

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
OCTOBER 29, 2008**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Wednesday, October 29, 2008, in the Commissioners Board Room, 814 West King Street. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, Janet Pepin, Liz Aycock, Rennie Brantz, and Stephen Phillips. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Town Clerk Freida Van Allen, Assistant to the Manager Jim Byrne, Fire Chief Reggie Hassler, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, and Development Services Director John Spear.

TENTATIVE AGENDA ADOPTION

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

1. Addition of Item 4.F. - Adoption of First Amendment to Lease and License Agreement with Walmart.
2. Addition of Item 4.G. - Adoption of Rural Center Agreement for ASU Interconnection.
3. Addition of Item 4.H. - Adoption of Resolution - imposing a gross receipts tax on heavy equipment.
4. Deletion of Item 7.C. - Requested Appearance - Buddy Barker.
5. Deletion of Item 8.D. - High County Council of Governments water/sewer request.
6. Deletion of Item 8.E. - Joyce R. Dunbar water/sewer request.
7. Addition of Item 8.G. - Elizabeth Buchanan emergency water request.
8. Addition of Item 8.H. - Joan Robinson emergency water request.
9. Addition of Item 8.I. - Jan Watson emergency water request.
10. Addition of Items to Closed Session:
 - CWWW, LLC donation.
 - Brown property.
 - Nature Conservancy.

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

VOTE: Aye - All
 Nay - None

CONSENT AGENDA ADOPTION

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

Minutes: September 18, 2008 - Regular Meeting.
 September 22, 2008 - Special Meeting.
 September 29, 2008 - Special Meeting.

Tax Releases & Refunds - August & September 2008.

**TAX RELEASES
AUGUST 2008**

Taxpayer	Year	Amount	Description
TUTTLE, TROY ROBERT	2008	17.91	TURN IN TAG
JOLLEY, DEBRA ANN	2008	20.41	ADJ FOR BILL OF SALE

HEFREN, JOHN FRANKLIN	2008	7.36	TURN IN TAG
PRENTICE, WILLIAM MICHAEL	2008	44.88	RESIDENT OF CHATHAM CO
KNIGHT, OSCAR DARRYL	2007	19.77	INCORRECT BILL
TOTAL		110.33	

**TAX REFUNDS
AUGUST 2008**

Taxpayer	Year	Amount	Description
BRIGMAN, HAYNES MICHAEL	2007	8.54	TURN IN TAG
TOTAL		8.54	

**TAX RELEASES
SEPTEMBER 2008**

Taxpayer	Year	Amount	Description
BOONE DRUG & HEALTH CARE AT DEERFIELD	2008	33.23	TURN IN TAG
HARRIS, ELIZABETH	2008	32.44	DOUBLE BILLED
TRIVETTE, GRACE	2008	13.65	INCORRECT VALUE
BROWN, DORAS GREEN	2008	23.41	DOUBLE BILLED
JONES, GARRETT MYRON	2008	259.00	NOT IN TOB
OLLIS, PAUL FRANK	2008	11.84	TURN IN TAG
HUDSON, ALBERT QUINN JR HUDSON, MARY JAYNE	2008	14.80	ADJ FOR INCORRECT VALUE
NEW RIVER LIGHT & POWER	2008	83.29	EXEMPT
KOERSCHNER, WILLIAM F JR	2008	25.73	TURN IN TAG
BROOKSHIRE, RICHARD C BROOKSHIRE, LILLIAN E	2008	34.39	TURN IN TAG
LEARNED, SALLY TARLER	2008	13.43	LIVES IN BURKE CO.
GARLAND, NORMAN EUGENE	2008	8.44	ADJ VALUE
TOYOTA OF BOONE INC.	2008	282.32	RENTALS
MURRAY, HELEN TEMPLETON	2008	36.15	TURN IN TAG
HAGLER, ANTHONY REED	2008	1.30	TURN IN TAG
MAXWELL, JOSETTE LOU	2008	51.32	INCORRECT SITUS

COSMO, ELIZABETH CARMAN COSMO, LEONARD Y	2008	10.36	SOLD VEHICLE
SMITH, PAUL J & MARIE	2008	5.60	SOLD VEHICLE
FARMERS RENTALS & POWER EQUIPMENT	2008	1.11	INCORRECT SITUS
MIXTER, HOWARD PERRY MIXTER, JAN THORWALDSEN	2008	23.47	TURN IN TAG
GRIMES, WILLIAM THOMAS	2008	44.40	NOT IN TOB
GRIMES, WILLIAM THOMAS	2007	75.96	NOT IN TOB
GRIMES, WILLIAM THOMAS	2000	8.36	NOT IN TOB
LYONS, ARCHIE DEAN	2007	20.31	DOUBLE BILL
LYONS, ARCHIE DEAN	2006	12.43	DOUBLE BILL
WHITTINGTON, LEE GARY	2008	18.93	SOLD VEHICLE
WHITTINGTON, LEE GARY	2007	32.23	SOLD VEHICLE
TOTAL		1182.34	

**MSD
SEPTEMBER 2008**

Taxpayer	Year	Amount	Description
FARMERS RENTALS & POWER EQUIPMENT	2008	.63	INCORRECT SITUS
TOTAL		0.63	

Approval of Name Change - Frontier Natural Gas.

**ADOPTION OF CODE AMENDMENT
§113.01 - Definitions**

COMPANY. ~~Frontier Utilities of North Carolina, Inc.,~~ **Frontier Natural Gas**, a North Carolina corporation formed to provide natural gas service in North Carolina, and its successors and assigns.

Adoption of Code Amendment - §30.51(D)(10) Appointments.

**ADOPTION OF CODE AMENDMENT
§30.51(D)(10) - Appointments**

(10) Members of a committee, task force, or advisory body, except for membership on those boards, committees, task forces, or advisory bodies where a particular term of service is specified, are appointed for the duration of the committee, task force, or advisory body. However, if the duration of any committee, task force, or advisory body is indefinite, unless the Town Council specifies a different term of membership, membership will be for three years and may be renewed for one additional three- year term. Unless otherwise specified by the Town Council, no person may serve on such committee, task force, or advisory body for more than six consecutive years but may be reappointed to such committee, task force, or advisory body following a one-year period of non-membership. Unless the Town Council takes specific action to excuse the absences and reappoints a member of a board, committee, task force or advisory body after being informed by the Town Clerk of the member's ~~approval~~ **removal**, the member shall be automatically removed for failure to attend three consecutive meetings or for failure to attend 50% of the meetings within any 12 month period. Absence due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not affect the member's status on the committee, except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced. The Town Clerk shall notify any member who has been removed. In addition, a member of the Town Council may propose removal of a member for any other good cause related to the performance of official duties, but before removal on that basis, the member shall be given an opportunity to appear before the Town Council to address the issues involved.

Adoption of Identity Theft Prevention Program. **(Copy permanently on file in Clerk's Office)**

Adoption of First Amendment to Lease and License Agreement - Walmart. - **EXHIBIT A**

Adoption of Rural Center Agreement - ASU Interconnection.

AGREEMENT

THIS AGREEMENT, entered into this the 21st day of October, 2008, by and between the Town of Boone (hereinafter referred to as "GRANTEE") and the Rural Economic Development Center, Inc. (hereinafter referred to as "CENTER"), a North Carolina non-profit corporation.

WITNESSETH:

THAT, WHEREAS, the CENTER was organized for the purpose of stimulating and supporting economic development in the rural areas of North Carolina; and

WHEREAS, in its efforts to stimulate and encourage Economic Development in the rural areas of North Carolina, the CENTER contracts with academic, public, and private entities for the purpose of engaging in such activities; and

WHEREAS, the CENTER has agreed to contract with the GRANTEE to engage in activities to support projects of the CENTER;

NOW, THEREFORE, in consideration of the mutual promises and such other valuable consideration as shall be set out herein, the parties hereto do mutually agree to the following terms and conditions:

1. Scope of Program. The GRANTEE shall develop, perform, and complete the work set out in Exhibit A (hereinafter referred to as the "Project") and said Project being that work described in a proposal entitled, "Drought CRISIS - Interconnection with Appalachian State University's System" as approved by the CENTER. Additionally, the GRANTEE agrees to the conditions and regulations for the REDC Supplemental Grants Program as set forth in the Memorandum of Understanding (Exhibit A-1).

2. Changes in the Project.

(A) If changes or extra work are requested and authorized in writing by the CENTER, the GRANTEE will be available to furnish, or obtain from others, the services required.

(B) Any work referred to in paragraph 2(a) above shall be the subject of a separate written agreement between the CENTER and the GRANTEE stating the costs and schedule for completing said extra work.

(C) The GRANTEE shall immediately notify the CENTER of any change in conditions or local law, or any other event, which may significantly affect its ability to perform the Project in accordance with the provisions of this paragraph.

3. Term of Agreement. The effective period of this Agreement shall commence on 2/20/2008 and shall terminate on 3/31/2009.

4. Funding.

(A) Subject to the reduction described below, the CENTER grants to the GRANTEE the amount of \$168,000.00, which is the total amount of this agreement for expenditures relating to the Project. In the event that the costs of the project are less than the costs projected in Exhibit A, the grant shall be reduced on a pro rata basis with other project funding.

5. Independent Status of the GRANTEE.

(A) It is agreed between the parties that neither this Agreement nor any provisions hereof shall be deemed to create a partnership or joint venture between the CENTER and the GRANTEE. It is further agreed that except for the rights expressly granted to the CENTER in this Agreement, it shall not have any proprietary rights in the Project.

(B) The parties acknowledge that the GRANTEE is an independent entity. The GRANTEE shall not represent itself as an employee of the CENTER nor is the Agreement intended to be construed so as to make the GRANTEE an employee of the CENTER. The GRANTEE shall not have the ability to bind the CENTER to any agreement for payment of goods or services, nor shall it represent to any person that it has such ability. The GRANTEE shall be responsible for payment of all its expenses, including rent, office expenses and all forms of compensation to employees. The GRANTEE shall provide worker's compensation insurance to the extent required for its operations and shall accept full responsibility for payments of unemployment compensation, social security, income taxes, and any other charges, taxes or payroll deductions required by law in connection with its operations, for itself and its employees who are performing work pursuant to this Agreement. All expenses incurred by the GRANTEE are its sole responsibility, and the CENTER shall not be liable for the payment of any obligations incurred in the performance of the Project.

6. Method of Payment. The sums awarded under this agreement shall be paid to the GRANTEE in accordance with the Schedule of Payments attached hereto as Exhibit B. The payments set forth in Exhibit B will be paid within twenty (20) days upon a requisition for payment from the GRANTEE specifying that it has performed the required work under this Agreement and that it is entitled to receive the amount requisitioned under the terms of this Agreement and clarified further in the Memorandum of Understanding (Exhibit A-1).

7. Obligation of Funds. Funds provided by the CENTER may not be obligated by the GRANTEE prior to the effective date or subsequent to the termination date of this Agreement. All obligations outstanding as of the termination date shall be liquidated within thirty days. Prior approval shall not be required for changes which affect the approved budget unless a budget category is exceeded by five (05) percent of the

CENTER grant amount. Any changes in the approved budget which would result in the addition or deletion of a budget category shall require prior approval from the CENTER.

8. Construction Deadlines. The GRANTEE must have the project under construction within one (01) year of grant award. Failure to meet this condition may result in withdrawal of award.

9. Amendments. Any and all additions, deletions, or other changes in this Agreement shall be effectuated by written amendment, with the written consent of both parties, and said amendments shall be incorporated into this Agreement with the same formalities required of this, the original document.

10. Reports.

(A) The GRANTEE will furnish the CENTER with detailed written progress reports on a quarterly basis or other periods specified in Exhibit C.

(B) The reports referred to in paragraph 9(a) above should describe the progress made by the GRANTEE toward achieving the purpose(s) for which the funds were awarded. This should include the successes and problems encountered during the reporting period.

(C) Failure to submit a required report by the scheduled submission date will result in the withholding of any forthcoming payment until the CENTER is in receipt of the delinquent report.

(D) All funds awarded to the GRANTEE under this Agreement are appropriated by the North Carolina General Assembly. Accordingly, the GRANTEE acknowledges and agrees that it will be subject to the audit and reporting requirements prescribed by N.C.G.S. §159-34, The Local Government and Fiscal Control Act - Annual Independent Audit, Rules, and Regulations. Such audit and reporting requirements may vary depending upon the amount and source of funding received by GRANTEE, and are subject to change from time to time. Upon completion, the GRANTEE agrees to forward to the CENTER one copy of any audited financial statements and accompanying reports generated covering the period that the GRANTEE has an active award contract with the CENTER. In addition to the audit and reporting requirements mandated by the State of North Carolina, the GRANTEE agrees to comply with any requests made by the CENTER to comply with its fiscal monitoring responsibilities.

(E) The GRANTEE agrees that within thirty (30) days after the termination of this Agreement, a Final Report shall be submitted to the CENTER which describes the activities and accomplishments of the Project. The Final Report will include a review of performance and activities over the entire project period and will include a one-page program summary which the CENTER can use for future publication. In that brief summary, the GRANTEE should describe the project, how it is implemented, to what degree the established project objectives were met and the difficulties encountered, what the project changed, and its cost. In addition to accounting for the use of the Project funds during the current fiscal year, the GRANTEE will submit a detailed final financial report by category (i.e., salaries, materials, equipment, etc.) showing all expenditures during the entire Project period and reports the source and amount of all other funds used to support the Project.

(F) The CENTER may request from the GRANTEE certain information which will assist the CENTER with evaluation of the short- and long-range impact of its programs. The GRANTEE recognizes that such request may occur after the termination of this Agreement and agrees, to the extent possible, to provide such information to the CENTER.

11. Project Records.

(A) The GRANTEE shall maintain full, accurate and verifiable financial records, supporting documents, and all other pertinent data for this Project in such a manner as to clearly identify and document the expenditure of the CENTER funds provided under this Agreement separate from accounts for other awards, monetary contributions, or other revenue sources for this Project.

(B) The GRANTEE shall retain all financial records, supporting documents, and all other pertinent records related to the Project for a period of three years from the date of termination of this Agreement. In the event such records are audited, all project records shall be retained beyond the three-year period until any and all audit findings have been resolved.

(C) The GRANTEE agrees to make available to the CENTER, or its designated representative, all of its records which relate to the Project, and agrees to allow the CENTER or said representative to audit, examine and copy any and all data, documents, proceedings, records and notes of activity relating in any way to the Project. Access to these records shall be allowed upon request at any time during normal business hours and as often as the CENTER or said representative may deem necessary.

12. Publications.

(A) Any reports, data, or other information given to, prepared, or assembled by the GRANTEE under the Agreement must contain the following acknowledgment and disclaimer statement: "This material is based upon work supported in whole or part by the Rural Economic Development Center." All materials must also contain the following statement: "Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views and policies of the Rural Economic Development Center."

(B) Except as provided in paragraph 11(a) above, the GRANTEE may publish or arrange for the publication of scientific and technical information resulting from work carried out under this Agreement. The GRANTEE may, with the permission of the CENTER, copyright any books, publications, films or other copyrightable materials developed in the course of or resulting from work under this Agreement.

(C) Projects which are the subject of a press release by the GRANTEE to the news media shall contain an acknowledgment statement that the project is supported by an award from the Rural Economic Development Center.

(D) Upon publication of materials resulting from the work of the project, the GRANTEE shall furnish a minimum of two copies of reprints to the CENTER.

13. Termination. If through any cause the GRANTEE shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or shall violation any of the covenants or stipulations of this Agreement, the CENTER shall thereupon have the right to terminate this Agreement by giving written notice to the GRANTEE of such termination and by specifying the effective date of termination. In such event, the CENTER shall have no responsibility to make additional payments under this contract after the date of termination. No further expenditures shall be made under this Agreement except for such work as shall have already been performed prior to the date of termination and the GRANTEE shall repay all unspent grant funds upon the demand of the CENTER.

14. Liabilities and Loss. The CENTER assumes no liability with respect to accidents, bodily injury, illness, breach of contract or any other damages or loss, or with respect to any claims arising out of any activities undertaken by the GRANTEE under this Agreement, whether with respect to persons or property of the GRANTEE, or third parties. The GRANTEE agrees to obtain insurance or otherwise protect itself or others as it may deem desirable. Further, the GRANTEE agrees to indemnify, defend, and save harmless the CENTER and its officers, agents, and employees against any liability, including costs and expenses and attorneys' fees, for the GRANTEE'S violation of any proprietary right or

right of privacy arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any information published resulting from the work of the Project or based on any libelous or other unlawful matter contained in such information. The GRANTEE also further agrees to indemnify, defend, and save harmless the CENTER and its officers, agents and employees from any and all claims and losses accruing or resulting to any and all subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work, services, materials, or supplies in connection with the Project and the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the GRANTEE or its agents in the performance of the Project and this Agreement.

15. Availability of Funds. It is understood that the CENTER'S obligation to pay any amounts under this Agreement is contingent upon the availability and continuation of funds for such purpose. In the event that funds for this Project shall become unavailable, the CENTER may terminate this Agreement upon thirty (30) days written notice to the GRANTEE. All obligations of the CENTER to make payments under this Agreement shall cease as of the date of such termination.
16. Entire Agreement. This agreement supersedes all prior agreements between the CENTER and the GRANTEE, and expresses their entire understanding with respect to the transactions contemplated herein, and shall not be amended, modified or altered except pursuant to a writing signed by both the GRANTEE and the CENTER.
17. GRANTEE Representations and Warranties. The GRANTEE hereby represents and warrants that:
 - (A) The GRANTEE is duly organized and existing, and, if a corporation, is duly incorporated under the laws of the State of North Carolina.
 - (B) The execution and delivery of this Agreement have been duly authorized by all necessary GRANTEE action and are not in contravention of law nor in contravention of any GRANTEE certificate of authority, by laws or other applicable organizational documents of the GRANTEE, nor the provisions of any indenture agreement or undertaking to which it is a party or by which it is bound.
 - (C) There is no action, suite proceeding, or investigation at law or in equity or before any court, public board or body pending, or to the GRANTEE'S knowledge, threatened against or affecting it, that could or might adversely affect the Project or any of the transactions contemplated by this Agreement or the validity or enforceability of this Agreement or the GRANTEE'S ability to discharge its obligations under this Agreement. If it is subsequently found that an action, suit, proceeding, or investigation did or could threaten or affect the development of the Project, the GRANTEE shall be liable to the CENTER for repayment of the entire amount of the grant and this Agreement may be terminated by the CENTER effective upon notice.
 - (D) The GRANTEE shall at all times preserve its legal existence, except that the GRANTEE may merge or consolidate with or into or sell all or substantially all its assets to any GRANTEE that expressly undertakes, assumes for itself, and agrees in writing to be bound by all of the obligations and undertakings of the GRANTEE contained in this Agreement. If the GRANTEE so merges, consolidates or sells its assets without such an undertaking being provided, the GRANTEE agrees to repay to the CENTER the full amount of sums awarded under this contract.
 - (E) No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Agreement by the GRANTEE or the performance of any of its obligations hereunder, or all such requisite governmental consents or approvals have been obtained. The GRANTEE shall provide the CENTER with evidence of the existence

of any such necessary consents or approvals at the time of the execution of this Agreement.

(F) The GRANTEE is solvent.

18. Special Provisions and Conditions.

(A) Nondiscrimination. The GRANTEE agrees not to discriminate by reason of age, race, religion, color, sex, national origin, or handicap related to the activities of this Agreement.

(B) Findings Property of CENTER. All finished or unfinished documents, data, surveys, studies, drawings, maps, models, photographs, and reports prepared by the GRANTEE related to the project shall, at the option of the CENTER, become the CENTER'S A property.

(C) Conflict of Interest. The GRANTEE certifies that to the best of its knowledge no GRANTEE employee or officer of the GRANTEE has any pecuniary interest in the business of the CENTER or of the Agreement, and that no person associated with the GRANTEE has any interest that would conflict with in any manner with the performance of the Agreement.

(D) Compliance with Laws. The GRANTEE shall at all times observe and comply with all laws, ordinances, and regulation of the State, Federal and Local governments which may in any manner affect the performance of the Agreement.

(E) Non-Assignability. The GRANTEE shall not assign any interest in the Agreement and shall not transfer any interest in the same without prior written consent of the CENTER; provided, however, that claims for money due to the GRANTEE from the CENTER under this Agreement may be assigned to any commercial bank or other financial institution without such approval.

(F) Personnel. The GRANTEE represents that it has, or will secure at its own expense, all personnel required to carry out and perform the scope of services of this Agreement. Such employees shall not be employees of, or have any relationship to any of the members of the CENTER. Such personnel shall be fully qualified and shall be authorized under state and local law to perform such services.

19. Notice. All notices required or permitted to be delivered hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered or when deposited in the United States mails, certified, return receipt requested, first class, postage prepaid and addressed as follows:

If to the CENTER: Attn: Bobby Blowe
Rural Economic Development Center, Inc.
4021 Cary Drive
Raleigh, NC 27610

If to the GRANTEE: Attn: Mr. Jim Byrne
Town of Boone
PO Box 192
Boone, NC 28607

or addressed to such other address or to the attention of such other individual as the CENTER or the GRANTEE shall have specified in a notice delivered pursuant to this subsection.

20. Execution. This Agreement may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and such counterparts, together, shall

constitute one and the same Agreement which shall be sufficiently evidenced by one of such original counterparts.

21. Construction. This Agreement shall be construed and governed by the laws of the State of North Carolina.
22. Acceptance. If you agree to the grant conditions as stated, please return the original contract with your signature in the space provided. This grant may be withdrawn if your acceptance has not been received by the Rural Center within one month from the date the contract is received.

IN WITNESSETH WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Adoption of Resolution - Imposing Gross Receipts Tax on Heavy Equipment.

**A RESOLUTION LEVYING A TAX ON GROSS RECEIPTS DERIVED FROM
RETAIL SHORT-TERM LEASE OR RENTAL OF HEAVY EQUIPMENT**

WHEREAS, the North Carolina General Assembly has ratified Senate Bill 1852, which has been designated as Session Law 2008-144 [the “Act”]; and,

WHEREAS, the Act repealed the property tax on certain heavy equipment leased or rented under retail short-term leases or rentals and authorized municipalities to replace the lost tax revenue through enactment of a local tax on gross receipts derived from the retail short-term lease or rental of that heavy equipment.

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

Section 1. Definitions. In addition to the common meanings of words, the following definitions shall be applicable herein:

- (a) “Customer” shall mean any person that leases or rents heavy equipment on a short-term lease or rental basis.
- (b) “Finance Officer” shall refer to that individual appointed pursuant to (G.S. § 159-24) (the provisions of the municipal charter) to serve as finance officer (or other reasonably descriptive title as provided in G.S. § 159-24) for the Town of Boone and any other person authorized to carry out the duties and functions of such individual.
- (c) “General Statutes” shall refer to the North Carolina General Statutes and any reference to a particular section thereof shall include the same as may be from time to time amended, modified, supplemented, revised, or superseded.
- (d) “Gross receipts” shall mean the amount that is or would be reported as gross receipts on a business’s state income tax return, or on the federal income tax return filed with the state income tax return if the state return does not separately state gross receipts for the most recently completed tax year. Taxes collected hereunder are not subject to the tax herein imposed and are not included in gross receipts.
- (e) “Heavy equipment” shall mean earthmoving, construction, or industrial equipment that is mobile, weights at least 1,500 pounds, and is either:
 - (i) A self-propelled vehicle that is not designed to be driven on a highway; or
 - (ii) Industrial lift equipment, industrial material handling equipment, industrial electrical generation equipment, or a similar piece of industrial equipment.

The term includes an attachment for heavy equipment, regardless of the weight of the attachment.
[G.S. § 160A-215.2(a)(1)]

- (f) “Lease or rental” shall mean a transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. The term does not include any of the following:
 - (i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments.
 - (ii) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100.00) or one percent (1%) of the total required payments.
 - (iii) The providing of tangible property along with an operator for a fixed or indeterminate period of time if the operator is necessary for the equipment to perform as designed. For the purpose of this subparagraph, an operator must do more than maintain, inspect, or set up the tangible personal property.

[G.S. § 105-164.3(17)]

- (g) “Long-term lease or rental” shall mean a lease or rental made under a written agreement to lease or rent property to the same person for a period of at least three hundred sixty-five (365) continuous days. [G.S. § 105-187.1(3)]
- (h) “Person” shall mean any individual, trustee, executor, other fiduciary, corporation, unincorporated association, partnership, sole proprietorship, company, firm, or other legal entity.
- (i) “Short-term lease or rental” shall mean any lease or rental that is not a long-term lease or rental. [G.S. § 160A-215.2(a)(2) and G.S. § 105-187.1(7)]
- (j) “Taxpayer” means any person liable for the taxes imposed by this Resolution.

Section 2. Levy of Tax. A tax is hereby imposed and levied in an amount equal to eight tenths percent (0.8%) of the gross receipts derived from the short-term lease or rental of heavy equipment at retail. This tax on gross receipts is in addition to the privilege taxes authorized by G.S. § 160A-211. [G.S. § 160A-215.2(b)]

Section 3. Collection of the Tax. Every person whose principal business is the short-term lease or rental of heavy equipment at retail shall collect at the time of the lease or rental, or at the time of the payment of the consideration therefor, the tax herein levied. A person is not considered to be in the short-term lease or rental business if the majority of the person’s lease and rental gross receipts are derived from leases and rentals to a person who is a related person as defined under G.S. § 105-163.010. The tax so collected shall be placed in a segregated account, and thereafter remitted to the Finance Officer in accordance with the provisions of this Resolution. The taxpayer shall include a provision in each retail short-term lease or rental agreement, or other documentation evidencing the transaction, stating that the percentage amount enacted by this Resolution of the total lease or rental price, excluding sales tax, is being charged as a tax on gross receipts. The amount of the tax shall be stated separately from the lease or rental and shown separately on the taxpayers’s records. The tax shall be paid by the customer to the taxpayer as trustee for and on account of the Town of

Boone. The taxpayer shall be liable for the collection thereof and for its payment to the Finance Officer and the taxpayer's failure to charge or to collect said tax from the customer shall not affect such liability. [G.S. § 160A-215.2(b)]

- Section 4. Report and Payment of Tax. Taxes levied under this Resolution are due and payable when a return is required to be filed. Every taxpayer shall, within the time specified, submit a return to the Finance Officer on the form prescribed by the Finance Officer. A return must be signed by the taxpayer or the taxpayer's agent. Returns of taxpayers are due to the Finance Officer for each calendar quarter on or before the last day of the month following the end of the quarter in which the tax accrues. As provided in G.S. § 160A-208.1, a return shall not be considered a public record and information contained in a return may be disclosed only in accordance therewith. [G.S. § 160A-215.2(c)]
- Section 5. Taxpayer to Keep Records. The taxpayer shall keep and preserve suitable records of the gross receipts received by such taxpayer in the conduct of business and such other books or accounts as may be necessary to determine the amount of the tax for which such taxpayer is liable under the provisions of this Resolution. It shall be the duty of the taxpayer to keep and preserve for a period of three years all such records of gross receipts and other books and accounts described. All records, books, and accounts herein described shall be open for examination at all reasonable hours during the day by the Finance Officer or the Finance Officer's duly authorized agent.
- Section 6. Tax Collector to Provide Forms. The Finance Officer shall design, prepare, print and make available to all taxpayers operating within the municipal boundaries of the Town of Boone forms and instructions for filing returns to insure a full collection of and an accounting for taxes due. The failure of any taxpayer to obtain or receive forms shall not relieve such taxpayer from the payment of the tax at the time and in the manner provided.
- Section 7. Situs. Gross receipts from the short-term lease or rental of heavy equipment are subject to the tax imposed by this Resolution if the place of business from which the heavy equipment is delivered is located within the municipal boundaries of the Town of Boone. [G.S. § 160A-215.2(b)]
- Section 8. Penalties and Remedies. The provisions with respect to penalties and collection remedies that apply to the payment of sales and use taxes under Article 5 of Chapter 105 of the General Statutes shall be applicable in like manner to the tax authorized to be levied and collected under this Resolution, to the extent that the same are not inconsistent with the provisions hereof. The Finance Officer may exercise any power the Secretary of Revenue may exercise in imposing these penalties and remedies. [G.S. § 160A-215.2(d)]
- Section 9. Severability. If any section, clause, or provision of this Resolution shall be found to be invalid, the validity of the remaining sections, clauses or provisions shall not be affected thereby.
- Section 10. Authority. This Resolution is enacted pursuant to the provisions of G.S. § 160A-215.2.
- Section 11. Effective Date. This Resolution and the taxes thereby levied and imposed shall become effective upon adoption.

ADOPTED this the 29th day of October, 2008.

ATTEST:

Mayor

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 81-83)

VOTE: Aye - All
 Nay - None

PUBLIC HEARING - HAMPTON PROPERTY LLC ANNEXATION

Mayor Clawson opened a public hearing at 6:36 p.m. Development Services Director John Spear said this was an opportunity for the public to offer comment on the proposed annexation. There being no public comment, Mayor Clawson closed the public hearing at 6:36 p.m.

ADOPTION OF ORDINANCE - HAMPTON PROPERTY LLC ANNEXATION

Development Services Director John Spear said this was the third and final step in the annexation process. Mr. Spear noted that the effective date of annexation is December 31, 2008. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to adopt the following ordinance:

Ordinance 08-09

**AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE
TOWN OF BOONE, NORTH CAROLINA
(Hampton Property Annexation)**

WHEREAS, the Town Council has been petitioned under G.S. 160A-31 to annex the area described below; and

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

WHEREAS, the Town Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at Watauga County Administration Building in the Commissioners Board Room at 814 West King Street at 6:30 p.m., October 29, 2008 after due notice by Watauga Democrat on October 13, 2008; and

WHEREAS, the Town Council finds that the petition meets the requirements of G.S. 160A-31;

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

Section 1. By virtue of the authority granted by G.S. 160A-31, the following described territory is hereby annexed and made part of the Town of Boone as of December 31, 2008:

A 0.576 acre tract situated on the western side of NCSR 1516 (Bub Teems Road) approximately 550 feet southerly of its intersection with U.S. Highway 421 and being all of the Hampton Property, LLC land described in Book 1147 of Records at page 451; bounded on the north by remaining property of Hampton Property, LLC (BoR 979, pg. 571), on the east by Bub Teems Road, on the south by Wayne Hampton (BoR 246, pg. 577) and on the west by Connie Barnett (BoR 1127, pg. 440); said 0.576 acres being surveyed by me, Russell C. Shaw, PLS L-2899 and being more particularly described as:

BEGINNING on a ¼ inch rebar found, a common corner of the tract herein described and Connie Barnett in the Hampton Property, LLC line and said rebar being located North 72 degrees 32 minutes 15 seconds East 147.58 feet from a ¾ inch pipe found at a fence post on the eastern side of Hartley Street, the Barnett northwestern corner; THENCE from the beginning and along the line of Hampton Property, LLC, North 72 degrees 38 minutes 55 seconds East, passing a ¾ inch pipe found in a fence line at 74.05 feet, continuing another 19.99 feet for a total distance of 94.04 feet to the western edge of Bub Teems Road; THENCE leaving said line and along the western side of said road the following five calls: 1) South 21 degrees 47 minutes 05 seconds East 32.00 feet; 2) South 20 degrees 55 minutes 05 seconds East 41.34 feet; 3) South 20 degrees 55 minutes 05 seconds East 82.43 feet; 4) South 17 degrees 57 minutes 05 seconds East 74.34 feet; 5) South 10 degrees 30 minutes 05 seconds East 16.99 feet; THENCE leaving said road and along the Wayne Hampton line, South 58 degrees 22 minutes 55 seconds West 19.99 feet to a ¾ inch pipe found; THENCE South 58 degrees 15 minutes 10 seconds West 77.08 feet to a 5/8 inch rebar set, said iron being located North 58 degrees 15 minutes 10 seconds East 11.86 feet from a ¾ inch pipe found; THENCE leaving Wayne Hampton and along the line of Connie Barnett, North 19 degrees 14 minutes 30 seconds West 197.68 feet to a 5/8 inch rebar set; THENCE North 19 degrees 14 minutes 30 seconds West 73.20 feet to the BEGINNING, bearings being relative to the North Carolina Geodetic Survey system, NAD '83 by a tie to adjoining surveys and rounded to the nearest five seconds. All measurements are horizontal.

Section 2. Upon and after December 31, 2008, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the Town of Boone and shall be entitled to the same privileges and benefits as other parts of the Town of Boone. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

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

ATTEST:	
	Mayor
Town Clerk	

(ORDINANCE TO BE TYPED IN BOOK 3, PAGE(S) 360-361)

VOTE: Aye - All
Nay - None

ADOPTION OF RESOLUTION - SET DATE FOR PUBLIC HEARING ON DAVIS ANNEXATION

Development Services Director John Spear said this was the second step in the satellite annexation process. Mr. Spear said the property is located off the Highway 105 bypass and contains .50 acre. On a motion by Council member Brantz, seconded by Council member Pepin, Council moved to adopt the following resolution:

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO NCGS 160A-58.2 (DAVIS ANNEXATION)

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

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

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

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

Section 1. A public hearing on the question of annexation of the non-contiguous area described herein will be held at the Council Chambers on Blowing Rock Road at 6:30 p.m. on November 20, 2008.

Section 2. The area proposed for annexation is described as follows:
A 0.500 acre parcel lying and being in the Brushy Fork Township on the east side of Highway 105 By-pass at the intersection of same with the Lyons Road (NCSR 1106); bounded by said roads and Lon Warren; being a portion of the lands as described in deed book 75 at page 161; north being relative to book of records 189 at page 813 and more fully described as follows:

BEGINNING on a PK nail placed in the eastern right-of-way line of Highway 105 By-Pass (located S03-11-45E 25.81' from the southwest corner of the Lyons House), thence from the BEGINNING and along the right-of-way N42-47-30W 155.58' to a 1/2" rebar placed on the south side of the Lyons Road (NCSR 1106), thence along the south side of same N57-12-30E 100.00' to a point, thence NC88-12-30E 50.00' to a point, thence along the Lyons Road in part and the George Wilson Road in part S62-39-55E 126.05' to a 2.5' iron pipe found, thence with the Warren line (deed book 207 at page 1085) S46-19-20W 54.42' to a 2.5" iron pipe found, then with a new line N72-30-05W 17.43' to 1/2" rebar placed, thence with a new line S46-38-00-W passing within 2.00' of the northwest corner of a apartment building 116.02' to the point and place of beginning.....containing 0.500 of an acre by coordinate geometry as surveyed and shown on plat no. 97-075 dated September 3, 1997 by Hencle J. Matheson RLS L-2561. This land being a portion of that property conveyed to Earl J. Lyons in a Deed recorded with Watauga County Register of Deeds in Book 43, page 439.

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

Mayor

Attest:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S)84)

VOTE: Aye - All
Nay - None

APPROVAL OF COMMITTEE ROSTER - GREENWAY, PARKS & GARDENS COMMITTEE

Public Services Director Blake Brown said the Greenway Committee has restructured its board and is requesting adoption of the new roster. On a motion by Council member Mason, seconded by Council member Aycock, Council moved to adopt the following roster:

GREENWAY, PARKS AND GARDENS COMMITTEE
3-Year Terms Effective July 2008

Mr. Saul Chase, Chair
151 Iris Lane
Boone, NC 28607
Phone: 264-9269 (H)
E-mail: saulchase@bellsouth.net
Appointed: August 25, 2003
Term: July 31, 2010

Mr. Larry Horine
827 Market Hills Drive
Boone, NC 28607
Phone: 264-2556 (H)
E-mail:
Appointed: July 31, 2003
Term: July 31, 2009

Mr. Milton G. Spann (Bunk)
920 Blairmont Drive
Boone, NC 28607
Phone: 264-4331 (H)
E-mail: spannmg@appstate.edu
Appointed: July 31, 2003
Term: July 31, 2010

Mr. Matthew Burns
358 East King Street
Boone, NC 28607
Phone: (704)614-2307 (C)
Email: mb64901@appstate.edu
Appointed: June 21, 2007
Term: July 31, 2009

Ms. Joan Hearn
1741 Blackberry Road
Lenoir, NC 28645
Phone: (828)295-4767
Email: toadz@bellsouth.net
Appointed: January 17, 2008
Term: July 31, 2011

Mr. Tom Normand
1150 Laurel Fork Road
Vilas, NC 28692
Phone: (828)773-5020 (C)
Email: tnormand@boone.net
Appointed: February 21, 2008
Term: July 31, 2010

Mr. Mike Curcio, Vice-Chair
158 Dotson Drive
Boone, NC 28607
Phone: 264-0916 (H)
Email: curciom@appstate.edu
Appointed: July 31, 2003
Term: July 31, 2011

Mr. Dale E. Kirkley
180 Maple Ridge Drive
Boone, NC 28607
Phone: 265-2922 (H)
E-mail: kirkleyde@appstate.edu
Appointed: July 31, 2003
Term: July 31, 2009

Ms. Susan Tumbleston
PO Box 1243
Boone, NC 28607
Phone: 264-7147
Email: mb64901@appstate.edu
Appointed: June 21, 2007
Term: July 31, 2011

Ms. Meghan Baker
PO Box 128
Boone, NC 28607
Phone: (828)264-3061 (O)
Email: megan_baker@ncsu.edu
Appointed: November 15, 2007
Term: July 31, 2009

Mr. Stephen Poulos
523 Schaffer Road
Boone, NC 28607
Phone: (828)963-8494
Email: stephen.poulos@ncmail.net
Appointed: January 17, 2008
Term: July 31, 2011

VOTE: Aye - All
 Nay - None

ANNOUNCEMENT OF VACANT POSITIONS - GREENWAY, PARKS & GARDENS COMMITTEE

Public Services Director Blake Brown announced two vacant positions on the Greenway, Parks & Garden Committee. On a motion by Council member Phillips, seconded by Council member Brantz, Council moved to direct the Clerk to advertise the vacant positions.

VOTE: Aye-All
 Nay-None

TRANSPORTATION COMMITTEE RECOMMENDATION - RECOMMENDATIONS TO NC DOT

Public Services Director Blake Brown reported the following Transportation Committee recommendations:

1. That NCDOT consider the installation of a signalized pedestrian crosswalk at the intersections of Highway 321 and Clement Street, Shadowline Drive, Boone Heights Drive, and a ramp to connect the sidewalk to the Greenway Trail underpass adjacent to the Lowe's Home Improvement property. Mr. Brown explained in the signalized pedestrian crossing system. Council member Mason asked if DOT is using the countdown pedestrian crossing system. Mr. Brown said yes, that DOT is planning to use the countdown system on the new 421 project.
2. That NCDOT grant permission to the Town of Boone to place traffic counters to monitor speed limits in the Kellwood Road area and to send surveys to area residents for input.
3. That NCDOT investigate and consider lowering the speed limit from 45-mph to 35-mph on Highway 421 South from the traffic signal at Bamboo Road to the 35-mph speed limit in conjunction with the construction of the new high school.

On a motion by Council member Brantz, seconded by Council member Aycock, Council moved to approve the Transportation Committee's recommendations.

VOTE: Aye - All
 Nay - None

APPROVAL OF PROJECT - HUNTING HILLS LANE BRIDGE

Public Services Director Blake Brown reported that Town bridges are inspected every two years by the NC Department of Transportation. Mr. Brown reported that the Hunting Hills Drive bridge is in need of underneath repairs. Mr. Brown said his department will repair the bridge and that it will cost about \$12,000. Council member Phillips asked if the bridge must be closed during repairs. Mr. Brown said no, since the repairs are underneath the bridge. On a motion by Council member Pepin, seconded by Council member Brantz, Council moved to authorize the repairs to the Hunting Hills Drive bridge.

VOTE: Aye - All
 Nay - None

ACCEPTANCE OF BID PROPOSAL - RUBBER TIRE LOADER

Public Services Director Blake Brown presented the following bid minutes:

Below are the results of the bid opening held on Monday, October 27, 2008, for a Four-Wheel Rubber Tire Loader:

James River Equipment:

- (1) \$106,650.00 + (tax) \$7,198.88 = **\$113,848.88**
- (2) \$98,740.00 + (tax) \$6,664.95 = **\$105,404.95** (Does not meet specs)

Briggs Construction Equipment:

- (1) \$107,342.00 + (tax) \$7,245.59 = **\$114,587.59**

Carolina CAT:

(1) \$114,995.15 = (tax) \$7,762.17 = **\$125,284.32**

Linder Industrial Machinery Company:

(1) \$99,650.00 + (tax) \$6,726.38 = **\$106,376.38**

In conclusion to the bid opening, I would like to make a recommendation to accept the bid to purchase the Komatsu WA200PZ-6 Four-Wheel Rubber Tire Loader priced at \$106,376.38 (after tax) from Linder Industrial Machinery Company.

Mr. Brown budgeted \$120,000 for the purchase which is more than enough to award the bid to Linder. On a motion by Council member Phillips, seconded by Council member Mason, Council moved to award the bid to Linder Industrial Machinery in the amount of \$106,378.38.

VOTE: Aye - All
 Nay - None

APPROVAL OF BID & CONTRACT - WETLANDS & PARK PROJECT

Assistant to the Manager Jim Byrne presented the following bid minutes:

NC State University
Department of Biological and Agricultural Engineering
Box 7625, North Carolina State University
Raleigh, NC 27695-7625

October 20, 2008

Firm	Bid
Backwater Environmental (Pittsboro, NC)	\$111,400
Insite Development and Design (Hudson, NC)	\$118,600
Carolina Asphalt and Paving (Brown Summit, NC)	\$159,633
Fluvial Solutions (Raleigh, NC)	\$170,142
Vannoy Construction (Jefferson, NC)	\$190,000
J.W. Hampton Company (Boone, NC)	\$233,070

In addition to being the low bidder, Backwater Environmental is the most qualified bidder based on references and the project history provided. Among the bidders, only Backwater Environmental and Fluvial Solutions have constructed stormwater wetlands similar to the proposed design for the Boone Park Stormwater Wetland. Backwater Environmental recently completed a stormwater wetland for the Town of Lenoir that was also designed by North Carolina State University.

The bid proposal received from Backwater Environmental meets all design criteria for the Boone Park Stormwater Wetland. References from designers and managers of recent environmental projects constructed by Backwater Environmental are all positive. Specifically, references are complimentary of Backwater Environmental's quality of work, professionalism, industry knowledge, and flexibility in dealing with unanticipated circumstances. References contacted include (1) Kris Bass, PE, NC State University, (2) Tracy Morris, NC EEP, (3) Todd Miller, NC Coastal Federation, (4) Michael Hanson, PE, Dewberry and Davis, (5) Perry Sugg, NC EEP, (6) Jens Geratz, EcoScience Corporation, and (7) Grant Lewis, Axiom Environmental.

Based on qualifications and references, it is my recommendation as the designer that Backwater Environmental be awarded the contract for construction of the Boone Park Stormwater Wetland.

Justin Church
Extension Associate

Council member Brantz asked if the Town will provide matching funds. Mr. Byrne responded no, that any additional funding will come from the Town's park funds. Council member Mason asked when the work will be complete. Mr. Byrne said February 2009. On a motion by Council member Aycock, seconded by Council member Brantz, Council moved to award the bid to Backwater Environmental in the amount of \$111,400.

VOTE: Aye - All
 Nay - None

ADOPTION OF RESOLUTION - TO APPLY FOR GRANT FOR THE WINKLERS CREEK SEDIMENT REMOVAL PROJECT

Assistant to the Manager Jim Byrne requested permission to apply for a \$500,000 grant from the Rural Center. Mr. Byrne said, if awarded, a CDBG grant received in the amount of \$600,000 will provide the matching funds. Mr. Byrne said he did not expect any funds to be expended from the Town. Mr. Byrne said all funds awarded will be used to remove sediment behind the Winkler's Creek Dam. Mr. Byrne explained that the dam is not holding at capacity because of the sediment behind the dam. Council member Pepin felt it is important to look at all options while pursuing the water intake project. Council member Mason asked if there is any way to stop the sediment from settling behind the dam. Public Utilities Director Rick Miller said no, that the dam has been in use since 1982 and there has been major flooding since that time. On a motion by Council member Mason, seconded by Council member Phillips, Council moved to adopt the following resolution:

RESOLUTION

WHEREAS, in the summer of 2007, the North Carolina General Assembly included a \$100 million appropriation to the North Carolina Rural Economic Development Center in the FY2007-2009 state budget for the purpose of making grants to rural communities in need of water and wastewater infrastructure improvements; and

WHEREAS, the Town of Boone has need for and intends to construct or rehabilitate a publicly-owned treatment works or an alternate wastewater system, for wastewater collection systems or for water supply and distribution systems, project described as remove sediment behind the Winkler's Creek dam raw water intake; and

WHEREAS, the Town of Boone intends to request grant assistance from the Supplemental Grants Program for the project;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BOONE:

That the Town of Boone will arrange financing for all remaining costs of the project, if approved for a grant.

That the Town of Boone will provide for efficient operation and maintenance of the project on completion of construction thereof.

That Mayor Loretta Clawson, and successors so titled, are hereby authorized to execute and file an application on behalf of the Town of Boone with the NCREDC (Rural Center) for a grant to assist in the construction of the project described.

That Mayor Loretta Clawson, and successors so titled, are hereby authorized and directed to furnish such information as the Rural Center may request in connection with such application or the project; to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

That the Town of Boone has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to the grants pertaining thereto.

ADOPTED this the 29th day of October, 2008.

ATTEST:

Mayor

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 85)

VOTE: Aye - All
 Nay - None

ADOPTION OF RESOLUTION - TO APPLY FOR GRANT FOR WATER & SEWER CIP PLAN

Assistant to the Town Manager Jim Byrne requested permission to apply for a \$40,000 grant from the Rural Center. Mr. Byrne said the grant will be used to prepare a Capital Improvements Plan for the Water and Sewer department for the next decade. Mr. Byrne said a local match is required but that he is unsure of the amount at this time. The match will be included in next year's budget. On a motion by Council member Phillips, seconded by Council member Mason, Council moved to adopt the following resolution:

RESOLUTION

WHEREAS, in the summer of 2008, the North Carolina General Assembly included a \$50 million appropriation to the North Carolina Rural Economic Development Center in the FY2007-2009 state budget for the purpose of making grants to rural communities in need of water and wastewater infrastructure improvements; and

WHEREAS, the Town of Boone has need for and intends to construct or rehabilitate a publicly-owned treatment works or an alternate wastewater system, for wastewater collection systems or for water supply and distribution systems, project described as a Water and Sewer Capital Improvement Plan; and

WHEREAS, the Town of Boone intends to request grant assistance from the Planning Grants Program for the project;

NOW, THEREFORE, BE IT RESOLVED, BY THE TOWN COUNCIL OF THE TOWN OF BOONE

That the Town of Boone will arrange financing for all remaining costs of the project, if approved for a grant.

That the Town of Boone will provide for efficient operation and maintenance of the project on completion of construction thereof.

That the Town of Boone, and successors so titled, are hereby authorized to execute and file an application on behalf of the Town of Boone with the NCREDC (Rural Center) for a grant to assist in the construction of the project described above.

That Mayor Loretta Clawson, and successors so titled, are hereby authorized and directed to furnish such information as the Rural Center may request in connection with such application or the project; to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

That the Town of Boone has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to the grants pertaining thereto.

ADOPTED this the 29th day of October, 2008.

ATTEST:

Mayor

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 86)

VOTE: Aye - All
 Nay - None

APPOINTMENT OF CABLE TV COMMITTEE MEMBERS

On a motion by Council member Aycock, seconded by Council member Phillips, Council moved to appoint Patricia Sperry to the Cable TV Advisory Committee. Her term will expire 5/30/11.

VOTE: Aye - All
 Nay - None

MONTHLY WATER USE STATUS REPORT

Public Utilities Director Rick Miller presented the following status report:

As requested by Town Council, staff and I have compiled the following information concerning water use for the month of September. The Water Treatment Plant recorded a maximum daily demand of 2.140 million gallons on Wednesday, September 3, 2008. The maximum daily demand for September 2007 was 2.02 million gallons. The average daily demand for the entire month was 1.844 million gallons. The total amount of water treated was 55.31 million gallons. This is a 6.8 percent decrease over the total amount of water treated in September 2007. Attached you will find a chart that depicts a comparison of the monthly amounts treated at the Water Treatment Facility since 2003.

At the last Town Council meeting, Council chose to allocate 10,112 gallons per day from the 2008 allotment for two projects, 12,064 gallons per day from the 2009 allotment for three projects, and 18,480 gallons per day from the 2010 allotment for two projects. Since the last Town Council meeting one water allocation has expired and was added back into the 2008 allotment. This allowed for the Public Utilities Department to approve three projects that subtracted 565 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 665 gallons per day remaining for allotment in 2008, 2,298 gallons remaining for 2009 and 24,893 gallons remaining for 2010.

As of today's date The NC Drought Management Advisory Council has Watauga County categorized at "Severe Drought" status.

			2008			
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Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						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	1/17/2008	6750	13138
Salvation Army	1/7/2008	176				12962
			Adam Upchurch	2/21/2008	7452	5510
			Jamus FLP	2/16/2006	4209	9719
			Jamus FLP	2/16/2006	4209	13928
Thomas McGowan	1/24/2008	90				13838
Phillip Cresman	2/8/2008	30				13808
John Winkler	2/11/2008	30				13778
Den-Mac	3/4/2008	15				13763
			John Winkler	3/20/2008	3450	10313
			Michael Brown	3/20/2008	2400	7913
Boone Drug	3/27/2008	162				7751
			Warren Shepherd	4/17/2008	30	7721
			Hollar & Greene	4/17/2008	360	7361
Ethan Anderson	4/30/2008	150				7211
			Brent Davis	5/15/2008	60	7151
			High Country COG	5/15/2008	465	6686

William Scantlin	5/6/2008	150				6536
Templeton Properties	5/6/2008	135				6401
APE Inc.	5/8/2008	150				6251
Lee Bryant	5/21/2008	12				6239
			James Hartley	6/19/2008	270	5969
Greg Simmons	6/13/2008	270				5699
University Nissan	7/2/2008	450				5249
Blue Ridge Ear	7/2/2008	15				5234
			Alliance Bible Fellowship	7/17/2008	1050	4184
Boone Drug Inc	7/14/2008	60				4124
			Philip Starks LLC	8/21/2008	2700	1424
			Two Rivers School	8/21/2008	102	1322
Grace Academy	8/8/2008	210				1112
			Cambridge Venture	9/20/2007	9000	10112
			Cambridge Venture	9/18/2008	9900	212
			Jason Kellogg	9/18/2008	212	0
			Brent Bingham	10/18/2007	1230	1230

High Country Council	10/28/2008	385				845
Joyce Dunbar	10/28/2008	90				755
Gwen Parsons	10/28/2008	90				665
			2009			
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						50000
			Leanord Soloman	11/15/2007	8100	41900
			Oscorp Investment	1/17/2008	4225	37675
			Adam Upchurch	2/21/2008	20350	17325
			Boone Five LLC	2/21/2008	8418	8907
			Charisma Partners	4/17/2008	4176	4731
			Harris Teeter	6/19/2008	635	4096
			Jason Kellogg	9/18/2008	748	3348
Pat Carroll	1/2/2008	936				4284
WWWC LLC	1/2/2008	2682				6966
Carroll Companies	1/2/2008	2730				9696
WWWC LLC	1/2/2008	936				10632
WWWC LLC	1/2/2008	2982				13614
			John Winkler	9/18/2008	10266	3348
			Jack Pepper	9/18/2008	1050	2298
			2010			
Staff Approved	Date	Projected Usage	Council Approved	Date	Projected Usage	Remaining Gallons
						50000

		Hospitality House	4/17/2008	4629	45371
		Wal Mart	6/19/2008	1998	43373
		Cambridge Venture	9/18/2008	15300	28073
		John Winkler	9/18/2008	3180	24893

APPROVAL OF BUDGET AMENDMENTS

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

DESCRIPTION	ACCOUNT #	TO:	FROM:
CAPITAL OUTLAY-US POST OFFICE (KING STREET)	010-411-000-575022	\$1,252,445.00	
TRANSFER FROM TOWN FACILITIES CAPITAL RESERVE	010-000-000-498017		(\$1,252,445.00)
MAINTENANCE & REPAIR-VEHICLES (POLICE)	010-500-300-525301	\$1,283.00	
MISCELLANEOUS REVENUE-GF	010-000-000-489990		(\$1,283.00)
MAINTENANCE & REPAIR-VEHICLES (POLICE)	010-500-300-525301	\$165.00	
MISCELLANEOUS REVENUE-GF	010-000-000-489990		(\$165.00)
MAINTENANCE & REPAIR-BRIDGES (STREET)	010-600-401-525205	\$12,000.00	
APPROPRIATED FUND BALANCE-GENERAL FUND	010-000-000-499900		(\$12,000.00)
MAINTENANCE-POWELL BILL	010-600-403-525402	\$13,215.00	
PAVING & RESURFACING-POWELL BILL	010-600-403-577401	\$27,545.00	
APPROPRIATED FUND BALANCE-GENERAL FUND	010-000-000-499900		(\$40,760.00)
STATE OF NORTH CAROLINA-POWELL BILL	010-000-000-442100	\$13,215.00	
MAINTENANCE - POWELL BILL	010-600-403-525402		(\$13,215.00)

VOTE: Aye - All
 Nay - None

REQUESTED APPEARANCES - KENDALL MCDEVITT

Mayor Clawson said Ms. McDevitt is requesting that a Council member be appointed to the ASU Town/Gown Committee. On a motion by Council member Brantz, seconded by Council member Aycock, Council moved to appoint Stephen Phillips to the ASU Town/Gown Committee.

VOTE: Aye-All
 Nay-None

WATER & SEWER REQUEST - KELVIN GRyder

Town Attorney Sam Furgiuele reopened a public hearing at 7:15 p.m. to hear sworn testimony from Mark White, Development Services Director John Spear, and Public Utilities Director Rick Miller concerning a request for sewer service to property located at the Deerfield Meadows Business Park. Mr. Mark White testified that he met with Development Services Director John Spear to discuss the implications of constructing the Presbyterian Church under an R-A zoning classification. Mr. White said the height requirement of 35' will not be feasible for the roof-line or a steeple and that the church can only construct to meet the floor-area ratio requirement. Mr. White pointed out that the church is not requesting any additional services from the Town and hopes the Town will grant the sewer- only request. Mr. White said the church is willing to install an 8" line if the cost does not exceed \$203,722. Council member Phillips asked if the new church will be close to the creek. Mr. White answered that the two-acres closest to the creek is not useable and will be used as a walking trail. Council member Aycock asked if the easements have been secured. Mr. White said yes. Council member Aycock then asked if the church will connect to Town water if it is made available. Mr. White said yes. Council member Mason asked if the church is willing to comply with the Town's stormwater management and floodplain ordinances. Mr. White said he did not think it will be a problem to comply with those Town ordinances. Council member Mason asked if the church still plans to follow the County's watershed regulations. Mr. White said yes. Council member Phillips asked if the property owners granting the easements plan to connect to the sewerline. Mr. White said the property is used as a Christmas tree field at this time. Council member Mason asked if the sewerline could be extended farther. Public Utilities Director Rick Miller said yes, but not farther than Camp Rock Road because a pump station will be required. Council member Mason asked for ordinance clarification. Mr. Miller said if the Town wishes to install a 12" line the Town may contribute the difference between the cost of an 8" to a 12" line. Council member Mason asked Development Services Director John Spear to summarize his discussions with church officials. Development Services Director John Spear testified that after reviewing different zonings in the area, he concluded that most are R-A. Mr. Spear said R-A zoning does limit certain elements such as height. Mr. Spear pointed out there is no difference between the County and Town's floodplain regulations. Council member Brantz asked if there is a process the Town can use for land-use management in the area. Mr. Spear said yes that the Town can expand its ETJ in the area if the County Commissioners grant approval. Council member Mason asked if other intensity regulations are problematic. Mr. Spear said he was unsure since they did not discuss the church specifically. Council member Phillips asked if this area is in the Town's growth strategy area. Mr. Spear said no, that it is considered a rural area. Council member Mason asked about the number of stories in the proposed church construction. Mr. White said there will be no more than two stories. Council member Pepin asked about what level of LEED certification will be obtained. Mr. White said the construction will be in between certain levels, in that construction will exceed in some aspects and is too restrictive in others. Mr. White said church officials want to be environmentally responsible in the design and construction. After discussing watershed regulations at length, Town Attorney Sam Furgiuele closed the public hearing at 7:51 p.m. Council member Pepin said she had many reservations about granting the request because there are too many question marks. Council member Brantz felt Council is closer to reaching a middle-ground decision. Council member Phillips felt that a sewer line is better than a septic system. Council member Aycock agreed with Council member Phillips and felt it is good to have a sewerline in the area for future development. Council member Mason said she is struggling with the request because Council is developing policy based upon individual requests. Council member Mason suggested that if Council wants to proceed with approving the request, the Town should have some protections. Council member Mason pointed out that the Town has spent a fortune on the development of a land-use plan and that the Council should follow it. Council member Pepin said Council needs to review its own policies before granting the request, in that there is no hardship in this case. Council member Phillips felt that the Town should have included this area in the ETJ before now. Council member Brantz summarized that life is not always addressed by policy and that the Town should acknowledge that this is a special circumstance. Council member Brantz felt that having a church in a community is a good and valuable investment. Council member Mason reiterated that if the Town extends utilities in the area, land-use planning should be included. As a matter of protocol, on a motion by Council member Brantz, seconded by Council member Phillips, Council moved to deny the water request.

VOTE: Aye-All

Nay-None

On a motion by Council member Brantz, seconded by Council member Aycock, Council moved to grant the sewer only request with the following conditions:

1. The sewerline installed will be an 8" line with all costs associated with the extension being paid by the applicant.
2. The Town's floodplain and stormwater management requirements must be met.

VOTE: Aye-4(Aycock, Brantz, Mason, Phillips)
Nay-1(Pepin)

Mayor Clawson declared a break at 8:07 p.m. Council reconvened at 8:07 p.m.

REQUESTED APPEARANCES - TUESDAE RICE

Ms. Tusedae Rice, Executive Director for the Downtown Boone Development Association, finalized the year-end report from the DBDA. Ms. Rice said the public-art projects that have been initiated by the DBDA are a very good stimulus for the community and economy.

WATER & SEWER REQUEST - WATAUGA COUNTY SCHOOLS

Town Attorney Sam Furgiuele opened a public hearing at 8:31 p.m. to hear sworn testimony from Watauga High construction teacher Ronnie Storie and Development Services Director John Spear concerning a request for water and sewer service to lot #8 of Buckeye Estates. Mr. Storie explained that the high school trades department will construct a single-family home over a two-year period and then auction the property once complete. Mr. Storie said a three-bedroom, 1,800 square foot single family home will be constructed and that he hopes it will sell for at least \$280,000. Council member Brantz asked Mr. Storie if he is willing to annex. Mr. Storie said he could not answer that question, but that the property is located within the ETJ. Council member Brantz asked about the pros and cons of annexation. Development Services Director John Spear pointed out that the Town has not required annexation of the other lots in Buckeye Estates; however, he indicated this lot is contiguous to the Town limits so it can be annexed separately. Council member Mason asked if the permit is issued by the Town. Mr. Spear said yes. There being no further comments, the public hearing closed at 8:39 p.m. On a motion by Council member Mason, seconded by Council member Aycock, Council moved to grant the water and sewer request of 270 gallons per day from the 2010 allocation contingent upon annexation of lot #8.

VOTE: Aye-All
Nay-None

WATER & SEWER REQUEST - HUNTER NICHOLS

Town Attorney Sam Furgiuele opened a public hearing at 8:42 p.m. to hear sworn testimony from Hunter Nichols and Public Utilities Director Rick Miller concerning a water and sewer request to property located off Snaggy Mountain Road. Mr. Hunter Nichols requested permission to run his own private lines from Highway 105 to his property. Mr. Nichols said he plans to construct a 2,400- square-foot duplex on the property. Council member Mason asked when the water will be needed. Mr. Nichols said summer of 2009. Council member Mason asked about the zoning of the property. Mr. Nichols said the zoning is R-3 and the property is in the viewshed. Council member Brantz questioned Public Utilities Director Rick Miller about his opposition to using private lines. Public Utilities Director Rick Miller said he was not opposed to the use of private lines, but that he is opposed to tying into another private line. After little discussion about public versus private line, the public hearing closed at 8:52 p.m. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to grant the water and sewer

request for 600 gallons per day from the 2008 allocation contingent upon the applicant's installing private lines.

VOTE: Aye - All
 Nay - None

WATER & SEWER REQUEST - HIGH COUNTRY INN

Council member Phillips indicated that he had previously discussed this request with the applicant. On a motion by Council member Aycock, seconded by Council member Brantz, Council moved to excuse Council member Phillips from the discussion and vote on this request.

VOTE: Aye-All
 Nay-None

Town Attorney Sam Furgiuele opened a public hearing at 8:55 p.m. to hear sworn testimony from Gene Messenkopf, Jr. and Public Utilities Director Rick Miller concerning a request for water and sewer service to property known as the High Country Inn on Highway 105. Mr. Gene Messenkopf, Jr. presented his plans to renovate the High Country Inn property extensively by adding an indoor water park to the property. Mr. Messenkopf said he has been at that location for 33 years and has paid taxes to the community the same number of years. Council member Aycock asked for clarification on the indoor water park. Mr. Messenkopf said the indoor water park will include slides, a pool and a lazy river. Council member Pepin asked when the construction may be complete. Mr. Messenkopf said late 2010 or early 2011. Council member Brantz asked how much water is allocated to the property at this time. Mr. Messenkopf said he uses about 10,000 gallons per day now, but that he will need an additional 10,250 gallons per day. Council member Mason pointed out that changing the room configurations might change the water allocation need. Public Utilities Director Rick Miller agreed that the project may require more or less water and that is why his department will monitor the project closely once completed. There being no further comments, the public hearing closed at 9:04 p.m. Council member Aycock said the improvements will improve the Town's tax base. On a motion by Council member Pepin, seconded by Council member Aycock, Council moved to grant the 10,250 gallons per day from the 2010 allocation.

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

ELIZABETH BUCHANAN - EMERGENCY WATER REQUEST

Council member Pepin indicated that she had previously discussed one of the emergency water requests with the applicant. On a motion by Council member Aycock, seconded by Council member Brantz, Council moved to excuse Council member Pepin from discussion and voting on the requests.

VOTE: Aye-All
 Nay-None

On a motion by Council member Brantz, seconded by Council member Phillips, Council moved to consolidate the three emergency water requests.

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

Town Attorney Sam Furgiuele opened a public hearing at 9:07 p.m. to hear sworn testimony from Elizabeth Buchanan and Public Utilities Director Rick Miller concerning a request for water service to properties located at 196, 210 and 240 Paul Critcher Drive. Ms. Elizabeth Buchanan spoke on behalf of herself, Joan Robinson and Jan Watson. Mr. Buchanan said the wells are contaminated with various chemicals, but mostly petroleum products. Ms. Buchanan testified that

they have been without water for over 15 days and cannot use the water for flushing, bathing, and washing clothes and dishes. Council member Mason asked the ladies if they were aware that they would be responsible for connection fees. Ms. Buchanan indicated yes. Council member Mason then asked if there are other neighbors in the area that are having problems with their wells. Ms. Buchanan said she was unaware of other problems. Council member Mason asked if this is a public or private line. Public Utilities Director Rick Miller said the line is public and that an easement must be obtained from the DOT in order to install the taps. Council member Mason said this is a clear case of a public health issue and that the Town's policies address the same. There being no further comments, the public hearing closed at 9:15 p.m. On a motion by Council member Mason, seconded by Council member Aycock, Council moved to grant the emergency water request of 720 gallons per day collectively out of the 2008 and 2009 allocations.

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

PUBLIC COMMENT

There were no public comments.

CLOSED SESSION

On a motion by Council member Brantz, seconded by Council member Phillips, Council moved to enter Closed Session at 9:17 p.m., pursuant to NCGS 143-318.11a)3)5), in order to discuss the SAHA lease; the Templeton lawsuit; the DOT right-of way; the CWWW,LLC donation; the Brown property; and the nature conservancy.

VOTE: Aye - All
 Nay - None

On a motion by Council member Brantz, seconded by Council member Aycock, Council moved to exit Closed Session at 10:26 p.m.

VOTE: Aye-All
 Nay-None

ADJOURNMENT

On a motion by Council member Brantz, seconded by Council member Mason, Council moved to adjourn at 10:27 p.m.

VOTE: Aye - All
 Nay - None

Town Clerk

Mayor