

AGENDA

CITY OF HENDERSONVILLE CITY COUNCIL – REGULAR MEETING

MARCH 5, 2020 – 5:45 P.M.

**Council Chambers – City Hall
160 Sixth Avenue E.
Hendersonville NC 28792**

- 1. Call to Order**
- 2. Invocation and Pledge of Allegiance to the Flag**
- 3. Public Comment Time:** *Up to 15 minutes is reserved for comments from the public for items not listed on the agenda*
- 4. Consideration of Agenda**
- 5. Consideration of Consent Agenda:** *These items are considered routine, noncontroversial in nature and are considered and approved by a single motion and vote.*
 - A. Consideration of Minutes:**
 - i. February 6, 2020 Regular Meeting**
 - B. Consideration of Budget Amendment for Stormwater Intern**
 - C. Consideration of Tax Discoveries, Releases, Refunds and Forgiven Interest**
 - D. Consideration of Revisions of State of Emergency Ordinance**
 - E. Consideration of Statewide of Mutual Aid Agreement**
 - F. Consideration of Franchise Agreement with Public Service Company of North Carolina, Inc.**
 - G. Consideration of Agreement Regarding Billing for Sewer Service with Metropolitan Sewerage District of Buncombe County (MSD)**
 - H. Consideration of Certificate of Sufficiency for the Contiguous Annexation of a Parcel Located at 1412 Old Spartanburg Highway Identified as Tax Parcel 9578-42-6584**
 - I. Consideration of Utility Line Extension Agreements for Arcadia Views Sewer and Water Extension Request, WXZ Development, Inc.**

- J. Consideration of Special Event Permit for Meltdown Vintage Motorcycle Show
- K. Consideration of Ground Maintenance Equipment Lease Proposal
- L. Consideration of America's Water Infrastructure Act (AWIA) and NC Source Water Risk and Resiliency Plan Requirements and Associated Budget Amendment

6. Recognitions/Introductions/Proclamations:

- i. American Red Cross Month - Proclamation
- ii. Introduction of Police Officer
- iii. Introduction of Downtown Employees
- iv. Announcement of Walk of Fame Honorees

- 7. **Public Hearing - Consideration of an Order to Permanently Close a Portion of an Unimproved Right-of-Way for West Pine Street**
Presenter: Development Assistance Director Susan Frady
- 8. **Public Hearing - Consideration of an Application from Grace Blue Ridge Church for a rezoning to a Conditional Zoning District for Parcels Located at 109 Florence Street from R-15 Medium Density Residential to C-2CZD Secondary Business Conditional Zoning District**
Presenter: Senior Planner Daniel Heyman
- 9. **Public Hearing - Consideration of an Application from William A. Pace, Jr. for the Rezoning of a Parcel Located at 137 E. Central Street from C-3CZD Highway Business Conditional Zoning District to C-2CZD Secondary Business Conditional Zoning District**
Presenter: Planner Tyler Morrow
- 10. **Public Hearing - French Broad River Raw Water Intake and Pump Station**
Presenter: Clearwater Environmental
- 11. **Public Hearing – Input on Community Development Needs and Potential Applications for the 2020 Program Year**
Presenter: Downtown Economic Development Director Lew Holloway
- 12. **Consideration of Subdivision Ordinance**
Presenter: Chad Meadows, CodeWright Planners
- 13. **Presentation of Results of Affordable Housing Survey**
Presenter: Assistant Manager Brian Pahle
- 14. **Discussion of Stormwater Rate Study**
Presenter: Stormwater Administrator Mike Huffman and WithersRavenel
- 15. **Consideration of Eminent Domain Procedures for Half-Way Tree Sewer Project**
Presenter: City Attorney Sam Fritschner

16. **Public Records Presentation**
Presenter: City Clerk Tammie Drake
17. **Reports/Comments by Mayor and City Council Members**
18. **Staff Reports**
19. **Consideration of Appointments to Boards/Commissions**
20. **New Business**
21. **Adjourn**





CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

Submitted By: Mike Huffman / Adam Murr

Department: Admin

Date Submitted: 02/24/2020

Presenter: Mike Huffman

Date of Council Meeting to consider this item: 03/05/2020

Nature of Item: Council Action

Summary of Information/Request:

Item # 05b

The Stormwater Department was initially budgeted to hire an intern for FY19-20. The initial budget of \$5,700 for the position was reallocated to help fund the repair of a sinkhole off 3rd Avenues early in the year.

The proposed and attached amendment reallocates resources in the Stormwater Department to re-fund the position.

It is the City's policy that personnel-related budget amendments be approved by City Council.

Staff anticipate the position will operate from April 1, 2020 to June 30, 2020 this fiscal year.

25 hours per week
\$15.00 per hour
\$4,875 total

Budget Impact: \$ 4,875 **Is this expenditure approved in the current fiscal year**
budget? N/A **If no, describe how it will be funded.**

Was budgeted, amendment replenishes previously reallocated funds.

Suggested Motion:

I move City Council resolve to adopt the budget amendment(s) as proposed.

Attachments:

1. Stormwater Intern Budget Amendment

BUDGET AMENDMENT

FUND: 67

ACCOUNT NUMBER					
ORG	OBJECT	PROJECT	DESCRIPTION OF ACCOUNT	INCREASE	DECREASE
674720	512900		SALARIES & WAGES - P/T	4,875.00	
674720	521200		UNIFORMS		500.00
674720	525100		GASOLINE & DIESEL		300.00
674720	526000		OFFICE SUPPLIES		200.00
674720	529900		SUPPLIES & MATERIALS		1,875.00
674720	552100		CAPITAL OUTLAY - VEHICLES		2,000.00
FUND 67			TOTAL REVENUES	-	-
			TOTAL EXPENDITURES	4,875.00	4,875.00

A budget amendment to move resources from stormwater operating accounts to fund a stormwater intern from April through July of 2020.

APPROVED

CITY MANAGER

By John F. Connet at 1:08 pm, Feb 25, 2020

APPROVED BY CITY COUNCIL:

Date: _____

DATE:

3/5/2020



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

Submitted By: Jennifer Musselwhite

Department: Finance

Date Submitted: 2/25/2020

Presenter: Jennifer Musselwhite

Date of Council Meeting to consider this item: 03/05/2020

Nature of Item: Council Action

Summary of Information/Request:

Item # 05c

The Deputy Tax Collector, Jennifer Musselwhite, would like to submit for your approval the tax bill adjustments occurring between January 16, 2020 and February 20, 2020. These adjustments include all Discoveries, Releases, Refunds, and Forgiven Interest. These adjustments were provided by Henderson County Tax Department. Documentation is available in the Tax Office.

Budget Impact: \$ 0 Is this expenditure approved in the current fiscal year budget? ☐ N/A If no, describe how it will be funded.

Suggested Motion:

I move Council to adopt the resolution directing and authorizing the Tax Adjustments submitted by Henderson County Tax and relieve the Deputy Tax Collector of the charges owed.

Attachments:

Summary Total of Tax Adjustments

SUMMARY TOTAL OF DISCOVERIES, RELEASES, REFUNDS, AND FORGIVEN INTEREST

FOR TRANSACTIONS AS OF 2/20/2020

<i>VALUE CHANGE</i>	\$	(2,543,460)
<i>RELEASES</i>	\$	(12,643.57)
<i>REFUNDS</i>	\$	-
<i>FORGIVEN INTEREST</i>	\$	-
TOTAL TAX BILL ADJUSTMENTS	\$	(12,643.57)

<i>Adjustments, Releases, Refunds are provided by Henderson County Tax</i>
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CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

Submitted By: Sam Frittschner

Department: Legal

Date Submitted: 17 February 2020

Presenter: John Connet

Date of Council Meeting to consider this item: 5 March 2020

Nature of Item: Council Action

Summary of Information/Request:

Item # 05d

Since the City Council's adoption of an ordinance respecting emergency powers the General Assembly has amended the enabling legislation to permit local governments to restrict certain travel in emergency areas. The attached proposed ordinance would update the City Code to reflect and add those additional powers.

Budget Impact: \$ 0 Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

Suggested Motion:

I move City Council to adopt the ordinance amending the City Code with respect to declarations of, and powers during, emergencies.

Attachments:

Proposed ordinance

Ordinance #12-_____

**AN ORDINANCE AMENDING SECTION 36-184 PERTAINING TO THE AUTHORITY OF THE
MAYOR TO ISSUE EMERGENCY DECLARATIONS**

WHEREAS, the Code of Ordinances Chapter 36 Article V Division 2 provides for the declaration of emergencies within the City, and

WHEREAS, since the adoption of the aforementioned ordinances certain changes have been made to the North Carolina General Statutes with respect to the declaration of emergencies by local governments, and

WHEREAS, the Ordinance in its currently form does not completely conform to the current North Carolina General Statutes; and

WHEREAS, the City Council wishes to revise its ordinance to bring the same into conformity with the General Statutes in such a way as to invest the Mayor with the broadest discretion permitted in the declaration of emergencies and exertion of powers pursuant thereto,

NOW, THEREFORE, be it ordained by the City Council of the City of Hendersonville:

SECTION 1. Section 36-184 of the Hendersonville Code of Ordinances is hereby amended to read in its entirety as follows:

Sec. 36-184. - Restricted activities enumerated.

During the existence of a proclaimed state of emergency, the mayor may impose by proclamation any or all of the following restrictions:

(1) Of movements of people in public places, including imposing a curfew; directing and compelling the voluntary or mandatory evacuation of all or part of the population from any stricken or threatened area within the governing body's jurisdiction; prescribing routes, modes of transportation, and destinations in connection with evacuation; and controlling ingress and egress of an emergency area, and the movement of persons within the area.

(2) Of the operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate.

(3) Upon the possession, transportation, sale, purchase, and consumption of alcoholic beverages.

(4) Upon the possession, transportation, sale, purchase, storage, and use of gasoline, and dangerous weapons and substances, except that this section does not authorize prohibitions or restrictions on lawfully possessed firearms or ammunition. As used in this subdivision, the term "dangerous weapons and substances" has the same meaning as it does under G.S. 14-288.1. As used in this subdivision, the term "firearm" has the same meaning as it does under G.S. 14-409.39(2).

(5) Upon travel and the operation of vehicles within the City, including the powers of closure, within the emergency area, of streets, roads, highways, bridges, public vehicular areas, and other areas ordinarily used for vehicular travel, except to the movement of emergency responders and other persons necessary for recovery from the emergency.

(56) Upon other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency.

A declaration authorized by this section need not require or provide for the imposition of all of the types of prohibitions or restrictions, or any particular prohibition or restriction, authorized by this section during an emergency; rather the Mayor is authorized hereby to determine and impose the prohibitions or restrictions deemed necessary or suitable to a particular state of emergency.

SECTION 2. SEVERABILITY. If any provision of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the remaining provisions of this ordinance.

SECTION 3. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this fifth day of March 2020.

Barbara Volk, Mayor

Attest:

Tammie K. Drake, MMC, City Clerk

Approved as to form:

Samuel H. Fritschner, City Attorney



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

Submitted By: John Connet

Department: Admin

Date Submitted: 2/24/2020

Presenter: John Connet

Date of Council Meeting to consider this item: 3/5/2020

Nature of Item: Council Action

Summary of Information/Request:

Item # 05e

The City of Hendersonville executed the statewide mutual aid agreement in the late 1990's and is still in effect. However, the State of North Carolina updated the statewide mutual aid agreement in 2017 and we believe that it is in the best interest of the city to adopt an updated agreement. Therefore, we recommend the approve of an updated statewide mutual aid agreement between Hendersonville and the State of North Carolina.

Budget Impact: \$ NA Is this expenditure approved in the current fiscal year budget? ☐ N/A If no, describe how it will be funded.

Suggested Motion:

I move that the City Council resolve to approve the updated statewide mutual aid agreement be Hendersonville and the State of North Carolina.

Attachments:

Proposed agreement



NORTH CAROLINA STATEWIDE EMERGENCY MANAGEMENT MUTUAL AID AND ASSISTANCE AGREEMENT REVISION 2017

FOR THE

City of Hendersonville

THIS AGREEMENT IS ENTERED INTO BETWEEN THE NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, AND ITS DIVISION OF EMERGENCY MANAGEMENT OF THE STATE OF NORTH CAROLINA AND BY EACH OF THE ENTITIES THAT EXECUTES AND ADOPTS THE UNDERSTANDINGS, COMMITMENTS, TERMS, AND CONDITIONS CONTAINED HEREIN:

WHEREAS, the State of North Carolina is geographically vulnerable to a variety of natural disasters;

WHEREAS, Chapter 166A of the North Carolina General Statutes, entitled the North Carolina Emergency Management Act, recognizes this vulnerability and provides that its intended purposes are to:

1. Reduce vulnerability of people and property of this State to damage, injury, and loss of life and property;
2. Prepare for prompt and efficient rescue, care, and treatment of threatened or affected persons;
3. Provide for the rapid and orderly rehabilitation of persons and restoration of property;
4. Provide for cooperation and coordination of activities relating to emergency and disaster mitigation, preparedness, response, and recovery;

WHEREAS, in addition to the State, the Federal Emergency Management Agency (FEMA) has recognized the importance of the concept of coordination between the State and local governments;

WHEREAS, under Chapter 166A and other chapters of the North Carolina General Statutes, entities entering into mutual aid and assistance agreements may include provisions for the furnishing and exchanging of supplies, equipment, facilities, personnel and services; and

WHEREAS, the entities which have chosen to become signatories to this Agreement wish to provide mutual aid and assistance amongst one another at the appropriate times;

THEREFORE, pursuant to G.S. 166A-19.72, these entities agree to enter into this Agreement for reciprocal emergency management aid and assistance, with this Agreement embodying the understandings, commitments, terms, and conditions for said aid and assistance, as follows:

SECTION I. DEFINITIONS

"Agreement" means this document, the North Carolina Statewide Emergency Management Mutual Aid and Assistance Agreement.

"Aid and assistance" includes personnel, equipment, facilities, services, and supplies.

"Authorized Representative" means a party's employee who has been authorized, in writing by that party, to request, to offer, or to otherwise provide assistance under the terms of this Agreement. The list of Authorized Representatives for each party executing this Agreement shall be attached to the executed copy of this Agreement. (In the event of a change in personnel, unless otherwise notified, the presumption will be that the successor to that position will be the authorized representative.)

"Disaster declaration" means a gubernatorial declaration that the impact or anticipated impact of an emergency constitutes a Type I, II, III disaster as defined in G.S. 166A-19.21(b)

"Emergency" means an occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property, resulting from any natural or man-made accidental, military, or paramilitary cause.

"Local Agency" means a county agency charged with coordination of all emergency management activities for its geographical limits pursuant to G.S. 166A-19.15.

"Party" means a governmental entity which has adopted and executed this Agreement.

"Provider" means the party which has received a request to furnish aid and assistance from another party in need (the "Recipient").

"Recipient" means the party setting forth a request for aid and assistance to another party (the "Provider").

SECTION II. INITIAL RECOGNITION OF PRINCIPLE BY ALL PARTIES; AGREEMENT PROVIDES NO RIGHT OF ACTION FOR THIRD PARTIES

As this is a reciprocal contract, it is recognized that any party to this Agreement may be requested by another party to be a Provider. It is mutually understood that each party's foremost responsibility is to its own citizens. The provisions of this Agreement shall not be construed to impose an unconditional obligation on any party to this Agreement to provide aid and assistance pursuant to a request from another party. Accordingly, when aid and assistance have been requested, a party may in good faith withhold the resources necessary to provide reasonable and adequate protection for its own community, by deeming itself unavailable to respond and so informing the party setting forth the request.

Given the finite resources of any jurisdiction and the potential for each party to be unavailable for aid and assistance at a given point in time, the parties mutually encourage

each other to enlist other entities in mutual aid and assistance efforts and to enter into such agreements accordingly. Concomitantly, the parties fully recognize that there is a highly meritorious reason for entering into this Agreement, and accordingly shall attempt to render assistance in accordance with the terms of this Agreement to the fullest extent possible.

Pursuant to G.S. 166A-19.60 and as elaborated upon in Section X of this Agreement, all functions and activities performed under this Agreement are hereby declared to be governmental functions. Functions and activities performed under this Agreement are carried out for the benefit of the general public and not for the benefit of any specific individual or individuals. Accordingly, this Agreement shall not be construed as or deemed to be an Agreement for the benefit of any third parties or persons and no third parties or persons shall have any right of action under this Agreement for any cause whatsoever. All immunities provided by law shall be fully applicable as elaborated upon in Section X of this Agreement.

SECTION III. PROCEDURES FOR REQUESTING ASSISTANCE

Mutual aid and assistance shall not be requested unless the resources available within the stricken area are deemed inadequate by Recipient. When Recipient becomes affected by a emergency and deems its resources inadequate, it may request mutual aid and assistance by communicating the request to Provider, indicating the request is made pursuant to this Agreement. The request shall be followed as soon as practicable by a written confirmation of that request, including the transmission of a proclamation of local state of emergency under G.S. 166A-19.22, and a completed form describing recipient's projected needs in light of the emergency. All requests for mutual aid and assistance shall be transmitted by the party's *Authorized Representative* or to the *Coordinator of the Local Agency* as set forth below.

A. METHOD OF REQUEST FOR MUTUAL AID AND ASSISTANCE: Recipient shall set forth requests as follows:

(i) REQUESTS ROUTED THROUGH THE RECIPIENT'S LOCAL AGENCY: Recipient may directly contact the Local Agency, in which case it shall provide the Local Agency with the information in paragraph B of this Section (Section III). The Local Agency shall then contact other parties on behalf of Recipient to coordinate the provision of mutual aid and assistance. Recipient shall be responsible for the costs and expenses incurred by any Provider in providing aid and assistance pursuant to Section VII of this Agreement.

(ii) REQUESTS MADE DIRECTLY TO PROVIDER: Recipient may directly contact Provider's authorized representative, setting forth the information in paragraph B of this Section (Section III). All communications shall be conducted directly between Recipient and Provider. Recipient shall be responsible for the costs and expenses incurred by any Provider in providing aid and assistance pursuant to the provisions of this Agreement as noted in Section VII of this Agreement. Provider and Recipient shall be responsible for keeping Local Agencies advised of the status of response activities, in a timely manner.

(iii) RECORD OF REQUESTS TO BE PROVIDED: A record of the request for assistance shall be provided by the Recipient to the Director of the Division of Emergency Management in the NC Department of Public Safety, in a timely manner.

B. REQUIRED INFORMATION: Each request for assistance shall include the following information, in writing or by any other available means, to the extent known:

1. Stricken Area and Status: A general description summarizing the condition of the community or emergency area (i.e., whether the emergency and/or disaster declaration is imminent, in progress, or has already occurred) and of the damage sustained to date;
2. Services: Identification of the service function(s) for which assistance is needed and the particular type of assistance needed;
3. Infrastructure Systems: Identification of the type(s) of public infrastructure system for which assistance is needed (water and sewer, storm water systems, streets) and the type of work assistance needed;
4. Aid and Assistance: The amount and type of personnel, equipment, materials, and supplies needed and a reasonable estimate of the length of time they will be needed;
5. Provider's Traveling Employee Needs--Unless otherwise specified by Recipient, it is mutually understood that Recipient will provide for the basic needs of Provider's traveling employees. Recipient shall pay for all reasonable out-of-pocket costs and expenses of Provider's traveling employees, including, without limitation, transportation expenses for travel to and from the stricken area. Further, Recipient shall house and feed Provider's traveling employees at its (Recipient's) sole cost and expense. If Recipient cannot provide such food and/or housing at the emergency area, Recipient shall specify in its request for assistance that the Provider's traveling employees be self-sufficient.
6. Facilities: The need for sites, structures, or buildings outside Recipient's geographical limits to serve as relief centers or staging areas for incoming emergency goods and services; and
7. Meeting Time and Place: An estimated time and a specific place for a representative of Recipient to meet the personnel and resources of any Provider.

C. STATE AND FEDERAL ASSISTANCE: Recipient shall be responsible for coordinating requests for state or federal assistance with its (Recipient's) Local Agency.

SECTION IV. PROVIDER'S ASSESSMENT OF AVAILABILITY OF RESOURCES AND ABILITY TO RENDER ASSISTANCE

When contacted by the Recipient/Local Agency, Provider's authorized representative shall assess Provider's own local situation in order to determine available personnel, equipment, and other resources. If Provider's authorized representative determines that Provider has available resources, Provider's authorized representative shall so notify the

Recipient/Local Agency (whichever communicated the request). Provider shall complete a written acknowledgment, whether on the request form received from Recipient or on another form, regarding the assistance to be rendered (or a rejection of the request) and shall transmit it by the most efficient practical means to the Recipient/Local Agency for a final response. Provider's acknowledgment shall contain the following information:

1. In response to the items contained in the request, a description of the personnel, equipment, and other resources available;
2. The projected length of time such personnel, equipment, and other resources will be available to serve Recipient, particularly if the period is projected to be shorter than one week (as provided in the "Length of Time for Aid and Assistance" section [Section VI] of this Agreement.)
3. The estimated time when the assistance provided will arrive at the location designated by the Authorized Representative of the Requesting Party; and
4. The name of the person(s) to be designated as Provider's supervisor (pursuant to the "Supervision and Control" section [Section V] of this Agreement.)

Where a request has been submitted to the Local Agency, the Local Agency shall notify Recipient's authorized representative and forward the information from Provider. The Recipient/Local Agency shall respond to Provider's written acknowledgment by signing and returning a copy of the form to Provider by the most efficient practical means, maintaining a copy for its file.

SECTION V. SUPERVISION AND CONTROL

Provider shall designate one of its employees sent to render aid and assistance to Recipient as a supervisor. As soon as practicable, Recipient shall assign work tasks to Provider's supervisor, and unless specifically instructed otherwise, Recipient shall have the responsibility for coordinating communications between Provider's supervisor and Recipient. Recipient shall provide necessary credentials to Provider's personnel authorizing them to operate on behalf of Recipient.

Based upon such assignments from the Recipient, Provider's supervisor shall:

1. Have the authority to assign work and establish work schedules for Provider's personnel. Further, supervisor shall retain direct supervision and control of Provider's personnel, equipment, and other resources. Provider should be prepared to furnish communications equipment sufficient to maintain communications among its respective operating units, and if this is not possible, Provider shall notify Recipient accordingly;
2. Maintain daily personnel time records, material records, and a log of equipment hours;
3. Report work progress to Recipient at mutually agreed upon intervals.

SECTION VI. LENGTH OF TIME FOR AID AND ASSISTANCE; RENEWABILITY; RECALL

Unless otherwise provided, the duration of Provider's assistance shall be for an initial period of seven days, starting from the time of arrival. Thereafter, assistance may be extended in daily or weekly increments as the situation warrants, for a period agreed upon by the authorized representatives of Provider and Recipient.

As noted in Section II of this Agreement, Provider's personnel, equipment, and other resources shall remain subject to recall by Provider to provide for its own citizens if circumstances so warrant. Provider shall make a good faith effort to provide at least twenty-four (24) hours advance notification to Recipient of Provider's intent to terminate mission, unless such notice is not practicable, in which case as much notice as is reasonable under the circumstances shall be provided.

SECTION VII. REIMBURSEMENTS

Except as otherwise provided below, it is understood that Recipient shall pay to Provider all documented costs and expenses incurred by Provider as a result of extending aid and assistance to Recipient. The terms and conditions governing reimbursement for any assistance provided under this Agreement shall be in accordance with the following provisions, unless otherwise agreed in writing by Recipient and Provider. Recipient shall be ultimately responsible for reimbursement of all eligible expenses.

A. Personnel-- During the period of assistance, Provider shall continue to pay its employees according to its then prevailing ordinances, rules, and regulations. Recipient shall reimburse Provider for all direct and indirect payroll costs and expenses including travel expenses incurred during the period of assistance, including, but not limited to, employee retirement benefits as provided by Generally Accepted Accounting Principles (GAAP). However, as stated in Section IX of this Agreement, Recipient shall not be responsible for reimbursing any amounts paid or due as benefits to Provider's personnel under the terms of the North Carolina Workers' Compensation Act (Chapter 97 of the North Carolina General Statutes).

B. Equipment-- Recipient shall reimburse the Providers for the use of equipment during the period of assistance according to either a pre-established local or state hourly rate or according to the actual replacement, operation, and maintenance expenses incurred. For those instances in which costs are reimbursed by the Federal Emergency Management Agency (FEMA), the FEMA-eligible direct costs shall be determined in accordance with 44 C.F.R. 206.228. Provider shall pay for all repairs to its equipment as determined necessary by its on-site supervisor(s) to maintain such equipment in safe and operational condition. At the request of Provider, fuels, miscellaneous supplies, and minor repairs may be provided by Recipient, if practical. The total equipment charges to Recipient shall be reduced by the total value of the fuels, supplies, and repairs furnished by Recipient and by the amount of any insurance proceeds received by Provider.

C. Materials And Supplies—Recipient shall reimburse Provider for all materials and supplies furnished and that are used or damaged by Recipient during the period of assistance, except for the costs of equipment, fuel and maintenance materials, labor, and supplies, which shall be included in the equipment rate established in subsection B of this

section (Section VII), Recipient will not be responsible for costs where such damage is caused by gross negligence, willful and wanton misconduct, intentional misuse, or recklessness of Provider's personnel. Provider's personnel shall use reasonable care under the circumstances in the operation and control of all materials and supplies used during the period of assistance. The measure of reimbursement shall be determined in accordance with 44 C.F.R. 206.228. In the alternative, the parties may agree that Recipient will replace, with like kind and quality as determined by Provider, Provider's materials and supplies used or damaged in a reasonable time. If such an agreement is made, it shall be reduced to writing and transmitted to the North Carolina Division of Emergency Management.

D. Record Keeping-- Recipient and North Carolina Division of Emergency Management personnel shall provide information, directions, and assistance for record-keeping to Provider's personnel. Provider shall maintain records and submit invoices for reimbursement by Recipient or the North Carolina Division of Emergency Management using the format used or required by FEMA publications, 2 C.F.R. Part 200 and applicable Office of Management and Budget (OMB) Circulars.

E. Payment; Other Miscellaneous Matters as to Reimbursements-- The reimbursable costs and expenses with an itemized notice shall be forwarded as soon as practicable after the costs and expenses are incurred, but not later than sixty (60) days following the period of assistance, unless the deadline for identifying damage is extended in accordance with 44 C.F.R. part 206. Recipient shall pay the bill or advise of any disputed items, not later than sixty (60) days following the billing date. These time frames may be modified in writing signed by both parties by mutual agreement. This shall not preclude Provider or Recipient from assuming or donating, in whole or in part, the costs and expenses associated with any loss, damage, or use of personnel, equipment, and resources provided to Recipient.

F. Contracting – If recipient or provider contracts with a third party to perform any aid or assistance under the provisions of this agreement, then the entity shall follow any applicable local, state, or federal contracting requirements.

SECTION VIII. RIGHTS AND PRIVILEGED OF PROVIDER'S EMPLOYEES

Pursuant to G.S. 166A-19.60 whenever Provider's employees are rendering aid and assistance pursuant to this Agreement, such employees shall retain the same powers, duties, immunities, and privileges they would ordinarily possess if performing their duties within the geographical limits of Provider.

SECTION IX. PROVIDER'S EMPLOYEES COVERED AT ALL TIMES BY PROVIDER'S WORKER'S COMPENSATION POLICY

Recipient shall not be responsible for reimbursing any amounts paid or due as benefits to Provider's employees under the terms of the North Carolina Workers' Compensation Act, Chapter 97 of the General Statutes, due to personal injury or death occurring during the period of time such employees are engaged in the rendering of aid and assistance under this Agreement. It is mutually understood that Recipient and Provider shall be responsible for payment of such workers' compensation benefits only to their own respective employees. Further, it is mutually understood that Provider will be entirely responsible for

the payment of workers' compensation benefits to its own respective employees pursuant to G.S. 97-51.

SECTION X. IMMUNITY

Pursuant to G.S. 166A-19.60 all activities performed under this Agreement are hereby declared to be governmental functions. Neither the parties to this Agreement, nor, except in cases of willful misconduct, gross negligence, or bad faith, their personnel complying with or reasonably attempting to comply with this Agreement or any ordinance, order, rule, or regulation enacted or promulgated pursuant to the provisions of this Agreement shall be liable for the death of or injury to persons or for damage to property as a result of any such activity.

SECTION XI. PARTIES MUTUALLY AGREE TO HOLD EACH OTHER HARMLESS FROM LIABILITY

To the extent allowed by applicable law, each party (as indemnitor) agrees to protect, defend, indemnify, and hold the other party (as indemnitee), and its officers, employees and agents, free and harmless from and against any and all losses, penalties, damages, assessments, costs, charges, professional fees, and other expenses or liabilities of every kind and arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of indemnitor's negligent acts, errors and/or omissions. Indemnitor further agrees to investigate, handle, respond to, provide defense for, and defend any such claims, etc. at indemnitor's sole expense and agrees to bear all other costs and expenses related thereto. To the extent that immunity does not apply, each party shall bear the risk of its own actions, as it does with its day-to-day operations, and determine for itself what kinds of insurance, and in what amounts, it should carry. Each party understands and agrees that any insurance protection obtained shall in no way limit the responsibility to indemnify, keep, and save harmless the other parties to this Agreement. Notwithstanding the foregoing, to the extent that each party does not purchase insurance, it shall not be deemed to have waived its governmental immunity by law.

SECTION XII. ROLE OF THE DIVISION OF EMERGENCY MANAGEMENT

Pursuant to GS 166A-19.12(19) and under this agreement, the responsibilities of the North Carolina Division of Emergency Management are: (1) to serve as the central depository for executed Agreements, to maintain a current listing of entities with their authorized representatives and contact information, and to provide this listing to each of the entities on an annual basis; (2) to coordinate the provision of mutual aid and assistance to a requesting party, pursuant to the provisions of this Agreement; (3) to keep a record of all requests for assistance and acknowledgments; (4) to report on the status of ongoing emergency or disaster-related mutual aid and assistance as appropriate; and (5) if the parties so designate, to serve as the eligible entity for requesting reimbursement of eligible costs from FEMA and provide information, directions, and assistance for record keeping pursuant thereto.

SECTION XIII. AMENDMENTS

Manner-- This Agreement may be modified at any time upon the mutual written consent of

the Recipient and Provider.

Addition of Other Entities--Additional entities may become parties to this Agreement upon: (1) acceptance and execution of this Agreement; and (2) sending an executed copy of the Agreement to the North Carolina Division of Emergency Management.

SECTION XIV. INITIAL DURATION OF AGREEMENT; RENEWAL; TERMINATION

This Agreement shall be binding for not less than one (1) year from its effective date, unless terminated upon at least sixty (60) days advance written notice by a party as set forth below. Thereafter, this Agreement shall continue to be binding upon the parties in subsequent years, unless canceled by written notification served personally or by registered mail upon the Director of North Carolina Division of Emergency Management, which shall provide copies to all other parties. The withdrawal shall not be effective until sixty (60) days after notice thereof has been sent by the Director of the North Carolina Division of Emergency Management to all other parties. A party's withdrawal from this Agreement shall not affect a party's reimbursement obligations or any other liability or obligation under the terms of this Agreement incurred prior to withdrawal hereunder. Once the withdrawal is effective, the withdrawing entity shall no longer be a party to this Agreement, but this Agreement shall continue to exist among the remaining parties.

SECTION XV. HEADINGS

The headings of various sections and subsections of this Agreement have been inserted for convenient reference only and shall not be construed as modifying, amending, or affecting in any way the express terms and provisions of this Agreement.

SECTION XVI. SEVERABILITY: EFFECT ON OTHER AGREEMENTS

Should any clause, sentence, provision, paragraph, or other part of this Agreement be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement. Each of the parties declares that it would have entered into this Agreement irrespective of the fact that any one or more of this Agreement's clauses, sentences, provisions, paragraphs, or other parts have been so declared invalid. Accordingly, it is the intention of the parties that the remaining portions of this Agreement shall remain in full force and effect without regard to the clause(s), sentence(s), provision(s), paragraph(s), or other part(s) invalidated.

In the event that parties to this Agreement have entered into other mutual aid and assistance contracts, for example pursuant to Chapter 160A of the North Carolina General Statutes, those parties agree that to the extent a request for mutual assistance is made pursuant to this Agreement, those other mutual aid and assistance contracts are superseded by this Agreement.

SECTION XVII. EFFECTIVE DATE

This Agreement shall take effect upon its approval by the entity seeking to become a signatory to this Agreement and upon proper execution hereof.

IN WITNESS WHEREOF, each of the parties have caused this North Carolina Statewide Emergency Management Mutual Aid and Assistance Agreement to be duly executed in its name and behalf by its Chief Executive Officer, who has signed accordingly with seals affixed and attested with concurrence of a majority of its governing board, as of the date set forth in this Agreement.

DIVISION OF EMERGENCY MANAGEMENT
DEPARTMENT OF PUBLIC SAFETY

BY:

Erik A. Hooks, Secretary
Department of Public Safety
Date:

BY:

Michael A. Sprayberry, Director
Division of Emergency Management
Date:

BY: _____

Chief Executive Officer/Local Government
Name: **Barbara G. Volk**
Title: **Mayor**
Name of Unit: **City of Hendersonville**
Date: **March 5, 2020**

WITNESS: _____

APPROVED AS TO PROCEDURES:

BY:

Office of General Counsel
Department of Public Safety
Date:



LIST OF AUTHORIZED REPRESENTATIVES TO CONTACT FOR EMERGENCY ASSISTANCE

FOR THE City of Hendersonville

MAILING ADDRESS:

160 6th Avenue East

Hendersonville, NC 28792

DATE: **March 5, 2020**

PRIMARY REPRESENTATIVE

NAME: **John Connet**

TITLE: **City Manager**

DAY PHONE: **(828) 233-3201**

NIGHT PHONE: **(828) 606-1410**

CELL PHONE: **(828) 606-1410**

FAX:

FIRST ALTERNATE REPRESENTATIVE

NAME: **Brian Pahle**

TITLE: **Assistant City Manager**

DAY PHONE: **(828) 233-3218**

NIGHT PHONE: **(919) 602-2723**

CELL PHONE: **(828) 602-2723**

FAX:

SECOND ALTERNATE REPRESENTATIVE

NAME: **Tom Wooten**

TITLE: **Public Works Director**

DAY PHONE: **(828) 697-3084**

NIGHT PHONE: **(828) 674-0941**

CELL PHONE: **(828) 674-0941**

FAX:



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

Submitted By: John Connet

Department: Admin

Date Submitted: 2/24/2020

Presenter: John Connet

Date of Council Meeting to consider this item: 3/5/2020

Nature of Item: Council Action

Summary of Information/Request:

Item # 05f

The franchise agreement with Public Service Company (Company) of North Carolina Incorporated and its successors expires on November 26, 2020. The franchise agreement grants them the right to utilize public right of ways to provide natural gas to our residents and businesses. The company has requested that we execute an updated franchise agreement that extends their rights until 2050. The execution of a franchise agreement requires two readings by the City Council. Therefore, the agreement will not be finalized until after your approval at you April meeting.

Budget Impact: \$ NA Is this expenditure approved in the current fiscal year budget? ☐ N/A If no, describe how it will be funded.

Suggested Motion:

I move that the City Council resolve to approve the franchise agreement with Public Service Company of North Carolina Incorporated for the provision of natural gas within the City of Hendersonville .

Attachments:

Proposed agreement

ORDINANCE

AN ORDINANCE GRANTING TO PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INCORPORATED, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO USE AND OCCUPY THE PUBLIC WAYS OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA, FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF A GAS UTILITY SYSTEM AND ALL NECESSARY MEANS FOR TRANSMITTING AND DISTRIBUTING GAS WITHIN SAID CITY FOR A PERIOD OF THIRTY YEARS.

WHEREAS, Public Service Company of North Carolina, Incorporated proposes to continue to construct, operate and maintain a Gas Utility System and all necessary means for transmission and distribution of gas within the City of Hendersonville, North Carolina, the "City" and

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Hendersonville, North Carolina as follows:

SECTION 1. DEFINITIONS.

Whenever and wherever used in this Ordinance the following words and names shall have the following meanings:

- (a) **CITY COUNCIL** shall mean the governing body of the City of Hendersonville, North Carolina, as now or hereafter constituted.
- (b) **COMPANY** shall mean Public Service Company of North Carolina, Incorporated, dba Dominion Energy North Carolina, its successors and assigns.
- (c) **CITY** shall mean the City of Hendersonville, North Carolina, including its present and future boundaries.
- (d) **DEPARTMENT OF TRANSPORTATION** shall mean the North Carolina Department of Transportation or its successor.
- (e) **GAS** shall mean natural gas, mixed gas and substitute fuels carried over the Company's facilities as authorized by the North Carolina Utilities Commission.
- (f) **GAS UTILITY SYSTEM** shall mean all facilities of the Company in the City used for the transmission or distribution of Gas within the City.

- (g) **FERC** shall mean any reference made to the Federal Energy Regulatory Commission or its successor.
- (h) **COMMISSION** shall mean the North Carolina Utilities Commission or any successor body lawfully constituted.
- (i) **PUBLIC WAY OR WAYS** shall mean any public street, avenue, road, alley, lane, bridge, or other public right-of-way within the City over which the City has jurisdiction or exercises control.
- (j) **GOOD UTILITY PRACTICES** shall mean the practices, methods and acts engaged in or approved by a significant portion of the gas industry during the relevant time period or other practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result consistent with reliability, safety, expedition, requirements of governmental agencies having jurisdiction, and at the lowest reasonable cost. The term Good Utility Practices is not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to constitute a spectrum of acceptable practices, methods, or acts.

SECTION 2. Grant of Authority

The right, power and authority is hereby granted to and vested in the Company to construct, install, replace, repair, maintain and operate transmission mains, gas mains, pipes, equipment, service lines, communications lines, facilities and other appurtenant apparatus of the gas system, for the purpose of operating a natural gas system along, across, and under the streets, alleys, bridges, rights-of-way, and other public places of the City together with any necessary rights of access thereto; and to use that natural gas system to conduct a gas business. This granting of authority is provided that the City as of the applicable time, has jurisdiction or exercises control of the public ways. This Franchise Agreement shall also permit the Company to exercise the rights granted herein without the need for additional permit(s) from the City.

SECTION 3. Conditions on Use of Public Ways

(a) No street, alley, bridge, right-of-way or other public place used by the Company shall be obstructed longer than reasonably necessary during its work of construction or repair, and shall be restored to the same good order and condition as when said work was commenced. However, should any such damage occur due to the Company's failure to use due care, the Company shall repair the same as promptly as possible, and, in default thereof, the City, after written notice and opportunity for the Company to repair, may make such repairs and charge the reasonable cost thereof and collect the same from the Company. The Company shall save the City harmless from liability (including judgment, decrees, and legal court costs) resulting directly from its negligence and failure to use due care in the exercise of the privileges hereby granted or of its rights under this Section.

(b) All work upon the streets and public places of the City shall be done subject to reasonable inspection of the City Manager or designee (or other legally constituted governing body) of the City, all sidewalks or street pavements or street surfaces which may be displaced by reason of such work shall be properly replaced by the Company, its successors and assigns, to the reasonable requirements of the City.

SECTION 4. Annexation Notification

The City shall mail or email notice to the Company of areas annexed into the City. Said notices shall include pertinent maps and/or tax map numbers, so that newly annexed customers may be identified.

SECTION 5. Service

(a) The Company may supply any form of gas containing approximately one thousand (1,000) BTU's per cubic foot, and its obligation in respect thereto shall continue only so long as it is able to reasonably obtain an adequate supply of such gas hereunder, provided, however, that in the supply of such gas the customers within the City shall enjoy equal rights with respect to other similar customers served by the Company consistent with Commission rules and regulations.

(b) The Company shall, as to all other conditions and elements of service not fixed herein, be and remain subject to the rules and regulations of the Commission, Department of Transportation, and FERC or its successors, applicable to gas service in the City.

SECTION 6. Nonexclusive Grant and Term

(a) The gas franchise granted by this Ordinance is not exclusive. The City may grant the same or similar rights and privileges to other certified persons or companies at any time, provided that any such grants shall be made under terms and conditions which do not materially impair the exercise of the rights and privileges granted to the Company under this franchise.

(b) Upon ratification and acceptance, this franchise shall constitute a contract between the City and the Company, and shall be in force and effect for an initial term of thirty (30) years, and shall continue in force and effect year-to-year thereafter until properly terminated by either party. Either party may terminate the contract at the end of its initial term or its anniversary date any year thereafter, by giving written notice of its intention to do so no less than one (1) year before the proposed date of termination.

SECTION 7. Franchise Not Waiver of Law

This franchise is subject to the constitution and laws of the State of North Carolina, and is not a waiver of any present or future law or regulation. This franchise is not a limitation of the authority of the City to enact any ordinance or policy that does not diminish, conflict or impair the rights and authority granted to the Company in this franchise or otherwise impose additional obligations on the Company in order to exercise the rights granted herein.

SECTION 8. Regulations, Safety and Customer Service

(a) Gas utility service is not guaranteed to be free from interruptions, supply failure or outages.

(b) The Company will restore gas utility service using Good Utility practices.

(c) The Company shall maintain and operate its Gas Utility System in compliance with applicable State and Federal maintenance and safety regulations.

(d) Company vehicles, responding to natural gas emergencies, may park as close to the location of the emergency as is practicable.

SECTION 9. Commission Rules and Rates

The Company may from time to time declare, make and enforce such rules and regulations as shall have been fixed or allowed by the Commission as to the sale or distribution of Gas to any of its customers in the City. The rates to be charged for Gas at all times shall be such rates as are fixed or allowed by the Commission, including such rates as shall be negotiated by the Company with certain industrial or commercial customers pursuant to authority granted by the Commission.

SECTION 10. Plat of Gas Utility System

The Company shall maintain maps or plats of its Gas Utility System within the area covered by this franchise. Such maps or plats shall be maintained in the Company's offices, and the City may review the same during any regular business hours of the Company.

SECTION 11. Bankruptcy, Successors, Assigns

In the event the Company is adjudged bankrupt or its assets are placed in the hands of a receiver or other court officer, either voluntarily or involuntarily, then the interest, rights and remedies of the City in respect to said properties and operations shall not be affected or prejudiced, and any receiver, assignee, trustee, purchaser or successor, whether by operation of law or otherwise, so succeeding to or representing the interest or position of the Company, shall be bound by this Ordinance and the terms and provisions hereof and shall be bound to carry out and perform the obligations and duties imposed upon the Company by this Ordinance. Likewise, if the Company reorganizes, merges, or consolidates with any other company, then the City is bound by this Ordinance.

SECTION 12. Revocation

In the event the Company fails to comply with the provisions of this Ordinance and, within thirty (30) days after receipt of written notice from the City, the Company fails to cure or remedy such default,

or to have begun reasonable measures to do so, then the City may cause the Company to appear at a hearing before the City upon thirty (30) days prior written notice. Any written notice to the Company shall be sent to Public Service Company of North Carolina, 800 Gaston Road Gastonia, North Carolina, 28053, ATTN: D. Russell Harris. If at such hearing the City should determine that the Company's failure or default has been substantial, repeated or flagrant, then upon such determination the City may revoke and terminate this franchise; provided, however, that the Company may file with the City within ten (10) days after such determination the Company's election to appeal to the proper North Carolina court, during the pendency of which the Ordinance shall remain in full force and effect. In that event the City and Company agree that such court shall hear and determine *de novo* whether there has been substantial, repeated or flagrant failure or default by the Company of the terms, conditions or obligations of this Ordinance. Failure or default which cannot be corrected by the Company shall not be grounds for revocation or termination, unless such failure or default shall be determined to be material and continuing.

SECTION 13. Severability, Third Party Rights

(a) If any provision in this contract is determined to be invalid, void or unenforceable by any court or regulatory body having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the parties, their facilities, or gas supply, this Contract or transaction or any provisions thereof.

(b) The rights hereunder in this Ordinance accrue exclusively to the parties, their successors and assigns. It is the express intent of the parties that this franchise shall not create any rights in third parties.

SECTION 14. Effective Date, Term, Adoption, and Ratification

- (a) This Ordinance shall be effective from and after the ____ day of _____, 20____, provided the Company shall have executed the written acceptance hereof at the end of this Ordinance, and shall exist in force for a period of 30 years hereafter, and continue in force year to year thereafter until cancelled upon written notice of either party at least one year in advance.
- (b) All other Ordinances and clauses of Ordinances in conflict herewith are hereby repealed.

Adopted by the City/Town of _____ the ____ day of _____, 20____,
and hereby ratified.

Barbara Volk, Mayor

ATTEST:

Tammie Drake, Clerk

APPROVED AS TO FORM:

Samuel H. Fritschner, Attorney

ACCEPTANCE BY COMPANY

Public Service Company of North Carolina, Incorporated does hereby accept and acknowledge the foregoing Ordinance, and in consideration of the benefits and privileges granted to it does hereby agree to the terms and conditions therein provided.

This the _____ day of _____, 20____.

PUBLIC SERVICE COMPANY
OF NORTH CAROLINA, INCORPORATED

By: _____
D. Russell Harris
President and Chief Operating Officer

ATTEST:

Jordan C. Saltzberg: Assistant Corporate Secretary

(Corporate Seal)



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

Submitted By: Jennifer Musselwhite

Department: Finance

Date Submitted: 02/17/2020

Presenter: Jennifer Musselwhite

Date of Council Meeting to consider this item: 03/05/2020

Nature of Item: Council Action

Summary of Information/Request:

Item # 05g

In July 2020, Metropolitan Sewerage District of Buncombe County (MSD) will take over operation of the Cane Creek Sewer District. MSD has requested to enter into an agreement with the City to bill sewer fees for customers in the Cane Creek District that the City also provides water service. Staff would like to request that City Council approve the agreement with MSD for billing of fees for sewer collection services provided by MSD.

Budget Impact: \$ _____ Is this expenditure approved in the current fiscal year budget? ☐ N/A If no, describe how it will be funded.

Suggested Motion:

I move that City Council resolve to approve the agreement with Metropolitan Sewerage District of Buncombe County to provide sewer billing and collections services.

Attachments:

Metropolitan Sewerage District Agreement

STATE OF NORTH CAROLINA
COUNTIES OF BUNCOMBE
AND HENDERSON

**AGREEMENT REGARDING BILLING
FOR SEWER SERVICE**

This AGREEMENT, made this ____ day of _____, 2020, by and between the **METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY**, a North Carolina public body and body politic and corporate created and established under the provisions of the North Carolina Metropolitan Sewerage Districts Act, Chapter 153, Article 25, Sections 153-295 to 153-324, inclusive (succeeded by Chapter 162A-64-81, inclusive) of the North Carolina General Statutes, with its principal office and place of business at 2028 Riverside Drive, Woodfin, N.C. 28804 (hereinafter “MSD” or “District”) and the **CITY OF HENDERSONVILLE**, a body corporate and politic with its principal office and place of business at 160 Sixth Avenue East, Hendersonville, N.C. 28793 (hereinafter “Hendersonville” or “City”).

WITNESSETH

WHEREAS, MSD was created and established by the North Carolina State Stream Sanitation Committee by resolution adopted on January 19, 1962, and the MSD is currently comprised of the following political subdivisions:

City of Asheville
Town of Biltmore Forest
Town of Weaverville
Town of Black Mountain
Town of Woodfin
Woodfin Sanitary Water and Sewer District
Avery Creek Sanitary District
Busbee Sanitary District
Crescent Hill Sanitary District
Skyland Sanitary District
Fairview Sanitary District
East Biltmore Sanitary District
Caney Valley Sanitary District
Swannanoa Water and Sewer District
Beaverdam Water and Sewer District
Venable Sanitary District
Enka-Candler Water and Sewer District

WHEREAS, MSD operates and maintains a system of interceptor and collector sewer lines and a wastewater treatment facility which system of interceptor and collector sewer lines and wastewater treatment facility is referred to herein as the “District Sewerage System;” and

WHEREAS, MSD currently collects and treats wastewater from the Cane Creek Water and Sewer District in North Henderson County in the District Sewerage System pursuant to contract; and

WHEREAS, in accordance with the provisions of North Carolina General Statutes 162A-68.5, the Cane Creek Water and Sewer District (“CCWSD”) has submitted a request to become part of MSD, the MSD Board has approved such request, and subject to the approval of the North Carolina Environmental Management Commission (“EMC”), CCWSD will become a part of MSD, effective July 1, 2020; and

WHEREAS, MSD is authorized and empowered under Article 5 of Chapter 162A of the General Statutes to fix and revise rates, fees and charges for the use of or for the services and facilities provided by the District Sewerage System and to enter into contracts and agreements with the governing body of any political subdivision regarding the collection of rates, fees and charges for the services and facilities provided by the District Sewerage System; and

WHEREAS, Under MSD’s current contract with CCWSD, CCWSD is required to bill and collect rates, fees and charges for the use of and services furnished by the District Sewerage System to users within the CCWSD; and

WHEREAS, Upon the consolidation of the CCWSD into the MSD, MSD will become responsible for the billing and collecting rates, fees and charges for the use of and the services furnished by the District Sewerage System within the CCWSD; and

WHEREAS, City owns and operates a system for the provision of water (the “City Water System”) to persons in Hendersonville and Henderson County, and the City currently provides water to some users of the District Sewerage System living within the CCWSD; and

WHEREAS, MSD desires to contract with City to bill and collect rates, fees and charges for the use of and services provided by MSD to those users of the District Sewerage System in CCWSD who also receive water from the City; and

WHEREAS, City desires to contract with MSD to provide the billing and collecting services requested by MSD, and City has the authority and capability to provide such services.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions and obligations herein undertaken, it is agreed as follows:

1. City will act as MSD’s agent and bill and collect all rates, fees and charges levied by MSD for the use of and services furnished by the District Sewerage System to those customers in the CCWSD who also receive water from the City Water System (hereinafter “Customers”).
2. MSD will provide City with the rates, fees and charges for sewer service provided to Customers in the CCWSD who also receive water from the City, and a list of such Customers on an annual basis. The Customer list will be updated as new users connect to the District Sewerage System or the City Water System.
3. City will send bills to Customers as shown on the Customer list on a monthly basis and will exercise all reasonable efforts to ensure such bills are paid promptly. MSD and City acknowledge and agree that one bill for water and sewer service will be sent to Customers. City shall take appropriate action to collect any unpaid fees for sewer

service, including but not limited to, the discontinuing of water service to such Customer.

4. MSD will pay City \$2.45 per bill. City will bill MSD, and MSD shall promptly pay such charges. This fee may be adjusted, annually, by mutual agreement of MSD and City based on the prevailing MCI or CPI.
5. Payments received by City from a Customer shall be applied to charges for water and sewer service. To the extent any payments received are less than the total bill for water and sewer service, such payments shall be prorated to the charges for water and sewer service. MSD agrees to accept all City policies for adjustments to the customers' bills. Delinquent or late fees collected by the City shall be the property of the City. MSD reserves the right to terminate any Customer's sewer service for non-payment.
6. Payments received by the City for the Customers' sewer service shall be deposited in an account designated by the District on a bi-monthly basis.
7. Except as set forth herein, City shall have no responsibility to collect unpaid charges for sewer service from any Customer.
8. City's records and accounts relating to the billing and collection of rates, fees and charges for sewer service shall be open to inspection by the District at all reasonable times.
9. The effective date of this agreement is July 1, 2020. MSD will provide Customer and billing information so that City can begin billing for sewer service as of July 1, 2020.
10. This Agreement may not be amended except by a writing signed by an authorized representative of MSD and the City.

11. This agreement shall remain in effect until terminated by mutual agreement of MSD and City or by operation of law. If either City or MSD desire to terminate this agreement, the party requesting termination shall send the other party a request for termination. Such request shall be in writing and shall be sent via regular US Mail and by electronic mail, no later than six months prior to the requested termination date; addressed as follows:

AS TO CITY:

City Manager
City of Hendersonville
160 Sixth Avenue East
Hendersonville, N.C 28739
Via e-mail @ jconnett@hvlnc.gov

AS TO MSD:

General Manager
W.H. Mull Building
2028 Riverside Drive
Woodfin, N.C. 28814
Via e-mail @ thartye@msdbc.org

IN WITNESS WHEREOF, the parties hereto acting under the authority of their respective governing bodies, have caused this Agreement to be duly executed in two counterparts, each of which shall constitute an original.

METROPOLITAN SEWERAGE DISTRICT OF
BUNCOMBE COUNTY

By: _____
Jerry VeHaun, Board Chair

ATTEST:

By: _____
Secretary

CITY OF HENDERSONVILLE

By: _____
Barbara Volk, Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

This Instrument has been pre-audited in the manner required by the Local Government Budget and
Fiscal Control Act.

By: _____
MSD Finance Officer



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

Submitted By: Susan G. Frady

Department: Development Asst Dept

Date Submitted: 2-20-2020

Presenter: Susan G. Frady, Development Asst Director

Date of Council Meeting to consider this item: March 5, 2020

Nature of Item: Council Action

Summary of Information/Request:

Item # 05h

File #P20-08-ANX

The City has received an application from Mark Coleman for contiguous annexation of 0.15 acre located at 1412 Old Spartanburg Highway identified as tax parcel 9578-42-6584.

Attached is the Clerk's Certificate of Sufficiency finding that the petition is valid. The next step in the annexation process is to accept the Clerk's certificate and set a date for the public hearing on the question of adoption of an ordinance of annexation.

Budget Impact: \$ 0 Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

Suggested Motion:

I move Council to accept the City Clerk's Certificate of Sufficiency for the Coleman petition and set April 2, 2020 as the date for the public hearing.

Attachments:


Map
Survey
Certificate of Sufficiency




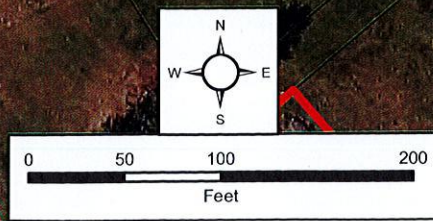
City of Hendersonville
February 2020

1420 Old Spartanburg Road
P20-8-ANX
Annexation Map
Development Assistance Department



 Subject Property

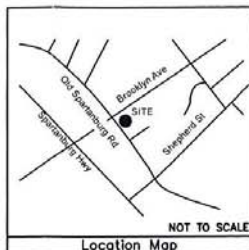
 Hendersonville City Limits



LEGEND:

IP	IRON PIN SET (1/2" REIN)
IP	IRON PIN FOUND
CP	CALCULATED POINT ONLY
CM	CONCRETE MONUMENT
PP	POWER POLE
LP	LIGHT POLE
WV	WATER VALVE
GV	GAS VALVE
W	WELL
PH	FIRE HYDRANT
SM	SANITARY SEWER MANHOLE
SD	STORM DRAIN MANHOLE
CB	CATCH BASIN
CI	CURB INLET
TR	TRANSFORMER
OU	OVERHEAD UTILITY
FL	FENCE LINE
ME	MEASURED
NR	RECORD
OR	OFFICIAL RECORD BOOK
LD	IDENTIFICATION
PL	PLAT BOOK
PA	PAVE
RD	ROAD
LA	LAKE
LN	LINE
R	RANGE
R/W	RIGHT-OF-WAY
N/F	NOW OR FORMERLY

LINE	BEARING	DISTANCE
L1	S 35°24'15" E	199.91'
L2	S 29°17'15" E	100.33'
L3	N 54°41'33" E	192.44'
L4	N 57°14'05" E	148.13'



NOTES

NOTE A: POSSIBLE 5.4' SHED ENCROACHMENT.

SURVEYOR WAS NOT PROVIDED WITH A LEGAL TITLE SEARCH. THERE MAY EXIST EASEMENTS OF RECORD, ENCUMBRANCES, RESTRICTIVE COVENANTS, OWNERSHIP TITLE EVIDENCE, OR ANY OTHER FACTS PERTINENT TO THIS PROPERTY THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE THAT ARE NOT SHOWN ON THIS SURVEY.

SUBJECT PROPERTY CURRENTLY ZONED R-15 BY THE CITY OF HENDERSONVILLE

SETBACKS: FRONT- 30' REAR - 15' SIDE - 10'

N/F
Mark Coleman
PIN 9578-42-6584
DB 1056/633

N/F
Patricia Garcia
PIN 9578-42-8538
DB 747/407

N/F
Mark & Kimberly Coleman
PIN 9578-42-8540
DB 3276/325

N/F
Mark & Kimberly Coleman
PIN 9578-42-7401
DB 3262/298

Plat of Boundary Survey for
Markus Coleman
1412 Old Spartanburg Road
Hendersonville Township, Henderson County, NC

Not For Recordation

The original drawing and/or all copies of it are not transferable to any future owner(s) of the platted property and shall not be used or relied upon by future owner(s) and/or their representatives for any reason without written release by the professional surveyor.

This is to certify that the property shown on this plat was surveyed under my direct supervision. Property lines and improvements are located correctly and that no visible encroachments exist unless otherwise shown.



RLS: F. V. CLINKSCALES JR., P.E.
No: L2614 Firm No: C-1562

Not valid without the signature
and the original seal of a North Carolina
licensed land surveyor.



FREELAND - CLINKSCALES & ASSOCIATES, INC. OF N.C.	REF. PLAT CABINET	N/A
ENGINEERS & LAND SURVEYORS	REF. DEED BOOK	3262/298
201 2nd AVE. EAST	TAX MAP	9578-42-6478
HENDERSONVILLE, N.C. 28792	PARTY CHIEF	FVC
fcoafnc@outlook.com	DRAWN	CPE
(828) 697-6539	DATE	02/04/2020
Fax (828)-697-4195	DWG. NO.	H40043
Firm No. C-1562		

NAD '83

CERTIFICATE OF SUFFICIENCY

**Re: Petition for Contiguous Annexation
 Mark Coleman
 File No. P20-08-ANX**

To the Honorable Mayor and members of the City Council of Hendersonville, North Carolina:

I, Tammie K. Drake, City Clerk, begin first duly sworn, hereby certify an investigation has been completed of the above referenced petition for the contiguous annexation of 0.15 acre identified as tax parcel 9578-42-6584.

A. According to the Development Assistance Department, the area described in the petition meets all of the standards set out in GS160A-58.1(b).

1. The petition follows the prescribed form.
2. The petition was signed by the owners of the subject property.
3. The subject property adjoins the existing city limits line.

Having made the findings stated above, I hereby certify the petition for satellite annexation presented by Mark Coleman is valid.

In witness whereof, I have here unto set my hand and affixed the seal of the City of Hendersonville, this 19 day of Feb., 2020.

Tammie K. Drake
Tammie K. Drake, MMC, City Clerk



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

Submitted By: Brendan Shanahan

Department: Utilities

Date Submitted: 2/17/2020

Presenter: Lee Smith

Date of Council Meeting to consider this item: 3/5/2020

Nature of Item: Council Action

Summary of Information/Request:

Item # 05i

Arcadia Views Sewer and Water Extension Request

This project requires an extension of the City of Hendersonville's water and sewer systems to provide service to 199 single family residential units. This project is within the Zoning and Planning Jurisdiction of the Town of Laurel Park and has received approval dated January 16, 2018.

This extension of the water system will consist of 308 linear feet of 8-inch main and 1 fire hydrant. This extension of the sewer system will consist of 2,048 linear feet of 8-inch PVC and 50 linear feet of 8-inch DIP gravity main; 6,460 linear feet of 4-inch PVC force main and a 0.053 million gallon-per-day sewer pump station.

Based on the above information, the Water and Sewer Department has the capacity to support this additional infrastructure and associated connections and hereby recommends approval of said project contingent upon final approval of construction plans and specifications by the Water and Sewer Department.

In addition, the City will enter into a Utility Extension Agreement with the developer. A draft version of the Utility Extension Agreement is attached. It will be revised in the near future, and we are asking Council to authorize the City Manager to execute the finalized version of the agreement.

Budget Impact: \$ _____ **Is this expenditure approved in the current fiscal year budget?** N/A **If no, describe how it will be funded.**

This project will be funded by the developer, WXZ Development Inc.

Suggested Motion:

I move the Council to resolve to accept this Utility Extension Project and to authorize the City Manager to execute the associated Utility Extension Agreements on behalf of the City.

Attachments:
Agreement

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON
Prepared by: Samuel H. Fritschner

UTILITY EXTENSION AGREEMENT

THIS AGREEMENT, Made and entered into this _____ day of _____, 2020, by and between the CITY OF HENDERSONVILLE, a political subdivision of the State of North Carolina, situate in Henderson County, herein referred to as "the City", and developer, herein referred to as "Developer", of the County of Henderson, State of North Carolina.

WHEREAS, Developer is desirous of improving a tract of land situate, lying and being in Henderson County, State of North Carolina, described as follows:

PARCEL No.: _____, DEED BOOK _____ PAGE _____

and

WHEREAS, in the process of such development and improvement, Developer is desirous of constructing a water distribution and sewer collection system to and on said tract of land; and

WHEREAS, Developer also desires to have the completed water distribution system and sanitary sewer collection system connected to the City's municipal water system and sewer system and made an integral portion thereof; and

WHEREAS, the City will permit said system(s) to be connected to the municipal system(s) under the terms and conditions heretofore established and agreed upon between the parties and specifically in conformance with the requirements of the water and sewer standard specifications and details, currently in force and the City's Code of Ordinances.

NOW, THEREFORE, in consideration of the mutual benefits which will result to the parties in carrying out the terms of this Agreement, it is agreed as follows:

1. Developer shall, at his own expense, employ a North Carolina registered professional engineer ("Engineer") to complete design, permitting and construction of the proposed water distribution in conformance with the Rules Governing Public Water Systems (NCAC Title 15A, Subchapter 18C), City's water Construction Specifications and Details and in size and alignment with the City's Master Plan for Development of the Water and Sewer Department. ???sewer
2. Developer shall require the Engineer to submit all plans, reports, technical specifications, fees, permit applications, engineer's certifications and any other correspondence directly related to this project to the City of Hendersonville Utility Line Extension office for review by the Water and Sewer Department. It shall be the Engineer's responsibility to disclose all proposed changes in the construction plans to the City in writing. If proposed changes are deemed by the City to be "significant" in nature, the Engineer may be required to resubmit plans to the State for re-permitting. This will require written approval by the City prior to re-submitting to the State or before proceeding with changes, even if State re-submittal is not required.
3. Developer shall, at his own cost and expense, employ the design engineer to perform construction inspection during installation of the system(s) and upon project completion submit written certification that the project was completed in accordance with the approved plans and specifications as required by the North Carolina Department of Environmental Quality (NCDEQ). The Developer shall, at his own expense, furnish all on-site and off-site easements and rights-of-way to the City required for perpetual maintenance of the system(s).
4. Developer shall, at his own cost and expense, furnish all materials and all equipment and perform all the work necessary to complete the construction of the water distribution system and sanitary sewer collection system described in the plans and specifications as approved by the City's authorized representative and the NCDEQ.
5. The installation and construction of the water and sewer lines shall be performed by a Contractor possessing a North Carolina Public Utility Contractor's License directly related to the installation of water and sewer lines issued by the North Carolina Licensing Board for General Contractors.

6. The City may purchase and install, or have installed, City-approved SCADA (supervisory control and data acquisition) equipment required to monitor and operate any pump station and/or storage tanks associated with system. Developer agrees to reimburse the City for all expense associated with this purchase and installation of SCADA equipment.
7. The Engineer shall contact the Utilities Project Coordinator prior to the start of construction in order to set up a pre-construction conference between the Developer, Contractor and Engineer. This request should be made at least seven (7) days in advance of the anticipated starting date. Developer shall receive a written notice to proceed (NTP) from the Utilities Director before commencing with construction. If construction is anticipated to be greater than sixty (60) days, a monthly progress meeting shall be scheduled once every thirty (30) days. The date and time of the monthly progress meeting shall be established during the preconstruction conference by the City.
8. Developer must submit the name, address and the Public Utility Contractor's License Identification Number of the proposed contractor to the Utilities Department at or prior to the preconstruction meeting. The Department shall investigate the validity of the Contractor's license.
9. City personnel will be assigned for the express purpose of periodic construction observation. The City's observer(s) shall have the authority to report all discrepancies identified in all phases of construction to the Engineer to ensure conformance with the approved construction drawings and specifications. This shall in no way relieve the Developer of his obligation to engage a professional engineer to perform construction inspection and certify completion of the project according with the approved plans and specifications as required by the NCDEQ.
10. During construction, no deviations from the approved plans and specifications shall be allowed without the prior approval of the Utilities Director.
11. The Utilities Director shall resolve any and all disputes between Developer, Developer's contractor(s), and the City's observation representative(s), regarding conformance with approved plans and/or specifications.
12. Upon completion of construction, Developer's project engineer shall contact the Utilities Project Coordinator to arrange for a final inspection to be performed jointly by the Engineer, the contractor, and the City's observer to determine if the project is acceptable to the City. If the project is not immediately acceptable, any deficiencies shall be noted in a written report (punch list) prepared by Engineer. This report shall be transmitted to the Water and Sewer Department. It shall be the responsibility of the Developer to correct any such deficiencies and arrange for a re inspection of the system.
13. As part of the final inspection process for sewer collection systems, Developer shall satisfactorily complete the following: air test, a mandrel test and video of the new sanitary sewer collection system by mean of closed-circuit television (CCTV). In addition, Developer shall be responsible for cleaning the sewer system if the Utilities Director deems it necessary. All testing shall be certified and all certifications, along with the related data and any video of the sewer system, shall be submitted to the City before final acceptance of the project is granted by the City. Developer may request the City of Hendersonville to perform the CCTV and sewer system cleaning services at Developer's expense.
14. As part of the final inspection process for water distribution systems, Developer shall satisfactorily complete the following: pressure test lines, bacteriological sampling. All testing shall be certified and all certifications, along with related data, shall be submitted to the City before final acceptance of the project is granted by the City.
15. Once all deficiencies are corrected and the project is deemed acceptable to the City, the Engineer shall submit an engineer as built accompanied by a surveyed as built to the Utilities Department. The surveyed as built shall be in the form of two (2) sets of 24"x36" paper, one Mylar and one set in digital format (i.e. .dwg or .dxf on compact disk or DVD). The Engineer shall also submit one original and one copy of his statement certifying construction in conformance with the approved plans and specifications, any off-site easements required for the infrastructure and any deeds necessary to convey ownership to the City.

16. The conveyance of all properties shall be in the form of a fee simple deed and without encumbrance. Developer (or petitioning party) shall indemnify and hold the City harmless from all actions, causes and claims on the part of any persons, firms, and corporations whatsoever, and Developer shall further be responsible for all claims, expenses, demands, and/or actions brought by any claimant against the Developer (or petitioning party), contractor(s), or agents of either, resulting from this agreement.
17. Prior to the activation of services on the newly constructed water distribution system, Developer shall convey, by deed of dedication, ownership of all lines and appurtenances to the City. If water extension was permitted for the same or similar project, the City shall receive final acceptance from the North Carolina Department of Environment and Natural Resources.
18. Developer shall guarantee the accepted water distribution system to be free of defects in materials and workmanship and to be properly functioning in all respects for a period of one calendar year from the date of acceptance by the City. During this year of guarantee, Developer shall correct or have corrected any defects that may develop in material, equipment, or workmanship. Should Developer fail to correct defects within a reasonable period of time after being notified, the City may proceed to correct them and Developer shall be liable for the City's expense in doing so. It shall be the Developer's responsibility to attend, or to provide an authorized representative to attend, a warranty inspection with the City prior to the expiration of said warranty period.
19. Once all items are complete, the City shall issue a formal "Letter of Acceptance" to the developer for the project. The City shall incorporate the accepted system as an integral part of its utility system and shall furnish service there from in accordance with the rules, regulations, rates, and policies established for its customers.
20. This agreement is executed in the State of North Carolina, and shall be construed in accordance with the laws of the State of North Carolina. Both parties submit their persons to the jurisdiction of the Courts for North Carolina. Exclusive venue for any action brought in connection with this agreement, its interpretation and breach shall be in the courts for Henderson County, North Carolina.

PLEASE BE ADVISED: The City shall not allow the activation of any water or sewer services until the City receives final approval from NCDEQ and shall not allow the issuance of any certificates of occupancy until the City deems the project complete.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

ACCEPTED BY DEVELOPER

BY: _____
Developer

STATE OF _____ COUNTY OF _____

I, _____, (printed name of notary) a Notary Public of said County and State, do hereby certify that _____, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal, this _____ day of _____, 20____

My commission expires _____

Notary Public Signature

SEAL>>

ACCEPTED BY THE CITY OF HENDERSONVILLE

BY: _____
John Connet, City Manager

STATE OF NORTH CAROLINA, COUNTY OF HENDERSON

I, Tammie K. Drake, a Notary Public in and for the State and County aforesaid, do hereby certify that John Connet, personally appeared before me and, being duly sworn, stated that he is City Manager of the City of Hendersonville, North Carolina, and that he executed and acknowledged the foregoing instrument on behalf of the City of Hendersonville pursuant to order of the City Council of said City and that the instrument is the act and deed of the City of Hendersonville.

WITNESS my hand and official seal, this _____ day of _____, 20____

My commission expires _____

Tammie K. Drake, Notary Public

SEAL>>



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

Submitted By: Susan G. Frady

Department: Development Asst Dept

Date Submitted: 2/20/2020

Presenter: Susan G. Frady, Development Asst Director

Date of Council Meeting to consider this item: March 5, 2020

Nature of Item: Council Action

Summary of Information/Request:

Item # 05j

Meltdown Vintage Motorcycle Show

This event will be held on Saturday, April 25th from 8 A.M. - 6 P.M. at Southern Appalachian Brewery. This is the 10th year for this event. The change this year is that the applicant has requested to sell alcohol in a barricaded area on Locust Street rather than at the brewery. Locust Street is closed for the event. Off-duty police officers will be hired by the applicant to work during this event as required by the Special Events Ordinance.

The Special Events Committee voted unanimously to approve this event.

Budget Impact: \$ 0 Is this expenditure approved in the current fiscal year budget? ☐ N/A If no, describe how it will be funded.

Suggested Motion:

I move City Council resolve to approve the special event permit for Meltdown Vintage Motorcycle Show.

Attachments:



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

Submitted By: Tom Wooten

Department: Public Works

Date Submitted: 2/21/2020

Presenter: Tom Wooten

Date of Council Meeting to consider this item: March 5, 2020

Nature of Item: Council Action

Summary of Information/Request:

Item # 05k

The Public Works Department is requesting to enter into a five year lease agreement with Smith Turf and Irrigation to lease five eXMark mowers (propane powered engines), one Workman with a snow plow blade and utility bed and a six foot wide broom attachment, and a Toro spreader/sander for \$87,705.68 or \$1,414.13 per month. This agreement includes trading in seven older Kubota and Woods mowers for a credit of \$11,350.

The last several years, we have been purchasing one new mower a year at a cost of about \$14,000. We propose to take these funds and redirect them toward the lease agreement. At the end of five years we plan to renegotiate a new lease.

The agreement benefits the City because we will have a newer fleet of mowers and a better commercial grade mower so we will have less maintenance, less down time, and we will save in fuel costs by switching from diesel engines to propane engines. In addition, we will have two new pieces of equipment to work on a variety of things but specifically cleaning parking lots of snow and mud/silt after flooding, cleaning the Oklawaha Greenway Trail of snow and mud/silt after flooding, and applying fertilizer and granular herbicide to our parks and city property.

Budget Impact: \$ 16,969.56 per year **Is this expenditure approved in the current fiscal year budget?** Yes ☐ If no, describe how it will be funded.

We will redirect CIP funds that were allocated to purchase mowers toward payment of the lease agreement. We will need to allocate another \$2,969.56 per year to completely fund the lease agreement.

Suggested Motion:

I move to allow the Public Works Director to enter into a five year lease agreement with Smith Turf and Irrigation as described and to trade in the used equipment as part of the agreement.

Attachments:

Equipment Quotation

A list of the mowers that we will trade

SMITH TURF & IRRIGATION

EQUIPMENT QUOTATION

Quoted To:

Kevin Rhodes

City of Hendersonville, NC Public Works-Grounds



Quoted From:

Charlotte Office






4355 Golf Acres Dr

Charlotte, NC 28208

Account Executive: Jeff Corn

2020 Budget Quote

704-512-9120

Qty	Model	Description	Unit Price	Extended
eXMark Mowers				
1	EXLZE751GKA60RA1	60" KAW.FX751VLAZER E REAR DISCH.		\$9,900.00
1	EXLZE751GKA60RA1	60" KAW.FX751VLAZER Z & OCD Foot for side shield		\$9,700.00
2	EXTLZE651GKA484A2	48" FX651V KAW.LAZER E SERIES & OCD Foot for side shield		\$17,300.00
1	EXLZE751GKA72RA1	72" REAR DIS. KAW FS751VLAZER		\$10,700.00
				
1	07383	Workman (HDX) 4wd (Kubota Diesel) & Bed		\$28,563.84
1	07316	High Flow Hydraulic Kit		\$1,515.58
1	119-0817	4WD Manual Control Kit		
1	07372	Canopy		\$526.10
1	07373	Folding Windshield		\$243.70
				
BOSS Product Snow Plow Option for HDX Workman				
1	STB13567	BLADE CRATE (SNOWPLOW),5-0,ATV POLY STB		\$345.00
1	STB13565B	PLOW BOX, ATV/UTV-STR		\$1,485.00
1	MSC13699	KIT-CONTROL, HANDHELD,ATV/UTV,STB		\$260.00
1	LTA13379	UC,MID-UTV,TORO WORKMAN HDX,09+		\$232.00
1	MSC13171	POWER/GROUND EXTENSION KIT,90,4 GA		\$95.30
1	MSC13850	BLADE EXTENSION KIT - 6", STB		\$235.00
				
MB Sweeper Option for HDX Workman				
1	MB1552	Sweeper & Frame		\$6,793.10
1	MB1156	KIT-CONTROL, HANDHELD,HDX		\$1,804.70
1	MB1182	UC,TORO WORKMAN HDX		\$718.06
1	MB1190	POWER/HYD KIT		\$471.90
				
1	TOT34225-	Toro Stand-on Spreader / Sprayer		\$8,166.40
		Potential trade-ins		(\$11,350.00)
		Purchase or Finance Total without Tax		\$87,705.68
		Projected Finance Options		<u>Payment</u>
		60 Month True Lease		\$1,414.13
		63 Month True Lease		\$1,327.12
				

Payment Terms: Net 10th Prox (Upon Credit Approval)

Prices And Payment Terms Shown Will Be Valid For 30 Days From Date Quoted. After This Period, We Reserve The Right To Make Any Necessary Adjustments To Prices And/Or Payment Terms.

Est. Sales Tax ???

Total

Quote Prepared By: Jeff Corn

Date: 2/16/2020

Quote Accepted By:

Date:

MOWERS TO BE TRADED

2013 Kubota BX2370 3 bagger riding mower 400 hours

2014 Kubota ZD326 zero turn mower 1562 hours

2013 Kubota ZD221 zero turn mower 1480 hours

2005 Kubota ZD18 zero turn mower 2750 hours

2008 Kubota ZD326S zero turn mower 2968 hours

2008 Kubota ZD321 zero turn mower 2000 hours

2001 Woods zero turn 2639 hours



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

Submitted By: Adam Steurer

Department: Utilities

Date Submitted: 2/25/2020

Presenter: Lee Smith

Date of Council Meeting to consider this item: 03/05/2020

Nature of Item: Council Action

Summary of Information/Request:

Item # 051

Compliance with America's Water Infrastructure Act of 2018 (AWIA) and North Carolina Source Water Risk and Resiliency Plan Requirements:

America's Water Infrastructure Act of 2018 (AWIA) requires that community water systems serving more than 3,300 people complete a Risk & Resiliency Assessment and an Emergency Response Plan. Based on total population served by the City of Hendersonville's water system (approximately 65,000 per the 2017 Water Master Plan), two components must be completed, and certification sent to the U.S. EPA: (1) Risk & Resiliency Assessment (RRA) prior to December 31, 2020 (2) Emergency Response Plan (ERP) within 6 months of RRA, but not later than June 30, 2021.

Since the enactment of AWIA, the North Carolina Department of Environmental Quality (NCDEQ) has proposed new changes to rule 15A NCAC 18C .1305 to reduce regulatory burden and allow public water systems to create and maintain one plan that would meet both AWIA requirements and the state's requirements for source water protection planning. Following the rule change, the documents prepared for compliance with AWIA may also be referred to as a Source Water Risk and Resiliency Plan (SWRRP) and used to satisfy compliance with State rule .1305.

This scope includes work to assist the City in completing these documents and submitting certification as well as work to prepare the City for recertification in five years.

Budget Impact: \$ 0.00 **Is this expenditure approved in the current fiscal year**
budget? N/A **If no, describe how it will be funded.**

the expenditure was not included in the original budget; however, the proposed amendment reallocates existing funds for the execution of the project.

Suggested Motion:

I move City Council resolve to approve the proposal by McKim & Creed and authorize the City Manager to execute a budget amendment, an amendment to our current on-call engineering agreement related to Compliance with America's Water Infrastructure Act of 2018 (AWIA) and North Carolina Source Water Risk and Resiliency Plan Requirements, as presented and recommended by staff.

Attachments:

1. McKim & Creed Professional Engineering Services Proposal
2. Budget Amendment for FY19-20 risk and resiliency planning



ENGINEERS

SURVEYORS

PLANNERS

February 14, 2020

Mr. Lee Smith
City of Hendersonville
305 Williams Street
Hendersonville, NC 28792

RE: Professional Engineering Services related to
Compliance with America's Water Infrastructure Act of 2018 and
North Carolina Source Water Risk and Resiliency Plan Requirements

Dear Mr. Smith,

We have prepared the enclosed "Exhibit A" to describe the proposed scope of services and compensation for the engineering services related to Compliance with AWIA and NC SWRRP requirements. Per our recent discussions the State of North Carolina has issued proposed rule changes to the state's 15A NCAC 18C .1305 rule for source water protection planning, which allows AWIA compliance documents to serve as the City's Source Water Risk and Resiliency Plan. The public comment period for the proposed rule change closed on January 31, 2020 and the proposed effective date of the rule is April 1, 2020. This proposed rule change is accounted for in the attached Exhibit A

Please let us know if this proposal is acceptable and if you would like for us to proceed. We appreciate this opportunity to continue to provide professional services to the City of Hendersonville.

Respectfully submitted,
McKIM & CREED, Inc.

Zachary Trammel, PE
Project Manager

8020 Tower Point Drive

Charlotte, NC 28227

704.841.2588

Fax 704.841.2567

Attachment

www.mckimcreed.com

EXHIBIT A
PROFESSIONAL ENGINEERING SERVICES
for
CITY OF HENDERSONVILLE
related to
COMPLIANCE WITH AMERICA'S WATER INFRASTRUCTURE ACT OF 2018 (AWIA)
AND NORTH CAROLINA SOURCE WATER RISK AND RESILIENCY PLAN
REQUIREMENTS

PROJECT UNDERSTANDING

America's Water Infrastructure Act of 2018 (AWIA) requires that community water systems serving more than 3,300 people complete a Risk & Resiliency Assessment and an Emergency Response Plan. Based on total population served by the City of Hendersonville's water system (approximately 65,000 per the 2017 Water Masterplan), these two components must be completed, and certification sent to the U.S. EPA by the following deadlines:

- Risk & Resilience Assessment (RRA) prior to December 31, 2020
- Emergency Response Plan (ERP) within 6 months of RRA, but not later than June 30, 2021

Every five (5) years, the City must review the RRA and submit a recertification to the U.S. EPA that the assessment has been reviewed and, if necessary, revised. Within six (6) months of submitting the recertification for the RRA, the City must certify it has reviewed and revised (if necessary) its ERP.

Since the enactment of AWIA, the North Carolina Department of Environmental Quality (NCDEQ) has reviewed the requirements promulgated by the EPA and has found significant overlap with the state's requirements for source water protection planning under rule 15A NCAC 18C .1305. As a result, NCDEQ has proposed new changes to rule 15A NCAC 18C .1305 to reduce regulatory burden and allow public water systems to create and maintain one plan that would meet both AWIA requirements and the state's requirements for source water protection planning. The public comment period for this proposed rule change closed January 31, 2020, and the proposed effective date of this rule change is April 1, 2020. Following the rule change, the documents prepared for compliance with AWIA may also be referred to as a Source Water Risk and Resiliency Plan (SWRRP) and used to satisfy compliance with state rule .1305.

The City of Hendersonville has requested assistance in completing a new RRA and a new ERP, and satisfying state requirements for a SWRRP. This scope includes work to assist the City in completing these documents and submitting certification as well as work to prepare the City for recertification in five (5) years.

ITEM 1 - SCOPE OF WORK (SOW)

In order to execute the services associated with AWIA compliance, McKim & Creed is pleased to perform the following Scope of Services in two phases. The following Professional Engineering Services shall be performed by the ENGINEER, and each Phase will be initiated upon written authorization (Notice to Proceed) by the OWNER.

PHASE 1:

- 1.1 Project Kickoff
- 1.2 Stakeholder Education and Planning Meeting
- 1.3 RRA Data and Document Gathering
- 1.4 RRA Development, Review, and Certification

PHASE 2:

- 2.1 ERP Data and Document Gathering
- 2.2 ERP Development, Review, and Certification
- 2.3 Plan for Recertification
- 2.4 Allowances

During completion of this work, McKim & Creed will follow standards and use tools recommended by water industry consensus, as applicable to the City of Hendersonville. These resources entail guidance documents, procedures, and Best Practices, and may include a combination of the following:

- AWWA J100-10 Risk and Resilience Management of Water and Wastewater Systems
- AWWA G430-14 Security Practices for Operation and Management
- AWWA G440-17 Emergency Preparedness Practices
- AWWA M19 Emergency Planning for Water and Wastewater Utilities
- AWWA G300-14 Source Water Protection
- AWWA M60 Drought Preparedness and Response
- Tools from the U.S. EPA and other organizations

PHASE 1

Upon receiving written authorization from the OWNER, the ENGINEER will perform the following services:

1.1 PROJECT KICKOFF

McKim & Creed will meet with the City's project manager to review project goals, project schedule, and administrative issues. This meeting will also be used to determine appropriate stakeholders to be included in development of the RRA and ERP and to gain a preliminary idea of the organizational structure of the City, data management systems used by the City, and documents that have already been developed by the City and may pertain to development of the RRA and ERP.

Stakeholder involvement is critical for a successful completion of an RRA. Core people required for involvement throughout the project are team leaders, risk analysts, members of security and safety, employees from treatment/distribution Operations and Maintenance, engineering staff, and IT professionals. Additional stakeholders to involve may include legal, human resources, customer service, finance, laboratory/compliance, and first responders.

As with the RRA, stakeholder involvement is critical for ERP development. In addition to City utility staff, other important stakeholders include key suppliers, contractors, critical customers, and local emergency planning committees. Depending on results of the RRA, additional stakeholders could also include first responders and governmental entities.

Following the meeting, McKim & Creed will prepare summary meeting notes and distribute to the attendees.

Deliverables:

- **Summary meeting notes**
List of stakeholders required for development of the RRA and ERP

1.2 STAKEHOLDER EDUCATION AND PLANNING MEETING

McKim & Creed will conduct a presentation to educate City stakeholders (as determined during the project kickoff meeting) about AWIA and to discuss the project. The presentation will discuss why AWIA exists, what the intended process will entail, who should be involved, and anticipated schedules. The presentation will also discuss what is expected of the identified stakeholders. The presentation is expected to take approximately one (1) hour.

The presentation will be followed by a Q&A session and a round table discussion of stakeholder concerns or suggestions. The Q&A session may also be used to identify potential risk related goals and objectives that stakeholders are interested in. The Q&A session is anticipated to take approximately two (2) hours.

Following the meeting, McKim & Creed will prepare summary meeting notes and will distribute them to the attendees.

Deliverables:

- **Presentation**
- **Summary meeting notes**

1.3 RRA DATA AND DOCUMENT GATHERING

To help the City complete an RRA and achieve compliance, the following must be considered:

- Risks to the system from malevolent acts and natural hazards
- Resilience of system components
- Operational, water quality, and security monitoring practices
- Financial infrastructure of the utility
- Use, storage, or handling of various chemicals
- Operation and maintenance
- Evaluation of capital and operational needs for risk and resilience management

Specific system components which must be considered include:

- Pipes
- Constructed conveyances
- Physical barriers
- Source water
- Raw water collection and intake
- Pretreatment and treatment storage and distribution facilities
- Electronic, computer, and other automated systems

As part of the RRA preparation, McKim & Creed will host individual interviews with stakeholders to determine what systems and processes the City has, and which documents are available that may be pertinent to development of the RRA. This scope of work assumes that two (2) days of interviews will be required.

Following the interviews, McKim & Creed will prepare a data request that will be forwarded to appropriate stakeholders. This scope of work assumes that stakeholders will provide the requested data to McKim & Creed via an electronic file transfer system (provided by McKim & Creed). If electronic data is not available, stakeholders will provide hard copies of the requested data to McKim & Creed.

Interview notes and the data gathered will be used to set up a preliminary document to guide RRA development. The data requested may include, but is not limited to an exported list of assets, capital plans and related documents, master plans and related documents, and process documentation.

Deliverables:

- **Interview notes**
- **Data request**

1.4 RRA DEVELOPMENT AND CERTIFICATION

McKim & Creed will prepare a preliminary RRA tool based upon the data gathered, developed in Microsoft Excel. McKim & Creed will then host a series of workshops at City facilities with appropriate stakeholders.

McKim & Creed will follow the 7-step process outlined in AWWA J100 and AWWA G430-14 for completing the RRA. This includes incorporating the J100 equations for both risk and resilience calculations.

1. Asset Characterization – This step determines which assets would result in prolonged or widespread service interruption, injuries, fatalities, and/or detrimental economic impact if compromised.
2. Threat Characterization – Determines applicable malevolent threats, natural hazards, and possible dependency/proximity hazards.
3. Consequence Analysis – Identifies worst reasonable consequences that can be caused by specific threats to the assets.
4. Vulnerability Analysis – Analyzing ability of each critical asset and its protective systems to withstand each specific threat.
5. Threat Likelihood Analysis – Estimates the likelihood of malevolent events and dependency hazards and estimates probability of natural hazards.
6. Risk/Resilience Analysis – Estimates the system's risk and resilience relative to each threat-asset pair.
7. Risk/Resilience Management – Determines whether actions are needed to enhance all-hazards security and/or resilience. Can decide on and implement actions to achieve an acceptable level of risk at an acceptable costs and may include net benefit and benefit/cost ratio calculations.

McKim & Creed will work with City stakeholders to define critical assets and relevant threats and hazards, and identify projects and strategies which will yield the highest net benefit to manage risk. The stakeholder meetings will help achieve consensus on financial resources required and the City's position/approach on risk. Mitigation measures will be organized into three tiers of short-term (immediately), mid-term (1-5 years), and long-term (>5 years). It is assumed that three (3) separate days of workshops with the City of Hendersonville will be required to complete this work.

After the conclusion of the workshops, McKim & Creed shall provide a Risk Assessment and Recommendations Report. The assessment shall meet U.S. EPA requirements for certification as outlined in AWIA.

After the RRA document is drafted, McKim & Creed will hold one (1) meeting with all stakeholder participants to review the document and provide it to stakeholders for review and comment. McKim & Creed will then address pertinent stakeholder comments to complete the RRA document.

McKim & Creed will provide the Excel-based RRA tool to the City of Hendersonville for their future reference and use.

The actual U.S. EPA certification process requires completing a publicly available, one page form and submitting it to the U.S. EPA via an online portal. This scope of work assumes that the City will complete and submit this form to the U.S EPA.

Deliverables:

- **RRA tool (Microsoft Excel format)**
- **Three (3) workshops**
- **Materials developed for workshops (if applicable)**
- **Risk Assessment and Recommendations Report**

PHASE 2

Upon receiving written authorization from the OWNER, the ENGINEER will perform the following services:

2.1 ERP DATA AND DOCUMENT GATHERING

To comply with ERP requirements, the following must be considered:

- Strategies and resources to improve the resilience of the system, which includes the physical security and cybersecurity of the system
- Plans and procedures that can be implemented, and identification of equipment that can be utilized, in the event of a malevolent act or natural hazard that threatens the ability of the community water system to deliver safe drinking water
- Actions, procedures, and equipment which can obviate or significantly lessen the impact of a malevolent act or natural hazard on the public health and the safety and supply of drinking water
- Strategies that can be used to aid in the detection of malevolent acts or natural hazards that threaten the security or resilience of the system
- Coordination with existing local emergency planning committees

McKim & Creed will provide a data and documentation request to the City to obtain existing City of Hendersonville emergency documentation which may include the following:

- All existing Emergency Response Plans completed for existing water related facilities. These may exist under other nomenclature such as:
 - Emergency Operations Plan (EOP)
 - Emergency Management Plan (EMP)
 - Integrated Contingency Plan (ICP)
- Additional, non-ERP documents, such as:
 - City Water Shortage Response Plan
 - Emergency Action Plan (EAP)
 - Disaster Response Plan (DRP)
 - Continuity of Operations Plan (COOP)
 - Business Continuity Plan (BRP)
 - Crisis Communications Plan (CCP)
 - Local Hazard Mitigation Plan
 - Other facility-specific plans

McKim & Creed will review the documentation delivered and check against industry guidelines from both the AWWA G440 Management Standard and M19 Manual. McKim & Creed will identify and document gaps in content or current information.

Deliverables:

- **Data request**
- **Documentation of gaps in system**

2.2 ERP DEVELOPMENT AND CERTIFICATION

McKim & Creed will use the RRA results and findings of the ERP data and document review to inform the development of an ERP. Development of the ERP will follow the AWIA-defined “all-hazards approach” in facilitating response planning to prevent, protect, prepare, respond, and recover from a full range of threats and hazards. This must include anticipating and planning for malevolent threats, natural hazards, and proximity/dependency hazards. McKim & Creed will work with the City to determine appropriate scalability of the ERP, which risks to prioritize, and which system components are most critical to include. It is assumed that two (2) separate days of workshops with the City of Hendersonville will be required to obtain the appropriate information from the City.

Key components of the ERP will include:

- Water utility interdependencies
- Emergency power
- Additional generator needs
- Strategies to ensure critical resources
- Emergency water supply
- Mutual Aid Agreements (MAAs)
- Defining Standard Operating Procedures (SOPs)

After the conclusion of the workshops, McKim & Creed will produce an Emergency Response Master Plan that shall provide consistency across and fill in gaps between existing and previously-prepared ERPs. This Master Plan shall meet U.S. EPA requirements for certification and will include recommendations for conducting the additional AWIA requirement of 5-year reviews. This Master Plan shall also meet the state’s new requirements for a SWRRP and shall include a compiled list of potential contaminant sources (PCS) prepared in accordance with state rule 15A NCAC 18C .1305.

After the ERP document is drafted, McKim & Creed will hold one (1) meeting with all stakeholder participants to review the document and provide it to stakeholders for review and comment. McKim & Creed will then address pertinent stakeholder comments to complete the ERP document.

The actual U.S. EPA certification process requires completing a publicly available, one page form and submitting it to the U.S. EPA via an online portal. This scope of work assumes that the City will complete and submit this form to the U.S EPA.

Deliverables

- **Two (2) workshops**
- **Materials developed for workshops (if applicable)**
- **Emergency Response Plan document**

2.3 PLAN FOR RECERTIFICATION

Per AWIA requirements, the City of Hendersonville will need to update their RRA and ERP again in five (5) years. McKim & Creed recommends that the City of Hendersonville plan for this activity as part of the RRA and ERP development outlined in this proposal. McKim & Creed will assist the City in this effort and develop a brief, documented plan that will include the following components:

- Project management suggestions
- A high level plan and schedule for update
- A list of stakeholders required
- An estimate of the level of effort that will be required for the update

It is assumed that this documented plan will be approximately ten (10) pages.

Deliverables

- **Plan for recertification document**

2.4 ALLOWANCES

An allowance has been established to provide for potential additional services that may be required to complete the RRA & ERP requirements. The allowance will not be utilized unless authorized in writing by the City. See “Additional Services” for potential additional services needed.

ITEM 2 – SCHEDULE

The typical timeframe for development of the RRA is nine (9) months from project kickoff. The typical timeframe for development of the ERP is six (6) months from the completion of the RRA.

TASK	START DATE	END DATE	TASK DURATION (DAYS)	TOTAL CONTRACT (DAYS)
PHASE 1				
NTP	3/16/2020	-	0	0
Project Kickoff	3/30/2020	4/3/2020	4	18
Stakeholder Education and Planning Meeting	4/13/2020	4/17/2020	4	32
Risk & Resiliency Assessment (RRA)	-	-	-	-
Data and Document Gathering	4/17/2020	5/17/2020	30	62
Development	5/31/2020	9/28/2020	120	196
Certification submittal deadline	12/31/2020	-	-	290
PHASE 2				
Emergency Response Plan (ERP)	-	-	-	-
Data and Document Gathering	1/14/2021	2/13/2021	30	334
Development	2/27/2021	4/28/2021	60	408
Certification submittal deadline	6/30/2021	-	-	471

ITEM 3 – COMPENSATION

McKim & Creed, Inc. will perform the services outlined in the Scope of Work detailed above for the fee amounts as detailed below. Services will be billed monthly on an hourly time and expense basis in accordance with the Hourly Rate Schedule included in the On-Call Contract between the OWNER and the ENGINEER, as amended. All fees shown below are to be charged on an hourly basis, not to exceed the amounts listed.

TASK	FEE
PHASE 1	
Project Kickoff	\$2,000
Stakeholder Education and Planning Meeting	\$12,000
RRA Data and Document Gathering	\$21,500
RRA Development and Certification	\$50,500
TOTAL – PHASE 1	\$86,000
PHASE 2	
ERP Data and Document Gathering	\$9,200
ERP Development and Certification	\$55,500
Plan for Recertification	\$2,300
Allowances (if authorized for use)	\$12,900
TOTAL – PHASE 2	\$79,900

ITEM 4 – OWNER’S RESPONSIBILITIES

The City of Hendersonville shall perform and provide the following in a timely manner so as not to delay the Services of McKim & Creed, and McKim & Creed may rely on the accuracy and completeness of the following:

1. Authorize McKim & Creed in writing to proceed.
2. Provide copies to McKim & Creed of all available information pertinent to the Project, including previous reports, or any other data relative to the Project. McKim & Creed will access and utilize this information as required to complete the scope of work outlined in this document.
3. Render decisions and approvals as promptly as necessary to allow for the expeditious performance of McKim & Creed's Services.
4. All OWNER stakeholder representatives will attend all workshops necessary to complete the project.
5. Give prompt written notice to McKim & Creed whenever the City becomes aware of any development that does or may affect the scope or timing of McKim & Creed's Services.

Unless otherwise provided in this Agreement, the City of Hendersonville shall incur all costs incidental to compliance with the above items.

ITEM 5 – ADDITIONAL SERVICES

If authorized in writing by the OWNER, the ENGINEER shall furnish or obtain from others Additional Services of the types listed below. These services will be paid by the OWNER on an hourly rate basis in accordance with the Hourly Rate Schedule included in the On-Call Contract between the OWNER and ENGINEER, as amended.

1. Assistance to coordinate with agencies to request vulnerability assessments or other evaluations.
2. Evaluations to complete RRA and ERP requirements not previously performed by the stakeholders. For example evaluations such as power/electrical, cyber security, or SCADA vulnerability analyses.
3. Additional workshops or presentations other than those listed above.

ITEM 6 – ASSUMPTIONS

1. Phasing of the project is based on the schedule provided.
2. All stakeholder representatives will attend all workshops necessary to complete the project.
3. Proposed changes to state rule 15A NCAC 18C .1305 will be effective on April 1, 2020.

BUDGET AMENDMENT

FUND: 60

ACCOUNT NUMBER					
ORG	OBJECT	PROJECT	DESCRIPTION OF ACCOUNT	INCREASE	DECREASE
607110	569000		CONTRACTED SERVICES	33,000.00	-
607110	519400		PROFESSIONAL SERVICES - ENGINEERING	-	13,000.00
607126	535250		R&M LINES	-	10,000.00
607136	535250		R&M LINES	-	10,000.00
FUND 60			TOTAL REVENUES	-	
			TOTAL EXPENDITURES	33,000.00	33,000.00

A budget amendment to move resources within the water and sewer fund for the execution of a risk and resilience assessment as required by the "America's Water Infrastructure Act" (AWIA). The AWIA federal law is an unfunded mandate which requires utility systems to update risk assessments and emergency response plans. We will plan for phase II of the assessment in FY20-21 in the water and sewer fund's operating budget.

APPROVED*By John F. Connet at 1:02 pm, Feb 25, 2020*

Date: _____

APPROVED BY CITY COUNCIL:

DATE:

3/5/2020

AMERICAN RED CROSS MONTH PROCLAMATION

WHEREAS, the American Red Cross, the humanitarian organization that eases people's suffering during life's emergencies in Hendersonville, across the United States and around the world; and

WHEREAS, the Western North Carolina Chapter has a long history of helping our neighbors in need by delivering shelter, care and hope during disasters; making our community safer through its lifesaving Home Fire Campaign; providing lifesaving blood; teaching skills that save lives; and supporting military, veterans, and their families; and

WHEREAS, we thank and honor the selfless volunteers, dedicated employees and generous supporters who make this compassionate work possible; and

WHEREAS, last year in Western North Carolina, 332 active volunteers responded to 207 disasters in the chapter; trained 443 people in disaster preparedness; and assisted 783 people following local disasters; and

WHEREAS, volunteers helped those affected by home fires in our community by addressing their urgent needs like food and lodging, and providing recovery support; and

WHEREAS, when National disasters like the Western wildfires, coastal hurricanes, Midwest tornadoes and floods devastated families in other parts of the country last year, volunteers from Hendersonville were among the nearly 9,000 Red Cross workers — 90 percent of them volunteers — who left their homes to work alongside partners to provide refuge, food, relief items, emotional support, recovery planning and other assistance; and

WHEREAS, the Red Cross continues to work with its partners to prevent fire tragedies through its national Home Fire Campaign, which installed its 2 millionth free smoke alarm last year and has saved hundreds of lives across the country since launching five years ago; and

WHEREAS, in Hendersonville, the Red Cross provides Services to the Armed Forces, Biomedical, and Training Services. We recognize the volunteer heroes in Hendersonville who make this work possible to help our neighbors when they need a helping hand; and

WHEREAS, people in our community depend on the American Red Cross, whose lifesaving mission is powered by the devotion of volunteers, generosity of donors and partnership of community organizations.

NOW, THEREFORE, I, Barbara G. Volk, by virtue of the authority vested in me as Mayor of the City of Hendersonville, do hereby proclaim March 2020 as

The American Red Cross Month

in the City of Hendersonville and encourage our citizens to support its noble humanitarian mission and vital work to prevent and alleviate human suffering in the face of emergencies.

Signed this sixth day of March 2020.

Barbara G. Volk, Mayor



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

Submitted By: Chief Herbert Blake

Department: Police

Date Submitted: 02/24/2020

Presenter: Chief Herbert Blake

Date of Council Meeting to consider this item: 03/05/2020

Nature of Item: Presentation Only

Summary of Information/Request:

Item # 06ii

The Hendersonville Police Department would like to recognize the following individual:

Nicole Marie Joanson was born and raised in Chicago Illinois, where she attended high school at Thornton Fractional North High School. She graduated in 2009 and shortly after graduating she moved to North Carolina.

Nicole attended AB Tech Community College where she received her Associates Degree in Criminal Justice. She graduated with a 3.7 GPA. As soon as she finished the Associates Degree she jumped right into Basic Law Enforcement Training at AB Tech Community College as well.

Nicole was hired as a Police Officer with the Hendersonville Police Department in October 2019 and completed her field training in late January.

Budget Impact: \$ No Is this expenditure approved in the current fiscal year
budget? N/A If no, describe how it will be funded.

Suggested Motion:

Attachments:



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

Submitted By: Lew Holloway

Department: Downtown

Date Submitted: 2/26/2020

Presenter: Lew Holloway

Date of Council Meeting to consider this item: 3/5/2020

Nature of Item: Presentation Only

Summary of Information/Request:

Item # 06iii

The Downtown Program wishes to introduce our two newest staff.

Jamie Carpenter - Downtown Economic Development Coordinator

Meredith Friedheim - Downtown Events Coordinator

Budget Impact: \$ None ☐ Is this expenditure approved in the current fiscal year budget? ☐ N/A If no, describe how it will be funded.

Suggested Motion:

Attachments:



CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

Submitted By: Tammie Drake

Department: Admin

Date Submitted: 02.26.20

Presenter: Kaye Youngblood

Date of Council Meeting to consider this item: 03.05.20

Nature of Item: Presentation Only



Summary of Information/Request:

Item # 06iv

The Walk of Fame Steering Committee will announce the "Class of 2020" Walk of Fame honorees.

Budget Impact: \$ _____ Is this expenditure approved in the current fiscal year budget? If no, describe how it will be funded.

Suggested Motion:

Attachments:



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

Submitted By: Susan G. Frady

Department: Development Asst Dept

Date Submitted: 2-11-2020

Presenter: Susan G. Frady, Development Asst Director

Date of Council Meeting to consider this item: 3-5-2020

Nature of Item: Council Action

Summary of Information/Request:

Item # 07

The City has received an application from Stephen Robertson to close an unimproved portion of right-of-way (25' ft.) of West Pine Street. West Pine Street currently has a 70' right-of-way. There is an existing 16'-21' ft. of paved street. The applicant discussed with Tom Wooten, Public Works Director closing 25' ft. of the 70' ft. right-of-way. Mr. Wooten was not opposed to this. A 45' ft. right-of-way would be remaining. There are no public utilities within this right-of-way.

The Council adopted a Resolution of Intent to close this portion of the right-of-way at the January 9th meeting. A copy of the Resolution of Intent was mailed to the adjoining property owners, notification of the proposed closing was posted on the property, and the Resolution of Intent and notice of public hearing was advertised four times in the legal notice section of the local newspaper.

General Statute 160-299 has procedures for permanently closing streets and alleys. Any person may be heard on the question of whether or not the closing would be detrimental to the public interest or the property rights of any individual. If it appears to the satisfaction of the City Council after the hearing that closing this street is not contrary to the public interest, and that no individual owning property in the vicinity of the street portion or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to their property, the City Council may adopt an order closing the street portion.

Budget Impact: \$ _____ **Is this expenditure approved in the current fiscal year**
budget? N/A **If no, describe how it will be funded.**

Suggested Motion:

I move Council to adopt the Order to Permanently Close an unimproved portion of right-of-way (25' ft.) of West Pine Street as petitioned by Stephen Robertson.

Attachments:

Order to Permanently Close
Survey

**ORDER TO PERMANENTLY CLOSE A PORTION OF AN UNIMPROVED
RIGHT-OF-WAY (25' ft.) OF WEST PINE STREET
(Petition by Stephen Robertson)**

NORTH CAROLINA
HENDERSON COUNTY

TO WHOM IT MAY CONCERN:

WHEREAS, North Carolina General Statute Section §160A-299 authorizes a city council to permanently close any street or public alley way within its corporate limits or area of extraterritorial jurisdiction and provides a procedure for the closing of such streets or alleyways; and

WHEREAS, Stephen Robertson has petitioned the City of Hendersonville to close a portion of the Right-of-Way for West Pine Street; and

WHEREAS, on the ninth day of January 2020, the Hendersonville City Council adopted a resolution expressing the intention of the municipality to close portions of these streets and setting the fifth day of March 2020, as the date of a public hearing regarding such closure; and

WHEREAS, the aforementioned resolution has been published once a week for four successive weeks prior to the public hearing in the Hendersonville Times News (a newspaper of general and regular circulation in Hendersonville and Henderson County) and a copy thereof has been sent by certified mail to all owners of property adjoining the street as shown on the county tax records; and

WHEREAS, notice of the closings and of the public hearing has been posted in at least two places along the streets; and

WHEREAS, a public hearing was held in conformance with the aforementioned public notice on the fifth day of March 2020.

NOW, THEREFORE, the City Council of the City of Hendersonville does hereby make the following findings of fact:

1. The closing of the right-of-way hereafter described are not contrary to the public interest.
2. No individual owning property in the vicinity of the alley or in the subdivision in which it is located would be deprived by the closing of such right-of-way of reasonable means of ingress and egress to his property.

IN CONSIDERATION THEREOF, IT IS HEREBY ORDERED:

1. The following portions of streets are permanently closed and no longer existent as of the effective date of this order:

Being that certain 25-foot strip of West Pine Street to be vacated in the City of Hendersonville, Henderson County, North Carolina, and being more particularly described as follows:

Beginning found iron pipe at the intersection of the South right-of-way line of Park Street (vacated) and the West right-of-way line of West Pine Street as shown on the plat of Leno Park recorded in Plat Cabinet B, slide 178A, Register of Deeds, Henderson County, North Carolina; Point of Beginning also being the Northernmost point of Block E of the aforesaid Lenox Park; thence along the West right-of-way line of West Pine Street the following six (6) courses to wit: (1) S38-50-05E for 76.00 feet to a found iron pipe; (2) S43-50-05E for 50.01 feet to found iron pipe; (3) S44-13-52E for 50.20 feet to a found iron pipe; (4) S46-00-52E for 49.48 feet to a found iron pin; (5) S44-45-29E for 50.54 feet to a found iron pin; (6) S 28-38-03E for 50.01 to a found iron pipe at the Southeast corner of Lot 18, Block E, Lenox Park; thence a new line N66-01-52E for 25.08 feet to a point; thence N28-38-03W for 55.59 feet to a point; thence N44-45-29W for 54.35 feet to a point; thence N46-00-52W for 49.37 feet to a point; thence N44-13-52W for 49.73 feet to a point; thence N43-50-05W for 48.83 feet to a point; thence N38-50-05W for 129.56 feet to a point on the West line of West Pine Street and the East line of that 0.15 acre parcel shown on a plat recorded at Plat Slide 11942, Register of Deeds, Henderson County, North Carolina; thence with the West right-of-way line of West Pine Street S02-45-14E for 42.45 feet to a found iron pin at the intersection of the North right-of-way line of Park Street (vacated) and the West right-of-way line of West Pine Street; thence S38-50-05 E for 22.34 feet to the Point of Beginning. Containing 9,175 square feet, more or less.

2. The City Clerk shall forthwith cause a certified copy of this order to be filed in the Office of the Register of Deeds of Henderson County.

This order shall take effect the fifth day of March, 2020.

Barbara G. Volk, Mayor, City of Hendersonville

ATTEST:

Tammie K. Drake, City Clerk

Approved as to form:

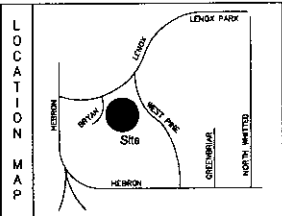
Samuel H. Fritschner, City Attorney

STATE OF NORTH CAROLINA, COUNTY OF HENDERSON

I, _____, a notary public in Henderson County, State of North Carolina, do hereby certify that Barbara G. Volk, in her capacity as Mayor of the City of Hendersonville, Tammie K. Drake, in her capacity as City Clerk, and Samuel H. Fritschner, in his capacity as City Attorney, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this _____.

My commission expires _____



SKETCH OF RIGHT OF VACATION Dawn & Stephen Robertson 706 Bryan Avenue Hendersonville Township, Henderson County State of North Carolina

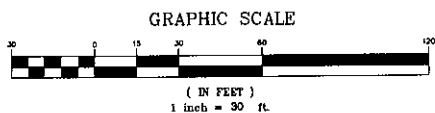
LINE	BEARING	LENGTH
L1	S02°45'14"E	8.54
L2	N63°02'22"W	25.04
L3	N54°41'11"W	12.89
L4	N66°01'52"E	25.09

SURVEY NOTES

1) The purpose of this sketch is to show a possible partial vacation of the 70' right of way of West Pine Street.

LEGEND:

○	NIP	NEW IRON PIN
●	EIP	EXISTING IRON PIN
○	CP	CALCULATED POINT ONLY
○	TP	POWER POLE
○	LP	LIGHT POLE
○	WV	WATER VALVE
○	GV	GAS VALVE
○	WM	WATER METER
○	FR	FIRE HYDRANT
○	SSM	SANITARY SEWER MANHOLE
○	SDM	STORM DRAIN MANHOLE
○	CB	CATCH BASIN
○	CO	CLEANOUT
○	CI	CURB INLET
○	TR	TRANSFORMER
○	ohp	OVERHEAD POWER
○	X-X-X	FENCE LINE



Not For Recordation

The original drawing and/or all copies of it are not transferable to any future owner(s) of the plotted property and shall not be used or relied upon by future owner(s) and/or their representatives for any reason without written release by the professional surveyor.

This is to certify that the property shown on this plot was surveyed under my direct supervision. Property lines and improvements are located, correctly and that no visible encroachments exist unless otherwise shown.



**FREELAND - CLINKSCALES
+ ASSOCIATES, INC. of NC**
Engineers & Land Surveyors
201 2nd AVE. EAST
HENDERSONVILLE, N.C. 28792
(888) 697-6539
(888) 697-4188 (fax)
jcaofnc@outlook.com
Perm. No. C-1688

REF. PLAT SLIDE	11942
REF. DEED. BOOK	3205/250 & 3367/528
TAX MAP	9568-44-5754 & 6575
PARTY CHIEF	TEC
DRAWN	TEC
DATE	November 6, 2019
DWG. NO.	H39127





CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

Submitted By: Daniel Heyman

Department: Development Asst Dept

Date Submitted: 02-25-2020

Presenter: Daniel Heyman, Senior Planner

Date of Council Meeting to consider this item: 03-05-2020

Nature of Item: Council Action

Summary of Information/Request:

Item # 08

The City is in receipt of an application for a conditional rezoning from Grace Blue Ridge Church. The applicant is requesting to rezone a 2.46-acre area that contains Grace Blue Ridge Church and their parking facilities, parcel numbers 9578-21-4699, 9578-21-4924, 9578-21-4699, and 9578-21-5614. The subject property is currently zoned C-2, Secondary Business and R-15 Medium Density Residential. The applicant is requesting to be zoned C-2 CZD, Secondary Business Conditional Zoning District. The applicant is requesting that the following uses be permitted:

- Religious institutions
- Offices, business, professional and public
- Parking lots and parking garages

Budget Impact: \$ _____ Is this expenditure approved in the current fiscal year budget? ☐ N/A If no, describe how it will be funded.

Suggested Motion:

Suggested Motions are on page 5

Attachments:

Site plan
Existing land use map, existing zoning map, future land use map

M E M O R A N D U M

TO: Honorable Mayor & City Council

FROM: Development Assistance Department

RE: Grace Blue Ridge Church PCA Conditional Rezoning

FILE #: P19-38-CZD

DATE: March 5, 2020

PROJECT HISTORY

The City is in receipt of an application for a conditional rezoning from Grace Blue Ridge Church. The applicant is requesting to rezone a 2.46-acre lot that contains Grace Blue Ridge Church and their parking facilities, parcel numbers 9578-21-4699, 9578-21-4924, 9578-21-4699, and 9578-21-5614. The subject property is currently zoned C-2, Secondary Business and R-15 Medium Density Residential. The applicant is requesting to be zoned C-2 CZD, Secondary Business Conditional Zoning District. The applicant is requesting that the following uses be permitted:

- Religious institutions
- Offices, business, professional and public
- Parking lots and parking garages

The majority of Grace Blue Ridge Church's parking is situated on land that is currently zone R-15 Medium Intensity Residential. Since parking lots are not a permitted use in R-15, this zoning change will bring these parcels into zoning compliance. The applicant is also requesting to allow offices as a permitted use. The office function will take place in the rear of the church where light manufacturing once took place.

If approved, the permitted uses would be limited to those indicated on the approved list of uses and conditions.

EXISTING LAND USE & ZONING

The subject parcel is currently zoned C-2, Secondary Business and R-15 Medium Density Neighborhood and contains Grace Blue Ridge Church and parking lots.

The parcels to the north west, west and south west are zoned R-15 Medium Density Residential and contain residential uses. The parcels to the north east, east and south east are zoned C-3 Highway Business include the Little Red School Hendersonville and the Dixie Trails Mobile Home Park. Surrounding land uses and zoning districts are shown on the "Existing Land Use" and "Existing Zoning" maps located on pages 10 and 11 respectively.

COMPREHENSIVE PLAN CONSISTENCY

According to N.C.G.S.160A-383, zoning map amendments shall be made in accordance with a comprehensive plan. The 2030 Comprehensive Plan's Future Land Use Map designates the subject area as High intensity Neighborhood and Medium Intensity Neighborhood.

The goal of the High Intensity Neighborhood future land use category is to "Encourage low-maintenance, high density housing that supports Neighborhood and Regional Activity Centers and downtown and provides a transition between commercial and single-family development. Promote walkable neighborhood design that creates attractive and functional roadway corridors and multi-family residential neighborhoods."

The goal of the Medium Intensity Neighborhood future land use category is to "Provide a transition between High and Low-Intensity Neighborhood areas while providing a wide range of housing formats and price points. Promote walkable neighborhood design and compatible infill development in new neighborhoods and as a means of preserving and enhancing existing neighborhoods."

All adjacent properties are designated as either Medium Intensity Neighborhood or High Intensity Neighborhood on the 2030 Comprehensive Plan's Future Land Use Map.

The 2030 Comprehensive Plan's Future Land Use Map is located on page 12.

PLAN REVIEW

Buildings

The site plan shows an existing structure which houses Grace Blue Ridge Church. The site plan is located on page 9 of this memo.

Streets

The site plan shows two entrances and exits from the property.

Parking

The site plan shows 102 existing parking spaces to remain.

Buffers/Landscaping

The landscaping plan shows a 10 ft. type-B buffer along the south side of parcel number ending in 5614 and the north side of parcel number ending in 4924. The site plan shows an existing privacy fence buffering existing residential uses in between their vehicular use areas.

The landscaping plan further provides for parking lot landscaping including one tree and two shrubs per 4,000 sq. ft. of vehicular use area.

NEIGHBORHOOD COMPATIBILITY

A neighborhood compatibility meeting concerning the application was held on December 18th, 2019. Notice was provided by U.S. mail to the owners of record of all property situated within 400 feet of the subject property as required by the Zoning Ordinance.

One person representing the public attended the meeting. The attendee asked questions regarding whether the rezoning is tied to a project and whether the lots would be resurfaced. A copy of the neighborhood compatibility minutes are attached to this memo.

PLANNING BOARD

The Planning Board took this matter up at its regular meeting on February 10, 2020. The Planning Board voted unanimously to recommend City Council adopt an ordinance amending the official zoning map of the City of Hendersonville. Changing the zoning designation of the subject property from C-2 and R-15 to C-2 CZD Secondary Business Conditional Zoning District based on the site plan submitted and subject to the limitations and conditions stipulated on the published list of uses and conditions, finding that the rezoning is consistent with the Comprehensive Plan, and that the rezoning is reasonable and in the public interest for the following reason: it will improve the functionality of the existing property.

ZONING ORDINANCE GUIDELINES

Per Section 11-4 of the City's Zoning Ordinance, the following factors shall be considered prior to adopting or disapproving an amendment to the City's Official Zoning Map:

1. **Comprehensive Plan consistency.** Consistency with the Comprehensive Plan and amendments thereto.
2. **Compatibility with surrounding uses.** Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property.
3. **Changed conditions.** Whether and the extent to which there are changed conditions, trends or facts that require an amendment.
4. **Public interest.** Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety and general welfare.
5. **Public facilities.** Whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment.

6. **Effect on natural environment.** Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, storm water management, streams, vegetation, wetlands, and wildlife.

SUGGESTED MOTIONS

For Recommending Approval:

I move City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject property from C-2, Secondary Business and R-15 Medium Density Residential to C-2-CZD, Secondary Business Conditional Zoning District, based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the Published List of Uses and Conditions, finding that the rezoning is consistent with the Comprehensive Plan's Future Land Use map, and that the rezoning is reasonable and in the public interest for the following reasons:

[PLEASE STATE YOUR REASONS]

For Recommending Denial:

I move City Council not adopt an ordinance rezoning the subject property, for the following reasons:

[PLEASE STATE YOUR REASONS]

Planning Report
Neighborhood Compatibility Meeting
Application for a Conditional Zoning District
Grace Blue Ridge Church File # P19-38-CZD
Wednesday, December 18, 2019 2:00 p.m.

Daniel Heyman, Planner, convened the compatibility meeting at 2:05 pm in the Assembly Room of the City Operations Center. One member of the public, two application representatives and two City staff were in attendance. The follow signed in:

Name	Address	Name	Address
Michael Bowen	Rise Root Architecture	Daniel Heyman	staff
Chas Morris	Grace Blue Ridge Church	Tyler Morrow	staff
Jim Phillis	611 Pineland Rd		

Mr. Heyman opened the meeting explaining this is the first step in a three-step process. He explained the conditional rezoning process adding anyone who received notice of this meeting would receive notice of the City Council Public Hearing. Minutes of this meeting will be forwarded to Planning Board and City Council. Mr. Heyman stated the parcel containing the church is currently zoned C-2, Secondary Business and the parcels containing parking area are zoned R-15 Medium Density Residential. The applicant is proposing to rezone the property to a conditional zoning district for development of two parking lots.

Michael Bowen explained that the church purchased the R-15 property with the intent of using them for parking. Church members are parking there but they do not meet the zoning ordinance requirements so this rezoning would bring the site into compliance.

Mr. Phillis asked if any project was tied to this rezoning.

Chas Morris stated the church changed their zoning designation years ago, this is to be in compliance with current code since they've expanded and begun using the areas noted for parking.

Mr. Phillis asked about resurfacing.

Mr. Bowen stated the parking lots are not proposed to be paved.

Mr. Phillis asked about the Planning Board and City Council meetings.

Mr. Heyman explained that the Planning Board gives a recommendation and City Council makes a decision of the rezoning. They are both public meetings he will be noticed of.

With no further comments or questions, Mr. Heyman closed the meeting at 2:16.

IN RE: Grace Blue Ridge Church PCA CZD (File # P19-38-CZD)

List of Uses & Conditions

I. Stipulated Uses:

Only the following uses are authorized for the referenced development:

- Religious institutions
- Offices, business, professional and public
- Parking lots and parking garages

II. Conditions:

(1) Shall be satisfied prior to issuance of a zoning compliance permit:

(2) Shall Be Attached to the Conditional Rezoning:

Any revised plans for the project shall comply with approved plans, the conditions agreed to on the record of this proceeding and applicable provisions of the Hendersonville Zoning Ordinance and Code of Ordinances.

Grace Blue Ridge Church PCA Incorporated

Signature: _____

Printed Name: _____

Date: _____

**AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF
HENDERSONVILLE**

IN RE: FILE NO. P19-38-CZD

Be it ordained by the City Council of the City of Hendersonville:

1. Pursuant to Article XI Amendments of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of parcel numbers 9578-21-4699, 9578-21-4924, 9578-21-4699, and 9578-21-5614 from C-2, Secondary Business and R-15 Medium Density Residential to C-2-CZD, Secondary Business Conditional Zoning District.
2. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this 5th day of March 2020.

Barbara Volk, Mayor

ATTEST:

Tammie K. Drake, CMC, City Clerk

Approved as to form:

Samuel H. Fritschner, City Attorney



Hendersonville, NC
www.riserroot.com
852-989-9381



CONDITIONAL REZONING REQUEST
GRACE BLUE RIDGE CHURCH PCA, INC
109 FLORENCE STREET, HENDERSONVILLE, NC

"THIS DRAWING MAY NOT BE
COPIED OR REPRODUCED, IN
WHOLE OR PART, WITHOUT
PERMISSION FROM RISERROOT
ARCHITECTURE + DESIGN."

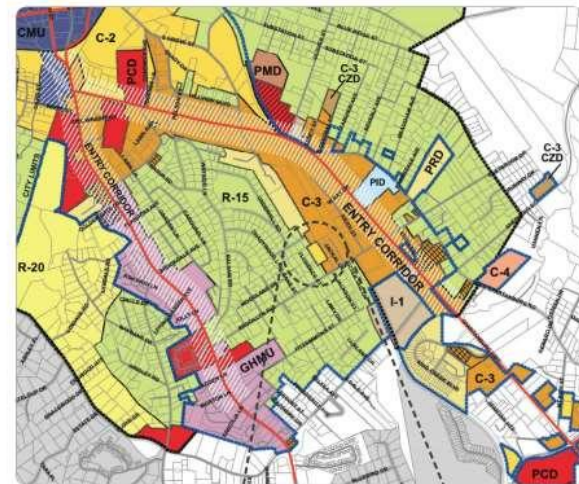
GENERAL CONTRACTOR TO
COMPLY WITH ALL STATE AND
LOCAL CODES AND ORDINANCES
IN THE DRAWINGS. SHALL
BE CONSULTED WITH RISERROOT
ARCHITECTURE + DESIGN PRIOR
TO COMMENCING ANY ADDI-
TIONAL CONSTRUCTION.

DO NOT SCALE DIMENSIONS
FROM DRAWINGS

DECEMBER 2, 2019
REV. 12.16.19
REV. 01.06.20
REV. 01.14.20

CONDITIONAL
REZONING PLAN

A0.1



CITY ZONING MAP - PARTIAL



ZONING MAP - ZOOM IN TO GBR SITE

- GBR Property Lines
- C-2 Secondary Business
- R-15 Medium Density Residential
- C-2 Highway Business
- Existing Owners
- GBR Building

Purpose of Rezoning:

The diagram shows the current zoning in place at and around the GBR property. The rezoning process will be addressing areas (1) and (2) only. Parking is NOT an allowable use of land in R-15. Currently the actual number of parking spaces that GBR can legitimately allocate for occupancy levels of our building only exist in the C-2 area, or 40 spaces = 160 occupants. Currently GBR averages about 300 people, so the rezoning process, as discussed with the city, is to officially resolve the problem.

Area (1) currently has 23 parking spaces (not parallel spaces) and area (2) has 37 parking spaces. Once all GBR property is rezoned to C-2, the total number will be 102 parking spaces = 408 occupants.

GENERAL NOTE
THIS DRAWING IS NOT A SURVEY. ALL DIMENSIONS ARE REFERENCED FROM HENDERSON COUNTY G.L.S. AND WILL NEED TO BE VERIFIED. UTILITY LOCATIONS ARE APPROXIMATE.

Adjacent Property Owners

You, G. Duane	113 Florence Street
Bradley Warren	524 Brooklyn Avenue
844, Charles C.	320 Brooklyn Avenue
King, Jr. Hubert G.	0 Shad Florence Street
Public, Advertiser	541 Pineland Road
Parker, Colby	401 Pineland Road
Schwartz, Paul E.	401 Pineland Road
Phelan, James W.	411 Pineland Road
Duke Power Company	901 Spartanburg Highway
Century James Harold	101 Jockal Lane
Honey, Craig J. Tractor	604 Brooklyn Avenue

PROJECT AREA (all Property is in Hendersonville City Limits)

Existing C-2	(#9574215868)	75,358.8 SF (1.72A)
Proposed Area 1	(#9574216019)	7,425.2 SF (0.17A)
	(#9573756146)	6,334.0 SF (0.15A)
Proposed Area 2	(#9573214924)	16,295.2 SF (0.42A)
TOTAL AREA		105,013.2 SF (2.48A)

KEY

- Existing Parking Areas to be Rezoned C-2 (Existing Zoning R-15)
- 1 Parcel P# (#9573216019) (7,425.2 SF)
- 2 Parcel P# (#9573215814) (6,334.0 SF)
- 2 Parcel P# (#9573214924) (16,295.2 SF)
- GBR Building in existing C-2 Zoning
- Existing City of Hendersonville Gravel Main (No Impact)
- Existing Overhead Utilities (No Impact)
- Existing Hydrant
- Existing Stormwater/Off-Road Drain
- Future Type III Landscape Buffer & Broadleaf canopy trees, 25 evergreen shrubs (8-foot centers), 33 flowering shrubs per 100 linear feet



GBR OVERALL SITE PLAN - EXISTING USE
1/32" = 1' - 0"



CITY OF HENDERSONVILLE
DECEMBER 2019

Grace Blue Ridge Church P19-38-CZD

DEVELOPMENT ASSISTANCE DEPARTMENT
EXISTING LAND USE


PIN S: 9578-21-4924,
-4699, -5614, -5868
APPROXIMATELY 2.46 ACRES

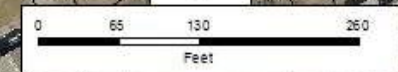
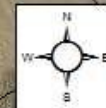
DIXIE TRAILS
MOBILE HOME PARK

THE LITTLE
RED SCHOOL
HENDERSONVILLE

RESIDENTIAL

RESIDENTIAL

 Subject Property





CITY OF HENDERSONVILLE
DECEMBER 2019

Grace Blue Ridge Church P19-38-CZD

DEVELOPMENT ASSISTANCE DEPARTMENT
EXISTING ZONING

PRD

C-3

PINS: 9578-21-4924,
-4699, -5614, -5868
APPROXIMATELY 2.46 ACRES

C-2

R-15



Subject Property

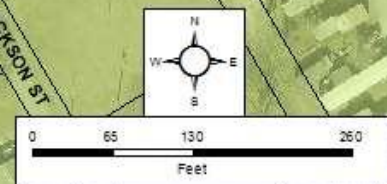
Hendersonville Zoning

-  R-15 Medium Density Residential
-  PRD Planned Residential Development
-  C-3 Highway Business
-  C-2 Secondary Business

FLORENCE ST

BROOKLYN AVE

W JACKSON ST





CITY OF HENDERSONVILLE
DECEMBER 2019

Grace Blue Ridge Church P19-38-CZD

DEVELOPMENT ASSISTANCE DEPARTMENT
FUTURE LAND USE

NEIGHBORHOOD
ACTIVITY CENTER

HIGH INTENSITY NEIGHBORHOOD

PIN S: 9578-21-4924,
-4699, -5614, -5868
APPROXIMATELY 2.46 ACRES

MEDIUM INTENSITY NEIGHBORHOOD

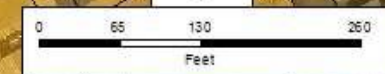
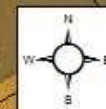
 Subject Property

Comprehensive Plan

 Neighborhood Activity Center

 High Intensity Neighborhood

 Medium Intensity Neighborhood





CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

Submitted By: Tyler Morrow

Department: Development Asst Dept

Date Submitted: 2/24/20

Presenter: Tyler Morrow, Planner

Date of Council Meeting to consider this item: 3/5/20

Nature of Item: Council Action

Summary of Information/Request:

Item # 09

The City is in receipt of a Conditional Rezoning application from William Pace of Pace Brothers Construction. The subject project is located on parcel number 9578-24-8681 and contains 1 commercial structure. The property was rezoned in 2018 from R-15 Medium Density Residential to C-3 CZD. City Council approved the rezoning with the following permitted uses:

- Business services
- Construction trades facilities
- Personal services
- Public and semi-public buildings
- Recreational facilities, indoor
- Religious institutions
- Repair services, miscellaneous
- Residential dwellings, single-family
- Residential dwellings, two-family
- Wholesale businesses

The applicant is requesting to rezone the subject property to C-2 CZD, Secondary Business Conditional Zoning District in order to have light manufacturing as a conditional use. The applicant wants to maintain the permitted uses from the 2018 approved rezoning with the addition of light manufacturing.

Budget Impact: \$ _____ **Is this expenditure approved in the current fiscal year budget?** ☐ N/A **If no, describe how it will be funded.**

Suggested Motion:

Suggested Motions are on page 4

Attachments:

Site plan
Existing land use map, existing zoning map, future land use map

M E M O R A N D U M

TO: City Council

FROM: Development Assistance Department

RE: William Pace Rezoning

FILE #: P20-4-CZD

DATE: March 5th, 2020

PROJECT DESCRIPTION

The City is in receipt of a Conditional Rezoning application from William Pace of Pace Brothers Construction. The subject project is located on parcel number 9578-24-8681 and contains 1 commercial structure. The property was rezoned in 2018 from R-15 Medium Density Residential to C-3 CZD. City Council approved the rezoning with the following permitted uses:

- Business services
- Construction trades facilities
- Personal services
- Public and semi-public buildings
- Recreational facilities, indoor
- Religious institutions
- Repair services, miscellaneous
- Residential dwellings, single-family
- Residential dwellings, two-family
- Wholesale businesses

The applicant is requesting to rezone the subject property to C-2 CZD, Secondary Business Conditional Zoning District in order to have light manufacturing as a conditional use. The applicant wants to maintain the permitted uses from the 2018 approved rezoning with the addition of light manufacturing.

Per our zoning ordinance light manufacturing is defined as “The assembly, fabrication, or processing of goods and materials using processes that ordinarily do not create noise, smoke, fumes, odors, glare, or health or safety hazards outside of the building or lot where such assembly, fabrication, or processing takes place, where such processes are housed entirely within a building, or where the area occupied by outdoor storage of goods and materials used in such processes does not exceed 25% of the floor area of all buildings on the property.”

No changes to the site are proposed, the applicant built the site in accordance with the site plan approved by City Council in 2018.

EXISTING LAND USE & ZONING

The subject property is currently zoned C-3 CZD, Highway Business Conditional Zoning District and contains 1 commercial structure.

Parcels to the north, east and west are zoned R-15 and include residential dwellings and a religious institution. Parcels to the south are zoned C-3 Highway Business and include commercial uses as well as the Henderson County Board of Elections. Parcels to the south west are zoned PCD-SU, Planned Commercial Development Special Use and I-1 Industrial and include mini-warehouses. Surrounding land uses and zoning districts are shown on the “Existing Land Use Map” and “Zoning Map” on page 8 and 9 respectively.

COMPREHENSIVE PLAN CONSISTENCY

The subject property is classified as High Intensity Neighborhood on the 2030 Comprehensive Plan’s Future Land Use Map. The goal of the High Intensity Neighborhood classification is to “Encourage low-maintenance, high density housing that supports Neighborhood and Regional Activity Centers and downtown and provides a transition between commercial and single-family development. Promote walkable neighborhood design that creates attractive and functional roadway corridors and multi-family residential neighborhoods.”

The recommended primary and secondary land use in High intensity Neighborhood are as follows:

Recommended Primary Land Uses:

- Single-family attached and multi-family residential
- Planned Residential Developments
- Open space

Recommended Secondary Land Uses:

- Public and institutional uses
- Offices and retail along thoroughfares
- Recreational amenities

The 2030 Comprehensive Plan’s Future Land Use Map designates all adjacent parcels as High Intensity Neighborhood. Some parcels located to the south west of the project are classified as Neighborhood activity center.

The 2030 Comprehensive Plan’s Future Land Use Map is located on page 10.

PLAN REVIEW

Buildings

The site contains a 10,000 square foot commercial structure.

Landscaping

A buffer as well as a grass berm were installed as a condition of the 2018 rezoning.

This application for rezoning is for adding light manufacturing to the permitted use, no changes to the structure have been submitted. The site was developed in accordance to the site plan and landscaping plan approved by City Council.

NEIGHBORHOOD COMPATIBILITY

A neighborhood compatibility meeting concerning the application was held on February 3rd, 2020. Notice was provided by U.S. mail to the owners of record of all property situated within 400 feet of the subject property as required by the Zoning Ordinance.

No one representing the public attended the meeting. A copy of the neighborhood compatibility report accompanies this memorandum on page 7.

PLANNING BOARD

The Planning Board took this matter up at its regular meeting on February 10th, 2020. The Planning Board voted unanimously to recommend City Council adopt an ordinance amending the official zoning map of the City of Hendersonville. Changing the zoning designation of the subject parcel from C-3 CZD, Highway Business Conditional Zoning District to C-2 CZD, Secondary Business Conditional Zoning District based on the site plan submitted and subject to the limitations and conditions stipulated on the published list of uses and conditions, finding that the rezoning is consistent with the Comprehensive Plan, and that the rezoning is reasonable and in the public interest.

ZONING ORDINANCE GUIDELINES

Per Section 11-4 of the City's Zoning Ordinance, the following factors shall be considered prior to adopting or disapproving an amendment to the City's Official Zoning Map:

1. **Comprehensive Plan consistency.** Consistency with the Comprehensive Plan and amendments thereto.
2. **Compatibility with surrounding uses.** Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property.

3. **Changed conditions.** Whether and the extent to which there are changed conditions, trends or facts that require an amendment.
4. **Public interest.** Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety and general welfare.
5. **Public facilities.** Whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment.
6. **Effect on natural environment.** Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, storm water management, streams, vegetation, wetlands, and wildlife.

SUGGESTED MOTIONS

I move City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject property from C-3 CZD, Highway Business Conditional Zoning District to C-2 CZD, Secondary Business Conditional Zoning District, based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the Published List of Uses and Conditions, finding that the rezoning is consistent with the Comprehensive Plan's Future Land Use map, and that the rezoning is reasonable and in the public interest for the following reasons:

[PLEASE STATE YOUR REASONS]

For Recommending Denial:

I move City Council not adopt an ordinance rezoning the subject property for the following reasons:

[PLEASE STATE YOUR REASONS]

IN RE: William Pace Rezoning (File # P20-4-CZD)

List of Uses & Conditions

I. Stipulated Uses:

Only the following uses are authorized for the referenced development:

- Business services
- Construction trades facilities
- Personal services
- Public and semi-public buildings
- Recreational facilities, indoor
- Religious institutions
- Repair services, miscellaneous
- Residential dwellings, single-family
- Residential dwellings, two-family
- Wholesale businesses
- Light manufacturing

II. Conditions:

(1) Shall Be Attached to the Conditional Rezoning and Satisfied Prior to Issuance of Final Site Plan Approval:

(2) Shall Be Attached to the Conditional Rezoning:

Final plans for the project shall comply with approved plans, the conditions agreed to on the record of this proceeding and applicable provisions of the Hendersonville Zoning Ordinance and Code of Ordinances.

Pace Brothers Constructions Company Inc.

Signature: _____

Printed Name: _____

Date: _____

**AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP
OF THE CITY OF HENDERSONVILLE**

IN RE: William Pace Rezoning
(File # P20-4-CZD)

Be it ordained by the City Council of the City of Hendersonville:

1. Pursuant to Article XI of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of the following:

Parcels 9578-24-8681 from C-3 CZD, Highway Business Conditional Zoning District to C-2 CZD, Secondary Business Conditional Zoning District.

2. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this 5th, day of March 2020.

Barbara Volk, Mayor

ATTEST:

Tammie K. Drake, CMC, City Clerk

Approved as to form:

Samuel H. Fritschner, City Attorney

Planning Report
Neighborhood Compatibility Meeting
Application for a Conditional Zoning District
Pace/E. Central St. File #P20-4-CZD
Monday, February 3, 2020 2:00 p.m.

Daniel Heyman, City Planner, convened the compatibility meeting at 2:00 pm in the Assembly Room of the City Operations Center. The following were in attendance:

<i>Name</i>	<i>Address</i>	<i>Name</i>	<i>Address</i>
Billy Pace (applicant)	619 S. Grove St.		
Daniel Heyman, Staff	100 N. King Street		
Susan Frady, Staff	100 N. King Street		
Tyler Morrow, Staff	100 N. King Street		

Adjacent property owners within 400 feet of the proposed project were notified by mail. No one attended the meeting except the applicant and staff.

Mr. Heyman closed the meeting at 2:15 pm.



City of Hendersonville
January 2020

William Pace Rezoning

P20-4-CZD

Existing Land Use

Development Assistance Department

Vacant

Barker Heights
Baptist Church


Pin: 9578-24-8681
Approximately 2.1 Acres

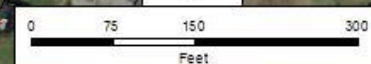
Residential

Wunderlich
America

Target
Shotguns

Henderson County
Board of Elections

-  Subject Property
-  Hendersonville City Limits





City of Hendersonville
January 2020

William Pace Rezoning

P20-4-CZD

Existing Zoning

Development Assistance Department

R-15


R-15


Pin: 9578-24-8681
Approximately 2.1 Acres

C-3 CZD


R-15


C-3

 Subject Property


 Hendersonville City Limits


Hendersonville Zoning


 CZD Conditional Zoning Districts

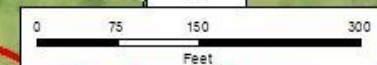
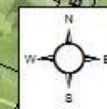
 R-15 Medium Density Residential

 C-3 Highway Business

 PCD-SU Planned Commercial Development Special Use

 I-1 Industrial

 PMD Planned Manufacturing Development





City of Hendersonville
January 2020





William Pace Rezoning
P20-4-CZD
Future Land Use
Development Assistance Department

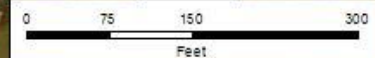
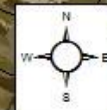
High Intensity Neighborhood

Pin: 9578-24-8681
Approximately 2.1 Acres

High Intensity Neighborhood

Neighborhood
Activity Center

-  Subject Property
-  Hendersonville City Limits
- Comprehensive Plan - Future Landuse**
-  Neighborhood Activity Center
-  High Intensity Neighborhood



PLAT NORTH
P.L. 11-2-2016

PLAT OF SURVEY FOR WILLIAM A. PACE, JR.

SHOWING A PROPOSED RECOMBINATION
OF A PORTION OF D.B. 1285, PG. 527, TRACT B, WITH
THE REMAINING PORTION OF D.B. 1285, PG. 527, TRACT C,
CREATING TRACT B.

HENDERSONVILLE TOWNSHIP
HENDERSON COUNTY
NORTH CAROLINA
JULY 6th, 2016

I, STACY KENT RHODES, Surveyor, do hereby certify that the foregoing is a true and correct copy of the original plat of survey as the same appears in my office.



STACY KENT RHODES
Surveyor

Given at Hendersonville, North Carolina, this 6th day of July, 2016.

WITNESSED BY ME, the Surveyor, at the place of recording, on the 6th day of July, 2016.

SCALE 1" = 50'

<p>PROPERTY D.B. 1285 AC. 527 PG. 527, TRACT B D.B. 1285 AC. 527 PG. 527, TRACT C D.B. 1285 AC. 527 PG. 527, TRACT C</p>	<p>VICINITY MAP (N.T.S.)</p>	<p>WITNESSED BY STACY KENT RHODES N.C. PLS 2050 REGISTERED & EXPIRES 12/31/2020 N.C. REG. AC. 1-10 100 SOUTH ST. ST. 100 HENDERSONVILLE, NC 28033 PHONE: 704.835.1111 FAX: 704.835.1111</p>
--	------------------------------	---

- NOTES:
1. AREA DETERMINED BY CHANGING CONFORMATION
 2. THE CURRENT BOUNDARY OF TRACT B AND TRACT C, AS PER D.B. 1285, PG. 527 AND WILLIAM A. PACE, JR. AS PER D.B. 1212, PG. 541.
 3. THE BOUNDARY OF TRACT B, WITHIN THE CITY OF HENDERSONVILLE, IS DETERMINED BY THE CITY OF HENDERSONVILLE.
 4. THE BOUNDARY OF TRACT B, WITHIN THE CITY OF HENDERSONVILLE, IS DETERMINED BY THE CITY OF HENDERSONVILLE.
 5. CURRENT ZONING DESIGNATION AS SHOWN IN ADOPTED MAPS IS IN THE CITY OF HENDERSONVILLE.

- LEGEND
1. EXISTING CORNER MARKERS
 2. NEW CORNER MARKERS
 3. EXISTING ROADWAY
 4. NEW ROADWAY
 5. EXISTING ROADWAY
 6. NEW ROADWAY



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

Submitted By: Brent Detwiler

Department: Engineering

Date Submitted: 2/25/20

Presenter: Clearwater Environmental

Date of Council Meeting to consider this item: 3/5/20

Nature of Item: Presentation Only

Summary of Information/Request:

Item # 10

Notice of Public Hearing City of Hendersonville French Broad River Raw Water Intake and Pump Station:

The City of Hendersonville (City) is conducting a Public Hearing for the proposed French Broad River Raw Water Intake and Pump Station project. The meeting will present the draft Environmental Assessment (EA) for the project and is scheduled for March 5, 2020 at 5:45 PM at the Council Chambers – City Hall 160 Sixth Avenue E. Hendersonville NC 28792. The City proposes constructing a new raw water intake and pump station to withdraw water from the French Broad River and increasing the treatment capacity of the Mills River Water Treatment Plant (WTP) by bringing online an additional dual-cell filter, thereby increasing the treatment capacity of the WTP from 12 MGD to 15 MGD. The purpose of this project is to provide a supplemental source of raw water to improve the resiliency of the drinking water infrastructure, and to increase the treatment capacity of the WTP to meet rising demands for potable water within the Henderson County service areas. The proposed project will include a new bankside channel style intake and 15 MGD capacity pumping station on the French Broad River to connect to an existing 11,500 linear foot 30-inch diameter ductile iron raw water line that was constructed in 2010.

Under the National Environmental Policy Act (NEPA) and the State Environmental Policy Act (SEPA) an environmental assessment is being conducted to evaluate and disclose the anticipated impacts to the natural and human environments associated with the project. All persons interested in the project are encouraged and invited to appear at the public hearing and to express their views. It is requested that insofar as possible, any person desirous of offering lengthy comments and discussion regarding the proposed project be prepared at the Public Hearing to offer a written statement to be included in the record of the public hearing. Detailed information on the EA will be available for public inspection at the City of Hendersonville Operations Center located at 305 Williams St, Hendersonville, NC 28792. The City encourages your participation and welcomes your comments on the proposed French Broad River Raw Water Intake and Pump Station project. If you are unable to attend the meeting, please submit your comments by March 5, 2020 to Mr. Clement Riddle, P.W.S. at 32 Clayton Street, Asheville NC. 28801, or electronically to clement@cwenv.com. If you have any questions regarding this public comment meeting, please contact Mr. Riddle at (828)-698-9800.

Budget Impact: \$ _____ **Is this expenditure approved in the current fiscal year**
budget? N/A **If no, describe how it will be funded.**

Suggested Motion:

Attachments:



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

Submitted By: Lew Holloway

Department: Downtown

Date Submitted: 2/24/2020

Presenter: Lew Holloway

Date of Council Meeting to consider this item: 3/5/2020

Nature of Item: Discussion/Staff Direction

Summary of Information/Request:

Item # 11

The CDBG program is administered by the North Carolina State Department of Commerce and will make resources available to eligible local governments for the 2020 program year for housing, economic development, public facilities, public infrastructure, and planning activities, with the principal purpose of benefitting low/moderate income persons. The hearing will provide further information about the CDBG program and will allow for citizen participation in the development of any proposed grant applications and/or to provide technical assistance to develop alternate proposals. Comments on the CDBG program or proposed project(s) will be received at this time. The hearing is being conducted pursuant to Section 570.486, Subpart I of the CFR and in compliance with the requirements of the Housing and Community Development Act of 1974, as amended.

While no Notice of Funding Availability (NOFA) has been released for 2020, holding a public hearing at this stage will prepare us for that future NOFA.

Budget Impact: \$ None Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

Suggested Motion:

Attachments:



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

Submitted By: Daniel Heyman

Department: Development Asst Dept

Date Submitted: 02-25-2020

Presenter: Chad Meadows, CodeWright Planners

Date of Council Meeting to consider this item: 03-05-2020

Nature of Item: Council Action

Summary of Information/Request:

Item # 12

At the February meeting, City Council heard a presentation from Chad Meadows of CodeWright Planners on major revisions to the City's Subdivision Ordinance. Council gave feedback on the proposed regulations and opened a public hearing. This is a continuation of that public hearing.

The issues discussed by Council included:

1. Public land/park dedication. 2. Allowance of private streets and gated communities. 3. Steep slope regulations. 4. Required HOA reserve funds.

A redlined draft is attached for your consideration.

Budget Impact: \$ _____ Is this expenditure approved in the current fiscal year budget? ☐ N/A If no, describe how it will be funded.

Suggested Motion:

I move City Council adopt the revised Subdivision Ordinance

Attachments:

Revised Draft Subdivision Ordinance



CITY OF HENDERSONVILLE

SUBDIVISION ORDINANCE

Adoption Draft ~~December 20, 2019~~ March 5, 2020

ACKNOWLEDGEMENTS



CITY COUNCIL

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Jeff Miller
Dr. Jennifer Hensley
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Tom Wooten, Public Works Director
James Miller, Interim Fire Chief
Daniel Heyman, Planner II

CONSULTANT

CodeWright Planners, LLC
9 Blue Bottle Lane
Durham, NC 27705
www.codewright.info

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TABLE OF AMENDMENTS

TABLE OF AMENDMENTS ¹				
ORD#.	TITLE	DESCRIPTION	AFFECTED SECTIONS	DATE ADOPTED
1-17	Example	This is an example description of a text amendment	2.1.A, 3.2.	1-1-19

¹ This is a suggested table provided for the City to track amendments to these subdivision regulations. It allows a user of the subdivision regulations to determine if they have the most recent copy of the provisions. This table is just a suggestion, and is not required. In the event the City relies upon an outside codifier, that codifier may provide a summary table of amendments which can be used instead.

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ARTICLE 1: GENERAL PROVISIONS

SECTION 1.01. TITLE²

This Ordinance shall be officially known as the "Subdivision Ordinance of the City of Hendersonville, North Carolina" and may be referred to herein as "the Subdivision Ordinance," or "this Ordinance."

SECTION 1.02. EFFECTIVE DATE³

This Ordinance shall be in full force and effect on *[insert the effective date of this Ordinance]*⁴, and repeals and replaces the Subdivision Ordinance for the City of Hendersonville, as originally adopted on May 5, 1977, and subsequently amended.

SECTION 1.03. AUTHORITY⁵

A. GENERAL AUTHORITY

This Ordinance controls the subdivision and re-subdivision of land within the City's planning jurisdiction, in accordance with the following:

1. The North Carolina General Statutes, including, but not limited to:
 - a. Chapter 160A, Article 8 (Police Powers);
 - b. Chapter 160A, Article 15 (Streets, Traffic, and Parking);
 - c. Chapter 160A, Article 19 (Planning and Regulation of Development);
 - d. Chapter 143, Article 21 (Water and Air Resources);
 - e. Chapter 113A, Article 4 (Sedimentation and Pollution Control);
2. The Hendersonville City Charter;
3. Other relevant laws, including but not limited to:
 - a. All other relevant laws of the State of North Carolina; and
 - b. Any special legislation applicable to the City of Hendersonville, as enacted by the North Carolina General Assembly.

B. REFERENCES TO STATE LAW

Whenever any provision of this Ordinance refers to or cites a section of the North Carolina General Statutes, the North Carolina Administrative Code, the State Building Code, or any other adopted State law, and that section is later amended or superseded, this Ordinance shall be deemed amended to refer to the amended section.

SECTION 1.04. PURPOSE AND INTENT⁶

The purpose of this Ordinance is to promote the public health, safety, and general welfare of the landowners and residents of Hendersonville, and to ensure that all subdivision or re-subdivision of land within the City's planning jurisdiction is generally consistent with the following goals and objectives:

- A.** Foster convenient, compatible, and efficient relationships among land uses;

² This section replaces the title provisions from Article I from the current ordinance.

³ This section consolidates and replaces Sections 704 and 706 of the current regulations

⁴ This is a placeholder for the effective date of the Ordinance once it is established. Following adoption, these placeholders will be converted to the actual effective date.

⁵ This is a new section that expands on the authority provisions from Article I of the current regulations. In 2019 the General Assembly adopted a sweeping set of changes to the North Carolina planning enabling laws often referred to as "160D". These changes will require, among other things, changes to the cross references in the General Statutes. 160D has not yet been codified, and will not become effective until January 1, 2021. Upon that date, cross references to the General Statutes will need to be revised.

⁶ This section replaces the purpose language in Article I from the current ordinance with supplemental text.

ARTICLE 1: GENERAL PROVISIONS

Section 1.05 Applicability

- B. Support orderly growth and development within the City's planning jurisdiction;
- C. Better manage and lessen congestion in the streets;
- D. Coordinate the development of streets with other public ~~facilities~~ infrastructure;
- E. Ensure the provision of adequate open space between uses for light, air, and fire safety;
- F. Secure the safety of landowners and residents from flooding, fire, seismic activity, and dangers presented from extreme weather events, to the extent possible;
- G. Facilitate the adequate and economic provision of transportation, potable water, sanitary sewage, stormwater management, schools, parks, and other public services;
- H. Protect open space, wildlife habitat, natural resources, cultural resources, and historic and rural character, where appropriate;
- I. Improve city-wide and regional connectivity through greenways, trails, bicycle lanes and paths, and sidewalks;
- J. Address the dedication and reservation of areas for recreation; ~~and~~
- K. Ensure the dedication and reservation of sufficient land for public rights-of-way and utilities; and
- L. Implement the City's adopted policy guidance.

SECTION 1.05. APPLICABILITY⁷

A. GENERAL APPLICABILITY

1. The provisions of this Ordinance shall apply to the subdivision or re-subdivision of all land within the City's planning jurisdiction, unless expressly exempted by a specific section of this Ordinance.
2. The City's planning jurisdiction includes all land within the corporate limits of the City of Hendersonville along with the City's extra-territorial jurisdiction (ETJ) identified on the map entitled "Official Zoning Map, City of Hendersonville," which is incorporated by reference herein and made available for inspection in the offices of the Development Assistance Department.

B. APPLICATION TO GOVERNMENTAL UNITS

Unless expressly exempted, this Ordinance shall apply to:

1. THE CITY OF HENDERSONVILLE

Subdivision of land by the City or its agencies or departments.

2. COUNTY AND STATE GOVERNMENT

Subdivision of land by a State or county agency or department, public college or university, or other political subdivision of the State, in accordance with the standards in Section 160A-392 of the North Carolina General Statutes.

3. THE FEDERAL GOVERNMENT

Subdivision of land owned by the government of the United States, its agencies, departments, or corporate services, to the full extent permitted by federal law. For those activities of the Federal government exempted from these regulations, compliance is strongly encouraged.

C. APPLICATION TO BONA FIDE FARMS

Unless exempted in accordance with Section 160A-376 of the North Carolina General Statutes, the standards and requirements in this Ordinance shall apply to the subdivision or re-subdivision of land within a bona fide farm or on land occupied by agricultural activities.

D. NO DEVELOPMENT UNTIL COMPLIANCE WITH ALL APPLICABLE LAW⁸

1. NO USE OR OCCUPANCY

⁷ This section replaces Article 2 from the current regulations and provides greater clarity about application to governmental units. It also replaces Section 703 of the current regulations.

⁸ This section builds on the standards in Article 4.

ARTICLE 1: GENERAL PROVISIONS

Section 1.06 Exemption from this Ordinance

No person shall use, occupy, or divide any land or authorize or permit the use, occupancy, or division of land under their control, except in accordance with this Ordinance and all other applicable City, State, and federal regulations.

2. NO SALE OR TRANSFER

No lots in a subdivision may be sold or titles to land transferred until all the requirements of this Ordinance have been met, except as authorized by Section 160A-375 of the North Carolina General Statutes.

3. NO RECORDING WITHOUT PRIOR APPROVAL

No subdivision plat subject to this Ordinance shall be filed or recorded by the Register of Deeds of Henderson County until it has been approved in accordance with this Ordinance, and evidence of such approval is entered on the plat by the City.

4. NO BUILDING PERMIT OR UTILITIES WITHOUT PRIOR APPROVAL

No building permits shall be issued for development, nor shall public utilities or services be extended to serve land in a subdivision that is subject to these standards until a plat has been approved in accordance with this Ordinance.

5. NO DOUBLE COUNTING OF REQUIRED AREAS

No land area or other required space counted as part of a required yard, setback, lot area, or similar feature of one lot may be counted towards the requirements of another lot.

E. MINIMUM REQUIREMENTS

In the application of this Ordinance, all provisions shall be considered as minimum requirements and shall not be deemed to limit or repeal any other powers or authority granted under the North Carolina General Statutes.

F. NO ABROGATION OF EXISTING SUBDIVISIONS

This Ordinance shall not repeal, abrogate, annul, impair, or interfere with any lawfully established subdivisions plats recorded in the Office of the Register of Deeds of Henderson County prior to *[insert the effective date of this Ordinance]*.

SECTION 1.06. EXEMPTION FROM THIS ORDINANCE⁹

The division of land into parcels as part of a probated will or in accordance with the intestate succession provisions of Chapter 29 of the North Carolina General Statutes shall be exempted from this Ordinance.

SECTION 1.07. RELATIONSHIP TO OTHER LAWS AND POLICIES¹⁰

A. ADOPTED POLICY GUIDANCE

The administration, enforcement, and amendment of this Ordinance shall be accomplished in accordance with the City's adopted policy guidance. The City's adopted policy guidance includes, but is not limited to:

1. The 2030 Comprehensive Plan;
2. The Parks and Greenspace Plan;
3. The Pedestrian Plan;
4. The Bicycle Plan; and
5. Any other applicable City-adopted policy ~~guidance~~ language.

B. ADOPTED ORDINANCES

These regulations shall be administered in accordance with the City's adopted Code of Ordinances, including the Zoning Ordinance.

⁹ This is a new section.

¹⁰ This is a new section, that builds on a portion of the language in Section 703 of the current regulations.

C. COVENANTS AND DEED RESTRICTIONS

Nothing in this Ordinance is intended to repeal, supersede, annul, impair, or interfere with any existing private agreements or vested rights, provided such agreements or vested rights were lawfully established and remain in effect.

SECTION 1.08. CONFLICT¹¹**A. CONFLICTS WITH STATE OR FEDERAL LAW**

If a provision of this Ordinance is inconsistent with State or federal law, the more restrictive provision controls, to the extent permitted by law.

B. CONFLICTS WITH OTHER CITY CODES OR LAWS

If a provision of this Ordinance is inconsistent with another provision found in other adopted ordinances of the City, the more restrictive provision shall govern, unless the terms of the more restrictive provision specify otherwise.

C. CONFLICTS BETWEEN THE STANDARDS IN THIS ORDINANCE**1. GENERALLY**

In cases where two or more standards in this Ordinance conflict with one another, the more restrictive standard shall control.

2. AUTHORIZED DEVIATIONS OR INCENTIVES

Development configured in accordance with an allowable deviation or incentive authorized by this Ordinance or by the City Code of Ordinances shall not be considered to conflict with the standards in this Ordinance.

D. DETERMINATION OF THE MORE RESTRICTIVE STANDARD

The more restrictive provision is the one that imposes greater restrictions or burdens, or more stringent controls.

SECTION 1.09. TRANSITIONAL PROVISIONS¹²

The standards in this section address existing violations, nonconformities, and applications in process at the time this Ordinance is adopted.

A. PRIOR VIOLATIONS

Violations of the previous subdivision ordinance shall continue to be violations under this Ordinance, unless the development complies with this Ordinance and is no longer considered to be in violation, or the ability to address the violation has lapsed.

B. EXISTING NONCONFORMING LOTS

If any lot legally existed on *[insert the effective date of this Ordinance]*, but does not fully comply with the standards of this Ordinance, the lot is considered nonconforming under this Ordinance and shall comply with the applicable requirements for nonconforming lots in the Zoning Ordinance.

C. PRIOR ~~DEVELOPMENT~~ APPROVALS

1. Any development approvals granted before *[insert the effective date of this Ordinance]* shall remain valid until their expiration date.
2. Developments with valid approvals or permits may be carried out in accordance with the terms and conditions of their approval and the standards in effect at the time of approval, provided the approval is valid and has not expired.

¹¹ This section expands on Section 705 from the current regulations.

¹² This is a new section that provides guidance on how to process applications still in review or development that is not yet complete upon adoption of this Ordinance. It also addresses important aspects of permit choice identified in the General Statutes.

3. If an approval expires or is revoked (e.g., for failure to comply with the terms and conditions of approval), any subsequent subdivision of the site shall be applied for in accordance with the procedures and standards of this Ordinance.
4. An applicant shall be deemed to have initiated an approved development upon the subsequent application for and diligent pursuit of other required City, State, or federal permits or approvals.
5. Timelines for the commencement or expiration of development in accordance with an approved application shall be suspended in the event of legal challenge.
6. To the extent a prior-approved application proposes development that does not comply with this Ordinance, the subsequent development, although permitted, shall be nonconforming and subject to the applicable provisions for nonconformities in the Zoning Ordinance.

D. PENDING APPLICATIONS

1. COMPLETE APPLICATIONS

Applications accepted as complete prior to *[insert the effective date of this Ordinance]* may be decided in accordance with either the regulations in effect at the time the application was determined complete or the regulations in this Ordinance, as requested by the applicant.

2. SUBMITTED, BUT NOT COMPLETE APPLICATIONS

Applications that have been submitted prior to *[insert the effective date of this Ordinance]* but not determined to be complete by the Development Assistance Department as of that date shall be reviewed and decided in accordance with this Ordinance.

SECTION 1.10. VESTED RIGHTS¹³

Vested rights under this Ordinance shall be established only in accordance with Chapter 40 of the City Code of Ordinances and the following:

A. BUILDING PERMIT

The issuance of a building permit establishes a vested right to development in accordance with Section 160A-385.1 of the North Carolina General Statutes, as long as the building permit complies with the terms and conditions of approval of that building permit.

B. COMMON LAW VESTING

A common law vested right is established only when the following can be demonstrated by the landowner:

1. There is an affirmative governmental act by the City in the form of an approval of a permit or development approval under this Ordinance; and
2. The landowner relies on this affirmative governmental act in good faith and makes substantial expenditures to develop the land; and
3. It would be inequitable to prevent the landowner from proceeding to develop the land consistent with the terms and conditions of the permit or development approval relied upon.

C. STATUTORY VESTING¹⁴

A statutory vested right is the right to complete a development project in accordance with the rules in place at the time the application was approved. Development approvals, other than building permits, site-specific development plans, and multi-phase development plans are statutorily vested for a period of one year after their approval.

D. SITE SPECIFIC DEVELOPMENT PLAN

¹³ This is a new section that describes how vested rights are established. The vested rights certificate process includes a public hearing, which is required in order to vest a "site-specific development plan" (a subdivision plat).

¹⁴ *This section has been updated for consistency with the recent 160D changes.*

1. A site-specific development plan is automatically vested for a period of two years after its approval, but may be subject to a maximum vesting period of up to five years. When deciding an application for a site-specific development plan, the review authority may make a determination on the vesting period. In the event the approval does not specifically grant a vesting period for longer than two years, the default vesting period shall be a two years from the date of the approval.
2. For the purposes of this Ordinance, a major subdivision shall be considered a site-specific development plan.
3. Only those development approvals subject to an approved master plan as part of the initial approval mat take advantage of the seven-year vesting period associated with a multi-phase development plan.

G.E. PRIOR VESTING

Amendments, supplements, repeals, or other changes in subdivision regulations shall not be applicable or enforceable without the consent of the landowner with regard to lots for which building permits, multi-phased development approvals, or vested rights certificates have been issued (pursuant to State law) prior to the enactment of the ordinance making the change(s), so long as the vested rights, building permit, or approval remain valid and unexpired.

SECTION 1.11. SEVERABILITY¹⁵

- A.** The legislative intent of the City Council in adopting this Ordinance is that all provisions shall regulate development in accordance with the existing and future needs of the City as established in this Ordinance, and promote the public health, safety, and general welfare of the landowners and residents of Hendersonville. If any section, subsection, sentence, boundary, or clause of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of the Ordinance.
- B.** The City Council hereby declares that it would have passed this Ordinance and any section, subsection, sentence, boundary, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, boundaries, clauses, or phrases are declared invalid.

¹⁵ This section replaces Section 701 of the current regulations.

ARTICLE 2: PROCEDURES

SECTION 2.01. HOW TO USE THIS SECTION¹⁶

A. ARTICLE ORGANIZATION

1. This article includes all the subdivision application review provisions, and is comprised of the following sections:
 - a. A section setting out the summary table of subdivision review procedures;
 - b. A section explaining how subdivision applications are processed under this Ordinance;
 - c. A section that describes the specific review procedures and the criteria used in evaluating applications submitted under this Ordinance;
 - d. A section that addresses performance guarantees in cases where an applicant seeks to transfer land or obtain a building permit before completing all required steps in the subdivision process; and
 - e. A section addressing payment of a fee in-lieu of providing required development features.
2. The summary table in **Section <>, Summary Table**, describes all the specific development application review procedures in this Ordinance and the review authorities who decide them.
3. **Section <>, Application Processing**, describes the common procedures, or the set of common development review procedures that apply to every type of development application. For example, the pre-application conference, application submittal, application completeness determination, staff review and report, public notification, public meeting or hearing procedures, and notification of decision steps are essentially identical for each type of development application, and as such, are listed only once in this Ordinance. In some cases, there are minor deviations from the common procedures for some types of development review applications. These deviations are noted in the specific review procedures section.
4. **Section <>, Review Procedures**, describes the steps in each type of application review process, the review criteria specific to that type of procedure, and any other provisions that apply in addition to or instead of the common procedures.

B. STEPS IN THE REVIEW PROCESS

An applicant seeking development approval under this Ordinance should first consult the summary table of subdivision review procedures to determine which review authorities are involved with the application. Then, an applicant should review the application processing section to understand the steps in the application process. Finally, an applicant should review the individual specific procedure related to their application type.

¹⁶ This is a new section that explains how to use the subdivision procedures article.

ARTICLE 2: PROCEDURES

Section 2.02 Summary Table

SECTION 2.02. SUMMARY TABLE¹⁷

Table <>, Summary Table, lists each of the review procedures under this Ordinance and the review authority (ies) involved in the decision-making process. Review authorities are listed in columns across the top of the table and procedures are listed in rows down the side. Cells in the middle show actions taken by a particular review authority as part of the review process. Blank cells ("") indicate that a particular review authority has no role in the particular procedure.

TABLE <>: SUMMARY TABLE Type of Action: A=Appeal; D=Decision; R= Recommendation Pre-Application Conference: M=Mandatory; O=Optional; N/A=Not Applicable Type of Hearing: / /= Public Meeting; { }=Quasi-judicial Public Hearing							
PROCEDURE	SECTION #	PRE-APP. CONFERENCE	REVIEW AUTHORITIES				
			CITY MANAGER [1]	DEVELOPMENT REVIEW COMMITTEE	PLANNING BOARD	CITY COUNCIL	BOARD OF ADJUSTMENT
Administrative Adjustment	<>	O	D	.	.	.	{A}
Appeal	<>	O	.	.	.	.	{D}
Conservation Subdivision	<>	M	D [2]	.	.	.	[3]
Exempt Subdivision	<>	N/A	D	.	.	.	{A}
Expedited Subdivision	<>	N/A	D	.	.	.	[3]
Final Plat	<>	N/A	D	.	.	.	[3]
Preliminary Plat Major Subdivision	<>	<u>M</u>	.	<u>R</u>	<u>/D/</u>	.	<u>[3]</u>
Minor Subdivision	<>	O	D	.	.	.	{A}
Preliminary Plat	<>	M	.	R	/D/	.	[3]
Subdivision Variance	<>	M	.	.	.	.	{D}
NOTES: [1] The City Manager may delegate any task or duty to a professional-level City staff member in accordance with Section <>, Delegation of Authority. [2] Follows the procedure for a preliminary plat major subdivision following approval of a conservation and development plan by the City Manager. [3] Appeals of a decision by a City review authority shall be made to the Superior Court for Henderson County in accordance with all applicable state laws.							

¹⁷ This is a new section that sets out all the procedures associated with a subdivision review. The minor subdivision, ~~preliminary plat~~ (major subdivision), final plat, and subdivision variance procedures are carried forward (as revised); the others are new procedures. The exempt subdivision is a voluntary courtesy review that an applicant may request to document their proposed subdivision is exempt from this Ordinance. The expedited subdivision is a new type of subdivision recognized by the General Assembly in 2017. The conservation subdivision is a new procedure used to review clustered subdivisions. The administrative adjustment allows minor deviations in numerical standards by staff, subject to the approval criteria in the procedure.

SECTION 2.03. APPLICATION PROCESSING¹⁸**A. PURPOSE AND INTENT**

This section establishes the rules used by the City for processing subdivision applications. It is the intent of this section to establish a uniform set of processes to foster greater efficiency and predictability for applicants, City residents, City staff, and elected and appointed officials during the review of subdivision applications.

B. CONFLICT WITH SPECIFIC PROCEDURES

In instances where there are conflicts between the standards in this section and the standards in **Section <>, Review Procedures**, the standards in **Section <>, Review Procedures**, shall control.

C. PRE-APPLICATION CONFERENCE¹⁹**1. PURPOSE**

The purpose of a pre-application conference is to provide an opportunity for the applicant to learn about the submittal requirements, procedures, and standards applicable to a particular application prior to undertaking its preparation. A pre-application conference is also an opportunity for City staff to become familiar with, and offer preliminary comments about the scope, features, and impacts of the proposed development, as it relates to the standards in this Ordinance.

2. APPLICABILITY**a. PRE-APPLICATION CONFERENCE REQUIRED**

A pre-application conference between the applicant and City staff is required before submittal of applications subject to a mandatory pre-application conference as identified in **Table <>, Summary Table**.

b. PRE-APPLICATION CONFERENCE OPTIONAL

A pre-application conference is recommended but not required before submittal of applications subject to an optional pre-application conference as identified in **Table <>, Summary Table**.

c. DISCUSSIONS NON-BINDING

Discussions at a pre-application conference are not binding on the City and do not constitute submittal or review of an application.

3. SCHEDULING

Applicants shall contact the Development Assistance Department to schedule a pre-application conference.

4. FEES

- a. The initial pre-application conference is free of charge.
- b. Any subsequent pre-application conferences associated with the same application require payment of a pre-application fee in accordance with the City's fee schedule.

¹⁸ This section sets out the standards and procedures used by City staff to process applications submitted under this Ordinance. The section addresses the common or typical aspects of all applications from pre-application conferences through application submittal. It sets out the standards for application completeness determination, the public hearing procedures, and notification of decisions on applications. Each of the specific review procedures in the subsequent section references the procedures in this section.

¹⁹ This is a new section that sets out the procedures for conduct of a pre-application conference, which is required for some (but not all) application types. Application types where a pre-application conference is optional may include a pre-application conference at the request of the applicant. The pre-application conference is suggested as a replacement for the sketch plan process in Section 602.1. As drafted, the current regulations allow an initial sketch plan review with the Planning Board for subdivisions of fewer than 75 lots, and require it for subdivisions of 75 lots or more. These draft standards require pre-application conferences for any ~~preliminary plat~~ **major subdivision** and allow for an optional conference for minor subdivisions. This approach is fairly typical and will ensure early input from the City for developments that include public infrastructure regardless of the number of lots.

D. APPLICATION FILING AND ACCEPTANCE²⁰**1. AUTHORITY TO FILE APPLICATIONS**

Unless expressly stated otherwise in this Ordinance, applications reviewed under this Ordinance shall be filed by the landowner, contract purchaser, or other person having a recognized property interest in the land proposed for subdivision.

2. APPLICATION FORMS²¹

Application forms are maintained by the Development Assistance Department.

3. APPLICATION FEES

The City Council shall establish application fees, which shall be identified in the City's adopted fee schedule.

4. FILING AND REVIEW SCHEDULE

Applications shall be filed in accordance with the City's application review schedule.

5. COMPLETENESS DETERMINATION

- a. On receiving a development application, the City Manager shall determine, within seven days from the date of filing, whether the application is complete or incomplete.
- b. A complete application is one that:
 - i. Contains all information and materials required for submittal of the particular type of application;
 - ii. Is in the form and number of copies required by the City;
 - iii. Is legible and printed to scale (where appropriate);
 - iv. Is signed by the person(s) with the authority to file the application;
 - v. Includes information in sufficient detail to evaluate whether or not the application complies with the applicable review standards in this Ordinance;
 - vi. Is accompanied by the fee established for the particular type of application; and
 - vii. Does not precede a pre-application conference, if one is required.
- c. Only applications determined to be complete shall be considered submitted.

6. APPLICATION INCOMPLETE

If the application is incomplete, the City Manager shall notify the applicant of the deficiencies. The applicant may correct the deficiencies and resubmit the application for completeness determination in accordance with **Section <>, Completeness Determination**.

7. APPLICATION SUBMITTED

On determining that the application is submitted, the City shall commence review in accordance with the procedures and standards of this Ordinance.

E. STAFF REVIEW AND ACTION²²**1. STAFF REVIEW**

- a. Applications shall be reviewed during the review cycle in place when the application is determined to be complete.

²⁰ This section builds on and replaces the standards in Section 601.2 of the current regulations (provisions addressing water supply, sewerage, access, and drainage are addressed in the next section on review procedures and in the subdivision standards). One important addition is a completeness determination procedure where City staff review an application for completeness before it is considered "submitted". An application is not considered submitted until it has been declared complete. This provision is included to address recent changes in the Statutes regarding permit choice that allow applicants to choose which standards they wish to follow after submitting an application. The completeness determination procedure protects the City from incomplete applications filed simply to preserve an applicant's ability to move forward under prior code language.

²¹ The current regulations include an appendix with application submittal requirements for sketch plans, ~~preliminary plat~~ **major subdivisions**, and final plats. Inclusion of submittal requirements in the ordinance means they may only be changed via public hearing. Application submittal requirements are proposed for relocation outside the ordinance to simplify application amendment.

²² This is a new section that clarifies how administratively-approved decisions are made.

- b. When an application is determined complete, it shall be distributed to all appropriate staff and review agencies for review and comment, and the preparation of a staff report, in accordance with City policy.
- c. In considering the application, the designated review authority shall review the application, relevant support material, and any comments or recommendations from other staff and review agencies to which the application was referred.
- d. If deficiencies in complying with applicable standards of this Ordinance are identified, the designated review authority shall notify the applicant of such deficiencies and provide the applicant a reasonable opportunity to discuss them and revise the application accordingly.

2. APPLICATIONS SUBJECT TO DECISION BY CITY STAFF

- a. In cases where an application is decided by the City Manager, the City Manager shall approve or disapprove the application based on the review standards set forth in this Ordinance.
- b. Decisions on applications made by City staff shall be provided within a reasonable timeframe.

F. PUBLIC NOTIFICATION²³**1. PUBLIC HEARING SCHEDULING**

When an application is subject to a public hearing, the designated review authority shall ensure that the public hearing is scheduled for a regular meeting or a meeting specially called for that purpose by the review authority.

2. PUBLIC NOTIFICATION

All applications subject to public notification requirements by State law shall comply with the standards in Section 160A-364 for published notice, 160A-384(a) for mailed notice, and 160A-384(c) for posted notice in the North Carolina General Statutes. In computing the required time periods, the day the notice is published, mailed, or posted shall not be included, but the day of the hearing shall be included.

3. NOTICE CONTENT

Unless expressly indicated otherwise, all notices by mail or publication shall:

- a. Identify the date, time, and place of the public hearing;
- b. Describe the land involved by county parcel identification number (PIN), street address, or by its relationship to a fronting street and the nearest cross street (if applicable);
- c. Describe the nature and scope of the proposed development or action; and
- d. Identify the means to contact a City official for further information.

4. CONSTRUCTIVE NOTICE

- a. Minor defects in any notice shall not impair the notice or invalidate proceedings if a bona fide attempt is made to comply with applicable notice requirements. Minor defects in notice may include, but are not limited to:
 - i. Errors such as landowner name, title, or address existing in the county tax listing; or
 - ii. Typographical or grammatical errors that do not impede communication of the notice to affected parties.
- b. Failure of a party to receive written notice shall not invalidate subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and place of a public hearing and the location of the subject property shall be strictly adhered to.

G. PUBLIC MEETING AND HEARING

The standards in this section set out the procedures for public meetings and quasi-judicial public hearings.

1. PUBLIC MEETINGS

²³ This is a new section that clarifies which applications are subject to public notification requirements.

Table <>, Summary Table, identifies the kinds of applications decided following a public meeting, which shall be conducted in accordance with the following requirements:

a. PROCEDURE

- i. Public meetings do not require public notification in accordance with **Section <>, Public Notification**. The City may provide some form of public notification, but is not legally bound to do so. Failure of the City to provide public notification for a public meeting shall not invalidate the proceedings or decision.
- ii. A public meeting shall be open to the public and shall be conducted in accordance with the Planning Board's adopted rules of procedure for public meetings.
- iii. There is no requirement to allow public comment or testimony during a public meeting, though it may be allowed by the Chair or other presiding officer.

b. VOTING

- i. A decision of the Planning Board on an application shall be decided by a simple majority of the Planning Board, excluding any members who are recused from voting due to a conflict of interest.
- ii. A Planning Board member shall recuse themselves from voting on an application where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on them or a member of their immediate family in accordance with Section 160A-381(d) of the North Carolina General Statutes.

c. APPLICATION REVISION

- i. An applicant may revise an application during a public meeting in response to recommendations or suggestions of the Planning Board.
- ii. The Planning Board may approve an application modified during a public hearing provided that all changes are properly identified in the motion of approval.
- iii. In cases where an application has been modified during a public meeting, the applicant shall submit any necessary plats or other documents depicting the modification to the appropriate City staff prior to issuance of any development permit approvals.

d. RECORD

- i. A recording may be made of all public meetings and the recordings shall be maintained in accordance with City policy.
- ii. Accurate minutes shall also be kept of all proceedings, but a transcript need not be made.

2. QUASI-JUDICIAL PUBLIC HEARINGS

Table <>, Summary Table, identifies the kinds of applications decided following a quasi-judicial public hearing, which shall be conducted in accordance with State law, the Board of Adjustment's rules of procedure, and the following requirements:

a. NOTICE REQUIRED

Quasi-judicial public hearings shall not be conducted until after provision of required public notification in accordance with **Section <>, Public Notification**.

b. VOTING

I. GENERALLY

The Board of Adjustment shall consider the application, relevant support materials, staff report, any recommendations, and public comments. After the conclusion of the public hearing, it shall make one of the decisions authorized for the particular type of application based on the review standards applicable to the application type, as set forth in **Section <>, Review Procedures**.

II. CLEARLY STATE FACTORS FOR DECISION

Unless stated otherwise in this Ordinance, the decision shall clearly state the factors considered in making the decision and the basis or rationale for the decision.

III. CONFLICTS OF INTEREST

A Board of Adjustment member shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close family, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall, by majority vote, rule on the objection.

c. APPLICATION REVISION

- i. An applicant may revise an application during a public hearing in response to recommendations or suggestions of the Board of Adjustment.
- ii. The ~~review authority~~ **Board of Adjustment** may approve an application modified prior to or during a public hearing provided all changes are properly identified in the motion of approval by the review authority.
- iii. In cases where an application has been modified during a public hearing, the applicant shall submit any necessary plats or other documents depicting the modification to the appropriate City staff prior to issuance of any development permit approvals.

d. RECORD

- i. A recording may be made of all public hearings and the recordings shall be maintained in accordance with City policy.
- ii. Accurate minutes shall also be kept of all proceedings, but a transcript need not be made.

H. EFFECT

1. APPROVAL LIMITED

Approval of an application in accordance with this Ordinance authorizes only the specific activity approved.

2. PERMIT PREREQUISITE

In the event an approval is a prerequisite to another permit or approval (e.g., administrative adjustment or variance approval prior to a ~~preliminary plat~~ **major subdivision** approval), development may not take place until all prerequisite approvals are obtained. Approval of one application does not guarantee approval of any subsequent applications.

I. CONTINUANCE OR WITHDRAWAL

An applicant may request that a review authority's consideration of an application be continued, postponed, or withdrawn by submitting a written request to the appropriate review authority.

1. PROCEDURE FOR APPLICATIONS SUBJECT TO A PUBLIC MEETING OR HEARING

- a. In cases where an applicant seeks a continuance ~~or postponement~~ of an application subject to a public meeting or hearing, but public notification of the meeting or hearing has not yet been provided, the designated review authority processing the application shall consider and decide the request.
- b. If public notification of the pending public meeting or hearing has been provided in accordance with this Ordinance prior to the request for the continuance ~~or postponement~~ of an application. The request for continuance ~~or postponement~~ shall be placed on the agenda and be considered by the review authority. Additional public notification shall not be required.
- c. A request for continuance ~~or postponement~~ may be approved in cases where the applicant needs additional time to prepare evidence, secure approval from outside agencies, bring the application into closer alignment with the City's adopted policy guidance or the requirements of this Ordinance, or for good cause, as determined by the review authority.

2. WITHDRAWAL

An applicant may withdraw an application at any time.

SECTION 2.04. REVIEW PROCEDURES**A. HOW TO USE THIS SECTION**

1. GENERALLY

This section sets out the standards and related procedural information for each of the specific development application types listed in [Table <>, Summary Table](#). [Section <>, Application Processing](#), establishes the generic steps in the application process used for all application types. Applicants should review both sections - application processing in its entirety, and the relevant review procedure in this section in order to understand all the applicable requirements.

2. STRUCTURE OF REVIEW PROCEDURES

- a. The review procedures in this section are listed in alphabetic order.
- b. Each review procedure follows a standardized format, comprised of the following subsections:
 - i. Purpose for the procedure;
 - ii. Applicability and any types of development exempted from the procedure;
 - iii. The steps in the review process;
 - iv. The review standards;
 - v. How the approved application may be amended (if applicable);
 - vi. How the approval may expire; and
 - vii. How decisions on an application are appealed.
- c. In addition to the standard subsections described above, a review procedure may also include additional standards or requirements unique to the particular application type.

3. PROCEDURAL FLOWCHART

- a. The steps in the process for each review procedure are set out in the procedural flowchart associated with the procedure. The procedural flowchart uses a numbered block for each step in the process with text inside the block describing the step in greater detail. Some blocks may include cross references to other parts of the Ordinance.
- b. The procedural flowchart is color coded to depict differing responsibilities. For example, white blocks indicate actions or responsibilities of the applicant. Blocks surrounded by dashed lines show optional steps an applicant may choose to undertake. Light grey blocks indicate actions of City staff. Dark grey blocks show the portion of the process where the decision is made.
- c. Applicants seeking greater detail on the steps in the review process should conduct a pre-application conference or consult with the Development Assistance Department.

B. ADMINISTRATIVE ADJUSTMENT²⁴**1. PURPOSE**

The purpose for the administrative adjustment procedure is to establish a clear procedure and measurable review criteria for the consideration of requests for minor deviations to numeric standards in this Ordinance. The intent of the procedure is to provide minor relief without a variance where application of a standard creates practical difficulties in allowing development that otherwise advances the purposes served by this Ordinance. It is the intent of this procedure that an administrative adjustment request only be granted in cases where the adjustment allows the proposed development to maintain compatibility with its surroundings or where the approval does not result in development that substantially deviates the City's adopted policy guidance.

2. APPLICABILITY

- a. Except where otherwise prohibited, an administrative adjustment may be requested for a modification or deviation to any numeric requirement in this Ordinance.
- b. In no instance shall an administrative adjustment application seek to reduce any of the following:
 - i. The required minimum lot area in a zoning district;
 - ii. The maximum allowable residential density on a lot;
 - iii. Riparian buffer requirements;
 - iv. Standards associated with flood damage prevention;
 - v. Requirements associated with stormwater control; or
 - vi. Standards associated with erosion control.
- c. Administrative adjustments are not required for conservation subdivisions, provided that the conservation subdivision complies with all applicable requirements in this Ordinance.

3. ADMINISTRATIVE ADJUSTMENT AMOUNT

An administrative adjustment may allow a deviation from a numeric standard by up to 10 percent unless a different amount is explicitly stated elsewhere in this Ordinance.

4. ADMINISTRATIVE ADJUSTMENT PROCEDURE**a. APPLICATION TIMING**

- i. An administrative adjustment may be requested either as a stand-alone application, or in combination with another review procedure except for a subdivision variance.

Figure 2.04.B: Administrative Adjustment Procedure

STEP	ACTION
1	PRE-APPLICATION CONFERENCE Optional
2	FILE APPLICATION Filed with Development Assistance Department - May be a standalone application or submitted along with another application
3	COMPLETENESS DETERMINATION See Section <>, Completeness Determination
4	CITY MANAGER REVIEW AND DECISION Decision shall be made in writing
5	NOTIFICATION OF DECISION Delivered via personal service, electronic mail, or 1 st class mail
6	PROCESS RELATED APPLICATIONS As appropriate

²⁴ This is a new procedure that allows for administrative consideration of minor deviations of 10% or less in some numeric standards without triggering the need to show hardship or undergo the variance process. It operates as a "safety-valve" for difficult sites. The amount of the deviation is capped and requests to exceed the cap require a variance.

- ii. In cases when submitted with another application, the administrative adjustment portion of the application shall be reviewed and decided prior to the other portion(s) of the application.

b. PRE-APPLICATION CONFERENCE

Optional (see **Section <>, Administrative Adjustment**).

c. APPLICATION SUBMITTAL

- i. Applicable (see **Section <>, Application Filing and Acceptance**).
- ii. In cases where a pre-application conference is conducted, the application shall include the date it was conducted.

d. STAFF REVIEW AND ACTION

- i. Applicable (see **Section <>, Staff Review and Action**).
- ii. The City Manager shall review the application and may submit it to technical staff or to other outside agencies, as appropriate, for further technical review, as appropriate.
- iii. Following receipt of comments from technical review, if conducted, the City Manager shall review and decide the application in accordance with **Section <>, Administrative Adjustment Review Standards**.

5. ADMINISTRATIVE ADJUSTMENT REVIEW STANDARDS

An administrative adjustment may be approved if the applicant demonstrates all of the following:

- a. The administrative adjustment is consistent with the type and thresholds for an administrative adjustment established in this section;
- b. The development, following application of an administrative adjustment, is consistent with the character of development on surrounding land, and is compatible with surrounding land uses;
- c. The administrative adjustment:
 - i. Is required to compensate for some unusual aspect of the site or the proposed development that is not shared by landowners in general; or
 - ii. Supports an objective or goal from the purpose and intent statements of the zoning district where it is located; or
 - iii. Is necessary to allow for proper functioning of infrastructure; or
 - iv. Saves healthy existing trees; or
 - v. Preserves environmentally sensitive lands; or
 - vi. Will not result in development that is contrary to the City's adopted policy guidance, in the sole discretion of the City Manager;
- d. The administrative adjustment will not pose a danger to the public health or safety;
- e. Adverse impacts resulting from the administrative adjustment will be fully mitigated; and
- f. The development standard being adjusted is not the subject of a previously approved administrative adjustment or condition of approval on the same site.

6. EFFECT

Approval of an administrative adjustment application allows consideration of any concurrent and related applications.

7. AMENDMENT

Amendment of an administrative adjustment may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

8. EXPIRATION

If an administrative adjustment is associated with another permit or development approval, the expiration of the administrative adjustment shall be the same as the permit or development approval with which it is associated.

9. APPEAL

ARTICLE 2: PROCEDURES

Section 2.04 Review Procedures

Appeal of a decision on an administrative adjustment shall be reviewed and decided by the BOA in the nature of certiorari and in accordance with **Section <>, Appeal**.

C. APPEAL²⁵**1. PURPOSE**

This appeal procedure is proposed to establish a clear and predictable procedure for persons with standing to appeal a decision or interpretation of this Ordinance by a review authority.

2. APPLICABILITY

- a. This section sets out the procedure and standards for appealing certain decisions or interpretations by ~~a~~the City Manager~~official~~ as identified in Table <>, Summary Table.
- b. Appeals of decisions made by the City Council, or BOA, and some decisions by City officials shall be to the Superior Court for Henderson County, in accordance with Table <>, Summary Table, and applicable State law.

3. INITIATION

An appeal shall be initiated by filing a written notice of appeal with the City Manager within 30 days of the date the decision being appealed is filed in the office of the Development Assistance Department.

4. APPEAL PROCEDURE**a. PRE-APPLICATION CONFERENCE**

Optional (see Section <>, Pre-Application Conference).

b. APPLICATION SUBMITTAL

- i. Applicable (see Section <>, Application Filing and Acceptance).
- ii. The written notice of appeal shall include a statement of the error or improper decision, the date of the decision or interpretation, the grounds for the appeal, and all related support materials.

c. STAFF REVIEW

- i. Applicable (see Section <>, Staff Review and Action).
- ii. On accepting a notice of appeal, the City Manager shall transmit to the BOA the record of material considered by the decision-maker in making the decision or interpretation as well as the application for the appeal.

d. PUBLIC NOTICE

Applicable (see Section <>, Public Notification).

e. REVIEW AND DECISION BY BOARD OF ADJUSTMENT

- i. The BOA, at the conclusion of a quasi-judicial public hearing (see Section <>, Public Meeting and Hearing), shall decide the application for the appeal.

Figure 2.04.C: Appeal Procedure

STEP	ACTION
1	PRE-APPLICATION CONFERENCE Optional
2	FILE NOTICE OF APPEAL Filed with Development Assistance Department
3	COMPLETENESS DETERMINATION See Section <>, Completeness Determination Application shall include - Error/decision being appealed - Date of error/decision - Grounds for appeal - All related support material
4	STAFF REVIEW
5	PUBLIC NOTICE See Section <>, Public Notification
6	BOA REVIEW AND DECISION Quasi-judicial public hearing - Decision shall be made in writing
7	NOTIFICATION OF DECISION Delivered via personal service, electronic mail, or 1 st class mail

²⁵ The current subdivision regulations do not include provisions for appeal of staff decisions related to the subdivision of land. This procedure is included to address those instances.

- ii. The decision shall be based on the competent, material, and substantial evidence in the record of the appeal, as supplemented by arguments presented at the quasi-judicial hearing, and the standards in **Section <>, Appeal Review Standards**.
- iii. The decision shall be either affirmation of the decision or interpretation (in whole or in part), modification of the decision or interpretation (in whole or in part), or reversal of the decision or interpretation (in whole or in part).
- iv. A vote to reverse or modify a decision or determination shall require approval of a majority of a quorum present at the hearing excluding any members who have been recused from voting due to a conflict of interest.
- v. Each decision shall be made in writing and reflect the BOA's determination of contested facts and their application to the standards in this Ordinance.
- vi. The written decision shall be signed by the Chair or other duly authorized member of the BOA.
- vii. The decision of the BOA shall be effective upon the filing of the written decision in the office of the appropriate review authority.

5. APPEAL REVIEW STANDARDS

- a. The BOA is limited to the following determinations in considering the appeal, which shall be based on:
 - i. Whether the decision-maker erred in the interpretation of this Ordinance; ~~and-or~~
 - ii. Whether the decision-maker erred in determining whether a standard of this Ordinance was met.
- b. The BOA shall not hear any evidence or make any decision based on hardships or special conditions except as part of an application for a variance.

6. EFFECT

- a. An appeal stays all proceedings in furtherance of the action appealed, unless the City Manager certifies to the BOA, after notice of appeal has been filed, that because of facts stated in the certificate a stay would, in the City Manager's opinion, cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of this Ordinance.
- b. If certification by the City Manager is filed, administrative proceedings shall not be stayed except through issuance of a restraining order by a court of competent jurisdiction.
- c. If the appeal is not stayed, the appellant may file for an expedited hearing of the appeal, and the BOA shall meet to consider the appeal with 15 days of the date the request is filed.
- d. The filing of an appeal prevents the filing of an application for a rezoning or special use permit for the same land subject to an appeal application, as well as the filing of a text amendment application by the same party filing the appeal until the appeal application is decided or appealed to the courts.

7. AMENDMENT

A decision on an appeal shall not be amended.

8. EXPIRATION

A decision on an appeal shall not expire.

9. APPEAL

- a. Any decision by the BOA shall be subject to review by the Superior Court for Henderson County by proceedings in the nature of certiorari and in accordance with Section 160A-393 of the North Carolina General Statutes.
- b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.

D. CONSERVATION SUBDIVISION²⁶**1. PURPOSE AND INTENT**

The purpose and intent of this section is to provide landowners in ~~the rural and environmentally sensitive~~certain portions of the City's planning jurisdiction a development option that provides additional development flexibility to build on smaller lots when additional open space set-asides are provided, and the development is designed and located in a way that protects rural character, as well as agricultural activities, or ~~protects~~ sensitive environmental features on the site. This is done in order to:

- a. Conserve open land, including those areas containing ~~productive~~prime agricultural soils, ridgelines, areas of steep slopes, unique and sensitive natural features such as floodplains, wetlands, river and stream corridors, areas with mature hardwood trees, and watersheds;
- b. Promote existing historic and rural character particularly in areas visible from major roadways in the City;
- c. Retain and protect existing wildlife habitat and environmental, natural, and cultural resources;
- d. Create a linked network of open lands; and
- e. Provide reasonable economic use of the land.

2. APPLICABILITY**a. TYPE OF DEVELOPMENT**

This conservation subdivision option shall be limited to development of single-family detached residential dwellings on individual lots in subdivisions of more than three lots. The conservation subdivision option shall not be available for any other form of development or use type.

b. WHERE PERMITTED

Single-family detached residential subdivisions of more than three lots in the R-15, R-20, and R-40 zoning districts may be developed as a conservation subdivision, in accordance with the standards in this section.

c. WHERE PROHIBITED

The conservation subdivision option is not available for use on land in any of the zoning districts other than R-15, R-20, and R-40 districts.

3. CONSERVATION SUBDIVISION PROCEDURE²⁷**Figure 2.04.D: Conservation Subdivision Procedure**

STEP	ACTION
1	FILE SITE ANALYSIS MAP Filed with Development Assistance Department - Existing conditions on the site and within 500 feet of the site
2	SITE INSPECTION Conducted with City staff
3	CONSERVATION AND DEVELOPMENT PLAN Includes site analysis map, conservation and development areas map, and preliminary site improvements plan
4	TECHNICAL REVIEW BY CITY STAFF
5	REVIEW AND DECISION BY CITY MANAGER Decision only approves the proposed conservation and development plan
6	FILE APPLICATION FOR PRELIMINARY PLAT<u>MAJOR SUBDIVISION</u> Application shall include the conservation and development Plan

²⁶ This is a new type of subdivision and subdivision procedure. It requires at least 50 percent of the total land area to be set aside as private common open space (or retained as agricultural land). It also seeks to promote existing rural character through requirements to locate development away from visibility from streets, parks, and ridgelines. It calls for compact clustering of residential dwellings, and allows for typical lot dimension requirements to be reduced because so much land is preserved. Clustered homes on smaller lots may help reduce costs associated with utility extension, depending upon where connections are located.

Development utilizing the conservation subdivision option shall be subject to the requirements for a ~~preliminary plat~~major subdivision in accordance with the procedures and standards in ~~Section <>, Preliminary Plat~~Major Subdivision, after approval of a conservation and development plan in accordance with this section.

4. CONSERVATION AND DEVELOPMENT PLAN

Prior to review of a ~~preliminary plat~~major subdivision, an applicant shall have a conservation and development plan for the land reviewed and approved, or approved with conditions by the City Manager in accordance with this the following steps, the standards in ~~Section <>, Conservation Subdivision Review Standards~~.

a. STEP 1—SITE ANALYSIS MAP

The applicant shall prepare a site analysis map that analyzes existing conditions both on the land proposed for the development ~~including and~~ land within 500 feet of the site, and submit the site analysis map to the City Manager. It is the intent of this section that the information required to be presented in the site analysis map be produced from existing sources and maps to ensure the process is economical for the applicant.

b. STEP 2—SITE INSPECTION

After receipt of the site analysis map, the City Manager shall schedule a site inspection of the land with the applicant. The applicant or the applicant's representative shall attend the site inspection with a City staff member. The purpose of this site visit is to:

- i. Familiarize the staff with the existing site conditions and features of the site;
- ii. Identify potential site development issues, including the best location for the development to minimize its visibility from surrounding areas and ~~adjacent~~ major roadways; and
- iii. Provide an opportunity to discuss site development concepts, including the general layout of conservation areas and potential locations for proposed structures, utilities, streets, and other development features. Comments made by the staff during the site inspection shall be interpreted as being only suggestive. No official decision on the conservation and development plan shall be made during the site inspection.

c. STEP 3—CONSERVATION AND DEVELOPMENT PLAN

Based on the site analysis map and the information obtained during the site inspection, the applicant shall prepare a conservation and development plan. The conservation and development plan shall include the following:

- i. A site analysis map;
- ii. A conservation and development areas map that depicts areas intended for conservation and areas intended for development; and
- iii. A preliminary site improvements plan, showing proposed site development, including the approximate locations of utilities, streets, other development features, buffers (if applicable), and lot lines in the proposed development area.

d. STEP 4-REVIEW BY THE DEVELOPMENT REVIEW COMMITTEE

The Development Review Committee shall review the conservation and development plan and prepare a written recommendation on any suggested revisions for consideration based on the standards in ~~Section <>, Conservation Subdivision Review Standards~~.

5. CONSERVATION SUBDIVISION REVIEW STANDARDS

A conservation subdivision shall comply with the following standards:

²⁷ The conservation subdivision procedure requires two steps: the completion of a conservation and development plan in step one, then approval of a minor subdivision for the development in step 2. The minor subdivision is recommended as the review procedure given the intensive nature of the conservation and development plan preparation process – however, the City may decide the preliminary and final plat procedures are better suited to this kind of development. Either approach will work, so please advise if you would like the procedure revised to reference the preliminary and final plat procedures instead.

a. LOCATION

Conservation subdivisions shall be configured to minimize their visibility from adjacent developed lands and major roadways.

b. MINIMUM PROJECT SIZE

Conservations subdivisions shall be at least two acres in land area.

c. REQUIRED CONSERVATION AREA

The required conservation area shall occupy at least 50 percent of the total acreage of the conservation subdivision site, but nothing shall limit it from occupying more than 50 percent of a conservation subdivision site.

d. MAXIMUM RESIDENTIAL DENSITY

A conservation subdivision may establish a maximum residential density that is twice the maximum residential density for lots in the zoning district where located, but in no instance shall the density of a conservation subdivision exceed the maximum allowable within a designated water supply watershed.

e. DIMENSIONAL REQUIREMENTS

Lots in a conservation subdivision may deviate from the minimum dimensional requirements for lots in the zoning district where located, provided:

- i. No lot frontage is less than 20 feet wide;
- ii. Building separation between structures on different lots meets or exceeds the minimum applicable Fire Code provisions; and
- iii. All structures shall comply with required setbacks from streets, wetlands/surface waters, or other protected natural areas.

f. LAND USED FOR AGRICULTURE

Nothing shall limit the ability of an owners' association to lease conservation area for the purposes of agriculture.

6. OWNERSHIP OF CONSERVATION AREAS**a. LANDOWNER OR ASSOCIATION**

A conservation area shall be owned jointly or in common by the owners of the development or through a recognized homeowners or property owners association, which shall be established in accordance with Article 6, Owner Associations.

b. NONPROFIT ORGANIZATION

The landowners may decide to convey a conservation area to a nonprofit organization such as a land trust or land conservancy for management and maintenance if the City is provided adequate assurance the area will be properly managed and maintained.

c. DEDICATED TO CITY OR OTHER PUBLIC AGENCY

In some cases, certain lands designated as conservation areas, such as greenways, may be dedicated to the City, a nonprofit organization, or other public agency during the development review process, at the landowner's discretion. If offered by the landowner, the City Council shall determine whether that land is appropriate for dedication to the City or other public agency.

E. EXEMPT SUBDIVISION²⁸**1. PURPOSE AND INTENT**

The purpose for this exempt subdivision procedure is to establish a clear and predictable procedure for a landowner to document that a proposed division of land is exempted from the subdivision requirements of this Ordinance in accordance with Section 160A-376 of the North Carolina General Statutes. This review is voluntary on the part of the applicant and is provided by the City as a courtesy.

2. APPLICABILITY

- a. Requests for determination of an exempt subdivision by the City in accordance with this section are at the discretion of the landowner proposing the subdivision and shall not be mandated by the City.
- b. The following forms of land division are identified in Section 160A-376 of the North Carolina Statutes as exempt subdivisions:
 - i. A combination or recombination of portions of previously subdivided and recorded lots that does not increase the total number of lots, and the resultant lots are equal to or exceed the standards of this Ordinance;
 - ii. The division of land into parcels greater than ten acres where no street right-of-way dedication is involved;
 - iii. Public acquisition involving the purchase of strips of land for the widening or opening of streets;
 - iv. Division of a tract of land in single ownership, where the total area of all land in the land division is no greater than two acres, the division creates no more than three lots, where no street right-of-way dedication is involved, and the resultant lots are equal to or exceed the standards of this Ordinance; or
 - v. The division of a tract into parcels in accordance with the terms of a probated will or in accordance with Chapter 29 of the North Carolina General Statutes.
- c. Divisions of land that are not consistent with these criteria shall not be considered exempt subdivisions, and shall be subject to the applicable review procedure and requirements of this Ordinance.

3. EXEMPT SUBDIVISION REVIEW PROCEDURE**a. PRE-APPLICATION CONFERENCE**

Not applicable.

b. APPLICATION SUBMITTAL

- i. Applicable (see Section <>, Application Filing and Acceptance).

Figure 2.04.E: Exempt Subdivision Procedure

STEP	ACTION
1	FILE APPLICATION Filed with Development Assistance Department - Application is voluntary
2	COMPLETENESS DETERMINATION See Section <>, Completeness Determination - Application shall indicate why subdivision should be considered as an exempt subdivision
3	STAFF REVIEW
4	CITY MANAGER DECISION AND CERTIFICATION Decision shall be made in writing
5	NOTIFICATION OF DECISION Delivered via personal service, electronic mail, or 1 st class mail
6	RECORDATION Optional

²⁸ This is a new procedure proposed for the City's consideration. It is only used in cases when an applicant is seeking proof that a proposed subdivision is not subject to the standards in this Ordinance. It is voluntary as the City may not compel an applicant to file this application.

- ii. An application for exempt subdivision determination may be filed by a landowner or a contract purchaser.

c. STAFF REVIEW AND ACTION

- i. Applicable (see **Section <>, Staff Review and Action**).
- ii. The City Manager shall review the application in accordance with **Section <>, Exempt Subdivision Review Standards**, and certify that the land division qualifies as an exempt subdivision.

d. RECORDATION

If an exempt subdivision plat is prepared by the applicant and approved by the City Manager in accordance with this section, it shall be certified by the City Manager, and may be recorded in the office of the Henderson County Register of Deeds.

4. EXEMPT SUBDIVISION REVIEW STANDARDS

A division of land shall be certified as an exempt subdivision only if it:

- a. Is excluded from the definition of a subdivision in accordance with Section 160A-376 of the North Carolina General Statutes; and
- b. Complies with or exceeds all applicable lot dimensional provisions for the zoning district where it is located in accordance with the Zoning Ordinance; and
- c. Complies with all standards or conditions of any applicable permits or development approvals; and
- d. Complies with all other applicable requirements in the City Code of Ordinances.

5. EFFECT

- a. A division of land determined to be an exempt subdivision shall be exempted from the subdivision standards of this Ordinance, but development of land within an exempt subdivision shall remain subject to any applicable requirements for potable water or wastewater from Henderson County Environmental Health, as well as all applicable standards in the City Code of Ordinances.
- b. In the event a division of land does not qualify as an exempt subdivision, it shall be reviewed in accordance with the applicable subdivision procedure and shall be subject to all applicable subdivision standards in this Ordinance.

6. APPEAL

- a. Appeal of a decision on an exempt subdivision shall be reviewed and decided by the BOA in the nature of certiorari and in accordance with **Section <>, Appeal**.
- b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.

F. EXPEDITED SUBDIVISION²⁹**1. PURPOSE AND INTENT**

The purpose for this expedited subdivision review procedure is to allow certain land divisions to be reviewed via an expedited review procedure based on their small size and limited likelihood to create significant impacts on surrounding lands.

2. APPLICABILITY

- a. The standards in this section shall apply to divisions of land meeting all the following criteria:
 - i. The proposed division of land is not exempted from the subdivision standards of this Ordinance in accordance with Section 160A-376(a) of the North Carolina General Statutes; and
 - ii. The proposed division will not result in more than three lots (including any residual or "parent" parcel); and
 - iii. The area of land subject to the division shall be comprised of at least five acres under common ownership; and
 - iv. No land included in an expedited subdivision application shall have been the subject of an expedited subdivision application approval within the preceding ten years; and
 - v. The use of all lots is in conformity with the zoning district where located; and
 - vi. No extension of public streets is proposed.
- b. Divisions of land not meeting all these standards shall be reviewed as a minor subdivision, or preliminary plat major subdivision, as appropriate.
- c. Lots within an expedited subdivision are not exempted from any applicable zoning district dimensional requirements.

3. EXPEDITED SUBDIVISION REVIEW PROCEDURE**a. APPLICATION SUBMITTAL**

- i. Applicable (see Section <>, Application Filing and Acceptance).
- ii. Expedited subdivision plats shall be prepared by a licensed professional authorized by the State to prepare such documents.
- iii. Applications for an expedited subdivision shall include an evaluation from Henderson County Environmental Health indicating that an on-site wastewater system and on-site potable water system may be used on each lot not connected to the public potable water or sanitary sewer systems.

b. STAFF REVIEW AND ACTION

- i. Applicable (see Section <>, Staff Review and Action).

Figure 2.04.F: Expedited Subdivision Procedure

STEP	ACTION
1	FILE APPLICATION Filed with Development Assistance Department - Required prior to conveyance of lots
2	COMPLETENESS DETERMINATION See Section <>, Completeness Determination - Application shall include copies of any protective covenants or deed restrictions - Plat shall include all required certification language
3	STAFF REVIEW
4	CITY MANAGER DECISION Decision shall be made in writing
5	NOTIFICATION OF DECISION Delivered via personal service, electronic mail, or 1 st class mail
6	RECORDATION With the Henderson County Register of Deeds within 10 days of approval

²⁹ This is a new procedure that recognizes a new kind of subdivision established by the General Assembly in 2017. The expedited subdivision is limited in size and scope and does not include the extension of public utilities. It is a modified version of the current 10-acre subdivision exemption that recognizes smaller tracts of land of 5 acres in area. The procedure requires the recordation of plat and has a time limit, but the other requirements typically applied to subdivisions (like open space dedication) may not be applied to an expedited subdivision.

- ii. The City Manager shall review and decide the application in accordance with **Section <>, Expedited Subdivision Review Standards**.
- iii. If an expedited subdivision application is denied, then the reasons for denial shall be stated in writing. The applicant may revise and resubmit an expedited subdivision application that has been denied.

4. EXPEDITED SUBDIVISION REVIEW STANDARDS

- a. An expedited subdivision shall be approved if the application complies with the following:
 - i. The expedited subdivision plat is on a sheet or sheets suitable for recording with the Register of Deeds in Henderson County;
 - ii. The expedited subdivision plat is prepared and sealed by a licensed professional authorized by the State to prepare such documents;
 - iii. The expedited subdivision plat complies with all applicable standards in this Ordinance and Section 47-30 of the North Carolina General Statutes;
 - iv. The expedited subdivision plat includes all required certifications;
 - v. The applicant has secured all required State and federal permit approvals;
 - vi. All lots have been certified by Henderson County Environmental Health as capable of accommodating the wastewater generated from the proposed use, in cases when the lots are not served by a centralized wastewater system;
 - vii. All lots have been certified by Henderson County Environmental Health as served by an acceptable source of potable water in cases when the lots are not served by a centralized potable water system;
 - viii. All lots in the expedited subdivision comply with the applicable dimensional requirements for the zoning district where located;
 - ix. The lots are served by a NCDOT-maintained roadway or a right-of-way constructed to and maintained in accordance with City standards; and
 - x. No land included in an expedited subdivision application shall have been the subject of an expedited subdivision application approval within the preceding ten years.
- b. Subdivisions of land located within a special flood hazard area shall comply with all applicable City standards for flood damage prevention, and include the following statement:

"Use of land within a floodplain or a special flood hazard area is substantially restricted by the City of Hendersonville."

5. RECORDATION

- a. Once an expedited subdivision plat is approved, a signed statement by the City Manager shall be entered on the face of the plat. The expedited subdivision plat may not be recorded without this and all other required certifications.
- b. Failure to record the final plat in accordance with **Section <>, Expiration**, shall render the plat null and void.
- c. Land may not be conveyed or construction started until the expedited subdivision is recorded.

6. EFFECT

- a. Approval of the expedited subdivision plat allows the sale or conveyance of lots within the subdivision.
- b. Building permits may be issued following recordation of the expedited subdivision plat.
- c. Land subject to an expedited subdivision approval shall not be further subdivided as an expedited subdivision within ten years of the date of the prior expedited subdivision approval.

7. AMENDMENT

Amendment of an expedited subdivision approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

8. EXPIRATION

An expedited subdivision plat shall be null and void unless it is recorded in the office of the Henderson County Register of Deeds within 10 days of approval.

9. APPEAL

- a. Decisions by the City Manager on an expedited subdivision plat shall be subject to review by the Superior Court of Henderson County by proceedings in the nature of certiorari and in accordance with Section 160A-393 of the North Carolina General Statutes.
- b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.

G. FINAL PLAT³⁰**1. PURPOSE**

The purpose for this final plat procedure is to ensure proposed subdivisions of land have been completed in substantial conformity with a ~~preliminary plat~~ **major subdivision** (as applicable) and all applicable regulations of this Ordinance prior to the conveyance of lots. These standards are intended to ensure preparation and recordation of a plat document of sufficient detail and data so as to enable the City or another landowner to readily determine and accurately reproduce the location, bearing, radius (as applicable), and length of the elements of a subdivision. The elements include, but shall not be limited to the following:

- a. Every street or private accessway;
- b. Aspects of public infrastructure such as potable water supply lines, or sanitary sewer lines;
- c. Lot lines;
- d. Easement boundaries;
- e. Lands or resources dedicated or reserved for use by the general public;
- f. Land or resources owned in common by residents of the subdivision; and
- g. Unbuildable resource or conservation lands.

2. APPLICABILITY

- a. The standards in this section shall apply to subdivisions subject to a **major subdivision** ~~preliminary plat~~.
- b. A landowner shall not submit an application for final plat review until a **major subdivision** ~~preliminary plat~~ (see **Section <>, Preliminary Plat** **Major Subdivision**) is approved and all required improvements serving the subdivision are installed and inspected by the City, or the developer provides a performance guarantee for those required improvements in accordance with **Section <>, Performance Guarantees**.

3. FINAL PLAT REVIEW PROCEDURE**a. PRE-APPLICATION CONFERENCE**

Not applicable.

Figure 2.04.G: Final Plat Procedure

STEP	ACTION
1	FILE APPLICATION Filed with Development Assistance Department - Required prior to conveyance of lots - May not be submitted prior to approval of a major subdivision preliminary plat for subdivisions that include public streets, water, or sewer infrastructure
2	COMPLETENESS DETERMINATION See Section <>, Completeness Determination - Application shall include copies of any protective covenants or deed restrictions - Plat shall include all required certification language
3	STAFF REVIEW AND DECISION Decision shall be made in writing - Application shall not be decided until all required dedications and easements are complete - Application shall not be decided until all proposed public infrastructure (including storm drains) is installed or subject to a financial guarantee (see Section <>, Performance Guarantees)
4	NOTIFICATION OF DECISION Delivered via personal service, electronic mail, or 1 st class mail
5	RECORDATION With the Henderson County Register of Deeds within 30 days of approval

³⁰ This section is proposed to replace Section 605 of the current regulations. The largest change in these draft provisions is the designation of the City Manager (Development Assistant Director) as the review authority responsible for deciding final plats instead of the City Council. This change is proposed because review of a final plat is a ministerial (not a legislative) decision. The application either does or does not meet the standards of this Ordinance. Requiring review by the Planning Board and City Council adds time and complexity to what should be a very straightforward and technical process.

b. APPLICATION SUBMITTAL

- i. Applicable (see **Section <>, Application Filing and Acceptance**).
- ii. A final plat shall be prepared by a licensed professional authorized by the State to prepare such documents.
- iii. In cases where a final plat includes only a portion of a larger phased development, the application materials shall illustrate all various stages and phases of the development as well as the schedule for completion of public and private improvements associated with the development.

c. STAFF REVIEW AND ACTION

- i. Applicable (see **Section <>, Staff Review and Action**).
- ii. The City Manager shall review the application and may submit it to technical staff or to other outside agencies, as appropriate, for further technical review, as appropriate.
- iii. Following receipt of comments from technical review, if conducted, the City Manager shall review and decide the application in accordance with **Section <>, Final Plat Review Standards**.
- iv. If a final plat application is denied, then the reasons for denial shall be stated in writing. The applicant may revise and resubmit a final plat that has been denied.

4. FINAL PLAT REVIEW STANDARDS

A final plat shall be approved if it complies with the following:

- a. The final plat is on a sheet or sheets suitable for recording with the Henderson County Register of Deeds;
- b. The final plat is prepared by a licensed professional authorized by the State to prepare such documents;
- c. The final plat complies with the standards in Section 47-30 of the North Carolina General Statutes;
- d. The final plat includes all required certifications;
- e. All required infrastructure improvements (e.g., streets, sewer lines, water lines, drainage, etc.) depicted on the ~~major subdivision~~ **preliminary plat** are installed, inspected, and accepted by the City, or are subject to a performance guarantee (see **Section <>, Performance Guarantees**);
- f. All required easements and rights-of-way are properly depicted on the final plat;
- g. If no public wastewater service is associated with the subdivision, all lots have been certified by Henderson County Environmental Health as capable of accommodating the wastewater generated from the proposed use;
- h. If no public potable water service is associated with the subdivision, all lots have been certified by Henderson County Environmental Health as served by an acceptable source of potable water;
- i. The final plat is in substantial conformance with the ~~major subdivision~~ **preliminary plat**;
- j. The applicant has secured all required State, federal, and other applicable City permit approvals;
- k. The final plat complies with all standards and conditions of any applicable permits and development approvals; and
- l. The final plat complies with all other applicable requirements in this Ordinance and the City Code of Ordinances.

5. RECORDATION

- a. Once a final plat is approved, a signed statement by the City Manager shall be entered on the face of the plat. The final plat may not be recorded without this and all other required certifications.

- b. Following certification, the applicant shall record the final plat and all associated protective covenants and deed restrictions in the office of the Henderson County Register of Deeds.
- c. Failure to record the final plat in accordance with **Section <>, Expiration**, shall render the plat null and void.

6. ACCEPTANCE OF PUBLIC INFRASTRUCTURE

- a. The approval of a plat shall not be deemed to constitute the acceptance by the City of the dedication of any street or other ground, public utility line, or other public facility shown on the plat.
- b. The City Council may, by resolution, accept any dedication made to the public of lands or facilities for streets, parks, public utility lines, or other public purposes when the lands or facilities are located within the ETJ.
- c. Acceptance of dedication of lands or facilities located within the ETJ but outside the corporate limits of the City shall not place on the City any duty to open, operate, repair or maintain any street, utility line, or other land or facility, and the City shall not be held responsible in any civil action or proceeding for failure to open, repair, or maintain any street located outside its corporate limits.

7. EFFECT

- a. Approval of a final plat allows the sale or conveyance of lots within the subdivision. Building permits may be issued following recordation of the final plat.
- b. Development located outside the Hendersonville corporate limits shall comply with all City ordinances and policies related to annexation and the extension of utilities.

8. AMENDMENT

Amendment of a final plat approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

9. EXPIRATION

- a. A final plat shall be null and void unless it is recorded in the office of the Henderson County Register of Deeds within 30 days of approval.
- b. If a final plat is not recorded within two years of the associated ~~major subdivision~~preliminary plat approval, or if there is a lapse of more than two years between the recording of different sections or phases, then the ~~major subdivision~~preliminary plat shall expire. In such cases, the City may record a notice of expiration in the office of the Henderson County Register of Deeds.
- c. An expired preliminary plat may be resubmitted in accordance with **Section <>, Preliminary Plat**Major Subdivision, and shall be reviewed in accordance with the standards of this Ordinance.

10. APPEAL

- a. Decisions by the City Manager on a final plat shall be subject to review by the Superior Court of Henderson County by proceedings in the nature of certiorari and in accordance with Section 160A-393 of the North Carolina General Statutes.
- b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.

H. ~~PRELIMINARY PLAT~~MAJOR SUBDIVISION³¹

1. PURPOSE

The purpose for this ~~preliminary—plat~~major subdivision procedure is to establish a fair, consistent, and predictable procedure for the review of requests to divide land into a series of lots for development or sale in ways that promote the health, safety, and welfare of the City of Hendersonville. The intent of these standards is to ensure:

- a. Orderly growth and development;
- b. Coordination of transportation and utility networks;
- c. Preservation of open space for purposes of recreation or natural resource protection;
- d. Protection from flooding, damaging sedimentation, and decreased surface water quality; and
- e. Distribution of population in ways that supports infrastructure investment and diminishes the impact of traffic and overcrowding.

2. APPLICABILITY

Unless exempted by Section 160A-376 of the North Carolina General Statutes, all divisions of land involving two or more lots along with the provision of or changes to streets or other public infrastructure (e.g., sewer lines, storm sewer, etc.) shall be considered ~~preliminary—plats~~major subdivisions subject to the standards of this section.

3. ~~PRELIMINARY PLAT~~MAJOR SUBDIVISION REVIEW PROCEDURE

a. PRE-APPLICATION CONFERENCE

Applicable (see Section <>, Pre-application Conference).

b. APPLICATION SUBMITTAL

- i. Applicable (see Section <>, Application Filing and Acceptance).
- ii. A ~~preliminary plat~~major subdivision shall be prepared by a licensed professional authorized by the State to prepare such documents.
- iii. The application shall include a transportation impact analysis for review when the new development meets the requirements for transportation impact analysis in Article 6 of the Zoning Ordinance.

Figure 2.04.J: ~~Preliminary Plat~~Minor Subdivision Procedure

STEP	ACTION
1	PRE-APPLICATION CONFERENCE See Section <>, Pre-Application Conference
2	FILE APPLICATION Filed with Development Assistance Department - Must be professionally prepared - May require a TIA
3	COMPLETENESS DETERMINATION See Section <>, Completeness Determination - Application shall include copies of any protective covenants or deed restrictions - Plat shall include all required certification statements
4	STAFF REVIEW AND RECOMMENDATION BY THE DEVELOPMENT REVIEW COMMITTEE
5	PLANNING BOARD REVIEW AND DECISION Decided after public meeting - Decision shall be made in writing
6	NOTIFICATION OF DECISION Delivered via personal service, electronic mail, or 1 st class mail
7	APPLY FOR OTHER REQUIRED PERMITS As appropriate

³¹ This section is proposed to replace Section 603 of the current regulations. The sketch plan portion of the current process is replaced by the pre-application conference.

c. STAFF REVIEW

The City Manager shall submit the ~~preliminary plat~~major subdivision application to technical staff or to other outside agencies, as appropriate, for further technical review, as appropriate.

d. DECISION BY PLANNING BOARD

- i. Following staff review, the Planning Board, after the conclusion of a public meeting (see Section <>, Public Meeting and Hearing), shall review and decide the application in accordance with Section <>, ~~Preliminary Plat~~Major Subdivision Review Standards.
- ii. The decision shall be either: approval of the ~~preliminary plat~~major subdivision as proposed; approval of a revised ~~preliminary plat~~major subdivision; or denial of the ~~preliminary plat~~major subdivision.
- iii. The Planning Board shall render a decision on an application for a ~~preliminary plat~~major subdivision within 32 days of the date of the first public meeting to consider the application unless a different review schedule is agreed to by the Planning Board, the City, and the applicant.
- iv. If a ~~preliminary plat~~major subdivision application is denied, then the reasons for denial shall be stated in writing. The applicant may revise and resubmit a ~~preliminary plat~~major subdivision that has been denied.

e. APPROVAL TO PROCEED³²

Following approval of a ~~preliminary plat~~major subdivision by the Planning Board, the applicant may proceed with an application to undertake land disturbing activities, or installation of public ~~utilities~~infrastructure, as appropriate.

4. PRELIMINARY PLATMAJOR SUBDIVISION REVIEW STANDARDS

- a. An application for a ~~preliminary plat~~major subdivision shall be approved, if it complies with the following:
 - i. The ~~preliminary plat~~major subdivision is prepared and sealed by a licensed professional authorized by the State to prepare such documents;
 - ii. The ~~preliminary plat~~major subdivision complies with the applicable standards in Section 47-30 of the North Carolina General Statutes;
 - iii. The ~~preliminary plat~~major subdivision includes all required certifications and other pertinent information as required by the City;
 - iv. All lots shall be served by a NCDOT-maintained roadway or a right-of-way constructed to and maintained in accordance with NCDOT or City standards, as appropriate;
 - v. The name of the subdivision shall not duplicate or be similar to the name of an existing subdivision in Hendersonville or Henderson County;
 - vi. Street names used in the subdivision shall not duplicate or be similar to the names of streets in an existing subdivision in Hendersonville or Henderson County;
 - vii. All standards or conditions of any prior applicable permits and development approvals; and
 - viii. The ~~preliminary plat~~major subdivision complies with all other applicable requirements in this Ordinance and the City Code of Ordinances.
- b. Land located within a special flood hazard area shall comply with all applicable City standards for flood damage prevention.

5. EFFECT**a. GENERALLY**

- i. Approval of a required ~~preliminary plat~~major subdivision shall not constitute the approval for recording a subdivision with the Register of Deeds, or approval for the conveyance of lots.

³² Section 603.2 of the current regulations describes a certificate of approval for ~~preliminary plats~~major subdivisions. This has not been carried forward.

- ii. Approval of a required ~~preliminary plat~~major subdivision authorizes the submittal of street and utility construction plans, and soil erosion and sedimentation control plans.

b. LANDS OUTSIDE THE CORPORATE LIMITS

~~Preliminary plats~~Major subdivisions for development located outside the corporate limits shall comply with any ordinances and City policies related annexation and the extension of utilities.

c. CONSTRUCTION PLANS

- i. Construction plans for all public ~~improvements~~infrastructure associated with the ~~preliminary plat~~major subdivision shall be approved prior to street and utility construction and prior to the approval of a final plat in accordance with the applicable standards this Ordinance.
- ii. In the case of a multi-phase subdivision, street and utility construction plans shall include all improvements within a phase and all public improvements outside the phase but necessary to serve development within that phase.

6. PERFORMANCE GUARANTEES

All public ~~improvements~~infrastructure that have not been installed by the developer, and inspected and accepted by the City shall comply with the requirements in **Section <>, Performance Guarantees**, prior to the recordation of a final plat.

7. AS-BUILT PLANS

As-built plans for all public ~~improvements~~infrastructure shall be submitted in accordance with **Section <>, As-Built Plans Required**.

8. AMENDMENT

Amendment of a ~~preliminary plat~~major subdivision approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

9. EXPIRATION³³

An approved ~~preliminary plat~~major subdivision shall be valid for ~~one~~two years from the date of approval. Failure to record a final plat for land subject to an approved ~~preliminary plat~~major subdivision within four years of the date the ~~preliminary plat~~major subdivision is approved shall render the ~~preliminary plat~~major subdivision approval null and void.

10. APPEAL

- a. Decisions by the Planning Board on a ~~preliminary plat~~major subdivision shall be subject to review by the Superior Court of Henderson County by proceedings in the nature of certiorari and in accordance with Section 160A-393 of the North Carolina General Statutes.
- b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.

³³ NOTE: This section has been revised to include a two-year expiration period in accordance with the site-specific plan designation included in the vested rights portion of Chapter 1. This change is proposed for closer alignment with 160D.

I. MINOR SUBDIVISION³⁴**1. PURPOSE AND INTENT**

The purpose for this minor subdivision review procedure is to allow certain land divisions to be reviewed via an administrative review procedure based on the limited number of new lots and no extension of or changes to existing public streets is required.

2. APPLICABILITY

- a. Subdivisions of land that include up to eight lots (including the ~~residual-parent~~ parcel) with no extension of or changes to public streets are minor subdivisions and shall be reviewed in accordance with the standards in this section.
- b. All lots shall connect to the public potable water and sanitary sewer systems as part of the establishment of the minor subdivision. However, connection to the public water or sewer system shall not require the subdivision to be reviewed as a ~~major subdivision~~ preliminary plat.
- c. No lot within a minor subdivision (including the ~~residual-parent~~ parcel) shall be the subject of another minor subdivision application for a period of three years from the date the minor subdivision is approved.

3. MINOR SUBDIVISION REVIEW PROCEDURE**a. PRE-APPLICATION CONFERENCE**

Applicable (see Section <>, Pre-Application Conference).

b. APPLICATION SUBMITTAL

- i. Applicable (see Section <>, Application Filing and Acceptance).
- ii. Applications shall be prepared by a licensed professional authorized by the State to prepare such documents.
- iii. In cases where a minor subdivision is part of a larger phased development, the application materials shall illustrate all various stages and phases of the development as well as the schedule for completion of public and private improvements associated with the development.

c. STAFF REVIEW AND ACTION

- i. Applicable (see Section <>, Staff Review and Action).

Figure 2.04.I: Minor Subdivision Procedure

STEP	ACTION
1	PRE-APPLICATION CONFERENCE Optional
2	FILE APPLICATION Filed with Development Assistance Department - Required prior to conveyance of lots
3	COMPLETENESS DETERMINATION See Section <>, Completeness Determination - Application shall include copies of any protective covenants or deed restrictions - Plat shall include all required certification language
4	STAFF REVIEW
5	CITY MANAGER DECISION Decision shall be made in writing
6	NOTIFICATION OF DECISION Delivered via personal service, electronic mail, or 1 st class mail
7	RECORDATION With the Henderson County Register of Deeds within 30 days of approval

³⁴ This process is proposed to replace the language in Section 301 and Section 601 of the current regulations. One significant change between the current regulations and this draft ordinance is the requirement that a minor subdivision not include the extension of public streets or sewer service. Subdivisions that include public streets or sewer service are treated as major subdivisions subject a preliminary and final plat.

- ii. The City Manager shall review the application and may submit it to technical staff or to other outside agencies, as appropriate, for further technical review, as appropriate.
- iii. Following receipt of comments from technical review, if conducted, the City Manager shall review and decide the application in accordance with **Section <>, Minor Subdivision Review Standards**.
- iv. If a minor subdivision application is denied, then the reasons for denial shall be stated in writing. The applicant may revise and resubmit a minor plat that has been denied.

4. MINOR SUBDIVISION REVIEW STANDARDS

- a. A minor subdivision shall be approved if the application complies with the following:
 - i. The minor subdivision plat is on a sheet or sheets suitable for recording with the Henderson County Register of Deeds;
 - ii. The minor subdivision plat is prepared and sealed by a licensed professional authorized by the State to prepare such documents;
 - iii. The minor subdivision plat complies with the applicable standards in Section 47-30 of the North Carolina General Statutes;
 - iv. The minor subdivision plat includes all required certifications;
 - v. All lots shall be served by a NCDOT-maintained roadway or a right-of-way constructed to and maintained in accordance with NCDOT or City standards, as appropriate;
 - vi. The applicant has secured all required State, federal, and other applicable permit approvals;
 - vii. The minor subdivision is in substantial conformance with all applicable requirements in this Ordinance;
 - viii. All lots in the minor subdivision shall maintain minimum lot widths in accordance with the requirements for the zoning district where located;
 - ix. All required improvements depicted on the minor subdivision plat are installed and inspected by the City, or are subject to a performance guarantee (see **Section <>, Performance Guarantees**); and
 - x. The minor subdivision complies with all standards and conditions of any applicable permits and development approvals.
- b. Minor subdivisions of land located within a special flood hazard area shall comply with all applicable City standards for flood damage prevention, and include the following statement:

"Use of land within a floodplain or a special flood hazard area is substantially restricted by the City of Hendersonville."

5. RECORDATION

- a. Once a minor subdivision is approved, a signed statement of approval by the City Manager shall be entered on the face of the plat. The minor subdivision plat may not be recorded without this certification.
- b. A minor subdivision plat shall not be recorded until after the City Manager receives confirmation that the proposed subdivision has been approved by the appropriate United States Postmaster, or evidence that the applicant has addressed comments submitted by the Postmaster.
- c. Failure to record the minor subdivision plat in accordance with **Section <>, Expiration**, shall render the minor subdivision plat null and void.

6. EFFECT

Approval of a minor subdivision allows the sale or conveyance of lots within the subdivision. Building permits may be issued following recordation of the minor subdivision plat.

7. AMENDMENT

Amendment of a minor subdivision approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

8. EXPIRATION

A minor subdivision plat shall be null and void unless it is recorded in the office of the Henderson County Register of Deeds within 30 days of approval.

9. APPEAL

- a. Appeal of a decision on a minor subdivision shall be reviewed and decided by the BOA in the nature of certiorari and in accordance with **Section <>, Appeal**.
- b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.

J. SUBDIVISION VARIANCE³⁵**1. PURPOSE**

The purpose of this section is to allow deviations from the standards of this Ordinance when the landowner demonstrates that, due to special circumstances or conditions beyond the landowner's control (such as topographical conditions, narrowness, shallowness, or shape of a specific parcel of land), a literal application of the standards would result in undue and unique hardship to the landowner and that allowing the requested deviation would not be contrary to the public interest.

2. APPLICABILITY

Development that would otherwise be subject to undue and unique hardship from the applications of the standards in this Ordinance may seek relief from the standards in accordance with this section.

3. SUBDIVISION VARIANCE PROCEDURE**a. PRE-APPLICATION CONFERENCE**

Applicable (see Section <>, Pre-Application Conference).

b. APPLICATION SUBMITTAL

Applicable (see Section <>, Application Filing and Acceptance).

c. STAFF REVIEW

- i. Applicable (see Section <>, Staff Review and Action).
- ii. In cases where a staff report is prepared, the staff report shall not include a recommendation.

d. PUBLIC NOTICE

Applicable (see Section <>, Public Notification).

e. DECISION BY BOARD OF ADJUSTMENT

- i. The BOA, after the conclusion of a quasi-judicial public hearing (see Section <>, Public Meeting and Hearing), shall decide the application for a variance.
- ii. The decision shall be based on the competent, material, and substantial evidence in the record, as supplemented by the arguments presented at the quasi-judicial hearing, and the appropriate standards in Section <>, Variance Review Standards.
- iii. The concurring vote of seven members of the BOA shall be necessary to grant a subdivision variance.
- iv. The decision shall be either approval of the variance as proposed, approval of the variance with revisions, or denial of the variance.

Figure 2.04.K: Variance Procedure

STEP	ACTION
1	PRE-APPLICATION CONFERENCE See Section <>, Pre-Application Conference
2	FILE APPLICATION Filed with Development Assistance Department
3	COMPLETENESS DETERMINATION See Section <>, Completeness Determination
4	STAFF REVIEW Staff report shall not include a recommendation
5	PUBLIC NOTICE See Section <>, Public Notification
6	BOA REVIEW AND DECISION Quasi-judicial public hearing - Decision shall be made in writing
7	NOTIFICATION OF DECISION Delivered via personal service, electronic mail, or 1 st class mail
8	RECORDATION With the Henderson County Register of Deeds within 30 days of approval

³⁵ This section replaces Section 606 of the current regulations but designates the Board of Adjustment as the review authority to decide the request. Review by the Planning Board has been removed as this review is inappropriate as part of a quasi-judicial decision-making process..

- v. Each decision shall be made in writing and reflect the BOA's determination of any contested facts and their application to the standards in this Ordinance.
- vi. The written decision shall be signed by the Chair or other duly authorized member of the BOA.
- vii. The decision of the BOA shall be effective upon the filing of the written decision by the City Manager.

f. RECORDATION

If a variance application is approved, the notice of decision shall be recorded by the City in the office of the Henderson County Register of Deeds.

4. SUBDIVISION VARIANCE REVIEW STANDARDS**a. REQUIRED FINDINGS**

A subdivision variance application shall be approved provided on a finding the applicant demonstrates all of the following:

- i. Unnecessary hardship would result from the strict application of the Ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- ii. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- iii. The hardship did not result from actions taken by the applicant or the landowner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of the variance shall not be regarded as a self-created hardship.
- iv. The requested variance is consistent with the spirit, purpose, and intent of ~~the~~ this Ordinance, such that public safety is secured, and substantial justice is achieved.
- v. The variance approval is the minimum necessary to make possible the reasonable use of the land, building, or structure.

b. NOT USED AS A BASIS FOR APPROVAL

None of the following may be used as the basis for approving a variance:

- i. Hardships resulting from factors other than application of the relevant standards of this Ordinance;
- ii. The fact that land or a structure may be utilized more profitably or be more marketable with a variance; or
- iii. Financial hardship.

c. CONDITIONS OF APPROVAL

- i. The Board of Adjustment may apply conditions of approval that are reasonably related to the variance.
- ii. All conditions shall be identified in the approval, the notice of decision, and on any associated plats.

5. EFFECT

Approval of a subdivision variance authorizes only the particular regulatory relief approved by the BOA. It does not exempt the applicant from the responsibility to obtain all other permits or development approvals required by this Ordinance or any other applicable laws, and does not indicate that the development for which the subdivision variance is granted should receive other permits or development approvals under this Ordinance unless the relevant and applicable portions of this Ordinance are met.

6. AMENDMENT

Amendment of a subdivision variance may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

7. EXPIRATION

A subdivision variance shall not expire.

8. APPEAL

- a. Any decision by the BOA shall be subject to review by the Superior Court of Henderson County by proceedings in the nature of certiorari and in accordance with Section 160A-393 of the North Carolina General Statutes.
- b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.

SECTION 2.05. PERFORMANCE GUARANTEES³⁶**A. PURPOSE AND INTENT**

These standards create the additional flexibility necessary for lots in a subdivision to be conveyed or for issuance of a building permit to commence with development prior to completion of all required infrastructure or site improvements, provided funds have been reserved for completion of these features. These provisions ensure that funds are available for the City's use to complete required public infrastructure or private site features in the event an applicant or developer is unable to do so.

B. APPLICABILITY³⁷

1. Performance guarantees shall be configured and managed in accordance with the standards in this section. The City is under no obligation to grant a performance guarantee for any feature or under any circumstance.
2. The following facilities and site features may be eligible for performance guarantees at the discretion of the City:
 - a. Sidewalks, multi-use paths, and greenways;
 - b. The final lift of asphalt on a street;
 - c. Private stormwater management facilities;
 - d. Street lights; and
 - e. Placement of vegetation, except when required as part of erosion control measures.
3. All other public infrastructure or required site features shall be completed prior to issuance of a certificate of occupancy for the development.

C. INELIGIBLE FACILITIES

The following infrastructure facilities are not eligible for performance guarantees, and shall be completed and dedicated to the City where appropriate, prior to approval of a final plat, conveyance, or issuance of a building permit:

1. Potable water;
2. Sanitary sewer;
3. Functional fire protection infrastructure;
4. The base and initial courses of asphalt on a street;
5. Stormwater drainage facilities associated with a street right-of-way;
6. Curb and gutter; and
7. Street signs and traffic control signals.

D. MAXIMUM TERM OF GUARANTEE³⁸

1. Performance guarantees associated with the placement of vegetation shall have a maximum term of one year, ~~otherwise there shall be no maximum term or expiration for a performance guarantee.~~
2. The applicant may request a term of more than one in year in cases where they believe one year is insufficient.

E. FORM OF GUARANTEE

³⁶ This section is proposed to replace the provisions in Section 604 of the current regulations. These proposed standards have been revised to reflect a series of recent changes in the statutes regarding the amount, term, form, and release of performance agreements.

³⁷ This is a new section that indicates which kinds of features may be subject to a request for a performance guarantee. The current regulations place no limits on what may be subject to a guarantee. These proposed provisions place limits on what can be the subject of a guarantee request, and allows City staff (instead of City Council) to review and decide the request.

³⁸ Revised for consistency with 160D.

1. The applicant shall determine the form(s) of the performance guarantee, which shall be provided in one or more of the following forms:

- a. **CASH OR IRREVOCABLE (EVERGREEN) LETTER OF CREDIT**

The developer shall deposit cash or an irrevocable (or "evergreen") letter of credit, either with the City or in escrow with a North Carolina financial institution. If cash or other instrument is deposited in escrow with a financial institution, an agreement between the financial institution and the developer shall be filed with the City guaranteeing the following:

- i. That the escrow account shall be held in trust until released by the City and may not be used or pledged by the developer for any other matter during the term of the escrow; and
- ii. That in case of a failure on the part of the developer to complete or repair the improvements, the financial institution shall, upon notification by the City, immediately pay the funds deemed necessary by the City to complete or repair the improvements up to the full balance of the escrow account, or deliver to the City any other instruments fully endorsed or otherwise made payable in full to the City.
- iii. The financial institution holding the cash or other instrument shall indicate to the City its notification requirements for release or payment of funds.

- b. **SURETY BOND**

- i. The developer shall obtain a surety bond from a surety bonding company authorized to issue surety bonds in North Carolina.
- ii. The bond shall be payable to the City and shall be in an amount as required by this subsection.

- c. **OTHER GUARANTEE**

The developer may provide another form of guarantee that provides equivalent security to cash, a surety bond, or letter of credit, as determined by the City Attorney.

2. An applicant may request a consolidated ~~The~~ performance guarantee to address required infrastructure and private site improvements, but it shall distinguish between the portion of the guarantee provided for public infrastructure improvements as well as the portion of the guarantee provided for private site improvements, if applicable.³⁹
3. The performance guarantee shall be conditioned on the performance of all work necessary to complete the installation of the required improvements within the term of the guarantee.

F. AMOUNT OF GUARANTEES

1. **GENERALLY**

Performance guarantees shall be in an amount equal to 125 percent of the estimated cost of completing the installation of the required improvements, including the costs of materials, labor, and project management.

2. **ESTIMATED COSTS**

Estimated costs of completing installation of required public improvements, vegetation, or stormwater measures shall be itemized by improvement type and certified by the developer's licensed professional, and is subject to approval by the City Manager.

3. **RENEWAL**

If a performance guarantee is renewed, the City Manager may require the amount of the performance guarantee be updated to reflect changes in cost over time.

G. RELEASE OR REDUCTION OF GUARANTEE

1. **RELEASE REQUESTED**

The City Manager shall release or reduce a performance guarantee only after:

³⁹ Revised for conformance with 160D.

- a. The owner or developer has submitted to the City a written request for a release or reduction of the performance guarantee that includes certification by the owner's or developer's engineer or contractor, whichever is appropriate, that installation of the guaranteed improvements has been completed in accordance with approved plans and specifications, and as-builts (if applicable);
- b. City staff has performed an inspection of the improvements and certified in writing that installation of the guaranteed improvements is completed in accordance with approved plans and specifications; and
- c. No release or reduction in performance guarantee amounts will be considered until more than 25 percent of the work is in place and approved.

2. ACCEPTANCE SHALL BE DOCUMENTED

The City Manager shall provide written notice of the City's final acceptance of the improvements subject to performance guarantees.

H. IMPROPER RELEASE OF FINANCIAL GUARANTEES

If the City releases a performance guarantee through error, the error shall not release the developer from responsibility for the completion of all improvements in accordance with this Ordinance.

I. FORFEITURE OF GUARANTEE

1. NOTICE OF FAILURE TO INSTALL OR COMPLETE IMPROVEMENTS

If the owner or developer fails to complete installation of the guaranteed improvements within the term of the performance guarantee (as may be extended), the City Manager shall give the owner or developer 30 day's written notice of the scope and degree of the default, by certified mail.

2. CITY COMPLETION OF IMPROVEMENTS

After the 30-day notice period expires, the City may draw on the guarantee and use the funds to perform the work necessary to complete installation of the guaranteed improvements. After completing such work, the City shall provide a complete accounting of the expenditures to the owner or developer. In the event of a default triggering the use of the performance guarantee, the City shall return any of the unused deposited cash funds or other security.

J. AS-BUILT PLANS REQUIRED

1. PUBLIC IMPROVEMENTS

Upon completion of a public infrastructure project, the developer shall certify to the City Manager that the completed project has been constructed in accordance with the approved plans and shall submit actual "as-built" plans for all public improvements after final construction is completed.

2. STORMWATER MANAGEMENT FACILITIES

Upon completion of a private stormwater management facility, the developer shall certify to the Stormwater Administrator that the completed project is in accordance with the requirements in Sections 24-131 through 24-163 in the City's Code of Ordinances.

3. INSPECTION REQUIRED

A final inspection and approval by the City Manager shall occur before the release of the ~~financial~~ performance guarantee.

SECTION 2.06. FEE-IN-LIEU⁴⁰**A. PURPOSE**

The purpose for this section is to establish a procedure and standards for instances where an applicant and the City agree that a payment-in-lieu of dedication or construction of infrastructure by the applicant is appropriate and in closer alignment with the City's adopted policy guidance of capital improvement program.

B. PROCEDURE**1. REQUIRED BY CITY**

- a. In cases where the City Manager determines that installation of a required sidewalk, greenway, bikeway, or other roadway improvement could conflict with another City, State, or federal infrastructure project that is planned or programmed to begin construction within five years, the applicant or developer shall be required to submit a fee-in-lieu of the required infrastructure element(s).
- b. Notification of the requirement for provision of a fee-in-lieu shall be in writing, and shall be delivered to the applicant or developer prior to the notice of decision on the associated application.
- c. Upon receipt of notification, and applicant shall provide the required fee-in-lieu in accordance with **Section <>, Acceptance of Fee-in-Lieu**.
- d. In the event the conflict necessitating the fee-in-lieu is eliminated prior to final approval, the fee-in-lieu shall be refunded and the applicant or developer shall be required to dedicate the required land or perform the required installation. The developer or applicant may request the City retain the funds in accordance with **Section <>, Requested by Applicant**.

2. REQUESTED BY APPLICANT

In cases where an applicant or developer desires to receive final approval of development under this Ordinance without providing land or infrastructure as required, the process for requesting such approval shall be in accordance with this section.

a. FILE REQUEST

- i. An applicant seeking the ability to provide a fee-in-lieu of making a required dedication or constructing required infrastructure shall file a written request with the City Manager prior to the rendering of a decision on the associated application by the appropriate review authority (see **Table <>, Summary Table**).
- ii. The request shall include the reasons for the request, the rationale why a fee-in-lieu is in closer alignment with the City's adopted policy guidance, and the estimated value of the land that would otherwise be dedicated or the estimated cost of completion of the infrastructure in question, based on current unit prices.

b. STAFF REVIEW

Upon receipt of the request, the City Manager shall review the information and notify the applicant if the information provided is sufficient.

c. DECISION BY CITY MANAGER

- i. The City Manager shall consider the request, and shall decide the request in accordance with the City's adopted policy guidance and **Section <>, Review Standards for Fee-in-Lieu**.
- ii. The decision shall be to either accept the request for provision of fee-in-lieu as offered, accept a modified request for provision of fee-in-lieu, or deny the request for provision of fee-in-lieu.

d. ACCEPTANCE OF FEE-IN-LIEU

⁴⁰ This is a new section proposed for the City's consideration.

- i. In cases where a fee-in-lieu is required by the City or a request for provision of a fee-in-lieu is accepted by the City Manager, payment of a fee-in-lieu shall take place prior to the approval of a final plat or issuance of the final approval associated with the subdivision.
- ii. All fees collected by the City pursuant to this section shall be deposited in City's revolving fund for purchase of recreation land, installation of vegetation, or installation of required infrastructure (whether streets, sidewalks, bikeways, or other infrastructure, as appropriate).
- iii. Use of funds collected in accordance with this section shall only take place in the general vicinity of where funds are collected and may only be used for the purchase of in-kind lands or the same type of infrastructure in accordance with all applicable State and federal law.
- iv. The City Manager shall maintain records of the amounts collected, the timing, and the location, which shall be used by the City as part of its capital facilities program.

C. AMOUNT

1. LAND

- a. The fee-in-lieu shall be calculated based upon the total acreage of land required for dedication.
- b. The land's assessed value (as determined by the Henderson County Tax Assessor) following subdivision shall be used to arrive at the required payment-in-lieu amount.

2. INFRASTRUCTURE

- a. The amount of fee-in-lieu shall be based on an estimate by a licensed professional authorized by the State to prepare such documents.
- b. The estimate shall include the cost of all materials and labor based on current unit prices.
- c. Nothing shall prevent the City Manager from acquiring an additional estimate for the same infrastructure from another licensed professional.
- d. The City Manager, in his or her sole discretion, may select the estimate that will form the basis for the fee-in-lieu payment.

3. VEGETATION

In cases where a fee-in-lieu is proposed for the installation of vegetation, the fee amount shall be based upon the unit price of the vegetation along with all associated labor, transportation, and incidental costs such as ground cover, staking, and fertilizer, but not irrigation.

D. REVIEW STANDARDS FOR FEE-IN-LIEU

Decisions regarding requests for provision of fee-in-lieu shall be made in accordance with the following standards, as applicable:

1. PARK LAND

- a. There is sufficient public park land in proximity to the proposed development based on a review of the City's adopted policy guidance and information from City staff;
- b. Private common open space resources provided on the subject site will be available for public use and will mitigate park land needs created by the proposed development;
- c. Collected funds could be utilized to further improve an existing park facility in a proximate location;
- d. The topography or other natural conditions of the site do not provide adequate opportunities for on-site recreation and park areas;
- e. The amount of park land to be dedicated is too small to provide adequate recreation and park opportunities or to be efficiently maintained;
- f. The intended location of the park land is too far from existing recreation and park areas to be efficiently maintained; or
- g. Adequate access is not available to the proposed park land.

2. GREENWAY LAND

- a. The conditions on the land make installation or operation of a greenway segment impossible or cost prohibitive for the City;
- b. The potential for the connection of a proposed greenway segment to the City's greenway network is unlikely within the foreseeable future, in the opinion of City staff; or
- c. There are suitable alternatives to a greenway segment, such as a multi-purpose trail, in close proximity to the proposed site.

3. STREETS

- a. The proposed street alignment creates a unacceptable environmental impact; or
- b. The proposed street is impossible or impractical to build based on topography, slope, soil conditions, or development patterns on adjacent lands.

4. SIDEWALKS

- a. The potential for the connection of a proposed sidewalk segment to the City's sidewalk network is unlikely within the foreseeable future, in the opinion of City staff; or
- b. There are suitable alternatives to a sidewalk, such as a greenway, in close proximity to the proposed site.

5. VEGETATION

- a. The proposed location of vegetation will not support healthy vegetation due to shading or topographic conditions; or
- b. The site where vegetation is proposed is incapable of supporting additional vegetation due to the presence of exiting vegetation, buildings, or impervious surfaces.

6. OTHER CRITERIA

- a. When, in the sole opinion of the City Manager, the decision on a fee-in-lieu requires consideration of additional or different criteria, the City Manager shall identify those criteria and describe how the proposal does or not address them.
- b. The applicant has sufficient opportunity to describe how the proposal meets those criteria prior to a decision by the City Manager.

ARTICLE 3: CONFIGURATION

SECTION 3.01. PURPOSE AND INTENT

This section sets out the basic configuration standards for subdivisions, including lot shapes, monuments, access to lots, easements for infrastructure, and related provisions.

SECTION 3.02. LAND SUITABILITY⁴¹

- A.** Where land to be subdivided is found by the City to be subject to the conditions of flooding, improper drainage, severe erosion, landslides, or to have other characteristics which pose an ascertainable danger to public health, safety, or property, the subdivider shall take measures necessary to correct these conditions in order to eliminate or mitigate any danger.
- B.** In making a determination about the potential danger to public health, safety, or property, the City or a review authority may take any of the following into consideration:
 - 1. The official FEMA Flood Hazard Boundary Maps;
 - 2. The Henderson County Soil Survey;
 - 3. Recommendations of the Tennessee Valley Authority;
 - 4. Information from the Soil Conservation Service;
 - 5. Information from the USDA; and
 - 6. The Henderson County Board of Health.
- C.** In cases where ~~the City or~~ a review authority makes findings pursuant to this section, the basis for such findings shall be in writing and recorded in a staff report, meeting minutes, or the written decision, as appropriate.

SECTION 3.03. LOTS⁴²

A. DIMENSIONAL REQUIREMENTS

1. GENERALLY

- a. The size, shape, and orientation of lots shall be appropriate for the location of the proposed subdivision and for the type of development contemplated.
- b. A lot shall have sufficient area, dimensions, and street access to allow a principal building to be erected on it in compliance with the requirements of this Ordinance and the Zoning Ordinance.
- c. Lot sizes, shapes, and locations shall be made with due regard to topographic conditions, contemplated use, and the surrounding area.
- d. The area of standing bodies of water shall not be included in determining minimum lot area requirements.

2. SINGLE-FAMILY RESIDENTIAL LOTS

a. WITHIN THE CORPORATE LIMITS

Lots intended for single-family residential development within the City's corporate limits shall comply with the minimum dimensional standards for the zoning district where located.

b. OUTSIDE THE CORPORATE LIMITS

- i. Lots intended for single-family residential development outside the City's corporate limit that are served by both public water and sewage systems shall comply with the minimum dimensional standards for the zoning district where located.

⁴¹ Carries forward Section 500 of the current regulations.

⁴² This section carries forward Section 507 and its related subsections from the current regulations.

- ii. Lots intended for single-family development outside the City's corporate limits that are not served by public water or by public sewer shall comply with the applicable dimensional standards in the Zoning Ordinance.

3. MULTI-FAMILY RESIDENTIAL LOTS

- a. Lots intended for multi-family residential development shall comply with the minimum dimensional standards for the zoning district where located.
- b. Prior approval from Henderson County Environmental Health must be obtained for lots containing multi-family development that are not served by both public water and sewer.

4. NONRESIDENTIAL AND MIXED-USE LOTS

Lots intended for non-residential and mixed-use development shall comply with the minimum dimensional standards for the zoning district where located.

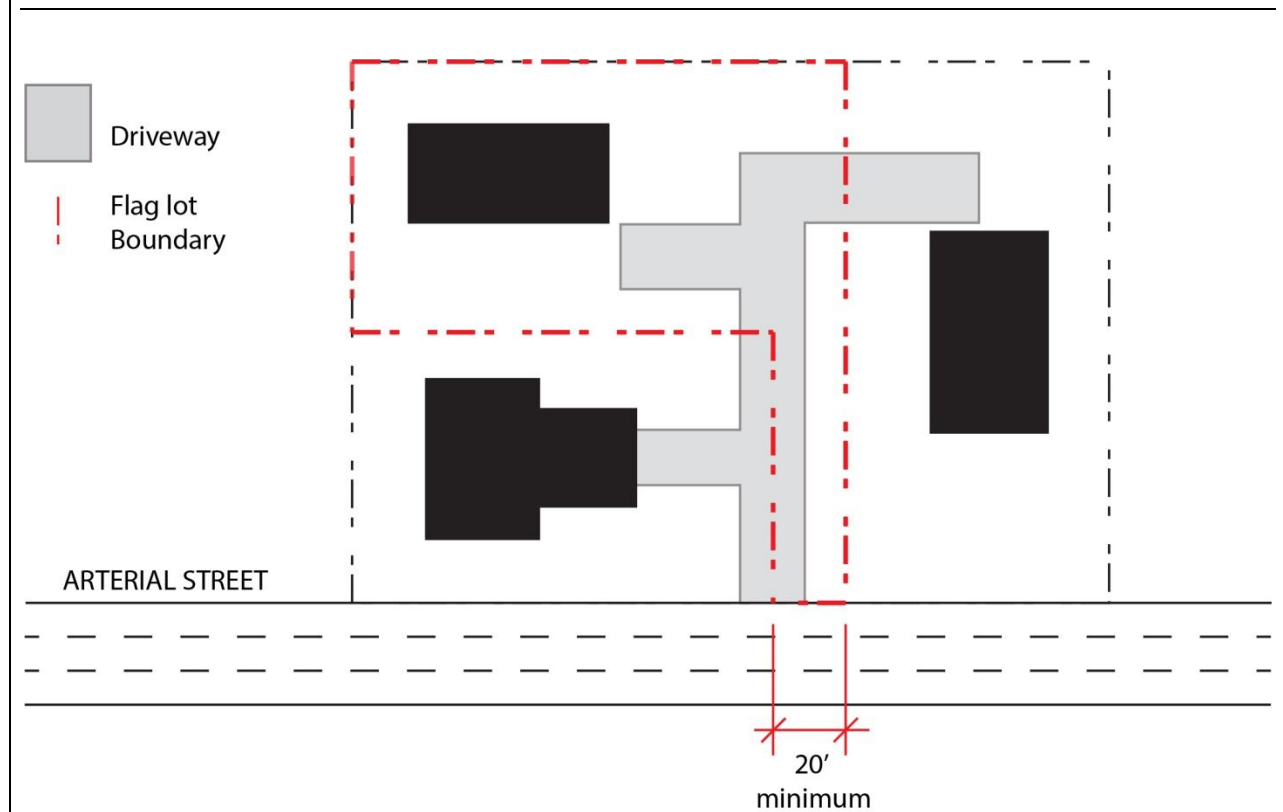
B. SIDE LOT LINES

- 1. Side lines of lots should be at or near right angles or radial to street lines.
- 2. Where side lot lines intersect at the rear of the lot, the angle of intersection shall not be less than 60 degrees.

C. FLAG LOTS

New flag lots may be established, subject to the following requirements:

- 1. Except where topographic conditions or environmental constraints make lot access impractical, no more than five percent of the lots within a subdivision (or individual phase of a subdivision) may be configured as flag lots.
- 2. New flag lots may be established along an expressway or boulevard street only in cases where access to the street is shared with an adjacent lot (see **Figure <>, Flag Lot Access**).
- 3. The "pole," arm," or "pan handle" portion of a flag lot shall maintain a minimum width of at least 20 feet.
- 4. Use of a single driveway to serve an adjoining flag lot or to serve a flag lot and an adjoining conventional lot is encouraged. In the case of a driveway shared with a conventional lot, the preferred location for the driveway is on the flagpole portion of the flag lot, with the conventional lot granted an access easement over the flagpole.

FIGURE <>: FLAG LOT ACCESS**D. DOUBLE OR REVERSE FRONTAGE LOTS**

1. Double frontage or reverse frontage lots shall be avoided, except when used in conjunction with the provisions for marginal access streets in [Section <>, Marginal Access Streets](#).
2. Double frontage [or reverse frontage](#) lots shall require a non-access buffer of 25 feet on one side of the lot bounded by a street, in addition to other dimensional requirements.

E. CORNER LOTS

Corner lots shall be of sufficient size to ensure development may be configured to avoid required sight distance triangles.

F. DRAINAGE AND FLOOD PREVENTION

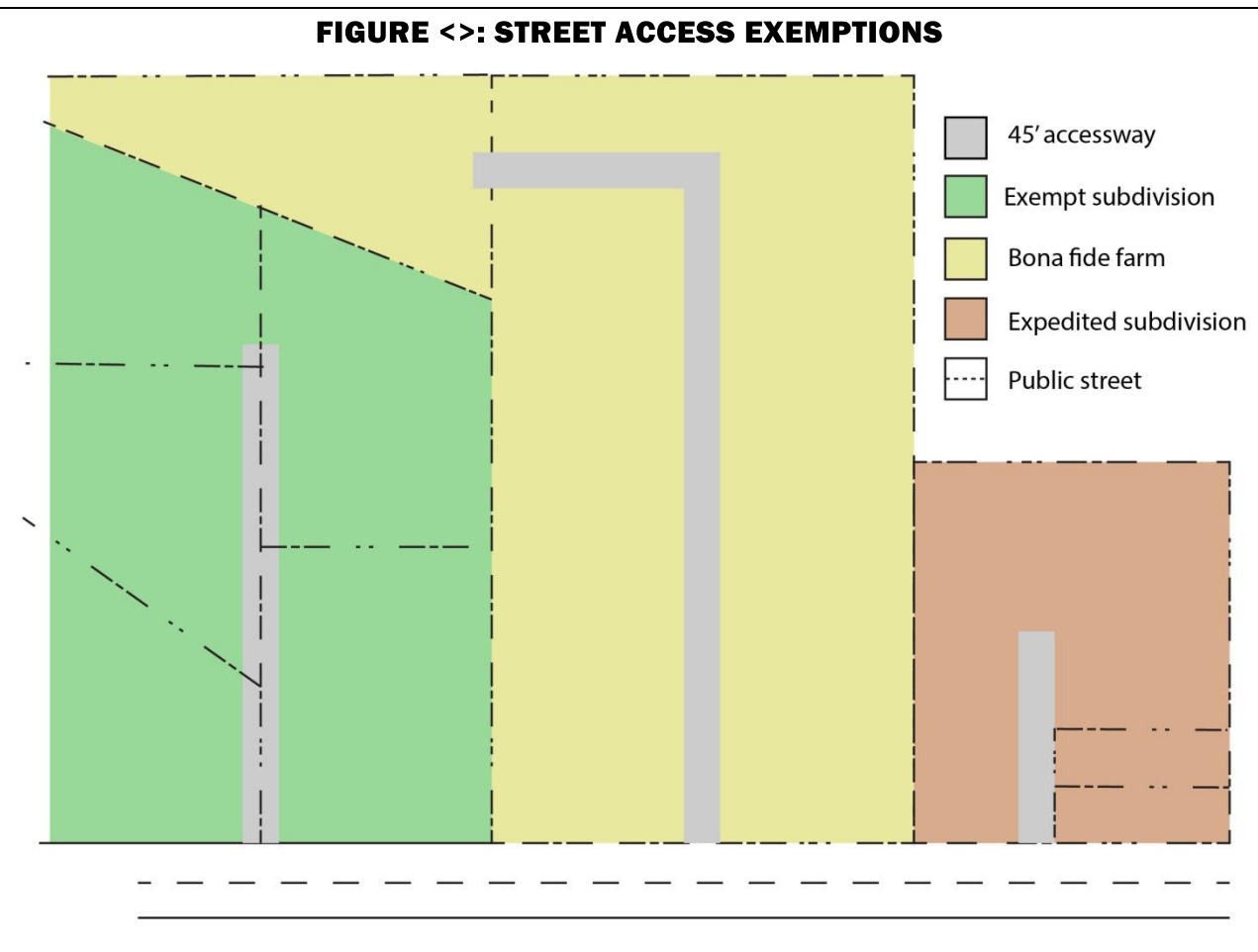
New subdivisions shall comply with all applicable requirements for stormwater management (see [Section <>, Stormwater Management](#)), drainage (see [Section <>, Sedimentation and Erosion Control](#)), and all applicable standards for flood damage prevention from Sections 24-31 through 24-117 of the City's Code of Ordinances, when located within a special flood hazard area.

SECTION 3.04. ACCESS TO LOTS⁴³**A. EVERY LOT MUST MAINTAIN ACCESS****1. GENERALLY**

Except for lots within bona fide farms, exempt subdivisions, or in accordance with [Section <>, Street Access Exemptions](#), all lots intended to contain a building or structure shall abut a street designed, built, and maintained to City or State standards, as applicable.

2. STREET ACCESS EXEMPTIONS

- a. Lots in any of the following forms of development are not required to be served by a street meeting City or State standards:
 - i. Up to three lots in an expedited subdivision; or
 - ii. Up to three lots without roadway frontage that are served by a single, shared accessway.
- b. Any lots not required to abut a street designed, built, and maintained to City or State standards shall maintain an access with a minimum width of 45 feet that is adequately maintained to afford a reasonable means of ingress and egress for emergency vehicles (see [Figure <>, Street Access Exemptions](#)).

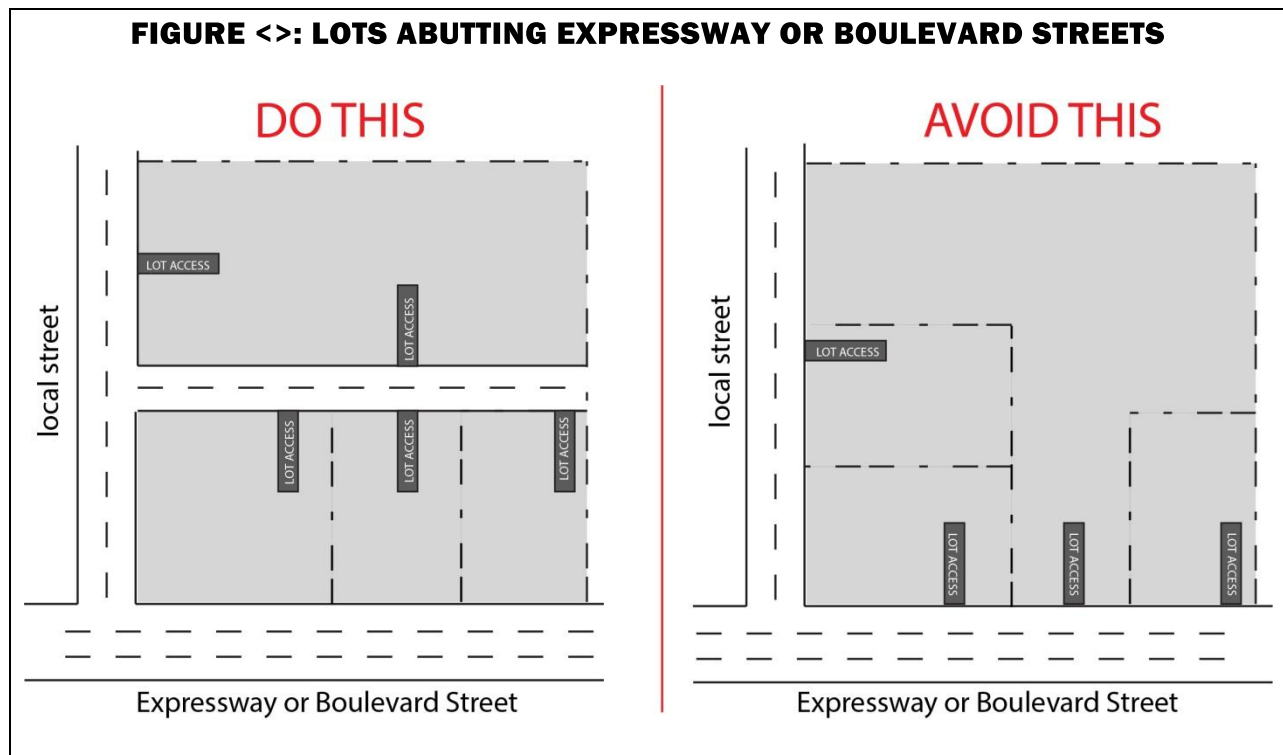
FIGURE <>: STREET ACCESS EXEMPTIONS**3. ACCESS SERVING MORE THAN THREE LOTS**

⁴³ This section is intended to replace Section 507.4 of the current regulations.

Accessways serving more than three lots outside a bona fide farm or exempt subdivision shall be designed, built, and maintained to public street standards.

B. ACCESS ON LOTS ABUTTING EXPRESSWAY OR BOULEVARD STREETS

1. In cases where a tract or site abutting an expressway or boulevard street is proposed for subdivision (whether residential or otherwise), then all lots created shall maintain sufficient frontage on a different street, either pre-existing or created as part of the subdivision, so that direct access to lots need not be provided by an expressway or boulevard street (see **Figure <>, Lots Abutting Expressway or Boulevard Streets**).
2. The final plat creating the subdivision shall indicate a notation that driveway access to an expressway or boulevard is limited and shall be provided by a different street.
3. In the event a site or tract is unable to comply with the access limitations in this subsection, an applicant may seek a variance in accordance with **Section <>, Subdivision Variance**.



C. MARGINAL ACCESS STREETS

1. Where a tract of land to be subdivided adjoins an expressway or boulevard street, the subdivider may be required to provide a marginal access street parallel to the expressway or boulevard street or reverse frontage where access is obtained solely by a different street for the lots to be developed adjacent to the expressway or boulevard street.
2. Where reverse frontage is established, private driveways shall not have direct access to the expressway or boulevard street, and a 25-foot-wide non-access buffer zone on the side of the lot abutting the expressway or boulevard street shall be provided.

D. DRIVEWAY CONSOLIDATION ALONG EXPRESSWAY, BOULEVARD, AND THOROUGHFARE STREETS

While a lawfully-established access to an individual lot from an expressway, boulevard, or thoroughfare street created prior to **[insert the effective date of this Ordinance]** may remain, it is the intent of this Ordinance to consolidate or eliminate these driveways to help ensure public safety and to preserve the traffic-carrying capacity of the street. In order to encourage the beneficial removal of existing driveways or shared driveways serving two or more lots, the required side setbacks and any

perimeter landscaping buffers required between lots may be reduced or waived by the City Manager, subject to the following requirements:

1. NCDOT confirms the shared access can still achieve a satisfactory level of access control;
2. A cross-access easement between all parties sharing access is approved by the City Manager and recorded with the Henderson County Register of Deeds;
3. All Fire Code regulations are met;
4. Adequate utility and drainage easements are provided, if necessary; and
5. Minimum side setbacks or perimeter landscaping buffer requirements are reduced by the smallest amount necessary to accommodate the shared access.

SECTION 3.05. MONUMENTS⁴⁴

Monuments shall be included as part of any subdivision, and shall be configured in accordance with *The Standards of Practice for Land Surveying in North Carolina*, as adopted by the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, and the following:

- A. Prior to the approval of the final plat, permanent reference points shall have been established in accordance with the standards in this section.
- B. At least one corner of the subdivision shall be designated by course and distance (tie) from a readily discernible reference marker.
- C. If a corner is within 2,000 feet of a U.S. Geodetic Survey or NC Grid System coordinated monument, then this corner shall be marked with a monument so designated by computed X and Y coordinates which shall appear on the map with a statement identifying this monument to an accuracy of at least one to 10,000.
- D. When a monument is not available, the tie shall be made to some pertinent and readily recognizable landmark or identifiable point, physical object, or structure. However, if in the opinion of City Manager, a subdivision is of a small size, or if there is an existing tie within a reasonable distance of the subdivision, this shall not be required.
- E. Within each subdivision, at least two monuments designed and designated as control corners shall be installed. The surveyor shall employ additional monuments, if required.
- F. The location and type of all monuments used shall be indicated on the final plat.
- G. All monuments shall be constructed of #4 rebar surrounded by three-inch PVC pipe and filled with concrete.
- H. Each monument shall be set 24 inches in the ground unless this requirement is impractical because of unusual conditions.
- I. The allowable angular error of closure and the linear error of closure for surveys shall be in accordance with *Standards of Practice for Land Surveying* published by the State Board of Registration for Land Surveyors.

⁴⁴ This section replaces Section 505 of the current regulations.

SECTION 3.06. EASEMENTS⁴⁵

Easements for drainage or utilities may be required where necessary, and shall be provided in accordance with the following:

A. LOCATIONS

1. Easements shall center along or be adjacent to a common property line where practicable.
2. Redesign of the lot arrangements may be required to meet extreme conditions.
3. Easements for water and sewer service within a subdivision shall be extended to any lot line shared with vacant land unless the vacant land cannot be served by public water or sewer service due to topographic constraints, public ownership, or other limiting factors as determined under the sole discretion of the City Manager.

B. UTILITIES**1. POWER OR COMMUNICATIONS**

Where alleys are not provided, easements (of not less than ten feet in width) shall be provided adjacent to public rights-of-way or in such other locations as may be directed by the City Manager for poles, wires, or conduits for electrical utilities, natural gas service, or telephone services.

2. POTABLE WATER

Easements shall be provided for public potable water supply systems in locations as may be directed by the City Manager for water distribution lines, water meters, and access points.

3. SANITARY SEWER

Easements shall be provided for public sanitary sewer systems in locations as may be directed by the City Manager for sewer collection lines and access points.

4. DRAINAGE

Stormwater or drainage easements, if provided, shall be in accordance with the City-approved stormwater operation and maintenance agreement.

C. WIDTH

Easement widths for potable water and sanitary sewer lines shall be provided in accordance with **Table <>, Minimum Easement Width.**

TABLE <>: MINIMUM EASEMENT WIDTH

PIPE SIZE (INCHES) [1]	PIPE DEPTH (FEET)	PERMANENT EASEMENT WIDTH (FEET)	CONSTRUCTION EASEMENT WIDTH (FEET) [2]
Sanitary Sewer Mains			
8 - 10	10 or less	20	30
8 - 10	10 - 12.5	25	35
8 - 10	12.5 - 15	30	40
8 - 10	15 - 17.5	34	45
8 - 10	17.5 - 20	40	50
12 - 24	15 or less	30	40
12 - 24	15 - 17.5	35	45
12 - 24	17.5 - 20	40	50

⁴⁵ This section replaces Section 508 of the current regulations but does not include the buffer strip requirements since this is a landscaping standard.

ARTICLE 3: CONFIGURATION

Section 3.06 Easements

TABLE <>: MINIMUM EASEMENT WIDTH

PIPE SIZE (INCHES) [1]	PIPE DEPTH (FEET)	PERMANENT EASEMENT WIDTH (FEET)	CONSTRUCTION EASEMENT WIDTH (FEET) [2]
> 24	Any depth	[3]	[3]
Any size not listed here	> 20	[3]	[3]
Potable Water Mains			
8 - 10	10 or less	20	30
8 - 10	> 10	25	35
12 - 24	10 or less	30	35
12 - 24	> 10	35	40

NOTES:

[1] Nominal diameter.

[2] Temporary easement for construction only.

[3] As specified by City Manager.

D. EASEMENT UPSIZING

The City Manager may increase the minimum required easement widths for potable water sanitary sewer, drainage, or other utility services based on topographic conditions, environmental considerations, the size of the line, the required depth of the line, or the need to remain clear of other utilities.

E. MAINTENANCE

1. All easements for drainage or utilities shall be cleared of undergrowth, trees, and other obstructions prior to approval of the final plat unless the City Manager certifies in writing that such clearance is unnecessary.
2. Clearance is not required for easements that are provided for possible future use.
3. Easements for stormwater management facilities and stormwater drainage systems located outside the street right-of-way shall be maintained by an owner's association, and maintenance responsibility for these features shall be indicated on the final plat.

F. IDENTIFICATION

All easements shall be granted in favor of the City of Hendersonville, the State of North Carolina, the appropriate utility provider, an owner's association, as appropriate, and shall be shown and clearly labeled on the final plat.

SECTION 3.07. SUBDIVISION NAMES

The name of a proposed development shall not duplicate or be phonetically similar to an existing development name in the County unless the proposed development lies adjacent or in proximity to the existing development.

SECTION 3.08. CLUSTER MAILBOX UNITS

New residential subdivisions shall include cluster mailbox units in accordance with U.S. Postal Service guidelines and the following:

- A.** Wherever possible, cluster mailboxes shall be located in a centralized location, within an open space set-aside, served by pedestrian access and served by two or more off-street parking spaces.
- B.** In cases where the cluster mailboxes must be placed within a public right-of-way, the mailbox unit(s) shall be located and configured in accordance with the latest revision of the NCDOT policy guidance on the placement cluster box units (CBUs), including provision of a vehicular turnout.
- C.** Cluster mailbox units placed on a private street shall comply with NCDOT policy guidance on the placement of cluster box units (CBUs) on State-maintained streets.

SECTION 3.09. DEDICATION OF PUBLIC LAND**A. DEDICATION OF LAND FOR PUBLIC PARKS**

Subdivisions of land for 30 or more single-family residential lots (including detached and attached units) shall be required to dedicate a portion of the land, or pay a fee-in-lieu thereof, for public parkland, in accordance with the standards of this section.

1. DEDICATION AMOUNT

- a. Single-family residential subdivisions of 30 or more lots shall dedicate 500 square feet of land per residential lot to the City for its use in developing public parkland.
- b. No credit towards required parkland dedication is given for lands mandated for preservation by State or federal requirements.
- c. No more than 25 percent of the total dedication requirement may be met through dedication of water areas.

2. PROCEDURE FOR DEDICATION OR PAYMENT

- a. The developer shall identify land proposed for dedication on the ~~major subdivision preliminary plat~~, or propose payment of an in-lieu fee as part of the application for approval of a ~~major subdivision preliminary plat~~.
- b. The City shall review the proposed application and determine if it complies with the standards in **Section <>, Nature of Area to be Dedicated**, or **Section <>, Fee-In-Lieu**, as appropriate. The decision to accept dedication is up to the sole discretion of the City Council.
- c. Land shall be dedicated prior to recording the first final plat for the subdivision, or the payment-in-lieu shall be paid prior to recording the first final plat for the subdivision for which the payment-in-lieu is paid.

3. NATURE OF AREA TO BE DEDICATED

All lands proposed for dedication as ~~recreation and~~ park areas shall meet the following standards:

a. UNITY

The dedicated land shall be a single parcel of land, whether the subdivision is developed in phases or sections, except where it is determined by the City Manager that multiple parcels would better serve City residents.

b. USABILITY

Public parkland must be without significant topographic elevation changes, well-drained, usable land for a park, as determined by the City Manager. In cases where dedication includes an area of water, public access to all portions of a water feature shall be provided and maintained, regardless of water feature's size.

c. SHAPE

The dedicated land shall be of a shape that supports gathering and recreation activities.

d. LOCATION

- i. The dedicated parkland shall be located so it can reasonably serve the park needs of the residents of the subdivision and immediate area.
- ii. The City Council may require that the land dedicated be located on the periphery of the development in order to allow enlargement by combining the recreation and park area with adjacent development or park facilities, existing or planned.

e. ACCESS

- i. All dwelling units in the subdivision and residents in the immediate area shall have access to and from the parkland provided by means of streets and public walkways or trails.
- ii. Rights-of-way for this access shall be shown on the preliminary and final plats.
- iii. All dedicated lands shall have access by way of a street. Such access can be provided when the dedicated land is adjacent to existing or proposed public parkland with street access.

4. CREDIT FOR GREENWAYS

Land or easements dedicated to the City in accordance with Section <>, Greenways, shall be credited towards the standards in Section <>, Dedication Amount.

ARTICLE 4: INFRASTRUCTURE

SECTION 4.01. PURPOSE AND INTENT

The purpose of this section is to establish standards for the planning, installation, and operation of public infrastructure as part of the subdivision of land in the City's planning jurisdiction. More specifically, this section is intended to:

- A.** Provide for the orderly growth and development of the City;
- B.** Coordinate the provision of streets within and contiguous to proposed subdivisions with other existing or planned streets in the general area;
- C.** Provide for the adequate provision of public services and infrastructure;
- D.** Maintain conditions essential to the public's health, safety, and general welfare; and
- E.** Facilitate the further re-subdivision of larger tracts into smaller parcels of land, where appropriate.

SECTION 4.02. GENERAL REQUIREMENTS

A. REASONABLE RELATIONSHIP

All required improvements and rights-of-way (other than required reservations) in this article shall substantially benefit the development or bear a reasonable relationship to the need for public facilities attributable to the new development.

B. CONSISTENCY WITH ADJACENT DEVELOPMENT

Whenever it can reasonably be anticipated that utility facilities constructed in one development will be extended to serve other adjacent or nearby developments, the utility facilities (such as, water or sewer lines) shall be located and constructed in accordance with the standards in this section so that extensions can be made conveniently and without undue burden or expense or unnecessary duplication of service.

C. WITHIN SPECIAL FLOOD HAZARD AREAS

Placement of required infrastructure within a special flood hazard area shall only be in accordance with the applicable standards for flood damage prevention in the Flood Damage Prevention Ordinance.

D. AS-BUILT PLANS REQUIRED

1. Whenever a developer installs or causes to be installed any water, sewer, stormwater, or sidewalk, the developer shall, as soon as practicable after installation is complete, and before acceptance, furnish the City with an as-built plan prepared by a licensed professional that shows the exact location and configuration of the utility. Nothing shall limit the depiction of more than one type of utility on the same as-built plan sheet.
2. The as-built plan must be verified as accurate by the utility service provider. Compliance with this requirement shall be a condition of the continued validity of the permit authorizing the development.
3. As-built plans shall be prepared and verified prior to issuance of a certificate of occupancy, commencement of operation, approval of a final plat, or release of a performance guarantee, as appropriate.

E. MAINTENANCE REQUIRED

1. Required infrastructure installed or caused to be installed by a developer and intended for ownership or operation by another entity shall be maintained by the developer until such time as the infrastructure is accepted by the entity who will own or operate it.
2. All utility facilities shall be constructed in a manner as to minimize interference with pedestrian or vehicular traffic and to facilitate maintenance without undue damage to improvements or facilities located within the development.

F. DEDICATION AND ACCEPTANCE

1. STREETS AND ASSOCIATED FACILITIES

- a. The subdivider or developer shall install all streets in accordance with all NCDOT standards, the standards in this Ordinance, and any applicable State or federal requirements, as appropriate.
- b. Streets and their associated infrastructure shall remain under private ownership or be dedicated to the City or NCDOT, in accordance with all applicable requirements.

2. POTABLE WATER

- a. The subdivider or developer shall install all potable water supply lines and meters in accordance with the applicable standards in Chapter 52 of the City's Code of Ordinances and other State or federal requirements.
- b. Potable water supply lines, including water tanks, distribution lines, water mains, and laterals shall be dedicated to the City or other public entity providing potable water for maintenance and operation. Supply lines serving individual lots or uses beyond the water meter shall not be the responsibility of the City or another public entity providing potable water.
- c. All lots in new subdivisions subject to the standards in this Ordinance shall abut a potable water main line.
- d. In no instance shall a potable water service line serving an individual use extend across the lot line.

3. SANITARY SEWAGE SYSTEM

- a. In cases of development being served by a public sewage systems, the subdivider or developer shall install all sewer lines in accordance with the applicable standards in Chapter 52 of the City's Code of Ordinances and other State or federal requirements.
- b. All lots in new subdivisions subject to the standards in this Ordinance shall abut a sanitary sewer main line.
- c. Except for private centralized systems, sanitary sewage lines, pump stations, and treatment facilities shall be dedicated to the City for maintenance and operation.
- d. In no instance shall a sewer service line serving an individual use extend across the lot line.
- e. Sewer lines serving individual lots or uses prior to their connection to the central collection system shall not be the responsibility of the City.
- f. Centralized private sewage systems shall be offered for dedication to the City, who may choose to accept the system in the sole discretion of the City Council.

4. STORMWATER MANAGEMENT FACILITIES

- a. The subdivider or developer shall install all stormwater management facilities in accordance with the standards in Sections 24-131 through 24-163 of the City's Code of Ordinances, and any applicable State or federal requirements.
- b. The City shall not accept dedication of land occupied by a stormwater management facility or maintenance responsibilities, though the City may require posting of a performance guarantee for stormwater management facility maintenance in accordance with [Section <>, Stormwater Management](#).
- c. The City may require granting and recordation of an access and maintenance easement to allow the City or its designated representatives to access and maintain a stormwater management facility required by this Ordinance.

5. PUBLIC PARK LAND

- a. Land designated as public park land on a final plat shall be considered to be offered for dedication until such offer is accepted by the City. The offer may be accepted through conveyance of fee simple marketable title (unencumbered financially and environmentally) of the land to the City at the time of final plat recordation.
- b. Until an offer of dedication is accepted by the City, land offered for dedication may be used for open space purposes by the landowner or by the owners' association. Land offered for dedication shall not be used for any purpose inconsistent with the proposed public use.

SECTION 4.03. STREETS⁴⁶**A. GENERALLY****1. STREETS DISTINGUISHED**

All streets, roads, and alleys within the City's planning jurisdiction shall be designated as one of the following street types, based on maintenance responsibility:

- a. State-maintained, or NCDOT streets (this includes roadways in the federal highway system);
- b. City streets that are owned and operated by the City of Hendersonville; or
- c. Private streets that are owned and maintained by individuals or owner associations.

2. TYPES OF STREETS**a. PUBLIC STREETS**

Streets that are owned, operated, or maintained by the NCDOT, the City, or the federal government shall be considered as public streets.

b. PRIVATE STREETS

Streets that are owned, operated, or maintained by an individual or an owner's association shall be considered private streets.

3. STREET CLASSIFICATION

- a. All new and existing streets in the City's planning jurisdiction shall be identified in the City's adopted policy guidance as one of the following street classifications:

TABLE <>: STREET CLASSIFICATION

STREET TYPE	DESCRIPTION
Freeway	Freeways are the highest classification of streets and are designed and constructed with mobility and long-distance travel in mind. Access is controlled, intersections are grade-separated, driveways serving individual lots are prohibited, and roadways are designed for high-speed travel of 55 mph or greater. Roadways in this functional classification category connect the City to other destinations in the State and connect major activity centers in the City to one another. Freeways carry the highest traffic volumes.
Expressway	These streets provide a high degree of mobility both within the City's urban areas as well as through neighboring rural areas. Vehicles move at high-to-moderate speeds and four-way intersections are often signal-controlled. These streets include at-grade intersections with other streets typically spaced 2,000 feet apart, but driveways to individual lots are typically limited to right-in/right-out or grade separated left turns. The average number of vehicles trips can vary widely based on the urban or rural location of an expressway.
Boulevards	Boulevards connect major streets to one another and provide for vehicle trips of moderate length at medium speeds. The road is typically two or more lanes with a median with median breaks provided for U-turns. Full-movement driveways may be provided when alternative forms of access are not available.

⁴⁶ This section is proposed to replace the standards in Section 501 of the current regulations. These proposed draft standards do not include references to the NC Secondary Road System standards in favor of simply referencing NCDOT standards.

TABLE <>: STREET CLASSIFICATION

STREET TYPE	DESCRIPTION
Major Thoroughfare	Major thoroughfares provide a balance of mobility and access with moderate traffic volumes and low-to-medium speeds between 25 and 55 mph. Streets may be up to four lanes wide with no median and no requirements for access control. Access management may be provided in the form of continuous left turn lanes, shared driveways, full movement driveways are permitted on two-lane streets with a center turn lane. Cross-parcel connectivity between adjacent lots is strongly encouraged.
Minor Thoroughfare	Minor thoroughfares provide balanced mobility and access with moderate traffic volumes and lot-to-medium design speeds of up to 45 mph. Streets may have up to three lanes with no more than one lane per direction. Access management may be provided in the form of continuous left turn lanes, shared driveways, full movement driveways are permitted on two-lane streets with a center turn lane. Cross-parcel connectivity between adjacent lots is strongly encouraged.
Local	Local streets occupy the largest percentage of lane miles across all types of streets and primarily provide direct access to individual lots. Local streets are often configured to discourage through traffic, though local streets can also effectively disperse local traffic when configured as part of a highly connected network offering multiple routes.
Cul-de-Sac	A dead-end local street that terminates in a vehicular turnaround.
Alley	A secondary street that provides direct access to a limited number of individual lots or land uses. In most cases, access is provided to the side or rear of the lot served by the alley.

- b. Nothing shall prohibit a change in street classification based on traffic volumes or anticipated needs.
- c. In no instance shall a private street be classified as a freeway, expressway, boulevard, or thoroughfare street.

4. COMPLIANCE WITH POLICY GUIDANCE

a. ALL STREETS

Except where otherwise allowed in accordance with **Section <>, Street Access Exemptions**, all streets and rights-of-way within the City's planning jurisdiction shall be designed, constructed, and maintained in accordance with the following:

- i. Streets maintained by the State shall comply with the standards established for the particular classification of street in question by the NCDOT.
- ii. Streets dedicated to or maintained by the City shall comply with all applicable standards established by this Ordinance or the City's Code of Ordinances, whichever is higher or more restrictive.

b. ADDITIONAL STANDARDS FOR STATE-MAINTAINED STREETS

- i. All streets intended for dedication to the State shall have rights-of-way and construction meeting the standards contained in the *Subdivision Roads, Minimum Construction Standards Handbook*, as revised, published by the NCDOT.
- ii. The District Highway Engineer shall approve the plat with respect to road construction, road width, and right-of-way prior to recording. Without the approval, the plat cannot be recorded.

- iii. Once the development meets the minimum housing requirements for state road acceptance, the developer shall petition NCDOT for state road acceptance.
- iv. After inspection and upon receipt of outcome of the inspection, the developer shall have 12 months to turn over roads to NCDOT.

B. STREET DESIGN

1. DEDICATION AND CONSTRUCTION

- a. All lands associated with a new or modified street right-of-way shall be dedicated to the City or the State as a part of the development process in accordance with Section 136-66.10 of the North Carolina General Statutes.
- b. All streets shall be improved to the full width, cross section, and profile, including paving and drainage, as specified in the development approval, this Ordinance, the City's adopted policy guidance, State or federal law, and any other applicable provisions.
- c. The subdivider or developer shall be responsible for the construction and installation of all streets and infrastructure in accordance with the applicable development approval, NCDOT standards, the standards in this Ordinance, and any applicable State or federal requirements.
- d. No road construction or improvements shall commence until a plan showing the proposed roadway improvements and a construction plan is approved by the City Manager.

2. PRIVATE STREETS⁴⁷

a. NEW STREETS

- i. Except where otherwise allowed in accordance with Section <>, Street Access Exemptions, all streets constructed, extended, or modified after (*insert the effective date of this Ordinance*) shall be constructed, maintained, and operated in accordance with the standards for public streets.
- ii. Private streets shall not be constructed as part of development within the City's corporate limits.
- iii. Existing streets associated with land or subdivisions proposed for voluntary annexation shall meet applicable City requirements prior to or concurrent with annexation.

b. EXISTING PRIVATE STREETS

- i. Neither the City of Hendersonville or NCDOT shall be responsible for maintenance of private streets existing on or after (*insert the effective date of this Ordinance*).
- ii. The City shall not accept maintenance responsibility for any private streets that do not meet the City's standards for street configuration and construction.

3. GENERAL LAYOUT

- a. Streets shall be related appropriately to the topography and designed to facilitate the drainage and stormwater runoff.
- b. Street grades shall be governed by NCDOT requirements and shall conform as closely as practicable to the original topography.
- c. Half streets (such as streets of less than the full required right-of-way and pavement width) shall not be permitted, except where the streets, when combined with a similar street, developed previously or simultaneously, on property adjacent to the subdivision, creates or comprises a street that meets the right-of-way and pavement requirements of this Ordinance.
- d. When a development abuts or contains an existing or proposed freeway, expressway, or boulevard, the City Manager may require frontage streets, reverse frontage with landscape plantings, or other treatment as may be necessary for adequate protection of residential properties and to ensure separation of through and local traffic.

⁴⁷ These are new standards that prohibits private streets within the corporate limits, and requires private streets within the ETJ to be constructed to public street standards.

- e. Reserve strips or parcels controlling access to streets shall be prohibited, except where required as part of development on a double-frontage lot.

4. COMPLIANCE WITH TRANSPORTATION IMPACT ANALYSIS FINDINGS

In cases where new development is subject to a requirement to prepare a transportation impact analysis, all streets and street-related infrastructure shall comply with the findings of the analysis.

5. CONTINUATION AND COORDINATION OF NEW STREETS

- a. New streets or upgrades to existing streets resulting from new development shall comply with the location, classification, configuration, and operation requirements identified in the City's adopted policy guidance or NCDOT standards, as appropriate. For the purposes of this section, the City's adopted policy guidance shall include, but not be limited to the following:
 - i. The Comprehensive Plan;
 - ii. The Comprehensive Transportation Plan from the French Broad MPO, as amended; and
 - iii. The City's Standard Specifications and Details.
- b. Whenever a street within a new development continues an existing street that formerly terminated outside the development or it is expected that a new street will be continued beyond the development at some future time, the classification of the street will be based upon the street in its entirety, both within and outside of the development.
- c. The arrangement of streets in a development shall provide for the alignment and continuation of existing or proposed streets into adjoining lands in those cases in which the adjoining lands are undeveloped and deemed appropriate by the DRC for future development or in which the adjoining lands are developed and include opportunities for such connections.
- d. Street rights-of-way shall be extended to or along adjoining property boundaries such that a roadway connection or street stub shall be provided for development where practicable and feasible in each direction (north, south, east, and west) for development which abuts vacant lands.
- e. Boulevard and thoroughfare streets shall intersect with surrounding boulevard and thoroughfare streets at safe and convenient locations, as determined by the NCDOT and the City Manager.
- f. At all locations where streets terminate with no street connection, but a future connection is planned or accommodated, a sign shall be installed at the location with the words "FUTURE ROAD CONNECTION" to inform property owners.
- g. The final plat shall identify all stub streets and include a notation that all street stubs are intended for connection with future streets on adjoining undeveloped or underdeveloped lands.
- h. The use of residential strips of land in order to prevent the extension of proposed or existing streets or access thereto is prohibited.
- i. Where access to a subdivision site is by a street that does not meet City or State standards, that street shall be improved by the developer in order to meet current City or State standards, as appropriate.

6. CONNECTIVITY

Streets within new subdivisions shall be connected to one another to ensure emergency access and prevent traffic congestion in accordance with the following:

a. MINIMUM CONNECTIVITY INDEX SCORE REQUIRED

All development shall achieve an internal street connectivity score in accordance with **Table <>: Minimum Street Connectivity Score**.

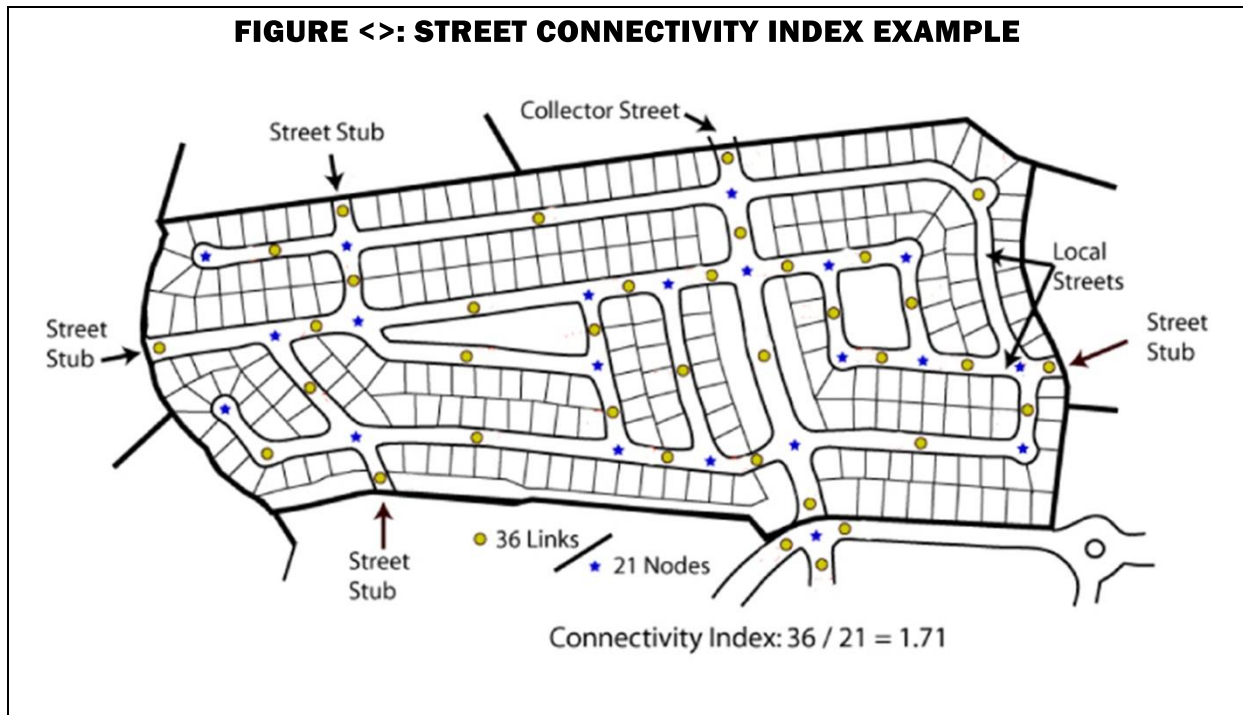
TABLE <>: MINIMUM STREET CONNECTIVITY SCORE	
ZONING DISTRICT WHERE DEVELOPMENT IS PROPOSED	MINIMUM REQUIRED STREET CONNECTIVITY INDEX SCORE

TABLE <>: MINIMUM STREET CONNECTIVITY SCORE

ZONING DISTRICT WHERE DEVELOPMENT IS PROPOSED	MINIMUM REQUIRED STREET CONNECTIVITY INDEX SCORE
R-15, R-20, and R-40	1.20
All Other Districts	1.40

b. CONNECTIVITY INDEX SCORE CALCULATION

- i. The connectivity index for a development is calculated by dividing its links by its nodes.
- ii. **Figure <>, Street Connectivity Index Example**, provides an example of how to calculate the connectivity index. Nodes (stars) exist at street intersections and cul-de-sac heads within the development. Links (circles) are stretches of road that connect nodes. Street stub-outs are considered as links, but temporary dead-end streets internal to a development or alleys are not counted as links. One link beyond every node that exists in the development and provides access to the street system outside the development shall be included in the index calculation. In the diagram, there are 36 links (circles) and 21 nodes (stars); therefore the connectivity index is 1.71 ($36/21 = 1.71$).

FIGURE <>: STREET CONNECTIVITY INDEX EXAMPLE**c. REDUCTION IN MINIMUM INDEX SCORE**

The minimum connectivity index score may be reduced if the owner/developer demonstrates it is not possible to achieve due to topographic conditions, natural features, existing road configurations, or adjacent existing development patterns. In these instances, internal street design shall achieve as high a connectivity index score as is reasonably practical.

C. STREET CONFIGURATION**1. STREET RIGHTS-OF-WAY**

- a. All new streets established in the City's jurisdiction after (*insert the effective date of this Ordinance*) shall include a minimum street right-of-way configured in accordance with **Table <>: Minimum Street Right-of-Way Requirements**.

TABLE <>: MINIMUM STREET RIGHT-OF-WAY REQUIREMENTS

TYPE OF STREET	CONFIGURATION	MINIMUM RIGHT-OF-WAY (FEET) [1] [2]
Expressway	8 lanes, raised median	160
	4 lanes, grass median	150
	6 lanes, raised median	150
	4 lanes, grass median	120
	4 lanes, raised median	110
Boulevard	8 lanes, raised median	160
	6 lanes, raised median	150
	4 lanes, grass median	120
	4 lanes, raised median	110
Major Thoroughfare	7 lanes	120
	5 lanes	100
	4 lanes	90
	3 lanes	80
Minor Thoroughfare	2 lanes, parking on each side	80
	2 lanes, parking on one side	70
	2 lanes, paved shoulder	70
Local	45	
Cul-de-Sac	45 [3]	
Alley	20	
NOTES:		
[1] The street right-of-way shall include curb and gutter, sidewalks, multi-use paths, bicycle lanes (where indicated), and associated utility strips.		
[2] Minimum rights-of-way may need to be wider to accommodate all forms of planned infrastructure in accordance with the City's adopted policy guidance.		
[3] Radius will be wider.		

- b. In cases where an existing street is depicted on the City's adopted policy guidance, but is not configured to the required width or cross section, the roadway shall be improved in accordance with the City's adopted policy guidance as part of the development.

2. STREET INTERSECTIONS

Street intersections shall be configured in accordance with the following standards:

- a. Not more than two streets shall intersect at any one point unless the City or NCDOT certifies that such an intersection can be constructed with no extraordinary danger to public safety.
- b. Streets shall intersect at right angles to the maximum extent practicable, and no two streets shall intersect at less than 60 degrees.
- c. Whenever possible, proposed intersections along one side of a street shall coincide with existing or proposed intersections on the opposite side of the street.
- d. Where a street center line offset (jog) occurs at an intersection, the distance between centerlines of the intersecting streets shall be not less than 125 feet.
- e. Except when no other alternative is practicable or legally possible, no two streets may intersect with any other street on the same side at a distance of less than 200 feet measured

- from centerline to centerline of the intersecting street. When the intersected street is an expressway or boulevard, the distance between intersecting streets shall be at least 1,000 feet, unless no other alternative is practicable.
- f. Property lines at street intersections shall be shown as a chord connecting points not less than 15 feet back from the street intersection along each street right-of-way line. Longer setbacks for chord connections for property lines may be required by the DRC as needed for public safety.
 - g. In commercial developments the City may assign traffic control to thru traffic within 500 feet of the point of access to the public right-of-way.

3. DEVELOPMENT ENTRY POINTS

- a. Unless exempted in accordance with subsection (d) below, all subdivisions shall provide streets from the development to the street system outside the development in accordance with **Table <>, Required Points of Access:**

TABLE <>: REQUIRED POINTS OF ACCESS [1]		
TYPE OF DEVELOPMENT	DEVELOPMENT SIZE	MINIMUM NUMBER OF VEHICULAR ACCESS POINTS [2]
Residential and Mixed-Use Development [3]	30 or fewer lots	1
	31 or more	2
Non-residential Development, other than Industrial [4]	Less than 5 acres or fewer than 10 lots	1
	More than 5 acres	2
NOTES: [1] Points of access shall refer to streets, not driveways. [2] Additional vehicular access points may be required where determined necessary by the City. [3] Multi-family or mixed-use developments of 100 dwelling units or more shall provide at least two points of access regardless of the number of lots. [4] The Fire Code may require a minimum of two points of access.		

- b. Nothing in this section shall limit the total number of streets providing access to the street system outside a development, or exempt a development from meeting all applicable street connectivity standards.
- c. Street stubs shall be credited as an access point when all ingress or egress to a development is only available from a single expressway, boulevard, or thoroughfare street.
- d. Development shall be exempted from these standards if it is demonstrated the following conditions apply:
 - i. A transportation impact analysis allows a deviation;
 - ii. No other street access points can be located due to existing lot configurations, absence of connecting streets, environmental, or topographic constraints;
 - iii. NCDOT will not authorize the required number of entrances; or
 - iv. Alternative access can be provided in a manner acceptable to the City that is supported by a transportation impact analysis.

4. TURN LANES

Turn lanes for either or both left and right turns into a commercial or residential subdivision driveway may be necessary for safety when there are high roadway and/or turning volumes or traffic, when the roadway speeds are moderate or high, or where needed due to limited sight distance. When provided, turn lanes shall be configured in accordance with the following:

- a. The final determination for the need, location, and design of a turn lane is the responsibility of the NCDOT, or the City, as appropriate.
- b. Left and right turn lanes shall be constructed in accordance with NCDOT standards and specifications.
- c. Right-turn lanes shall be constructed entirely within the frontage of the property being served, since an adjacent development might subsequently require an entrance that would otherwise encroach into the turn lane.
- d. The NCDOT may require a undivided street to be widened when the median has an inadequate width for a left turn lane.

5. DECELERATION LANES

- a. Any use capable of generating more than 60 trips per peak hour, as estimated by using NCDOT guidelines or the Institute of Traffic Engineers Trip Generation Manual, shall provide at least one deceleration lane per street front in accordance with NCDOT standards when the use is located along an expressway or boulevard street.
- b. Deviations from these requirements may only be authorized when the NCDOT indicates that a particular development design or technique can still achieve a satisfactory level of access control consistent with the objectives of this section.

6. CUL-DE-SAC AND DEAD-END STREETS

- a. No permanently designed cul-de-sac or other dead-end street shall be longer than 800 linear feet, except where land cannot otherwise be subdivided practicably in the opinion of the City Manager.
- b. In cases where one cul-de-sac is accessed from another cul-de-sac, the maximum length for all cul-de-sacs accessed from one another shall be 500 linear feet.
- c. All permanent cul-de-sacs or other dead-end streets shall be provided at the closed end with a turn-around configured in accordance with the City's minimum requirements.
- d. Dead-end streets intended to be continued at a later time shall be provided with a turn-around as required for a dead-end street when required by the City Manager.
- e. Only that portion to be required as right-of-way when the street is continued shall be dedicated and made a public street.

7. STREET GRADE

Street grades shall comply with the following standards:

- a. Streets and their associated gutters shall maintain grade levels in accordance with **Table <>, Maximum and Minimum Street Grade**.

TABLE <>: MAXIMUM AND MINIMUM STREET GRADE		
STREET TYPE	MAXIMUM GRADE	MINIMUM GRADE
Expressways and Boulevards	6%	Not less than 1%
Major and Minor Thoroughfares	8%	Not less than 1%
Local Streets	10%	

- b. Street and intersection approaches shall not have grades in excess of three percent for a distance of 100 feet from the intersection of center lines in all directions for all streets.
- c. All changes in grades for local streets and thoroughfares shall be connected by a vertical curve of a minimum length of 40 times the algebraic difference in the percents of grade ("K" value). Stop conditions shall have a minimum "K" value of 14 times the algebraic difference

- of the percents of grade. "K" values for arterials shall be per the AASHTO Geometric Design of Highways and Streets based on design speed.
- d. The City Manager may consider deviations from these standards based on topographic conditions or public safety concerns.

8. STREET CURVES

Street curves shall maintain the minimum radii established in **Table <>: Minimum Curve Radii and Tangents**:

TABLE <>: MINIMUM CURVE RADII AND TANGENTS		
STREET TYPE	MINIMUM RADII (FEET)	MINIMUM TANGENT DISTANCE BETWEEN REVERSE CURVES ON THE SAME STREET (FEET)
Expressways and Boulevards	600	150
Major and Minor Thoroughfares	400	100
Local Streets	150	0

9. STREET DRAINAGE

- a. All required drainage facilities associated with a street right-of-way shall be constructed prior to consideration of a final plat.
- b. Storm sewers, drains, and structures installed by the subdivider shall be installed of a size, type, and in locations as approved by the City Manager, or NCDOT, as appropriate.
- c. Street drainage facilities located outside the street right-of-way shall be maintained by the developer, the landowner, or an owners' association, and maintenance responsibility shall be noted on the final plat.
- d. The City shall not be responsible for any private or commonly-held subdivision drainage infrastructure connected to publically-maintained drainage facilities, streams, or other outlets having constant flow.

10. SIGHT DISTANCE TRIANGLES

a. SIGHT DISTANCE TRIANGLES ESTABLISHED

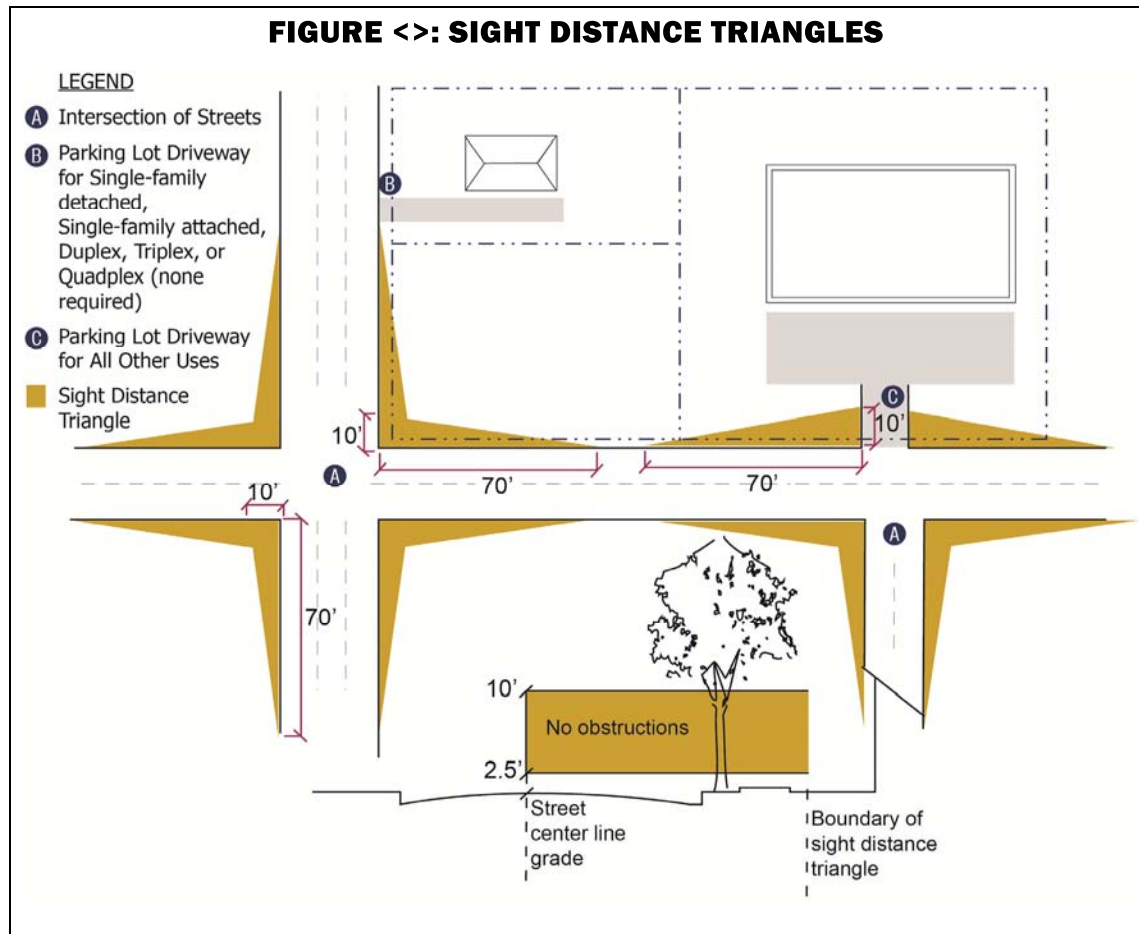
- i. Corner lots and lots with driveways, alleys, or other methods of ingress/egress to a street shall include sight distance triangles to ensure visibility for drivers and pedestrians moving through or in an intersection.
- ii. Required sight distance triangles shall be configured in accordance with **Table <>: Sight Distance Triangle Requirements**.
- iii. Land within a required sight distance triangle shall comply with the standards in **Section <>, Limitations on Obstructions within Required Sight Distance Triangles**.

TABLE <>: SIGHT DISTANCE TRIANGLE REQUIREMENTS		
TYPE OF STREET, INTERSECTION, OR DRIVEWAY		MINIMUM REQUIRED SIGHT DISTANCE TRIANGLE [1] [2] [3]
Intersections of Streets [4]		10/70
Driveways Serving Parking Lots		10/70
Driveways Serving Land Uses Without Parking Lots	Residential	None
	All Other Uses of Land	10/70 wherever possible
NOTES:		
[1] See Figure <>, Sight Distance Triangle , for the 10/70 configuration.		
[2] The NCDOT may require an alternate configuration.		

- [3] AASHTO requirements shall be applied to streets with curves.
 [4] Includes all streets, including public streets.

b. MEASUREMENT OF SIGHT DISTANCE TRIANGLE

Sight distance triangles shall be an area between a point at the edge of a street right-of-way located 70 linear feet from the intersection and a second point at the edge of the opposing street right-of-way located ten feet from the intersection (see Figure <>, Sight Distance Triangles).



c. LIMITATIONS ON OBSTRUCTIONS WITHIN REQUIRED SIGHT DISTANCE TRIANGLES

- i. No planting, structure, fence, wall, slope, embankment, parked vehicle, or other obstruction to vision between the heights of two-and-one-half (2½) feet and ten feet above the centerline grades of intersecting streets or accessways may be located within a required sight distance triangle.
- ii. No structure or object, regardless of its size, which obstructs visibility within a required sight distance triangle to the detriment of vehicular or pedestrian traffic shall be permitted.

D. STREET FEATURES

1. STREET NAMES⁴⁸

⁴⁸ These standards are proposed to replace the standards in Section 501.7 of the current regulations.

Street names and property address numbers shall be assigned by Henderson County.

2. TRAFFIC CONTROL SIGNS AND SIGNALS

- a. If deemed necessary by the City or by NCDOT, signals shall be installed by the developer at each street intersection within the subdivision and at each intersection of a subdivision street and a state-maintained road or access road.
- b. Signs and signals shall comply with NCDOT regulations with regards to size, shape, color, location and information contained thereon.
- c. At least two or more traffic-control signs shall be placed at each four-way street intersection and at least one at each "T" intersection.
- d. Signs and signals shall be installed free of visual obstruction.

3. STREET SIGNS⁴⁹

- a. The subdivider or developer shall install standard street signs as part of new development.
- b. In cases where decorative street signs are proposed, the developer or subdivider shall be responsible for the cost of the decorative street signs.
- c. Decorative street signs shall be approved as to form and content by the City prior to installation.
- d. Street name signs shall conform to City and NCDOT standards.
- e. At least two street name signs shall be placed at each four-way street intersection and at least one at each "T" intersection.
- f. Street signs shall be installed on the northwest and southeast corners of every four-way intersection.
- g. Signs shall be installed free of visual obstruction.

4. STREET LIGHTS

- a. Streets and sidewalks shall be illuminated with street lights or pedestrian lighting for security and safety, in accordance with City, utility company, and NCDOT standards.
- b. Areas adjacent to the vehicular entrances for non-residential, mixed-use, and multi-family residential developments shall be adequately lighted to ensure the safety of persons and the security of the buildings.

5. VEHICULAR GATES

- a. Gates to private property shall conform to City requirements for emergency access and be served by a vehicular turnaround.
- b. Proposed gates shall be reviewed and decided by the City Manager.
- c. In no instance shall a vehicular gate be placed within a public street right-of-way, but vehicular gates may be located within the right-of-way for a private street.

6. BRIDGES AND CULVERTS

- a. All bridges shall be designed by a professional engineer licensed by the State of North Carolina.
- b. All bridges and culverts shall be built to NCDOT standards.

7. DAMS

- a. Maintenance of a dam structure shall be the responsibility of the developer or an owners' association.
- b. The party responsible for dam maintenance shall provide a performance guarantee for the dam's maintenance in perpetuity in accordance with the standards in **Section <>, Performance Guarantees.**

⁴⁹ These standards are intended to replace the provisions in Section 501.7 of the current regulations.

SECTION 4.04. SIDEWALKS⁵⁰**A. LOCATION**

Sidewalks meeting the requirements in **Section <>, Configuration**, are required in accordance with the City's adopted policy guidance and the following standards:

1. SIDEWALKS PROVIDED ON BOTH SIDES OF THE STREET

- a. Sidewalks shall be provided along both sides of all expressway and boulevard streets, regardless of the zoning district where located.
- b. Sidewalks shall be provided along both sides of all streets except alleys in the area designated as downtown in the City's adopted policy guidance.

2. SIDEWALKS PROVIDED ON ONE SIDE OF THE STREET

- a. Sidewalks shall be required on one side of the street in the following locations:
 - i. Along local streets; and
 - ii. Along cul-de-sac, dead-end, and loop streets serving nine or more lots or nine or more dwelling units.
- b. When sidewalks are required on one side of the street, they shall generally be located on the side of the street to best continue existing sidewalk networks, if present.
- c. Sidewalks are not required around the head of a cul-de-sac street.
- d. Where there is no clear preferable street side for the placement of a sidewalk, the sidewalk shall be placed on the street side where it is least likely to have a negative impact on stormwater management, in the opinion of the City Manager.
- e. In cases where sidewalks are already found on both sides of a street serving immediately adjacent development, sidewalks shall be provided along both sides of the street serving new development.

3. NO SIDEWALKS REQUIRED

No sidewalks shall be required in the following locations:

- a. Along freeways and interstate highways maintained by NCDOT;
- b. Along alleys and accessways to individual lots not served by a street; and
- c. Along gravel streets.

B. CLUSTER MAILBOX UNITS

Sidewalk access shall be provided to all cluster mailbox installations that do not include vehicle parking spaces in accordance with **Section <>, Cluster Mailbox Units**.

C. RESPONSIBILITY FOR SIDEWALK PROVISION

- 1. The applicant or developer of a subdivision or site plan, as appropriate, shall be responsible for the provision of sidewalks required in accordance with this section.
- 2. In no instance shall a final plat be recorded or land conveyed within a subdivision subject to the standards in this section before the sidewalk is completed, a fee-in-lieu has been provided (see **Section <>, Fee-in-Lieu**), or a performance guarantee has been provided in accordance with **Section <>, Performance Guarantees**.

D. CONFIGURATION

- 1. Sidewalks shall be located within a designated street right-of-way or in another City-approved location.

⁵⁰ This section replaces Section 501.5 of the current regulations. The standards include new requirements for sidewalks on both sides of some streets and more guidance about when located on one side of the street. Smaller developments (e.g., minor subdivisions) are proposed for exemption from sidewalk standards, but may still be subject to greenway requirements. The new fee-in-lieu section allows some relief from sidewalk requirements. These standards differ somewhat from the current Zoning Ordinance provisions, but the City may wish to consider revising the Zoning Ordinance in accordance with these provisions.

2. Sidewalks shall be at least five feet wide, and may be required to match the width of a connecting sidewalk that exceeds five feet in width.
3. Sidewalks shall be constructed of concrete or other hard-surface materials, consistent with the established sidewalk patterns on adjacent developments.
4. Pedestrian street crossings shall be raised above the adjacent street level, be constructed of material other than asphalt, or be striped as a traffic-calming measure.
5. Sidewalks shall connect with existing sidewalks at property boundaries.
6. Whenever curb and gutter construction is used on public streets, wheelchair ramps for the disabled, configured in accordance with NCDOT standards, shall be provided at intersections and other major points of pedestrian flow in accordance with Section 136-44.14 of the North Carolina General Statutes.
7. New nonresidential, mixed-use, and multi-family development shall provide at least one on-site improved connection between the development and the adjacent public sidewalk system (planned or existing).

E. CREDIT FOR TRAILS

Hard-surfaced, ADA-accessible trails within open space set-asides shall be credited towards these sidewalk requirements when trails are available for use by the public and connect open space set-asides to schools, shopping areas, or other recreation areas.

SECTION 4.05. GREENWAYS⁵¹**A. REQUIRED GREENWAY DEDICATION AND CONSTRUCTION**

1. Whenever a tract of land included within any proposed minor subdivision, ~~preliminary plat~~major subdivision, or conservation subdivision includes any part of a greenway designated in the City's adopted policy guidance, the greenway shall be platted and dedicated to the City as a greenway easement.
2. Greenways shall be constructed as part of the required infrastructure serving a site or a subdivision.

B. GREENWAY CONFIGURATION

1. A greenway easement shall be at least 50 feet wide, to the maximum extent practicable.
2. The greenway shall include an all-weather surface trail of at least ten feet in width, paved with asphalt or concrete that meets ADA guidelines for accessibility.
3. The trail shall be edged with gravel shoulders of at least one foot in width on each side.
4. Positive drainage shall be established in areas adjacent to the paved trail.
5. In cases where a greenway crosses a street, the pedestrian crossing area shall be demarcated and supplemented with signage that alerts drivers to the presence of pedestrians.

C. DENSITY CREDITS

1. Land that is dedicated in fee-simple interest to and accepted by the City in accordance with this section shall be credited toward the donating parcel's lot or tract area for the purpose of calculating the density of development and area coverage calculations though no longer part of the parcel.
2. Dedicated land credits shall be transferred to subsequent holders if properly noted in transfer deeds.

D. OPEN SPACE SET-ASIDE CREDITS

Land associated with a greenway ~~dedication or~~ easement shall be credited towards any open space set-aside requirements.

E. PARK LAND DEDICATION CREDITS

~~Land associated with a greenway dedication or easement shall be credited towards any requirements in Section <>, Dedication of Land for Public Parks.~~

~~E.F.~~ PAYMENT IN-LIEU OF PROVIDING GREENWAYS

Provision for payment of a fee-in-lieu of providing a greenway shall be in accordance with ~~Section <>, Fee-in-Lieu.~~

⁵¹ This is a new section proposed for the City's consideration. One precursor for implementation of this section is adopted policy guidance that specifies the location of greenways relative to lot lines. It is very difficult to apply greenway requirements without a map that shows their planned locations. The ability to pay an in-lieu fee softens this difficulty somewhat, but having greenway alignments mapped is vital.

SECTION 4.06. POTABLE WATER⁵²

All new development shall comply with the City's standards for potable water in accordance with Chapter 52 of the City's Code of Ordinances, the City's Standard Specifications and Details, and the following:

A. WATER SUPPLY SYSTEM REQUIRED

1. Every lot within a subdivision shall be served by a means of a water supply that is adequate to accommodate the reasonable needs of the use or subdivision lot(s).
2. All materials and pipes shall meet or exceed the requirements established by State law or City requirements for the potable water system.
3. The City may, before issuing any approval under this Ordinance, make the investigation and require the developer to submit the information as appears reasonably necessary to ensure that the developer or his or her successor will be able to comply with the water supply system requirements of this Ordinance.

B. CONNECTION TO CITY WATER SUPPLY SYSTEM

Except where exempted by this Ordinance, all new development shall connect to the public potable water supply system.

C. DEDICATION AND ACCEPTANCE

1. The subdivider or developer shall install all potable water supply lines and service connections in accordance with the standards in this Ordinance, all applicable City requirements, and other State or federal requirements.
2. The developer shall provide all the necessary pipes and accessories for installation of the required potable water lines.
3. Potable water supply lines, including water tanks, distribution lines, water mains, pump stations, valves, hydrants, laterals, and other appurtenances shall be dedicated to the City for maintenance and operation.
4. Supply lines serving individual lots or uses beyond the water meter shall not be the responsibility of the City.

D. OVERSIZING OF WATER SUPPLY SYSTEM-RELATED IMPROVEMENTS

1. The water supply system where the subdivision is being developed may require installation of certain oversized facilities, such as water mains in excess of eight inches in diameter, when it is in the interest of future development.
2. When oversizing is required, the public water system operating where the subdivision is located shall pay for that portion of the improvement that exceeds the standards set forth in this Ordinance.
3. When oversizing is required, the developer may enter into a development agreement with the City for reimbursement of the cost of the oversize lines.

⁵² This section replaces Section 502 (as it pertains to potable water systems). These standards require connection to the water system for all new developments.

SECTION 4.07. SANITARY SEWER⁵³

All new development shall comply with the City's standards for wastewater disposal in accordance with Chapter 52 of the City's Code of Ordinances, the City's Standard Specifications and Details, and the following:

A. SEWAGE SYSTEM REQUIRED

1. Every lot within a subdivision intended to be developed shall be served by a sewage disposal system that is adequate to accommodate the reasonable needs of the use or subdivision lot and that complies with all applicable City and State requirements.
2. All materials and pipes shall meet or exceed the requirements established by State law or City requirements for the sanitary sewer system.
3. The City may, before issuing any approval under this Ordinance, make the investigation and require the developer to submit the information as appears reasonably necessary to ensure that the developer or his or her successor will be able to comply with the sanitary sewer system requirements of this Ordinance.
4. No sewage treatment system that discharges into surface waters shall be allowed.

B. CONNECTION TO PUBLIC SEWER

Except where exempted by this Ordinance, all new development shall connect to the public sanitary sewer system.

C. DEDICATION AND ACCEPTANCE

1. In cases of development being served by the public sewage system, the subdivider or developer shall install all sewer lines in accordance with the standards in this Ordinance, all applicable City requirements, and other State or federal requirements.
2. The developer shall provide all the necessary pipes and accessories for the installation of the required sanitary sewer lines.
3. Sanitary sewage lines, including treatment facilities, pump stations, force mains, and laterals shall be dedicated to the City for maintenance and operation.
4. Service lines serving individual lots or uses outside of a right-of-way or sewer easement shall not be the responsibility of the City.

⁵³ This section replaces Section 502 (as it pertains to sewer systems). These standards require connection to the sewer system for all new developments.

SECTION 4.08. FIRE PROTECTION⁵⁴

All new development shall comply with the City's adopted Fire Code and related appendices, the City's Standard Specifications and Details, as well as the following:

A. FIRE HYDRANTS

1. Every subdivision that is served by a public water system with at least six-inch lines shall include a system of fire hydrants within the development.
2. Fire hydrants must be located so that not more than 400 linear feet, measured along the centerline of the street right-of-way, separates a property within the development and a fire hydrant. However, the City may require a deviation from the standards in this section if a different configuration is warranted.
3. Local fire officials shall determine the precise location of all fire hydrants.
4. Fire hydrants shall be placed six feet behind the curb line of publicly dedicated streets that have curb and gutter and placed within ten feet of the edge of a public street without curb and gutter.
5. The City shall, after consultation with local fire officials, determine the design standards of all hydrants based on fire flow needs, which shall maintain a minimum flow rate of 1,000 gallons-per-minute, and 20 psi, or shall be supplemented with a pump or increased diameter pipe sizes.
6. Additional lots subdivided from the same parent parcel/tract of land shall comply with these fire hydrant standards.

~~B. DRY HYDRANTS~~

~~In cases where fire hydrants are required by Section (A) above but the public water supply is insufficient to provide adequate water flow for firefighting, dry hydrants shall be required.~~

⁵⁴ This section replaces Section 502.4 from the current regulations, but requires provision of fire hydrants.

ARTICLE 5: ENVIRONMENT

SECTION 5.01. STORMWATER MANAGEMENT⁵⁵

All new development shall comply with the standards in Sections 24-131 through 24-163 of the City's Code of Ordinances, as well as the following:

A. PURPOSE AND INTENT

These stormwater management standards are proposed to ensure new and existing development is configured to retain and slowly release stormwater to help promote ground water quality and avoid nuisance flooding on surrounding lands. These standards are intended to:

1. Establish basic requirements for stormwater management for all uses in the City's planning jurisdiction; and
2. Identify the types of development required to file a stormwater management plan to control stormwater in accordance with this section.

B. APPLICABILITY

1. STORMWATER MANAGEMENT REQUIRED

The stormwater management standards in this section shall apply to all development that disturbs one acre of land area or more.

2. STORMWATER MANAGEMENT PLAN REQUIRED

Development subject to these standards shall comply with the following:

- a. Stormwater management plans shall be prepared by a licensed professional authorized by the State to prepare such documents.
- b. Stormwater management plans shall be prepared in accordance with Article 3, the Stormwater Ordinance, of the City's Code of Ordinances.

⁵⁵ This section is proposed to replace Section 503 in the current regulations.

SECTION 5.02. SEDIMENTATION AND EROSION CONTROL⁵⁶

All new development shall comply with the standards in the Henderson County Soil Erosion and Sedimentation Control Ordinance and the following:

A. EROSION AND SEDIMENTATION CONTROL PLAN REQUIRED

Any development subject to a minor subdivision, conservation subdivision, ~~preliminary plat~~, ~~major subdivision~~, or final plat that requires land disturbing activity shall require prior approval of an erosion and sedimentation control plan by Henderson County in accordance with Section 113A-57(4) of the North Carolina General Statutes, unless exempted by this section.

B. EXEMPTIONS

Section <>, Erosion and Sedimentation Control Plan Required, shall not apply in cases where the Henderson County or the State Sedimentation Control Commission has certified to the City that:

1. An erosion and sedimentation control plan for the associated project has already been submitted to and approved by the County or the State Sedimentation Control Commission; or
2. The County or the State Sedimentation Control Commission has examined the preliminary plans for the development and it reasonably appears that an erosion and sedimentation control plan can be approved upon submission by the developer of more detailed construction or design drawings. However, in this case, construction of the development may not begin (and no building permits may be issued) until the County or the Commission approves the erosion and sedimentation control plan.

C. TIMING OF REVIEW

An applicant for development subject to this section shall submit proof of an approved erosion and sedimentation control plan prior to issuance of a building permit or final plat, as appropriate.

⁵⁶ This section carries forward the standards in Section 504 of the current regulations. This is sufficient unless the City has implemented its own sediment control regulations. If this is the case, this section needs to be revised to cross reference those standards.

SECTION 5.03. STEEP SLOPES⁵⁷**A. PURPOSE**

These standards establish additional requirements for subdivision and development of lands that include steep slopes, ridgelines, and hillsides that are visible from the public realm as necessary to protect the health, safety, and welfare of the public. More specifically, these standards are intended to:

1. Prevent or reduce the possibility of accelerated erosion on lands with significant slopes;
2. Reduce the risk of landslide or subsidence resulting from inappropriate construction techniques or development patterns in areas with steep slopes; and
3. Protect the scenic character of hillsides and ridgelines visible from the public realm.

B. APPLICABILITY

The standards in this section shall apply to minor subdivisions, conservation subdivisions, and preliminary plat major subdivisions located on the following:

1. AVERAGE SLOPE

Lands with an average slope of 15.1 percent or more; and

2. LAND AT ELEVATION

Lands with a pre-construction elevation of 2,600 feet above mean sea level or more regardless of the average slope of the land.

C. EXEMPTION

The standards in this section are not applied to the following:

1. Developments where 10 percent or less of the total development size includes areas of steep slopes (lands with an average slope of 10 percent or more); and
2. Ridge tops or hill tops over 2,600 feet above mean sea level that are not visible from the public realm, or that are comprised solely of public park land.

D. STANDARDS**1. MINIMUM LOT AREA AND COVERAGE**

- a. Regardless of the zoning district where located, lots located in lands subject to these standards shall maintain minimum lot sizes and maximum lot coverages in accordance with Table <>, Steep Slope Lot Standards.

TABLE <>: STEEP SLOPE LOT STANDARDS

AVERAGE SLOPE OF LOT	MINIMUM LOT SIZE	MAXIMUM LOT COVERAGE BY IMPERVIOUS SURFACE[%]
15.1% - 25%	1.3 times the minimum lot size of the zoning district where located	25
More than 25%	1.5 times the minimum lot size of the zoning district where located	20

- b. Visual examples of slope are provided in Figure <>, Slope Examples.

⁵⁷ This is a new section that seeks to limit development in areas with slopes over 15% and bar development in areas where slopes are 35% or more. The standards also limit development at elevations above 2,600 feet above mean sea level as a means of protecting scenic views of hills and ridges.

FIGURE <>: SLOPE EXAMPLES



2. DEVELOPMENT PROHIBITED

- a. Except for public utilities and telecommunications equipment, permanent structures, including driveways, streets, and utilities are prohibited on ~~lands-lots~~ with average slopes of 35 percent or more. Grading of lots is permitted subject to Section <>, Sedimentation and Erosion Control.
- b. Nothing shall limit the ability to credit land with average slopes of 35 percent or more towards the gross residential density of the land.
- ~~c. Unless approved in accordance with Section <>, Subdivision Variance, new development consisting of above-grade buildings or structures proposed at or above an elevation of 2,600 feet above mean sea level shall be prohibited.~~

SECTION 5.04. OPEN SPACE STANDARDS

New development shall provide common open space in accordance with Section 6-16, Common Open Space Standards, in the City's Zoning Ordinance.

ARTICLE 6: OWNER ASSOCIATIONS⁵⁸

SECTION 6.01. PURPOSE

The purpose of this section is to set out the requirements for establishment of a homeowners' or property owners' association (hereinafter "association") that shall be responsible for the long-term maintenance of common areas, common features, and private infrastructure in a subdivision. This section also sets out the requirements associated with transfer of subdivision control and maintenance responsibility from the subdivider to the association.

SECTION 6.02. APPLICABILITY

- A.** The standards in this section shall apply to subdivisions with open space set-aside(s), lands held under common ownership, or shared responsibility for common infrastructure including, but not limited to streets or stormwater management facilities.
- B.** Establishment of an owners' association shall not be required for minor subdivisions (see Section <>, Minor Subdivision), or expedited subdivisions (see Section <>, Expedited Subdivision), but the responsible party for any private infrastructure shall be identified in the subdivision approval.

SECTION 6.03. CREATION REQUIRED

- A.** A homeowners' or property owners' association shall be established in areas that have private common open space or shared private infrastructure. Associations are required to accept ownership and maintenance responsibility of all open space set-aside(s), shared infrastructure, or common areas within a development.
- B.** Associations are also required in order to fulfill the requirements of Chapter 47C (the "Condominium Act") of the North Carolina General Statutes, or the requirements of Chapter 47F (the "Planned Community Act") of the North Carolina General Statutes.
- C.** The association shall be in legal existence prior to the conveyance, lease-option, or other long-term transfer of control of any unit or lot in the development, though maintenance responsibility shall only transfer from the developer to the association in accordance with Section <>, Transfer of Maintenance Responsibility.

SECTION 6.04. RESPONSIBILITIES OF ASSOCIATION

Upon transfer of maintenance responsibility, the association shall be responsible for:

- A.** Liability insurance and payment of premiums for liability insurance and local taxes;
- B.** Maintenance of all common elements including, but not limited to, stormwater management facilities, private utilities, private accessways, private sidewalks and trails, private streetlights, and private common recreation facilities shown on the preliminary and final plats;
- C.** Maintenance of public streets until such time as NCDOT or the City agrees to accept the responsibility for street maintenance, as appropriate;
- D.** Maintenance of an escrow account intended for the maintenance and repair of community facilities; and
- E.** Payment of assessments for public and private improvements made to or for the benefit of the common elements.

⁵⁸ This is a new section proposed for the City's consideration. It is intended to ensure that an owner's association is in place, functioning, and has sufficient resources for maintaining private common lands and infrastructure. The City is not responsible for enforcing covenants and deed restrictions, but does reserve the right to inspect them. This system may not stop neighborhoods from asking the City to take over private infrastructure, but it should help owners associations to better manage their own resources. These standards do not need to be included with the rest of the subdivision ordinance for the ordinance to function as intended; these standards are proposed for consideration in case the City has had problems with owner association solvency in the past.

SECTION 6.05. PROCEDURE FOR ASSOCIATION ESTABLISHMENT

- A.** Documents for the creation of the association shall be submitted to the City for review and approval prior to approval of a minor subdivision (see **Section <>, Minor Subdivision**), or final plat (see **Section <>, Final Plat**), as appropriate. Documentation shall include, but not be limited to the information in **Section <>, Documentation Requirements**.
- B.** The association shall be established by the subdivider prior to the sale of the first lot in the subdivision.
- C.** The association documents shall establish that the subdivider shall maintain the common area, common facilities, and infrastructure until at least 75 percent of the lots are sold; and
- D.** Responsibility for maintaining the subdivision's common areas, common facilities, and private infrastructure shall be transferred in accordance with the standards in **Section <>, Transfer of Maintenance Responsibility**.

SECTION 6.06. DOCUMENTATION REQUIREMENTS

- A.** The association documents submitted to the City for review and approval prior to formation shall include, but not be limited to, the following:
 - 1.** A declaration of all restrictive covenants and conditions;
 - 2.** A declaration of all deed restrictions;
 - 3.** A declaration that the association is responsible for liability insurance and all applicable taxes;
 - 4.** A declaration of common ownership and maintenance responsibilities of all on-site improvements not dedicated to a local or state agency, including but not limited to streets, street signs, drainage systems, wastewater systems, open space set-aside areas, recreational facilities, and private infrastructure;
 - 5.** A description of the structural organization and operating procedures of the association;
 - 6.** Association by-laws;
 - 7.** A legal description of all open space set-asides and other lands owned in common;
 - 8.** Provisions establishing the legal authority of the association to maintain control over all common areas, common features, and private infrastructure in the subdivision, following transfer of control by the subdivider;
 - 9.** Provisions authorizing the association to compel contributions from owners in the development to cover their proportionate share of maintenance costs associated with common areas, common features, and private infrastructure;
 - 10.** Provisions authorizing the association to increase the amount of mandatory fees or assessments, when necessary, for the continued maintenance of common areas, common features, or private infrastructure;
 - 11.** Provisions authorizing the association to convert any member's unpaid assessments into a lien on the real property; and
 - 12.** Evidence related to the establishment of a reserve fund to support the continued maintenance and upkeep of common areas, common features, and private infrastructure.
- B.** Following approval of the required documentation by the City, the subdivider shall record all required documentation with the Henderson County Register of Deeds.

SECTION 6.07. MEMBERSHIP REQUIREMENTS

- A.** Following establishment of the association by the subdivider, membership in the association shall be automatic and mandatory for all purchasers of land within the subdivision and their successors in title.
- B.** All members of an association shall be responsible for contributions to the association's reserve fund to cover their proportionate share of maintenance costs associated with common areas, common features, and private infrastructure.

SECTION 6.08. TRANSFER OF MAINTENANCE RESPONSIBILITY

- A.** The subdivider shall be responsible for maintenance of all common areas, common features, and private infrastructure until maintenance responsibility is transferred to the association in accordance with the standards in this subsection.
- B.** Maintenance responsibility shall not be transferred from the subdivider to the association until all of the following occur:
- 1.** At least 75 percent of the total number of lots in the subdivision are sold; and
 - 2.** The subdivider commissions a report prepared by a licensed professional indicating that all common areas, common features, and infrastructure elements comply with the minimum standards in this Ordinance and the City Code of Ordinances. The report shall also include verification of the reserve fund balance in accordance with the standards in this section; and
 - 3.** The City Manager reviews and approves the report prepared by the licensed professional; and
 - 4.** A reserve fund dedicated to the continued maintenance and upkeep of common areas, common features, and private infrastructure is established with a banking institution acceptable to the City in the name of the association that contains a minimum balance that includes the following:
 - a.** Except for sidewalks and street trees, ten percent of the construction costs of common features and private infrastructure;
 - b.** Liability insurance and taxes for two years; and
 - c.** Facilities, stormwater, and landscaping maintenance costs for two years.
 - 5.** In the event the association has not collected sufficient assessment funds from the lot owners in the subdivision to meet the minimum balance requirements of the reserve fund, the subdivider shall be responsible for the difference needed to meet the minimum balance requirements.
- C.** The subdivider shall retain maintenance responsibility of all private streets until at least 75 percent of the lots are sold.
- D.** Applications to cede maintenance responsibility to the association for common areas, common features, or private infrastructure prior to conveyance of 75 percent of the lots in the subdivision may be reviewed by the City Manager. The City Manager, at the request of the subdivider, may waive the timing and reserve fund requirements upon a finding that the association has sufficient financial capacity to assume maintenance responsibility for common areas, common facilities, and private infrastructure.

SECTION 6.09. FAILURE TO MAINTAIN IS A VIOLATION

Failure to maintain common areas, common features, or infrastructure is a violation of this Ordinance and is subject to the penalties and remedies in Article 7, Enforcement.

ARTICLE 7: ENFORCEMENT⁵⁹

SECTION 7.01. PURPOSE

This section establishes procedures through which the City seeks to ensure compliance with the provisions of this Ordinance and obtain corrections for Ordinance violations. It also sets forth the remedies and penalties that apply to violations of this Ordinance. The provisions of this section are intended to encourage the voluntary correction of violations, where possible.

SECTION 7.02. COMPLIANCE REQUIRED

Compliance with all the procedures, standards, and other provisions of this Ordinance is required by all persons subdividing or occupying land in the City's planning jurisdiction.

SECTION 7.03. STATUTE OF LIMITATIONS

Enforcement of violations of this Ordinance shall be in accordance with Section 1-49(3) and Section 1-51(5) of the North Carolina General Statutes.

SECTION 7.04. VIOLATIONS

Any of the following shall be a violation of this Ordinance and shall be subject to the remedies and penalties provided by this Ordinance and by State law:

A. SUBDIVIDE IN VIOLATION

Subdividing land in violation of this Ordinance, or transferring land by reference to a plat or map showing a subdivision of land before the plat or map has been properly approved under this Ordinance and recorded in the office of the Henderson County Register of Deeds;

B. DEVELOPMENT WITHOUT AUTHORIZATION

Engaging in any construction, land disturbance, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this Ordinance without all required plats, permits, certificates, or other forms of authorization as set forth in this Ordinance;

C. VIOLATION BY ACT OR OMISSION

Violating, by act or omission, any term, variance, adjustment, condition, or qualification placed upon any required plat, permit, certificate, or other form of authorization upon land or improvements thereon;

D. VIOLATION OF ENVIRONMENTAL REGULATIONS

Failing to follow or violating the rules or regulations of Article 5, Environment, or any related environmental provision of the Zoning Ordinance or the City Code of Ordinances.

SECTION 7.05. RESPONSIBLE PERSONS

A. GENERAL

The landowner, tenant, or other occupant of any land or structure and an architect, engineer, builder, contractor, agent, or any other person who participates in, assists, directs, creates, or maintains a situation that constitutes a violation of this Ordinance may be held responsible for the violation and is subject to the remedies and penalties set forth in this Ordinance.

B. FAILURE BY CITY DOES NOT RELIEVE INDIVIDUAL

Failure of a City official charged with enforcement responsibility to observe or recognize conditions which violate the intent and purpose of this section of the Ordinance, or to deny the issuance of a development permit, shall not relieve the landowner from responsibility for the condition or damages

⁵⁹ This section is proposed to replace Article 7 of the current regulations. It goes into much greater detail on what constitutes a violation, the City's procedure for addressing violation and remedies.

that may result and shall not result in the City, its officers, or agents being responsible for conditions or damages.

SECTION 7.06. ENFORCEMENT RESPONSIBILITIES

The City Manager shall have responsibility for enforcement of this Ordinance in accordance with the following:

A. INVESTIGATIONS

The City Manager shall have the power to conduct such investigation as may be deemed necessary to carry out their duties as prescribed in this Ordinance.

B. INSPECTIONS

1. The City Manager has the right, upon receipt of permission from a responsible person, to enter on any premises within the jurisdiction at any reasonable hour for the purpose of inspecting locations subject to any complaints or alleged violations, or determination of compliance or other enforcement action of this Ordinance.
2. If the City Manager cannot obtain permission to enter from a responsible person, the City shall obtain an administrative search warrant prior to entering the property.

C. SUPPORTING DOCUMENTATION

The City Manager or a designee shall have the power to compel a person responsible for an alleged violation to provide written statements, certificates, certifications, or reports relating to complaints or alleged violations of this Ordinance.

SECTION 7.07. ENFORCEMENT PROCEDURE

When the City Manager finds a violation of this Ordinance, they shall notify the responsible person(s) of the violation in accordance with the following:

A. WRITTEN NOTICE OF VIOLATION

A written notice of violation shall be prepared and shall include all of following:

1. VIOLATION EXISTS

That the land or activity is in violation of this Ordinance;

2. NATURE OF THE VIOLATION

The nature of the violation, and citation of the section(s) of this Ordinance violated;

3. REMEDY

The measures necessary to remedy the violation;

4. ALLOWABLE TIME PERIOD

The time period in which the violation must be corrected;

5. PENALTIES THAT MAY BE ASSESSED

That penalties or remedies may be assessed; and

6. APPEAL

That the party cited has the right to appeal the notice in accordance with **Section <>, Appeal**.

B. DELIVERY OF WRITTEN NOTICE

Written notice of violation shall be provided to the landowner, occupant, or any other responsible person by any of the following means:

1. Certified mail;
2. Registered mail to their last known address;
3. Hand delivery; or
4. Posting notice conspicuously on the property.

C. REMEDY UPON NOTICE

Upon delivery of a written notice of a violation, the landowner or any other responsible person shall remedy the violation within the allowable time period.

D. FAILURE TO COMPLY WITH ORDER

If the landowner, occupant, or any other responsible person fails to comply with a notice of violation from which no appeal has been taken, or a final decision by the BOA following an appeal, the landowner or occupant shall be subject to such remedies and penalties as may be provided for by State law or **Section <>, Remedies**.

E. EACH DAY A SEPARATE VIOLATION

Each day a violations continues following notice or failure to comply is considered a separate and distinct offense.

SECTION 7.08. REMEDIES

A. CIVIL PENALTIES

Any responsible person who violates any provision of this Ordinance shall be subject to the assessment of a civil penalty of \$500.00 per day under the procedures provided in **Section <>, Assessment of Civil Penalties**.

B. DENIAL OF PLAT OR CERTIFICATE

The City Manager may withhold or deny a permit, certificate, or other authorization for the same land, subdivision, building, structure, sign, use, or development activity in which there is an uncorrected violation of a provision of this Ordinance, or of a condition or qualification of a permit, certificate, or other authorization previously granted.

C. STOP WORK ORDERS**1. GENERAL**

Whenever the City Manager determines that a person is engaged in doing work that constitutes, creates, or results in a violation of this Ordinance and that irreparable injury will occur if the violation is not terminated immediately, the City Manager may order the specific part of the work that constitutes, creates, or results in a violation of this Ordinance to be immediately stopped.

2. ORDER IN WRITING

The stop work order shall be in writing and directed to the landowner, and the occupant or person doing the work. The stop work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed.

3. APPEAL

Any person aggrieved by the issuance of a stop work order may appeal the issuance of the order in accordance with **Section <>, Appeal**. An appeal shall not stay the stop work order unless the BOA fails to hear the appeal within 30 days of receipt of the notice of appeal. If the BOA fails to hear the appeal within 30 days, the stop work order shall be stayed until the BOA acts on the appeal.

4. COMPLIANCE REQUIRED

Neither the responsible person nor a landowner upon whom a stop work order is served shall continue with work in violation of the stop work order while it remains in effect, unless the order is stayed in accordance with subsection (3) above.

D. REVOCATION OF PERMITS

1. The City Manager may revoke and require the return of a permit by notifying the permit holder in writing, stating the reason for the revocation.
2. Permits or certificates may be revoked, in accordance with Section 160A-422 of the North Carolina General Statutes, for any of the following:
 - a. Any substantial departure from the approved application, plans, or specifications;
 - b. Refusal or failure to comply with the requirements of State or local laws; or

- c. For making false statements or misrepresentations in securing the permit, certificate, or approval.
- 3. Any permit or certificate mistakenly issued in violation of an applicable State or City law may also be revoked.

E. CRIMINAL PENALTIES

1. VIOLATION OF EROSION AND SEDIMENTATION CONTROL

Any person who knowingly or willfully violates any soil erosion and sedimentation control provision of this Ordinance, or rule or order adopted or issued pursuant to the soil erosion and sedimentation control provisions, or who knowingly or willfully initiates or continues a land-disturbing activity for which a soil erosion and sedimentation control plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars (\$5,000) per day up to a maximum amount of twenty-five thousand dollars (\$25,000) in accordance with Section 113A-64 of the North Carolina General Statutes.

2. ALL OTHER VIOLATIONS

Any violation other than a violation of erosion and sedimentation control rules of this Ordinance may be enforced as a Class 3 misdemeanor as provided for by Sections 14-4 and 160A-175 of the North Carolina General Statutes, subject to a maximum fine of \$500 per day.

F. INJUNCTIVE OR OTHER EQUITABLE RELIEF

The City may apply to a court of law for any appropriate equitable remedy to enforce the provisions of this Ordinance. The fact that other remedies are provided under general law or this Ordinance shall not be used by a violator as a defense to the City's application for equitable relief.

1. ACTION BY CITY COUNCIL

Whenever the City Council has reasonable cause to believe that any person is violating or threatening to violate this Ordinance, or any rule or order adopted or issued pursuant to this Ordinance, or any term, condition, or provision of an subdivision plat, or soil erosion and sedimentation control plan, it may institute a civil action in the name of the City, for injunctive relief to restrain, correct, abate, mandate, or enjoin the violation or threatened violation either before, during, or after the institution of any other action or proceeding authorized by this Ordinance.

2. SUPERIOR COURT

The action shall be brought in the Superior Court of Henderson County. Upon determination by a court that an alleged violation is occurring or is threatened, it shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation.

3. NO RELIEF FROM CRIMINAL PENALTIES

The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

G. STATE AND COMMON LAW REMEDIES

In addition to other enforcement provisions contained in this section, the City Manager may exercise any and all enforcement powers granted to it by State law or common law.

H. PREVIOUS ENFORCEMENT

Nothing in this Ordinance shall prohibit the continuation of previous enforcement actions.

I. REMEDIES; CUMULATIVE AND CONTINUOUS

All such remedies provided herein shall be cumulative. To the extent that North Carolina law may limit the availability of a particular remedy set forth herein for a certain violation or a part thereof, such remedy shall remain available for other violations or other parts of the same violation.

SECTION 7.09. ASSESSMENT OF CIVIL PENALTIES**A. RESPONSIBLE PARTIES**

Any person who violates any provision of this Ordinance, including the owner or occupant of any land, building, structure, sign, use of land, or part thereof, may be held responsible for the violation and subject to the penalties and remedies provided in this Ordinance.

B. NOTICE**1. NOTIFICATION REQUIRED**

Civil penalties may not be assessed until the responsible person in violation has been notified in accordance with **Section <>, Enforcement Procedure**.

2. CIVIL PENALTY IMPOSED

If after receiving a written notice of violation under **Section <>, Enforcement Procedure**, the person fails to take corrective action or file an appeal, a civil penalty may be imposed in accordance with this section.

3. NOTICE OF PENALTY ASSESSMENT

Notice of the civil penalty assessment shall be served in the same manner as a notice of violation.

4. ASSESSMENT CONTENTS

The assessment notice shall state the nature of the violation, the civil penalty to be imposed upon the violator, and shall direct the violator to pay the civil penalty within 30 days of the date of the notice.

5. SEPARATE NOTICES

Separate notices must be provided for the first or second violations. The City may, in its discretion, treat the first notice for a violation as the final notice for chronic violators.

6. ASSESSMENT UNTIL COMPLIANCE

Civil penalties may be assessed until compliance is achieved.

C. CONTINUING VIOLATION

For each day the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalty.

D. DEMAND FOR PAYMENT

If compliance is not achieved, then the City Manager shall make written demand for payment of penalties that have accrued while the property has been in violation. The demand for payment shall be sent to the responsible person in violation and must include a description of the violation for which the civil penalties have been imposed.

E. NONPAYMENT

If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the City may recover any unpaid civil penalty by filing a civil action in the nature of debt.

F. PENALTIES

Any person who violates any provision of this Ordinance shall be subject to assessment of a civil penalty for each succeeding violation over the course of a calendar year.

ARTICLE 8: MEASUREMENT

SECTION 8.01. RULES OF LANGUAGE CONSTRUCTION⁶⁰

The following rules shall apply for construing or interpreting the terms and provisions of this Ordinance.

A. MEANINGS AND INTENT

1. All provisions, terms, phrases, and expressions contained in this Ordinance shall be interpreted in accordance with the general purposes set forth in **Section <>, General Purpose and Intent**, and the specific purpose statements set forth throughout this Ordinance.
2. When a specific section of these regulations gives a different meaning than the general definition provided in **Section <>, Definitions**, the specific section's meaning and application of the term shall control.
3. Terms that are not defined are subject to their common or customary meaning.

B. HEADINGS, ILLUSTRATIONS, AND TEXT

1. In the event of a conflict or inconsistency between the text of this Ordinance and any heading, caption, figure, illustration, table, or map other than the Official Zoning Map, the text shall control.
2. Graphics and other illustrations are provided for informational purposes only and should not be relied upon as a complete and accurate description of all applicable regulations or requirements.

C. LISTS AND EXAMPLES

Unless otherwise specifically indicated, lists of items or examples that use terms like "for example," "including," and "such as," or similar language are intended to provide examples and are not exhaustive lists of all possibilities.

D. COMPUTATION OF TIME

1. The time in which an act is to be done shall be computed by excluding the first day and including the last day.
2. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the City, the deadline or required date of action shall be the next day that is not a Saturday, Sunday, or holiday observed by the City.

E. TIME-RELATED LANGUAGE

1. TIME STANDARD

Whenever certain hours are named, they shall mean standard time or daylight saving time, as may be in current use in Hendersonville, North Carolina.

2. DAY

The term "day" means a calendar day, including weekends and holidays.

3. HOLIDAY

The term "holiday" means a legal holiday recognized by the City, State, or federal government.

4. MONTH

The term "month" means a calendar month.

5. YEAR

The term "year" means a calendar year.

6. TEMPORARY

The term "temporary" shall mean a condition lasting for only a limited period of time; not permanent.

⁶⁰ This is a new section proposed for the City's consideration. These kinds of provisions are typically found in the zoning ordinance, but they work well in the subdivision regulations as well.

F. REFERENCES TO THIS ORDINANCE

A reference to an article, section, subsection, or paragraph means an article, section, subsection, or paragraph of this Ordinance, unless otherwise specified.

G. REFERENCES TO OTHER REGULATIONS OR PUBLICATIONS

Whenever reference is made to a resolution, ordinance, statute, regulation, or document, it shall be construed as a reference to the most recent edition or amendment of such regulation, resolution, ordinance, statute, regulation, or document, unless otherwise specifically stated.

H. REFERENCES TO NORTH CAROLINA GENERAL STATUTES

Whenever any provision of this Ordinance refers to or cites a section of the North Carolina General Statutes and that section is later amended or superseded, this Ordinance shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

I. DELEGATION OF AUTHORITY

Whenever a provision of this Ordinance requires or authorizes an officer or employee of the City to do some act or perform some duty, the officer or employee may designate, delegate, and authorize subordinates to perform the act or duty, unless the terms of the provision specifically provide otherwise.

J. JOINT AUTHORITY

All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

K. TECHNICAL AND NON-TECHNICAL TERMS

1. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases that may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.
2. In cases where words or phrases in this Ordinance use two or more meanings, all meanings shall be identified in Article 9, Definitions.

L. PUBLIC OFFICIALS AND AGENCIES

All public officials, bodies, and agencies to which references are made in this Ordinance are those of the City of Hendersonville, North Carolina, unless otherwise indicated.

M. MANDATORY AND DISCRETIONARY TERMS

1. The words "shall," "must," and "will" are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words "may," "can," and "should" are permissive in nature.
2. The words "provision," "standard," and "requirement" are used interchangeably and all have the same meaning.
3. The words "condition of approval" are used interchangeably with the word "stipulations" with regard to conditions or requirements attached to the approval of a proposed development.

N. CONJUNCTIONS

Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows:

1. "And" indicates that all connected items, conditions, provisions, or events apply.
2. "Or" indicates that one or more of the connected items, conditions, provisions, or events apply.

O. TENSES, PLURALS, AND GENDER OF WORDS**1. TENSE**

Words used in the past or present tense include the future tense as well as the past and present.

2. NUMBER

ARTICLE 8: MEASUREMENT

Section 8.01 Rules of Language Construction

Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise.

3. GENDER

Words used in the masculine gender include the feminine gender and the neuter, and vice versa.

P. OATH

The term "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in like cases the terms "swear" and "sworn" shall be equivalent to the terms "affirm" and "affirmed."

Q. TERM NOT DEFINED

If a term used in this Ordinance is not defined, the City Manager is authorized to provide a definition, based upon the definitions used in professionally accepted sources.

SECTION 8.02. RULES OF MEASUREMENT⁶¹**A. PURPOSE**

The purpose of this section is to clarify the rules of measurement and exemptions as typically used in this Ordinance. These standards may be modified by other applicable sections of this Ordinance.

B. MEASUREMENTS, GENERALLY**1. STRAIGHT LINES**

Unless otherwise stated in this Ordinance, distances specified in this Ordinance are to be measured as the length of an imaginary straight line joining two points.

2. ROUNDING

All calculations that result in a fractional unit or part of a whole number, the number shall be rounded up to the next highest whole number, unless otherwise provided in this section or elsewhere in this Ordinance.

3. IRREGULAR SHAPES

In cases where an irregular shape complicates the application of these standards, the City Manager shall determine the applicable dimensional, setback, or bulk standards.

4. SEPARATION

When the provisions of this Ordinance require separation between two or more lots, or a lot and another feature, separation shall be measured by drawing straight lines from the nearest point of one lot line to the nearest point of the lot line subject to the separation requirement.

5. ABUTTING VERSUS ADJACENT**a. ABUTTING**

The term abutting describes a condition where two or more features (a lot line, building, driveway, etc.) are immediately beside or next to one another either on the same lot or on different lots sharing a common lot line.

b. ADJACENT

The term adjacent describes a condition where two or more similar features (a lot line, building, use type, structure, site feature, etc.) are proximate to one another, but are separated by some form of intervening feature, such as a street, alley, water feature, railroad, lot or property under separate ownership, or natural feature of sufficient size so as to prevent direct sight or impede the movement of sound from one feature to another.

C. LOT DIMENSIONS**1. LOT MEASUREMENTS****a. MINIMUM LOT AREA**

The minimum amount of required land area, measured horizontally, that must be included within the lines of a lot. Lands located within any private easements shall be included within the lot area. The following features shall not be included in calculating minimum lot area:

- i. Public street rights-of-way;
- ii. Private street area;
- iii. The "pole," "arm," or "pan handle" portion of a flag lot; and
- iv. Land that is submerged or regularly underwater and jurisdictional wetlands.

b. LOT WIDTH

- i. The mean width measured at right angles to its depth at the actual or proposed building setback line.

⁶¹ This is a new section that sets out basic dimensional requirements for lots and measurement techniques used in both the subdivision regulations and often used in the zoning ordinance as well.

- ii. Lot width on a cul-de-sac lot is measured at a point 50 feet inwards from the street right-of-way edge.

c. LOT DEPTH

The distance along the perpendicular bisector of the lot.

d. STREET FRONTAGE

The length of the lot line of a single lot abutting a public or private street right-of-way.

e. ACREAGE

The total number or gross number of acres on a tract or site.

2. LOT LINES

A lot line is a line of record bounding a lot which separates one lot from another lot or separates that lot from a public or private street or any other public space. The following terms describe differing types of lot lines:

a. FRONT LOT LINE

The lot line connecting the two side lot lines along the edge of the street that provides a lot's street address or that opposes the primary entrance of a building.

b. REAR LOT LINE

The lot line opposite and most distant from the front lot line.

c. SIDE LOT LINE

The lot line connecting the front and rear lot lines regardless of whether it abuts a right-of-way or another lot line.

3. LOT TYPES**a. CORNER LOT**

A lot which occupies the interior angle at the intersection of two street lines or a single street which make(s) an angle of more than 45 degrees and less than 135 degrees. The front of the lot is the lot line adjacent to the street from which the lot obtains its street address.

b. FLAG LOT

A lot having shape and configuration so that it connects to street frontage by an extension and/or arm of the main portion of the lot.

c. INTERIOR LOT

A lot other than a corner lot with only one frontage on a street.

d. LOT OF RECORD

A lot which is part of a subdivision, a plat of which has been recorded in the Henderson County Register of Deeds prior to the adoption of this Ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this Ordinance.

e. THROUGH LOT (DOUBLE FRONTAGE LOT)

A lot which fronts upon two parallel streets, and/or which fronts upon two streets which do not intersect at the boundaries of the lot.

4. LOTS SERVING CONDOMINIUM USE TYPES

Individual condominium uses, whether residential or nonresidential, are exempted from minimum lot area requirements in this Ordinance, but shall be located on a larger site or parent tract that meets the standards for the zoning district where located.

D. SETBACKS

New lots shall be developed in accordance with all required setbacks for the zoning district where development is located in accordance with the City's Zoning Ordinance.

E. LOT COVERAGE

- 1.** Lot coverage is the percentage of a lot or development site that is covered by impervious, or built-upon area.
- 2.** Built-upon area includes buildings, structures, pavement, and site features that are impervious or partially impervious to rain or stormwater runoff.
- 3.** The following features are not considered impervious, and as a result are not included within the built-upon area:
 - a.** A slatted deck or walkway;
 - b.** The water area of a swimming pool;
 - c.** A surface covered by number 57 stone, as designated by the American Society for Testing and Materials, laid at least four inches thick over a geotextile fabric;
 - d.** A trail as defined in Section 113A-85 of the North Carolina General Statutes that is either unpaved or paved as long as the pavement is porous with a hydraulic conductivity greater than 0.001 centimeters per second (1.41 inches per hour); or
 - e.** Landscaping material, including, but not limited to, gravel, mulch, sand, and vegetation, placed on areas that receive pedestrian or bicycle traffic or on portions of driveways and parking areas that will not be compacted by the weight of a vehicle, such as the area between sections of pavement that support the weight of a vehicle.

F. SLOPE AND ELEVATION

1. SLOPE

The degree of deviation of the ground surface from a flat, horizontal elevation, usually expressed in percent or degrees of deviation from horizontal.

2. AVERAGE SLOPE

The amount of elevation change from the lowest point of a lot to the highest point of a lot divided by the distance between the two points.

3. FINISHED GRADE

The established grade following grading, excavation, or other land-disturbing activity.

4. NATURAL GRADE

The level of the ground elevation prior to the commencement of development or land disturbing activity.

5. BASE FLOOD ELEVATION

A determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a "Special Flood Hazard Area", it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation establishes the Regulatory Flood Protection Elevation.

6. REGULATORY FLOOD PROTECTION ELEVATION

The minimum height allowable for lowest structural member comprising habitable space within a building. This is a height equivalent to one linear foot in elevation above the base flood elevation.

ARTICLE 9: DEFINITIONS

SECTION 9.01. DEFINITIONS

Table <>, Definitions, includes definitions of terms used throughout this Ordinance.

TABLE <>: DEFINITIONS	
TERM	DEFINITION
A	
ABANDONMENT	The relinquishment of property or a cessation of the use of the property for a continuous period.
<u>ABROGATE</u>	<u>To abolish or annul.</u>
ABUTTING LAND	For the purpose of public notice, abutting land is the condition of two parcels of land having a common property line or boundary, including cases where two or more parcels of land adjoin at a corner, but not including cases where parcels of land are separated by a street or alley.
ACCESS EASEMENT	An easement which grants the right to cross land.
ACCESSWAY	A paved or unpaved travelway intended to serve vehicles for the purposes of obtaining ingress, egress, or circulation around a lot or site. Subdivisions of up to three lots may be served by a vehicular accessway.
ACREAGE	Total acreage means gross acres.
ADJACENT	A parcel of land or development that shares all or part of a common lot line or boundary with another parcel of land, or a parcel of land that would abut another parcel of land, but for the fact a street, waterbody, or right-of-way divides the parcels.
ADMINISTRATIVE ADJUSTMENT	A type of flexibility permit approval reviewed and approved or denied by the City Manager in accordance with <u>Section <>, Administrative Adjustment.</u>
ADOPTED POLICY GUIDANCE	The combined future land-use policy guidance provided by the adopted comprehensive plan, area plans prepared for specific parts of the City, and system plans related to the City's infrastructure systems.
AFFECTED PARTY	Owners of land adjoining the land subject to an application and any other person who could suffer an adverse effect to a property interest from a proposed development.
AGGRIEVED PARTY	A person, with a legally recognized interest (i.e., fee simple ownership) and standing to appeal, that is injuriously affected by a decision from any decision-making body of the City, including any officer or agent of the City.
<u>AGRICULTURAL ACTIVITIES</u>	<u>For the purposes of this Ordinance, development and activities defined as "agriculture."</u>
ALL WEATHER SURFACE	Paving or surface treatment to a walkway or vehicular use area that is capable of withstanding adverse weather while still maintaining is regular or typical surface characteristics.
AMENDMENT	A minor change, addition, or deletion to a legal statutory document.
APPEAL	A request for review of an administrative official's or decision-making body's interpretation or decision made under this UDO.
APPLICANT	A person who has submitted a development application for review under applicable provisions of this Ordinance.
APPLICATION	The completed form or forms and all accompanying documents, exhibits, and fees required of an applicant by the appropriate City department or board as part of the development review processes.
AS-BUILT PLANS	A set of engineering or site drawings that delineate the specific permitted development as actually constructed.

ARTICLE 9: DEFINITIONS

Section 9.01 Definitions

TABLE <>: DEFINITIONS

TERM	DEFINITION
AUTHORIZED AGENT	A person with express written consent to act upon another's behalf.
B	
BASE FLOOD	The flood having a 1 percent chance of being equaled or exceeded in any given year. Also known as the "100-year flood."
BASE FLOOD ELEVATION	A determination of the water surface elevations of the base flood as published in the flood insurance study.
BEST MANAGEMENT PRACTICE	A structural or non-structural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.
BLOCK	The land lying within an area bounded on all sides by streets.
BLOCK FACE	The lands abutting on one side of a street and lying between the two nearest intersecting or intercepting streets, railroad right-of-way, watercourse, or un-subdivided land.
BOARD OF ADJUSTMENT	A quasi-judicial board appointed by the Board of Commissioners.
BONA FIDE FARM	A bona fide farm shall be as defined in Section 153A-340 of the North Carolina General Statutes, as amended.
BOND	See "Performance Guarantee."
BUILDING	A structure having a roof supported by walls or columns constructed or used for residence, business, industry, or other public or private purposes.
<u>BUILDING PERMIT</u>	<u>An authorization issued by Henderson County that allows an applicant to begin construction activities in accordance with the applicable development approval and all applicable City and County requirements.</u>
BUILT-UPON AREA	Built-upon areas shall include that portion of a development project that is covered by impervious or partially impervious cover including, but not limited to, buildings, pavement, and certain recreation facilities. (Note: wooden slatted decks, gravel, and the water area of a swimming pool are considered pervious.)
BUSINESS DAY	Any day in which normal business is conducted. A business day does not include a holiday or a weekend day.
C	
CALENDAR DAY	All days in every month, including weekends and holidays.
<u>CITY</u>	<u>City of Hendersonville, North Carolina.</u>
<u>CITY'S PLANNING JURISDICTION</u>	<u>The land area located with the Hendersonville city limits, the City's extraterritorial jurisdiction, and land subject to a development agreement to which the City is a party.</u>
<u>CIVIL ACTION</u>	<u>Proceedings conducted before a court of law.</u>
CERTIORARI	A situation where an appellant may file an appeal of a decision directly to a higher court of law.
CLUSTER MAILBOX UNITS	A centralized series of two or more mailboxes that serve individual housing units within a development.
<u>COMMON DEVELOPMENT REVIEW PROCEDURE</u>	<u>The types of activities undertaken by City staff as part of the review of any application submitted under this Ordinance.</u>
COMMON LAW VESTED RIGHT	Legal doctrine that recognizes where property owners have reasonably made a substantial expenditure of money, time, labor or energy in a good faith reliance on a permit from the government, that they acquire "vested rights" or a protected right to complete the development of their land as originally begun despite any changes in the zoning on the property.

ARTICLE 9: DEFINITIONS

Section 9.01 Definitions .....	9-1

TABLE <>: DEFINITIONS	
TERM	DEFINITION
COMPLETE APPLICATION	<p>A complete application is one that:</p> <ol style="list-style-type: none"> 1. Contains all information and materials established by the City Manager as required for submittal of the particular type of application; 2. Is in the form established by the City Manager as required for submittal of the particular type of application; 3. Includes information in sufficient detail to evaluate the application to determine whether it complies with the appropriate review standards of this Ordinance; and 4. Is accompanied by the fee established for the particular type of application. <p>An application will not be accepted for review until it is complete.</p>
<u>COMPLETENESS DETERMINATION</u>	<u>The process of determining if an application for a development approval is or is not complete.</u>
CONDITION (OF APPROVAL)	A limitation or stipulation on the range of allowable uses, density, intensity, configuration, or operational parameters of new development or redevelopment. A condition may be proposed by an applicant, a staff member, or an advisory or decision-making body that must be accepted by an applicant to become binding.
CONDOMINIUM	A building or group of buildings in which dwelling units, offices or floor area are owned individually and the structure, common areas and facilities are owned by all the owners on a proportional undivided basis.
CONNECTIVITY	The relative degree of connection between streets, sidewalks, or other means of travel.
<u>CONNECTIVITY INDEX</u>	<u>A measurement of the connectedness of the streets in a single development.</u>
<u>CONSERVATION AND DEVELOPMENT PLAN</u>	<u>The preliminary plan identifying potential areas for conservation and areas for development as part of a conservation subdivision.</u>
<u>CONSERVATION AREA</u>	<u>The portion of a conservation subdivision or open space set-aside that is reserved for the purposes of conservation or natural resource protection.</u>
CONSERVATION SUBDIVISION	The division of a tract of land into two or more lots, building sites, or other divisions along with additional land area set aside as open space for conservation and/or recreation purposes.
CONSTRUCTION	The erection of any building or structure or any preparations (including land disturbing activities) for the same.
CONSTRUCTION PLANS	Drawing and specifications prepared by a qualified person showing buildings, structures, utilities, infrastructures, and site configuration aspects associated with development.
CONTIGUOUS	Abutting directly or immediately adjacent to a boundary or separated only by a street, railroad or public utility right-of-way.
CONTINUANCE	The adjournment or postponement of review or decision on an application to specified future date.
<u>CONTRACT PURCHASER</u>	<u>A party to a contract for the purchase of land from the landowner.</u>
CONTROL CORNER	A recognized corner of a lot or piece of real property that is permanently marked with a monument or marker for the purpose of determining distances, bearing, or metes and bounds descriptions of the lot or real property.
<u>CORPORATE LIMITS</u>	<u>The political boundary of the municipal incorporation of the City of Hendersonville.</u>
<u>COUNTY</u>	<u>Henderson County, North Carolina.</u>
COVENANT	A binding written agreement between two or more private parties regarding the use, occupancy, or configuration of development that runs with the land.
CURB	A constructed element used to stabilize paving, gutter, planting areas, or sidewalks.
D	

ARTICLE 9: DEFINITIONS

Section 9.01 Definitions

TABLE <>: DEFINITIONS	
TERM	DEFINITION
DECK	A structure, without a roof, directly adjacent to a principal building which has an average elevation above finished grade.
DEDICATION	The act of giving, donating, or dedicating land or infrastructure improvements to a unit of government for their operation and maintenance.
DEED RESTRICTION	A written private agreement that restricts the use, occupancy, or configuration placed upon the title of real estate often by the developer.
DEFERRAL	A postponement of consideration of an application or request to a future date that may or may not be specified.
DEMOLITION	Complete or constructive removal of a building or portion of a building on any site.
DESIGNEE	A person selected or designated to carry out a duty or role.
DEVELOPER	A person engaging in land, site, or building development.
DEVELOPMENT	Any man-made change to improved or unimproved real estate, including but not limited to: buildings or other structures; mining; dredging; filling; grading; paving; excavation; drilling operations; or storage of equipment or materials. Development is also any land-disturbing activity that adds to or changes the amount of impervious or partially impervious cover on a land area or that otherwise decreases the infiltration of precipitation into the soil.
<u>DEVELOPMENT APPROVAL</u>	<u>The granting of a permit or affirmative decision on a development application reviewed in accordance with this Ordinance.</u>
<u>DEVIATION ALSO MINOR DEVIATION</u>	<u>A de minimus, small, or slight departure from a requirement or standard for good cause shown.</u>
DRAINAGE	General terms applied to the removal of surface or resurface water from a given area either by gravity via natural means or by systems constructed so as to remove water, and is commonly applied herein to surface water.
DRAINAGE EASEMENT	An easement which grants the right to maintain, relocate, or, utilize land within the easement for the improvement of drainage and stormwater flow.
DRAINAGE, POSITIVE	An area that has been graded or shaped to prevent pooling of stormwater runoff.
DRIVEWAY	The portion of the vehicle accommodation area that consists of a travel lane bounded on either side by an area that is not a part of the vehicle accommodation.
<u>DRY HYDRANT</u>	<u>See "Hydrant, Dry."</u>
DWELLING UNIT	One or more rooms, designed, occupied, or intended for occupancy as separate living quarters, with cooking, sleeping, and sanitary facilities provided for use as a permanent residence by one family.
E	
EASEMENT	The right to use or temporarily occupy the real property of another owner for a specifically identified purpose. An easement is a recognized interest in real property, but legal title to the underlying land is retained by the owner granting the easement.
EROSION	The wearing away of land surface by the action of wind, water, gravity, or any combination thereof.
EROSION CONTROL MEASURE	A device which controls the soil material within the land area under responsible control of the person conducting a land-disturbing activity.
EX PARTE COMMUNICATION	Any communication between a member of a decision-making body and a person involved in a development application that is made without the presence or knowledge of the other members of the same decision-making body.
EXEMPTION	A use, site feature, or development condition that is exempted authorized to deviate from otherwise applicable requirements

ARTICLE 9: DEFINITIONS

Section 9.01 Definitions

TABLE <>: DEFINITIONS	
TERM	DEFINITION
EXISTING DEVELOPMENT	Development that is built or those projects that at a minimum have established a vested right under North Carolina zoning law based on at least one of the following criteria: (a) Substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project; (b) Having an outstanding valid building permit as authorized by Sections 153A-344.1 and 160A-385.1 of the North Carolina General Statutes; or (c) Having expended substantial resources (time, labor, money) and having an approved site specific or phased development plan as authorized by Sections 153A-344.1 and 160A-385.1 of the North Carolina General Statutes.
EXISTING LOT OF RECORD	A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to the effective date of this Ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the effective date of this Ordinance.
<u>EXTRA-TERRITORIAL JURISDICTION</u>	<u>The land area located outside the City's corporate limits but still subject to the planning and development regulations of the City of Hendersonville.</u>
F	
FEE	An amount charged in accordance with the regularly adopted fee schedule of the City.
<u>FEE SCHEDULE</u>	<u>The City's published list of application fees and fees for violations.</u>
FILL	The act of depositing soil, sand, stone, or other inert debris customarily used for supplementing or augmenting land. The term "fill" also applies to the deposit soil, sand, stone, or other deposited material.
FINAL PLAT	A plan or drawing recorded in the office of the register of deeds that identifies the metes and bounds as well as all applicable conditions applied to a lot or group of lots that have been subdivided.
FINANCIAL GUARANTEE	See "Performance Guarantee."
FINE	A sum of money imposed on a violator as punishment for violation of law.
FLAG LOT	An irregularly shaped lot where the buildable portion of the lot is connected to its street frontage by an arm. Further, in cases where a minimum lot width is prescribed, the arm is less than the presumptive minimum required lot width.
FLOOD INSURANCE RATE MAP	An official map of a community issued by the Federal Emergency Management Agency, on which both the special flood hazard areas and the risk premium zones applicable to the City are delineated.
FLOOD OR FLOODING	For flood damage prevention purposes, a general and temporary condition of partial or complete inundation of normally dry land areas from: the overflow of inland or tidal waters; and/or the unusual and rapid accumulation of runoff of surface waters from any source.
FLUSHING HYDRANT	See "Hydrant, Flushing."
FRONTAGE	A strip or extent of land abutting and extending along a street.
G	
GENERAL STATUTES	A statute is a written law passed the General Assembly that sets forth general propositions of law that courts apply to specific situations.
GOOD CAUSE	Legally adequate or substantial grounds or reason to take a certain action based upon the circumstances of each individual case.
<u>GOOD FAITH</u>	<u>A sincere belief or motive without any malice or the desire to defraud others or conceal the truth.</u>
GRADING	Excavating, filling (including hydraulic fill) or stockpiling of earth material, or any combination thereof, including the land in its excavated or filled condition.

ARTICLE 9: DEFINITIONS

Section 9.01 Definitions

TABLE <>: DEFINITIONS	
TERM	DEFINITION
<u>GREENWAY</u>	<u>A path, trail, or linear arrangement of land used of purposes of mobility and recreation. A greenway typically includes an improved surface for locomotion flanked by undeveloped lands.</u>
H	
HABITABLE SPACE	A space in a building for living, sleeping, eating or cooking, or used as a home occupation.
<u>HALF STREET</u>	<u>A partial street that has a reduced pavement and right-of-way width.</u>
HARDSHIP	Special or specified circumstances that place an unreasonable or disproportionate burden on one applicant or landowner over another.
HOLIDAY	A holiday observed by the City.
HOMEOWNERS' ASSOCIATION	An organization of homeowners or property owners of lots or land in a particular subdivision, condominium, or planned development. The owners' association is responsible for maintaining and enhancing the shared private infrastructure (e.g., stormwater, streets, and sidewalks) and common elements such as recreation areas.
HYDRANT, DRY	A hydrant provided for the purposes of fire protection that is not connected to a public or private water supply system, but is instead provides water from an alternate source such as a river or pond.
HYDRANT, FLUSHING	A hydrant that is connected to a public or private water supply system, but that is not intended for fire protection because it lacks sufficient water pressure for firefighting. Flushing hydrants are typically painted a different color than traditional fire hydrants.
I	
IMPERVIOUS SURFACE (OR COVER)	Any structure, material or ground cover consisting of, but not limited to, asphalt, concrete, stone, brick, terrazzo, roofing, ceramic tile or any other natural or man-made material that prevents the absorption of surface water into the soil.
IMPROVEMENT	The construction of buildings and the establishment of basic services and amenities associated with development, including, but not limited to streets and sidewalks, parking areas, water and sewer systems, drainage system, property markers and monuments, recreation facilities (i.e., lakes, swimming pools, tennis courts, golf courses, club houses, cabanas, marinas, docks and the like) and other similar construction or establishment.
IN-LIEU FEE	Monetary compensation offered by a landowner or applicant as an alternative to provision of some other required site or development feature.
<u>INCENTIVE</u>	<u>Inducement or supplemental reward that serves as a motivational device for a desired action or activity.</u>
<u>INTESTATE SUCCESSION</u>	<u>The rules governing distribution of an estate to a spouse or other heirs through the laws of descent and marital rights.</u>
J	
JURISDICTION	The official power to make legal decisions and judgements. The term can also be used to describe the geographic boundaries of a municipal corporation or the extent over which a particular agency has control.
JUST CAUSE	Legitimate cause; legal or lawful ground for action.
K	
L	
<u>LAND</u>	<u>Real estate taking the form of a single lots, multiple lots, an un-subdivided tract, or a site.</u>

ARTICLE 9: DEFINITIONS

Section 9.01 Definitions

TABLE <>: DEFINITIONS	
TERM	DEFINITION
LAND DISTURBANCE	Any movement of earth or substrate, manually or mechanically, including but not limited to any modification of existing grade by dredging, demolition, excavation or fill, grading, scraping, vegetation removal, landscaping, coring, well drilling, pile driving, undergrounding utility lines, trenching, bulldozing, sheeting, shoring and excavation for laying or removing foundations, pilings or other purposes.
LAND DISTURBING ACTIVITY	Any use of the land by any person in residential, industrial, educational, institutional or commercial development, highway and road construction and maintenance that results in a change in the natural grade and may cause or contribute to sedimentation, except activities that are exempt under Section 113A-52(6) of the North Carolina General Statutes. Sedimentation occurs whenever solid particulate matter, mineral or organic, is transported by water, air, gravity, or ice from the site of its origin.
LANDOWNER	As applied to the standards related to vested rights, an owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of the owner.
<u>LEGAL CHALLENGE</u>	<u>The filing of a suit in a court of competent jurisdiction over a decision or action taken by the City, a landowner in the City, or other interested party with standing to file suit.</u>
LEGISLATIVE PUBLIC HEARING	A hearing held for the purpose of soliciting public comments on a proposed change in the zoning text or zoning map. Reasonable time limits on speakers may be imposed and responsible decorum maintained. However, unlike quasi-judicial hearings, there is no requirement for oaths, no limits on expression of personal opinions, and no limit on discussing the matter outside the context of the hearing.
<u>LOOP STREET</u>	<u>A street that begins and terminates on another streets</u>
LOT	A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same. The term includes plot, parcel, or tract.
<u>LOT FRONTAGE</u>	<u>The portion of a lot adjacent to a street.</u>
LOT OF RECORD	A lot which is a part of an approved subdivision, a plat of which has been recorded in the Office of the Henderson County Register of Deeds or a lot described by metes and bounds the description of which has been so recorded and which at the time of recordation and the time it was originally subdivided met all applicable subdivision and zoning regulations then in effect. In addition, this definition shall include lots for which a plat and/or deed is recorded in the Office of the Register of Deeds and the lot was created prior to the adoption of the City's first subdivision regulations or a lot upon which an existing structure is located provided a valid building permit was obtained for the construction or a lot which at the time of creation met all subdivision and zoning requirements.
M	
MAXIMUM EXTENT PRACTICABLE	No feasible or practical alternative exists, as determined by the City, and all possible efforts to comply with the standards or regulation to minimize potential harmful or adverse impacts have been undertaken by an applicant. Economic considerations may be taken into account but shall not be the overriding factor determining "maximum extent practicable."
<u>MINOR RELIEF</u>	<u>See "Deviation."</u>
MIXED USE DEVELOPMENT	A tract of land or structure developed for two or more different uses, such as, but not limited to, residential, office, retail, institutional, public, or entertainment. Such uses are functionally integrated and share vehicular use areas, ingress/egress, and pedestrian access.
<u>MONUMENT</u>	<u>Permanent markers used to denote lot corners, street curves, and other geographic elements of a subdivision.</u>

ARTICLE 9: DEFINITIONS

Section 9.01 Definitions

TABLE <>: DEFINITIONS

TERM	DEFINITION
<u>MULTI-FAMILY RESIDENTIAL</u>	<u>Development that includes multiple dwelling units in a single building.</u>
N	
<u>NATURAL RESOURCES</u>	<u>Resources that exist without the actions of humans, including: sunlight, atmosphere, water, land, vegetation, and animal life. For the purposes fo this Ordinance, natural resources may include specific areas with unique ecological conditions, views into or out of a particular area, habitats or areas with special circumstances conducive to particular life forms, or raw materials used in a production process.</u>
NONCONFORMING LOT OF RECORD	A lot described by a plat or a deed that was recorded prior to the effective date of this Ordinance.
<u>NONCONFORMITY</u>	<u>A use, building, site, sign, or site feature that does not comply with the minimum requirements of this Ordinance or other applicable City law.</u>
<u>NORTH CAROLINA ADMINISTRATIVE CODE</u>	<u>A set of written rules prepared by the North Carolina Department of Health and Human Services that are used to help affected parties interpret the North Carolina general Statutes.</u>
<u>NORTH CAROLINA GENERAL STATUTES</u>	<u>The set of written laws adopted by the North Carolina General Assembly that Statutes that set forth general propositions of law that courts apply to specific situations.</u>
NOTICE OF PUBLIC HEARING	The formal legal notification of a public hearing on a proposed development application. A "published notice" is one required to be printed in a newspaper of general circulation. A "mailed notice" is one delivered to specified individuals by US Mail. A "posted notice" is a sign posted on or near the property subject to the application
NOTICE OF VIOLATION	A notice indicating a violation of this Ordinance.
NUISANCE FLOODING	Somewhat common or typical flooding that takes places in the same locations or with regular frequency.
O	
OATH	The term "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in like cases the terms "swear" and "sworn" shall be equivalent to the terms "affirm" and "affirmed."
<u>OCCUPY OR OCCUPANCY</u>	<u>The act, state, or condition of holding, possessing, residing, or otherwise using a premises, lot, site, building, or dwelling.</u>
OPEN SPACE	Areas of land free from buildings, structures, or encumbrances, as well as lands with buildings or structures devoted to active or passive recreational purposes.
<u>OPEN SPACE SET-ASIDE</u>	<u>Land that has been permanently set aside as open space.</u>
ORDINANCE	A legislative enactment of the City of Hendersonville, North Carolina.
OWNER	The person firm or organization in whom is vested the ownership, dominion or title of property. The person firm or organization who is recognized and held responsible by the law as the owner of property.
P	
PARCEL	See "Lot."
<u>PARENT PARCEL</u>	<u>A lot or tract that is further subdivided.</u>
<u>PARKLAND</u>	<u>Land dedicated to the City for use as a public park.</u>
PEDESTRIAN PATHWAY	Interconnected paved walkway that provides a pedestrian passage through blocks running from street to street, vehicular use areas, through sites, or other locations.

ARTICLE 9: DEFINITIONS

Section 9.01 Definitions

TABLE <>: DEFINITIONS	
TERM	DEFINITION
PENALTY	Punishment for violation of a law or rule.
PERFORMANCE GUARANTEE	Cash or other guarantee provided by an applicant in-lieu of completion of public infrastructure or installation of required private site features prior to issuance of a building permit or other development approval.
PERSON	An individual, trustee, executor, other fiduciary, corporation, firm, partnership, association, organization or other entity acting as a unit.
PERSONAL PROPERTY	All forms of property, except real property.
PERVIOUS SURFACE	Any land surface not effectively covered by impervious surface, in which rainfall and stormwater runoff can naturally infiltrate.
PHASE	The discrete portion of a proposed development.
PLAT	A map or plan of a parcel of land which is to be, or has been subdivided.
<u>POSITIVE DRAINAGE</u>	<u>Configuration of a walkway or trail in a manner that sheds water.</u>
PRE-APPLICATION CONFERENCE	A meeting or conference conducted by a potential applicant for a permit or development approval and City staff for the purposes of discussing a potential application or City rules regarding development.
PRE-FIRM	Construction or other development for which the "start of construction" occurred before the effective date of the initial Flood Insurance Rate Map..
<u>PRELIMINARY PLAT</u>	<u>A drawing or plan showing the proposed organization of lot boundaries, streets, public infrastructure, open space, and other site configuration features associated with a proposed development including two or more lots.</u>
<u>PRIVATE CENTRALIZED SYSTEM</u>	<u>A private sanitary sewer system that serves multiple uses in a single development.</u>
PRIVATE STREET OR ROAD	A road or way for the use of private individuals that is not dedicated to the City, the State, or other public agency.
<u>PROBATED WILL</u>	<u>A last will and testament authenticated by a court that calls for the distribution of real estate (land) to one or more heirs.</u>
PROPERTY OWNER	See "Landowner."
<u>PUBLIC HEARING</u>	<u>A hearing conducted by a review authority for the purpose of allowing interested members of the public to provide testimony or evidence for the review authority to consider in deciding an application under this Ordinance. A public hearing is required to be publically noticed prior to conducting the hearing.</u>
PUBLIC INFRASTRUCTURE	Infrastructure or facilities (such as <u>potable</u> water lines, <u>sanitary sewer lines</u> , streets, storm drainage, sidewalks, trails, etc.) <u>and related facilities or appurtenances that are</u> owned by the public and intended for use by the public.
<u>PUBLIC MEETING</u>	<u>A meeting conducted by a review authority for the consideration of a development application submitted under this Ordinance that is open to any member of the public to attend. A public meeting is not subject to public notification requirements.</u>
<u>PUBLIC NOTICE OR NOTIFICATION</u>	<u>See "Notice of Public Hearing."</u>
<u>PUBLIC RIGHT-OF-WAY</u>	<u>See "Right-of-Way."</u>
Q	
QUASI-JUDICIAL DECISION	A decision by an elected or appointed body that applies previously-established policies. Examples include decisions on appeals and variances.

ARTICLE 9: DEFINITIONS

Section 9.01 Definitions

TABLE <>: DEFINITIONS	
TERM	DEFINITION
QUASI-JUDICIAL PUBLIC HEARING	A formal public hearing involving the legal rights of specific parties conducted by the Board of Commissioners or the Board of Adjustment based on evidence and sworn testimony presented during the public hearing. Decisions made during such hearings are based upon and supported by the record developed at the hearing, and typically involve findings of fact made by the decision-making body.
QUORUM	The minimum number of council, board, or commission members that must be present in order to conduct official business or take official action.
R	
<u>RE-SUBDIVISION</u>	<u>The further subdivision of land already subject to an expedited subdivision, minor subdivision, or major subdivision approval in accordance with the City's development regulations. The shifting of a lot line between two established lots shall be considered a re-subdivision.</u>
<u>RECOMBINATION</u>	<u>The consolidation or shifting of lot lines between two or more parcels.</u>
<u>RECORDATION</u>	<u>Filing a plat or paperwork associated with a subdivision or other form of development at the Henderson County Register of Deeds to ensure the documents are available for public inspection in perpetuity.</u>
REMEDY	The manner in which a right or law is enforced or satisfied when a violation of the UDO or related law has occurred.
REMEDY A VIOLATION	An act to bring the structure or other development into compliance with State or community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this subchapter or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.
REQUIRED YARD	The land area located between a lot line and the boundary of a required setback.
<u>RESERVATION</u>	<u>Land area set aside by a landowner for use by the public. Reservations typically involve the identification and protection of an easement for some public purpose.</u>
RESERVE FUND	A bank account containing reserve funds for the purpose of maintaining commonly-held land, infrastructure, or facilities.
RESIDENTIAL DEVELOPMENT	Buildings established for residential purposes such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, and their associated outbuildings such as garages, storage buildings, gazebos, and customary home occupations.
REVERSE FRONTAGE <u>LOT</u>	A lot with two or more street frontages that includes a building or structure that is oriented in a manner that differs from other existing structures or from the development patterns indicated by adopted policy guidance or good planning practice.
<u>REVIEW AUTHORITY</u>	<u>The City Manager, Planning Board, Board of Adjustment, or City Council, as appropriate.</u>
RIGHT-OF-WAY	Property located within and adjoining the streets, roads and highways within the City, which rights-of-way are owned or otherwise maintained by the state.
ROAD	See "Street."
ROAD, PRIVATE	See "Private Street or Road."
ROAD, PUBLIC	See "Street, Public."
<u>RURAL CHARACTER</u>	<u>Lands and activities located outside a municipal corporation (a city) that has a low population density where the majority of the land is undeveloped and the majority of economic activity revolves around agricultural pursuits. Rural areas are typically occupied by farms, fields, forests, and un-built land, but may also include low concentrations of homes and business activities.</u>

ARTICLE 9: DEFINITIONS

Section 9.01 Definitions

TABLE <>: DEFINITIONS	
TERM	DEFINITION
S	
SEDIMENT	Solid particulate matter, both mineral and organic, that is transported by water, air, gravity, or ice from its site of origin.
SEDIMENTATION	The process by which sediment resulting from accelerated erosion is transported off-site by land-disturbing activity.
SIDEWALK	A paved area public right-of-way running parallel to the street for the purposes of pedestrian travel and to facilitate pedestrian access to adjacent streets and land.
SIGHT DISTANCE TRIANGLE	The triangular area formed by a diagonal line connecting two points located at designated locations on intersecting right-of-way lines or a right-of-way line and the curb or a driveway.
<u>SIMPLE MAJORITY</u>	<u>More than half of the voting members of a review authority deciding an application under this Ordinance.</u>
SINGLE-FAMILY RESIDENTIAL	Any development where no building contains more than one principal dwelling unit, every principal dwelling unit is on a separate lot, and where no lot contains more than one principal dwelling unit.
SITE SPECIFIC DEVELOPMENT PLAN	A development plan prepared in accordance with Section 160A-385.1 of the North Carolina General Statutes.
SPECIAL FLOOD HAZARD AREA	The land in the floodplain subject to a one percent or greater chance of being flooded in any given year.
<u>SPECIAL LEGISLATION</u>	<u>Laws or acts approved by the North Carolina General Assembly that apply specifically applied to the City of Hendersonville. Special legislation may be applied solely to the City or to multiple jurisdictions, but it is not universally applicable to all units of local government in North Carolina.</u>
<u>STATE</u>	<u>The State of North Carolina.</u>
<u>STATE BUILDING CODE</u>	<u>A series of ordinances enacted by North Carolina that establish the minimum requirements that must be met in the construction and maintenance of buildings for the purpose of safety and sanitation.</u>
STOP WORK ORDER	An order issued by the City to a landowner or developer to cease and desist all land-disturbing or development activity on a site pending resolution of a problem or conflict.
STORMWATER CONVEYANCE	Stormwater management facilities or features designed to facilitate the movement of stormwater runoff.
STORMWATER MANAGEMENT DEVICE	A structure or facility intended to control stormwater runoff on an individual lot or development site.
STORMWATER RUNOFF	The surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting.
STREET	A paved or unpaved travelway intended for use by automobiles and bicycles.
<u>STREET CLASSIFICATION</u>	<u>The type or category of a street.</u>
<u>STREET GRADE</u>	<u>The incline or steepness of a street.</u>
STREET STUB	A nonpermanent dead end street intended to be extended in conjunction with development on adjacent lots or sites.
STREET, BOULEVARD	A street whose principal function is to carry large volumes of traffic at higher speeds through the City or from one part of the City to another.
STREET, THOROUGHFARE	A street whose principle function is to carry traffic between local streets and arterial streets but that may also provide direct access to abutting properties. It generally serves or is designed to serve, directly or indirectly, more than 100 dwelling units and is designed to be used or is used to carry more than 800 trips per day.

ARTICLE 9: DEFINITIONS

Section 9.01 Definitions

TABLE <>: DEFINITIONS	
TERM	DEFINITION
STREET, CUL-DE-SAC	A street that terminates in a vehicular turnaround.
STREET, EXPRESSWAY	A street whose principal function is to carry large volumes of traffic at higher speeds through the City or from one part of the City to another.
STREET, LOCAL	A street whose primary function is to provide access to abutting properties. It generally serves or is designed to serve less than 100 dwelling units and handles less than 800 trips per day.
<u>STREET, MARGINAL ACCESS</u>	<u>A street meeting public street standards that provides access solely to lots inaccessible to abutting higher order streets like expressways, boulevards, or thoroughfares.</u>
STREET, PRIVATE	A vehicular travelway not dedicated or offered for dedication as a public street but resembling a cul-de-sac or a local street by carrying traffic from a series of driveways to the public street system.
STREET, PUBLIC	A dedicated public right-of-way in which the roadway has been accepted or constructed to public standards for vehicular traffic, but not an alley.
SUBDIVIDER	Any person, firm, or corporation who subdivides or develops any land deemed to be a subdivision as herein defined.
SUBDIVISION	As used in this ordinance means all divisions of a tract or parcel of land into two or more lots, building sites or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition provided, however, that any subdivision document or plat to be recorded pursuant to such exclusions shall have the notation of "No Approval Required" and the signature of the City Manager or his designated agent before filing in the office of the Henderson County Register of Deeds. A "Subdivision" shall not include the following: 1. The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the City as shown in this Ordinance. 2. The division of land into parcels greater than ten acres where no street right-of-way dedication is involved. 3. The public acquisition by purchase of strips of land for the widening or opening of streets. 4. The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way or easement dedication is involved and where the resultant lots equal or exceed the standards set forth in this Ordinance.
SUBDIVISION, EXEMPT	A division of land that is exempted from review and approval by the City in accordance with the North Carolina General Statutes.
SUBDIVISION, EXPEDITED	A subdivision of land reviewed and approved administratively that is exempted from most of the public infrastructure requirements.
<u>SUBDIVISION, MAJOR</u>	<u>A drawing or plan showing the proposed organization of lot boundaries, streets, public infrastructure, open space, and other site configuration features associated with a proposed development including two or more lots.</u>
SUBDIVISION, MINOR	A subdivision of land that includes up to eight lots (including the residual parcel) with no extension of public streets, public water, public sewer, or other public utility.
SURETY BOND	See "Performance Guarantee."
T	
<u>THIS ORDINANCE</u>	<u>The Subdivision Ordinance for the City of Hendersonville, North Carolina.</u>
TRACT	A separate tract of land under common or unified ownership in existence on the effective date of this Ordinance.

ARTICLE 9: DEFINITIONS

Section 9.01 Definitions

TABLE <>: DEFINITIONS	
TERM	DEFINITION
<u>TRANSFER</u>	<u>Shifting of an ownership interest in land from one owner to another.</u>
U	
UNSUBDIVIDED DEVELOPMENT	All construction of structures upon land under common singular ownership where such construction does not involve the sale of individual lots or parcels of land and the streets and ways are intended for use by the public or occupants of the development.
UTILITY EASEMENT	An easement which grants the right to install and maintain utilities including, but not limited to, water lines, sewer lines, storm sewer lines, electrical power lines, telephone lines, natural gas lines, and community antenna television systems.
V	
VARIANCE	The permission to develop or use property granted by the BOA, in a manner that that relaxes or waives a requirement in this Ordinance.
VEHICULAR ACCESSWAY	See "Accessway."
VESTED RIGHT	A right pursuant to North Carolina General Statutes Section 160A-385.1 to undertake and complete the development and use of property under the terms and conditions of an approved site-specific development plan.
<u>VESTED RIGHT, COMMON LAW</u>	<u>A term that refers generally to the right to complete a proposed development project according to the rules in effect at the time it was approved.</u>
VIOLATION	A breach, infringement, or transgression of a law or requirement in this Ordinance or a permit or development approval.
W	
<u>WATER SUPPLY WATERSHED</u>	<u>An area of land located within the same watershed of a body of water that serves as a potable water source.</u>
<u>WILDLIFE HABITAT</u>	<u>Land area that includes both physical and biological features necessary for an organism to find food, shelter, protection, and reproductive mates.</u>
WRIT OF CERTIORARI	A writ of superior court to call up the records of an inferior court or a body acting in a quasi-judicial capacity.
X	
Y	
YARD	An open space on the same lot with a building or group of buildings which open space lies between the building or group of buildings and the nearest lot line and is occupied and unobstructed from the ground upward by buildings or structures except by permitted accessory buildings or uses.
Z	



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

Submitted By: Brian Pahle

Department: Admin

Date Submitted: 02/24/2020

Presenter: Brian Pahle

Date of Council Meeting to consider this item: 03/05/2020

Nature of Item: Council Action

Summary of Information/Request:

Item # 13

A presentation on the results from the affordable housing survey from the council conversations in fall of 2019.

Budget Impact: \$ _____ Is this expenditure approved in the current fiscal year budget? If no, describe how it will be funded.

Suggested Motion:

None.

Attachments:

Presentation



CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

Submitted By: Brent Detwiler

Department: Engineering

Date Submitted: 2/25/20

Presenter: Mike Huffman & WithersRavenel

Date of Council Meeting to consider this item: 3/5/20

Nature of Item: Discussion/Staff Direction

Summary of Information/Request:

Item # 14

Stormwater Enterprise Fund Rate Study Progress Summary:

Staff has worked with WithersRavenel to conduct a stormwater rate study with various budget scenarios. Initial findings of the study were presented to Council at their January workshop. Based on feedback from Council at the workshop, WithersRavenel refined the financial modeling and is here to present that information. We hope to have further direction from Council in order to finalize the rate structure for implementation in the FY20-21 budget. Please let us know if you have any questions or need additional information.

Budget Impact: \$ TBD Is this expenditure approved in the current fiscal year budget? No If no, describe how it will be funded.

Suggested Motion:

Attachments:



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

Submitted By: Sam Fritschner

Department: Legal

Date Submitted: 26 February 2020

Presenter: Sam Fritschner

Date of Council Meeting to consider this item: 5 March 2020

Nature of Item: Council Action

Summary of Information/Request:

Item # 15

In coordination with the city manager the legal department is requesting authorization to initiate two separate eminent domain actions.

The first is authorization to acquire an easement in assistance of the northside water tank project. We earlier acquired real property in this area but a reevaluation by our outside engineers indicated that additional easement area was required. We are in discussion with the owner now but the owner's somewhat loose organizational structure has hampered quick action in the past and as a precaution we believe it best to be able to proceed with eminent domain.

A second acquisition, of a sewer easement on an ancient road right-of-way, will be necessary because of the great difficulty of determining the identities of some, or possibly all, of the owners of the right-of-way. We expect to institute an action and ask the court to appoint a guardian for the unknown owners.

Budget Impact: \$ unknown at this time **Is this expenditure approved in the current fiscal year budget?** N/A If no, describe how it will be funded.

Amendment to follow if there are overages

Suggested Motion:

I move the City Council to authorize the city attorney to institute eminent domains with respect to the Halfway Tree project and the Northside water tank project.

Attachments:

RESOLUTION # _____

**A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO FILE ACTIONS UNDER N.C.G.S.
CHAPTER 40A WITH RESPECT TO CERTAIN REAL PROPERTIES IN HENDERSON COUNTY**

WHEREAS the City Council finds it necessary in order to improve its water distribution system and sewerage collection systems in favor of potential customers who are in need of such improvement, and

WHEREAS the City Council finds that efforts to obtain easements to aid such improvements have proved impractical or ineffective, and

NOW, BE IT THEREFORE RESOLVED that the City Attorney be and he is hereby authorized to cause the filing of actions under N.C.G.S. Chapter 40A with respect to the following identified real properties.

Record Owner:	PIN
KME Development, LLC	9663-54-4661

Also, a sewer easement over that unnamed 16.5-foot (more or less) right-of-way abutting and directly to the west of real property identified as Henderson County PINs

9577-17-3813
9577-17-3618
9577-17-3663.

Adopted this fifth day of March 2020.

Barbara Volk
Mayor, City of Hendersonville

ATTEST:

Tammie K. Drake, CMC
City Clerk



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

Submitted By: Tammie Drake

Department: Admin

Date Submitted: 02.25.20

Presenter: Tammie Drake

Date of Council Meeting to consider this item: 03.05.20

Nature of Item: Presentation Only

Summary of Information/Request:

Item # 16

Sunshine Week is March 15-21, 2020

The state of NC to allow public access to the business of government. Open government laws are known as "sunshine laws" because they help shed light on the government's work. There are laws that govern how boards meet (open meetings law) and public records laws.

Staff will discuss the open meetings and public records laws as a refresher.

Budget Impact: \$ N/A Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

Suggested Motion:

N/A

Attachments:



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

Submitted By: Tammie Drake

Department: Admin

Date Submitted: 02.17.20

Presenter: Tammie Drake

Date of Council Meeting to consider this item: 03.05.20

Nature of Item: Council Action

Summary of Information/Request:

Item # 19

Board/Commission Announcements: It is the policy of the Council to receive applications at one meeting, make appointments at the next.

Animal Services Advisory Board: This Committee was established by the Council at their 02.06.20 meeting. The purpose is to make recommendations to the Council and staff regarding the Animal Ordinance, policies and procedures, etc. This Committee will also hear dangerous dog appeals.

Seven members shall be from the general public with various affiliations and diverse backgrounds, a veterinarian and a representative from the Hendersonville Police Department. Members will serve three-year staggered terms.

To accomplish staggered terms, I recommend two positions expire June 30, 2023 as well as the veterinarian position, two positions expire June 30, 2022 and two positions expire June 30, 2021.

You have received applications from: Alexa Arnold, Barbara Burke, Caroline Gunther, Sharon Hanson, Sarah Hoffman, Angela Prodrick and Constance Sewart.

Walk of Fame Steering Committee: There is one vacant City position on the Steering Committee. There are no applications on file at this time.

Budget Impact: \$ _____ **Is this expenditure approved in the current fiscal year budget?** N/A **If no, describe how it will be funded.**

Suggested Motion:

I nominate ... for a three-year on the Animal Services Advisory Committee.

I nominate ... for a two-year term on the Animal Services Advisory Committee.

I nominate ... for a one-year term on the Animal Services Advisory Committee.

Attachments: