

**MINUTES - REGULAR MEETING
BOONE TOWN COUNCIL
DECEMBER 13, 2011**

An organizational meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, December 13, 2011, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Jamie Leigh, Lynne Mason, Andy Ball, Rennie Brantz, and Allan Scherlen. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Town Clerk Freida Van Allen, Deputy Town Clerk Kimberly Brown, Assistant to the Town Manager Jim Byrne, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Public Works Director Blake Brown, Public Utilities Director Rick Miller, Finance Director Amy Davis, Human Resources Director Peri Moretz, Planning Director Bill Bailey, Planner Jane Shook, and Development Coordinator Pilar Fotta.

Mayor Loretta Clawson presided over the swearing-in ceremonies. Official oaths precede this page.

ANNOUNCEMENTS

Mayor Clawson presented Stephen Phillips with a plaque commemorating his service as a Boone Town Council member.

Mayor Clawson stated that any persons wishing to address the Council should sign in to speak during the Public Comment period.

TENTATIVE AGENDA ADOPTION

Town Manager Greg Young noted that there were no changes to the agenda. Upon a motion by Council member Ball, seconded by Council member Mason, Council moved to adopt the agenda as presented.

VOTE: Aye - All
 Nay - None

CONSENT AGENDA ADOPTION

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

Minutes: November 7, 2011 - Special Meeting.
 November 7, 2011 - Quarterly Public Hearing.
 November 15/17, 2011 - Regular Meetings.
 November 29, 2011 - Special Meeting.
 November 29, 2011 - Special Meeting.

Adoption of Resolution - Service Appreciation for Stephen Phillips:

RESOLUTION

WHEREAS, Stephen Phillips has served this community well for many years in numerous capacities, including 4 years as a member of the Boone Town Council; and

WHEREAS, these years of service have been marked by exemplary dedication to the best interest of the community as he has worked constantly for the betterment of its economic, cultural, and aesthetic development; and

WHEREAS, the Town has benefitted greatly because of his particular interest and work in the areas of AppalCART, Transportation Committee, Greenway, Parks & Gardens Committee, Parks & Recreation, ASU Town/Gown, Parking Task Force, and Watauga County Transportation Plan Steering Committee; and

WHEREAS, through the performance of his duties and responsibilities as a member of the Town Council, he has made excellent and constructive contributions to municipal government in our Town; and

WHEREAS, he has earned the admiration and high regard of those with whom he has come into contact and the affection of his fellow public servants, who are proud to call him “friend”;

NOW, THEREFORE, BE IT RESOLVED that the Town Council for the Town of Boone does hereby express our sincere appreciation and thanks, as well as that of our citizens to **Stephen Phillips** for his distinguished service to the community;

BE IT FURTHER RESOLVED that a copy of this resolution shall be forwarded to **Stephen Phillips** with sincere best wishes for continued success and many happy years ahead.

Adopted by unanimous vote of the Town Council on the 13th day of December, 2011.

Mayor

ATTEST:

Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE(S) 170)

Annual Certification of Firemen: Boone Fire Department.

Approval of Encroachment Agreement - Appalachian Homebrewing Canopy Sign.

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made and entered into this the 13th day of December, 2011, by and between the TOWN OF BOONE, party of the first part; and Appalachian Homebrewing Supply, 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 904 West King Street with the following: 8 square feet canopy 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 1 (one) 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 - Appalachian Law Center Canopy Sign.

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made and entered into this the 13th day of December, 2011, by and between the TOWN OF BOONE, party of the first part; and Appalachian Law Center, 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 835 West King Street with the following: 10 square feet canopy 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 1 (one) 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 - PNC Bank.

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

ENCROACHMENT AGREEMENT

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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 671 West King Street with the following: 10.68 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:

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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.

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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.

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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 1 (one) 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.

Amendment to Resolution Defining the Duties, Function & Structure of the Jones House Advisory Board.

RESOLUTION DEFINING THE DUTIES, FUNCTIONS, AND STRUCTURE OF THE JONES HOUSE ADVISORY BOARD

WHEREAS, the Town of Boone, North Carolina, a non-profit municipal corporation so chartered by the State of North Carolina purchased, and still has legal title to certain property, located at 124 East King Street, commonly known, and referred to as, the JONES HOUSE, and that said property when conveyed to the Town of Boone was to be used as a park, community center, museum, and/or cultural center; and

WHEREAS, on the 20th day of August 1986, the Boone Town Council, by way of resolution, set forth the mechanics of a group known in that resolution as an "Advisory Council," hereinafter referred to as the "Advisory Board," to oversee the operations of the JONES HOUSE, by unanimous vote of the Boone Town Council.

NOW, THEREFORE, BE IT RESOLVED by the Boone Town Council that the JONES HOUSE Advisory Board will operate under the following:

ARTICLE I ADVISORY Board

- § The Advisory Board shall be comprised of nine (9) persons serving staggered three-year terms with three members rotating annually. These persons shall be appointed by the Boone Town Council. ~~A Two~~ members of the Boone Town Council shall be appointed to serve as an ex officio members of the Advisory Board.
- § Vacancies caused by resignation, death, or removal may be filled by appointment by the Boone Town Council. The newly appointed Board member shall fill the unexpired term

of his or her predecessor. The Advisory Board may submit nominations to the Boone Town Council for such vacancies.

\$ A Board member may resign at any time by giving written notice to the Executive Director.

\$ A Board member may be removed at any time by the Boone Town Council. ~~The Council may remove members for non attendance at meetings of the Advisory Board upon the recommendation of the remaining members of the Board.~~ *Any member of the Board who misses more than two (2) unexcused consecutive regular meetings or more than half the regular meetings in a calendar year shall lose his or her status as a member of the Board, and shall be replaced or reappointed by the Council. Absence due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not affect the member status on the Board, except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced. Excused absences shall be subject to the Chairperson's discretion.* (Amended February 27, 1997)

\$ The Chairperson of the Board may appoint committees as needed.

\$ The members of the Advisory Board shall draft and submit to the Budget Officer for the Town of Boone both an Annual Plan (physical and operational) and an Annual Budget (fiscal year).

ARTICLE II OFFICERS

q The Board may elect a Chairperson, a Vice Chairperson, and any such other officers as it may determine who shall have such duties, functions, and powers as hereinafter provided. All officers shall be elected at the first meeting of the Advisory Board following the beginning of the fiscal year and shall hold office for one year.

q In the event of the death, resignation, or removal of an officer, the Board in its discretion may elect or appoint a successor to fill the unexpired term.

q The Chairperson shall preside at all meetings of the Advisory Board.

q The Vice Chairperson shall have the powers and functions of the Chairperson in the absence or disability of the Chairperson. He/she shall perform such other duties as the Board shall prescribe.

ARTICLE III MEETINGS

q Regular meetings of the Board shall be held monthly at such a time and place as it shall from time to time determine.

q Special meetings may be held upon notice to the members of the Board and may be called by the Chairperson according to North Carolina General Statutes by provision of notice to each member personally, by mail, or by telephone. Special meetings may also be called upon the written request of two members of the Advisory Board to the Chairperson or the Executive Director.

q A simple majority of the voting members of the Board shall constitute a quorum for the transaction of business or of any specified item of business.

q If a quorum is present, the vote of a majority of members present at the time of the vote shall be the act of the Board. Each member present shall have one (1) vote except the Chairperson who shall vote only in the case of a tie.

q The Chairperson, or in his/her absence the Vice Chairperson, shall preside at all meetings of the Board. In the absence of both, those present shall elect a temporary chairperson to preside at that meeting.

ARTICLE IV EXECUTIVE DIRECTOR

1. The Boone Town Council may employ an Executive Director or it may contract with an outside agency, in consultation with the JONES HOUSE Advisory Board, to employ an Executive Director. In the later case, the duties of the Executive Director shall be defined in the yearly contract signed with the outside agency. In either case, the job description of the Executive Director shall include the following:
2. The Executive Director shall act as Secretary to the Board and shall assist the Chairperson in developing meeting agendas; record all votes and minutes of all meetings

of the Advisory Board; give, or cause to be given, notice of all meetings and special meetings of the Board; keep all documents and records, as required by law or otherwise, in a proper and safe manner.

3. The Executive Director shall keep, or cause to be kept, full and accurate accounts based on standard accounting practices, of all deposits and disbursements.
4. The Advisory Board and the Executive Director shall work together to develop the Annual Budget (fiscal year) and the Annual Plan (physical and operational) for the JONES HOUSE to be submitted to the Budget Officer for the Town of Boone.
5. Working closely with the Advisory Board, the Executive Director shall oversee facility maintenance.
6. The Executive Director shall see that the JONES HOUSE is made available to the public for meeting space and shall keep the galleries open as specified in the Annual Plan.
7. The Executive Director shall schedule special events and community groups for maximum use of the JONES HOUSE.
8. The Executive Director shall employ and supervise part-time help as needed.
9. Other reasonable activities of the Executive Director may be assigned as needed by the Advisory Board.

VOTE: Aye - All
 Nay - None

PUBLIC COMMENT

Jeff Walker, of Boone Brewing Company, voiced his support of the inclusion of breweries in the UDO Table of Permitted Uses.

ELECTION OF MAYOR PRO-TEM

Mayor Clawson opened the floor for nominations for the position of Mayor Pro-Tem of the Council. Council member Brantz nominated Lynne Mason. Council member Andy Ball nominated Jamie Leigh. With no other nominations, Mayor Clawson called for a vote on each of the nominees.

Lynne Mason - 2 (Mason, Brantz)

Jamie Leigh - 3 (Scherlen, Leigh, Ball)

By majority vote, Council member Jamie Leigh was elected to serve as Mayor Pro-Tem.

APPOINTMENT OF TDA MEMBER

Council member Ball nominated Council member Lynne Mason to serve on the Tourism Development Authority (TDA) Board. By unanimous vote, Council member Mason was appointed to serve on the Boone TDA Board.

COUNCIL LIAISON APPOINTMENTS

Mayor Clawson presented the following list of Town Council assignments and liaisons:

2011-2013 COUNCIL ASSIGNMENTS AND LIAISONS

Loretta Clawson Region D Council of Governments*; High Country Council of Government RPO;

Rennie Brantz Watauga County Solid Waste Committee*; Vehicle Committee; Jones House*; Historic Preservation; Zero-Waste; Outside Agency Funding Review; Horn in the West

Jamie Leigh	Greenway Committee; Outside Agency Funding Review; Affordable Housing Task Force; DBDA; Sustainability Task Force; Jones House*
Andy Ball	Vehicle Committee; AppalCART; High Country RPO Backup; EDC; Sustainability Task Force; Transportation Committee
Lynne Mason	DBDA; Affordable Housing Task Force; TDA*;Transportation Committee; Alternative Transportation Sub-Committee; Watauga County Transportation Plan Steering Committee
Allan Scherlen	Historic Preservation; Greenway, Parks & Garden; ASU Town/Gown; Mountain Keepers; Parks & Recreation*; Watauga County Transportation Plan Steering Committee (Alternate)

* Requires a Council member to serve on respective board/commission.

Effective: December 13, 2011

On a motion by Council member Brantz, seconded by Council member Ball, Council moved to approve the aforementioned list of Town Council assignments and liaisons.

VOTE: Aye - All
Nay - None

ONGOING DISCUSSION OF TABLE OF PERMITTED USES

Planner Jane Shook presented a set of minutes from the Planning Commission Subcommittee of October 21, 2011 and noted that the Council is up-to-date on all of the approved sets of minutes from the subcommittee. Upon a motion by Council member Brantz, seconded by Council member Ball, 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

**APPROVAL OF ZONING TEXT AMENDMENT - CASE 20110547 BATES
CONDITIONAL DISTRICT ZONING**

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. Upon a motion by Council member Ball, seconded by Council member Brantz, Council moved to reopen the public hearing on this case at 6:55 p.m.

VOTE: Aye - All
Nay - None

James Bates confirmed that he will accept the conditions offered by the Council for this case, including the condition for owner-occupancy of one of the units. He also stated that the Town's parking requirements for the project will be met with three spaces, not including one space inside each garage. With no other testimony, the public hearing was closed at 7:05 p.m.

Vote #1

Upon a motion by Council member Ball, seconded by Council member Brantz, 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 because it is an appropriate transitional use subject to the following conditions:

1. The occupancy of the accessory apartment is to be limited to no more than two unrelated or a three-person family.
2. Approval is subject to the letter dated October 3, 2011 (bearing a received date of October 5, 2011) submitted by James Bates in which Mr. Bates offered the following conditions:
 - a. Footprints of both buildings remain the same with parking as indicated on the attached diagram (site plan bearing a received date of October 5, 2011.)
 - b. That both buildings remain single unit dwellings.
 - c. That leases and/or rental agreements contain clauses that have penalty and termination clauses for noise at night between 9 p.m. and 7 a.m.
 - d. That if the alley is permanently closed, that a fence, shrubs, or plants, or both line the property line of the south-east side (right-side, if facing the property from Delmar Street) of the property, preserving the existing pear trees that would likely be on or very close to that line.
3. Approval is subject to the site plan submitted by the applicant bearing an a received date of October 5, 2011. Insignificant deviations may be permitted to comply with the requirements of the UDO or State Building Code.
4. Any commitments and representations concerning the proposed project made by the applicant or his representative at the public hearing shall also become a condition of approval.
5. Applications and final plans shall be submitted that are in compliance with the provisions of the UDO and State Building Code.
6. If both units are occupied, one unit must be owner-occupied.

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

Vote #2

Upon a motion by Council member Ball, seconded by Council member Brantz, Council moved to approve the proposed amendment to the Town's zoning map and believe approval is reasonable and in the public interest because it is an appropriate transitional use and with the following conditions:

1. The occupancy of the accessory apartment is to be limited to no more than two unrelated or a three-person family.
2. Approval is subject to the letter dated October 3, 2011 (bearing a received date of October 5, 2011) submitted by James Bates in which Mr. Bates offered the following conditions:
 - a. Footprints of both buildings remain the same with parking as indicated on the attached diagram (site plan bearing a received date of October 5, 2011.)
 - b. That both buildings remain single unit dwellings.
 - c. That leases and/or rental agreements contain clauses that have penalty and termination clauses for noise at night between 9 p.m. and 7 a.m.
 - d. That if the alley is permanently closed, that a fence, shrubs, or plants, or both line the property line of the south-east side (right-side, if facing the property from Delmar Street) of the property, preserving the existing pear trees that would likely be on or very close to that line.
3. Approval is subject to the site plan submitted by the applicant bearing an a received date of October 5, 2011. Insignificant deviations may be permitted to comply with the requirements of the UDO or State Building Code.
4. Any commitments and representations concerning the proposed project made by the applicant or his representative at the public hearing shall also become a condition of approval.
5. Applications and final plans shall be submitted that are in compliance with the provisions of the UDO and State Building Code.
6. If both units are occupied, one unit must be owner-occupied.

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

APPROVAL OF ZONING TEXT AMENDMENT - CASE 20110638 APPALACHIAN MOUNTAIN BREWERY

Case 20110638 Appalachian Mountain Brewery - Sean Spiegelman has initiated a Zoning Map Amendment Petition for Conditional District Zoning for 163 Boones Creek Drive, property owned by Johnny C. Hampton and Cherie H. Smith and further identified as Watauga County PIN 2910-23-6493-000. The request is to rezone the property to Conditional District B-3 General Business with a phased site specific development plan for a Brewery (Use 4.10 Light Industrial) with a Tasting Room (Private Club, 8.0 Restaurant, Bar, and Night Club.) A five-year vesting is being requested for this project. Planner Jane Shook informed the Council that the Planning Commission recommended approval with conditions. In order to help address a concern about the parking situation for this project, Council member Ball moved to reopen the public hearing at 7:24 p.m. Council member Brantz seconded the motion.

VOTE: Aye - All
 Nay - None

Applicant Sean Spiegelman stated that he has considered the possibility of more parking needed once the second phase of his project is underway which includes a tasting room. He stated that he will accept the following additional condition regarding parking: Applicant will agree to a parking assessment if required by the Planning Staff and agrees to follow any recommendations of such an assessment. Regarding a pre-treatment plan for the project, Mr. Spiegelman stated that he has discussed the matter with staff from the Town's Wastewater Treatment Plant and that he will complete and return the necessary form which is entitled "Long Form Industrial Waste Survey/Permit Application." With no other discussion, the public hearing was closed at 7:38 p.m.

Vote #1

Upon a motion by Council member Ball, seconded by Council member Leigh, Council moved that 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 because of the Town's effort to promote responsible business redevelopment and to encourage the establishment of a regional center as outlined in the Boone 2030 Land Use Plan and with the following conditions:

1. The four staff recommendations:
 - a. Where there is a conflict between the application information and the plans and supplemental information (site plan bearing a received date of December 1, 2011, narrative bearing a received date of December 2, 2011), the plans and supplemental information shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
 - b. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
 - c. That the applicant work with the Planning and Inspections Department in reestablishing as much of the buffers for Boone and Hodges Creek that can be done without impeding traffic circulation for the development.
 - d. Final plans shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.
2. The applicant's addendums submitted on December 12, 2011.
3. Provide no outdoor storage but outdoor display be allowed as part of an operational plan that is to be submitted and approved by Staff.
4. Applicant will agree to a parking assessment if required by the Planning Staff and agrees to follow any recommendations of such an assessment.
5. Applicant must submit the "Long Form Industrial Waste Survey/Permit Application."

VOTE: Aye - All
 Nay - None

Vote #2

Upon a motion by Council member Ball, seconded by Council member Brantz, Council moved to approve the proposed amendment to the Town's zoning map and believe approval is reasonable and in the public interest and with the following conditions:

1. The four staff recommendations:
 - a. Where there is a conflict between the application information and the plans and supplemental information (site plan bearing a received date of December 1, 2011, narrative bearing a received date of December 2, 2011), the plans and supplemental information shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
 - b. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
 - c. That the applicant work with the Planning and Inspections Department in reestablishing as much of the buffers for Boone and Hodges Creek that can be done without impeding traffic circulation for the development.
 - d. Final plans shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.
2. The applicant's addendums submitted on December 12, 2011.
3. Provide no outdoor storage but outdoor display be allowed as part of an operational plan that is to be submitted and approved by Staff.
4. Applicant will agree to a parking assessment if required by the Planning Staff and agrees to follow any recommendations of such an assessment.
5. Applicant must submit the "Long Form Industrial Waste Survey/Permit Application."

VOTE: Aye - All
 Nay - None

P & I MONTHLY REPORT

Planning Director Bill Bailey presented the Planning and Inspections Monthly Report **(permanently on file in the December 2011 Town Council Packet.)**

SCHEDULING OF SPECIAL MEETING - NOISE ORDINANCE

Upon a motion by Council member Mason, seconded by Council member Scherlen, Council moved to schedule a special meeting for Tuesday, January 10, 2011, at 6:00 p.m. in the Council Chambers in order to further discuss the Noise Ordinance.

VOTE: Aye - All
 Nay - None

Council asked that the Police Chief secure a report from the ASU student who was in attendance at the November meeting and recorded the decibel levels during the presentation.

SCHEDULING OF SPECIAL MEETING - JONES HOUSE CONTRACT

Upon a motion by Council member Brantz, seconded by Council member Leigh, Council moved to schedule a special meeting for Tuesday, January 31, 2011, at 5:30 p.m. at the Jones House Community Center in order to discuss Jones House procedures and functions and the Resolution Defining the Duties, Function & Structure of the Jones House Advisory Board.

VOTE: Aye - All
 Nay - None

It was consensus of the Council to invite the members of the Jones House Advisory Board to attend this meeting.

SCHEDULING OF SPECIAL MEETING - WATAUGA ARTS COUNCIL CONTRACT

Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved to place this matter on the January 31, 2011 special meeting agenda.

VOTE: Aye - All
 Nay - None

DISCUSSION OF BOARD MEMBERSHIP - AFFORDABLE HOUSING TASK FORCE

At the November meeting, Council suggested that the membership requirements of the Affordable Housing Task Force be reconsidered. Several members expressed concern about changing the requirements for membership in this task force. Upon a motion by Council member Ball, seconded by Council member Leigh, Council moved to amend the agenda to discuss quorum requirements for the Affordable Housing Task Force and for possible action on the matter.

VOTE: Aye - All
 Nay - None

Upon a motion by Council member Ball, seconded by Council member Leigh, Council moved to adjust the quorum requirements for the Affordable Housing Task Force to a majority of the number of *appointed* members.

VOTE: Aye - All
 Nay - None

Mayor Clawson declared a break at 8:06 p.m. Council reconvened at 8:23 p.m.

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Clawson announced the following board vacancy:

One resident position on the Boone Board of Adjustment with the term expiring June 30, 2012.

BOARD APPOINTMENTS

Affordable Housing Task Force - There were no applications received for these vacancies.

Board of Adjustment - There were no applications received for these vacancies.

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

Greenway, Parks & Gardens Committee - There were no applications received for this vacant position.

Planning Commission - There were no applications received for this vacant position. Upon a motion by Council member Ball, seconded by Council member Brantz, Council moved to confirm the appointment of Tom Purpur as the Planning Commission representative on the Water Study Committee.

VOTE: Aye - All
 Nay - None

Tree Board - There were no applications received for these vacant positions. It was the consensus of the Council to change the board vacancy announcement for this position to include community members.

Water Use Committee - There were no applications received for these vacant positions.

**WATER COMMITTEE RECOMMENDATION - WATER ALLOCATION
EXPIRATION FOR OLD HIGH SCHOOL SITE**

Public Utilities Director Rick Miller presented a recommendation from the Water Study Committee requesting the expiration date for the 150,000 gallons per day water reserve for the old high school property be extended from December 31, 2011 to December 31, 2013 to coincide with the expiration of Ordinance #11-01. Upon a motion by Council member Mason, seconded by Council member Brantz, Council moved to approve the recommendation from the Water Study Committee to extend the expiration date for the 150,000 gallons per day water reserve for the old high school property to December 31, 2013 to coincide with the expiration of Ordinance #11-01.

VOTE: Aye - All
 Nay - None

WATER COMMITTEE RECOMMENDATION - PROPOSED TEXT AMENDMENT

Public Utilities Director Rick Miller presented a proposed text amendment to Ordinance #11-01 which will allow staff to deny water service requests located in Watauga County and that are not willing to comply with Town requirements. Upon a motion by Council member Brantz, seconded by Council member Ball, Council moved to approve the following amendments to Ordinance #11-01:

ORDINANCE 11-01
(FORMERLY ORDINANCE 05-01)

1. **Term and Applicability of Ordinance:**

- a. This ordinance shall control the approval of new water or sewer connections to the extent specified herein during the period beginning January 1, 2008 through December 31, 2013 or such other end date as the Town Council may by majority vote designate. To the extent its provisions create any conflict with the Town of Boone Water and Sewer Use Code this ordinance shall supercede and control. To the extent the provisions of this ordinance do not conflict with or otherwise supercede the Town of Boone Water and Sewer Use Code, that Code remains in full force and effect.

2. **Amount of Water which may be Allocated:**

- a. **Annual Amount Which May Be Allocated.** The amount of water available for allocation and attributable to any designated calendar year during the remaining term of this ordinance shall be 110,000 gallons per day, except 2011, in which it shall be 65,000 gallons per day (in addition to any amount reserved for the old Watauga High School property) collectively referred to as “the water census.” The Town shall always reserve at least 10,000 gallons per day from its available water supply for possible allocations to existing vacant lots within the corporate limits of the Town. In addition, in recognition of its value to the citizens of the Town and the taxpayers of Watauga County in terms of its size, key location, and financial importance; and as a result of the Town Council’s express interest in promoting the sale and beneficial development of the property currently owned by Watauga County upon which the old Watauga High School is situated (“the property”), and in recognition that the previous reserve amount of 70,000 gallons per day may not be sufficient for this property, there shall be a reserve of 150,000 gallons per day set aside until December 31, ~~2011~~ **2013** (“the high school reserve”), for allocation to the property, subject to the following conditions and provisions:

- i. For a site specific development plan (hereinafter, “the project”) to qualify for allocation of the high school reserve, both the preparation of the site for the project and the construction of the project must fully comply with all provisions of the Town’s Unified Development Ordinance, whether or not they would generally be applicable to Watauga County;

hundred (500) gallon per day or less. Once more than two-thirds of the full water allotment for the year has been approved, the Director may only approve new applications for water serving property within the Town limits when the predicted water usage is no more than five hundred (500) gallons per day.

- b. Allocations by Town Council.** Except those allocations which may be approved by the Director, every other request for a new allocation of water serving property within the Town limits or within the Town's planning extra-territorial jurisdiction ("ETJ") must be approved upon action, by majority vote, of the Boone Town Council acting in its *quasi* judicial capacity. Any request for a new water allocation serving property outside the Town limits and ETJ of the Town, without regard to the amount of the request, must be approved by a two-thirds super-majority of the Town Council members present and not excused from the vote.

- 4. Requests for Service in the Town's Secondary Pressure Zone.** Requests for extensions and connections into the Town's secondary pressure zone may only be approved if the following additional criteria are satisfied. For purposes of this paragraph, an "extension" refers to the continuation of a water main beyond its currently existing limits while a "connection" is defined as the linking of pipes serving a single customer to an existing water main.

- a. Requests for Extensions into the Secondary Pressure Zone.** No service extensions into the secondary pressure zone shall be considered for approval unless:

- i.** The property for which service is requested was located inside the Boone Town limits on or before March 8, 2007; and

- ii.** The applicant agrees to adhere to Town of Boone secondary pressure zone specifications, and among other things, agrees at its expense to:

- A.** Use minimum eight-inch minimum pipe diameter;

- B.** Provides all needed booster pumping station(s) of EFI design with fire pumping capabilities;

- C.** Provides a minimum 100,000 gallon welded joint steel storage tank;

- D.** Installs pressure protection for each individual water service; and

- E.** Install Dataflow Systems radio telemetry compatible with existing Town of Boone system is provided; and

- iii.** All portions of a proposed extension are below 3,620 feet in elevation.

- b. Request for Connections into the Secondary Pressure Zone.** A connection to an existing water main in a secondary pressure zone may be approved by the Town Council in cases in which such connection:

- i.** Creates no negative impact on the Town's distribution system;

- ii.** Allows adequate pressure to be maintained as may be necessary to comply with the requirements of the Boone Fire Department and applicable fire codes;

- iii.** Results in no additional costs to the Town; and

- iv.** Otherwise complies with the requirements of the Town of Boone Water and Sewer Code for connection to the Town's water system.

- 5. What information Must be Provided by an Applicant for Water or Sewer Service.** At the time of application, an applicant for water service shall designate and describe the following **and provide all required assurances. The refusal of an applicant to provide**

such information, or, for applicants for service outside the corporate boundaries of the Town, the stated unwillingness to petition for annexation or comply with the Town's Unified Development Ordinance shall be grounds for the Director to deny the application without further consideration. There shall be no appeal of the Director's denial of an application. An applicant must provide the following information and assurances, as applicable:

- a. The name and address of the applicant;
- b. The specific location of the property to be served so that it may be determined whether it is in the Town limits or ETJ, whether any portion of it is within the secondary pressure zone, and the relative location of available water and sewer connections;
- c. The name and address of the owner of the property if the applicant is not the owner of the property;
- d. If the applicant is not the owner of the property, a description of the legal rights of the applicant to apply for and obtain service and proof of those rights, as requested by the Director;
- e. If water rights have previously been approved for a property and are currently vested, a written relinquishment of previously granted water rights signed by the owner or other person with legal authority to do so.
- f. A site specific development plan for the property for which service is requested in sufficient detail to enable the Town to assess the factors which may be considered under this ordinance; and
- g. Any technical information needed by the Director to determine compliance with this ordinance or the Water and Sewer Use Code.
- h. If the application is for property located outside the corporate limits of the Town, a statement that if approved, the applicant will petition for voluntary annexation if requested to do so as a condition of approval, and in cases in which new construction or development is anticipated, the applicant will construct any such structures or develop the property in accordance with the requirements of the Town's Unified Development Ordinance if required to do so as a condition of approval.**

6. Town Council Priorities in the Allocation of Water.

- a. **Requests Considered on a First-Come, First-Served Basis.** The Town shall ordinarily provide water service to future customers within the Town limits on a "first-come, first-served," basis. Hearings on requests shall be conducted by the Town Council in the order in which completed applications have been received by the Department, unless a case has been tabled to a later date for consideration either at the request of the applicant or by action of the Town Council.
- b. **Requests for Service in Town Preferred over Other Requests.** Requests for water service serving properties within the Town limits shall be preferred over other requests. Ordinarily, only requests for service connections to property which is in the Town limits will be granted.
- c. **Smaller Requests are Preferred over Larger Requests.** Ordinarily, the Town Council shall prefer small requests over large requests for water, and a request may be denied based on the determination by the Town Council that a particular request, if approved, would too greatly reduce the remaining water to be allocated.
- d. **Compliance by Applicant with Other Conditions Required by this Ordinance and the Water and Sewer Use Code.** The Town Council may also deny a request because an applicant has not complied with any other requirement of this ordinance or the Water and Sewer Use Code.

7. **Additional Factors Which the Town Council May Consider When Deciding Whether to Grant a Request for Water.** In addition to the priorities and considerations described in paragraph 7, the Town Council can consider the following in deciding whether to grant or deny a request for water or sewer service:

- a. Any factor which may make the predicted actual use different from the NCDRS predicted use;
- b. The amount of water usage in gallons per day previously approved during the calendar year and the amount still left to be allocated for the year;
- c. Whether in its opinion the application is for a land use which is consistent with the Town's adopted policies concerning growth and development; and
- d. Such other factors as may be identified by the Town Council in its deliberations, which either suggest that a particular application promotes or undermines the public health or safety, or the general welfare of the Town.

8. **Conditions.** The Town Council may place conditions upon a successful application for water or sewer service. Without limitation and by way of example only, the Town Council may require:

- a. That an applicant whose property is partly or wholly outside the Town limits petition the Town for annexation in accordance with the requirements of North Carolina General Statutes and the Town of Boone's ordinances before service is provided.
- b. That an applicant whose property is partly or wholly outside the Town limits comply with designated development policies of the Town in order to receive and continue to receive service.
- c. That an applicant granted the right to connect to the sanitary sewer system agree to connect into the Town's water system should the Town later request that such a connection be made, and that the applicant sign a statement of commitment to that effect which will remain on file with the Town's Public Utilities Department.

9. **Vesting of Water Rights.**

- a. **Rights Vest to Property, Not Applicant.** Any vesting of water rights which is obtained through a successful application during the term of this ordinance vests to the property itself for the specific project rather than to the applicant personally. Therefore, any change in ownership or change in legal rights subsequent to approval shall not affect the vesting of the water rights, the time periods described herein, or the payment or retention of required fees.
- b. **Rights not Transferrable.** Water rights may not be transferred from the property designated in the application to a different piece of property, even for the same or a similar site specific development plan.
- c. **Vesting Does Not Occur until Required Fees Are Paid.** No vesting of water or sewer rights occurs until the fees required by this ordinance are paid.
- d. **Initial Payment of Fees.** Within thirty days of the time an application is approved and at the applicant's option, the applicant must pay either ten percent (10%) or twenty percent (20%) of the availability fee for the approved site specific development plan. Such fee is non-refundable, but will be credited against the availability fee charged at the time of the actual connection to the Town's system if the site specific plan is constructed as proposed.
 - i. **Fees are Non-Transferrable to Another Property.** A fee paid pursuant to this paragraph may not be transferred from one property to another property.
 - ii. **Fees May not be Transferred to Another Project on the Same Property.** A fee paid pursuant to this paragraph may not be transferred from one site specific development plan to another, even if both are on the same

property, if the subsequent plan represents a substantial change, as defined in paragraph 11, below, from the plan which has been approved.

- e. **Initial Vesting Period.** If an applicant pays ten percent (10%) of the availability fee for the approved site specific development plan, the applicant shall be entitled to a one year initial vesting period; if an applicant pays twenty percent (20%), the applicant shall be entitled to a two year initial vesting period, dated from the date of approval by the Town Council or Director of the application.

- f. **Lapse of Vesting after Initial Period of Vesting.** Unless extended by the payment of full availability fees, any applicant granted the right to connect to the Town's water distribution system must obtain all needed development permits within the initial vesting period or said approval will expire and the allocated water usage shall return into the water census for redistribution. For purposes of this section the term "development permits" shall mean the following:
 - i. In the case of applicants for water service for a minor subdivision, the minor subdivision plat approval and recording of the approved plat with the Watauga County Register of Deeds, and any associated zoning and grading compliance certificates;
 - ii. In the case of applicants for water service for a major subdivision, a special use permit, and associated zoning and grading compliance certificates;
 - iii. In the case of a commercial development project, all permits required for the physical development of the land, plus those permits necessary for the building. These may include some or all of the following: a special use permit, a zoning permit and a building permit.

- g. **Extension of Period of Vesting upon Payment of Full Availability Fees.** Upon payment made prior to the expiration of the initial vesting period of the full remainder of the availability fee predicted for the site specific development plan for which approval has been granted, the approval of a water application will be extended for an additional period matching the vesting period of approved development permits for the site specific development plan, but not less than one additional year from the expiration of the initial vesting period, and any additional vesting of development permits which is obtained during the additional vesting period shall automatically extend the water rights to match that vesting period.
 - i. **Availability Fee Payment Non-Refundable.** The funds paid pursuant to this section are non-refundable, but will be credited against the availability fee charged at the time of the actual connection to the Town's system if the site specific plan is constructed as proposed.
 - ii. **Availability Fee Payment Non-Transferrable.** The funds paid pursuant to this section are non-transferrable, as described. Such funds may not be transferred as a credit from one property to another property, and they may not be transferred from one site specific development plan to another, even if both are on the same property, if the subsequent plan represents a substantial change, as defined in paragraph 11, below, from the approved plan.
 - iii. **Adjustment in Availability Fee at Time of Connection.** If the required availability fee at the time of the connection to the Town's system is more than the amount which has been previously paid, the remainder of the then current availability fee must be paid before a connection will be allowed; if the required current availability fee at the time of the connection to the Town's system is less than the amount which has been previously paid, no refund shall be due.

- h. **Expiration of Vesting.** Without regard to the payment of fees and term of vesting, should any applicant whose development project requires a special

use permit or zoning permit allow the special use permit or zoning permit to expire, the applicant's water rights will also immediately expire. Likewise, should any applicant whose development project acquires a building permit allow the building permit to expire, the applicant's water rights will also immediately expire.

10. Changes in Development Plan after Approval.

a. Substantial Changes Prohibited. When an application has been approved for water or sewer service and fees paid to vest the approval, a substantial change may not be made in the site specific development plan designated in the application without a new application and appropriate payment of fees if approved. Except for a mixed use development proposed in accordance with Section 179 if the Town's Unified Development Ordinance (a "mixed use project"), a "substantial change" is one for which a different type of principal zoning use is proposed, e.g. multi-family to commercial, or there is more than a ten percent (10%) change, plus or minus, in the predicted water use for the site specific development plan, as determined by the calculations prescribed in paragraph 2(b), provided that a reduction in predicted use which is the result of a change to a site specific development plan initiated and mandated by the Board of Adjustment in a special use permit proceeding, or one which is the result of conditions or modifications agreed upon by the Town Council in a conditional district zoning proceeding shall not be considered a "substantial change" for purposes of this ordinance.

b. A substantial change in a mixed use project shall occur when there is a change in the multi-family portion of the project which, if viewed as an independent project, would be considered a substantial change pursuant to subparagraph 11(a), or for which there is more than a 10% change, plus or minus, in the square footage of the completed commercial space from the commercial space described by the applicant at the time the application is approved, provided that a reduction in predicted square footage which is the result of a change to a site specific development plan initiated and mandated by the Board of Adjustment in a special use permit proceeding, or one which is the result of conditions or modifications agreed upon by the Town Council in a conditional district zoning proceeding, shall not be considered a "substantial change" for purposes of this ordinance.

11. Monthly Water Reports. The Director shall provide a monthly report to the Boone Town Council concerning the number and predicted volume of each water connection request approved during the term of this Resolution.

12. This policy as amended shall become effective upon adoption.

Amended and effective this the 15th day of March, 2011.

Amended and effective this the 26th day of April, 2011.

Amended and effective this the 17th day of May, 2011.

Amended and effective this the 20th day of September, 2011.

Amended and effective this the 13th day of December, 2011.

VOTE: Aye - All
 Nay - None

WATER COMMITTEE RECOMMENDATION - TOILET REBATE PROGRAM

Public Utilities Director Rick Miller presented a recommendation from the Water Study Committee to use all monies allocated to the Toilet Rebate Program regardless of classification until the funds are dispersed. Upon a motion by Council member Brantz, seconded by Council member Mason, Council moved to approve the recommendation of the Water Committee to use all monies budgeted for the Toilet Rebate Program regardless of either residential or commercial classification until all funds are dispersed.

VOTE: Aye - All
 Nay - None

MONTHLY WATER STATUS REPORT

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

APPROVAL OF BUDGET AMENDMENTS

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

DESCRIPTION	ACCOUNT #	TO:	FROM:
CAPITAL OUTLAY-LAND (APPALACHIAN THEATER)	010-411-000-575021	\$624,500	
TRANSFER FROM W/S INFRASTRUCTURE RESERVE	010-000-000-498033		(\$549,500)
TRANSFER FROM MUNICIPAL SERVICE DISTRICT	010-000-000-498050		(\$75,000)
TRANSFER TO GENERAL FUND (W/S INFRASTRUCTURE C/R)	033-700-000-598010	\$549,500	
TRANSFER TO GENERAL FUND (MUNICIPAL SERVICE DISTRICT)	050-450-000-598010	\$75,000	
APPROPRIATED FUND BALANCE - (W/S INFRASTRUCTURE C/R)	033-700-000-499900		(\$549,500)
APPROPRIATED FUND BALANCE- (MUNICIPAL SERVICE DISTRICT)	050-450-000-499900		(\$75,000)
TRANSFER TO CAPITAL RESERVE- FIRE STATION/LAND	051-451-000-598052	\$178,582	
SALE FOR SURPLUS PROPERTY- RURAL FIRE	051-451-000-481200		(\$28,582)
APPROPRIATED FUND BALANCE- RURAL FIRE	051-451-000-499900		(\$150,000)

VOTE: Aye - All
 Nay - None

Before deliberating on the quasi-judicial request, Town Attorney Sam Furgiuele questioned the members of the Council on whether or not they had had contact with the applicant regarding the request. All Council members stated that they had not had any significant contact with the applicant for this requests.

WATER & SEWER REQUEST - FAISON KUESTER

Town Attorney Sam Furgiuele opened a public hearing at 8:45 p.m. to hear sworn testimony from several witnesses on a request for water and sewer service to property located on Winklers Meadows. Frank "Ham" Wilson, attorney for the applicant, stated that the project was just approved for a Special Use Permit by the Board of Adjustment. He gave a brief description of the project. Brent Davis, project architect, explained that the project consists of 20 apartments with a total of 48 bedrooms. He stated that the property is located in both the primary growth area and a transitional zone. Furthermore, he stated that the building height is 39 feet and six inches and that there is a minimum 40' buffer between the project site and the adjacent property owner. Frank Amenity, traffic engineer with Davenport Consulting, stated that the NC DOT will not approve a crosswalk or any traffic control devices for the project at this time but will monitor

the project once it is completed to determine if such measures are warranted. He testified that the additional location for the Appalcart bus-stop has been approved by the NC DOT. Furthermore, Mr. Ameyna stated that he knows of no traffic crashes at this intersection. Mr. Wilson indicated that the applicant will pay for the cost of installing such traffic control devices if the NC DOT determines it necessary. Matt Langston, project civil engineer, testified regarding the distance of the site from the creek on the property. Planning Director Bill Bailey stated that he feels the Traffic Impact Analysis performed by the traffic engineer is adequate and that the Board of Adjustment approved the Special Use Permit for a 2-year vesting period. With no other testimony, the public hearing was closed at 9:22 p.m. Upon a motion by Council member Ball, seconded by Council member Leigh, Council moved to approve the request for water and sewer service to property located on Winklers Meadows by Faison Kuester in the amount of 6,658.5 gallons per day from the 2011 allotment to coincide with the two-year vesting period as approved by the Board of Adjustment.

VOTE: Aye - All
 Nay - None

CLOSED SESSION

Upon a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to enter Closed Session at 9:24 p.m. pursuant to NCGS 143-318.11a)3)5) in order to discuss the following matters:

- Discussion to instruct staff on position to be taken regarding material terms of contract for acquisition of Appalachian Theater property.
- Legal Advice - Settlement Proposal from ADR Capital.
- Legal Advice - Settlement Proposal from Gang of Five LLC.

VOTE: Aye - All
 Nay - None

Upon a motion by Council Member Brantz, seconded by Council Member Leigh, Council moved to exit Closed Session at 11:12 p.m.

VOTE: Aye - All
 Nay - None

ADJOURNMENT

On a motion by Council Member Brantz, seconded by Council Member Ball, Council moved to adjourn the meeting at 11:13 p.m.

VOTE: Aye - All
 Nay - None

Deputy Town Clerk

Mayor