

WHEREAS, it is to the material advantage of the party of the second part to effect this encroachment, and the party of the first part, in the exercise of authority conferred upon it by statute and ordinance, is willing to permit the encroachment on public land, subject to the conditions of this agreement;

NOW, THEREFORE, IT IS AGREED that the party of the first part hereby grants to the party of the second part the right and privilege to make this encroachment upon the following conditions, to wit:

That the party of the second part complies with all pertinent provisions of the North Carolina State Building Code, the Town of Boone Unified Development Ordinance and Town of Boone Municipal Code, and such other laws, regulations and ordinances which might apply;

That the said party of the second part binds and obligates itself, its successors and assigns, to install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said public land, nor obstruct nor interfere with the proper maintenance thereof, to reimburse the party of the first part for the costs incurred for any repairs or maintenance to its roadways, sidewalks and other structures resulting from the installation and existence of the encroaching facility of the party of the second part, and if at any time the party of the first part shall require the removal of or changes in the location of the encroaching facility, that the said party of the second part binds itself, its successors and assigns, to promptly remove or alter the said encroaching facility in order to conform to the said requirements of the party of the first part, without any cost to the party of the first part.

That the party of the second part agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and/or other warning devices, as necessary or as requested by the party of the first party Director of Public Works or his designee, for the protection of the public and in the case of encroachment into a street right of way, in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and amendments or supplements thereto. Information as to the above rules and regulations may be obtained from the party of the first part.

That to the extent permitted by law, the party of the second party shall be responsible for all liability associated with the encroachment and encroaching facility. In furtherance of such responsibility, the party of the second part agrees to indemnify and hold harmless the party of the first part from and against any claim by any third party based upon any action or omission occurring during construction and maintenance of the encroaching facility, as well as from and against any and all claims, demands, suits, causes of action, or other assertion of responsibility, however denominated, for personal injury, damage to property, losses and expenses, including court costs and attorney's fees, arising out of or in any way related to the encroachment or encroaching facility;

That where pertinent and requested by the party of the first part, the party of the second part agrees to name the party of the first part as an additional insured on its and/or its contractor's general liability insurance policies applicable to the encroachment or encroaching facility.

It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such encroaching facility as the party of the first part carries out its construction and maintenance operations, and the party of the second party expressly waives all claims of liability or responsibility against the party of the first party for any damage that may be caused to the encroaching facility as the result of the Town carrying out any construction and maintenance operations. The party of the second part acknowledges that with regard to canopies, awnings, signs and similar encroachments, even where same fully comply with the Town of Boone Unified Development Ordinance, when placed less than ten feet above the surface of a public sidewalk, such obstructions are at great risk of damage by the equipment of the party of the first part during snow removal and general sidewalk construction and maintenance, and the party of the second part understands that by placing the encroaching facility less than ten feet above the surface of a public sidewalk, the party of the second part is knowingly and intentionally assuming that heightened risk of damage.

That the party of the second part agrees to be bound by such other and additional conditions as the Town Council may impose in connection with the encroaching facility.

The party of the second part agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the party of the first part. The party of the second part agrees to exercise every reasonable precaution during construction and maintenance to prevent eroding of soil; silting or pollution to the rivers, streams, lakes, reservoirs, other water impoundments; ground surfaces or other property; or pollution of the air. The party of the second part shall comply with all applicable all rules and regulations of the North Carolina Sedimentation Control Commission, the Town of Boone Unified Development Ordinance and all other applicable laws and regulations relating to pollution prevention and control. When any installation or maintenance operation disturbs the ground surface and the existing ground cover, the party of the second part agrees to remove and replace the sod or otherwise reestablish the grass cover to meet the satisfaction of the party of the first part. The party of the second part shall comply with all pertinent ordinances, rule, regulations and laws, and failure to do so shall be a basis for revocation of this encroachment agreement by the party of the first part.

That the party of the second part agrees to assume the actual cost of any inspection of the work considered to be necessary by the party of the first part.

That the party of the second part agrees to have available at the encroaching site, at all times during construction, a copy of this agreement showing evidence of approval by the party of the first part. The party of the first part reserves the right to stop all work unless evidence of approval can be shown.

Provided the work referred to in this agreement is being performed on a completed public street open to traffic, the party of the second part agrees to give written notice of when work will begin to the party of the first part.

That in the case of noncompliance with the terms of this agreement by the party of the second part, the party of the first part reserves the right to stop all work until the encroaching facility has been brought into compliance or removed from the right of way at no cost to the party of the first part.

That it is agreed by both parties that this agreement shall become void if actual construction of the work contemplated herein is not begun and completed within one (1) year(s) from the date of this agreement unless written waiver is secured by the party of the second part from the party of the first part.

The party of the first part expressly reserves the unrestricted right to require the party of the second part to change the location of the encroaching facility described herein at no expense to the party of the first part.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed as of the day and year first above written.

Approval of Encroachment Agreement - Love is Earth projecting sign.

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made and entered into this the 15th day of November, 2011, by and between the TOWN OF BOONE, party of the first part; and Love is Earth, party of the second part.

W-I-T-N-E-S-S-E-T-H

THAT WHEREAS, the party of the second part desires to encroach on public land designated as (CHOOSE ONE) a public sidewalk/public street/public park/public land (hereinafter referred to as the "public land") located at 444 West King Street with the following: 9 square feet projecting sign (hereinafter referred to as "the encroaching facility"); and

WHEREAS, it is to the material advantage of the party of the second part to effect this encroachment, and the party of the first part, in the exercise of authority conferred upon it by

statute and ordinance, is willing to permit the encroachment on public land, subject to the conditions of this agreement;

NOW, THEREFORE, IT IS AGREED that the party of the first part hereby grants to the party of the second part the right and privilege to make this encroachment upon the following conditions, to wit:

That the party of the second part complies with all pertinent provisions of the North Carolina State Building Code, the Town of Boone Unified Development Ordinance and Town of Boone Municipal Code, and such other laws, regulations and ordinances which might apply;

That the said party of the second part binds and obligates itself, its successors and assigns, to install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said public land, nor obstruct nor interfere with the proper maintenance thereof, to reimburse the party of the first part for the costs incurred for any repairs or maintenance to its roadways, sidewalks and other structures resulting from the installation and existence of the encroaching facility of the party of the second part, and if at any time the party of the first part shall require the removal of or changes in the location of the encroaching facility, that the said party of the second part binds itself, its successors and assigns, to promptly remove or alter the said encroaching facility in order to conform to the said requirements of the party of the first part, without any cost to the party of the first part.

That the party of the second part agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and/or other warning devices, as necessary or as requested by the party of the first party Director of Public Works or his designee, for the protection of the public and in the case of encroachment into a street right of way, in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and amendments or supplements thereto. Information as to the above rules and regulations may be obtained from the party of the first part.

That to the extent permitted by law, the party of the second party shall be responsible for all liability associated with the encroachment and encroaching facility. In furtherance of such responsibility, the party of the second part agrees to indemnify and hold harmless the party of the first part from and against any claim by any third party based upon any action or omission occurring during construction and maintenance of the encroaching facility, as well as from and against any and all claims, demands, suits, causes of action, or other assertion of responsibility, however denominated, for personal injury, damage to property, losses and expenses, including court costs and attorney's fees, arising out of or in any way related to the encroachment or encroaching facility;

That where pertinent and requested by the party of the first part, the party of the second part agrees to name the party of the first part as an additional insured on its and/or its contractor's general liability insurance policies applicable to the encroachment or encroaching facility.

It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such encroaching facility as the party of the first part carries out its construction and maintenance operations, and the party of the second party expressly waives all claims of liability or responsibility against the party of the first party for any damage that may be caused to the encroaching facility as the result of the Town carrying out any construction and maintenance operations. The party of the second part acknowledges that with regard to canopies, awnings, signs and similar encroachments, even where same fully comply with the Town of Boone Unified Development Ordinance, when placed less than ten feet above the surface of a public sidewalk, such obstructions are at great risk of damage by the equipment of the party of the first part during snow removal and general sidewalk construction and maintenance, and the party of the second part understands that by placing the encroaching facility less than ten feet above the surface of a public sidewalk, the party of the second part is knowingly and intentionally assuming that heightened risk of damage.

That the party of the second part agrees to be bound by such other and additional conditions as the Town Council may impose in connection with the encroaching facility.

The party of the second part agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the party of the first part. The party of the second part agrees to exercise every reasonable precaution during construction and maintenance to prevent eroding

of soil; silting or pollution to the rivers, streams, lakes, reservoirs, other water impoundments; ground surfaces or other property; or pollution of the air. The party of the second part shall comply with all applicable all rules and regulations of the North Carolina Sedimentation Control Commission, the Town of Boone Unified Development Ordinance and all other applicable laws and regulations relating to pollution prevention and control. When any installation or maintenance operation disturbs the ground surface and the existing ground cover, the party of the second part agrees to remove and replace the sod or otherwise reestablish the grass cover to meet the satisfaction of the party of the first part. The party of the second part shall comply with all pertinent ordinances, rule, regulations and laws, and failure to do so shall be a basis for revocation of this encroachment agreement by the party of the first part.

That the party of the second part agrees to assume the actual cost of any inspection of the work considered to be necessary by the party of the first part.

That the party of the second part agrees to have available at the encroaching site, at all times during construction, a copy of this agreement showing evidence of approval by the party of the first part. The party of the first part reserves the right to stop all work unless evidence of approval can be shown.

Provided the work referred to in this agreement is being performed on a completed public street open to traffic, the party of the second part agrees to give written notice of when work will begin to the party of the first part.

That in the case of noncompliance with the terms of this agreement by the party of the second part, the party of the first part reserves the right to stop all work until the encroaching facility has been brought into compliance or removed from the right of way at no cost to the party of the first part.

That it is agreed by both parties that this agreement shall become void if actual construction of the work contemplated herein is not begun and completed within one (1) year(s) from the date of this agreement unless written waiver is secured by the party of the second part from the party of the first part.

The party of the first part expressly reserves the unrestricted right to require the party of the second part to change the location of the encroaching facility described herein at no expense to the party of the first part.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed as of the day and year first above written.

Rescheduling of December regular Council meetings.

Adoption of Resolution - NC DOT Bicycle Planning Grant.

RESOLUTION

WHEREAS, the Town of Boone is hereby applying to the North Carolina Department of Transportation (NC-DOT) for grant funds to develop a Bicycle Planning grant to develop a bicycle plan for the Town of Boone; and

WHEREAS, if the North Carolina Department of Transportation approves funding of the project as described in the grant application, the NC-DOT will prepare a Grant Agreement for execution by the Town Board; and

WHEREAS, the Grant is a 70% State contribution with a 30% Town match where the State's maximum contribution does not exceed \$45,000.00 and the Town's maximum contribution up to the amount of \$19,285.00 from the Fund Balance; and

WHEREAS, the Grant Agreement will require the Town of Boone to perform certain functions and obligations in order to carry out the work described in this grant application;

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Boone assures the North Carolina Department of Transportation that it understands the functions and

obligations to which the Town of Boone is committing itself in order to carry out the work described in this grant application, and further agrees that the Town of Boone will proceed with diligence to perform those functions and obligations to accomplish the work described in this grant application.

Adopted this the 15th day of November, 2011.

Mayor

ATTEST:

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 169)

VOTE: Aye - All
Nay - None

PUBLIC COMMENT

John Cooper appeared before the Council to express his appreciation of its efforts at purchasing the Appalachian Theater. He encouraged the Council to continue the pursuit of acquiring the historic landmark.

Kathleen Rowell of the Blue Ridge Community Theater stated that the group does not have a permanent location and voiced her support of the Town's acquiring of the Old Appalachian Theater.

Keith Martin, who has many years of experience in arts and entertainment, voiced his support of the old Appalachian Theater as a community theater and music venue.

Bettie Bond, as a member of the Historic Preservation Commission and a resident of Grand Boulevard, voiced her support of the purchase of the old Appalachian Theater by the Town.

DISCUSSION OF TABLE OF PERMITTED USES

Planner Jane Shook noted that, due to several cases on the agenda for the Planning Commission to consider, there was time left for discussion of the Table of Permitted Uses. She stated that the Planning Commission voted to change its meeting time to begin at 6:00 p.m. for the next year and to schedule a special meeting for Wednesday, December 7, 2011, from 5:00-9:00 p.m. in the Council Chambers for the purpose of further discussion of the Table of Permitted Uses. Upon a motion by Council member Ball, seconded by Council member Mason, Council moved to direct the Planning Commission to continue in the discussion and study of the Table of Permitted Uses.

VOTE: Aye - All
Nay - None

ADOPTION OF TEXT AMENDMENTS

Case 20110547 James and Janet Bates have filed a Conditional District Map Amendment request for property located at 225 Delmar Street and further identified as Watauga County PIN 2910-68-7833-000. The request is to rezone the property from R-1 Single Family Residential to Conditional District R-2 Two Family Residential for a site specific development plan for Use 1.210 Single Family with Accessory Apartment. Planner Jane Shook noted that the Planning Commission has recommended approval with conditions. Council expressed concern with the fact that at least one of the units will not be owner occupied and requested further discussion information from the Planning Commission meeting. Planner Jane Shook stated that she can provide the Council with minutes from the Planning Commission meeting. Upon a motion by Council member Phillips, seconded by Council member Ball, Council moved to table consideration of this case until the Thursday, November 17, 2011 regular meeting.

VOTE:Aye - All
Nay - None

Case 20110573 Watauga County has filed a Zoning Map Amendment Petition for Conditional District Zoning for property located at 300 Go Pioneers Drive and further identified as Watauga County PIN 2910-88-3456-000 to modify the existing site specific development plan for the Conditional District O/I Office Institutional Zoning for the Watauga High School property. The modification will include the addition of a wind turbine, which is proposed to be located between the football and soccer fields an action which also triggers the requirements for Transitional Zones in accordance with UDO Section 198. Planner Jane Shook noted that the Planning Commission has recommended approval of the request with staff-recommended conditions.

Vote #1

Upon a motion by Council member Ball, seconded by Council member Phillips, Council moved that the proposed amendment to the Town's zoning map is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relate to this application the construction and placement of the wind turbine is an appropriate use for the property in question, encourages the development of sustainable and renewable energies and provides educational opportunities for student energy studies.

VOTE:Aye - All
Nay - None

Vote #2

Upon a motion by Council member Ball, seconded by Council member Phillips, Council moved to approve the proposed amendment to the Town's zoning map with the following conditions and believe approval is reasonable and in the public interest because the amendment is consistent with the conditional district zoning of the property, provides education venues, and encourages movement toward the Boone 2030 Land Use Plan and promotes alternative energies that the Boone 2030 Land Use Plan encourages:

1. Approval is subject to the sites plan and supplemental information submitted bearing the received date of October 24, 2011. Insignificant deviations may be permitted to comply with the requirements of the UDO or State Building Code.
2. Any commitments and representations concerning the proposed project made by the applicant or his representatives at the public hearing shall also become a condition of approval.
3. Applications and final plans shall be submitted that are in compliance with the provisions of the UDO, Town Code and State Building Code.

(This zoning text amendment can be found in the Zoning Text Amendment Book #1)

VOTE:Aye - All
Nay - None

Case 20110523 The Town of Boone has filed a text amendment request to modify language in the Unified Development Ordinance Article III Administrative Mechanisms regarding Board/Commission appointments. Planner Jane Shook noted that the Planning Commission has unanimously recommended approval of the request.

Vote #1

Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's Comprehensive plan and other applicable adopted plans of the Town which relate to this application because it demonstrates the spirit of cooperation between the Town and the County and facilitates the appointment of representatives from the ETJ.

VOTE:Aye - All
Nay - None

Vote #2

Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved to approve the proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because the amended language provides an equitable and effective method of ensuring representation for ETJ representatives on Town boards and commissions and further moves that this be made effective as of January 1, 2012.

(This zoning text amendment can be found in the Zoning Text Amendment Book #1)

VOTE:Aye - All
Nay - None

P&I MONTHLY STATUS REPORT

Planner Jane Shook presented the Planning and Inspections Monthly Report **(permanently on file in the November 2011 Town Council Packet.)**

AUTHORIZATION OF UDO TEXT AMENDMENT

Board of Adjustment Chairman Rich Crepeau appeared before the Council to speak in support of a request for UDO text amendment which will limit applicants appearing before the Board of Adjustment to a 30-minute timeframe, unless the Board approves to vote to extend the time limit. He explained that the exorbitant number is resulting in cases being continued onto the next month's agenda for consideration. Dr. Crepeau stated that he is concerned that this is impacting the due process of applicants who are having to wait a month to be considered. Upon a motion by Council member Leigh, seconded by Council member Ball, Council moved to authorize the Town Attorney to prepare a draft for consideration.

VOTE:Aye - All
Nay - None

DISCUSSION OF BEER/WINE SOLD BY GLASS

Council member Phillips asked for further discussion of the issue of the sale of beer and wine by the glass. He presented a copy of the Alcoholic Beverage Control Laws regarding the ballot options for consideration. Council member Phillips moved to open the floor for public comment on the issue; Council member Ball seconded the motion.

VOTE:Aye - 2 (Phillips, Ball)
Nay - 3 (Leigh, Mason, Brantz)

Discussion ensued about concerns from several Council members regarding the inability to limit the scope of the distribution of beer and wine by the glass. Town Attorney Sam Furgiuele stated that the Council would have to consider pursuing special legislation from the General Assembly to limit the ability to sell beer and wine by the glass. Council member Mason stated that she was disappointed in learning of the effect of this action on other communities such as Greenville, NC. Several council members expressed concern about the possible effects of allowing this action, such as the impact on the character of the community. Upon a motion by Council member Mason, seconded by Council member Phillips, Council moved to direct the Town Attorney to explore the option of pursuing special legislation by the General Assembly for the selling of beer and wine by the glass and to also approach local legislative representatives regarding this option.

VOTE:Aye - All
Nay - None

ADOPTION OF USACE FINAL PROJECT REPORT

Assistant to the Manager Jim Byrne appeared before the Council to request adoption of the United States Army CORPS of Engineers Report and Assessment 206 Project. Upon a motion by Council member Brantz, seconded by Council member Ball, Council moved to adopt the United States Army CORPS of Engineers Report and Assessment 206 Project **(copy of report in entirety permanently on file at Town Hall.)**

VOTE:Aye - All
Nay - None

ADOPTION OF USACE PROJECT PARTNERSHIP AGREEMENT

Assistant to the Manager Jim Byrne appeared before the Council to request approval of the United States Army CORPS of Engineers Project Partnership Agreement. He explained that the project will be an USACE Section 206 Aquatic Restoration of the South Fork of the New River from the covered greenway bridge to the middle greenway bridge, approximately 4,000 feet. Upon a motion by Council member Brantz, seconded by Council member Ball, Council moved to adopt the US Army CORPS of Engineers Project Partnership Agreement (**copy of report permanently on file in the November 2011 meeting information packet.**)

VOTE: Aye - All
Nay - None

UPDATE ON ASU GAME DAY TRAFFIC PATTERN

Police Chief Dana Crawford presented an update on the recent change in the traffic pattern on ASU Game days which includes allowing ASU to close a portion of Stadium Drive immediately following a football game in order to usher pedestrians out of the stadium area and to shift both lanes of Stadium Drive to exit onto Rivers Street, thereby improving traffic flow and pedestrian safety. At this point, Chief Crawford stated that he is not aware of any significant impacts of this change and that his department will continue to monitor the situation.

APPROVAL OF CHANGE ORDER - DOWNTOWN STREET LIGHTING UPGRADES

Public Works Director Blake Brown appeared before the Council to present a request for approval of a change order for the Downtown Street Lighting project. He explained that the existing pole bases were originally to be removed and replaced with new bases. He stated that the existing bases have been discovered to be much larger than typical pole bases. Mr. Brown offered the following change order options:

- Option 1 - Deduct \$9,600.00
Scope: BECO proposes at owner's request a change order to reuse existing pole bases and anchor bolts. Change order #101Rev#1 is for BECO to furnish and install steel plate adapters at (17) existing pole base locations to use transformer bases in lieu of installing hand holes in poles and not using transformer bases.
- Option 2 - Deduct \$5290.00
Scope: BECO proposes at owner's request a change order to reuse existing pole bases and anchor bolts.

He stated that this option also includes the extension of the completion date until May 15, 2012. Town Manager Greg Young stated that by extending the contract date, the Town will not be imposing liquidated damages against the contractor. Upon a motion by Council member Brantz, seconded by Council member Mason, Council moved to approve a change order Option 1 and to extend the contract date to May 15, 2012.

VOTE: Aye - All
Nay - None

APPROVAL OF CHANGE ORDER - HIGHWAY 421 STREET LIGHTING PROJECT

Public Works Director Blake Brown appeared before the Council to present a request for approval of a change order for the Highway 421 Street Lighting project. He read into record the following information: "The design is having to be adjusted to account for unforeseen site conditions. A telecommunications ductbank is running along the same side of the street as overhead powerlines. Due to the small amount of space, when the ductbank clearance is obtained, the poles are then inside of the required 10 foot clearance from the power lines. NC DOT has allowed the Town to lower the light fixtures. The poles are having to be fieldmodified to accept an adapter which will lower the fixture. Upon approval of the submitted change order for the adapters, there is a 6 to 8 week lead time to receive the poles from the manufacturer. The 421 project deadline is also dictated by the timeline of the road-widening project. BECO has requested to extend the deadline of the 421 project to be completed by June 15, 2012. This time extension may need to be extended in the event of extreme weather conditions." Mr. Brown explained that the change order for this project will be at an additional cost of \$14,800 to shorten

22 light poles and use adapter to attach fixture arms. Council members expressed dissatisfaction with the additional costs and time needed. Council member Leigh stated that she feels that a difference in the height of the poles will be very noticeable. Mr. Brown stated that the costs will increase considerably if the Council wishes to modify all 44 poles to the same height. It was the consensus of the Council to direct Mr. Brown to investigate the costs involved in making all 44 poles the same height. Town Manager Greg Young stated that by extending the contract date, the Town will not be imposing liquidated damages against the contractor. Upon a motion by Council member Brantz, seconded by Council member Ball, Council moved to approve the change order for the Highway 421 Lighting Project at an additional cost of \$14,800 to shorten 22 light poles and use adapter to attach fixture arms and to extend the contract time until June 15, 2012.

VOTE:Aye - 4 (Phillips, Mason, Brantz, Ball)
Nay - 1 (Leigh)

SCHEDULING OF SPECIAL MEETING - WATER USE COMMITTEE

Upon a motion by Council member Ball, seconded by Council member Brantz, Council moved to schedule a special meeting for Tuesday, November 29, 2011, at 7 p.m. in order to discuss the following topics:

1. Discussion of Water Treatment Plant production amounts since last year.
2. Discussion of Watauga County request to extend expiration of old high school property water allotment to coincide with Ordinance 11-01 expiration.
3. Discussion of providing staff authority to deny water/sewer requests from those who do not wish to adhere to Town requirements.

VOTE:Aye - All
Nay - None

REQUEST TRANSFER OF FUNDS - TOILET REBATE PROGRAM

Public Utilities Director Rick Miller requested permission to transfer funds within the toilet rebate program. He explained that the Town Council had previously authorized \$10,000 for a trial toilet rebate program, with \$5,000 each for residential and commercial replacements. He stated that the residential portion of the program has been quite a bit more successful than the commercial portion and has a limited amount of funding remaining. Mr. Miller stated that he is requesting the transference of \$2,500 from the commercial portion of the program to the residential portion of the toilet rebate program. Upon a motion by Council member Leigh, seconded by Council member Ball, Council moved to refer the request for consideration by the Water Use Committee and to add the matter to the November 29th special meeting agenda.

VOTE:Aye - All
Nay - None

MONTHLY WATER USE STATUS REPORT

Public Utilities Director Rick Miller presented the monthly water-use status report. **(Permanently on file in the November 2011 Boone Town Council meeting packet.)**

APPROVAL OF BUDGET AMENDMENTS

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

DESCRIPTION	ACCOUNT #	TO:	FROM:
Horn In the West/SAHA	010-411-000-549122		\$2,000.
Appropriated Fund Balance - General Fund	010-000-000-4999000		\$2,000.
Maint. & Repairs-Vehicles (PD)	010-500-300-525301		\$561.
Travel & Training (PD)	010-500-300-521101		\$500.

Misc. Revenue - General Fund	010-000-000-489900		\$561.
Contributions/Donations-General Fund	010-000-000-482200		\$500.
Maint. & Repair - Vehicles (P&I)	010-500-360-525301	\$2,474.	
Miscellaneous Revenue-General Fund	010-000-000-483300		\$2,474.

RECESS

On a motion by Council member Brantz, seconded by Council member Ball, Council moved to recess the meeting at 8:19 p.m. until Thursday, November 17, 2011 at 6:30 p.m.

VOTE: Aye - All
Nay - None

CALL TO RECONVENE

A recessed meeting from Tuesday, November 15, 2011 was called to order at 6:30 p.m., Thursday, November 17, 2011 in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, Andy Ball, Jamie Leigh, Rennie Brantz, and Stephen Phillips. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Deputy Town Clerk Kim Brown, Town Clerk Freida Van Allen, Assistant to the Manager Jim Byrne, Police Chief Dana Crawford, Planner Jane Shook, Planning Director Bill Bailey, Fire Chief Jimmy Isaacs, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Human Resources Director Peri Moretz, and Downtown Development Coordinator Pilar Fotta.

ANNOUNCEMENTS

Mayor Clawson announced that any persons wishing to address the Council on a non-agenda item should sign in to speak during the Public Comment period.

TENTATIVE AGENDA ADOPTION

Town Manager Greg Young noted that there was one change to the agenda: to hold only one regular meeting in December on Tuesday, December 13, 2011. Upon a motion by Council member Brantz, seconded by Council member Ball, Council moved to adopt the agenda as presented with the change in the December meeting schedule.

VOTE: Aye - All
Nay - None

PUBLIC COMMENT

There were no persons signed to speak during the Public Comment period.

BOARD APPOINTMENTS

Affordable Housing Task Force - There were no applications submitted for these vacancies. Council directed the Clerk to add to the December meeting agenda, a discussion regarding the membership positions for this task force.

Board of Adjustment - Mayor Clawson announced that two applications were received for vacancies on this board. Council member Ball nominated Jesse McNeil for an alternate resident position with a term expiring on June 30, 2014.

VOTE: Aye - All
Nay - None

Council member Brantz nominated Craig Adams for an alternate resident position with a term expiring June 30, 2014.

VOTE: Aye - All
Nay - None

Community Appearance Commission - There were no applications submitted for these vacancies.

Greenway, Parks & Gardens Committee - There were no applications submitted for these vacancies.

Planning Commission - There were no applications submitted for this vacant position.

Tree Board - There were no applications submitted for these vacancies.

Boone Tourism Development Authority - Mayor Clawson noted that one application was received for this vacant position. Council member Mason nominated Ron Coldiron to serve as a member who is a resident of Boone and a member of the Boone Area Chamber of Commerce.

VOTE: Aye - All
Nay - None

Water Study Committee - There were no applications submitted for these vacancies.

APPROVAL OF TEXT AMENDMENT - CASE 20110547 BATES CONDITIONAL DISTRICT MAP AMENDMENT

Case 20110547 James and Janet Bates have filed a Conditional District Map Amendment request for property located at 225 Delmar Street and further identified as Watauga County PIN 2910-68-7833-000. The request is to rezone the property from R-1 Single Family Residential to Conditional District R-2 Two Family Residential for a site specific development plan for Use 1.210 Single Family with Accessory Apartment. Planner Jane Shook presented a draft of the Planning Commission minutes detailing discussion of this case (**copy of DRAFT Planning Commission minutes permanently on file in the November Town Council meeting information file.**) Further discussion ensued regarding the concerns of Council about such items as the size of the accessory apartments, parking enforcement, noise, and the fact that there is no stipulation for owner occupancy. Several Council members voiced a concern about an effect on the integrity of the neighborhood. Upon a motion by Council member Phillips, seconded by Council member Ball, Council reopened the public hearing for this case at 6:52 p.m. Jim Bates, property owner, stated that he may be able to provide a bit more flexibility regarding the parking issues; however, he stated that at this time, he cannot move into the property to satisfy the owner-occupancy regulation. Council member Phillips asked if he is willing to limit the occupancy of the accessory apartment to one person. Mr. Bates stated that he will consider that option if it is the only way his request will be considered. With no other testimony, Mayor Clawson closed the public hearing at 6:05 p.m. Upon a motion by Council member Mason, seconded by Council member Leigh, Council moved to table consideration of this case until the December 13, 2011 regular meeting.

VOTE: Aye - All
Nay - None

APPROVAL OF CONTRACT - DBDA

Upon a motion by Council member Leigh, seconded by Council member Ball, Council moved to approve the following contract, with minor grammatical changes:

**STATE OF NORTH CAROLINA
COUNTY OF WATAUGA**

**AGREEMENT BETWEEN
TOWN OF BOONE
AND THE DOWNTOWN BOONE DEVELOPMENT ASSOCIATION, INC.**

THIS AGREEMENT ("Agreement") is entered into this 19th day of November, 2011, by and between the TOWN OF BOONE, a North Carolina municipality (hereafter referred to as "the Town") and the DOWNTOWN BOONE DEVELOPMENT ASSOCIATION, INC., a

North Carolina non-profit membership corporation (hereafter referred to as “the DBDA”), collectively referred to as “the Parties.”

WITNESSETH:

THAT, WHEREAS, the Town is a municipal corporation organized pursuant to the laws of the State of North Carolina and located in Watauga County, North Carolina; and

WHEREAS, the Town has established a Municipal Service District pursuant to N.C. Gen. Stat. § 160A-535, et seq., (hereafter, the “MSD”) from which it collects a Municipal Service District tax the authorized purposes of which are identified under State law; and

WHEREAS, pursuant to N.C. Gen. Stat. § 160A-536(d), the Town is authorized to enter into contracts to administer, in whole or in part, the Municipal Service District tax; and

WHEREAS, the Town is a participant in the North Carolina Main Street Program administered by the North Carolina Department of Commerce (hereafter, “the Main Street Program”); and

WHEREAS, the DBDA is a North Carolina Non-Profit Corporation, duly organized pursuant to the laws of the State of North Carolina and authorized by law to enter into Agreements for the purposes for which it was created, including the promotion, encouragement and assistance in the revitalization and economic health and stability of the Town’s Municipal Service District (the “MSD”); and

WHEREAS, the parties wish to confirm their Agreement concerning the expenditure of MSD funds, governance of the DBDA, and required and permitted activities of the DBDA with those funds in writing;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration passing from each party to the other, the receipt of which is hereby respectively acknowledged by each of the parties hereto, the parties agree and contract as follows:

1. **Term:** The term of this Agreement shall be one year, commencing on July 1, 2011 and ending June 30, 2012. No continuation or renewal of the Agreement shall be inferred following its expiration, nor shall any further commitment by either party exist without specific action by each of the parties to authorize, create and adopt a new contract, except as to those duties created by this Agreement.
2. **Consideration:** In consideration of the DBDA's performance of the duties and responsibilities set out herein, the Town will make available to the DBDA the 2011-2012 MSD tax revenues, as those revenues become available (hereafter, “MSD funds”). Each party recognizes and confirms that all MSD funds are derived from MSD taxes and are subject to all relevant restrictions for MSD tax funds set out in the North Carolina General Statutes. Should the Agreement be terminated or end before all funds have been paid, the Town shall reimburse the DBDA or pay from MSD funds for any outstanding expenses committed by the DBDA pursuant to this Agreement.
3. **Governance:** Beginning with the 2011 annual meeting of the membership of the DBDA, one half of the members of the Board of Directors shall be elected by the membership of the DBDA, and one-half of the members shall be appointed by the Boone Town Council. Service of the new board shall begin at the first meeting of the directors following the annual meeting of the members. Should the Town Council also appoint one or more of its members as liaison to the DBDA, the DBDA board of directors shall include them in their meetings and deliberations, but they shall be considered as *ex officio*, non-voting members of the Board.
4. **Administration:** The parties acknowledge that the executive director of the DBDA is a Town employee, subject to the Town’s Personnel Policy and working under the supervision of the Town manager or his designee.
5. **Appropriate Uses of MSD Funds:** MSD funds shall be used solely for purposes authorized by this Agreement, but the DBDA may expend funds from other sources for other purposes so long as: (1) they are accounted for using methods which satisfactorily assure their proper use; (2) no MSD funds are committed, either directly or indirectly, to support any activities which are not appropriate for the use of MSD funds; and (3) such other funds are

expended in accordance with pertinent law and the DBDA's own by-laws. MSD funds will not be authorized for sign or facade grants until a policy is developed and recommended by the DBDA, and adopted by the Town Council, which ensures comprehensive notice of the availability of such grants and which contains criteria for determining which proposed facade or sign improvements or replacements benefit the MSD as a whole and not simply the individual property owner or business.

6. Recommendations by DBDA to Town Council: The DBDA will make recommendations to the Town Council for its consideration, to ensure that:

- A.** To the extent feasible and taking into consideration the limits of the DBDA's ability to know all changes which take place within the MSD, the DBDA's website is updated at least quarterly and MSD directory signage is updated at least annually.
- B.** Regular office hours for public and membership access to the DBDA director or her designee are maintained in accordance with the hours reflected on the DBDA website, subject to the review and approval of the Town Manager (who must oversee the hours of employees and Town's compliance with wage and hour laws, etc.).
- C.** MSD funds are used to benefit only the MSD area, are used to benefit the entire range of stakeholder categories (i.e. including service providers and other non-retail establishments) and all MSD locations (e.g. less traveled streets and outer boundary edges), and prohibiting the use of MSD funds, in whole or in part, to promote businesses or activities outside the MSD.
- D.** At least 30% of MSD funds are utilized for tangible improvements to the MSD, such as "streetscape improvements."
- E.** Remaining MSD funds are utilized, if desirable, to create, coordinate and administer District revitalization projects which provide for services or functions, such as additional garbage pick up, which are in addition to or to a greater extent than those provided or maintained by the Town for the entire town, to support any duly adopted plan by the Town aimed at improving the MSD, which is specifically authorized herein, or for such other activities which benefit the MSD, work toward its revitalization or preservation, or otherwise enhance the MSD area and help the businesses of the MSD thrive.

Such recommendations shall address activities such as:

1. Promotional and developmental activities, such as sponsoring festivals and markets in the MSD, promoting business investment in the MSD, helping to coordinate public and private actions in the MSD, and developing and issuing publications on the MSD designed to improve the economic well-being of the MSD;
2. Administration of any MSD revitalization project specifically requested by the Town;
3. Creation, maintenance and administration of a clearinghouse for information concerning the availability of properties within the MSD for purchase or rent, by creating, maintaining and administering a repository of such information to which MSD property owners may contribute, as they may wish, and which shall be in a format which will make it broadly available to the public and to persons potentially interested in investment in the MSD;
4. Its participation in activities, and the maintenance and submission of all information requested or required by or of the Town, or by the North Carolina Department of Commerce in order for the Town to continue to participate in good standing in the North Carolina Main Street Program and for the Town to derive all available benefits from its continued participation in the Main Street program;

7. **Commitments by DBDA:** The DBDA agrees that:

- A. Should the DBDA hire employees with non-MSD funds, it will maintain and provide to the Town Manager a comprehensive personnel policy which addresses and ensures the proper performance by non-Town staff for expenditure of funds, and which includes procedures for the supervision of staff and the discipline of staff, with personnel actions up to and including dismissal authorized.
- B. No later than thirty days after its receipt, or September 1, 2011, whichever is earlier, it will provide the Town Manager and Town Council a full copy of any audit which it obtains, and that should it obtain an audit, it shall be prepared by an independent auditing firm having no conflicts of interest and selected by the DBDA board of directors after a general solicitation to appropriate accounting firms in the region, including an Audited Income Statement with detailed expense categories, not just one generic “downtown redevelopment” expense item. The audit must disclose itemized expenditures by funding source.
- C. At least five days before each meeting of the DBDA board of directors, it will post on its website and provide notice, in accordance with its duly adopted by-laws, of the meeting to its membership, Board members, Town Council members and Town Manager, along with an agenda and a copy of the draft minutes from the previous meeting.
- D. It will provide the Town Manager with a copy of the organization’s Form 990 promptly after it is prepared.
- E. It will maintain a written policy which requires that a fund accounting system is created and maintained which ensures that any non-MSD funds are used only in accordance with State law and this contract, to the extent applicable.
- F. It will maintain written policies ensuring that non-MSD funds are properly used in accordance with its own by-laws and in accordance with applicable law.
- G. It will report to the Town Council the duly adopted, collective views of its full membership and its Board of Directors as to those actions and policies which the Town may consider within the District to improve the District’s economic well-being.

8. **Activities to Serve entire Municipal Service District without Charge:** All activities of the DBDA with MSD funds shall be undertaken in such manner, insofar as possible, as to provide benefits to and throughout the entire District.

9. **Compliance with Laws:** The DBDA shall comply with all pertinent federal, State, county and Town laws, regulations and ordinances, including but not limited to all North Carolina and federal laws relating to the operation of non-profit membership corporations, those laws which govern the conduct of the annual meetings of its membership and the selection of its directors and officers. In addition, and not by way of exclusion, in any and all its actions and activities, the DBDA shall comply with and hereby certifies its compliance with the Americans with Disabilities Act, as amended, and Title VII of the Civil Rights Act of 1964, as amended, and should it hire employees of its own, the Fair Labor Standards Act, as amended, the Occupational and Health Safety Act, as amended, the North Carolina Employment Security Act, as amended, and the North Carolina Worker’s Compensation Act, as amended, to the extent each such law applies to the DBDA or any of its activities.

10. **Compliance with its By-laws and Organizational Reporting to the Town:** The DBDA will operate and act in accordance with its duly adopted by-laws, including but not limited to the provisions which govern the conduct of the annual meetings of its membership, the notice and quorum requirements for meetings of its board of directors, the selection of its directors and officers, and its prohibition against legislative advocacy. The DBDA shall seasonably provide the Town with its current by-laws and a roster of its current board of directors and officers, including their names, addresses, terms, and class of membership, and it shall seasonably notify and provide a copy to the Town of any changes in its by-laws or in its board of directors or officers. The DBDA shall invite and include in its membership all property owners in the MSD and it shall provide a mechanism or opportunity for all businesses and residents within the MSD to be represented in the DBDA or have their voices heard as policies

are formulated and recommended. Should the DBDA's corporate status be revoked by the North Carolina Secretary of State, or should the DBDA's non-profit status be revoked by the United States Internal Revenue Service or otherwise, the DBDA shall immediately notify the Town, and this Agreement shall immediately terminate and it shall have no claim to the commitment of any remaining MSD funds.

11. Reporting on its Activities: At least quarterly during the term of the Agreement, and at such additional times as may be requested by the Town, the DBDA shall report to the Town Council on its activities. Said report shall include at a minimum descriptions of activities of the DBDA which have been undertaken since the prior report and those activities which are planned for the future.

12. Financial Responsibilities: The DBDA shall develop and recommend to the Town Council a proposed budget for the expenditure of MSD funds. The DBDA must set aside in its proposed budget an amount sufficient to pay, at a minimum, one-half of the salary and fringe benefits of the executive director of the DBDA. It shall present the proposed budget to the Town Council for its consideration by a date designated by the Town Manager which gives the Town Finance Director an adequate opportunity to review and evaluate the proposal, and the Town Council an adequate opportunity to review the recommendation and propose such changes as it may determine are desirable. Should the Town Council be unwilling to accept the proposal of the DBDA in any material way, an effort shall be undertaken for the parties to discuss their differences before a final budget is approved by the Town. In addition to providing the annual audit, as required by Paragraph 7(B), the DBDA shall maintain its financial accounts for non-MSD funds, and shall operate in accordance with generally accepted accounting principles. Financial information shall be maintained and provided, if requested, in a form acceptable to the Town and shall include, among other things, a detailed accounting for all funds from all non-MSD sources received or collected by the DBDA during the reporting period. In addition, the DBDA shall provide such records, verification of the expenditure of the funds, and other such information as requested by the Town. Should the DBDA at any time be advised by a funding, taxing or other governmental entity, or by its accountants, of any misappropriation of funds from any source or of any malfeasance or misfeasance, it shall immediately report such advice to the Town. Should the DBDA itself discover or determine any wrong doing, misappropriation, malfeasance or misfeasance, it shall immediately report such matter to the Town. The DBDA will notify the Town in writing within five days if any member of its staff is charged with or convicted of any crime involving malfeasance or misfeasance, or dishonesty in the use or handling of any DBDA funds, whatever the source, or if the DBDA itself is accused of any wrongdoing. Should the DBDA become aware of or suspicious of any embezzlement, malfeasance or misfeasance by an employee, agent, officer, director or other person connected with DBDA, of any of the DBDA's funds, whether from this grant or elsewhere, whatever the source, it hereby commits that it will promptly report to and notify the appropriate law enforcement agency of such act, omission or suspicion.

13. Maintenance of Records: All records of the DBDA shall be available for inspection by the Town Manager or the Town Manager's designee. The DBDA agrees that records of its past use of MSD funds and of all disbursements of any funds will be maintained by it for a period of no less than seven years, and upon request such books and records will be made available to the Town or its representative for inspection. The DBDA shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement, and the accounting methods shall be satisfactory to the Town. Upon request, the DBDA will turn over ~~its~~ all financial records governing the use of MSD funds to the Town for storage and eventual destruction.

14. Indemnity: The DBDA shall indemnify and reimburse the Town for any misuse by it of funds which results in the assertion of liability against the Town. The DBDA hereby releases, acquits and forever discharges the Town, its agents, officers and employees, from any claims, demands, costs, loss of services, expenses, compensation, liabilities and obligations, suits at law or equity, including claims or suits for contribution and/or indemnity of whatever nature and all consequential damages resulting from or on account of its use of non-MSD funds, and it hereby agrees to indemnify and defend the Town from any claims brought as a result of its use or misuse of said funds.

15. Insurance: The DBDA confirms that it maintains sufficient liability insurance coverage to satisfactorily compensate any person for injury to a person or property caused by the operation of DBDA's programs and/or services paid in whole or part with non-MSD funds. The DBDA agrees that should the Town determine, in its sole discretion, that the DBDA does not maintain

adequate liability insurance to satisfactorily protect itself and its participants, it will promptly increase its coverage to a level determined necessary by the Town.

16. Lobbying: The DBDA will use no funds for purposes of local, state, or legislative advocacy or lobbying, or to attempt to influence the legislative process at the local, State, or federal level. Likewise, no funds will be used to carry on any religious or political activities, or to attempt to influence the outcome of any public election.

17. Default: If the DBDA defaults in the performance of any of its duties under this Agreement, all of which are deemed material, the Town may terminate the Agreement after affording the DBDA prior notice ~~of an~~ and a reasonable opportunity to cure its default. On the date specified in any such notice of default for the DBDA to cure its default, should the default not be cured, this Agreement shall terminate. In the event of repeated violation of this Agreement, the Town may elect to terminate the Agreement without any further chance to cure the violation. Should this Agreement be terminated prior to the full expenditure of MSD funds for the fiscal year, the DBDA shall have no claim to the commitment of remaining funds.

18. Modification of Agreement, Merger: This Agreement contains all of the terms and conditions agreed upon by the Town and the DBDA. All discussions between them have been merged into this Agreement, and there are no oral terms or conditions agreed upon by the parties hereto which are not contained in this written Agreement. There shall be no modification of this Agreement unless the modification is in writing and signed by both parties.

19. Waiver: The Town's failure to strictly enforce any of its rights under this Agreement shall not constitute a waiver of such rights, and the parties agree that this provision may itself not be waived by the conduct of the parties, but only by a written instrument executed by each.

20. Relationship of Parties: Each party shall be considered an independent contractor in relation to the other, and neither shall be construed to be an agent or representative of the other party except as agreed upon by both parties and approved by the Boone Town Council. Therefore, neither party shall have any liability to a third party for the acts or omissions of the other party. In addition, neither party nor any of its employees, agents, or contractors shall be deemed to be employees or agents of the other party. Neither party nor any of that party's employees, agents or contractors shall be entitled to compensation for services, worker's compensation, or employee benefits from the other party by virtue of this Agreement or actions taken in furtherance of the Agreement.

21. Assignments: The DBDA shall not assign any of its duties under this Agreement or its right to compensation from the Town to any other person or entity without the written consent of the Town, but the Town shall have no responsibility, express or implied, to approve any proposed assignment.

22. Force Majeure: In the event that either party shall be interrupted or delayed in completing performance of its obligations hereunder by an act of God or any other occurrence which is wholly beyond the control of the parties hereto, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

23. Partial Invalidity: If any term, covenant, condition or provision of this Agreement shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law. Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

24. Headings and Construction of Agreement: The headings used in this Agreement have been prepared for the convenience of reference only and shall not control, affect the meaning, or be taken as an interpretation of any provisions of this Agreement. This Agreement has been prepared on the basis of mutual understanding of the parties and shall not be construed against either party by reason of such party being the drafter hereof.

25. Entirety of Agreement: This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and Agreements between the parties with respect to said matter. Each party to this Agreement acknowledges that no representations, inducements, promises, or

Agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, and that no other Agreement, statement, or promise not contained in this Agreement shall be valid or binding.

26. Governing Law and Venue: This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, and venue of any dispute between the parties shall be in Watauga County, North Carolina.

27. Execution: Each party represents and warrants to the other that all necessary authorizations and approvals required for execution and performance of this Agreement have been given and obtained, and that the undersigned individual is duly authorized to execute this Agreement and bind the party for which it signs.

28. Notices: All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested; to the following addresses:

If to the Town, to: Greg Young
 Town Manager
 Town of Boone
 P.O. Drawer 192
 Boone, NC 28607

If to the DBDA, to: President
 The Downtown Boone Development Association, Inc.
 PO Box 362 DTS
 Boone, NC 28607

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

Town of Boone, by

Loretta Clawson, Mayor

Attest: _____(Seal)
Town Clerk, Town of Boone

Downtown Boone Development Association, Inc., by

President

Attest: _____(Seal)
Secretary, Downtown Boone Development Association, Inc.

VOTE: Aye - All
Nay - None

REQUESTED APPEARANCE - TRENT MARGRIF

Trent Margrif of the Historic Preservation Commission appeared before the Council to request approval of a public forum on December 6, 2011, from 4:00-7:00 p.m. in order to receive public comment on the Historic Preservation Design Guides. He stated that after the public forum the document must be reviewed by the Town Attorney and authorized by the Council to forward on to the NC State Historic Office for review. Town Attorney Sam Furguele stated that approval of the Design Guidelines must also include a public hearing and review by the Planning Commission. Upon a motion by Council member Brantz, seconded by Council member Leigh, Council moved to approve a public workshop on December 6, 2011, from 4:00-7:00 p.m. at the

High Country Press building for public comment on the proposed Historic Preservation Design Guidelines.

VOTE:Aye - All
Nay - None

REQUESTED APPEARANCE - CRAIG HUGHES

Craig Hughes, High Country RPO Coordinator, appeared before the Council to present the NC DOT Transportation Planning Branch Comprehensive Transportation Plan Socio-economic Data Forecasting Methodology (**copy of report permanently on file in the November 2011 Council packet.**) He explained that this information will help to determine existing and anticipated deficiencies through an analysis of the transportation system reviewing at both current and future travel patterns. Upon a motion by Council member Phillips, seconded by Council member Ball, Council moved to endorse the growth rates, goals and objectives as presented by Mr. Hughes.

VOTE:Aye - All
Nay - None

REQUESTED APPEARANCE - SEAN SPIEGELMAN

Sean Spiegelman appeared before the Council to request a Conditional District Rezoning for property located at 163 Boone Creek Road, which is currently zoned B-3, for a microbrewery called "The Appalachian Mountain Brewery, LLC." He requested a special public hearing so that this request can be considered as soon as possible. Mr. Spiegelman stated that this business will be a sustainable endeavor which will employ the use of solar-thermal energy and a rainwater collection system. Project Architect Bill Dixon stated that the project will be a rehabilitation of a current structure. Council member Leigh voiced a concern that the Planning Commission and Council will not be able to fully consider the project due to the accelerated scheduling of meetings to meet advertising deadlines. Upon a motion by Council member Ball, seconded by Council member Brantz, Council moved to schedule a special joint public hearing of the Town Council and Planning Commission in order to consider this request on Monday, December 12, 2011, at 5:00 p.m.

VOTE:Aye - 4 (Phillips, Mason, Ball,Brantz)
Nay - 1 (Leigh)

REQUESTED APPEARANCE - FRONTIER NATURAL GAS

Jeff Trexler and Dave Shipley of Frontier Natural Gas appeared before the Council to present an update on current and future projects. Mr. Shipley stated that in the past year, Frontier Natural Gas has installed 5.49 miles of new pipe and established 27 new residential accounts and 28 commercial accounts. Mr. Trexler stated that two new commercial projects for the upcoming year will include the installation of natural gas lines to the Boone Police Department and the U.S. Postal Service building adjacent to the Police Department. He stated that anticipated residential projects may include Grand Boulevard and the Blairmont, University Village, and Kellwood neighborhoods. Council member Mason voiced frustration at the lack of service to residential areas and the exorbitant costs in installing service to residential areas.

BREAK - DECIBEL LEVEL READINGS BY BOONE POLICE DEPARTMENT

Mayor Clawson declared a break at 9:02 p.m. During the break, the Town Council heard various samples of decibel levels as provided by the Boone Police Department. It was noted that Highway 321 traffic noise was measured at 65 decibels. During the demonstration, decibel levels of 107 were recorded inside the Council Chambers, 77 decibels standing about 25 feet from the Council Chambers with the door open, and 65 decibels standing about 25 feet with the door closed. Council took no action and reconvened at 9:30 p.m.

CLOSED SESSION

Upon a motion by Council member Brantz, seconded by Council member Ball, Council moved to enter Closed Session at 9:31 p.m., pursuant to NCGS 143-318.11(a)(3)(5) in order to discuss the following matters:

1. Property Acquisition - Appalachian Theater.
2. Update on Darbo Development LLC Settlement.

VOTE: Aye - All
Nay - None

On a motion by Council member Brantz, seconded by Council member Mason, Council moved to exit Closed Session at 10:46 p.m.

VOTE: Aye-All
Nay-None

ACTION FOLLOWING CLOSED SESSION

On a motion by Council member Mason, seconded by Council member Brantz, Council moved to amend the agenda to schedule a special meeting of Town Council for Tuesday, November 29, 2011 at 6:00 p.m. in order to conduct a Closed Session pursuant to NCGS 143-318.11a)5) - Property Acquisition - Appalachian Theatre.

VOTE: Aye-All
Nay-None

On a motion by Council member Ball, seconded by Council member Brantz, Council moved to excuse Council member Mason from participation and discussion in the following matter: **Darbo Settlement Offer**.

VOTE: Aye-All
Nay-None

DARBO SETTLEMENT OFFER

On a motion by Council member Brantz, seconded by Council member Ball, Council moved to accept the \$1,000 offer from Darbo, LLC.

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

ADJOURNMENT

On a motion by Council member Brantz, seconded by Council member Ball, Council moved to adjourn at 10:49 p.m.

VOTE: Aye-All
Nay-None

Deputy Clerk

Mayor