

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
MAY 21, 2009**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, May 21, 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, 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 Director Blake Brown, Utilities Director Rick Miller, Finance Director Amy Davis, Human Resources Director Peri Moretz, Development Coordinator David Graham, and Planner Jane Shook.

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.

Public Utilities Director Rick Miller recognized the winners of the 2008 Water Conservation Post Contest:

- 1st Place - Mariyah Rawl, Two Rivers Community School
- 2nd Place - Erik Salvenson, Hardin Park Elementary School
- 3rd Place - Griffen Arquette, Two Rivers Community School

Mayor Clawson and the members of the Town Council applauded the effort made by each student who contributed to the contest.

TENTATIVE AGENDA ADOPTION

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

1. Addition of Item 6.W. - Approval of Proposed Municipal Code Amendment - Operation of Committees.
2. Addition of Item 6.X. - Approval of Affordable Housing Task Force Recommendations.
3. Addition of Item 6.Y. - Affordable Housing Task Force Appointment.

Council Member Phillips requested the addition of the following item to the agenda: Item 6.Z. - Request approval to allow McLaurin Parking Company to meet with representatives of the Downtown Boone Development Association concerning downtown parking issues.

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

VOTE: Aye - All

Nay - None

CONSENT AGENDA ADOPTION

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

Minutes: April 6, 2009 - Special Meeting.
April 16, 2009 - Regular Meeting.
April 21, 2009 - Special Meeting.

Tax Releases - April 2009:

**TAX RELEASES
APRIL 2009**

Taxpayer	Year	Amount	Description
RICHARDSON, PATRICK JOSEPH RICHARDSON, SUSAN MARIE	2008	16.10	LEFT SIDE BODY DAMAGE
GLASSER, REBECCA GRAHAM	2008	18.06	TURN IN TAG
RUPPARD, JAMES WILLIS	2008	4.77	SOLD VEHICLE
CRAIG, BRADLEY TYSON	2008	15.43	DOUBLE BILL
HILL, ROBERT WALLACE	2008	58.20	INCORRECT FIRE DISTRICT
NATIONS, SYLVIA NIFONG	2008	4.07	OVERLAP OF TAGS
BOONE FORD LINCOLN MERCURY	2008	45.39	SOLD VEHICLE
GREYSTONE INS ASSOCIATES GILLELAND, LINDA BURR	2008	135.64	TURN IN TAG
RANDALL, RICHARD RHODES	2008	14.84	ADJ FOR BILL OF SALE
DAILEY, JEREMIAH WAYNE	2008	2.59	TURN IN TAG
TOTAL		315.09	

Adoption of Resolution - Personal Property Donation:

RESOLUTION AUTHORIZING DONATION OF PROPERTY

WHEREAS, the Town of Boone has personal property it wishes to donate to another government entity; and

WHEREAS, public notice of the intent of the Town Council and of the time and place of the meeting was published as required by law;

NOW, THEREFORE, BE IT RESOLVED, by the Town Council of the Town of Boone, North Carolina to authorize the donation of the following personal property as described below to to the Watauga County Sheriff's Department:

K-9 cage

ADOPTED this the 21st day of May, 2009.

ATTEST:

Mayor

Deputy Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 105)

VOTE: Aye - All
 Nay - None

PUBLIC COMMENT

Mayor Clawson recognized James Milner of 198 Stratford Lane. Mr. Milner stated that his term on the Board of Adjustment was due to expire next month and stated that he is willing to serve again as a resident alternate on the Board of Adjustment or to serve on another Town board.

Michael Testerman, of 292 Stairway Road, Vilas, N.C., read the following statement into record:

Good Evening,

I am Michael Testerman, and with my brother-in-law and business partner, Andy Stebbins, own Mountaintop Home Builders, LLC. Together we own 5 tracts of land that join the Town's property at the Water treatment plant on Deck Hill Road and extending into Winkler's Creek. The largest of these tracts also extends under the reservoir area at the Winkler's Creek dam and

water intake. My brother-in-law Andy also owns a 2 acre tract at the water plant's entrance, and another 2 acre tract on Winkler's Creek upstream of the Town's dam and water intake.

Along with this statement is a plat of a survey done for the Town of Boone, and recorded in Plat Book 10, Page 334, and another recorded plat of a survey done for Mountaintop Home Builders, LLC, in Plat Book 19, Page 325. The first plat is of the water treatment plant on Deck Hill Road and clearly shows our mutual boundary in the reservoir. There are other surveys that are recorded for the Town of Boone that also show this. The second plat shows the survey of our tract, and also shows the reservoir's encroachment upon it.

We have read about the plans the Town of Boone has to clean out the reservoir at the water intake on Winkler's Creek, and have reviewed several grant applications that the Town of Boone has submitted for the funds to do this. From these applications, and the preliminary engineering they contain, it is clear that the Town of Boone intends to enter our property to survey, engineer, dredge, and restore the part of the reservoir and creek that is on our property, and to remove part of our land in doing so.

At no time has the Town of Boone ever consulted with us concerning this, given us notification of what they intend to do on our land, nor asked permission to do so.

We are therefore forced to deny permission for the Town of Boone, any of it's officials, employees, agents or assigns, or any business or individuals working on their behalf, to enter any of our properties.

We ask that any communication regarding this matter be done through our attorney, Charlie Clement at the Clement Law Office here in Boone.

*Thank you,
Michael Testerman*

Raymon Garrison of 179 Snowy Oak Road stated that he is in support of item B under Council Matters regarding a request from the Watauga County Board of Education to allow for a replacement of the school sign at Hardin Park Elementary School.

Mayor Clawson thanked all persons for expressing their comments.

ADOPTION OF BICYCLE & MOTORCYCLE PARKING AMENDMENT

Development Coordinator David Graham presented the following case:

Case 20090089 - Request to amend the Unified Development Ordinance as an interim measure to promote Smart Growth principles. The proposed text encourages compact building design and a variety of transportation choices.

Mr. Graham noted that the Planning Commission voted to recommend approval of the proposed amendment with a change in Section 355 [5] to use the word "or" instead of "and" and to include

definitions in Article II, Definitions Section 15. Council Member Phillips asked about the number of spaces for multi-family uses. Mr. Graham stated that the Planning Commission agreed that the number proposed is adequate. Council discussed the effect of the proposed standards within the downtown area. Upon a motion by Council Member Phillips, seconded by Council Member Mason, Council moved to exempt B-1 zoning districts from the proposed text.

VOTE: Aye - All
 Nay - None

Council Member Mason suggested clarifying 5.110 under Section 355[b] to include high schools, as well as elementary schools. Upon a motion by Council Member Mason, seconded by Council Member Aycock, Council moved to amend the text to include “high schools” in Section 355[b] Commercial Uses 5.110.

VOTE: Aye - All
 Nay - None

Council Member Phillips presented a list of comments from Michael Trew, P.E. regarding the proposed amendment.

Comment #1: If the Town truly wants to make bicycling an alternative mode of transportation, they need to get NC DOT on board so we can have some bike lanes along with these 60'-70' wide roadways.

Comment #2: In the text on #2 and E it states that 10-12 bicycles can be parked in the space of one automobile. If you follow the requirements of this ordinance, you can only fit 8.

Mr. Graham clarified that the reference to 10-12 bicycles in one automobile space is from an earlier document and not part of the information before the Council for consideration.

Comment #3: 355 and 356[a][2] state that the requirements apply when “any addition or enlargement of an existing building is constructed.” It may help to have a minimum (size or \$) so that it doesn’t put a burden on a small addition of an existing business.

Mr. Graham clarified that the requirement will apply to redevelopment consisting over 2500 square feet.

Comment #4: We feel that although larger bike racks would be nice you will still need a long cable lock to secure both wheels. If that is the case we don’t see why the standard bike racks wouldn’t work.

Council felt that this comment is reflective of Mr. Trew’s opinion.

Comment #5: 355[d] requires bike rack no farther than the closes vehicle space. Since designers usually try to get Handicap spaces as close as possible (9' is the closest considering the 5' sidewalk and 4' landscape buffer) this may cause problems. Some flexibility would be most helpful so that staff can apply some common sense and not kick it to the BOA for a variance which is nearly impossible to obtain. Also different type of buildings and architecture may have a problem meeting this requirement. Maybe if staff used the center of the closest space which would add 9'.

After brief discussion, Council agreed to change the text to say “the closest non-handicap vehicle space” for better clarity.

Upon a motion by Council Member Pepin, seconded by Council Member Mason, Council moved to amend the proposed text to include the wording “the closest non-handicap vehicle space.”

VOTE: Aye - All
 Nay - None

Comment #6: There is nothing about rounding in the ordinance.

Comment #7: Does long term storage count as floor area? Does it have to meet appearance standards? If apartments provide room in each room for bike storage does it count?

Mr. Graham pointed out that these questions are considered during plan review for a project.

Upon a motion by Council Member Mason, seconded by Council Member Pepin, Council moved to accept the changes to the proposed text as recommended by the Planning Commission.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council made a motion 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 it supports Policy 1.1 Overall Objectives for the Boone Comprehensive Plan in regard to the following objectives: environmental quality, automobile transportation, and bikeways and Policy 2.0 Policies for Growth and Development including Policies 2.1.5 (E.2) Downtown and 2.2.1 (B) and (H) Transportation.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Phillips, seconded by Council Member Aycock, Council made a motion to approve the following proposed amendment to the Town’s zoning ordinance and believe approval is reasonable and in the public interest because the proposed amendment

promotes Smart Growth principles and provides choices for alternative transportation which are promoted in the 2006 Comprehensive Plan.

Bicycle: A pedal-driven, human-powered vehicle with two wheels attached to a frame, one behind the other.

Motorcycle: A motor vehicle with two wheels and a strong frame including mopeds, scooters, and powered pedal cycles.

Section 355. Bicycle Parking

[a] The B - 1 Central Business zoning district is exempt from the requirements of Section 355 Bicycle Parking.

[b] Except for single family housing (Use 1.100, Table of Permitted Uses), two family housing (Use 1.200), home occupation uses (Use 1.700), and agriculture and livestock uses (Use 14.100), bicycle parking facilities meeting the standards of this Section shall be provided by a permit applicant under each of the following circumstances:

- [1] When a new building is constructed;
- [2] When any addition to or enlargement of an existing building is constructed;
- [3] When a change in occupancy of any building occurs which results in a requirement for additional vehicle parking facilities under UDO Section 346.

[c] The number of bicycle spaces included in the required bicycle parking facilities shall be determined by the following table of uses. Use descriptions are abbreviated and are for descriptive purposes only. Uses listed below are preceded by a number which corresponds to a use category in the Table of Permissible Uses, Section 165, *supra*, and include all specific uses described in association with that number, i.e., 5.200 includes not only "Churches," as mentioned herein, but also "synagogues, and temples, including associated residential structures for religious personnel and associated buildings but not including elementary school or secondary school buildings," the full detail of Section 5.200 in the Table of Permitted Uses. In those instances when alternative measures are associated with a particular use, e.g., "2, or 1 per 20 units," the measure providing the higher number of bicycle parking spaces shall be used.

Residential Land Uses	Short Term Spaces	Long Term Spaces
1.300 Multi-family Residences	2, or 1 per 20 units	1 per 4 units
1.400 Group Homes	2, or 1 per 20 bedrooms	
1.510 Rooming Houses	2	
1.530 Hotels	2	2
1.540 Fraternity/Sorority Dwellings	2, or 1 per 20 units	2

Commercial Land Uses	Short Term Spaces	Long Term Spaces
2.100 Commercial Retail	2, or 1 per 5,000 SF*	2, or 1 per 12,000 SF
2.200 Commercial Wholesale	2, or 1 per 15,000 SF	
2.300 Convenience Stores	2	2
2.400 Large Scale Retail	2, or 1 per 5,000 SF	2, or 1 per 12,000 SF
3.0 Commercial Office	2	2, or 1 per 10,000 SF
4.0 Industrial Uses	2, or 1 per 15,000 SF	
4.300 Warehouses	2, or 1 per 40,000 SF	
5.110 Elementary/High Schools	1 per classroom	1 per classroom
5.120 Trade Schools	2, or 1 per 10,000 SF	2, or 1 per 20,000 SF
5.130 Colleges	2, or 1 per 10,000 SF	2, or 1 per 20,000 SF
5.200 Churches	2	2
5.300 Libraries	1 per 10 automobile spaces	2
5.400 Social Clubs	1 per 10 automobile spaces	2

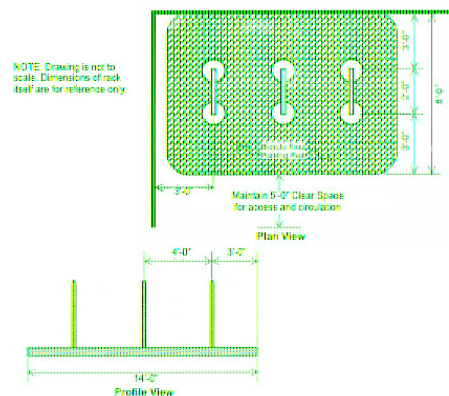
6.110 Indoor Recreation	1 per 10 automobile spaces	2
6.120 Movie Theaters	8 or 1 per 40 seats	
6.130 Coliseums	8 or 1 per 40 seats	
6.210 Private Outdoor Recreation	2	
6.220 Public Outdoor Recreation	2	
6.230 Town Passive Recreation	5	
7.100 Hospitals	2, or 1 per 40,000 SF	2, or 1 per 50,000 SF
7.200 Nursing Homes	2	2
Commercial Land Uses	Short Term Spaces	Long Term Spaces
8.0 Restaurants	2, or 1 per 5,000 SF	2, or 1 per 12,000 SF
9.0 Motor Vehicle Sales	2	
10.100 Automobile Parking	1 per 10 automobile spaces	
12.0 Animal Services	2	
13.0 Emergency Services	2	
15.100 Post Office	2	2
15.200 Airport	2	2
16.0 Dry Cleaners	2	2
19.0 Open Air Market	2	2
22.0 Daycare	2, or 1 per 10,000 SF	
24.0 Transportation	8	
25.0 Greenhouse	2	2

28.0 Combination	As applied individually	As applied individually
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* “SF” shall denote and refer to “square feet.”

[d] Parking facilities shall meet the following standards:

- [1] Each bicycle parking space shall be no less than six (6) feet long by two (2) feet wide, plus sufficient area for access. A “rack” is a bicycle facility which includes multiple contiguous bicycle parking spaces. Exact conformity with the following diagram for a single rack bicycle facility is not required, but adherence to this design shall meet the requirements of this section:

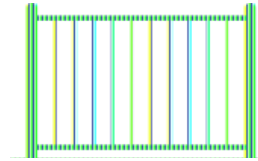
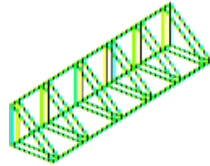


- [2] No less than four (4) feet must be provided between parallel racks.
- [3] Bicycle parking facilities shall be constructed of materials of sufficient strength to significantly resist their displacement or removal, and they shall be securely anchored in concrete or other equivalent material or system of sufficient strength to significantly resist removal. Bicycle parking facilities shall support bicycles in a stable position without damage to wheels, frame or other components and allow for the use of either a cable, U-shaped, or similar lock to secure the bicycle.

Examples of acceptable facilities

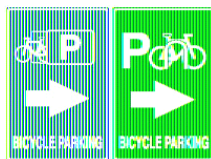


Examples of **unacceptable** facilities (because they secure only one wheel)



- [4] Outside bicycle parking facilities shall be illuminated in conformity with the standards for "open parking areas" of UDO Section 396. Inside bicycle parking facilities shall be illuminated in conformity with the standards for "building entries" of UDO Section 396.
- [5] Areas set aside for outside bicycle parking shall be clearly marked and reserved for bicycle parking only. Where the location of said parking is not easily visible from the street, a sign that does not exceed four (4) square feet in area and directs cyclists to parking shall be provided on site and must be visible from the street or from the main building entrance. For purposes of this Section, "main building entrance" shall connote and refer to the primary doorway by which residents, visitors or customers enter and exit a building, whether or not said entrance is oriented facing the public street.

Examples of acceptable signs



- [6] Bicycle parking shall be located so as to avoid impeding or creating a hazard to pedestrians from parked or approaching bicycles, and to avoid creating a hazard to bicyclists or bicycles from automobiles or other motor vehicles. Bicycle racks installed on private sidewalks within the development must provide a clear, unobstructed passage of at least five (5) feet for pedestrians and should be installed at least three (3) feet from the face of any curb. Bicycle racks may not be installed on public sidewalks without the express authorization of the Boone Town Council, subject to such conditions which may be attached to such authorization.

[e] Short-term bicycle parking is parking intended or utilized for 2 hours or less by customers or visitors to a particular use. Parking facilities for short-term bicycle parking must be located no farther from the main building entrance than the distance to the closest non-handicap vehicle space, or 50 feet, whichever is less, and they must be visible from public sidewalk areas along the public street frontage adjoining the use and located directly in front of the main building entrance unless the main building entrance is not oriented toward the public street. In those instances where the main building entrance is not oriented toward the public street, the parking facilities must be visible from such locations, as determined by the Administrator or permit issuing authority, which will provide the greatest level of visibility to achieve the dual purposes of security for the bicycles using the facilities and availability to bicyclists visiting the building for the first time. Short term bicycle parking, when allowed within a public right-of-way, should be coordinated with street furniture as applicable.

[f] Long term bicycle parking is intended or utilized for daily, overnight or even longer duration bicycle parking by residents and employees. Long term bicycle parking shall be covered or enclosed, and must provide security and protection from weather and the elements. Long term bicycle parking should be incorporated whenever possible into the building design.

[g] Bicycle parking exceeding the requirements of subsection [b] may reduce by up to 10% required motor vehicle parking for residential uses and other uses where a parking demand analysis establishes a minimum motor vehicle parking expectation. For every five bicycle parking spaces in excess of the short or long term bicycle parking requirements of subsection [b], the use's motor vehicle parking requirement is reduced by one (1) space.

Section 356. Motorcycle Parking

[a] The B – 1 Central Business zoning district is exempt from the requirements of Section 356 Motorcycle Parking.

[b] Motorcycle parking facilities meeting the standards of this Section shall be provided by a permit applicant under each of the following circumstances, and one (1) motorcycle parking space shall be provided for every 40 motor vehicle parking spaces:

- [1] When a new building is constructed;
- [2] When any addition or enlargement of an existing building is constructed;
- [3] When a change in occupancy of any building occurs where 40 or more vehicle parking spaces are provided.

[c] Motorcycle parking facilities shall meet the following design standards:

- [1] Each motorcycle parking space shall be no less than eight (8) feet long by four (4) feet wide, and sufficient space for access shall be provided.
- [2] Motorcycle parking facilities must be visible from public sidewalk areas along the public street frontage adjoining the use and located directly in front of the main building entrance unless the main building entrance is not oriented toward the public street. In those instances where the main building entrance is not oriented toward the public street, the motorcycle parking facilities must be visible from such locations, as determined by the Administrator or permit issuing authority, which will provide the greatest level of visibility to achieve security for the motorcycles using the facilities. Motorcycle parking facilities must also include features to provide reasonable security for motorcycles. Designers are encouraged to include fixed features such as rails, hoops, or posts designed to provide a simple locking point to secure a motorcycle or scooter using a chain or similar device.
- [3] Motorcycle parking facilities shall be clearly marked and reserved for motorcycle parking only, using signage and/or pavement marking determined by the Administrator or permit issuing authority as adequate to both direct motorcycle riders to the proper facilities and to prevent use of the motorcycle parking facilities by other motor vehicles.
- [4] The slope of motorcycle parking facilities should be as close to level as possible while still providing adequate drainage. "Adequate drainage" is such drainage as will prevent the buildup of water and ice in included motorcycle parking spaces. Motorcycle parking facilities must have a firm surface capable of supporting the weight supported by the stand of the heaviest of models of motorcycle.

VOTE: Aye - All
 Nay - None

CONSIDERATION OF BOARD OF EDUCATION REQUEST - EXEMPTION TO ARTICLE XVII, SIGNS

Planner Jane Shook began by explaining that the situation began when school officials decided to replace the current sign at Hardin Park Elementary school. During discussion concerning the sign, staff notified school officials that regulations contained currently within the UDO regarding signs do not include “public schools” under the exemption for governmental agencies. Ms. Shook stated the property under discussion is in the O/I zoning district and that the sign that has been made to replace the exiting sign at Hardin Park does not meet the requirements for this zoning district. Town Attorney Sam Fugieuele noted that the Council can initiate a change to the UDO to include public schools in the definition of “governmental agencies.” Upon a motion by Council Member Aycock, seconded by Council Member Phillips, Council moved to hold a special public hearing on Thursday, June 18, 2009, at 6:00 p.m. in the Council Chambers prior to the June regular meeting of the Council in order to receive public comment on a text amendment to the UDO to include “public schools” in the definition of “governmental agencies” in regard to exemptions from the sign ordinance.

VOTE: Aye - All
 Nay - None

ADOPTION OF RESOLUTION - FIXING DATE OF PUBLIC HEARING - SALDINO ANNEXATION

Planner Jane Shook explained that this is the second step in the annexation process for the request for a non-contiguous annexation. Upon a motion by Council Member Phillips, seconded by Council Member Aycock, Council adopted the following resolution:

**RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION
OF ANNEXATION PURSUANT TO G.S. 160A-58.2
(SALDINO 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 Council Chambers on Blowing Rock Road at 6:30 p.m. on June 18, 2009.

Section 2. The area proposed for annexation is described as follows:

BEING a certain tract of land containing 3.188 acres according to a survey by Ashe Land Surveyors, P.A., located in Brushy Fork Township, Watauga County, North Carolina, and being more particularly described as follows:

BEGINNING on a 3/4" conduit, thence S 54°48'08" W a distance of 81.60 feet to a 3/4" conduit; thence S 43°11'19" E a distance of 104.22 feet to a 3/4" conduit; thence S 58°18'40" W a distance of 99.93 feet to a 5/8" rebar; thence S 43°50'18" W a distance of 66.04 feet to a 5/8" rebar; thence N 53°59'51" W a distance of 115.17 feet to a 5/8" rebar; thence S 44°27'58" W a distance of 49.89 feet to a 1/2" rebar; thence N 59°54'33" W a distance of 170.78 feet to a 5/8" rebar in a creek; thence N 13°15'32" E a distance of 201.72 feet to a 3/4" conduit in a creek; thence N 18°42'16" E a distance of 63.91 feet to a 1 1/2" pipe in a creek; thence S 67°49'27" E a distance of 71.01 feet to a 5/8" rebar; thence N 15°01'59" E a distance of 84.14 feet to a 1/2" conduit; thence N 64°52'36" W a distance of 110.67 feet to a 1/2" conduit in a creek; thence N 05°01'38" W a distance of 37.82 feet to a 1/2" conduit; thence N 21°59'46" E a distance of 76.72 feet to a 3/4" conduit in a creek; beginning at a 3/4" conduit in a creek; thence S 58°42'23" E a distance of 137.70 feet to a 3/4" conduit; thence N 57°29'46" E a distance of 69.91 feet to a 5/8" rebar; thence S 20°16'06" E a distance of 84.51 feet to a 1/2" rebar; thence S 12°37'02" E a distance of 74.81 feet to a 1/2" rebar; thence S 13°34'02" E a distance of 63.11 feet to a 3/4" conduit; thence S 38°26'02" E a distance of 71.27 feet to a 1/2" rebar; thence S 35°10'24" E a distance of 59.43 feet to a 3/4" conduit; thence S 35°16'46" E a distance of 11.88 feet to a 3/4" conduit, thence the point of beginning.

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.

ATTEST:

Mayor

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 106)

VOTE: Aye - All
 Nay - None

ADOPTION OF RESOLUTION - DIRECTING CLERK TO INVESTIGATE SUFFICIENCY OF ANNEXATION PETITION - ALLIANCE BIBLE FELLOWSHIP

Planner Jane Shook stated that this is the first step in the annexation process for a request for a non-contiguous annexation made by Alliance Bible Fellowship for a 12.790-acre tract. Upon a motion by Council Member Mason, seconded by Council Member Aycok, Council moved to adopt the following resolution:

**RESOLUTION DIRECTING THE CLERK TO INVESTIGATE
A PETITION RECEIVED UNDER G.S. 160A-58.1**

WHEREAS, a petition requesting annexation of an area described in said petition was received on May 21, 2009 by the Town Council; and

WHEREAS, G.S. 160A-58.2 provides that the sufficiency of the petition shall be investigated by the Town Clerk before further annexation proceedings may take place; and

WHEREAS, the Town Council of the Town of Boone deems it advisable to proceed in response to this request for annexation;

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

The Town Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the Town Council the result of her investigation.

ATTEST:

Mayor

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 107)

VOTE: Aye - All
 Nay - None

AUTHORIZATION OF EXECUTION OF CONTRACT - N.C. DEPARTMENT OF TRANSPORTATION

Town Manager Greg Young presented a request for Council to authorize the Mayor to execute contracts with the NC Department of Transportation subject to review and approval by the Town Attorney. He explained that the contracts are for the Town's share of costs in relation to the U-4020 project. Mr. Young also updated the Council to a recent change in the costs associated with the U-4020 project which includes a change in the estimated cost regarding the installation of conduit for power, cable, and telephone in the amount of \$258,432.00. He reminded the Council that 1.2 million dollars was allocated by the Council for the Highway 421 project at the annual retreat but that the estimated cost of the project is now anticipated to be 1.9 million. Furthermore, Mr. Young pointed out that the cost for aesthetic overhead signs (\$10,400) can be deleted from the project total. He noted that the Town is not eligible to apply for stimulus funding from the NC DOT. Public Works Director Blake Brown pointed out the utility contract is anticipated to be put out for bid on June 16, 2009. Council discussed at length several

alternatives for the additional funding needed for this project. Council Member Aycock asked that Public Works Director Blake Brown present photograph examples of options for streetlights at the next meeting. Council Member Mason suggested delaying action on this request until the matter can be discussed at the budget workshops in June. She also suggested investigating whether there are any grants available which could help to defray the costs associated with this project. Upon a motion by Council Member Pepin, seconded by Council Member Aycock, Council made a motion to take the following action:

1. To place on the June 9, 2009 budget workshop agenda, further discussion and action regarding the increase costs associated with the U-4020 project.
2. If action regarding this matter is required before the June 9th meeting, to call a special meeting of the Council.
3. To authorize Mayor Clawson to execute all contracts with NC DOT in regard to project U-4020.

VOTE: Aye - All
 Nay - None

APPROVAL OF CONTRACT - CAVANAUGH & ASSOCIATES - KING DEVELOPMENT

Assistant to the Manager Jim Byrne requested Council's approval of a contract with Cavanaugh & Associates, P.A. in the amount of \$2,500. He explained that at the request of the Town's Development Services Department, Cavanaugh & Associates, P.A. inspected the King Development on Eastbrook Drive to ensure that stormwater controls on site had been properly installed and maintained. Furthermore, Mr. Byrne explained that the Town has received numerous complaints regarding stormwater runoff on other properties, thus making it necessary to hire an independent engineer to provide direction in the matter. Council Member Phillips questioned why Town Staff could not perform the inspection. Upon a motion by Council Member Mason, seconded by Council Member Pepin, Council moved to approve the following contract:

STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

Project: Town of Boone - King Property Drainage Evaluation

THIS AGREEMENT, made and entered into this _____ day of _____, 2009, by and between **Cavanaugh & Associates, P.A.**, their successors or assigns, (hereinafter called "ENGINEER,") and **Town of Boone**, their successors or assigns, (hereinafter called "CLIENT"). Neither ENGINEER nor CLIENT shall assign this agreement without the prior written consent of the other.

Scope of Services:

- Review project documentation & applicable ordinances
- Perform site visit for field reconnaissance
- Meet individually with King, Pond and Toub property owners
- Prepare report of findings and recommendations for resolution to current drainage issues

The above scope does not include:

- Any other service not specifically described in the above scope of services.

CLIENT’S Responsibilities:

1. Representatives: Both CLIENT & ENGINEER shall designate a minimum of two representatives with respect to the services to be rendered under this Agreement who shall act on behalf of the CLIENT and ENGINEER.
2. Criteria and Information: The CLIENT shall provide all criteria and full information as to its requirements for the Project, including objectives, constraints, projected demands and service areas, and performance requirements.
3. Access: The CLIENT shall arrange access for the ENGINEER to all public and private properties where such access is required for the performance of services under this Agreement.
4. Reviews: The CLIENT shall examine all work products presented by the ENGINEER and shall render decisions pertaining thereto within a reasonable time as not to delay the services of the ENGINEER.
5. Regulatory Fees: The CLIENT shall furnish all required fees for regulatory approval of the project.

Hidden Conditions:

A condition is hidden if concealed by existing finishes or is not capable of investigation by reasonable visual observation. If the ENGINEER has reason to believe that such a condition may exist, the CLIENT shall authorize and pay all cost associated with the investigation of such a condition and, if necessary, all costs necessary to correct said condition. If (1) the CLIENT fails to authorize such investigation or correction after due notification, or (2) the ENGINEER has no reason to believe that such a condition exists, the CLIENT is responsible for all risks associated with this condition, and the ENGINEER shall not be responsible for the existing condition nor any resulting damages to persons or property.

Fee Arrangement:

The fee for the Services described in the above scope will be provided as:

1. Drainage Evaluation \$2,500 Lump Sum.

This fee does not include any permit application fees. Such fees will be paid directly by the CLIENT.

Additional Services:

Cavanaugh & Associates, P.A. can provide services that are required in addition to those being provided and outlined in this proposal at hourly rates. If additional services are required, the rates for those additional services will be negotiated or will be negotiated or we can provide an additional proposal in lieu of using hourly rates.

Billing/Payment:

Professional services will be invoiced at the beginning of each month for services performed during the previous month. All invoices are due upon receipt. In the event that any portion or all of an account remains unpaid for 90 days after billing, and ENGINEER initiates a civil action to collect the amount claimed and is awarded the amount claimed by a court of competent jurisdiction, the CLIENT shall pay the cost of collection, including attorney's fees. Should CLIENT prevail in such action, or should the court award ENGINEER less than the amount claimed, ENGINEER shall pay the cost of defense, including attorney's fees.

Professional Liability:

ENGINEER maintains professional liability coverage for damages as a result of our negligent acts, errors, or omissions. Our liability for this project will be limited to \$1,000,000.00. Upon request, a certificate of insurance can be provided as proof of coverage and CLIENT will be added as additional insured.

Termination of Services:

Should ENGINEER cease performance of the contract for 30 days, CLIENT may, at its sole option, terminate the contract upon written notice to ENGINEER. Either party may terminate this agreement without cause upon 30 days written notice. Either party may terminate this agreement upon a significant breach of the obligations created under the contract. If the defaulting party does not cure the alleged breach within ten days of its receipt of notice of the alleged breach, the contract shall terminate without further notice. In the event of termination, the CLIENT shall pay the ENGINEER for all services, rendered to the date of termination and all-reimbursable expenses.

Period of Service:

The project shall be submitted for permitting no later than 60 days from the official Notice to Proceed and it is understood that time is of the essence for the project. If the ENGINEER is delayed by circumstances outside of his control, then the ENGINEER shall promptly notify the CLIENT in writing citing such delay. If the delay will cause a monetary impact to the ENGINEER, then the ENGINEER shall notify the CLIENT in writing of such projected costs.

Venue & Jurisdiction:

Venue and jurisdiction of any dispute between the parties in connection with this contract shall be in Watauga County, North Carolina.

Acceptance:

This Agreement represents the entire and integrated Agreement between CLIENT and ENGINEER. It supercedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement. Any alteration made to this Agreement by either part will render the Agreement null and void. If this Agreement meets with your approval, please sign and return both copies to our office to serve as our contractual agreement and authorization to proceed. We will execute and return one copy to you. We look forward to working with you on this project.

IN WITNESS THEREOF, the parties have caused this Agreement to be signed by their duly authorized officers in duplicate originals, the day and year first written above.

Cavanaugh & Associates, P.A.

Town of Boone

Tory Wagoner, PE, SIDA
Vice President

By:

Date

Witnessed By: Date

Witnessed By:

Date

VOTE: Aye - 3 (Aycock, Mason, Pepin)
 Nay - 1 (Phillips)

APPROVAL OF PROPOSAL - DAVID R. JONES ARCHITECTURE FOR POST OFFICE RENOVATIONS

Assistant to the Manager Jim Byrne appeared before the Council to request approval of a contract with David R. Jones Architecture for architectural design services for additions and renovations to the historic Downtown Boone Post Office. Upon a motion by Council Member Mason, seconded by Council Member Aycock, Council moved to approve the following proposal:

PROPOSAL FOR ARCHITECTURAL DESIGN SERVICES FOR ADDITIONS & RENOVATIONS FOR THE HISTORIC BOONE POST OFFICE, DOWNTOWN BRANCH FOR THE TOWN OF BOONE

PROPOSED TO PROVIDE THE FOLLOWING SERVICES:

- Provide as-built floor plans and evaluations (utilizing the existing found blueprints and our own as-built measurements).
- Provide schematic design phase (shall include project program outline).
- Provide design development phase.
- Provide contract documents phase (working drawings).
- Provide bidding and negotiation phase.

- Provide construction contract administration phase.

SERVICES NOT PROVIDED BY DAVID R. JONES ARCHITECTURE:

- Site inspection/survey report and assessments.
- Design remediation & abatement.
- Abatement/remediation supervision.
- Air quality monitoring.

*NOTE: I will assist the Town in the procurement of these services. These services have to be performed by licensed abatement inspectors, designers, contractor supervisors, and air quality monitoring technicians.

OTHER SERVICES TO BE PROVIDED TO THE TOWN OF BOONE:

- Updated boundary survey and topographical map (max. interval, 1 foot).
- Geotechnical Evaluation - critical for site soils analysis and building structural design (for building foundations and retaining walls if these are required.)
- Construction Monitoring - monitoring of construction activities related to site development and building development (for footing construction and concrete testing).

These are typical services provided by the Owner and result in an actual cost from the provider to the Town, without going through the architect. Even though the Town engages testing agencies to fulfill the above-mentioned services, I will still oversee and coordinate the work as a part of my duties.

My services and fee shall include structural, mechanical, plumbing, electrical, civil engineering consultants. Fees for engineering consultants are included in the Architectural Design Fees. Contracts for Owner/Architect and Owner/Contractor shall be written on AIA Standard Form of Agreement documents.

The proposed fee for the Architectural Design Services shall be ten percent (10%) of the actual Building and Site Construction Costs. A Preliminary Probable Cost Estimate shall be used temporarily for calculating design fees until a contract can be awarded and the actual Building Construction Costs can be determined.

Reimbursable items to be billed to the Owner will be for long distance telephone communications, postage, and cost of reproductions (blueprints, wide format copies, and office copies). These are actual costs to the Owner with a 15 percent Reimbursable Fee added. I will not charge for local mileage from my office to the job site.

ACCEPTANCE:

The proposed description of professional services and terms are satisfactory and are hereby accepted. Authorization to proceed with the work is granted. The Architect shall prepare AIA

Standard Form of Agreement Between Owner and Architect for signatures. The Terms of this proposal shall be null and void if not accepted within 30 days.

NAME:
POSITION:
DATE:

VOTE: Aye - All
 Nay - None

APPROVAL OF CONTRACT - CAVANAUGH & ASSOCIATES - WINKER'S CREEK PROJECT

Assistant to the Manager Jim Byrne appeared before Council to request approval of a contract with Cavanaugh & Associates, P.A. to secure state and federal permits required for the CDBG Grant #08-C-1854 and to conduct an environmental review for the Winkler's Creek Sediment Removal project. He noted the cost of the contract is \$7,500 and should be repaid to the Town by funds from the grant. Upon a motion by Council Member Aycock, seconded by Council Member Mason, Council moved to approval the following contract:

STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

Project: Town of Boone - Winkler's Creek Intake Improvements:
 NCDCA-CDBG Environmental Review

THIS AGREEMENT, made and entered into this _____ day of _____, 2009, by and between **Cavanaugh & Associates, P.A.**, their successors or assigns, (hereinafter called "ENGINEER,") and **Town of Boone**, their successors or assigns, (hereinafter called "CLIENT"). Neither ENGINEER nor CLIENT shall assign this agreement without the prior written consent of the other.

Scope of Services:

- Funding Agency (NCDCA-CDBG) coordination to satisfy "Funding Approval Condition A: Environmental Condition (Environmental Review);
- Facilitate permit summit of all agencies having or potentially having jurisdiction: NCDENR (DWQ, DLQ, Dam Safety, PWS), US Army Corps of Engineers, NCDOT, Town of Boone;
- Facilitate stakeholder review meetings: National Committee for the New River;
- Evaluation of Construction Means & Methods for sediment removal technologies: Streamside Environmental "Sand Wand", Dewatering Tubes, and other technologies.

The above does not include:

- Any other service not specifically described in the above scope of services.

CLIENT'S Responsibilities:

1. Representatives: Both CLIENT & ENGINEER shall designate a minimum of two representatives with respect to the services to be rendered under this Agreement who shall act on behalf of the CLIENT and ENGINEER.
2. Criteria and Information: The CLIENT shall provide all criteria and full information as to its requirements for the Project, including objectives, constraints, projected demands and service areas, and performance requirements.
3. Access: The CLIENT shall arrange access for the ENGINEER to all public and private properties where such access is required for the performance of services under this Agreement.
4. Reviews: The CLIENT shall examine all work products presented by the ENGINEER and shall render decisions pertaining thereto within a reasonable time as not to delay the services of the ENGINEER.
5. Regulatory Fees: The CLIENT shall furnish all required fees for regulatory approval of the project.

Hidden Conditions:

A condition is hidden if concealed by existing finishes or is not capable of investigation by reasonable visual observation. If the ENGINEER has reason to believe that such a condition may exist, the CLIENT shall authorize and pay all cost associated with the investigation of such a condition and, if necessary, all costs necessary to correct said condition. If (1) the CLIENT fails to authorize such investigation or correction after due notification, or (2) the ENGINEER has no reason to believe that such a condition exists, the CLIENT is responsible for all risks associated with this condition, and the ENGINEER shall not be responsible for the existing condition nor any resulting damages to persons or property.

Fee Arrangement:

The fee for the Services described in the above scope will be provided as follows:

Hourly Plus Expenses Fee

Total contract price not-to-exceed \$7,500.00 without prior written approval from CLIENT.

This fee does not include any permit application fees. Such fees will be paid directly by the CLIENT.

Additional Services:

Cavanaugh & Associates, P.A. can provide services that are required in addition to those being provided and outlines in this proposal at hourly rates. If additional services are required, the

rates for those additional services will be negotiated or we can provide an additional proposal in lieu of using hourly rates.

Billing/Payment:

Professional services will be invoiced at the beginning of each month for services performed during the previous month. All invoices are due upon receipt. In the event that any portion or all of an account remains unpaid for 90 days after billing, and ENGINEER initiates a civil action to collect the amount claimed and is awarded the amount claimed by a court of competent jurisdiction, the CLIENT shall pay the cost of collection, including attorney's fees. Should CLIENT prevail in such action, or should the court award ENGINEER less than the amount claimed, ENGINEER shall pay the cost of defense, including attorney's fees.

Professional Liability:

ENGINEER maintains professional liability coverage for damages as a result of our negligent acts, errors, or omissions. Our liability for this project will be limited to \$1,000,000.00. Upon request, a certificate of insurance can be provided as proof of coverage and CLIENT will be added as additional insured.

Termination of Services:

Should ENGINEER cease performance of the contract for 30 days, CLIENT may, at its sole option, terminate the contract upon written notice to ENGINEER. Either party may terminate this agreement without cause upon 30 days written notice. Either party may terminate this agreement upon a significant breach of the obligations created under the contract. If the defaulting party does not cure the alleged breach within ten days of its receipt of notice of the alleged breach, the contract shall terminate without further notice. In the event of termination, the CLIENT shall pay the ENGINEER for all services, rendered to the date of termination and all-reimbursable expenses.

Period of Service:

The project shall be submitted for permitting no later than 60 days from the official Notice to Proceed and it is understood that time is of the essence for the project. If the ENGINEER is delayed by circumstances outside of his control, then the ENGINEER shall promptly notify the CLIENT in writing citing such delay. If the delay will cause a monetary impact to the ENGINEER, then the ENGINEER shall notify the CLIENT in writing of such projected costs.

Venue & Jurisdiction:

Venue and jurisdiction of any dispute between the parties in connection with this contract shall be in Watauga County, North Carolina.

Acceptance:

This Agreement represents the entire and integrated Agreement between CLIENT and ENGINEER. It supercedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement. Any alteration made to this Agreement by either party will render the Agreement null and void. If this Agreement meets with your approval, please sign and return both copies to our office to serve as our contractual agreement and authorization to proceed. We will execute and return one copy to you. We look forward to working with you on this project.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized officers in duplicate originals, the day and year first above written.

Cavanaugh & Associates, P.A.

Town of Boone

Tory Wagoner, PE, SIDA
Vice President

By: _____ Date _____

Witnessed By: _____ Date _____

Witnessed By: _____ Date _____

VOTE: Aye - All
Nay - None

APPROVAL OF BID - GARBAGE & RECYCLABLE MATERIALS COLLECTION

Public Works Director Blake Brown informed the Council of a sealed bid opening that was held on Thursday, May 14, 2009, at 2:00 p.m. at the Town of Boone Public Works Center for the collection of garbage and recyclable materials within the Town of Boone. Mr. Brown stated that the following bids were offered:

<u>Firm</u>	<u>Amount</u>
High Country Waste Solutions	No Bid
Republic/GDS, Inc.	\$281,682.60

He explained that High Country Waste Solutions offered a No Bid at this time due to the management of its current service levels. Mr. Brown recommended that the Town contract with the low bid of \$281,682.60 from Republic/GDS, Inc. for a three-year time period. Upon a motion by Council Member Pepin, seconded by Council Member Mason, Council moved to award the bid in the amount of \$281,682.60 to Republic/GDS, Inc. for the collection of garbage and recyclable materials in the Town of Boone.

VOTE: Aye - All
Nay - None

ANNOUNCEMENT OF BOARD VACANCY - BOARD OF ADJUSTMENT

Mayor Clawson announced that there are six positions on the Board of Adjustment that expire on June 30, 2009. The following positions will be open: two resident positions, two resident alternate positions, one ETJ position, and one ETJ alternate position. She noted that the Clerk will advertise the vacancies in the usual venues.

ANNOUNCEMENT OF BOARD VACANCY - COMMUNITY APPEARANCE COMMISSION

Mayor Clawson announced that two resident positions on the Community Appearance Commission will become available effective June 30, 2009. She noted that the Clerk will advertise the vacancies in the usual venues.

ANNOUNCEMENT OF BOARD VACANCY - HISTORIC PRESERVATION COMMISSION

Mayor Clawson announced a resident position on the Historic Preservation Commission that will become available effective June 30, 2009. She noted that the Clerk will advertise the vacancy in the usual venues.

ANNOUNCEMENT OF BOARD VACANCY - PLANNING COMMISSION

Mayor Clawson announced that two resident positions on the Planning Commission will become available effective June 30, 2009. The Town Clerk will advertise the vacancies in the usual venues.

CABLE TV ADVISORY COMMITTEE APPOINTMENTS

Mayor Clawson announced that one position is open on the Cable TV Advisory Committee. She noted that no applications were received for this position and the Clerk will continue to advertise the position with other board vacancies in the usual venues.

GREENWAY, PARKS & GARDENS COMMITTEE APPOINTMENT

Public Works Director Blake Brown informed the Council of a position open on the Greenway, Parks & Gardens Committee. He noted that applications for the position were received from Ashley Oliver, Ceylon Barclay, Ane Gade, and Nancy Green. Mayor Clawson called for nominations from the Council. Council Member Mason nominated Ane Gade. Council Member Phillips nominated Ceylon Barclay. With no other nominations, Mayor Clawson called for a vote on the two nominations beginning with Ane Gade.

VOTE: Aye - 2 (Mason, Pepin)
 Nay - 2 (Phillips, Aycock)

Mayor Clawson called for a vote on the nomination of Ceylon Barclay.

VOTE: Aye - 2 (Phillips, Aycock)

Nay - 2 (Mason, Pepin)

Mayor Clawson cast the deciding vote for the nomination of Ane Gade to the Greenway, Parks & Gardens Committee.

NOMINATIONS FOR ETJ POSITIONS - PLANNING COMMISSION

Development Coordinator David Graham explained that there are two ETJ positions open on the Planning Commission. He stated the nominations from the Council will be forwarded to the Watauga County Board of Commissioners for appointment. Mr. Graham noted that applications were received from Thomas Purpur and Kimberly Marland. Council Member Phillips nominated Kimberly Marland, and Thomas Purpur was nominated by Council Member Mason. With no other nominations, Mayor Clawson called for a vote on the nomination of Kimberly Marland.

VOTE: Aye - All
 Nay - None

Mayor Clawson called for a vote on the nomination of Thomas Purpur.

VOTE: Aye - All
 Nay - None

These nominations will be forwarded to the Watauga County Board of Commissioners for consideration for appointment.

WATER COMMITTEE APPOINTMENTS

Public Utilities Director Rick Miller noted that three positions are vacant on the Water Study Committee. He noted that applications were received for the positions from Donna Lisenby and James Buchanon. Council Member Aycock nominated Donna Lisenby, and James Buchanon was nominated by Council Member Mason. With no other nominations, Mayor Clawson called for a vote on the nomination of Donna Lisenby.

VOTE: Aye - All
 Nay - None

Mayor Clawson called for a vote on the nomination of James Buchanon.

VOTE: Aye - All
 Nay - None

Mr. Miller noted that one position remains vacant and will be advertised by the Clerk in the usual venues.

SCHEDULING OF BUDGET MEETINGS

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

Tuesday, June 9th - 8:00 a.m. to 11:00 a.m. - Budget Workshop

Wednesday, June 10th - 8:00 a.m. to 12:00 p.m. - Budget Workshop

Tuesday, June 16th - 7:00 p.m. - Budget Public Hearing.

VOTE: Aye - All
 Nay - None

APPROVAL OF AGREEMENT AMENDMENT - GEO-TECHNICAL ANALYSIS

Public Utilities Director Rick Miller explained that as part of the ER/EA process, the Town is required to complete a geo-technical analysis in areas not within State Rights-of-Way and that \$25,000 for the geo-technical analysis was anticipated and included in the contract the Council previously approved during the August 2008. He noted that the estimated cost has now risen to \$40,964 creating a shortfall of \$15,964.00. Mr. Miller explained that when the archeological survey was completed, the Town incurred a savings of \$16,329.00 and that this amount may be applied to the shortfall amount; however, depending on the proposed route of the raw water transmission main and NC DOT requirements, it is likely that additional geo-technical engineering work will be required. Mr. Miller stated the additional amount will need to be appropriated from the fund balance. He noted that the geo-technical fee includes investigation of the intake site, intake, intake site access road, booster pump station, Water Treatment plant site, and South Fork New River crossings only. Upon a motion by Council Member Pepin, seconded by Council Member Mason, Council moved to approve the amendment to the contract with WK Dickson reflecting the increased cost of the geo-technical in the amount of \$40,964.00 (**copy of amended contract permanently on file at Town Hall**).

VOTE: Aye - All
 Nay - None

APPROVAL OF CONTRACT - ORCHARD STREET SEWER DESIGN

Public Utilities Director Rick Miller presented a contract for the engineering design and construction administration for the Orchard Street sewer main replacement project. He noted that the contract is with Cavanaugh & Associates, P.A. in the amount of \$17,750.00. Mr. Miller pointed out that this project was included in the 5-year wastewater capital improvement plan that was adopted by the Council in April 2008. Upon a motion by Council Member Mason, seconded by Council Member Aycock, Council moved to approve the following contract:

STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

Project: Town of Boone - Orchard Street Sewer Improvements
 C&A No. M11.09.000

THIS AGREEMENT, made and entered into this _____ day of _____, 2009, by and between **Cavanaugh & Associates, P.A.**, their successors or assigns, (hereinafter called "ENGINEER,") and **Town of Boone**, their successors or assigns, (hereinafter called "CLIENT"). Neither ENGINEER nor CLIENT shall assign this agreement without the prior written consent of the other.

Project Description:

This project is described as the design of the upgrade of approximately 1,000 feet of existing 4" x 6" sanitary sewer to 8" sanitary sewer along Orchard Street in Boone, NC ("the Project"). The ENGINEER will provide professional services as follows: consultation, evaluation, planning, engineering, design, permitting assistance, and other necessary professional services as detailed in the following paragraphs.

Scope of Services:

The Scope of Services shall include performance by Engineer in accordance with the specifications and materials submitted by Engineer with its proposal.

Field Survey

- Establish survey control for project
- Topographic and data collection survey
- Preparation of base survey map and verify topography
- Utilities will be located by One Call and Town officials

Design/Contract Documents

- Preliminary layout of the proposed sewer
- Plan/profile construction drawing preparation
- Technical specifications
- Plan detail sheet preparation
- Coordination with Town of Boone to ensure design approval

Permitting

- Complete permit submittal packages and submit to NCDENR Division of Water Quality "FAST-TRACK" permitting for sewer collection system approval

Bid/Award Services

- Facilitate the public bid process for the planned improvements to include advertisement coordination, contract documents distribution, bid opening, and recommendation of award letter.

Construction Administration Phase

- Be available to the contractor for interpretation of contract documents, plans, and specifications;
- Review shop drawings, diagrams, illustrations, catalog data, samples, test results, inspections, and other data which the contractor and/or laboratory submits for compliance with their contracts;
- Prepare contract change orders that do not involve substantial change in the general scope of the project;

- Review and approve all partial contractor's applications for payment including determining amounts due to contractors based upon the contract documents and work progress;
- Record drawings
 Upon completion of all construction and work involved, furnish Town of Boone one set of reproducible record drawings and two sets of blue line record drawings for the project.

Construction Observation

- Furnish and maintain, at the job site, a competent associate during periods of significant construction and work being done. Said associates shall inspect all materials and workmanship, check all layouts of work, keep the necessary or required daily or weekly diaries or records, review estimates for payment to contractors, and provide liaisons between the engineer and the Town of Boone. For the purposes of this agreement, the contact time is assumed to be 60 days and the associate will be on-site a minimum of 2 days per week.

The above scope does not include:

- Existing sanitary sewer system evaluation
- Any other service not specifically described in the above scope of services.

CLIENT'S Responsibilities:

1. Representatives: Both CLIENT & ENGINEER shall designate a minimum of two representatives with respect to the services to be rendered under this Agreement who shall act on behalf of the CLIENT and ENGINEER.
2. Criteria and Information: The CLIENT shall provide all criteria and full information as to its requirements for the Project, including objectives, constraints, projected demands and service areas, and performance requirements.
3. Access: The CLIENT shall arrange access for the ENGINEER to all public and private properties where such access is required for the performance of services under this Agreement.
4. Reviews: The CLIENT shall examine all work products presented by the ENGINEER and shall render decisions pertaining thereto within a reasonable time as not to delay the services of the ENGINEER.
5. Regulatory Fees: The CLIENT shall furnish all required fees for regulatory approval of the project.

Hidden Conditions:

A condition is hidden if concealed by existing finishes or is not capable of investigation by reasonable visual observation. If the ENGINEER has reason to believe that such a condition may exist, the CLIENT shall authorize and pay all cost associated with the investigation of such a condition and, if necessary, all costs necessary to correct said condition. If (1) the CLIENT fails to authorize such investigation or correction after due notification, or (2) the ENGINEER has no reason to believe that such a condition exists, the CLIENT is responsible for all risks

associated with this condition, and the ENGINEER shall not be responsible for the existing condition nor any resulting damages to persons or property.

Fee Arrangement:

The fee for the Services described in the above scope will be provided as:

1.	Field Survey	\$2,300	Lump Sum
2.	Design/Contract Documents	\$6,500	Lump Sum
3.	Permitting	\$1,500	Lump Sum
4.	Bid/Award Services	\$1,500	Lump Sum
5.	Construction Administration	\$4,000	Lump Sum
6.	Construction Observation	\$650/visit	

This fee does not include any permit application fees. Such fees will be paid directly by the CLIENT.

Additional Services:

Cavanaugh & Associates, P.A. can provide services that are required in addition to those being provided and outlines in this proposal at hourly rates. If additional services are required, the rates for those additional services will be negotiated or we can provide an additional proposal in lieu of using hourly rates.

Billing/Payment:

Professional services will be invoiced at the beginning of each month for services performed during the previous month. All invoices are due upon receipt. In the event that any portion or all of an account remains unpaid for 90 days after billing, and ENGINEER initiates a civil action to collect the amount claimed and is awarded the amount claimed by a court of competent jurisdiction, the CLIENT shall pay the cost of collection, including attorney's fees. Should CLIENT prevail in such action, or should the court award ENGINEER less than the amount claimed, ENGINEER shall pay the cost of defense, including attorney's fees.

Professional Liability:

ENGINEER maintains professional liability coverage for damages as a result of our negligent acts, errors, or omissions. Our liability for this project will be limited to \$1,000,000.00. Upon request, a certificate of insurance can be provided as proof of coverage and CLIENT will be added as additional insured.

Termination of Services:

Should ENGINEER cease performance of the contract for 30 days, CLIENT may, at its sole option, terminate the contract upon written notice to ENGINEER. Either party may terminate this agreement without cause upon 30 days written notice. Either party may terminate this agreement upon a significant breach of the obligations created under the contract. If the

defaulting party does not cure the alleged breach within ten days of its receipt of notice of the alleged breach, the contract shall terminate without further notice. In the event of termination, the CLIENT shall pay the ENGINEER for all services, rendered to the date of termination and all-reimbursable expenses.

Period of Service:

The project shall be submitted for permitting no later than 60 days from the official Notice to Proceed and it is understood that time is of the essence for the project. If the ENGINEER is delayed by circumstances outside of his control, then the ENGINEER shall promptly notify the CLIENT in writing citing such delay. If the delay will cause a monetary impact to the ENGINEER, then the ENGINEER shall notify the CLIENT in writing of such projected costs.

Venue & Jurisdiction:

Venue and jurisdiction of any dispute between the parties in connection with this contract shall be in Watauga County, North Carolina.

Acceptance:

This Agreement represents the entire and integrated Agreement between CLIENT and ENGINEER. It supercedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement. Any alteration made to this Agreement by either party will render the Agreement null and void. If this Agreement meets with your approval, please sign and return both copies to our office to serve as our contractual agreement and authorization to proceed. We will execute and return one copy to you. We look forward to working with you on this project.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized officers in duplicate originals, the day and year first above written.

Cavanaugh & Associates, P.A.

Town of Boone

Tory Wagoner, PE, SI
Vice President

By: _____ Date

Witnessed By: _____ Date

Witnessed By: _____ Date

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 May 2009 Town Council packet**).

Mayor Clawson declared a break at 8:04 p.m. Council reconvened at 8:10 p.m.

APPROVAL OF BUDGET AMENDMENTS

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

DESCRIPTION	ACCOUNT #	TO:	FROM:
Transfer from Law Enforcement Separation Allowance	010-000-000-498042	\$17,388.00	
Law Enforcement Separation Allowance	010-500-300-502100		(\$17,388.00)
Miscellaneous Supplies - Police Dept.	010-500-300-519900	\$131.00	
Miscellaneous Revenue-General Fund	010-000-000-489900		(\$131.00)
Recycling Materials	010-600-407-516105	\$6,647.00	
Miscellaneous Revenue-General Fund	010-500-300-502100		(\$6,647.00)
Miscellaneous Supplies-Narcotics Fund	012-500-303-519900	\$800.00	
Appropriated Fund Balance-Narcotics Fund	012-500-303-499900		(\$800.00)

VOTE: Aye - All
 Nay - None

APPROVAL OF PROPOSED MUNICIPAL CODE AMENDMENT - OPERATION OF COMMITTEES

Town Attorney Sam Furgiuele presented a draft amendment to the Municipal Code Sections §30.51, §35.01, §35.02, §35.03, §35.04, and §35.05. He noted that the proposed changes will not apply to boards created under the Unified Development Ordinance and will not restrict the Council in creating criteria for various boards. He noted that the proposed changes will help to keep track of the activities of the various boards and help to ensure that open meetings laws are followed. Council Member Phillips voiced a concern about the proposed amendment that allows for the Council to appoint chairpersons to boards. Mr. Furgiuele stated that these changes can be extended to boards created under the UDO at a later date when applicable and when not

superseded by state law. Upon a motion by Council Member Pepin, seconded by Council Member Mason, Council moved to adopt the following amendment to the Municipal Code:

§ 30.51 APPOINTMENTS.

(A) All appointments made by the Council shall be made in open session. The Council or committee of the Council may consider (but not make) an appointment to another body in closed session, if it follows the requirements set out in division (B) below. The Council may not consider or fill a vacancy among its own membership except in an open meeting.

(B) If the Council or a committee of the Council considers an appointment to another body in closed session as permitted by G.S. § 143-318.11(a)(6), the Council shall, prior to making the appointment, present at an open meeting a written list of the persons then being considered for the appointment, and on the same day shall make the list available for public inspection in the office of Clerk. The Council shall not make the appointment in such a case before the seventh day after the day on which the list was presented.

(C) The Council shall use the following procedure to appoint individuals to various subordinate boards, commissions, task forces, advisory bodies or committees **but this shall not apply to the designation by the Council of one or more of its own members to participate or act as liaison to boards, commissions, task forces, advisory bodies, committee or other entities of its own creation or designation or appointment of one more of its own members to participate or act as liaison to other bodies not created by the Town:**

(1) At least two months before any anticipated vacancy on any board, commission, task force, advisory body or committee (the “body”) due to the expiration of a term, the Department Head staffing the body shall notify the Town Clerk of the expected vacancy. For vacancies created by resignation or removal for failed attendance, the Department Head shall notify the Town Clerk as soon as practical.

(2) At least one month before the Town Council meeting when the action is to be taken, the Town Clerk shall cause to be published on the town’s website, and in the Watauga Democrat, the committees for which appointments are contemplated, with the date when action on the appointments is expected. To the extent practical, the Town Clerk shall also seek announcements of such vacancies on WATA radio and WASU.

(3) Any person seeking appointment to a body, including individuals seeking reappointment to the body and student representatives to the body, must complete and submit to the Town Clerk an “Application for Appointment to a Board, Commission, Task Force, Advisory Body or Committee” on a form approved by the Town Council and available from the town’s website and the Town Clerk.

(4) The Town Clerk shall include in the board book for the meeting where the appointment shall be considered:

(a) A copy of each application received for the appointment;

(b) A current roster of the membership of the body in question, with terms shown; and

(c) A copy of the selection criteria, if any, established under state law or town ordinance, such as the Unified Development Ordinance.

(d) Should the application be submitted too late for inclusion in the Board book, it shall be provided to Council members as part of a supplemental packet prior to the beginning of the Council meeting. Unless a person's application is provided in the board book or supplemental packet, the person shall not be considered for the appointment, but this provision shall not prevent the Town Council from delaying appointment of the position in question until a later meeting.

(5) Unless superceded by State law or otherwise directed by other town ordinance, people who reside in the town shall generally be favored for appointment to town bodies over people who reside outside the town. Notwithstanding this provision, the Town Council shall strive to appoint at least 25% of the membership of any body from residents of the town's Extra Territorial Jurisdiction (ETJ). However, when an applicant neither resides in the town nor ETJ, but has particular skills or experience that make appointment of that applicant desirable, the applicant may nevertheless be appointed.

(6) The Town Council shall generally avoid appointment of any one person to more than two bodies.

(7) Any Council member may request that applicants for a body be present at the Council meeting during which the appointment is expected to be made so that the applicant may be questioned by members of the Council as to the applicant's qualifications. Even if no such request is made, it shall be proper for Council members to directly contact applicants to discuss the applicant's interest in and qualification for the appointment.

(8) At the meeting during which an appointment is to be made, the Mayor shall first open the floor to nominations. Nominations shall be made by Council members from the applicants properly before the council, but a nomination shall require no "second." Once all nominations have been made, the names of nominees shall be put forward by the members and debated. Upon the conclusion of the debate, the Mayor shall propose each name in alphabetical order, and the members shall cast their votes.

(9) Each Council member shall be entitled to one vote for each position, and when multiple appointments are made, each member cast each vote for a different nominee. Voting shall continue until a nominee receives a majority of the votes cast, whereupon that person shall be appointed. If more appointments are to be made and an insufficient number of nominees receives a majority of votes, there shall be successive votes until the requisite appointments are made by majority vote. In each successive vote, and persons receiving a majority of votes in the previous round and the applicant with the fewest votes from the previous vote shall be excluded from further votes. If no person receives a majority of votes in the second vote, the applicant receiving the fewest votes in the second vote shall be excluded from further votes, and a third

vote shall be taken. Unless excused from voting, each member of the Council must cast a vote in each round of voting.

(10) Members of a board, commission, task force, advisory body, committee and other such entity (hereafter, “the body”), except in cases in which a particular term of service is specified, are appointed for the duration of the body. However, if the duration of the 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 the body for more than six consecutive years, but a person may be reappointed to the 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 the body after being informed by the Town Clerk of the member’s removal, a 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 be included in the attendance calculations nor affect the member’s status on the body, 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 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.

~~—(D)— Along with its appointments to various subordinate boards and offices, the Town Council, using the procedure set out in Section 30.51(C) above, may appoint such committees, task forces, and other advisory bodies at it may deem useful or expedient in the discharge of its duties. Such committees, task forces, and other advisory bodies must operate in compliance with the North Carolina Open Meetings law, codified as G.S. §§ 143-318.9 et seq. and, unless the Council adopts procedures specific to such committee, task force, or advisory body, will conduct its meetings in compliance with the following procedures:~~

~~—(1)— A quorum shall be 50% of the persons initially appointed to the committee, task force, or advisory body.~~

~~—(2)— The Mayor or the Mayor’s designee will attend the first meeting of every committee, task force, or advisory body, and will conduct, as the first order of business, an election of officers for the committee, task force, or advisory body. Each such group shall elect a chairperson and vice chairperson. Election shall require a majority of votes, and if more than two candidates are nominated for a particular office and none of the candidates receives a majority of votes, a second vote will be taken, with only the top two candidates from the first vote eligible for consideration. Once a chairperson has been selected, that person will conduct all further business.~~

~~—(3)— In the absence of the chairperson, the vice chairperson shall conduct any meeting of a committee, task force, or advisory body, and in the absence of both officers, the Mayor may designate a person to act as chair for the meeting in question.~~

~~—— (4) — The business of the committee, task force, or advisory body shall be conducted in such manner as to afford all members an opportunity to speak. However, no member shall generally address the committee, task force, or advisory body until first recognized by the chairperson, and members of the committee, task force, or advisory body shall be respectful to each other and shall avoid interrupting each other.~~

~~—— (5) — Minutes shall be kept of all meetings of each committee, task force, or advisory body, and shall be subject to revision and adoption by the group as a whole.~~

~~—— (6) — All actions or recommendations of a committee, task force, or advisory body require the presence of a quorum and are only effective or adopted upon majority vote, following a motion and second. When such action is to be reported to the Town Council, the committee, task force, or advisory body shall not only report the action or recommendation adopted, but the vote by which it was adopted.~~

~~—— (7) — Meeting of each committee, task force, or advisory body shall proceed in the following order: adoption of an agenda, approval of the minutes, unfinished business, new business, informal discussion, and public comment, when public comment is to be accepted.~~

~~—— (8) — At any meeting of the committee, task force, or advisory body, if the meeting is opened for public comment, any person wishing to address the committee, task force, or advisory body shall state his or her name and whether or not he or she is a resident of the town.~~

~~—— (a) — If there is a sign up sheet provided for speakers, speakers shall be recognized in the order in which they have signed up.~~

~~—— (b) — Unless by motion, second, and majority vote a different time limit is adopted by the committee, task force, or advisory body, no person shall be allowed to speak for more than five minutes.~~

~~—— (c) — 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 committee, task force, or advisory body, and the presiding officer may allot a larger amount of time for the presentation of the group position by the spokesperson.~~

~~—— (d) — All persons addressing the committee, task force, or advisory body 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 a 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.~~

~~— (9) — Unless a particular duration is specified by the Town Council, the duration of any committee, task force, or advisory body shall be indefinite.~~

~~— (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 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.~~

~~— (11) — Members of a committee, task force, or advisory body may resign from the committee, task force, or advisory body by notifying the Mayor, Town Manager, or relevant department head.~~

CHAPTER 35: BOARDS, COMMISSIONS, TASK FORCES, ADVISORY BODIES, COMMITTEES AND OTHER SUCH ENTITIES

§ 35.01 GRANT OF AUTHORITY.

(A) The Town Council is authorized to create such boards, commissions, task forces, advisory bodies, committees and other such entities as it may find useful or necessary to the discharge of its duties or the effective operation of the Town.

§ 35.02 PROCEDURE FOR CREATION OF BOARDS, COMMISSIONS, TASK FORCES, ADVISORY BODIES, COMMITTEES AND OTHER SUCH ENTITIES.

(A) All boards, commissions, task forces, advisory bodies, committees or other such entities shall be created by motion, second and majority vote of the Council.

(B) The Council shall appoint the members of each board, commission, task force, advisory body, committee and other entity (hereafter, "the body") in accordance with the Town's Unified Development Ordinance and §30.51, *supra*, as appropriate, and unless a

different procedure is established by an enabling ordinance specific to the body, shall designate the Chair and Vice-Chair of each such body.

§ 35.03 POWERS OF BOARDS, COMMISSIONS, TASK FORCES, ADVISORY BODIES, COMMITTEES AND OTHER SUCH ENTITIES.

(A) All boards, commissions, task forces, advisory bodies, committees or other such entities (hereafter “the body”) shall have only those powers and duties which have been assigned to the body by the Council.

(B) No individual member of any body shall purport to speak or act on behalf of the body without action by the body explicitly authorizing the member to speak or act on its behalf.

(C) No individual member of any body, nor body itself, shall purport to speak or act on behalf of the Town without action by the Town Council explicitly authorizing the member or empowering or authorizing the body to speak or act on its behalf.

(D) Without an express grant of authority or explicit authorization by the Town Council, no individual member of any body, nor the body itself, may direct staff members of the Town to take action or engage in actions requiring the expenditure of Town funds.

(E) No body may create its own committee, sub-committee, or working group, by whatever name denominated, without the explicit approval of the Town Council.

§ 35.04 MEETINGS OF BOARDS, COMMISSIONS, TASK FORCES, ADVISORY BODIES, COMMITTEES AND OTHER SUCH ENTITIES.

(A) Every board, commission, task force, advisory body, committee and other such entity (hereafter “Town body”) created by the Council, including any committee of a Town body, sub-committee, or working group, by whatever name or designation (hereafter referred to as a “sub-committee”) and whether created by the Council or other Town body with Council approval, must operate in compliance with the North Carolina Open Meetings law, codified as N.C. Gen. Stat. §§ 143-318.9 et seq. (hereafter, “the law”). At a minimum, all meetings of a Town Body or sub-committee shall require all of the following:

(1) Notice of all official meetings, other than an emergency meeting, by posting of the date, time and name of the Town body or sub-committee at least 48 hours in advance, on the bulletin board for that purpose in Town Hall. If an agenda has been distributed to members of the Town body or sub-committee, it shall also be posted. An “official meeting” occurs whenever a “regularly scheduled meeting of the Town body or sub-committee occurs, whether or not a quorum is present, or when a majority of the Town body or sub-committee meet, whether in person or by electronic means such as conference call or e-mail, to conduct a hearing, deliberate, take action, or otherwise transact public business. “Deliberate” includes examining, weighing or reflecting upon the reasons for or against a possible decision and also includes the collective acquisition and exchange of facts preliminary to a decision.

An “emergency meeting” is one that concerns generally unexpected circumstances which require the immediate consideration of the Town body or sub-committee. In the event of an emergency meeting, a local news medium must be notified prior to the meeting.

(2) A meeting which is open to the public, except as to closed session conducted in accordance with the law for the reasons authorized by the law.

(3) Full and accurate minutes of the meeting, a copy of which shall be provided, once approved by the body or sub-committee, to the Town Clerk.

(B) Unless the Council adopts procedures specific to the body or sub-committee, will conduct its meetings in compliance with the following procedures:

(1) A quorum shall be 50% of the persons initially appointed to the body or sub-committee.

(2) In the absence of the chair, the vice-chair shall conduct any meeting of the body or sub-committee, and in the absence of both officers, the Mayor may designate a person to act as chair for the meeting in question.

(3) The agenda of the body or sub-committee shall include only those matters within the responsibilities and powers of the body or sub-committee which have been conferred upon it by the Council.

(4) The business of the body or sub-committee shall be conducted in such manner as to afford all members an opportunity to speak. However, no member shall generally address the body until first recognized by the chair, and members of the committee, task force, or advisory body shall be respectful to each other and shall avoid interrupting each other.

(5) Minutes of the body or sub-committee shall be subject to revision and adoption by the group as a whole.

(6) All actions or recommendations of the body or sub-committee shall require the presence of a quorum and are only effective or adopted upon majority vote, following a motion and second. When such action is to be reported to the Town Council, the committee, task force, or advisory body shall not only report the action or recommendation adopted, but the vote by which it was adopted.

(7) Meetings of the body or sub-committee shall proceed in the following order: adoption of an agenda, approval of the minutes, unfinished business, new business, informal discussion, and public comment, when public comment is to be accepted. By majority vote of the members of the body or sub-committee in attendance, the order of business may be altered.

(8) At any meeting of the body or sub-committee, if the meeting is opened for public comment, any person wishing to address the body or sub-committee shall state his or her name and whether or not he or she is a resident of the town.

(a) If there is a sign up sheet provided for speakers, speakers shall be recognized in the order in which they have signed up.

(b) Unless by motion, second, and majority vote a different time limit is adopted by the committee, task force, or advisory body, no person shall be allowed to speak for more than five minutes.

(c) 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 committee, task force, or advisory body, and the presiding officer may allot a larger amount of time for the presentation of the group position by the spokesperson.

(d) All persons addressing the body 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 a 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.

§35.05 RESIGNATION FROM BOARDS, COMMISSIONS, TASK FORCES, ADVISORY BODIES, COMMITTEES AND OTHER SUCH ENTITIES.

(A) A member of a board, commission, task force, advisory body, committee or other such entity may resign by notifying the Mayor, Town Manager, or relevant department head.

§35.06 DURATION OF BOARDS, COMMISSIONS, TASK FORCES, ADVISORY BODIES, COMMITTEES AND OTHER SUCH ENTITIES.

(A) Unless a different duration is specified by the Council at the time of creation of a Board, Commission, Task Force, Advisory Body, Committee or Other Such Entity,

including a sub-committee, the duration of the body shall be one year, but it may be extended by action of the Council.

Council Member Phillips moved to amend the motion to change Section §35.01(B) to omit the language granting the Council the ability to designate the chair and vice-chair. The motion to amend the original motion died for a lack of a second.

VOTE: Aye - 3 (Aycock, Mason, Pepin)
 Nay - 1 (Phillips)

Upon a motion by Council Member Pepin, seconded by Council Member Mason, Council moved to direct the Town Attorney to draft language that incorporates the amendment to the Municipal Code into the Unified Development Ordinance to be presented at the August Quarterly Public Hearing.

VOTE: Aye - 3 (Aycock, Mason, Pepin)
 Nay - 1 (Phillips)

(A second reading of the Code Amendment will occur at the June 18, 2009, regular meeting of the Boone Town Council.)

APPROVAL OF AFFORDABLE HOUSING TASK FORCE RECOMMENDATION

Council Member Mason updated the Council regarding the work of the Affordable Housing Task Force which has been drafting a text amendment regarding accessory apartments. She stated the Task Force would like to explore ways to address increasing density that meets single-family occupancy and discuss the development and redevelopment of large tracts of land in order to meet affordable housing needs. Upon a motion by Council Member Pepin, seconded by Council Member Aycock, Council moved to approve the priorities of the Affordable Housing Task Force as listed by Council Member Mason.

VOTE: Aye - All
 Nay - None

AFFORDABLE HOUSING TASK FORCE APPOINTMENTS

Council Member Mason requested, on behalf of the Affordable Housing Task Force, that another at-large citizen position be added to the task force for a total of five members. Upon a motion by Council Member Pepin, seconded by Council Member Aycock, Council moved to add another position to the Affordable Housing Task Force for an at-large community member.

VOTE: Aye - All
 Nay - None

Council Member Mason noted that the Clerk can advertise the vacancy and Council can consider any applications received at the next regular meeting.

REQUEST PERMISSION TO ALLOW REPRESENTATIVES FROM MCLAURIN PARKING COMPANY TO MEET WITH REPRESENTATIVES OF DBDA TO DISCUSS DOWNTOWN PARKING ISSUES

Council Member Phillips requested that the Council allow representatives from McLaurin Parking to meet with the Downtown Boone Development Association in order to explore any suggestions for improving the parking situation in the downtown area that McLaurin Parking might have to offer. He explained that the DBDA had met previously with representatives from McLaurin Parking in March and discussed the following issues:

- event parking (especially on weekends)
- the installation of more parking meters at strategic locations
- possible revision of parking fines and fees.

Council Member Phillips stated this discussion will be a follow-up to discussion held in March and be part of the larger discussion (charette process) of downtown parking issues. Council Member Aycock agreed that short-term solutions for event parking especially during weekends should be explored. Council Member Phillips stated that he can bring back any recommendations for consideration by the Council. It was agreed by Council to request a meeting at no charge from McLaurin Parking. Upon a motion by Council Member Phillips, seconded by Council Member Aycock, Council moved to grant permission to allow a meeting with representatives from McLaurin Parking Company and the DBDA to continue discussion of downtown parking issues and to request that representatives from McLaurin agree to meet with the DBDA at no charge.

VOTE: Aye - All
 Nay - None

Police Chief Bill Post noted that other stakeholders, such as members of his department and ASU Parking Director Barry Sauls, be included in the discussion of event parking.

REQUESTED APPEARANCES - SETH NORRIS

Aaron Miller, on behalf of Seth Norris, appeared before the Council to request approval of the 2009 Emergency Fest Special Event Permit and waiver of the permit fee of \$1,500. He noted the event will be held on Saturday, June 13, 2009, from 10:00 a.m. until 4:00 p.m. He requested as part of the permit the closure of Appalachian Street and a portion of Howard Street. Mr. Miller stated the purpose of Emergency Fest is to increase public awareness, education, and exposure to all aspects of emergency services and that the primary goal of the event is to reduce unintentional injury, death, and property loss from fire and other hazards. Council Member Mason asked if Public Works Director Blake Brown foresees any problems with the road closures. Mr. Brown indicated that the requested street closures will not pose any problems for his department. Upon a motion by Council Member Mason, seconded by Council Member Aycock, Council moved to approve the Special Event Permit for the 2009 Emergency Fest and to waive the permit fee of \$1,500.

VOTE: Aye - All

Nay - None

REQUESTED APPEARANCE - CANDY WINEBARGER, CHAIR, ABC BOARD

Candy Winebarger, Chair of the ABC Board, appeared before the Council to present the revenue distribution report. She reported a total of \$102,867 for the past quarter.

Before deliberating on the water and sewer requests, Town Attorney Sam Furgiuele questioned the members of the Council on whether or not they have had contact with any of the applicants requesting water and sewer service. All Council members stated that they had not had contact with any of the applicants submitting request for water and sewer service. Mayor Clawson noted that she has had contact with the applicant for the Jerry Haas request and will asked to be excused from deliberating on the issue.

WATER & SEWER REQUEST - BELLE OAKS MILLWORK, INC.

Public Utilities Director Rick Miller stated that the applicant has withdrawn the request for Town water and sewer services.

WATER & SEWER REQUEST - JAMES R. HARTLEY

Town Attorney Sam Furgiuele opened a public hearing at 8:55 p.m. to hear sworn testimony from James Hartley and Public Utilities Director Rick Miller on a request for water and sewer service to property located at the intersection of Ivey and Margot Lane, Camp Rock Subdivision Lots 1-5 and 10-14. Mr. Hartley began by stating that he was previously granted a water allocation for 270 gallons per day by the Council in June 2008. He noted that the allocation is due to expire in June of this year and is requesting an extension of the water allocation. He noted that he has received approval from the Watauga County Health Department for a septic system and drain field. Public Utilities Director Rick Miller stated that the availability fee of \$2,227.50 has not yet been paid. Mr. Hartley stated that he is willing to pay the availability fee if the Council grants the water extension. With no other testimony, Mr. Furgiuele closed the public hearing at 9:01 p.m. Upon a motion by Council Member Mason, seconded by Council Member Aycock, Council moved to grant an extension to the 270 gallon per day water allocation received by James Hartley upon payment of the availability fee in the amount of \$2,227.50.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Aycock, Council moved to excuse Mayor Clawson from deliberation of the Jerry Haas water and sewer request.

VOTE: Aye - All
 Nay - None

WATER & SEWER REQUEST - JERRY HAAS

Town Attorney Sam Furgiuele opened a public hearing at 9:02 to hear sworn testimony from Nancy Haas and Public Utilities Director Rick Miller on a request for water service to property located at 611 Winkler's Creek Road. Nancy Haas stated that she is the property owner of this lot. She stated that she is making this request for financial reasons because the well that had served the property is on another lot and that she pays monthly for use of the well. Furthermore, Ms. Haas stated that the well has, in the past, tested positive for e. coli contamination. Public Utilities Director Rick Miller stated that an old water meter is accessible to the property but that a new meter and setter will have to be installed. He estimated the cost of extending sewer service to the property to be \$5,200 for boring under the road to run the line since the NC DOT will not allow the Town to cut the pavement. Council Member Aycock asked if Ms. Haas will be agreeable to paying the cost of a new meter and setter for the property. Ms. Haas stated that she is willing to pay for a new meter and setter. With no other testimony offered, Mr. Furgiuele closed the public hearing at 9:10 p.m. After brief discussion, it was the consensus of the Council that Ms. Haas's situation constitutes a hardship situation due to the previous contamination of the shared well. Upon a motion by Council Member Phillips, seconded by Council Member Mason, Council moved to approve water service in the amount of 270 gallons per day from the 2009 allocation to property located at 611 Winkler's Creek Road contingent on the property owner's payment of a new meter and setter for the property.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Aycock, Council moved to reseal Mayor Clawson.

VOTE: Aye - All
 Nay - None

Council Member Mason left the meeting at 9:12 p.m.

CLOSED SESSION

Upon a motion by Council Member Pepin, seconded by Council Member Aycock, Council moved to enter Closed Session at 9:13 p.m. pursuant to NCGS 143-318.11a)3) to hear the following item:

-Legal Advice regarding Water Intake.

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

Upon a motion by Council Member Pepin, seconded by Council Member Aycock, Council moved to exit Closed Session at 10:09 p.m.

VOTE: Aye - All
 Nay - None

Absent - 1 (Mason)

ADJOURNMENT

Upon a motion by Council Member Pepin, seconded by Council Member Aycock, Council moved to adjourn at 10:10 p.m.

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

Deputy Town Clerk

Mayor