aye-All

Nay-None

### **REQUESTED APPEARANCE - MEGA BUILDERS LLC**

Town Attorney Sam Furgiuele opened the public hearing at 9:28 p.m. to hear sworn testimony from Mark Bloomquist, Michael Trew, Development Services Director John Spear and Public Utilities Director Rick Miller regarding a request for water and sewer service to property located off Yosef Drive. Mr. Mark Bloomquist, chief operating officer for Mega Builders, testified that plans are to construct 48 three bedroom condo units for a total of 144 bedrooms, which equates to 21,600 gallons of water per day needed. Council member Mason asked about the price of the condos. Mr. Bloomquist said the cost is \$145,000 per unit. Mayor Clawson asked if the property layout is flat. Mr. Michael Trew, Project Engineer, testified that the property is flat and had already been graded. Mr. Trew pointed out that, if water is unavailable from the Town, the developer is requesting sewer service only, with plans to dig two wells with one large storage tank. Council member Brantz asked about the time frame of the project. Mr. Trew responded that construction could begin this year with completion by next summer. Council member Spann asked if the project is located in the view-shed. Mr. Trew said yes, that a portion is located within the viewshed. Council member Brantz asked if the project is an extension of Mountaineer Village. Mr. Bloomquist said no. Council member Wilcox questioned what portion of the project is located within the secondary pressure zone. Public Utilities Director Rick Miller said the actual structure is not located within the secondary pressure zone. Council member Mason asked about the zoning and growth area designation. Development Services Director John Spear responded that the property is zoned R-3 and is located in a rural growth area. Council member Spann asked if it is permissible to dig wells and have a storage tank. Public Utilities Director Miller said yes, it is allowable, if water service is denied. Council member Pepin asked if there could be a problem serving the property with sewer service only. Mr. Miller said no, that it would be a gravity flow. Council member Brantz asked if a partial water allocation can be made to the property. Mr. Miller said no, that Council can approve, deny or table the request. Council member Mason asked if the project will require a special-use permit. Development Services Director Spear indicated that the project would require a special-use permit once it is annexed from the County's jurisdiction. Mr. Trew interjected at this point, that if water is not available, the property owner does not wish to be annexed until such time as the Town is able to provide water. There being no further testimony, the public hearing closed at 9:50 p.m. Council member Wilcox felt Council should deny water and grant the sewer request. Council member Mason pointed out several concerns such as the project not being located within the Town's ETJ and located in a rural growth area. Council member Mason said she feels strongly that the project needs to be annexed first in order to comply with Town regulations. Council member Spann agreed and said if the developer is willing to annex and forego the water allocation, a compromise might be available. After a lengthy discussion, on a motion by Council member Wilcox, seconded by Council member Brantz, Council moved to deny the water allocation request.

VOTE: Aye-All  
Nay-None

On a motion by Council member Wilcox, seconded by Council member Brantz, Council moved to grant the sewer-only request, subject to future annexation of the property, and to state that the property must connect with the Town's water system once water is available.

VOTE: Aye-2(Brantz, Wilcox)  
Nay-3(Mason, Pepin, Spann)

Council member Pepin felt that the Town should provide both water and sewer to the project and then made a motion to table the matter until the November 15<sup>th</sup> meeting. Council member Mason seconded.

VOTE: Aye-3(Mason, Pepin, Spann)  
Nay-2(Brantz, Wilcox)

### **REQUESTED APPEARANCE - LEONARD SOLOMON**

Town Attorney Sam Furgiuele opened the public hearing at 10:01 p.m. to hear sworn testimony from Michael Trew and Development Services Director John Spear regarding a request for water and sewer service to property located off Bamboo Road. Mr. Michael Trew, Project Engineer, testified that the developer plans to construct 27, two-bedroom condominium units for a total of 8,100 gallons per day water requested. Mr. Trew said the developer is willing to annex the property if water and sewer service is granted. Council member Brantz questioned if the property is located within the floodway. Mr. Trew explained that most of the property is in the floodway so that the property must be "built up" in order for the buildings to be constructed out of the floodway. Council member Wilcox asked if the property is located in the flight path of the Boone Airport. Mr. Trew said the FAA has been contacted and that the developer was told a permit is not required from them. Council member Brantz asked about the time frame of the project. Mr. Trew said the developer is ready to start construction as soon as possible. Council member Mason asked about the zoning and growth designation of the property. Development Services Director John Spear said the property is not zoned since it is located within the County's jurisdiction and is classified as a rural growth area. There being no further testimony, the public hearing closed at 10:11 p.m. Again, Council member Mason expressed her concerns about the property not being located within the ETJ or in a growth area and felt the property would have to annex before construction and receiving services. On a motion by Council member Spann, seconded by Council member Mason, Council moved to table this matter until the November 15<sup>th</sup> meeting.

VOTE: Aye-All  
Nay-None

### **REQUESTED APPEARANCE - MANGIA BUONA**

Town Attorney Sam Furgiuele opened the public hearing at 10:14 p.m. to hear sworn testimony from Barry Nicholson and Public Utilities Director Rick Miller regarding a request for a 4,114 gallons per day water allocation within the Boone Mall. Mr. Barry Nicholson of the HL Libby Corporation, owner/operator of the Boone Mall, testified about plans to open an Italian restaurant, Mangia Buona, at the rear of the mall. The restaurant plans to have 94-indoor seats and 45-outdoor seats. Council member Pepin asked if the mall is set up on separate meters. Public Utilities Director Rick Miller said yes and there would be a small fee credit applied to the restaurant. There being no further testimony, the public hearing closed at 10:21 p.m. On a motion by Council member Wilcox, seconded by Council member Mason, Council moved to allocate 4,114 gallons per day water from the 2008 water allocation.

VOTE: Aye-All  
Nay-None

## **REQUESTED APPEARANCE - MIKE WISE**

Mr. Mike Wise, President of the Watauga Arts Council, appeared before Council to discuss the outside agency funding contract for fiscal year 2007/2008. Mr. Wise said he was concerned about some of the language of the contract and presented changes he felt would clarify the actual situation the Town has with the Arts Council. Council member Pepin explained at length the meaning and specifics of the contract. On a motion by Council member Brantz, seconded by Council member Mason, Council moved to adopt the following contract (modifications are in ***bold and italics***) and to implement the same changes in next year's contract:

### **STATE OF NORTH CAROLINA COUNTY OF WATAUGA**

#### **FUNDING AGREEMENT**

**THIS FUNDING AGREEMENT** is made this the 21st day of June, 2007, by and between the **Town of Boone**, a North Carolina Municipal Corporation, hereinafter referred to as "**Grantor**" and **Watauga Arts Council**, hereinafter referred to as "**Grantee**," collectively referred to as the "parties."

WITNESSETH:

For and in consideration of a funding allocation by **Grantor** in the amount of **Five thousand two hundred dollars** (\$ 5,200), the parties agree, and **Grantee** certifies, as follows

1. **Grantee** confirms that the United States Internal Revenue Service has determined that it is a non-profit organization described in the Internal Revenue Code or it is an entity of government and is thus entitled to tax exempt status, and that said determination has not been revoked. **Grantee** further confirms that it is a North Carolina non-profit corporation or other legally constituted entity under the laws of North Carolina. Should **Grantee's** corporate status, if any, be revoked by the North Carolina Secretary of State, or should the **Lessee's** non-profit status be revoked by the United States Internal Revenue Service or otherwise, this funding agreement shall immediately terminate and **Grantee** agrees to immediately refund any unexpended funds. **Grantee** agrees to immediately notify **Grantor** if its tax-exempt status or corporate status is revoked, suspended, or modified in any way.
2. **Grantee** will only use this grant for purposes consistent with its tax-exempt status and status as a non-profit organization or corporation.
3. **Grantee** agrees to comply with all local, State and federal laws, ordinances, regulations and rules concerning its operation and use of funds. In particular, and not by way of exclusion, in any and all its actions and activities undertaken pursuant to these funds or funds from any other source, **Grantee** will comply with and hereby certifies its compliance with the Americans with Disabilities Act, as amended, Title VII of the Civil Rights Act of 1964, as amended, the Fair Labor Standards Act, as amended, the Occupational and Health Safety Act, as amended, the North Carolina Employment Security Act, as amended, and the North Carolina Worker's Compensation Act, as amended, to the extent each such law(s) applies (apply) to **Grantee** and/or any of its activities. **Grantee** further commits that it will act in accordance with its duly adopted by-laws and, if relevant, will comply with all laws related to its status as a non-profit North Carolina Corporation. **Grantee** shall provide **Grantor** with its current by-laws, if any, at any time requested by **Grantor**.
4. **Grantee** certifies that, if required, it is in possession of a valid and current solicitation license or permit from the State of North Carolina.
5. **Grantee** will use no funds for purposes of local, state, or legislative advocacy or lobbying, or to attempt to influence the legislative process at the local, State, or federal level.

Likewise, no funds from this grant will be used to carry on any religious or political activities, or to attempt to influence the outcome of any public election.

6. **Grantee** certifies that its use of any funds allocated or paid to it pursuant to this Agreement will be in accordance with its application, its written narrative, and all other representations, whether written or oral, made by it in connection with its request for funding and acceptance of that funding, and all such representations, applications and narrative are specifically incorporated by reference into the terms of this Agreement. **Grantee** agrees that should it not submit information and/or reports requested by the **Grantor** in timely fashion, or should it use the funds allocated or paid in a manner inconsistent with this Agreement, **Grantor** shall have the right, without prior notice, to discontinue any further payment under the Agreement. Copies of the grant application, supporting documents and your written representations, if any, are attached hereto as Attachment "A" and incorporated by reference herein. In addition, the following specific conditions shall apply to this funding allocations (If none, write "none.")  
NONE
7. **Grantee** agrees that it will only spend funds allocated hereunder for programs and/or services and/or expenses which serve a public purpose for the citizens and residents of Boone, North Carolina.
8. **Grantee** agrees that records of all disbursements of these funds will be maintained by **Grantee** for a period of no less than three years, and upon request such books and records will be made available to **Grantor** or its representative for inspection. Further, if **Grantee** receives an audit during the term of this agreement, it will provide **Grantor** with a copy within thirty days of its receipt of such audit.
9. Within ten days of such change, **Grantee** shall notify **Grantor** of any change to its management staff, and at the execution of this Agreement and any time such composition changes, **Grantee** shall advise **Grantor** of the names and addresses of each member of board of directors and officers of the **Grantee**.
10. **Grantee** will notify **Grantor**, in writing, within five days, if any member of **Grantee's** staff is charged with or convicted of any crime involving malfeasance or misfeasance, or honesty in the use or handling of any of **Grantee's** funds, whatever the source, or if **Grantee** itself is accused of any wrongdoing. Should **Grantee** become aware of or suspicious of any embezzlement, malfeasance or misfeasance by an employee, agent, officer, director or other person connected with **Grantee**, of any of **Grantee's** funds, whether from this grant or elsewhere, whatever the source, it hereby commits that it will promptly report to and notify the appropriate law enforcement agency of such act, omission or suspicion.
11. These funds are allocated for the fiscal year of July 1, 2007 through June 30, 2008. **Grantee** agrees that all funds received pursuant hereto will be fully expended within the fiscal year in question, and that any funds not so expended will be returned to **Grantor** at the end of the fiscal year, unless the Boone Town Council specifically authorizes the expenditure of any portion of the funds in a subsequent fiscal year.
12. **Grantee** does hereby release, acquit and forever discharge **Grantor**, its agents, officers and employees, from any claims, demands, costs, loss of services, expenses, compensation, liabilities and obligations, suits at law or equity, including claims or suits for contribution and/or indemnity of whatever nature and all consequential damages resulting from or on account of its use of any funds allocated or for which the **Grantor** is the conduit, and it hereby agrees to indemnify and defend **Grantor** for any claims brought as a result of its use of its use or misuse of said funds.
13. **Grantee** confirms that it maintains sufficient liability insurance coverage to satisfactorily compensate any person for injury to a person or property caused by the operation of **Grantee's** programs and/or services. Upon request, **Grantee** will provide **Grantor** with

proof of insurance. **Grantee** agrees that should **Grantor** determine, in its sole discretion, that **Grantee** does not maintain adequate liability insurance to satisfactorily protect itself and its participants, **Grantee** will increase its coverage to a level determined by **Grantor**.

14. Should this Agreement involve the use by **Grantee** of any personal or real property belonging to **Grantor**, unless expressly assumed by **Grantor**, **Grantee** shall be responsible for all maintenance and repairs necessary to maintain the property and any improvements in safe, sanitary and good condition. **Grantor** shall retain the right to make any such repairs itself. **Grantee** agrees to notify **Grantor**, *promptly and* in writing, of any and all conditions in need of correction or repair. **Grantee** further agrees that no repairs will be undertaken, and no person or entity will be hired to undertake any repairs.
15. If this Agreement involves the use of any real or personal property belonging to **Grantor**, **Grantee** agrees to neither make nor arrange for any alterations to the property unless expressly authorized by **Grantor**.
16. If this agreement involves the use of any personal or real property belonging to **Grantor**, said property may only be used by **Grantee** in accordance with the terms of this grant, for the purposes of this grant alone for services *that are of benefit* to the citizens and residents of the Town of Boone.
17. **Grantee** shall not assign its rights or responsibilities under this Agreement to any other entity or person. **Grantee** accepts and will retain full control of the grant's disposition and full responsibility for compliance with its terms and conditions.
18. If **Grantee** defaults in the performance of any of the conditions or its responsibilities under this Agreement, all of which are deemed material, **Grantor** may terminate this Agreement and demand repayment of any funds which have not yet been expended under this Agreement, as well as any and all funds which have been improperly expended.
19. Except for the representations made by **Grantee** in its application for these funds, and **Grantee's** other representations which are incorporated into the terms of this Agreement, this Agreement contains all of the terms and conditions agreed to by the **Grantor** and the **Grantee** concerning this allocation. There shall be no modification of this Agreement unless the modification is in writing and signed by both parties.
20. This Agreement is to be read by **Grantee** in a complementary way with any other contract(s), agreement(s), lease(s) and/or license(s) between the Town of Boone and **Grantee** or any persons connected with **Grantee's** operation and/or administration, or administering this Agreement on behalf of **Grantee**. No provision of this Agreement shall be interpreted as superceding any responsibility placed on **Grantee** or such persons by such other agreement, contract, lease and/or license, but instead shall be read with such other contract(s), agreement(s), lease(s) and/or license(s) to accomplish the intents and purposes of this agreement and such other contract(s), agreement(s), lease(s) and/or license(s).
21. **Grantor's** failure to strictly enforce its rights under this Agreement shall not constitute a waiver of such rights with respect to any violation of the Agreement by **Grantee**, and the parties agree that this provision may itself not be waived by the conduct of the parties.
22. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, and venue of any dispute between the parties shall be in Watauga County, North Carolina.
23. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested; to the following addresses:

If to **Lessor**, to:           Greg Young

Town Manager  
Town of Boone  
P.O. Drawer 192  
Boone, NC 28607

If to Lessee, to: Cherry Johnson  
Executive Director  
Watauga Arts Council  
PO Box 366 DTS  
Boone NC 28607

24. Between January 1, 2008 and January 15, 2008, and at such other times as may be requested, **Grantee** will provide a narrative progress report to **Grantor**, in such form as may be requested by **Grantor**, and including information concerning the current state of grant revenue and expenditures using grant funds, and further explaining its use of these funds, how they have serve a public purpose for the citizens and residents of the Town of Boone, and including such other information as may be required by **Grantor**. In addition, **Grantee** commits, upon request of **Grantor**, to appear before the Boone Council to provide such information as may be requested concerning, among other things, its operation and its use of grant funds.
25. Between July 1 and July 15 following the close of the grant period, the **Grantee** shall submit a final report, in such form as may be requested by **Grantor**, and including information concerning its use of grant revenue and expenditures using grant funds, and further explaining how the grant funds have served a public purpose for the citizens and residents of the Town of Boone, and including such other information as may be required by **Grantor**.

**IN WITNESS WHEREOF**, the **Grantor** and **Grantee** have executed this Agreement in duplicate originals, and agree to all of the terms and conditions set forth above, the day and year first above written. The person signing below on behalf of the **Grantee** certifies his or her authority to execute this agreement on behalf of the **Grantee** and further certifies that **Grantee's** governing board has reviewed and accepted the conditions of the grant of these funds.

VOTE:Aye-All  
Nay-None

### **PUBLIC COMMENT**

Mr. Dan Burke of the Mountain Alliance Board of Directors thanked Council for funding the Mountain Alliance program.

### **CLOSED SESSION**

On a motion by Council member Wilcox, seconded by Council member Spann, Council moved to enter Closed Session at 10:45 p.m. pursuant to NCGS 143-318.11a)3)5)6) in order to hear legal advice on the Alpha-Gamma purchase order, an update on Howard Street property acquisition, property acquisition-water, discussion of Balestrieri litigation settlement offer, an update on ASU violations, discussion of Templeton request for privileged attorney time records, personnel matters and possible criminal charges related to assault on a Town employee.

VOTE:Aye-All  
Nay-None

On a motion by Council member Spann, seconded by Council member Wilcox, Council moved to exit Closed Session at 1:01 a.m.

VOTE:Aye-All  
Nay-None

**POSSIBLE ACTION FOLLOWING CLOSED SESSION**

On a motion by Council member Mason, seconded by Council member Wilcox, Council moved to cancel the purchase order with Alpha-Gamma and to issue a purchase to At-Net Services, Incorporated (2<sup>nd</sup> lowest bidder) for the voice-over IP system.

VOTE: Aye-All  
Nay-None

**ADJOURNMENT**

On a motion by Council member Wilcox, seconded by Council member Spann, Council moved to adjourn at 1:03 a.m.

VOTE: Aye-All  
Nay-None

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Town Clerk

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Mayor