

Jody L. McLeod  
**MAYOR**

Bruce Thompson  
**TOWN ATTORNEY**

Steve Biggs  
**TOWN MANAGER**



Bob Satterfield  
Alex Harding  
R.S. "Butch" Lawter, Jr.  
Art Holder  
**COUNCIL MEMBERS**

Michael Grannis  
**MAYOR PRO TEM**

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## **TOWN COUNCIL MEETING**

**AUGUST 1, 2011**

### **AGENDA**

#### **MAYOR AND TOWN COUNCIL**

**MAYOR JODY L. MCLEOD**  
**MAYOR PRO TEM MICHAEL GRANNIS**  
**COUNCILMAN BOB SATTERFIELD**

**COUNCILMAN ALEX HARDING**  
**COUNCILMAN R.S. "BUTCH" LAWTER, JR.**  
**COUNCILMAN ART HOLDER**

#### **TOWN STAFF**

**STEVE BIGGS, TOWN MANAGER**  
**SHERRY L. SCOGGINS, TOWN CLERK**  
**BRUCE THOMPSON II, TOWN ATTORNEY**

**AGENDA**  
**THE REGULAR MEETING OF THE CLAYTON TOWN COUNCIL**

**MONDAY, AUGUST 1, 2011**  
**7:30 PM**

**THE CLAYTON CENTER**  
**COUNCIL CHAMBERS**

**1. CALL TO ORDER**

Pledge of Allegiance – Boy Scout Troop 24 sponsored by the Clayton Civitan Club

Invocation – Mayor Jody L. McLeod

**2. ADJUSTMENT OF THE AGENDA**

**3. CONSENT AGENDA**

(Items on the consent agenda are considered routine in nature or have been thoroughly discussed at previous meetings. Any member of the Council may request to have an item removed from the consent agenda for further discussion.)

- a. Draft minutes from the July 18, 2011, work session meeting.
- b. Powhatan R.A.C.E. request.
- c. NCDOT agreement for Clayton Community Center Pedestrian Connector.
- d. Proclamation – August 2011 as Firefighter Appreciation Month.
- e. Initial warranty acceptances for asphalt pavement for the following:
  - Cassedale Subdivision
  - Harvest Mill Lane
  - RWAC: Phases 3B, 3C, 3D, 3E & Athletic Club Boulevard

**4. INTRODUCTIONS AND SPECIAL PRESENTATIONS**

- a. Presentation by the Clayton Chamber of Commerce for the 2011 Harvest Festival; continuance from the July 18, 2011, Council meeting.

**5. PUBLIC HEARINGS**

**6. OLD BUSINESS**

- a. Ordinance Amendment OA 2011-25 to the UDC to add Scenic Highway Overlay Regulations – UDC Section 155.204.
- b. Phase 2 of the streets bonds bid opening results.
- c. Citizen request to close the unopened portion of Hamby Street between 517 Starling Street and 605 Starling Street.

**7. NEW BUSINESS**

- a. Presentation of special use permit request, SUP 2011-62, for a proposed church to co-locate at 307 Tew Court, currently the Kids-R-Kids Daycare.
- b. Presentation of application to serve on the Public Art Advisory Board.

**8. STAFF REPORTS**

- a. Town Manager
- b. Town Attorney
- c. Town Clerk
  - Calendar of Events
- d. Other Staff

**9. OTHER BUSINESS**

- a. Informal Discussion & Public Comment.
- b. Council Comments.

**10. ADJOURNMENT**

**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

Agenda Item: 3a

Meeting Date: 8/01/11

**TITLE: DRAFT MINUTES FROM THE JULY 18, 2011, WORK SESSION MEETING.**

**DESCRIPTION: Attached.**

**RELATED GOAL: Administrative**

**ITEM SUMMARY:**

**Date:**

**Action:**

**Info. Provided:**

8-01-11

Approval.

DRAFT minutes the  
7/18/2011 meeting.

**MINUTES  
CLAYTON TOWN COUNCIL  
JULY 18, 2011**

The first regular meeting of the Clayton Town Council for the month of July was held on Monday, July 18, 2011, at 7:30 PM at Town Hall, 111 East Second Street.

**PRESENT:** Mayor Jody L. McLeod, Mayor Pro Tem Michael Grannis, Councilman Bob Satterfield, Councilman R. S. "Butch" Lawter Jr., Councilman Alex Harding, and Councilman Art Holder.

**ALSO PRESENT:** Steve Biggs, Town Manager; Brenton McConkey, Town Attorney; Sherry Scoggins, Town Clerk; Nancy Medlin, Deputy Town Manager; David DeYoung, Planning Director; Bruce Naegelen, Downtown Development Coordinator; Tommy Roy, Information Services Technician

**ITEM 1. CALL TO ORDER**

Mayor McLeod called the meeting to order at 7:34 PM and led the Pledge of Allegiance. Mayor McLeod gave the invocation.

**ITEM 2. ADJUSTMENT OF THE AGENDA**

Town Manager Steve Biggs requested the following adjustment(s) of the agenda:

- Item 5b will not require Council action but there will be a report.

It was the consensus of the Council to approve the agenda with the requested adjustment.

**ITEM 3. ACTION AGENDA**

Councilman Harding motioned to approve the action agenda as presented; Councilman Holder and Mayor Pro Tem Grannis simultaneously seconded the motion. The motion carried unanimously with the following action agenda item being approved at 7:35 PM:

- Item 3a. Draft minutes from the June 20, 2011, work session meeting, and the June 20, 2011, closed session meeting.
- Item 3b. Final acceptance request for asphalt pavement at Mitchiner Hills Subdivision, Phase 1.

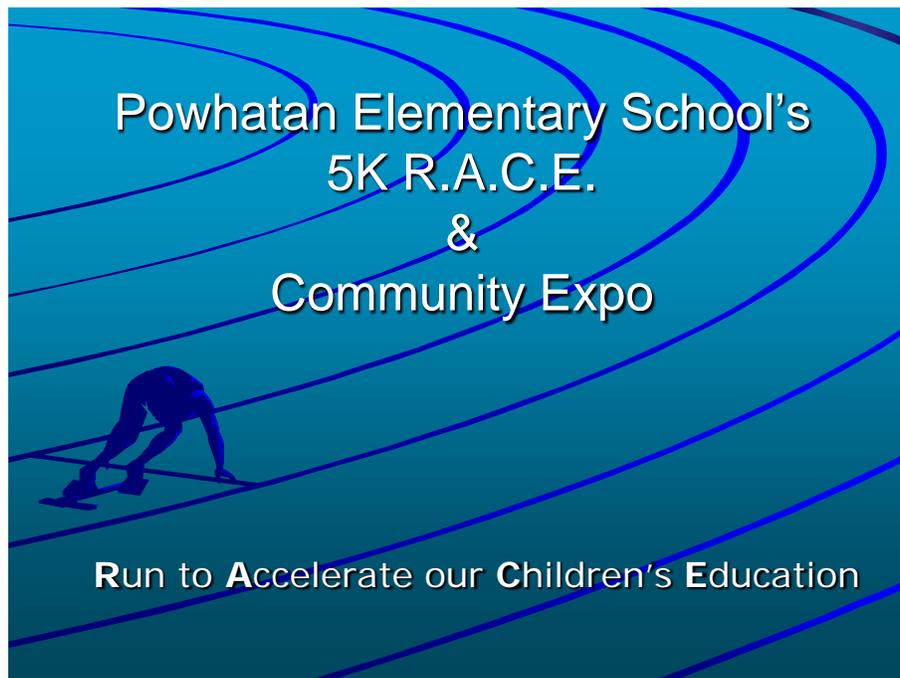
**ITEM 4. INTRODUCTIONS & SPECIAL PRESENTATIONS**

- Item 4a. Introduction of new Town of Clayton employee(s).

No new Town of Clayton employees were introduced.

Item 4b. Presentation of Powhatan R.A.C.E. request.

Ms. Laura Kell provided the following PowerPoint presentation of the Powhatan R.A.C.E. request:



## Event

4<sup>th</sup> Annual

Run to Accelerate our Children's Education  
and Community Expo

- ◆ When: Saturday, October 8, 2011
- ◆ Where: Powhatan Elementary School
- ◆ Events: 5K road race, 5K health walk, 1 mile kids run and 100 yard fun run

## Event Continued

### Community Expo and Used Book Sale

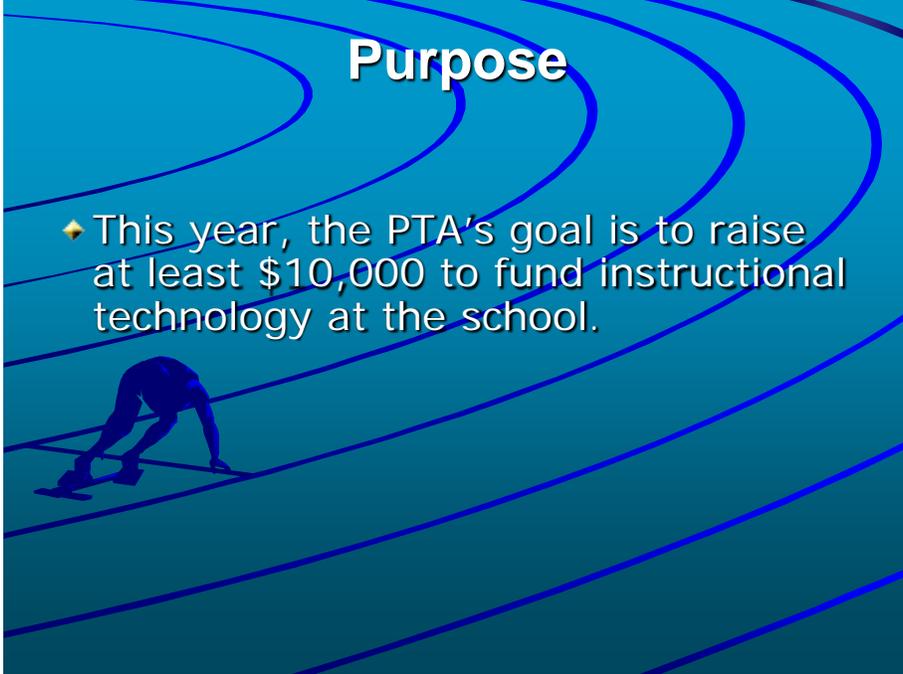
- ◆ 8:00 am – 12:00 noon on RACE day
- ◆ Local businesses will be showcasing their products and services.
- ◆ All books from preschool to adult level will be on sale for \$1 each.

### Pre-RACE Spaghetti Dinner

- ◆ Friday, October 7
- ◆ 5:30 pm – 7:30 pm
- ◆ \$6 per plate. Take Out is available.
- ◆ Sponsored by The Clayton Steakhouse

## Purpose

- ◆ This year, the PTA's goal is to raise at least \$10,000 to fund instructional technology at the school.



## Race Day Schedule

- ◆ Registration/Packet Pick-up: 7:00-8:15 am
- ◆ 5K Race: 8:30 am
- ◆ 5K Health Walk: 8:30 am
- ◆ 1 mile Kids Run (12 & under): 9:30 am
- ◆ Fun Run (ages 5 & under): 9:45 am
- ◆ Community Expo: 8:00 am-12:00
- ◆ Used Book Sale: 8:00 am-12:00



## 5K Race Course

- ◆ The course is a 3.1 mile UST&F-certified course in the Glen Laurel neighborhood.
- ◆ The course begins and ends at Powhatan Elementary. Out of the school turn right on Vinson Road, left on Torrey Pines Drive, right on Parkridge Drive, left of Neuse Ridge Drive, right on Parkridge Drive, loop

## 1 Mile Race Course

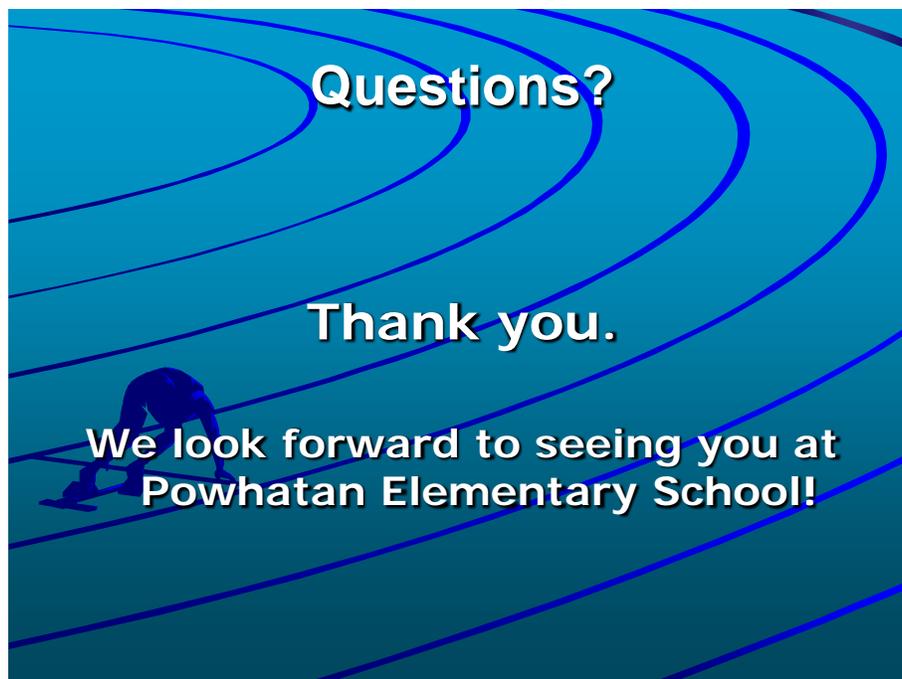
- ◆ In order to ensure the safety of our children, the entire 1 mile course will be on school grounds.

## Roads and Traffic Control

- ◆ Vinson Road will be blocked off by the Clayton Police while the runners begin to run the course. Vinson Road will be reopened to traffic until the runners return. The estimated time for all participants to complete the course is 1 hour. No other roads will be closed. Participants know that this is not a closed course and open to Glen Laurel neighborhood traffic.
- ◆ Adult volunteers will be at every intersection throughout the course. The volunteers will encourage drivers to wait or proceed slowly out of the neighborhood. A list of volunteers will be supplied to the Clayton Police.
- ◆ The PTA will continue to work closely and comply with all requests from CPD as in years past.

## Road Closing Request

- ◆ The Powhatan PTA requests that Vinson Road be closed for short intervals from 8:30 am – 9:30 am on Saturday, October 8, 2011
- ◆ Contact for the event is  
Laura Kell 333-9614



Ms. Laura Kell stated the letter given to each Council member is an example of a letter that will be given to residents to make them aware of the Powhatan R.A.C.E.; herewith attached. She also provided an overview of the course for the participants.

Based upon question by Council, Ms. Kell stated the event is slated for Saturday, October 8<sup>th</sup>.

Based upon question by Council, Ms. Kell stated she will contact and work with Lt. Hutchins of the Clayton Police Department.

Based upon question, Ms. Kell stated all volunteers wear orange safety vests for the event and Lt. Hutchins will have a list of all volunteer cell phone numbers for the event. She added there is an ambulance dedicated to the event. She added there is one person at each intersection.

Based upon question by Council, Ms. Kell stated the new principal of Powhatan Elementary is Sharon Johnson.

It was the consensus of the Council to place this item on the consent agenda.

Item 4c. Presentation by the Clayton Chamber of Commerce for the 2011 Harvest Festival.

Mr. James Lipscomb stated there have been changes and the map of the event has not been finalized. He added he hopes to have it by the next meeting. He stated the festival will be in the same area as last year and no additional street

closure is being requested. He provided an overview of the changes proposed for this year's festival:

- Moved the car show to Smith Street
- Moved the arts and crafts vendors between Lombard and Fayetteville Streets
- Moved stage to the Coffee Mill parking lot
- Deleted the small stage that was in front of Jones'
- Co-sponsored with Ray Price Harley Davidson and bring in a simulator and possibly a bike exhibition
- Secured a re-enactment troupe, the Shadow Players
- Moved the gospel sing to Sunday
- Music, possibly by the area high school students, on Friday
- Closure of Fayetteville Street between Main and Second Streets to remain closed until 6 PM Sunday evening

Based upon question by Council, Mr. Lipscomb stated Horne Square will be utilized. He stated a few months back the town manager and he made a trip to Wake Forest and viewed amusement rides. He stated the kiddie rides could be on the asphalt. He stated there will be two concession trailers on the brick trailers and plywood would be put down to distribute weight. He stated the asphalt portion is slated to have kiddie rides and games. He stated additional landscape protection was discussed and the product has not been finalized. He stated at the railroad right of way, will have larger rides.

Based upon question by Council, Mr. Lipscomb stated the concessions would sell cotton candy, candy apples, drinks, nachos with cheese, hot dogs, and candy bars. He stated the barbeque would be placed in the gravel lot behind HomeTowne Realty.

Based upon comment by Council, Town Manager Biggs stated a suggestion for the area around the concession trailers on the pavers is placing plywood under the trailers. He stated the advantage is it distributes the weight and catches potential food droppings.

Based upon comment by Council, Mr. Lipscomb stated for the landscaping he was hoping to use the white poles with roping for barriers.

Town Manager Biggs stated the proposed trailers are self-contained. He stated for the landscaping, there is on-going dialogue.

Mayor Pro Grannis stated he would like to hear from the police department on the requested street closures.

Based upon question by Council, Mr. Lipscomb stated this is being billed as the Clayton Harvest and Music Festival.

**ITEM 5. ITEMS SCHEDULED FOR THE REGULAR MEETING AGENDA**

- Item 5a. Continuation of public hearing for Ordinance Amendment OA 2011-25 to the UDC to add Scenic Highway Overlay Regulations – UDC Section 155.204 from the Monday, May 2, 2011, Council meeting.

David DeYoung presented a PowerPoint presentation:





## Citizen Input

Based on Town Council direction given May 2, 2011, staff held public forums on:

- Thursday May 26, 2011 from 6:30 – 8:30 pm
  - 17 attendees (signed in)
- Thursday June 9, 2011 from 6:30 – 8:30 pm
  - 22 attendees (signed in)

Attendees included affected property owners and interested citizens.



## Identified Issues

UDC Section	Regulation	Reason	Solution
155.204(C)(2) Designation	Geographic boundary of Overlay	Extends to far from the corridor	1. Reduce distance
155.204(C)(8) SHO interchange development	Included Interchanges	Ranch Rd. and US HWY 70 should be included	1. Evaluate interchange in the future for potential inclusion
155.204(C)(9)(h) Interchange site development guidelines	Interchange height requirement	Too restrictive at 2 stories	1. Provide incentives for compliance 2. Waiver process (C)(7)
155.204(C)(11)(b) SHO corridor development	Corridor setback requirement	Too restrictive at 100'	1. Reduce setback 2. Waiver process (C)(7)

*In addition to the above, there was a general concern that the overlay regulations would impact buyers/developer interest. Development incentives were added as a solution.*



## Revision Table

UDC Section	Previous Text	Proposed Text	Purpose
155.204(C)(2) Designation	"... extends 2,000 feet from the centerline of the right-of-way..."	"... extends 1,000 feet from the centerline of the right-of-way..."	To reduce corridor distance by 1000 feet.
155.204(C)(2) Designation	N/A	"The official SHO boundaries are subject to an Official Zoning Map Amendment..."	To allow the final boundary to be adjusted when an Official Zoning Map Amendment is approved.
155.204(C)(9)(b) Use Regulations Table	N/A	<b>Added:</b> -Nursing Convalescent Facility -School (Technical, Trade or Business) -Amusement Center ( <i>Change to Indoor Entertainment</i> ) <b>Removed:</b> -Indoor Recreation -Foot note <b>Modified:</b> -Approval Types	To clean-up and clarify use types which will be allowed at the interchanges.



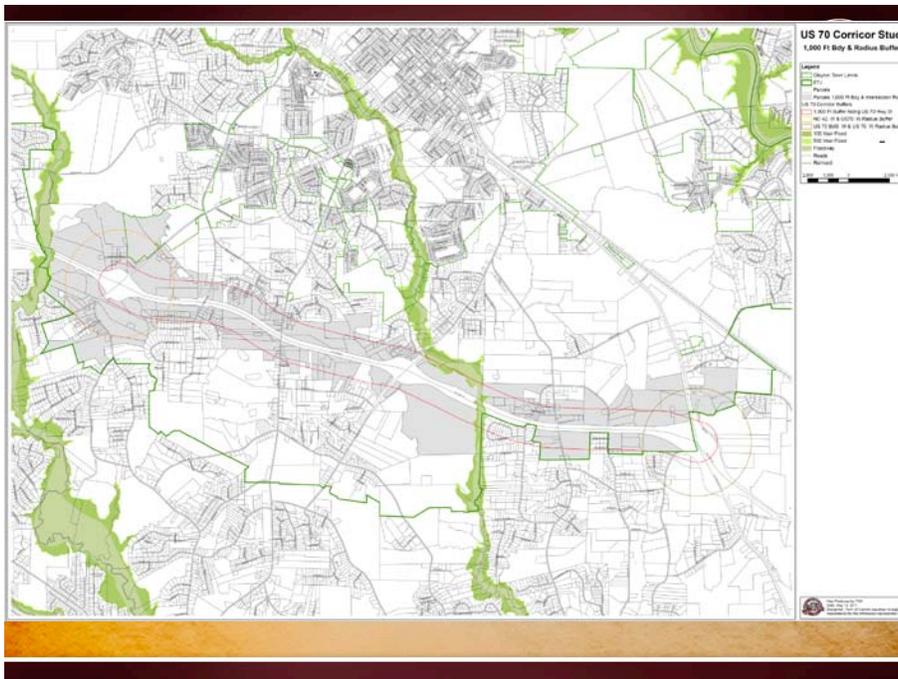
## Revision Table Cont.

UDC Section	Previous Text	Proposed Text	Purpose
155.204(C)(9)(h) Site development	"To promote a sense of arrival, structures located on intersection properties having frontage on Scenic US Highway 70 West shall be a minimum of two stories in height."	"To promote ... properties having frontage on Scenic US Highway 70 West are encouraged to be multiple stories in height. Buildings directly adjacent to Scenic US 70 West shall be a minimum of two stories or 25 feet in height. To encourage both quality mixed-use development and multiple story buildings, the Town Council may grant development incentives such as: 1. Density and/or intensity bonuses; 2. Increased building height allowances; and 3. Reduced parking requirements.	To create incentives for quality development with multiple stories directly adjacent to the right-of-way and encourage development to locate where incentives are being given.



## Revision Table Cont.

UDC Section	Previous Text	Proposed Text	Purpose
155.204(C)(11)(b) Special setback requirement	“No structures shall be allowed within 100 feet of the edge of the ultimate right-of-way for Scenic US Highway 70 West, except as follows:...”	“Non-residential development must maintain a minimum 100 foot setback and non-exempt residential development must maintain a minimum 50 foot setback from the edge of the ultimate right-of-way for Scenic US Highway 70 West. Residential development which provides a 100 foot setback and provides unit clustering will receive a density bonus of one-half unit per acre.	To maintain a 100 foot setback for non-residential and encourage non-exempt residential development to do the same. Reduced residential setback to 50 feet and provide development incentive for increasing it to 100 feet.



Mr. DeYoung stated the areas shaded in gray are the impacted parcels.



## Minor Revisions

### 155.204(C) (7) Waivers.

- "A waiver of one or more requirements of the SHO may be granted by the ~~Town Council~~ Town Board with approval authority if the waiver criteria set forth below have been met."

### 155.204(C) (8) SHO Interchange Development.

- "SHO interchanges ~~shall~~ generally include ~~all~~ properties within ½ mile radius of the intersection point of the following highway interchanges..."

### 155.204(C) (9) (b) Interchange Use Regulations.

- Remove "Amusement Center" Use and replace it with "Indoor Entertainment" Use



## Minor Revisions Cont.

### 155.204(C) (11) (b) SHO Corridor Development.

- "...The following exceptions are permitted within the special setback:
  1. Landscaping;
  2. Drainage features designed to mimic the natural environment;
  3. Public utilities and facilities and private well and septic systems;
  4. Driveways and streets; and
  5. Sidewalks, pedestrian ways, or bikeways."



## Future SHO Development

**Exemptions.**

- Existing single family lots of record and residential subdivisions which have a valid subdivision/plat approval.
- “Bona fide” farms as defined in North Carolina General Statutes (NCGS) Section 153A-340.

**Waivers.**

- A waiver of one or more requirements of the SHO may be granted by the Town Council if the waiver criteria have been met.



## Questions/Discussion

Councilman Satterfield stated site plans are not coming before the Town Council for action and he stated there are Council members that would like that change. He questioned if Planning Director DeYoung received Councilman Holder’s email.

Planning Director DeYoung stated in the negative.

**Councilman Satterfield stated he would like those concerns addressed.**

**Town Manager Biggs stated he did not forward to Planning Director DeYoung as he thought this would be discussed by the Council in open forum.**

**Councilman Satterfield stated his preference is to reflect Ranch Road in the SHO.**

**Councilman Lawter stated the next to last slide reflected the Town Council granting waivers and a few slides back reflected Town Boards. He stated his preference is for the Town Council to grant waivers.**

**Mayor Pro Tem Grannis stated he would like to enter into a dialogue with respect to Councilman Holder’s email. He stated one item is the façade of the building. He stated in Clayton the front façade is masonry of some sort and this is because it is facing a major thoroughfare. He stated he would include all the sides of the building as those could also face thoroughfares. He stated the language is too vague. He stated he is pleased to see the area decreased from 2000 feet to 1000 feet. He stated he is not prepared to say that is the final. He stated he would like more justification.**

**Councilman Lawter stated appreciation for citizen input.**

**Mayor Pro Tem Grannis suggested reading Councilman Holder’s suggestions into the record so those in attendance are aware of what is being discussed.**

**Town Manager Biggs read Councilman Holder’s Scenic Highway Overlay Proposal email into the record:**

**“After reading the proposed overlay and attending the 2 forums, I suggest the following changes:**

**Section 8 Page 23 Add Scenic US Highway 70 West and Ranch Road**

**Section 9 Item (f) Setbacks Thoroughfare right-of-way setbacks shall be a minimum of 25 feet. The entire area within the right-of-way setback shall be fully grassed and landscaped.**

**Section 9 (h) I am concerned about the 25 foot height requirement. My thinking is that normal commercial establishments of a standard height of less than 25 feet may decide not to partake because of the extra cost of the higher building.**

**Section 10 item (d) Chain establishments such as McDonald’s, Cracker Barrel, and BoJangles’ may refuse to participate if they cannot use their recognized logos and signage.**

**Section 11 Item (b) Non-residential development must maintain a minimum of 50 foot setback and non-exempt residential development must maintain a minimum of 25 foot setback from the edge of the State right-of-way for Scenic US highway 70 West.”**

**Mayor McLeod stated this is a public hearing and he opened the floor at 8:18 PM.**

**Mr. James Lipscomb thanked Mr. Holder for his recommendations. He requested waivers for a minor subdivision be granted by the Planning staff. He added he disagrees with the condition for waivers not being granted for financial consideration. He stated he has seen neon done tastefully and would like it permitted within the SHO.**

**Mayor Pro Tem Grannis stated masonry facades need to be considered when facing major thoroughfares and this document does not adequately provide direction.**

**Mr. Lipscomb stated he would like to see buildings with different types of building materials. He cited Cracker Barrel in which the building is part of the corporate image as an example.**

**Councilman Satterfield requested a copy of Mr. Lipscomb’s questions.**

**Mayor Pro Tem Grannis stated as he reads the document today, the only thing that cannot be done is unfinished concrete or concrete masonry walls. He stated anything else construction wise could be used and it is too wide open.**

**Councilman Harding stated he does not want to become prohibitive. He stated in terms of financial, he stated the intent is so that profit does not take away from the citizens of the Town.**

**Mr. Hilton Byrd, Vice President of Carolina Packers, came forward.**

**Mr. Kent Denning, General Manager of Carolina Packers, came forward.**

**Mr. Lynn Thornton, member of Board of Directors of Carolina Packers, stated for the record all three support the interchange of Ranch Road reflective of the same applications of ordinances as the other two. He stated Carolina Packers does not intend to develop but it is one of the largest landowner in the corridor with the most impact.**

Mr. Michael Blinson thanked the Council for the extra time. He added Mr. DeYoung went out of his way to answer questions.

Mr. Lipscomb requested the Council give direction to the Planning Board or staff to up the size of the square feet of the signage. He expressed concern of the financial consideration.

Councilman Satterfield stated he has a 4 x 8 sign at his shop that he would like placed in the SHO where allowed to see the visual impact.

Councilman Holder stated he wants to encourage rather than discourage development.

Mayor McLeod closed the public hearing at 8:32 PM.

Item 5b. Phase 2 of the streets bonds bid opening results [Council action is requested].

Town Manager Biggs stated a bid opening was scheduled for Tuesday, July 12th, and only two firms submitted bids. He stated on first advertisement the Town must receive three bids in order to open. He stated the Town is re-advertising for a second bid opening on Thursday, July 28.

Based upon question by Council, Town Manager Biggs stated with second advertisement bids can be opened if there are fewer than three. He stated if the lowest bid is within budget, it is generally 45 days from bid opening to notice to proceed and there is about two weeks for mobilization on site.

Based upon question by Council about low response, Town Manager Biggs stated this phase is much more extensive as it includes underground utilities. He stated the best season is the March or April timeframe. He stated this is a very large project and smaller firms may not be able to get bonded.

#### **ITEM 6. ITEMS CONTINGENT FOR THE REGULAR MEETING**

Item 6a. Presentation of NCDOT agreement for Clayton Community Center Pedestrian Connector.

Town Manager Biggs stated this is one of two locally administered projects the Town has been approved; he added the other project was the Front Street Extension project. He stated this is an inter-local agreement with NCDOT that would begin at Cooper School and connect to Clayton Community Center.

It was the consensus of the Council to place this item on the consent agenda.

- Item 6b. Presentation of proclamation – August 2011 as Firefighter Appreciation Month.**

**It was the consensus of the Council to place this item on the consent agenda.**

- Item 6c. Presentation of initial warranty acceptances for asphalt pavement for the following:**
- Cassedale Subdivision**
  - Harvest Mill Lane**
  - RWAC: Phases 3B, 3C, 3D, 3E & Athletic Club Boulevard**

**It was the consensus of the Council to place these items on the consent agenda.**

**ITEM 7. ITEMS FOR DISCUSSION**

- Item 7a. Discuss citizen request to close the unopened portion of Hamby Street between 517 Starling Street and 605 Starling Street.**

**Mr. Michael Baker thanked the Council for consideration of the request. He stated they (Mr. Baker and Mr. O’Neal) believe the building of the auto parts store on HWY 70 Business will increase foot traffic in between their properties.**

**Based upon question by Council, Town Manager Biggs stated a study on the utilities has not been done. He recommended that the Town retain easement rights for existing and future utilities.**

**Town Manager Biggs stated there is a formal process for noticing and that is typically charged back to the benefitting adjoining property owners.**

- Item 7b. Discussion of request for additional permits in the Summerlyn Subdivision.**

**Town Manager Steve Biggs provided an overview of the Summerlyn Subdivision. He stated Mr. Stewart Marlowe acquired the property from SunTrust Bank. He stated Mr. Marlowe intends to sell the lots for building purposes. He added Mr. Marlowe is willing to move forward with the construction of the amenities package and greenway. He stated Mr. Marlowe is offering to post 125% of the estimated cost of the amenities with completion of the amenities package by Memorial Day 2012. He stated this evening staff is seeking Council approval of an agreement that would outline schedule, outline scope of work, and outline agreement for the issuance of the 52 permits. He added Mr. Marlowe is available and construction would begin as soon as possible.**

**It was the consensus of the Council for staff to proceed with drafting an agreement with Mr. Marlowe for the items described.**

**ITEM 8. OLD BUSINESS**

No Old Business was presented to the Council.

**ITEM 9. STAFF REPORTS**

Item 9a. Town Manager

Town Manager Steve Biggs stated no report.

Item 9b. Town Attorney

Town Attorney Brenton McConkey stated no report.

Item 9c. Town Clerk

Town Clerk Sherry Scoggins stated there is no July Public Art Advisory Board meeting.

Town Clerk Sherry Scoggins stated the Board of Adjustment meeting slated for Wednesday, July 20, 2011, at 6 PM has been rescheduled to Wednesday, August 3, 2011 at 6 PM.

Item 9d. Other Staff

No other staff presented comments.

**ITEM 10. OTHER BUSINESS**

Item 10a. Informal Discussion & Public Comment.

Colonel Dennis Nielsen, retired air force, stated he was in the building a week and a half ago and he requested information to open a business and he did not receive it. He stated he is a firearms dealer and is a self-defense instructor. He stated he is seeking clarification on a privilege license for a firearms dealer. He stated he is seeking clarification on what constitutes other weapons.

Mayor McLeod requested Mr. Nielsen share the information he is seeking and staff will be requested to address the questions.

Mr. Nielsen stated he is seeking to rent property in Town and he would like to know the cost of his privilege license for selling firearms. He added he would like to know the definition of “other weapons.” He requested the answer in writing.

Mr. Nielsen also requested if there is a fee to register an alarm for his place of business and information on alarm response. He also requested zoning information for the selling of firearms.

Item 10b. Council Comments.

No Council comments were presented.

Item 10c. Planning Board Highlights of the June 2011 meeting.

The Planning Board Highlights were distributed as information.

**ITEM 11. ADJOURNMENT**

With there being no further business brought before the Council, Councilman Holder motioned to adjourn; Councilman Satterfield seconded the motion. Motion carried unanimously at 9:04 PM.

Duly adopted by the Town Council this \_\_\_\_\_ day of August 2011, while in regular session.

ATTEST:

\_\_\_\_\_  
Jody L. McLeod,  
Mayor

\_\_\_\_\_  
Sherry L. Scoggins, MMC,  
Town Clerk

**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

Agenda Item: 3b

Meeting Date: 8/01/11

**TITLE: POWHATAN R.A.C.E. REQUEST.**

**DESCRIPTION:** A parent representative of Powhatan Elementary respectfully requests the Council's consideration of a temporary street closure for the Powhatan R.A.C.E. slated for Saturday, October 8, 2011.

It was the consensus of the Council to place this item on the consent agenda.

**RELATED GOAL:** Administrative

**ITEM SUMMARY:**

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
7-18-11	Presentation.	N/A.
8-01-11	Approval.	N/A.

**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

Agenda Item: 3c

Meeting Date: 8/01/11

**TITLE: NCDOT AGREEMENT FOR CLAYTON COMMUNITY CENTER PEDESTRIAN CONNECTOR.**

**DESCRIPTION:** The agreement is for a locally administered project with federal funds. The project will consist of planning, final design, and right of way acquisition of a pedestrian connector from the intersection of Shotwell Road with Amelia Church Road and along Amelia Church Road as a paved pathway, transitioning to a five-foot sidewalk, crossing US 70 and ending at Clayton High School. The project length is approximately 1.1 miles.

The Town is slated to receive up to \$76,000 federal funds and the Town shall provide a local match of \$19,000. Costs exceeding the total estimated cost of \$95,000 are the responsibility of the Town. Activities eligible for funding reimbursement for this projects includes design, environmental documentation, and right of way acquisition.

If the Council approves the agreement, the Town shall complete the project by June 30, 2012.

It was the consensus of the Council to place this item on the consent agenda.

**RELATED GOAL:** Expand Leisure Opportunities and Arts Community

**ITEM SUMMARY:**

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
7-18-11	Presentation.	Agreement.
8-01-11	Approval.	Agreement.



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE  
GOVERNOR

EUGENE A. CONTI, JR.  
SECRETARY

June 9, 2011

Mr. James L. Browder, AICP  
Planning Director  
Town of Clayton  
Post Office Box 879  
Clayton, NC 27528

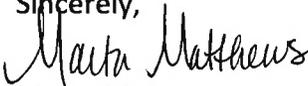
SUBJECT: Locally Administered Project Agreement  
Town of Clayton, Johnston County  
Project EL-5100 OB; WBS Element: 41821.1.33 & 41821.2.33  
Federal-Aid No: STPDA-0406(5)  
Clayton Community Center Pedestrian Connector

Dear Mr. Browder:

Please find enclosed duplicate originals of the above-referenced Project Agreement for the Clayton Community Center Pedestrian Connector in Clayton, Johnston County.

After the Town of Clayton has reviewed and executed both originals, please return them to my attention, within ninety (90) days. The Department of Transportation will execute the agreements and send one fully executed agreement back to the Town of Clayton.

If you have any questions, please contact me at (919) 707-6626 or by e-mail at [mtmatthews@ncdot.gov](mailto:mtmatthews@ncdot.gov). Thank you.

Sincerely,  
  
Marta Matthews  
Program Consultant  
Local Programs Management Office

Enclosure

cc: Mr. Jerry Page, PE, Division Project Manager  
Mr. Ray McIntyre, PE, TIP Unit  
Mr. Rick Lakata, PE, TIP Unit

MAILING ADDRESS:  
NC DEPARTMENT OF TRANSPORTATION  
TRANSPORTATION PROGRAM MANAGEMENT  
1595 MAIL SERVICE CENTER  
RALEIGH NC 27699-1595

TELEPHONE: 919-250-4234  
FAX: 919-212-5711

WEBSITE:  
[WWW.NCDOT.GOV](http://WWW.NCDOT.GOV)

LOCATION:  
CENTURY CENTER COMPLEX  
ENTRANCE B-1  
1020 BIRCH RIDGE DRIVE  
RALEIGH NC 27610

NORTH CAROLINA

**LOCALLY ADMINISTERED PROJECT -  
FEDERAL**

JOHNSTON COUNTY

DATE: 6/2/2011

NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

TIP #: EL-5100 OB

AND

WBS Elements: PE 41821.1.33

ROW 41821.2.33

TOWN OF CLAYTON

CON \_\_\_\_\_

OTHER FUNDING:

FEDERAL-AID NUMBER: STPDA-0406(5)

CFDA #: 20.205

Total Funds [NCDOT Participation] \$76,000

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department" and the Town of Clayton, hereinafter referred to as the "Municipality".

**WITNESSETH:**

WHEREAS, Title 23, Sections 133(d)(3) and 133(f) of the US Code require suballocation of Surface Transportation Program Funds to urbanized areas; and,

WHEREAS, the Town of Clayton has requested federal funding for Clayton Community Center Pedestrian Connector, hereinafter referred to as the Project, in Johnston County, North Carolina; and,

WHEREAS, subject to the availability of federal funds, the Municipality has been designated as a recipient to receive funds allocated to the Department by the Federal Highway Administration (FHWA) up to and not to exceed the maximum award amount of \$76,000 for the Project; and,

WHEREAS, the Department has agreed to administer the disbursement of said funds on behalf of FHWA to the Municipality for the Project in accordance with the Project scope of work and in accordance with the provisions set out in this Agreement; and,

WHEREAS, the Department has programmed funding in the approved Transportation Improvement Program for the Project; and,

WHEREAS, the governing board of the Municipality has agreed to participate in certain costs and to assume certain responsibilities in the manner and to the extent as hereinafter set out; and,

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly including, but not limited to, the following applicable legislation: General Statutes of North Carolina (NCGS) Section 136-66.1, Section 136-71.6, Section 160A-296 and 297, Section 136-18, Section 136-41.3 and Section 20-169, to participate in the planning, construction and/or implementation of the Project approved by the Board of Transportation.

NOW, THEREFORE, this Agreement states the promises and undertakings of each party as herein provided, and the parties do hereby covenant and agree, each with the other, as follows:

## **1. GENERAL PROVISIONS**

### **FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT**

All parties to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall provide reports as required by the Federal Funding Accountability and Transparency Act (FFATA) for this Project.

### **AGREEMENT MODIFICATIONS**

Any modification to this Agreement will be agreed upon in writing by all parties prior to being implemented.

Any increases to the funding amount will be agreed upon by all parties by means of a Supplemental Agreement.

### **SPONSOR TO PERFORM ALL WORK**

The Municipality shall be responsible for administering all work performed and for certifying to the Department that all terms set forth in this Agreement are met and adhered to by the Municipality and/or its contractors and agents. The Department will provide technical oversight to guide the Municipality. The Department must approve any assignment or transfer of the responsibilities of the Municipality set forth in this Agreement to other parties or entities.

### **COMPLIANCE WITH STATE/FEDERAL POLICY**

The Municipality, and/or its agent, including all contractors, subcontractors, or sub-recipients shall comply with all applicable Federal and State policies and procedures, stated both in this Agreement and in the Department's guidelines and procedures, including the *Local Programs Management Handbook*.

**FAILURE TO COMPLY - CONSEQUENCES**

Failure on the part of the Municipality to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of any reimbursed funds.

**2. SCOPE OF PROJECT**

The Project consists of planning, final design, and right of way acquisition of a pedestrian connector from the intersection of Shotwell Road with Amelia Church Road, along Amelia Church Road as a paved pathway, transitioning to five-foot sidewalk, crossing US 70 and ending at Clayton High School. The project length is approximately 1.1 miles.

The Department's funding participation in the Project shall be restricted to the following eligible items:

- Design
- Environmental Documentation
- ROW Acquisition

as further set forth in this Agreement.

**3. FUNDING**

Subject to compliance by the Municipality with the provisions set forth in this Agreement and the availability of federal funds, the Department shall participate up to a maximum amount of Seventy Six Thousand Dollars (\$76,000), as detailed below. The Municipality shall provide a local match, as detailed in the FUNDING TABLE below, and all costs that exceed the total estimated cost.

**FUNDING TABLE**

<b>Fund Source</b>	<b>Federal Funds Amount</b>	<b>Reimbursement Rate</b>	<b>Non-Federal Match \$</b>	<b>Non-Federal Match Rate</b>
STP-DA	\$76,000	80 %	\$19,000	20 %
<b>Total Estimated Cost</b>		<b>\$95,000</b>		

#### **4. TIME FRAME**

The Municipality shall complete the Project by June 30, 2012. Completion for this Agreement is defined as completion of all pre-construction activities, acceptance of the project, and submission of a final reimbursement package to the Department.

The Department and/or FHWA reserves the right to revoke the funds awarded if the Municipality is unable to meet milestone dates included herein.

#### **5. PRELIMINARY ENGINEERING AUTHORIZATION**

If Preliminary Engineering is an eligible expense, then upon receipt of an executed agreement, the Department will authorize Preliminary Engineering funds and shall notify the Municipality, in writing, once funds have been authorized and can be expended. The Municipality shall not initiate any work, nor solicit for any professional services prior to receipt of written authorization from the Department to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be ineligible for reimbursement.

#### **6. PROFESSIONAL AND ENGINEERING SERVICES**

The Municipality shall comply with the policies and procedures of this provision if Preliminary Engineering and/or Construction Contract Administration is an eligible expense.

##### **PROCUREMENT POLICY**

When procuring professional services, the Municipality must adhere to Title 49 Code of Federal Regulations Part 18.36; Title 23 of the Code of Federal Regulations, Part 172; Title 40 United States Code, Chapter 11, Section 1101-1104; NCGS 143-64, Parts 31 and 32; and the Department's *Policies and Procedures for Major Professional or Specialized Services Contracts*. Said policies and standards are incorporated in this Agreement by reference at [www.fhwa.dot.gov/legregs/legislat.html](http://www.fhwa.dot.gov/legregs/legislat.html) and [www.ncleg.net/gascripts/Statutes/Statutes.asp](http://www.ncleg.net/gascripts/Statutes/Statutes.asp).

- The Municipality shall ensure that a qualified firm is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner and at a just and reasonable cost.
- All Professional Services Firms shall be pre-qualified by the Department.

- If the proposed contract exceeds \$30,000, a pre-negotiation audit must be requested from the Department's External Audit Branch.

#### **SMALL PROFESSIONAL AND ENGINEERING SERVICES FIRMS REQUIREMENTS**

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Small Professional Services Firms (SPSF). This policy conforms with the SPSF Guidelines as approved by the North Carolina Board of Transportation. These provisions are incorporated into this Agreement by reference [www.ncdot.org/doh/preconstruct/ps/contracts/sp/2006sp/municipal.html](http://www.ncdot.org/doh/preconstruct/ps/contracts/sp/2006sp/municipal.html)

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

#### **WORK BY ENTITY**

If the Professional and Engineering Services required for this project will be undertaken by the Municipality, and the Municipality requests reimbursement, then the Municipality must submit a request and supporting documentation to the Department for review and approval, prior to any work being initiated by the Municipality.

### **7. PLANNING / ENVIRONMENTAL DOCUMENTATION**

The Municipality shall prepare the environmental and/or planning document, including any environmental permits, needed to construct the Project, in accordance with the National Environmental Policy Act (NEPA) and all other appropriate environmental laws and regulations. All work shall be performed in accordance with Departmental procedures and guidelines. Said documentation shall be submitted to the Department for review and approval.

- The Municipality shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required to apply for those permits necessary for the construction of the desired improvements. Copies of approved permits should be forwarded to the Department.
- The Municipality shall advertise and conduct any required public hearings.

- If any permit issued requires that action be taken to mitigate impacts associated with the improvements, the Municipality shall design and implement a mitigation plan. The Department will determine if any mitigation costs are eligible for reimbursement. The Municipality shall bear all costs associated with penalties for violations and claims due to delays.
- The Municipality shall be responsible for designing an erosion control plan if required by the North Carolina Sedimentation Pollution Control Act of 1973, NCGS 113A, Article 4, incorporated in this Agreement by reference at [www.ncleg.net/gascripts/Statues/Statutes.asp](http://www.ncleg.net/gascripts/Statues/Statutes.asp) and obtaining those permits required thereby in order to construct the Project. During the construction of the improvements, the Municipality, and its contractors and agents, shall be solely responsible for compliance with the provisions of said Act and the plan adopted in compliance therewith.

## **8. DESIGN**

### **CONTENT OF PLAN PACKAGE**

The Municipality, and/or its agent, shall prepare the Project's plans, specifications, and a professional estimate of costs (PS&E package), in accordance with the Department's guidelines and procedures, and applicable Federal and State standards. All work shall be submitted to the Department for review and approval. The plans shall be completed to show the design, site plans, landscaping, drainage, easements, and utility conflicts.

## **9. RIGHT OF WAY / UTILITY AUTHORIZATION**

If the costs of right of way acquisition or utility relocation are an eligible expense, the Municipality shall submit a letter of request to the Department to authorize and set up right of way and/or utility funding. The acquisition for right of way, construction easements, and/or utility relocation may be undertaken only after the Municipality receives written authorization from the Department to proceed.

## **10. PROJECT LIMITS AND RIGHT OF WAY (ROW)**

### **SPONSOR PROVIDES ROW**

The Municipality, at no liability whatsoever to the Department, shall be responsible for providing and/or acquiring any required ROW and/or easements for the Project.

## **ROW GUIDANCE**

The Municipality shall accomplish all ROW activities, including acquisition and relocation, in accordance with the following: Title 23 of the Code of Federal Regulations, Part 710, Subpart B and Title 49 of the Code of Federal Regulations, Part 24, [Uniform Act] incorporated by reference at [www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm](http://www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm); NCGS, Chapter 133, Article 2, Sections 133-5 through 133-18, Relocation Assistance, incorporated by reference at [www.ncleg.net/gascripts/Statutes/Statutes.asp](http://www.ncleg.net/gascripts/Statutes/Statutes.asp); and the North Carolina Department of Transportation Right of Way Manual.

## **APPRAISAL**

If the costs of ROW acquisition are an eligible expense, the Municipality shall submit the appraisal to the Department's Right of Way Branch for review and approval in accordance with Departmental policies and procedures.

## **CLEARANCE OF PROJECT LIMITS / ROW**

The Municipality shall remove and dispose of all obstructions and encroachments of any kind or character (including hazardous and contaminated materials) from said ROW, with the exception that the Municipality shall secure an encroachment agreement for any utilities (which shall remain or are) to be installed within the ROW. The Municipality shall indemnify and save harmless the Department, Federal Highway Administration, and the State of North Carolina, from any and all damages and claims for damages that might arise on account of said right of way acquisition, drainage, and construction easements for the construction of said Project. The Municipality shall be solely responsible for any damages caused by the existence of said material now and at any time in the future and will save the Department harmless from any legal actions arising as a result of this contaminated and/or hazardous material and shall provide the Department with documentation proving the proper disposal of said material.

## **RELOCATION ASSISTANCE**

The Municipality shall provide relocation assistance services and payments for families, businesses, and non-profit organizations being displaced by the Project in full accordance with the Federal relocation requirements of Title 49 Code of Federal Regulations, Part 24 [Uniform Act], as amended. Relocation assistance services and payments may be accomplished by contract with any other municipal corporation, or State or Federal agency, rendering such services upon approval by the Department and Federal Highway Administration.

## **11. UTILITIES**

The Municipality, and/or its agent, at no liability to the Department, shall relocate, adjust, relay, change or repair all utilities in conflict with the Project, regardless of ownership. All utility work shall be performed in a manner satisfactory to and in conformance with State and Federal rules and regulations, prior to Municipality beginning construction of the project. This Agreement does not modify or supersede any existing Utility Encroachment Agreements that may be in place.

## **12. RIGHT OF WAY CERTIFICATION**

The Municipality, upon acquisition of all right of way/property necessary for the Project, shall provide the Right of Way Agent, located at the Department's Local Right of Way Office, all required documentation (deeds/leases/easement/plans) to secure right of way certification from that office. Certification is only issued after all ROW is in public ownership or property is publicly accessible by a legal document and utilities in conflict with the project are relocated.

## **13. REIMBURSEMENT**

### **SCOPE OF REIMBURSEMENT**

Activities eligible for funding reimbursement for this Project shall include:

- Design
- Environmental Documentation
- ROW Acquisition

### **REIMBURSEMENT GUIDANCE**

The Municipality shall adhere to applicable administrative requirements of Title 49 Code of Federal Regulations, Part 18 ([www.fhwa.dot.gov/legregs/directives/fapgtoc.htm](http://www.fhwa.dot.gov/legregs/directives/fapgtoc.htm)) and Office of Management and Budget (OMB) Circulars A-102 ([www.whitehouse.gov/omb/circulars/index.html](http://www.whitehouse.gov/omb/circulars/index.html)) "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." Reimbursement to the Municipality shall be subject to the policies and procedures contained in Title 23 Code of Federal Regulations, Part 140 and Part 172, which is being incorporated into this Agreement by reference at [www.fhwa.dot.gov/legregs/directives/fapgtoc.htm](http://www.fhwa.dot.gov/legregs/directives/fapgtoc.htm) and by Office of Management and Budget (OMB) Circular A-87 ([www.whitehouse.gov/omb/circulars/index.html](http://www.whitehouse.gov/omb/circulars/index.html)) "Cost Principles for State,

Local, and Indian Tribal Governments.” Reimbursement to the Municipality shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 (<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>) and Office of Management and Budget (OMB) “Federal Funding Accountability and Transparency Act” (FFATA). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the Municipality with all applicable federal policy and procedures.

## **REIMBURSEMENT LIMITS**

### **▪ WORK PERFORMED BEFORE NOTIFICATION**

Any costs incurred by the Municipality prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

### **▪ NO REIMBURSEMENT IN EXCESS OF APPROVED FUNDING**

At no time shall the Department reimburse the Municipality costs that exceed the total federal funding.

### **▪ UNSUBSTANTIATED COSTS**

The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs that have been deemed unallowable by the Federal Highway Administration and/or the Department’s Financial Management Division.

### **▪ WORK PERFORMED BY NCDOT**

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, shall reduce the maximum award amount of \$76,000 available to the Municipality under this Agreement. If the cost of work done by the Department exceeds the funding award, the Department will bill the Municipality for the excess costs.

### **▪ CONSTRUCTION ADMINISTRATION**

Reimbursement for construction contract administration will be made as governed by Departmental policy that limits reimbursement for construction contract administration to no more than fifteen (15%) percent of the actual construction contract of the Project. These costs will also include any cost overruns and charges to the Project by the Department during the Construction Phase.

- **CONSTRUCTION CONTRACT UNIT PRICES**

Reimbursement for construction contract work will be made on the basis of contract unit prices in the construction contract and any approved change orders.

- **RIGHT OF WAY**

Reimbursement will be limited to the value as approved by the Department. Eligible costs for reimbursement of Right of Way Acquisition include: realty appraisals, surveys, closing costs, and the approved appraised fair market value of the property, at the reimbursement rate as shown in the FUNDING TABLE.

- **FORCE ACCOUNT**

Invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs set forth in Office of Management and Budget (OMB) Circular A-87 ([www.whitehouse.gov/omb/circulars/index.html](http://www.whitehouse.gov/omb/circulars/index.html)) "Cost Principles for State, Local, and Indian Tribal Governments." Reimbursement shall be based on actual eligible costs incurred with the exception of equipment owned by the Municipality or its Project partners. Reimbursement rates for equipment owned by the Municipality or its Project partners cannot exceed the Department's rates in effect for the time period in which the work is performed.

## **BILLING THE DEPARTMENT**

- **PROCEDURE**

The Municipality may bill the Department for eligible Project costs in accordance with the Department's guidelines and procedures. Proper supporting documentation shall accompany each invoice as may be required by the Department. By submittal of each invoice, the Municipality certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement.

Along with each invoice, the Municipality is responsible for submitting the FFATA Subrecipient Information Form, which is available at <http://www.ncdot.gov/programs/Enhancement/ProjectAdministration/Forms/>.

- **INTERNAL APPROVALS**

Reimbursement to the Municipality shall be made upon approval of the invoice by the Department's Financial Management Division.

- **TIMELY SUBMITTAL OF INVOICES**

The Municipality may invoice the Department monthly for work accomplished, but no less than once every six (6) months to keep the Project funds active and available. If the Municipality is unable to invoice the Department, then they must provide an explanation. Failure to submit invoices or explanation may result in de-obligation of funds.

- **FINAL INVOICE**

All invoices associated with the Project must be submitted within six (6) months of the completion of construction and acceptance of the Project to be eligible for reimbursement by the Department. Any invoices submitted after this time will not be eligible for reimbursement.

## **14. REPORTING REQUIREMENTS AND RECORDS RETENTION**

### **PROJECT EVALUATION REPORTS**

The Municipality is responsible for submitting quarterly Project evaluation reports, in accordance with the Department's guidelines and procedures, that detail the progress achieved to date for the Project.

### **PROJECT RECORDS**

The Municipality and its agents shall maintain all books, documents, papers, accounting records, Project records and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office and shall require its agent to make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration, for inspection and audit by the Department's Financial Management Section, the Federal Highway Administration, or any authorized representatives of the Federal Government.

## **15. OTHER PROVISIONS**

### **REFERENCES**

It will be the responsibility of the Municipality to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this Agreement.

### **INDEMNIFICATION OF DEPARTMENT**

The Municipality agrees to indemnify and hold harmless the Department, FHWA and the State of North Carolina, to the extent allowed by law, for any and all claim for payment, damages and/or liabilities of any nature, asserted against the Department in connection with this Project. The Department shall not be responsible for any damages or claims, which may be initiated by third parties.

### **DEBARMENT POLICY**

It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the Municipality certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

### **TITLE VI - CIVIL RIGHTS ACT OF 1964**

The Municipality shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

### **OTHER AGREEMENTS**

The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this Project. The Department is not responsible for any expenses or obligations incurred for the Project except those specifically eligible for STP-DA funds and obligations as approved by the Department under the terms of this Agreement.

## **AVAILABILITY OF FUNDS**

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

## **IMPROPER USE OF FUNDS, EXCESS USE OF FUNDS**

Where either the Department or the FHWA determines that the funds paid to the Municipality for this Project are not used in accordance with the terms of this Agreement, or if the cost of work done by the Department exceeds the funding award, the Department will bill the Municipality.

## **TERMINATION OF PROJECT**

If the Municipality decides to terminate the Project without the concurrence of the Department, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project.

## **AUDITS**

In accordance with OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations" ([www.whitehouse.gov/omb/circulars/a133/a133.html](http://www.whitehouse.gov/omb/circulars/a133/a133.html)) dated June 27, 2003 and the Federal Single Audit Act Amendments of 1996, the Municipality shall arrange for an annual independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the annual independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.

## **REIMBURSEMENT BY MUNICIPALITY**

For all monies due the Department as referenced in this Agreement, reimbursement shall be made by the Municipality to the Department within sixty (60) days of receiving an invoice. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with NCGS 147-86.23.

## **USE OF POWELL BILL FUNDS**

If the other party to this agreement is a Municipality and fails for any reason to reimburse the Department in accordance with the provisions for payment hereinabove provided, NCGS 136-

41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to Municipality by NCGS 136-41.1, until such time as the Department has received payment in full.

#### **GIFT BAN**

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).

#### **16. SUNSET PROVISION**

All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the Department is subject to the conditions of this Agreement, and that no expenditures of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

ATTEST: TOWN OF CLAYTON

BY: \_\_\_\_\_ BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

NCGS 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

Approved by \_\_\_\_\_ of the Town of Clayton as attested to by the signature of \_\_\_\_\_ Clerk of the \_\_\_\_\_ on \_\_\_\_\_ (Date)

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

(SEAL)

\_\_\_\_\_  
(FINANCE OFFICER)

Federal Tax Identification Number

\_\_\_\_\_  
Town of Clayton

Remittance Address:

P.O. Box 879

Clayton, NC 27528

DEPARTMENT OF TRANSPORTATION

BY: \_\_\_\_\_  
(STATE HIGHWAY ADMINISTRATOR)

DATE: \_\_\_\_\_

APPROVED BY BOARD OF TRANSPORTATION ITEM O: \_\_\_\_\_ (Date)

**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

Agenda Item: 3d

Meeting Date: 8/01/11

**TITLE: PROCLAMATION – AUGUST 2011 AS FIREFIGHTER  
APPRECIATION MONTH.**

**DESCRIPTION: Attached.**

It was the consensus of the Council to place this item on the consent agenda.

**RELATED GOAL: Administrative**

**ITEM SUMMARY:**

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
7-18-11	Presentation.	Proclamation.
8-01-11	Approval.	Proclamation.

**TOWN OF CLAYTON  
PROCLAIMING AUGUST 2011 AS  
FIREFIGHTER APPRECIATION MONTH**

**WHEREAS**, each year residents and visitors to our community may require emergency services from our Clayton Fire Department; and

**WHEREAS**, the citizens of our community benefit from the knowledge, skills, and dedication of our firefighters as they work together to ensure prompt and appropriate action at the scene; and

**WHEREAS**, the citizens of our community benefit from the stewardship of our firefighters when they participate in charitable causes to raise awareness and support for North Carolina Jaycee Burn Center, Red Cross, National Fallen Firefighters Foundation, North Carolina Fallen Firefighters Foundation, Community Emergency Response Team (CERT), St. Baldrick's Foundation, and food drives for local pantries; and

**WHEREAS**, firefighters are engaged in one of the most hazardous occupations in the United States; and

**WHEREAS**, firefighters can, at any time and during any emergency, be called on to sacrifice their lives in the performance of their lifesaving duties.

**NOW, THEREFORE**, the honorable Mayor and Town Council of the Town of Clayton, North Carolina, do hereby proclaim August 2011 as

**FIREFIGHTER APPRECIATION MONTH**

and reassert the support of every individual, agency, and institution that plays a role in the delivery of firefighter services to people who live, work or visit our community.

**DULY PROCLAIMED** this 1st day of August 2011 while in regular session.

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Jody L. McLeod,  
Mayor

**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

**Agenda Item: 3e**

**Meeting Date: 8/01/11**

**TITLE: INITIAL WARRANTY ACCEPTANCE FOR ASPHALT PAVEMENT  
FOR THE FOLLOWING:**

- **CASSEDALE SUBDIVISION**
- **HARVEST MILL LANE**
- **RWAC: PHASES 3B, 3C, 3D, 3E, & ATHLETIC CLUB BLVD**

**DESCRIPTION: Attached.**

**It was the consensus of the Council to place these items on  
the consent agenda.**

**RELATED GOAL: Administrative**

**ITEM SUMMARY:**

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
7-18-11	Presentation.	Memorandums (3),
8-01-11	Approval.	Memorandums (3).

# TOWN OF CLAYTON OPERATIONS CENTER

"SERVICE"

ELECTRIC SERVICE  
(919) 553-1530

VEHICLE MAINTENANCE  
(919) 553-1530



"ENVIRONMENT"

PUBLIC WORKS  
(919) 553-1530

WATER RECLAMATION  
(919) 553-1535

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## MEMORANDUM

To: Sherry Scoggins, Town Clerk

From: Chris N. Rowland, Construction Inspector 

Date: June 15, 2011

Cc: Dave DeYoung, Planning Director  
Jonathan Barnes, Dalton Engineering

Subject: Cassedale Subdivision

The final lift of asphalt pavement has been installed within the subject development. Please schedule Council action for the acceptance of this work, subject to a one-year warranty period. Subsequent to the warranty period, pavement and base course conditions will be evaluated and any faults corrected by the developer prior to final acceptance.

**received**  
6-16-11 

# TOWN OF CLAYTON OPERATIONS CENTER

"SERVICE"

ELECTRIC SERVICE  
(919) 553-1530

VEHICLE MAINTENANCE  
(919) 553-1530



"ENVIRONMENT"

PUBLIC WORKS  
(919) 553-1530

WATER RECLAMATION  
(919) 553-1535

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## MEMORANDUM

To: Sherry Scoggins, Town Clerk  
From: Chris Rowland, Construction Inspector *CR*  
Copy: Steven Sanderson, PE, Sanderson Engineering  
Date: June 22, 2011  
Re: Harvest Mill Lane

Please place a warranty acceptance request for the subject asphalt pavement on the next available agenda. Following acceptance, the referenced street will be subject to a one-year warranty period. Subsequently, a final inspection will be done and any deficient items corrected by the developer prior to final acceptance.

## MEMORANDUM

To: Sherry Scoggins, Town Clerk

From: Chris Rowland, Construction Inspector

Copy: Skip McGlamery, Fred Smith Company  
Dave DeYoung, Planning Director

Date: June 20, 2011

Subject: RWAC, Phases 3B, 3C, 3D, 3E & Athletic Club Boulevard

The final lift of asphalt pavement has been installed in the subject sections. Please schedule Council action for the acceptance of this work subject to a **five-year warranty**. Subsequent to the warranty period, pavement and base course conditions will be evaluated and any faults corrected by the developer prior to final acceptance.

*Rec'd 6-28-2011 DRS*

**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

Agenda Item: 4a

Meeting Date: 8/01/11

**TITLE: PRESENTATION BY THE CLAYTON CHAMBER OF COMMERCE FOR THE 2011 HARVEST FESTIVAL; CONTINUANCE FROM THE JULY 18, 2011, COUNCIL MEETING.**

**DESCRIPTION: The Clayton Chamber of Commerce is hosting the 2011 Clayton Harvest and Music Festival September 14 – 18, 2011.  
The Clayton Chamber of Commerce respectfully requests the use of the Town Square from Friday, September 16 through Sunday, September 18.**

**The Clayton Chamber of Commerce respectfully requests the temporary closure of the following streets:**

- **Main Street between Smith and O’Neil Streets on Saturday, September 17 from 5 AM thru 6:30 PM**
- **Lombard Street between Main and Second Streets on Saturday, September 17**
- **Church Street between Main and Second Streets on Saturday, September 17**
- **Barbour Street between Main and Second Streets on Saturday, September 17**
- **Fayetteville Street between Main and Second Streets from 6:30 PM on Thursday, September 15, 2011, thru midnight on Sunday, September 18, 2011**

**Council requested additional information for consideration at the next Council meeting.**

**RELATED GOAL: Create an Alive Downtown**

**ITEM SUMMARY:**

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
6-20-11	Tabled.	Letter.
7-18-11	Presentation.	Letter.
8-01-11	Presentation, Con’d.	Letter.

# CLAYTON NC CHAMBER of COMMERCE

301 East Main Street • P.O. Box 246 • Clayton, NC 27528 • 919-553-6352 • 919-553-1758 fax

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May 24, 2011

## LETTER OF REQUEST

Clayton Town Council  
C/o Mr. Steve Biggs, Town Manager  
Town of Clayton  
P.O. Box 879  
Clayton, NC 27528

Dear Town Manager and Council Members,

As you are aware, the Clayton Chamber of Commerce sponsors the Clayton Harvest and Music Festival annually in September. The 2011 event is scheduled for September 14 – 18, 2011.

This event draws thousands of visitors to downtown Clayton, and we expect this year to again bring record numbers to our town.

### Town Square:

The Chamber staff respectfully requests the Council's permission to use the Town Square at the corner of Main and Fayetteville Street on Friday, September 16<sup>th</sup> to Sunday, September 18<sup>th</sup>. We are planning to have two (2) stages and food vendors at this location. The stage will be set up in the grassy area, while the food vendors will be located on the paved area. Friday we will have a youth focus, with a dance and activities with assistance from local churches, youth groups and school leadership groups. The Chairman for the Friday night activities is Butch Lawter.

On Saturday the festival will look very similar to last year with a few possible improvements/changes that are currently in the planning stages.

On Sunday, we will host a Gospel Sing. This event was held on Friday night last year and because of its success, we decided to move the event to Sunday to allow for a longer time frame and expanding participation. The Chairman for the Gospel Sing is Steve Matthews.

One major change on the Town Square is the addition of a 24 x 24 performance stage, giving us two stages to schedule entertainment. This will allow us to have no down time between performances. Both stages will be installed on Friday and removed Monday morning.

**Street Closures:**

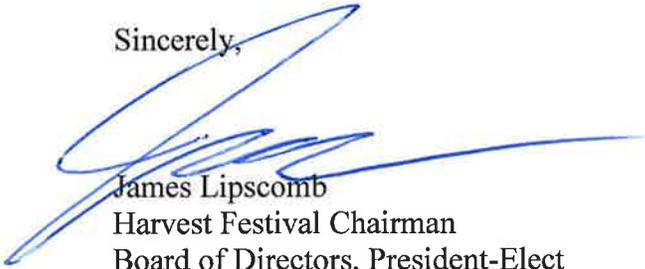
We would like to request the closing of Main Street on Saturday, September 17<sup>th</sup>, 2011 starting at 5:00 a.m. for the annual Vendor Fair. We will ensure that all vendors are cleared of Main Street no later than 6:30pm.

On Saturday, September 17<sup>th</sup> we also request the following side streets be closed between Main and Second Streets; Lombard Street, Church Street, and Barbour Street.

We further request that Fayetteville Street (from Main to Second Street) be closed Thursday, September 15, 2011 at 6:30 p.m. through Sunday, September 18, 2011 at midnight.

Thank you for your consideration of our request.

Sincerely,



James Lipscomb  
Harvest Festival Chairman  
Board of Directors, President-Elect

Sincerely,



James Godfrey  
Executive Director  
Clayton Chamber of Commerce

cc: Bruce Naegelen

**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

**Agenda Item: 6a**

**Meeting Date: 8/01/11**

**TITLE: ORDINANCE AMENDMENTS OA 2011-25 ORDINANCE  
AMENDMENT TO THE UDC TO ADD SCENIC HIGHWAY OVERLAY  
REGULATIONS – UDC SECTION 155.204.**

**DESCRIPTION: The Planning Board reviewed this item at its March meeting and OA 2011-25 was recommended 6 – 3 with Planning Board Members Jim Lee, Marty Bizzell, and Joseph Whitley dissenting.**

**At the May 2, 2011, public hearing, Council members voted in favor of tabling this item to the July 18, 2011, Council meeting and that two public workshops be held prior to the July 18, 2011, Council meeting.**

**The Planning Department hosted public workshops on the proposed scenic highway overlay text amendments on May 26, 2011, and June 9, 2011.**

**At the July 18, 2011, Council meeting, Mayor McLeod closed the public hearing. Council requested amendments to the ordinance and for the revised ordinance to come back to Council for consideration.**

**RELATED GOAL: Administrative**

**ITEM SUMMARY:**

**Date:**

**4-18-11**

**Action:**

**Presentation &  
Public Notice.**

**Info. Provided:**

**Staff Report (3), Marked up  
Version of the proposed  
ordinance (3), and clean  
version of the proposed  
ordinance (3).**

**5-02-11**

**Public Hearing.**

**Staff Report (3) and  
Ordinances (3).**

**5-26-11**

**Public Workshop.**

**6-09-11**

**Public Workshop.**

**7-18-11**

**Public Hearing, con'd.**

**Ordinance.**

**8-01-11**

**Ordinance.**

**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

Agenda Item: 6b

Meeting Date: 8/01/11

**TITLE: PHASE 2 OF THE STREETS BONDS BID OPENING RESULTS.**

**DESCRIPTION:** The bid opening for Phase 2 of the streets bonds was Tuesday, July 12th. The bid tabulation will be available the evening of the Council meeting for discussion. Council action is requested.

At the July 12 bid opening, only two bidders arrived. As the NC GS requires three bids, the item was re-advertised on

**RELATED GOAL:** Beautify the Town of Clayton

**ITEM SUMMARY:**

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
7-18-11		Will be distributed at the 7/18 meeting.
8-01-11		Will be distributed at the 8/01 meeting.

**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

Agenda Item: 6c

Meeting Date: 8/01/11

**TITLE: CITIZEN REQUEST TO CLOSE THE UNOPENED PORTION OF HAMBY STREET BETWEEN 517 STARLING STREET AND 605 STARLING STREET.**

**DESCRIPTION: Mr. Michael Baker of 605 Starling Street submitted the attached letter requesting consideration of closing the unopened portion of Hamby Street between 517 and 605 Starling Street.**

**Mr. Baker submitted a similar request in January 2003. After proper notice, this item was considered by the Town Council at its April 28, 2003, Council meeting. At that time, Council was unable to approve the request as it was the means of ingress and egress for Mr. Hardee.**

**If it is the pleasure of the Council to proceed with this request, a resolution of request will be presented at the August 1, 2011, Council meeting. If the resolution of intent is adopted it would be incorporated into a legal notice for publication for four successive weeks; adjacent property owners and NCDOT would be notified by certified mail; and the property would be posted for public hearing. The public hearing would be slated for the Tuesday, September 5, 2011, Council meeting.**

**RELATED GOAL: Administrative**

**ITEM SUMMARY:**

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
7-18-11	Discussion.	Letter, Checklist, Resolution of Intent, & Map.
8-01-11	Discussion.	Resolution of Intent & Map.

**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

Agenda Item: 7a

Meeting Date: 8/01/11

**TITLE: PRESENTATION OF SPECIAL USE PERMIT REQUEST SUP 2011-62, FOR A PROPOSED CHURCH TO CO-LOCATE AT 307 TEW COURT, CURRENTLY THE KIDS-R-KIDS DAYCARE.**

**DESCRIPTION: Request submitted by Christ Church to occupy a portion of the Kids-R-Kids Daycare facility as a place of worship. The property is owned by Abernathy Property Management Group. The property is zoned B-3 SUD HWY Business Special Use District.**

**RELATED GOAL: Manage Growth Producing Quality Developments**

**ITEM SUMMARY:**

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
8-01-11	Presentation & Public Notice.	Application, Staff Report, Map & Site Plans.

**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

**Agenda Item: 7b**

**Meeting Date: 8/01/11**

**TITLE: PRESENTATION OF APPLICATION TO SERVE ON THE PUBLIC ART ADVISORY BOARD.**

**DESCRIPTION: Ms. Lara Perry tendered her resignation from the Public Art Advisory Board.**

**Ms. Jessica Hammett has prior experience serving on the Public Art Advisory Board and is requesting appointment. If it is the pleasure of the Council to appoint Ms. Hammett, her term would begin the date of Council approval through December 31, 2013.**

**RELATED GOAL: Administrative**

**ITEM SUMMARY:**

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
8-01-11	Discussion.	Application.

TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET

Agenda Item: 8c

Meeting Date: 8/01/11

TITLE: TOWN CLERK

DESCRIPTION: Calendar of Events:

- Council Mtg – Monday, August 1, 2011 @ 7:30 PM
- Downtown Development Association Mtg – Monday, August 8, 2011 @ 7:30 PM in Room GS 223
- Council Mtg – Monday, August 15, 2011 @ 7:30 PM
- ~~Board of Adjustment Mtg – Wednesday, August 17, 2011 @ 6 PM - Cancelled~~
- Town Square Concert Series: Central Park Band – Thursday, August 18, 2011 from 7 PM to 9 PM
- Planning Board Mtg – Monday, August 22, 2011 @ 7 PM
- 2011 ElectriCities Annual Conference – August 25 – 27, 2011; Grove Park Inn Asheville
- Labor Day Holiday – Monday, September 5, 2011
- Council Mtg – **TUESDAY**, September 6, 2011 @ 7:30 PM
- Clayton Harvest & Music Festival – September 14 – 18, 2011
- Town Square Concert Series: The Castaways – Thursday, September 15, 2011 from 7 PM to 9 PM
- Council Mtg – Monday, September 19, 2011 @ 7:30 PM
- Board of Adjustment Mtg – Wednesday, September 21, 2011 @ 6 PM
- Planning Board Mtg – Monday, September 26, 2011 @ 7 PM
- Council Mtg – Monday, October 3, 2011 @ 7:30 PM
- Clayton Library Board Mtg – Thursday, October 6, 2011 @ 2:30 PM at the Hocutt-Ellington Library, 100 South Church Street
- Downtown Development Association Mtg – Monday, October 10, 2011 @ 7:30 PM in Room GS 223
- Council Mtg – Monday, October 17, 2011 @ 7:30 PM
- Board of Adjustment Mtg – Wednesday, October 19, 2011 @ 6 PM
- 2011 North Carolina League of Municipalities (NCLM) Annual Conference – October 23 -25, 2011; Raleigh
- Planning Board Mtg – Monday, October 24, 2011 @ 7 PM
- Clayton Farm and Community Market: Season Closes – Saturday, October 29, 2011, 9 AM – 2 PM, at the Clayton Town Square
- Council Mtg – Monday November 7, 2011 @ 7:30 PM
- Elections – Tuesday, November 8, 2011
- Veteran’s Day Holiday – Friday, November 11, 2011
- Downtown Development Association Mtg – Monday, November 14, 2011 @ 7:30 PM, site TBA
- Board of Adjustment Mtg – Wednesday, November 16, 2011 @ 6 PM
- Council Mtg – Monday, November 21, 2011 @ 7:30 PM

- Thanksgiving Day Holiday – Thursday, November 24, 2011 & Friday, November 25, 2011
- Planning Board Mtg – Monday, November 28, 2011 @ 7 PM
- Council Mtg – Monday December 5, 2011 @ 7:30 PM
- Downtown Development Association Mtg – Monday, December 12, 2011 @ 7:30 PM in Room GS 223
- Council Mtg – Monday, December 19, 2011 @ 7:30 PM
- Board of Adjustment Mtg – Wednesday, December 21, 2011 @ 6 PM
- Christmas Holiday – Monday, December 26, 2011 & Tuesday, December 27, 2011
- Planning Board Mtg – **WEDNESDAY**, December 28, 2011 @ 7 PM

Date:  
8-01-11

Action:  
N/A.

Info. Provided:  
Calendar of Events.