

**MINUTES - REGULAR MEETING  
BOONE TOWN COUNCIL  
JANUARY 15, 2009**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, January 15, 2009, in the Council Chambers, 1500 Blowing Rock Road. 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, Deputy Town Clerk Kimberly Brown, Assistant to the Town Manager Jim Byrne, Police Chief Bill Post, Fire Chief Reggie Hassler, Public Works Superintendent Eric Gustaveson, Public Utilities Director Rick Miller, Finance Director Amy Davis, Human Resources Director Peri Moretz, and Development Services Director John Spear.

**ANNOUNCEMENTS**

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

Mayor Clawson noted that Mike Norris was not able to attend the meeting to accept his retirement recognition.

**TENTATIVE AGENDA ADOPTION**

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

1. Deletion of Retirement Recognition - J. R. Reese.
2. Addition of Item 4.F. - Adoption of Resolution - Economic Stimulus Request.

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

VOTE:           Aye - All  
                      Nay - None

**CONSENT AGENDA ADOPTION**

Upon a motion by Council Member Aycock, seconded by Council Member Phillips, Council moved to adopt the following consent agenda items:

Minutes:        December 15, 2008 - Regular Meeting.

Adoption of Municipal Speed Zone Ordinance for Highway 105:

**CERTIFICATION OF MUNICIPAL ORDINANCE DECLARING SPEED LIMIT  
MODIFICATIONS AND REQUEST FOR CONCURRING ORDINANCE BY  
DEPARTMENT OF TRANSPORTATION:**

I, Freida Van Allen, Clerk of the Town of Boone, do hereby certify that the Council of the Town of Boone duly enacted on the 15<sup>th</sup> day of January, 2009 an ordinance based upon engineering and traffic investigation pursuant to authority granted by G.S. 20-141(f) declaring the following speed limit modifications as set forth below on the following described portion of a State Highway System Street:

**Declare the Following Speed Limit**

<u>Speed</u> <u>Limit</u>	<u>Route</u>	<u>Description</u>
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**Rescind the Following Speed Limit**

<u>Speed Limit</u>	<u>Route</u>	<u>Description</u>
45	NC 105	NC 105 from the western corporate limit at Poplar Hill Drive (SR 1101) to Highland Avenue.

said ordinance to become effective upon adoption of the Department of Transportation of a concurring ordinance and the erection of signs giving notice of the authorized speed limit; that said ordinance is recorded in Minute Book \_\_\_\_\_ at page \_\_\_\_\_.

In witness whereof, I have hereunto set my hand and the seal of the Town of Boone, North Carolina, this 15<sup>th</sup> day of January, 2009.

(SEAL)

Freida Van Allen, Town Clerk

Approval of Amendment to Municipal Code - §30.07 Order of Business:

#### AMENDMENT TO MUNICIPAL CODE

The Town of Boone Municipal Code is amended, by adding to Sections 30.07(G) and (H) the following language, set out in bold, and deleting characters shown with a strike-through:

#### **§30.07 ORDER OF BUSINESS**

...

(G) Any person wishing to address the Town Council at any regular meeting of the Town Council shall place his or her name on a sign up sheet available for this purpose. Such person shall be entitled to speak under "Public Comments," subject to the following rules and regulations:

(1) Speakers shall be recognized in the order in which they have signed up.

(2) **During the public comment period, ~~n~~No person shall be allowed to speak for more than five minutes unless the presiding officer allows an extension of time. When the Mayor or other presiding officer determines that there are more speakers than can be reasonably heard during the fifteen minute initial public comment period, the Mayor or presiding officer may limit each speaker's presentation to less than five minutes. Likewise, the Town Council, by motion and majority vote, may limit the time allotted to each speaker to less than five minutes and may grant a speaker more than five minutes to complete a public comment. Any person who wishes to address the Town Council, but is unable to speak during the initial fifteen minute public comment period due to the number of persons offering public comment who signed up ahead of that person, shall be given an opportunity to address the Town Council at the conclusion of all business scheduled for open session, subject to the same procedures and rules which apply to the initial fifteen minute public comment period.**

(3) Should more than one person wish to make substantially the same comments regarding the same subject, or where a group of persons supports or opposes the same positions, the presiding officer may require that all such persons designate a spokesperson for their group to address the Town Council, and the presiding officer may allot a larger amount of time for the presentation of the group position by the spokesperson.

(4) When the number of persons wishing to address the Town Council during the "Public Comment" period exceeds the number of people who can be safely accommodated within the Town Council chambers or other location of the meeting, the presiding officer may require that all such persons select delegates from the groups of persons supporting or opposing

the same positions to address the Town Council, and the presiding officer may allot a larger amount of time for the presentation of the group position by each delegate.

(5) All persons addressing the Town Council during the public comment period shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. Should any person present during a public comment period substantially interfere with the ability of a person offering public comment or engage in behavior which violates norms of accepted decorum, or should a person offering public comment engage in behavior which violates norms of accepted decorum, after warning such person(s) and, except in situations where there is a risk of harm to any person present, providing such person(s) the opportunity to alter their behavior to bring it into conformity with norms of accepted behavior, the presiding officer may direct that such person(s) be removed from the meeting. However, a person expressing positions which are critical of Town policies or actions, or criticizing the Mayor, Town Council Members, Town staff, Town Officials, or Town policies or actions, shall not on that basis alone be considered to have engaged in behavior which violates norms of accepted decorum.

(6) Unless the agenda is amended in accordance with this ordinance so as to allow action on an item raised during the public comment period, the matter presented by the speaker shall be for information.

(H) Items shall be placed on the agenda according to the Order of Business. The Order of Business for each regular meeting shall be, but **is** not limited to, the following: adoption of an agenda (regular and/or consent), approval of the minutes, public hearings, **a maximum of fifteen minutes of public comment**, administrative reports, committee report, unfinished business, new business, informal discussion and public comment **not reached during the initial public comment period**. By general consensus of the Council, items may be considered out of order . .

..

THIS AMENDMENT IS EFFECTIVE WHEN ADOPTED.

Adopted this 15<sup>th</sup> day of January, 2009.

ATTEST:

Mayor

Town Clerk

Adoption of Resolution - Disposition of Surplus Property:

**RESOLUTION BY THE TOWN COUNCIL  
OF THE TOWN OF BOONE, NORTH CAROLINA**

**WHEREAS**, the Town of Boone is constructing a storm water wetland on town property located off Hunting Lane; and

**WHEREAS**, the construction of the wetland has resulted in the removal of several thousand tons of soil; and

**WHEREAS**, the Town of Boone and Appalachian State University will remove as much soil for future landscaping as feasible, and project manager Jim Byrne should negotiate the disposal of this property (soil) by private sale; and

**WHEREAS**, the Boone Town Council authorizes Jim Byrne, Assistant to the Manager, to dispose of the property, which is soil, by private sale at a negotiated price; and

**WHEREAS**, the Boone Town Council directs the Clerk to publish this resolution once after its adoption, and no sale shall be consummated thereafter until 10 days after its publication;

**NOW, THEREFORE, LET IT BE RESOLVED** that the Town Council of the Town of Boone, North Carolina approves this resolution.

Adopted this the 15<sup>th</sup> day of January, 2009.

ATTEST:

Mayor

Town Clerk

**(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 89)**

Adoption of Grant Project Ordinance - \$450,000 for Raw Water Intake Project:

**GRANT PROJECT ORDINANCE  
NORTH CAROLINA RURAL ECONOMIC DEVELOPMENT CENTER, INC.  
CONTRACT REF#: 2009-210-40101-112  
ORDINANCE:**

**BE IT ORDAINED** by the Town Council of the Town of Boone, North Carolina, that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following grant project ordinance is hereby adopted:

**SECTION 1.** The project authorized is to purchase land to construct a new raw water intake site.

**SECTION 2.** The anticipated acquisition date is January 30, 2009.

**SECTION 3.** The officers of this unit are hereby directed to proceed with the grant project within the terms of the grant agreement documents, and the budget contained herein.

**SECTION 4.** The following amounts are appropriated for the project:

Purchase land to construct a new raw water intake site for the Town of Boone, NC:

\$	Land	\$850,000
\$	Realtor Fees (5%)	\$ 42,500
\$	Legal Fees	\$ 1,000
\$	Administration	\$ 42,500
	<b>Total</b>	<b>\$936,000</b>

**SECTION 5.** The following revenues are anticipated to be available to complete this project:

NC Rural Economic Development Center, Inc.-Grant	\$450,000
Town of Boone, NC Local Funds (Established Reserve Fund)	<u>\$486,000</u>
<b>Total</b>	<b>\$936,000</b>

**SECTION 6.** The Finance Officer is hereby directed to maintain within the Grant Project Funds sufficient specific detailed accounting records to satisfy the requirements of the grantor agency and the grant agreement. The terms of the grant agreement shall also be met.

**SECTION 7.** Copies of this grant project ordinance shall be furnished to the Clerk to the Town Council, to the Budget Officer and the Finance Officer for direction in carrying out this project.

Adopted this 15<sup>th</sup> day of January, 2009.

\_\_\_\_\_  
Loretta Clawson, Mayor

\_\_\_\_\_  
Greg Young, Town Manager

\_\_\_\_\_  
Amy Davis, Finance Director

\_\_\_\_\_  
Freida Van Allen, Town Clerk

**(ORDINANCE TO BE TYPED IN BOOK 3, PAGE 364)**

Adoption of Resolution - Economic Stimulus Request:

**RESOLUTION**

**WHEREAS**, the United States economy entered into a recession in December 2007 and it is widely agreed that economic stimulus is critical; and

**WHEREAS**, to stimulate the economy, President-elect Barack Obama is working closely with Congress to prepare an economic stimulus package of up to \$1 trillion they hope to pass soon after the President-elect's inauguration; and

**WHEREAS**, previous stimulus bills have proven most effective if legislation is enacted soon after the recession is identified, funds are spent quickly while unemployment is high and new jobs are created when needed; and

**WHEREAS**, North Carolina's jobless rate soared in December to 7.9 percent, the highest in 25 years; and

**WHEREAS**, on December 19<sup>th</sup>, the North Carolina Metropolitan Mayors Coalition, representing the 26 largest city mayors, released a \$2.8 billion list of shovel-ready public infrastructure projects that will immediately put citizens to work in construction, public safety, office, and retail jobs; and

**WHEREAS**, academic research indicates that the list of upgrades for roads, public buildings, water systems, and other essential infrastructure would create nearly 100,000 jobs; and

**WHEREAS**, the most efficient way to distribute federal funding is through existing federal programs; and

**WHEREAS**, economic stimulus legislation should allow for a substantial role for municipal government, making it as easy as possible for local funding recipients to access and spend stimulus funds;

**NOW, THEREFORE, BE IT RESOLVED** that the Town of Boone recommends that Congress consider the following recommendations as it begins work on an economic stimulus package:

1. Include Funding for the Economic Development Administration's Public Works and Infrastructure Program and Economic Adjustment Assistance
2. Include Funding for HUD's Community Development Block Grant program (CDBG)
3. Include Funding for Energy Efficiency and Conservation Block Grant program (EECBG)
4. Distribute State Revolving Loan Fund Dollars as Direct Grants
5. Do not limit the Corps of Engineers' ability to spend Stimulus funds
6. Distribute Transportation Stimulus Funds through the Surface Transportation Program (STP)

**FURTHERMORE, BE IT RESOLVED** that the Town of Boone recommends that the State of North Carolina strongly partner with cities when deploying these funds to spur our local economies and choose a wide range of local infrastructure projects that will create long-term positive benefits for our citizens.

**ADOPTED** this 15<sup>th</sup> of January, 2009.

ATTEST:

Loretta Clawson, Mayor

Freida Van Allen, Town Clerk

**(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 90)**

VOTE:       Aye - All  
              Nay - None

**PUBLIC COMMENT**

With no public comment offered, Mayor Clawson invited Town Attorney Sam Furgiuele to begin with the next item for discussion.

**DISCUSSION OF POLICY QUESTIONS - PROPOSED TEXT AMENDMENTS**

Town Attorney Sam Furgiuele presented the following policy questions for discussion by the Council:

*To:   Town Council  
From: Sam Furgiuele  
Re:   Policy Questions in Recently Proposed Text Amendments  
Date: December 18, 2008*

*I have been asked to list for the Town Council some of the policy questions which are assumed in the recently proposed text amendments to the UDO. As you will recall, these deal with parking requirements, density and intensity ratios and signs. The following are some of the policy issues which must be resolved in connection with these proposals.*

1.   *Parking*
  - §       *Should all minimum parking requirements for commercial developments be eliminated?*
  - §       *Should the elimination of parking requirements for commercial development only apply to the B-1 or Downtown Business District?*
  - §       *Should parking reduction incentives be used to encourage more multi-family housing development within a ½ mile to 1 mile radius from the center of ASU's campus?*
  - §       *Should public parking downtown be considered a substitute for parking within a multi-family development downtown?*
2.   *Density*
  - §       *Does the Council want to reduce the size of lots that can be built upon in existing residential neighborhoods by nearly 40%?*
  - §       *Does the Council want to reduce the size of lots that can be built upon in multifamily districts by 1/3?*
  - §       *does the Council want to retain, alter or eliminate the complicated intensity ratios of the Schedule of Lane Use Intensities of Section 200 of the UDO before the Planning Director and his department explain the goals of the different intensity rules and whether the use of these values has accomplished these goals?*
3.   *Signs*
  - §       *Does the Town Council want to authorize, through the UDO, encroachment by signs in Town sidewalks and right-of-way, without encroachment agreements which shift liability for any injuries that result (someone forced into the streets and hit by a car, someone tripped by the sign and injured, etc.) to the person who place the sign and away from the Town?*
  - §       *Does the Town want to contribute to clogged sidewalks on certain blocks by allowing sandwich board signs to be displayed on the sidewalk?*
  - §       *If sidewalk signs are allowed, should enforcement be only triggered by complaints, or should there be daily inspections?*

After a lengthy discussion regarding the effects of eliminating or reducing the parking requirement standards, Council Member Mason moved to discuss these and any other policy

questions regarding the proposed amendments at the annual Planning Retreat to be held next month. Council Member Brantz seconded the motion. Council Member Phillips stated delaying action on direction for these amendments is frustrating the Planning Commission, members of which have already spent hours studying the parking issue.

VOTE:           Aye - All  
                      Nay - None

**PRESENTATION OF PROPOSED ORDINANCE AMENDMENTS & SCHEDULING OF PUBLIC HEARING**

Development Services Director John Spear presented the following draft amendments for Council's review and consideration.

1. Sidewalk fee in lieu of construction text.

Upon a motion by Council Member Aycock, seconded by Council Member Phillips, Council moved to place the draft amendment text regarding sidewalk fees in lieu of construction text on the February Quarterly Public Hearing agenda with minor modification suggested by Council Member Mason.

VOTE:           Aye - All  
                      Nay - None

2. Queen Street Neighborhood Conservation District map and text.

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to place the draft amendment text regarding Queen Street Neighborhood Conservation District map and text on the February Quarterly Public Hearing agenda.

VOTE:           Aye - All  
                      Nay - None

3. Parking Requirement text.

Upon a motion by Council Member Phillips, seconded by Council Member Aycock, Council moved to place the draft amendment text regarding parking requirements on the February Quarterly Public Hearing agenda.

VOTE:           Aye - All  
                      Nay - None

**ADOPTION OF UDO AMENDMENT - SCHEDULING OF QUARTERLY PUBLIC HEARINGS**

Development Services Director John Spear presented an amendment to UDO Section 380 which eliminates the current reference to specific hearing dates of the Quarterly Public Hearings. He noted that the Planning Commission meeting date has changed from the third Monday of each month to the second Monday of each month and that this change will allow additional time following the public hearing for Council's consideration of future map and text amendments. Upon a motion by Council Member Aycock, seconded by Council Member Phillips, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relate to this application because the amendment accommodates the revised public meeting schedule.

VOTE:           Aye - All  
                      Nay - None

Upon a motion by Council Member Aycock, seconded by Council Member Phillips, the Council moved to approve the following proposed amendment to the Town's zoning ordinance and

believe that approval is reasonable and in the public interest because the amendment allows additional time for Town Council consideration of proposed amendments:

**Section 380. Hearing Required: Notice**

[b] The Town Council and Planning Commission shall meet in joint session to hold the public hearing. Public hearings on proposed ordinance amendments will be held quarterly in February, May, August, and November. A record of the public hearing will be prepared by staff and submitted to the Planning Commission and Council as soon as practical following the public hearing. The Town Council, in the interest of advancing a legitimate public purpose may schedule a public hearing at date other than those specified above.

VOTE:           Aye - All  
                      Nay - None

**BOARD OF ADJUSTMENT APPOINTMENT**

Development Services Director John Spear noted that BOA member Daniel Collins has resigned his position due to increasing conflicts during the year. He noted that the Town Clerk has advertised the board vacancy and that applications have been received from the following: Andrew T. Ball, James R. Milner, Morgan W. Murray, Ivan C. Roten, Allan G. Scherlen, and Mark A. Templeton. He noted that the new appointee will serve the remainder of Mr. Collin's term which expires June 30, 2010. Mayor Clawson opened the floor for nominations. Council Member Aycock nominated Andrew Ball. Council Member Phillips nominated Morgan Murray. Allan Scherlen was nominated by Council Member Mason, who cited his experience having served on the BOA for a number of years as an alternate. With no other nominations, Mayor Clawson called for a vote on each nomination beginning with Andrew Ball.

VOTE:           4 - (Aycock, Mason, Pepin, Brantz)

Mayor Clawson called for a vote on the nomination of Morgan Murray.

VOTE:           1 - (Phillips)

Mayor Clawson called for a vote on the nomination of Allan Scherlen.

VOTE:           0

By majority vote, Andrew Ball was appointed to serve on the Boone Board of Adjustment with his term expiring on June 30, 2010.

**COMMITTEE APPOINTMENT - HORN IN THE WEST BOARD**

Mayor Clawson noted that Council Member Brantz has volunteered to serve as a Town Council liaison to the Horn in the West Board. Upon a motion by Council Member Aycock, seconded by Council Member Mason, Council moved to appoint Council Member Brantz as the Town Council liaison to the Horn in the West Board.

VOTE:           Aye - All  
                      Nay - None

**ANNOUNCEMENT OF BOARD VACANCIES - JONES HOUSE ADVISORY BOARD**

Mayor Clawson announced that three positions on the Jones House Advisory Board will expire February 27, 2009 and that after advertising the vacant positions, the Council will consider applications at the next regular meeting.

**SCHEDULING OF ANNUAL PLANNING RETREAT**

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to schedule the annual Planning Retreat on Monday, February 9, 2009 from 9 a.m. until 3 p.m. in the Council Chambers.

VOTE:           Aye - All  
                      Nay - None

### **SCHEDULING OF ANNUAL COUNCIL RETREAT**

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to schedule the annual Town Council Retreat on Friday, February 20, 2009 from 9 a.m. until 4 p.m. in the Council Chambers.

VOTE:           Aye - All  
                      Nay - None

### **APPROVAL OF GRANT APPLICATION - WINKLER'S CREEK WATER INLET PROJECT**

Assistant to the Town Manager Jim Byrne appeared before Council to request permission to apply for a Rural Center Grant for \$500,000 to fund the Winkler's Creek Water Inlet Project. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to grant permission to apply for a \$500,000 Rural Center Grant for the Winkler's Creek Water Inlet Project.

VOTE:           Aye - All  
                      Nay - None

### **ADOPTION OF ORDINANCE - INITIATING LEGAL ACTION AGAINST BAXTER G. PALMER**

Town Attorney Sam Furgiuele stated that this ordinance will allow civil action to collect money owed by Baxter Palmer for outstanding water and sewer charges in the amount of \$1,850.60. Upon a motion by Council Member Brantz, seconded by Council Member Aycock, Council moved to adopt the following ordinance:

#### **ORDINANCE #09-02**

WHEREAS, the Town of Boone (hereafter, "the Town") has duly adopted a Water and Sewer Use Ordinance; and

WHEREAS, N.C. Gen. Stat. §160A-314 authorizes the Town to establish a schedule of fees for the use of its water and sewer system, and the Town Council, in accordance with said authority, has established a fee schedule for water and sewer services; and

WHEREAS, pursuant to a request for water and sewer services by Baxter G. Palmer on March 22, 2007, the Town established an account, #0010894, for water and sewer service to "The Library Restaurant and Pub" at 1934 Blowing Rock Road, Boone, NC 28607, and provided water services to that property through approximately January 2008, at which time service was disconnected due to non-payment; and

WHEREAS, at the time service was disconnected, Mr. Palmer had an outstanding balance of \$1,850.60, including unpaid water and sewer charges, disconnections charges, and NSF charges; and

WHEREAS, Mr. Palmer has failed to make any payments on these charges since November 28, 2007, despite repeated demands by the Town for payment, leaving a balance owed of \$1,850.60; and

WHEREAS, pursuant to N.C. Gen. Stat. §§160A-11 and 314, and the Town's Water and Sewer Use Code, these unpaid charges for the use of the water and sewer system are the legal obligation of Baxter G. Palmer, upon information and belief residing at 4457 Unit G2 Highway 105 S Boone, NC 28607;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA, PURSUANT TO N.C. GEN. STAT. §§160A-11 AND 160A-314, AS FOLLOWS:

1. The Town Attorney is ordered to initiate a legal action in the General Court of Justice in Watauga County, North Carolina against Baxter G. Palmer, seeking to recover the outstanding charges of \$1,850.60 for the provision of water services to the Library Restaurant and Pub, previously operated at 1934 Blowing Rock Road, Boone, NC 28607, pursuant to Water and Sewer Account No. #0010894, along with attorney's fees, costs, and interest, as available.

Adopted this 15<sup>th</sup> day of January, 2009.

ATTEST:

Mayor

Town Clerk

**(ORDINANCE TO BE TYPED IN BOOK 3, PAGE(S) 365)**

VOTE:       Aye - All  
              Nay - None

**ADOPTION OF ORDINANCE - INITIATING LEGAL ACTION AGAINST BAGWELL FENCE COMPANY, INC.**

Town Attorney Sam Furguele stated that this ordinance will allow civil action to collect monies owed by Bagwell Fence Company, Inc. in the amount of \$620.08 for repairs to a Town water line on Deck Hill Road which was damaged while the company was installing a guard rail post on that road. Upon a motion by Council Member Aycock, seconded by Council Member Brantz, Council moved to adopt the following ordinance:

**ORDINANCE #09-03**

WHEREAS, the Town of Boone (hereafter, "the Town") pursuant to North Carolina Chapter 160A, Article 16 operates a water and sewer public enterprise system; and

WHEREAS, on or about March 7, 2008, Bagwell Fence Company, Inc., a South Carolina corporation, while installing a guard rail post on Deck Hill Road, struck and damaged a Town water line, causing a leak in the line and occasioning the Town's Public Utility Department to make emergency repairs at a charge of \$620.08 for labor and materials; and

WHEREAS, Bagwell Fence Company, Inc. has failed to make any payments on the aforesaid charges, despite repeated demands by the Town for payment, leaving a balance owed of \$620.08; and

WHEREAS, pursuant to N.C. Gen. Stat. §§160A-11 and 160A-314, and the Town's Water and Sewer Code, the Town has the right to initiate a civil action to collect said charges and to recover its reasonable attorney's fees and costs for doing so;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA, PURSUANT TO N.C. GEN. STAT. §§160A-11 AND 160A-314, AS FOLLOWS:

1. The Town Attorney is ordered to initiate a legal action in the General Court of Justice in Watauga County, North Carolina against Bagwell Fence Company, Inc., seeking to recover the outstanding charges of \$620.08 for the provision of repair services to Deck Hill Road, Boone, North Carolina, along with attorney's fees, costs, and interest, as available.

Adopted this 15<sup>th</sup> day of January, 2009.

ATTEST:

Mayor

Town Clerk

**(ORDINANCE TO BE TYPED IN BOOK 3, PAGE 366)**

VOTE:       Aye - All  
              Nay - None

**ADOPTION OF ORDINANCE - INITIATING LEGAL ACTION AGAINST PAGE AND JIM SAUDER**

Town Attorney Sam Furgiuele stated that this ordinance will allow civil action to collect money owed by Page and Jim Sauder in the amount of \$190.00 for outstanding charges for installing a water meter and associated connectors and materials at 145 McCauley Lane. Upon a motion by Council Member Brantz, seconded by Council Member Aycok, Council moved to adopt the following ordinance:

**ORDINANCE #09-04**

WHEREAS, the Town of Boone (hereafter, "the Town") pursuant to North Carolina Chapter 160A, Article 16 operates a water and sewer public enterprise system; and

WHEREAS, pursuant to a request by Page and Jim Sauder, on or about August 30, 2007, the Town's Public Utility Department installed a water meter and associated connectors and materials at 145 McCauley Lane, Boone, NC at a charge of \$190.00 for labor and materials; and

WHEREAS, Page and Jim Sauder have failed to make any payments on the aforesaid charges, despite repeated demands by the Town for payment, leaving a balance owed of \$190.00; and

WHEREAS, pursuant to N.C. Gen. Stat. §§ 160A-11 and 160A-314, and the Town's Water and Sewer Code, the Town has the right to initiate a civil action to collect said charges and to recover its reasonable attorney's fees and costs for doing so;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA, PURSUANT TO N.C. GEN. STAT. §§ 160A-11 AND 160A-314, AS FOLLOWS:

1. The Town Attorney is ordered to initiate a legal action in the General Court of Justice in Watauga County, North Carolina against Page and Jim Sauder, seeking to recover the outstanding charges of \$190.00 for the provision of construction services to 145 McCauley Lane, Boone, North Carolina, along with attorney's fees, costs, and interest, as available.

Adopted this 15<sup>th</sup> day of January, 2009.

ATTEST:

Mayor

Town Clerk

**(ORDINANCE TO BE TYPED IN BOOK 3, PAGE 367)**

VOTE:       Aye - All  
              Nay - None

Mayor Clawson declared a break at 7:40 p.m. Council reconvened at 7:47 p.m.

**APPROVAL OF CHANGE ORDER #2 - TRACY CIRCLE SEWER MAIN PROJECT**

Public Utilities Director Rick Miller explained that the request for Change Order #2 is to modify the contract with Hobbs, Upchurch and Associates to include the installation of two additional manholes, forty linear feet of 8" sewer main and three service tie-ins and that the contract price needs to be adjusted to the final cost of \$356,444.00 which is a \$11,369.40 decrease from the original contract price. Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve the following Change Order:

**CHANGE ORDER**

Order No.       2        
Date:       10-29-08        
Agreement Date:       6-4-08      

NAME OF PROJECT: Tracy Circle Sanitary Sewer Main Upgrade

OWNER: Town of Boone

CONTRACTOR: Carolina Grading & Utilities, Inc.

The following changes are hereby made to the CONTRACT DOCUMENTS:

1. Adjustments to the bid quantities have been made due to changes as required by the actual field conditions encountered during the time of construction. The bid quantities adjusted are listed on the attached Summary of Charges.
2. A line item for 6-inch schedule 40 pipe was added for material and installation changes requested by the Town for tie-in of the existing mains.

**Justification:**

1. The bid schedule quantities were adjusted for field conditions and actual quantities installed and utilized. Changes were required to the design due to the ASU water line on Edgewood Drive. Additional service connections were encountered during sewer main installation.
2. Required where the existing main on Crest Drive and Arbor Lane were tied into the new main with 6-inch material as requested by Town staff.

Prices were discussed with the contractor at the time of the required change and deemed reasonable for the additional work required.

**Change to CONTRACTOR PRICE:**

Original CONTRACT PRICE: \$367,814.00

Current CONTRACT PRICE adjusted by previous CHANGE ORDER: \$367,814.00

The CONTRACT PRICE due to this CHANGE ORDER will be decreased by \$11,369.40

The new CONTRACT PRICE including this CHANGE ORDER will be \$356,444.60

Change to CONTRACT TIME

The CONTRACT TIME including previous change orders: 116 calendar days

The CONTRACT TIME will not be changed.

The date for completion of all WORK will remain 10-17-08.

To be effective this Order must be approved by the Town Council if it changes the scope or objective of the PROJECT, or if it will increase the budgeted amounts of contract funds needed to complete the PROJECT, or as may otherwise be required by the SUPPLEMENTAL GENERAL CONDITIONS.

VOTE:           Aye - All  
                      Nay - None

**MONTHLY WATER USE STATUS REPORT**

Public Utilities Director Rick Miller presented the monthly water status report (**copy permanently on file in January 2009 Town Council packet**). He noted that Watauga County is still categorized at “moderate drought” status by the NC Drought Management Advisory Council.

**APPROVAL OF BUDGET AMENDMENTS**

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

<b>DESCRIPTION</b>	<b>ACCOUNT #</b>	<b>TO:</b>	<b>FROM:</b>
CAPITAL OUTLAY-LAND	010-411-000-575021	\$1,000.00	
TRANSFER FROM RAW WATER LAND ACQUISITION RSV.	010-000-000-498018		(\$1,000.000)
MAINTENANCE-VEHICLES-POLICE DEPARTMENT	010-500-300-525301	\$2,562.00	
MISCELLANEOUS REVENUE-GENERAL FUND	010-000-000-489900		(\$2,562.00)
CONTRACTED SERVICES-DEVELOPMENT SERVICES	010-500-360-577000	\$26,110.00	
APPROPRIATED FUND BALANCE-GENERAL FUND	010-000-000-499900		(\$11,110.00)
NCDENR-URBAN/COMMUNITY FORESTRY GRANT	010-000-000-448028		(\$15,000.00)

VOTE:           Aye - All  
                      Nay - None

**REQUESTED APPEARANCES - GEORGE SANTUCCI**

George Santucci, member of the National Committee for the New River, appeared before the Council to request support for a restoration project for a portion of Kraut Creek located in front of the Boone Mall. Mr. Santucci requested a matching amount of \$5,000 from the Town of

Boone for the initial work of the project including design, etc. Upon a motion by Council Member Brantz, seconded by Council Member Aycock, Council moved to grant \$5,000 from the General Fund for a restoration project for a portion of Kraut Creek located in front of the Boone Mall.

VOTE:           Aye - All  
                  Nay - None

### **WATER & SEWER REQUEST - DAVID HARMAN**

Town Attorney Sam Furgiuele opened a public hearing at 7:59 p.m. to hear sworn testimony from David Harman, Development Services Director John Spear, and Public Utilities Rick Miller on a request for water service to property located on Morgan Smith Lane. David Harman, property owner, explained that the request is for water service for two 3-bedroom single-family houses to be located on each lot. He noted that there is a mobile home rental that is currently served by a well and septic system located on the property, as well. Mr. Harman stated that officials from the Watauga County Health Department will not approve the service of the two lots by the current well system or a new well system for the lots but did state that each lot is able to accommodate a septic system. Mr. Harman stated that the property is outside of the town limits but is located adjacent to Town water lines on Camp Rock Road and Paul Critcher Road. He stated that he does plan to sell each home as starter homes but that if he is not able to sell the homes, he is not opposed to renting the homes to no more than two unrelated persons. Mr. Harman stated that, if granted water service, he would negotiate with neighbors to put an extension across private property and that he will be responsible for all costs involved. He stated that he would prefer to access water from lines on Paul Critcher Road. Furthermore, Mr. Harman noted that several of the properties in proximity to the property have contaminated wells. In response to a question by Council Member Brantz, Development Services Director John Spear noted that annexation of the property is prohibited since the property is part of a residential subdivision. He noted that state law prohibits annexation of a portion of a subdivision. In response to a question regarding the surrounding contaminated wells, Public Utilities Director Rick Miller explained the location of the properties containing the contaminated wells. He stated that he is unsure at this time as to why the wells became contaminated. With no other testimony offered, Mr. Furgiuele closed the public hearing at 8:14 p.m. Council Member Pepin stated that she could not support granting this request since no testimony was offered indicating a hardship situation exists. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council tabled consideration of the request until the next regular meeting in February pending the submission of evidence regarding the existence of a hardship situation.

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

### **REQUESTED APPEARANCES - ANGELA MILLER**

Melissa Soto, Finance Director for W.A.M.Y. Community Action, Inc. and on behalf of OASIS, Inc., appeared before the Council to request a grant to help pay the cost of property tax for the 2008 year which totaled \$8,267.03, for property at 225 Birch Street which houses the new Family Resource Center. She stated that the agency was unable to obtain tax-free status for the property since it was occupied for three months by Blue Ridge Pediatrics in 2008. She noted that W.A.M.Y. has received a grant from Watauga County in the amount of \$3,788.55 and that Blue Ridge Pediatrics has submitted its portion of the tax bill. Upon a motion by Council Member Aycock, seconded by Council Member Brantz, Council moved to grant W.A.M.Y. Community Action, Inc. \$2,267.00 to help pay the cost of the 2008 tax for 225 Birch Street.

VOTE:           Aye - All  
                  Nay - None

**CLOSED SESSION**

Upon a motion by Council Member Brantz, seconded by Council Member Aycock, Council moved to enter Closed Session at 8:23 p.m. pursuant to NCGS 143-318.11a)3)5) to hear the following items:

- Occupancy Tax.
- Garber Settlement Proposal.
- Legal Advice Regarding Proposed Fire Protection Agreement.
- Property Acquisition - Water.
- Legal Issues regarding Closed Session.

VOTE:           Aye - All  
                      Nay - None

Upon a motion by Council Member Brantz, seconded by Council Member Aycock, Council moved to exit Closed Session at 11:18 p.m.

VOTE:           Aye - All  
                      Nay - None

**POSSIBLE ACTION FOLLOWING CLOSED SESSION**

Upon a motion by Council Member Pepin, seconded by Council Member Phillips, Council moved to adopt the following contract with an effective date of March 1, 2009 and to empower the Mayor to sign the contract:

STATE OF NORTH CAROLINA

AGREEMENT

COUNTY OF WATAUGA

This Agreement, made this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the Blowing Rock Fire Department, Inc., a non-profit corporation with an address of PO Box 570, Blowing Rock, NC 28605, herein referred to as ABlowing Rock@; the Town of Boone on behalf of the Boone Fire Department, a North Carolina municipal corporation chartered by the State of North Carolina with an address of 1500 Blowing Rock Road, Boone, NC 28607, herein referred to as "Boone"; and Watauga County, a North Carolina corporate and body politic chartered by the State of North Carolina with an address of 814 West King Street, Boone, NC 28607, herein referred to as AWatauga@.

BACKGROUND STATEMENT

WHEREAS, Chapter 69 and Chapter 153A of the General Statutes authorize Watauga to implement a fire protection system for the protection of the citizens of Watauga County; and

WHEREAS, a tax supported fire district has been established for Blowing Rock from which it receives a fire tax pursuant to Chapter 69 of the General Statutes of North Carolina; and

WHEREAS, the State of North Carolina has implemented a recommended six mile insurance district and fire response district to enhance fire protection for the citizens of North Carolina; and

WHEREAS, there is one area within Blowing Rock's fire district that will be within the six mile insurance and fire responses districts of Boone; and

WHEREAS, to enhance the fire protection safety of the citizens of Watauga County within this area, Boone has agreed to provide fire protection services within this area in exchange of Boone receiving the proceeds of the fire district tax which Blowing Rock is authorized to receive pursuant to Chapter 69 of the General Statutes of North Carolina; and

WHEREAS, Blowing Rock, Boone and Watauga acknowledge and agree that entering into this Agreement to allow Boone to service the area within Blowing Rock's fire district is for the benefit of the citizens within that area which will result in better fire protection and lower insurance rates for the citizens of Watauga County within that area.

THEREFORE, for and in consideration of the mutual covenants contained herein, including, but not limited to, the payment to Boone of the fire district tax that Blowing Rock would receive for the specified area, the receipt of which is acknowledged as being full and adequate consideration to support this Agreement, Blowing Rock, Boone and Watauga agree as follows:

1. Boone Service within Blowing Rock: Boone will provide fire protection service to the area within Blowing Rock's fire district as more particularly described on Exhibits A attached hereto and incorporated herein by reference to enable the area to benefit from the six mile insurance and fire response districts recommended by the State of North Carolina. Blowing Rock acknowledges that Boone will be the primary fire protection service provider for the area, in exchange for Boone receiving the fire district tax that Blowing Rock is allotted to receive for the area.

2. Payment of Fire District Tax to Boone. Blowing Rock hereby agrees and hereby authorizes Watauga to pay to Boone the fire district tax that Blowing Rock would receive pursuant to Chapter 69 of the General Statutes of North Carolina to Boone for the area. The payments will be made by Watauga to Boone at the same time it distributes the proceeds of the fire district tax to the various fire protection entities within Watauga County.

3. Termination of Agreement. This agreement may be terminated by Blowing Rock, Boone or Watauga upon official action of its duly elected or appointed representatives after giving sixty (60) days written notice to the other parties at the following addresses:

a. Blowing Rock Fire Chief  
Blowing Rock Fire Department  
P.O. Box 570  
Blowing Rock, NC 28605

b. Town Manager  
Town of Boone  
1500 Blowing Rock Road  
Boone, NC 28607

With a copy to the Boone Town Attorney

c. County Manager  
Watauga County  
814 West King Street  
Boone, NC 28607

With a copy to the Watauga County Attorney

3. Ratification and Approval by Boone, Watauga and Blowing Rock; Effective Date. This Agreement is hereby ratified and approved by Boone by the requisite affirmative vote of its council this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by Watauga by the requisite affirmative vote of its commission this \_\_\_\_\_ day of \_\_\_\_\_, 2009 and executed by Blowing Rock by its President pursuant to authority duly given to the President by its board of directors with an effective date of March 1, 2009.

Town of Boone, a North Carolina municipal corporation chartered by the State of North Carolina

VOTE:           Aye - All  
                      Nay - None

**ADJOURNMENT**

Upon a motion by Council Member Brantz, seconded by Council Member Aycock, Council moved to adjourn at 11:20 p.m.

VOTE:       Aye - All  
              Nay - None

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Deputy Town Clerk

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Mayor