

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
FEBRUARY 21, 2008**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, February 21, 2008, 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, Liz Aycock, and Stephen Phillips. Staff members present were Town Manager Greg Young, Town Clerk Freida Van Allen, 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, Development Services Director John Spear, and Human Resources Director Peri Moretz. Town Attorney Sam Furgiuele was also present.

TENTATIVE AGENDA ADOPTION

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

Addition to Consent Agenda - Adoption of Ordinance #05-01 amendments.
Deletion of Item 5.F. - Transportation Committee presentation.
Addition of Item 5.L. - Scheduling of Special Meetings.

On 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

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

Minutes: January 9, 2008 - Special Meeting.
 January 10, 2008 - Special Meeting.
 January 17, 2008 - Regular Meeting.
 January 25, 2008 - Special Meeting.
 January 28, 2008 - Special Meeting.

Tax Releases & Refunds: December 2007.

**Tax Releases
December, 2007**

Taxpayer	Year	Amount	Description
DCFS TRUST	2007	61.46	INCORRECT BILL
KAENZIG, REBECCA	2007	15.07	TURN IN TAG
GENERAL ELECTRIC CREDIT CORP	2007	329.52	EQUIPMENT NO LONGER IN TOB
RICHARDSON, KARA LEIGH	2007	3.87	MOVED TO ANOTHER STATE
CHEEK, CRYSTAL DAWN PEARSON, BILLY CORWIN	2007	14.12	SOLD VEHICLE
ADAMS, DAISY A TRUSTEE DAISY A ADAMS LIVING TRUST	2007	57.35	CLERICAL ERROR
ALIMANESTIANO MULTINATIONAL MARKETING OAKWOOD MOTEL	2007	280.83	ALL SOLD BUT 10000.00 OF VALUE
SHEAR WIZARD SKIN & HAIR STUDIO	2007	10.18	BUSINESS CLOSED BEFORE 01/01/07
BOONE TAXI ZACHARY WHITE	2007	2.44	NOT IN BUSINESS 01/01/07
TOTAL		\$774.84	

**MSD TAX RELEASES
DECEMBER, 2007**

Taxpayer	Year	Amount	Description
SHEAR WIZARD SKIN & HAIR STUDIO	2007	5.78	BUSINESS CLOSED BEFORE 01/01/07
		\$5.78	

**Tax Refunds
December, 2007**

Taxpayer	Year	Amount	Description
MCMILLAN, BRADLEY WILLIAM	2006	5.89	TURN IN TAG
Total		\$5.89	

Approval of Agreement: Carolina West Wireless Lease Agreement.

STATE OF NORTH CAROLINA

LEASE AGREEMENT

COUNTY OF WATAUGA

THIS LEASE AGREEMENT is made this the **21st** day of **February**, 2008, by and between the **Town of Boone**, hereinafter referred to as "**Lessor**" and **North Carolina RSA 3 Cellular Telephone Company, Inc., d/b/a/ Carolina West Wireless**, a NC corporation, hereinafter referred to as "**Lessee**".

1. **Leased Premises.** The **Lessor** hereby leases to the **Lessee** the telecommunications equipment room on the 2nd floor of the **Lessor's** Public Works Department located at 321 East King Street, Boone, NC 28607. The **Lessor** shall allow the **Lessee** 24 hours - 7 days a week access to the leased premises. Only employees, technicians, or subcontractors of the **Lessee** shall be given access to the leased premises.

2. **Term.** The term of this Lease shall be **three years**, commencing on **February 1, 2008**.

3. **Rent.** The rent for the above described premises shall be **\$4,813.00** for the first year, and shall be due upon execution of this lease agreement. The annual rent shall increase each year by 5%, and shall be due on the first day of each subsequent year.

4. **Cellular Phones.** The **Lessee** shall provide the **Lessor** with free phones and phone service for thirty-two (32) cellular phones identified by service phone numbers set forth on **Exhibit "A"** attached hereto and made a part hereof.

5. **Repairs.** The **Lessee** shall make all repairs necessary to keep the leased premises in good condition. This includes repairs for any and all damage caused by the **Lessee**, its agents and/or invitees. However, this does not include repairs for ordinary wear and tear of the premises, which shall be the responsibility

and obligation of the **Lessor**. The **Lessee** shall maintain its equipment in accordance with good engineering practices, and in a manner which will not interfere with the **Lessor's** normal governmental operations. Upon vacation of the leased premises, the **Lessee** shall surrender the leased space in the building and on the rooftop in substantially the same and in as good a condition as when this lease commenced, except for ordinary wear and tear.

6. **Assignment or Subletting.** The **Lessee** shall not assign nor sublease the leased premises without the prior written consent of the **Lessor** .

7. **Alterations.** The **Lessee** may erect antennas, without the use of a tower, on the rooftop of said building, and shall be responsible for the installation, maintenance and repair of said antennas. A "tower" for the purposes of this agreement shall be defined as any structure over fifteen feet in height. The **Lessee** shall be responsible for repairing any damage it causes to the roof of the **Lessor's** building. The **Lessee** may place communication equipment in the leased premises and shall be responsible for the installation, maintenance and repair of said equipment. The **Lessee** shall be solely responsible for the cost of the installation, maintenance and repair of the antennas and equipment. The **Lessee** shall not make any other alterations, additions or improvements to the above described premises without the prior written consent of the **Lessor**. All equipment installed by the **Lessee** shall remain the property of the **Lessee**.

8. **Utilities.** The **Lessor** shall be responsible for paying the water, sewer and electric utilities. The **Lessor** shall provide heating and air conditioning at no expense to the **Lessee**.

9. **Insurance.** The **Lessee** shall be responsible for providing and maintaining insurance coverage, in the minimum amount of \$2,000,000 per occurrence, against loss, destruction, or other damage to all its personal property located on the premises, and providing liability coverage protecting both **Lessee**

and **Lessor** arising from personal injury or property damage caused by **Lessee's** use of the premises. The **Lessor** shall provide and maintain insurance coverage against loss, theft, destruction or damage to the building structure, but shall not be responsible for any theft of property contained within the leased premises.

10. **Destruction of Premises.** If said premises are destroyed by fire or other cause, this Lease shall be terminated.

11. **Security Deposit.** A security deposit shall not be required.

12. **Inspection of Premises.** The **Lessor** may enter the premises at any reasonable time upon giving prior notice for the purpose of inspecting said premises.

13. **Use of Property.** The **Lessee** shall not use or knowingly permit any part of the leased premises to be used for any purpose which violates any law.

14. **Default.** If the **Lessee** defaults in the payment of rent or in the performance of any of the conditions of this Lease, the **Lessor** may give the **Lessee** written notice of default. If the **Lessee** does not cure any default within ten (10) days after the receipt of notice thereof, the **Lessor** may terminate this Lease. On the date specified in the notice, this Lease shall terminate and the **Lessee** shall at once quit and surrender the premises to the **Lessor**. If this Lease is terminated by the **Lessor**, it may thereafter resume possession of the premises by any lawful means and remove the **Lessee** and any other occupants and their property.

15. **Indemnity.** The **Lessee** shall indemnify and hold harmless the **Lessor** from any and all claims, actions, damages and liability associated with personal injury and/or damage to property arising out of any occurrence in, upon or at the leased premises, or associated with any act or omission of the **Lessee**, its agents, employees or invitees. In the event that the **Lessor** is made a party to any litigation brought against the **Lessee** or by reason of the **Lessee's** use or

occupancy of the leased premises, the **Lessee** shall defend, protect and hold harmless the **Lessor** from any and all liability that may result therefrom.

16. **Modification of Lease.** This Lease Agreement contains all of the terms and conditions agreed to by the **Lessor** and the **Lessee** concerning the Lease of the above described premises. There are no oral terms or conditions agreed to by the parties hereto which are not contained in this written agreement. There shall be no modification of this Lease Agreement unless the modification is in writing and signed by both parties.

17. **Termination of Lease.** Either party may terminate this Lease by providing ninety (90) days prior written notice. If the **Lessee** terminates this lease prior to the end of the lease term, the **Lessee** shall forfeit any lease payment made. If the **Lessor** terminates this lease prior to the end of the lease term, the **Lessor** shall refund to the **Lessee** a prorated portion of any lease payment made, based upon application of a factor with the number of days of possession during the payment period, as the numerator, and the total number of days for full payment period at the denominator, multiplied by the amount of the full rental payment made. At the termination of this Lease, **Lessee** shall not remove any property from the premises without advance notice and permission from **Lessor**. Following its vacation of the premises, should **Lessee** leave any property on the premises, it shall be deemed abandoned, and **Lessor** shall have the right to dispose of the property as it sees fit, at the expense of **Lessee**.

18. **Property Taxes.** The **Lessee** shall be responsible for paying the property taxes, if any, on its personal property.

19. **Right to Reentry.** **Lessee** shall be responsible for obtaining, at its sole expense, all permits, licenses and other permissions which may be necessary for any action or pursuit undertaken by **Lessee**. **Lessor** reserves, for itself, its agents, employees and assigns, the right to reenter the property to inspect,

maintain and repair its property on the premises, and for such other purposes as may be reasonably necessary to discharge its responsibilities to protect the health, safety and welfare of the citizens of Boone.

19. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of North Carolina. All provisions of this agreement are material to this Agreement.

IN WITNESS WHEREOF, the **Lessor** and **Lessee** have executed this Lease Agreement in duplicate originals, and agree to all of the terms and conditions set forth above, the day and year first above written.

Town of Boone, Lessor

Loretta Clawson, Mayor

ATTEST:

Freida Van Allen, Town Clerk

**North Carolina RSA 3 Cellular Telephone Company, Inc.,
d/b/a/ Carolina West Wireless, Lessee**

_____(SEAL)

Adoption of Code Amendment: Chapter 92-Fire Prevention. Various
sections updated to comply with new state fire code.

Adoption of Lease Agreement: Donald Mack Brown.

DONALD D. BROWN - TOWN OF BOONE LEASE

LEASE AGREEMENT

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

This Lease Agreement, made and entered into this 1st day of February, 2008, by and between Mack Donald Brown, Jr., of Watauga County, North Carolina, party of the first part, hereinafter called Lessor, and Town of Boone, a body politic, organized and existing under and by virtue of the laws of the State of North Carolina, party of the second part, hereinafter called Lessee;

WITNESSETH:

That for and in consideration of the rents hereinafter reserved, the covenants, stipulations, and agreements herein contained, the Lessors do hereby demise and lease unto the Lessee, and the Lessee does hereby hire and rent from the Lessors, the following described property, lying and being in Boone Township, Watauga County, North Carolina: Being a 1.004 acre tract of land lying on the north side of Tracy Circle and being a portion of the Council Grove Subdivision.

For a term of five (5) years beginning on the 1st day of February 2008, and ending on the last day of January 2013. The increase of the annual rent will be changed to an additional \$250.00 per year.

The terms of this lease: Rental shall be as follows:

- From February 1, 2008 to January 31, 2009 the sum of \$7,500.00
- From February 1, 2009 to January 31, 2010 the sum of \$7,750.00
- From February 1, 2010 to January 31, 2011 the sum of \$8,000.00
- From February 1, 2011 to January 31, 2012 the sum of \$8,250.00
- From February 1, 2012 to January 31, 2013 the sum of \$8,500.00

The Lessee covenants with the Lessors, their heirs, executors, administrators, and assigns, as follows:

1. The Lessee shall pay a cash rental for said property as follows: said rent to be due and payable on the 1st day of February of each year and during the term of this lease.
2. That Lessee shall have the right to assign or sublease the premises.
3. The Lessee shall hold Lessor harmless from any and all claims or causes of action arising out of the Lessee's or their assigns, use of the lease premises.
4. That if the Lessee shall default in the payment of rent or in the performance of any of the conditions of this lease, the Lessor shall give the Lessee written notice of such default, and if Lessee does not cure said default within ten (10) days after the giving of such notice, the Lessor may terminate this lease without further notice.
5. Either party may terminate this lease by providing ninety (90) days prior written notice. If the Lessee terminate this lease prior to the end of the lease term, the Lessee shall forfeit any lease payment made. If the Lessor terminates this lease propr to the end of the lease term, the Lessor shall refund to the Lessee a prorated portion of any lease payment made, based upon application of a factor with the number of days of possession during the payment period, as the numerator, and the total number of days for full payment period as the denominator, multiplied by

the amount of the full rental payment made. At the termination of this lease, Lessee shall not remove any property from the premises without advance notice and permission from Lessor. Following its vacation of the premises, should Lessee leave any property on the premises, it shall be deemed abandoned, and Lessor shall have the right to dispose of the property as it sees fit, at the expense of Lessee.

This lease shall be governed and constructed in accordance with the laws of the State of North Carolina.

That the Lessee shall use said premises well and will keep the same in a good condition at all times and will never use the same for illegal purposes, and the Lessee shall return said premises to the Lessor, his heirs, executors, administrators, and assigns, at the expiration of said lease in as good a condition as when the Lessee received the same, reasonable wear and tear excepted.

That said Lessee shall have the exclusive use and occupancy of said premises so long as the Lessee complies with the terms of this lease, or until the same shall be terminated by mutual agreement between the parties.

IN WITNESS THEREOF, the parties hereto have hereunto set their hands and affixed their seals, the day and year first above written.

LESSOR: _____ LESSEE:
_____ Mack Donald Brown, Jr.
Mayor Loretta Clawson

ATTEST:
_____ Town Clerk

Adoption of Ordinance Amendments: Ordinance 05-01.

ORDINANCE 05-01

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

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

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

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

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

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

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

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

1. To the extent feasible and during the term of this Resolution, the Town shall allocate its remaining water usage gallons, ~~estimated at the time of adoption as 150,000 gallons,~~ evenly in yearly increments **of 50,000 gallons** for a **four** ~~six~~ year period beginning January 1, 2004, **2008**, ~~with the first two years of allocation available in calendar year 2005,~~ and **along with** any unused allocation from a prior calendar year made available in the following calendar year. **In addition, through and including December 31, 2010, the Town shall reserve an allocation of 10,000 gallons per day from its available water supply for possible allocation to existing vacant lots within the corporate limits of the Town.** Any approval of water service in a particular calendar year shall ordinarily be attributed to the available allocation for that same calendar year; however, the Town Council may designate that a particular approval of water

service shall be attributed to the available allocation from any year within the term of this resolution, but the periods of time established in paragraph 5 herein for the expiration of rights shall be measured from the date of the Town Council's approval. (Amended 6/27/05)

2. **Beginning November 2008, and no less than annually thereafter, the Town shall review actual water usage records to determine whether changes should be made to the allocation allotments for subsequent years.** The Council may adjust ~~the~~ any yearly allocation based on actual usage as it can be determined and/or new information concerning remaining capacity.
- 2.3. Within the aforesaid limits, the Town of Boone shall ordinarily provide water service to future customers within the corporate limits on a first-come, first served, basis. The water usage predicted as to each application shall be determined by multiplying the usage predicted by the North Carolina Discharge Rate (NCDRS) Schedule by 60%. (Amended 6/27/05) Any requests for water service which involve predicted usage, as thus calculated, of over 3,000 gallons per day shall only be approved upon action, by majority vote, of the Boone Town Council acting in its *quasi* judicial capacity (Amended 6/27/05). Likewise, in each calendar year in which the Town has allocated two-thirds (2/3) of the water allotted for that year, all subsequent requests for water connection for which there is a predicted usage of more than five hundred (500) gallons per day must be approved by the Boone Town Council, without regard to the predicted usage resulting from the granting of the request (Amended 6/27/05). In determining the desirability of approving a connection for water service, the Council shall consider the following:
 - a. Any factor which may make the predicted actual use different from the NCDRS predicted use;
 - b. The amount of water usage in gallons per day previously approved during the calendar year;
 - c. The amount of water usage in gallons per day predicted to be used by the applicant, ordinarily with small requests preferred over large requests;
 - d. Whether in its opinion the application is for a land use which is consistent with the Town's adopted policies concerning growth and development; and
 - e. Such other factors as may be identified by the Town Council in its deliberations which either suggest that a particular project promotes or undermines the public health or safety, or the general welfare of the Town.
- 3.4. During the term of this Resolution, ordinarily only requests for service connections to property which is in the corporate limits will be granted. An applicant whose property is partly or wholly outside the Town limits may petition the Town for annexation, and if the property is annexed, in accordance with the requirements of North Carolina General Statutes and the Town of Boone's

ordinances, water services may be extended to such property, in accordance with the provisions of this Resolution.

- 4.5. During the term of this Resolution, no service extensions into the secondary pressure zone shall be considered for approval unless the requesting property was located inside the Boone corporate limits on or before March 8, 2007 and applicant is willing to adhere to Town of Boone secondary pressure zone specifications. These specifications include but are not limited to, eight-inch minimum pipe diameter; booster pumping stations shall be an EFI design with fire pumping capabilities; minimum 100,000 gallon welded joint steel storage tank, pressure protection is provided for each individual water service, telemetry systems shall be Dataflow Systems radio telemetry and shall be compatible with existing Town of Boone system, and proposed extension does not exceed 3,620 feet in elevation. (Amended 3/15/07) A connection to an existing water main in a secondary pressure zone may be considered where the connection is within the corporate limits as they exist as of the date of the resolution, and where such connection creates no negative impact on the Town's distribution system, allows adequate pressure to be maintained as may be necessary to comply with the requirements of the Boone Fire Department applicable fire codes, results in no additional costs to the Town, and otherwise complies with the requirements of the Town of Boone Water and Sewer Code for connection to the Town's water system. For purposes of this paragraph, a "connection" is defined as the linking of pipes serving a single dwelling unit to an existing water main. For purposes of this paragraph, an "extension" refers to the continuation of a water main beyond its currently existing limits.

- 5.6. Any applicant granted the right to connect to the Town's water distribution system, without regard to the calendar year to which the applicant's predicted water usage is attributed, must obtain all needed development permits within one year of the approval by the Town Council or Public Utilities Department of the water application, or said approval will expire and the allocated water usage shall return into the overall water census for redistribution (Amended 6/27/05). Upon subsequent action by the Boone Town Council, the approval of a water application may be extended for a second year from the date of the initial approval, whether by the Town Council or staff of the Public Utilities Department, upon payment by the applicant of a non-refundable availability fee in the amount of the normal availability fee established by the Town of Boone Water and Sewer Code for use(s) of the type proposed (Amended 6/27/05). Previously approved requests which have not been connected shall likewise expire within one year of enactment of this ordinance. However, they, too, may be extended for an additional period (Amended 2/16/06) upon payment by the approved applicant of a non-refundable availability fee in the amount of the normal availability fee established by the Town of Boone Water and Sewer Code for use(s) of the type proposed. If approved, the additional period shall be no less than one year, but in the case where development rights are vested through the issuance of a zoning permit, special use permit, or the approval of a conditional zoning district, the

additional period may be extended and approved for a longer period, so that the resulting water rights and the approved development rights simultaneously expire. (Amended 2/16/06) Previously approved requests which have not been connected shall likewise expire within one year of enactment of this ordinance. However, they, too, may be extended for an additional period (Amended 2/16/06) upon payment by the approved applicant of a non-refundable availability fee in the amount of the normal availability fee established by the Town of Boone Water and Sewer Code for use(s) of the type proposed. Without regard to the foregoing, should any applicant whose development project requires a special use permit or zoning permit allow the special use permit or zoning permit to expire, the applicant's water rights will also immediately expire. Likewise, should any applicant whose development project acquires a building permit allow the building permit to expire, the applicant's water rights will also immediately expire. (Amended 3/15/07)

- 6.7.** For purposes of this Ordinance, the term "development permits", as referred to in paragraph 5 above, shall mean the following:
- a. In the case of applicants for water service for a minor subdivision, the minor subdivision plat approval and recording of the approved plat with the Watauga County Register of Deeds, and any associated zoning and grading compliance certificates;
 - b. In the case of applicants for water service for a major subdivision, a special use permit, and associated zoning and grading compliance certificates;
 - c. In the case of commercial development projects, all permits required for the physical development of the land, plus those permits necessary for the building. These may include some or all of the following: special use permits, zoning permits and building permits (Amended 12/15/05).
- 7.8.** Whenever the Town Council approves an application for water service to either a proposed minor or major residential subdivision, the Director of Public Utilities shall subtract an amount of water from the available water calculations which reflects the projected amount of water which will be consumed when all residences in the proposed subdivision are fully constructed (Amended 12/15/05).
- 8.9.** During the term of this Resolution, Section 3-10(G) of the Town of Boone Water and Sewer Code, which prohibits the connection into the Town's sanitary sewer system of the discharge from private water systems, other than the system of Appalachian State University, is suspended as to those applicants whose application for both water and sewer connections cannot be granted because the request for water service has been denied by the action of the Town Council in applying this Resolution. However, in order to be granted the right to connect to the sanitary sewer system, along with such other conditions as may be placed

upon the applicant in accordance with the Town of Boone Water and Sewer Code, the applicant must agree to connect into the Town's water system, should the Town later request that such a connection be made, and the applicant must sign a statement of commitment to that effect, which will remain on file with the Town's Public Utilities Department. (Amended 7/21/05)

- ~~9.10.~~ Any requests for water services from the Town must comply with all requirements of the Town of Boone Water and Sewer Code which are not superceded by this Resolution (Amended 12/15/05).
- ~~10.11.~~ The Town of Boone Water and Sewer Department shall provide a monthly report to the Boone Town Council concerning the number and predicted volume of each water connection request approved during the term of this Resolution.
- ~~11.12.~~ This resolution shall expire December 31, 2009, unless specifically extended by action of the Boone Town Council, and it may be modified by the Boone Town Council upon majority vote of the Council.
- ~~12.13.~~ This policy shall become effective upon the adoption of this Resolution.

Amended and effective this the 27th day of June, 2005.

Amended and effective this the 21st day of July, 2005.

Amended and effective this the 15th day of December, 2005.

Amended and effective this the 16th day of February, 2006.

Amended and effective this the 15th day of March, 2007.

Amended and effective this the 20th day of December, 2007.

Amended and effective this the 21st day of February, 2008.

VOTE: Aye - All

Nay - None

ADOPTION OF ZONING AMENDMENT

Council member Mason requested that she be excused from discussion and voting on Case 20080031 due to a conflict of interest. On a motion by Council member Brantz, seconded by Council member Pepin, Council moved to excuse Council member Lynne Mason from voting on Case 2008031 since she is the Hospitality House Executive Director.

VOTE: Aye-All

Nay-None

Case 2008031 - Shelter Housing Text Amendment - Town Council initiated amendment to UDO Section 165 - Table of Permissible Uses to allow housing for the homeless in the M-1 zoning district. Development Services Director John Spear said the Planning Commission recommended approval of the text amendment. Ms. Lynne Mason, speaking as a citizen and Director of the Hospitality House, said the text amendment was prepared in consultation with the Development Services Department and that the site was chosen because of its close proximity to the Hunger Coalition and the Caldwell Community College Campus. Ms. Mason also noted that the site is located adjacent to other affordable housing neighborhoods. Ms. Mason said the shelter will provide eleven housing units. Ms. Mason commented that the community would not need a homeless shelter if it provided enough affordable housing. Ms. Mason said the purpose of the Hospitality House is to help people get "back on their feet" and to get back into permanent housing. Mr. Kent Tarbuton, Chair of the new Facility Committee for the Hospitality House, said the current facility is very well managed and that the house truly does help people get "back on their feet." Mr. Tarbuton said the lot is level and the right location since residents will be able to utilize AppalCART and other adjacent non-profits in the community. Ms. Kay Borkowski, Hospitality House board member, said the board searched long and hard for another site and felt this site was ideal.

On a motion by Council member Brantz, seconded by Council member Aycock, Council moved that he application is consistent with all objectives and policies for growth and development of the 2006 Boone Comprehensive Plan.

VOTE:Aye-All
Nay-None
Excused-1 (Mason)

On a motion by Council member Brantz, seconded by Council member Aycock, Council moved that he Town Council finds that this application is both reasonable and in the public interest for the following reasons: The shelter will strengthen community well-being for all citizens, will advance affordable housing in a convenient location, and will establish a facility to accommodate the homeless in Boone.

VOTE:Aye-All
Nay-None
Excused-1 (Mason)

On a motion by Council member Brantz, seconded by Council member Aycock, Council moved that the following zoning text amendment be approved:

PROPOSED TEXT Section 15 [a] Basic Definitions and Interpretations

~~Temporary~~ *Shelter for Homeless*: A shelter for occupants without means of obtaining shelter with a minimum of two (2) non-occupant managers. Such shelter must be established and managed by a non-profit organization.

PROPOSED TEXT (Use 1.430) Section 165 Table of Permissible Uses

Uses Description	R-1	R-1A	R-R	R-2	R-3	R-4	R-A	MH	O/I	B-1	B-2	B-3	U-1	M-1
1.0 RESIDENTIAL														
1.100 Single-Family Residences														
1.110 Single-family detached, one dwelling unit per lot.														
1.111 Site built or modular structures	Z	Z	Z	Z	Z	Z	Z		Z	Z	Z	Z	Z	
1.112 Class "A" mobile home			Z	Z	Z	Z	Z	Z		Z	Z	Z	Z	
1.113 Class "B" mobile home						Z	Z	Z						
1.120 Single-family detached, more than one dwelling unit per lot														
1.121 Site built and modular structures					ZS	ZS								
1.122 Class A or B mobile homes (manufactured home park)								Z						
1.200 Two-family Residences														
1.210 Single family residence with accessory apartment	Z	Z	Z	Z	Z	Z	Z		Z	Z	Z	Z	Z	
1.220 Duplex				Z	Z	Z	Z		Z	Z	Z	Z	Z	
1.300 Multi-Family Residences														
1.310 Multi-family conversion					ZS	ZS			ZS	ZS	ZS	ZS	Z	
1.320 Multi-family town homes					ZS	ZS			ZS	ZS	ZS	ZS	Z	
1.330 Multi-family apartments					ZS				ZS	ZS	ZS	ZS	Z	
1.400 Homes emphasizing special services, treatment or supervision														
1.410 Homes for handicapped or infirm	Z	Z	Z	Z	Z	Z	Z		Z	Z	Z	Z	Z	
1.420 Nursing care, intermediate care homes			S	S	Z	S	S		Z		Z	Z	Z	
1.430 Shelter for Homeless (short term, long term or permanent housing)					S				S	S	S	S	Z	Z
1.440 Halfway houses					S				S	S	S	S	Z	

VOTE:Aye-All
Nay-None
Excused-1 (Mason)

Case 2008032 - U-1/R-1 Interior Setback Text - Town Council initiated amendments to UDO Section 205 - Building Setback requirements to reduce the interior setback to zero when B-1 and U-1 zoning districts adjoin. Development Services Director John Spear said the Planning Commission recommended approval of the text amendment. Council briefly discussed setbacks in various districts. On a motion by Council member Phillips, seconded by Council member Brantz, Council moved that the application is consistent with all objectives and policies for growth and development of the 2006 Boone Comprehensive Plan.

VOTE:Aye-All
Nay-None

On a motion by Council member Phillips, seconded by Council member Brantz, Council moved that the Town Council finds that this application is both reasonable and in the public interest for the following reasons: The text amendment promotes smart growth and a dense, compact downtown area.

VOTE:Aye-All
Nay-None

On a motion by Council member Phillips, seconded by Council member Brantz, Council moved that the following zoning text amendment be approved:

Section 205. Building Setback Requirements

[c] In the B-1 district, the minimum street setback distance shall not apply to a canopy or roof overhang supports as long as such supports do not go beyond the edge of the sidewalk. When the B-1 district abuts a district other than a ~~B-1~~ **U-1**, the lot boundary setback shall be fifteen (15) feet.

[h] In the U-1 district, the minimum interior setback shall be increased to 14 feet only when development is proposed adjacent to R-1 zoned property. Additional setback provisions in Section 205 [e] do not apply in the U-1 district. **The minimum interior setback is zero feet only when development is proposed adjacent to B-1 zoned property.**

VOTE:Aye-All

Nay-None

COMMUNITY APPEARANCE COMMISSION & TREE BOARD ALTERNATE APPOINTMENTS

On a motion by Council member Aycock, seconded by Council member Mason, Council moved to appoint William Scantlin to a position on the Community Appearance Commission. His term will expire June 30, 2009.

VOTE: Aye-All
Nay-None

On a motion by Council member Aycock, seconded by Council member Brantz, Council moved to appoint Michael Kirk to an alternate position on the Tree Board. His term will expire June 30, 2008.

VOTE: Aye-All
Nay-None

PLANNING COMMISSION APPOINTMENT

On a motion by Council member Brantz, seconded by Council member Mason, Council moved to appoint David Gryder to a position on the Planning Commission. His term will expire June 30, 2009.

VOTE: Aye-All
Nay-None

GREENWAY COMMITTEE APPOINTMENT

On a motion by Council member Pepin, seconded by Council member Phillips, Council moved to appoint Thomas Albert Normand to a position on the Greenway Committee.

VOTE: Aye-All
Nay-None

REQUEST PERMISSION TO APPLY FOR GRANT - 2008 COMMUNITY WASTE REDUCTION & RECYCLING GRANT

Public Services Director Blake Brown requested permission to apply for a grant in the amount of \$17,063.10 to the North Carolina Division of Pollution Prevention. Mr. Brown explained that by joining with Watauga County the Town will be able to purchase more recycling and compost bins at a lower price. Mr. Brown said the Town's match on

the grant will be \$893.40 and the grant award should be announced by the end of March. Mr. Brown said the Town will receive about 500 recycling bins and about 72 compost bins. On a motion by Council member Pepin, seconded by Council member Mason, Council moved to grant permission to apply for the 2008 Community Waste Reduction and Recycling Grant.

VOTE:Aye-All
Nay-None

CABLE TV COMMITTEE NOMINATIONS

No nominations were made at this time.

WATAUGA RECREATION COMMISSION NOMINATIONS

On a motion by Council member Mason, seconded by Council member Aycock, Council moved to nominate Joe Robinson and David Koppenhaver to the Watauga County Recreation Commission. The nominations will be forwarded to the Watauga County Board of Commissioners for appointment.

VOTE:Aye-All
Nay-None

PERMISSION TO PARTNER WITH NCNR - GRANT FOR STREAM BANK & STORM WATER IMPROVEMENTS

Mr. George Santucci, Executive Director for the National Committee of the New River, appeared before Council to request partnership for a grant application for funding to stabilize stream banks and make storm water improvements along Kraut Creek. Mr. Santucci said most of the improvements along the creek will beautify Jimmy Smith Park. Mr. Santucci said matching funds are NOT needed at this time; however, he indicated that a commitment letter signed by the Mayor is needed. On a motion by Council member Mason, seconded by Council member Pepin, Council moved to partner with the National Committee for the New River to pursue funding for stream bank and storm water improvements.

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 January. The Water Treatment Plant recorded a maximum daily demand of 2.180 million gallons on Thursday, January 31, 2008, and the average daily demand was 1.921 million gallons for the entire month. The total amount of water treated was 59.55 million gallons. This is a 1.5 percent increase over the total amount of water treated in January 2007. Attached you will find a chart that depicts a comparison of the maximum daily demands for the month of December since 1995. Included is an average trend line that illustrates the extent the maximum daily demand has increased during the last thirteen years.

Originally the Boone Town Council appropriated for 25,000 gallons per day usage for allocation to customers over a five year period. In November 2007 the Water Use Committee met and after careful review of predicted vs actual water usage numbers, recommended to Council that the allocation amount be increased to 50,000 gallons per day until 2012.

At the last Town Council meeting, Council chose to allocate 6,750 gallons per day from the 2008 allotment and 4,225 gallons per day from the 2008 allotment to one project. Since then, the Public Utilities Department has approved 1 project that subtracted 176 gallons per day from the 2008 allotment. The total water allotment remaining for the year 2008 has broken the sixty percent threshold and all future water service requests in excess of 500 gallons per day 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 12,962 gallons per day remaining for allotment in 2008 and 37,675 gallons remaining for 2009.

Staff Approved	Date	Projected Usage	2008		Projected Usage	Remaining Gallons
			Council Approved	Date		
						50000
			Mega Builders	11/15/2007	14400	35600
			Anne Henning	11/15/2007	795	34805
			Katrina Callio	11/15/2007	90	34715
Brad Moretz	1/2/2008	916				33799
Park Street Subdivision	1/2/2008	810				32989
Bob Buyce	1/2/2008	2043				30946
James Bates	1/2/2008	270				30676
Beth Postlewait	1/2/2008	270				30406
John Winkler	1/2/2008	252				30154
Pat Carroll	1/2/2008	936				29218
WWWC LLC	1/2/2008	2682				26536

Carroll Companies	1/2/2008	2730				23806
WWWC LLC	1/2/2008	936				22870
WWWC LLC	1/2/2008	2982				19888
			Oscorp Investment	1/717/2008	6750	13138
Salvation Army	1/7/2008	176				12962
			2009			
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						50000
			Leanord Soloman	11/15/2007	8100	41900
			Oscorp Investment	1/717/2008	4225	37675

JONES HOUSE CENTENNIAL CELEBRATION FUNDING REQUEST

Council member Brantz presented the following update on the Jones House Centennial Celebration:

2008 Jones House Centennial Celebration Schedule and Proposed Budget

I. Rationale

The Jones House is Boone's community cultural center. Built in 1908 as a private residence by Dr. John Walter Jones, this 9-room Colonial Revival/Queen Anne style home was purchased by the Town of Boone in 1983. Since then this structure has been renovated, placed on the National Register of Historic Places, and developed into a destination for over 10,000 citizens and visitors each year. The Jones House hosts monthly art shows, exhibitions, receptions, weekly music events, and numerous community gatherings. It reminds us daily of our rich cultural heritage even as it enriches the cultural and civic life of our community. Remembering and celebrating our rich heritage and unique mountain identity is especially important at a time of rapid growth and change in Boone. It helps us as a community to understand where we came from and how we reached this point. With this in mind, the Jones House Advisory Board developed a Centennial Celebration program that will help Boone recall, record, and reflect on the last century of life in our community.

Below we list Centennial Celebration events and a breakdown of expenses. We request special funding from the Town of Boone to implement this Centennial Celebration.

II. Schedule of Events (with Costs)

- A. Centennial Celebration Opening Reception: Friday, April 11, 2008, 6:30-9:00 p.m.***

1. Focus: Conversation with Mazie Levenson

2. Budget:

a. Transportation and Hotel for Ms. Levenson	\$150
b. Photo Display Exhibit (Portable display board, photos)	125
c. Refreshments	75
d. Special Centennial Cake	100
e. Invitations, mailings, publicity	45

Total Cost: 495

B. "Tea and Old Times" Friday, June 13, 2008, 6:30-9:00 p.m.

1. Focus: Conversation about Boone's Past with Residents

2. Budget:

a. Invitations to Long-time Residents	\$ 45
b. Refreshments	75

Total Cost 120

C. July 4th Celebration and Concert, Friday, July 4, 2008, 5:30-7:30 p.m.

1. Focus: Presentation of Jones House Brochure and Video

2. Budget:

a. Community Band Concert	\$200
b. Refreshments	125
c. Centennial Cake	100

Total Cost 425

D. Tea and Old times, Friday, August 15, 2008, 6:30-9:00 p.m.

1. Focus: Conversation with Long-time Boone Residents

2. Budget:

a. Invitations and Mailings	\$ 45
b. Refreshments	75

Total Cost 120

E. Jones House Today and Tomorrow, Friday, Oct. 10, 2008, 6:30-9:00 p.m.

**1. Focus: Conversation with Community Leaders about Future Role of
Jones House in Boone's Cultural and Civic Life**

2. Budget:

a. Refreshments	\$ 125
b. Invitations and Mailings	45

<i>c. Centennial Cake</i>	100
<i>Total Cost</i>	<u>\$270</u>

Total Cost for Centennial Celebration Events: \$ 1430

III. Centennial Celebration Expenses: Summary

A. Expenses for Four Events (see above)	\$1430
B. Administrative Expenses	
1. Centennial Celebration Coordinator (Whitney Coe)	2200
<i>Responsibilities:</i>	
a. Planning four Centennial Events	
b. Producing a Jones House Centennial Brochure	
c. Producing a bi-weekly newspaper article on the history of the Jones House	
d. Creating a Permanent Photo Display Board	
e. Developing a Jones House Video	
2. Cost of Producing a Jones House Centennial Brochure	750
3. Publicity Costs	150
4. Centennial Banner	130
5. Video Production Costs	350

Total Centennial Celebration Costs: \$5010

Funds could be appropriated over a two-year period:

<i>Fiscal Year 2007-2008</i>	<i>\$3845</i>
<i>Fiscal Year 2008-2009</i>	<i>1165</i>
	<u><i>\$5010</i></u>

After some discussion regarding the budget allocation, on a motion by Council member Mason, seconded by Council member Brantz, Council moved to approve funding for the Jones House Centennial Celebration from the 2007/2008 budget. The actual budget amendment will be presented at the March meeting.

VOTE: Aye-All
Nay-None

SCHEDULING OF SPECIAL MEETINGS

On a motion by Council member Mason, seconded by Council member Brantz, Council moved to schedule a special meeting for Wednesday, February 27, 2008 at 4:30 p.m. at the Broyhill Inn and Conference Center. Council will meet with ASU officials to begin the master planning process.

VOTE:Aye-All
Nay-None

On a motion by Council member Pepin, seconded by Council member Brantz, Council moved to schedule a special meeting of the Water Study Committee for Monday, March 3, 2008 at 4:00 p.m. in the Council Chambers. The purpose of the meeting is to review proposed changes to Article VII of the Water and Sewer Code.

VOTE:Aye-All
Nay-None

REQUESTED APPEARANCE - MS. NAN CHASE

Ms. Nan Chase, Chair of the Daniel Boone Native Gardens, appeared before Council to request the following assistance:

1. *We are going to request permission to serve beer and wine at supervised events at the gardens, subject to any restrictions the council wishes to discuss.*
2. *Capital improvements at the gardens:*
 - A. *Bathroom facilities do not meet ADA standards, and we wish to be considered in any long-range planning with Horn in the West that involve water and sewer infrastructure improvements, with an eye toward bathroom improvements to bring facilities to ADA standards.*
 - B. *Stone work at entranceway. Currently the pea gravel and flagstone arrangement between our driveway and the front gate does not offer enough stability and safety for many of our older visitors. We would like to request during the current "down" season that the town replace that entryway with the same kind of beautiful stone walkway that was replaced last year within the gardens*
 - C. *Handrailing. We feel that visitors will be safer going from the main garden level to the rockery if there is a handrail, preferably of wrought iron to match the main gates, along one side.*
3. *Lawn mowing services. Currently the town mows at parks and the arboretum all around the DBNG grounds; we have had trouble with our current mowing service keeping up with required tax and insurance paperwork, and request that the town look into the possibility of having DBNG mowing done by the town beginning in 2008.*

Ms. Chase said the gardens have seen increased attendance over the past three years and that over a dozen weddings are scheduled already for 2008. Public Services Director Blake Brown said his maintenance crew of two mows five days a week now and he is unsure about scheduling another site to mow. Mr. Brown suggested having an intern

from Caldwell Community College perform some of the horticulture work; however, he stated that the Town must provide worker's compensation insurance on the intern. Mr. Brown estimated it would cost about \$2,500 to repair the walkway and noted that the fence along the property line needs to be replaced. Council member Mason thanked Ms. Chase for bringing these repairs to the Town's attention and suggested that the Caldwell Community College intern be utilized in other gardens throughout the Town. No other action was taken by Council.

Mayor Clawson declared a break at 7:46 p.m. Council reconvened at 7:57 p.m.

REQUESTED APPEARANCE - MR. ADAM UPCHURCH

Town Attorney Sam Furgiuele opened a public hearing at 7:57 p.m. to hear sworn testimony from Adam Upchurch and Public Utilities Director Rick Miller regarding a water and sewer request to property located off Park Street. Town Attorney Furgiuele reminded Council members that they should review the applicant's request for water and sewer use only. Council member Mason questioned if the number of bedrooms planned has changed. Mr. Upchurch responded that he plans to construct 55 units totaling 165 bedrooms. Mr. Upchurch presented Council with another site drawing showing the layout of the buildings within the Town limits now. Council member Brantz asked how the water will be allocated. Mr. Upchurch requested that 30% of the 24,750 gallons per day, or 7,425 gallons per day, be allocated from 2008 and the remaining 70%, or 17,325 gallons, be allocated from 2009. Council member Mason questioned if the recently adopted Ordinance 05-01 amendments would legally allow this project to connect to the Town's water system. Public Utilities Director Rick Miller responded yes, but that an engineer must certify that a connection into a secondary pressure system would work. There being no further comments, the public hearing closed at 8:06 p.m. Council member Mason commented that she saw no reason to deny the request since the project is entirely in the Town limits now; she also stated that the project will meet a housing need for the community and that the project meets the secondary pressure zone requirements as outlined in Ordinance 05-01. Council member Phillips agreed. Council member Mason then made a motion to grant the water and sewer request, allocating 30% of the water need out of the 2008 allocation and 70% of the water needed out of the 2009 allocation. Council member Pepin seconded.

VOTE: Aye-All

Nay-None

REQUESTED APPEARANCE - JAMUS FLP NO.3

Town Attorney Sam Furgiuele opened the public hearing at 8:10 p.m. to hear sworn testimony from Jim Wooten, Damien Mallett, Susan Owen and Public Utilities Director Rick Miller regarding a water and sewer extension request to Jamus FLP No. 3 and property located off Highway 105. Mr. Jim Wooten reminded Council that water and sewer service was originally allocated to Catacorner Investments and then to Jamus FLP

No. 3 last year. Mr. Wooten testified that Jamus FLP is no longer the applicant but Boone Hotel Five LLC is now the applicant. Mr. Wooten explained that, if the water is reallocated to Jamus FLP, a non-refundable availability fee of \$50,000 will be due to the Town; however, he stated that if the water is allocated to Boone Hotel Five LLC, the applicant will have one year to obtain all the necessary development permits, without having to pay the availability fee. Council member Mason questioned when the project would begin construction. Mr. Wooten said the applicant hopes to request a CU zoning designation at the May, 2008 public hearing, an action which would allow construction to begin sometime in 2009. Council member Mason asked when the water would be needed. Mr. Wooten said in 2009 and 2010. Council member Pepin asked what type of fees have been paid to the Town of Boone. Mr. Wooten said none yet. Council member Mason asked if the water request was the same as the Jamus FLP request of 2007. Public Utilities Director Rick Miller said yes, that the request is for 8,418 gallons per day. Town Attorney Sam Furgiuele questioned Mr. Miller about when the one-year allocation period ends for Jamus FLP. Public Utilities Director Miller said February 29, 2008. Mr. Wooten explained that it has been a lengthy process to work out a franchise with Marriott and that Boone Hotel Five is trying to meet the neighborhood's concerns. Susan Owen of Wintergreen Drive, a neighbor to the proposed project, felt the proposed use is actually the best use of the property. Damien Mallett, a partner with Boone Hotel Five LLC, requested that the water allocation be granted to Boone Hotel Five so that an availability fee will not have to be paid. Council member Mason questioned which entity would make the zoning request in May. Mr. Mallett said probably Boone Hotel Five. Council member Aycock asked if the entire neighborhood is in agreement with the proposed use. Mr. Mallett felt that most of the neighborhood is in agreement with the proposed use. Council discussed at length lighting requirements and whether or not it is legal to allocate to another applicant. There being no further comments, the public hearing closed at 8:38 p.m. Council member Aycock felt that the applicants are not purposely holding the water allocation and have been actively pursuing a franchise and working with the neighborhood. After some discussion, on a motion by Council member Mason, seconded by Council member Pepin, Council moved to grant the water and sewer request and to allocate 8,418 gallons of water per day to Boone Hotel Five LLC out of the 2009 water allocation contingent upon an application being made by Boone Hotel Five LLC after March 1, 2008. The application for Jamus FLP No. 3 will expire on February 29, 2008.

VOTE:Aye-All
Nay-None

PUBLIC COMMENT

Mr. Johnny Wright appeared before Council to make a request to disconnect from the Town's water system. On a motion by Council member Mason, seconded by Council member Aycock, Council moved to amend the agenda to hear the request.

VOTE:Aye-All
Nay-None

REQUESTED APPEARANCE - JOHNNY WRIGHT

Mr. Johnny Wright appeared before Council to request a disconnect from the Town's water system. Mr. Wright explained that he owns a duplex off Snaggy Mountain Road on Stardust Lane. Mr. Wright said since the water comes from a private system, there is no pressure at his duplex. Mr. Wright said he would like to disconnect from that system and dig his own well. Council member Pepin asked Public Utilities Director Rick Miller to explain the situation. Mr. Miller said a private water system was constructed in the 1980's to serve the Snaggy Mountain condos. He noted that the water system was not built to standards and is in a secondary pressure zone. Council member Mason asked where the water mains are located. Mr. Miller said the water mains are at the bottom of Snaggy Mountain Road at Highway 105. Council member Aycock asked if the Town could monitor sewer use with a well. Mr. Miller said yes, that the well could be metered. After little discussion, on a motion by Council member Brantz, seconded by Council member Mason, Council moved to allow Mr. Wright to disconnect from the town's water system, as long as the well is monitored for sewer usage.

VOTE:Aye-All
Nay-None

CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to enter Closed Session at 9:00 p.m. pursuant to NCGS 143-318.11a)3)5) in order to discuss the following matters:

- ASU Violations.
- Howard Street Alley.
- Community Garden Property Lease.
- Property Acquisition:
 - Howard Street
 - Water
 - Downtown Post Office
- Stebbins Counter Proposal.
- Discussion of Elk Motel Sewer Improvements.

VOTE:Aye - All
Nay - None

On a motion by Council member Brantz, seconded by Council member Aycock, Council moved to exit Closed Session at 11:17 p.m.

VOTE:Aye-All
Nay-None

POSSIBLE ACTION FOLLOWING CLOSED SESSION

On a motion by Council member Mason, seconded by Council member Brantz, Council moved to approve the following consent order:

STATE OF NORTH CAROLINA
JUSTICE

IN THE GENERAL COURT OF
SUPERIOR COURT

DIVISION
COUNTY OF WATAUGA
-528

FILE NUMBER 07 - CVS

TOWN OF BOONE,)
Plaintiff,)
)
vs.)
)
)
)
LYLE T. LIGHT and SUSAN E.)
LIGHT,)
Defendants.)

CONSENT ORDER

THIS MATTER HAVING COME BEFORE THE COURT upon the request of the Parties for the Court to accept, as its order, the agreement of the Parties; and Plaintiff having appeared, represented by Samuel F. Furgiuele, Jr., Attorney at Law, and Defendants having appeared, represented by Daniel O. Klinedinst, Attorney at Law; and the parties having represented, through counsel and by their endorsement of this Consent Order, that all issues between them have been resolved, that each party fully understands the terms herein; and each party, voluntarily agreeing to said terms and having been fully informed of the effect of such terms, wishes and hereby requests that these terms be adopted by the Court as its order, without the necessity of the Court making full findings of facts and conclusions of law, the necessity for which is hereby waived; by consent of the parties, the Court makes the following findings of fact and conclusions of law, and adopts the following order:

FINDINGS OF FACT

1. Plaintiff is a municipality created and existing under the laws of North Carolina, located in Watauga County, North Carolina.
2. Defendants Lyle T. Light and Susan E. Light are citizens and residents of North Carolina, and they own that certain real property located at 125

Cherrybrook Drive, Boone, North Carolina 28607, Watauga PIN 2910-08-1627-000 (hereafter, "the Property"). Said property is located within the town limits and the planning jurisdiction of the Town of Boone and is zoned R-1, "Single Family Residential."

3. Pursuant to N.C. Gen. Stat. Chapter 160A, Article 19, Plaintiff has duly adopted an ordinance governing land use within the jurisdictional limits of the Town of Boone. Said ordinance is known as the "Town of Boone Unified Development Ordinance" (hereafter "UDO") and includes provisions controlling the use and occupancy of real property within the planning jurisdiction of the Town.
4. Plaintiff has accused Defendants of using said property in violation of the UDO by asserting that said property was being rented as a boarding house, as that term is defined in the UDO and has asserted that the previously grandfathered use of the property as a duplex in an R-1 zone had been discontinued for a period of 180 days and was thus no longer available, and that Mr. and Ms. Light were repeat violators and were subject to certain civil penalties. All actions involved in this action have taken place in Watauga County, North Carolina.
5. Defendants deny any improper use of the property. Defendants are in the process of selling the property and expect a closing on the sale of the property to be concluded within thirty days of the entry of this order.
6. By their free and voluntary acts, the Parties have reached a resolution of all issues pending before the Court and arising in relation to the use of the property and this action, and they wish for their agreement to be accepted as the Court's order and judgment, concluding this civil action, according to the terms set out herein.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and subject matter of this action.
2. Venue of this action is proper in Watauga County, pursuant to N.C. Gen. Stat. §§1-76, 1-77 and 1-79.
3. The Court has the authority to accept the agreement of the Parties as its order.

WHEREFORE, BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND BY AGREEMENT OF THE PARTIES, IT IS HEREBY ORDERED:

1. Defendants shall henceforth use the property located at 125 Cherrybrook Drive, Boone, North Carolina 28607, Watauga PIN 2910-08-1627-000, in conformity with the Plaintiff's zoning ordinance and the requirements, in particular, of the R-1 zoning district regarding the use of the property; and by their execution of this consent order, they acknowledge that any contrary "grand-fathered" use of the property has now expired, and that the property must be used in conformity with the requirements of the R-1 district, as provided in the Plaintiff's Unified Development Ordinance.
2. Defendants shall close on the sale of the property within thirty days of the entry of this Order, unless a longer time is needed due to unforeseen circumstances and agreed upon by the parties, which the Court empowers the parties to modify this Order by agreeing upon, in writing. Defendants shall provide the closing attorney for the sale of the property with a copy of this Consent Order and shall authorize and instruct the closing attorney to withhold the sum of seven thousand, five hundred and no/100th dollars (\$7,500.00) from the settlement and proceeds of the sale and to pay that amount to Plaintiff through Plaintiff's attorney.
3. Plaintiff's action against Defendants is dismissed, but these terms may be enforced by application to the Court by either party and through the contempt powers of the Court, as well as through its inherent powers.
4. Each party shall bear its own costs and expenses of this action.

VOTE: Aye-All
Nay-None

On a motion by Council member Mason, seconded by Council member Pepin, Council moved to adopt a lease with Walmart for the community garden space, contingent upon the Town Manager and Town Attorney finalizing certain details.

VOTE: Aye-All
Nay-None

On a motion by Council member Pepin, seconded by Council member Aycock, Council moved to schedule a Closed Session on Monday, March 3, 2008 at 5:30 p.m., pursuant to NCGS 143-318.11a)5) to discuss property acquisition - post office.

VOTE: Aye-All
Nay-None

ADJOURNMENT

On a motion by Council member Brantz, seconded by Council member Phillips, Council moved to adjourn at 11:25 p.m.

VOTE: Aye-All
Nay-None

Town Clerk

Mayor