

Jody L. McLeod
MAYOR

Bruce Thompson
TOWN ATTORNEY

Steve Biggs
TOWN MANAGER



Bob Satterfield
R.S. "Butch" Lawter, Jr.
Art Holder
Jason Thompson
COUNCIL MEMBERS

Michael Grannis
MAYOR PRO TEM

TOWN COUNCIL MEETING

SEPTEMBER 04, 2012

AGENDA

MAYOR AND TOWN COUNCIL

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

**COUNCILMAN ART HOLDER
COUNCILMAN R.S. "BUTCH" LAWTER, JR.
COUNCILMAN JASON THOMPSON**

TOWN STAFF

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

Johnston Medical Center Clayton located on NC 42 HWY West and adjacent to the existing hospital.

6. OLD BUSINESS

- a. Update to expansion of façade improvement grant program.
- b. Revisions to the Town's Code of Ordinances pertaining to cemeteries.
- c. Status update of noise ordinance.

7. NEW BUSINESS

- a. Grant/loan award from the Rural Economic Development Center for renovations to Winstead Building 1 located at 107 North Tech Drive.

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: 9/04/12

TITLE: DRAFT MINUTES OF THE AUGUST 20, 2012, WORK SESSION.

DESCRIPTION: Attached.

RELATED GOAL: Administrative

ITEM SUMMARY:

Date:

Action:

Info. Provided:

9-04-12

Approval.

DRAFT minutes.

MINUTES CLAYTON TOWN COUNCIL AUGUST 20, 2012

The second regular meeting of the Clayton Town Council for the month of August was held on Monday, August 20, 2012, at 6:30 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 Art Holder, and Councilman Jason Thompson.

ALSO PRESENT: Steve Biggs, Town Manager; Katherine Ross, Town Attorney; Sherry Scoggins, Town Clerk; Nancy Medlin, Deputy Town Manager; David DeYoung, Planning Director; Robert McKie, Finance Director; Tommy Roy, Information Services Technician

ITEM 1. CALL TO ORDER

Mayor McLeod called the meeting to order at 6:30 PM. Mayor McLeod gave the invocation.

ITEM 2. ADJUSTMENT OF THE AGENDA

The following adjustments of the agenda were requested:

- Item 3c – Presentation by Ms. Lyn Austin regarding the upcoming Clayton Center Gala.
- Item 7a – Amend to include adoption of resolution or request for North Carolina Department of Transportation participation in construction of certain roadway improvements on Glen Laurel Road and HWY 42 East in relation to Project Bee.

It was the consensus of the Council to approve the agenda.

ITEM 3. ACTION AGENDA

Mayor Pro Tem Grannis motioned to approve the action agenda as presented; Councilman Holder seconded the motion. The motion carried unanimously with the following action agenda items being approved at 6:32 PM:

- Item 3a. Draft minutes from the August 6, 2012, regular meeting; and draft minutes from the August 6, 2012, closed session meeting.
- Item 3b. Certificate of sufficiency and resolution setting the date of public hearing for annexation petition 2012-07-01 located at 317 Pony Farm Road.
- Item 3c. Presentation by Lyn Austin regarding the Clayton Center Gala.

Ms. Lyn Austin provided an overview of the 10 year anniversary celebration of the Clayton Center. She stated at the time the Clayton Center project was undertaken, it was a leap of faith for the Town Council to enter into a public – private partnership to do an eight million dollar facility. She stated it was great vision to move forward with this project. She added there has not been an elected official that has not been supportive of the activities at the Clayton Center. She stated the intent was to make this project the “heart of the community.” She stated the sponsors that began with the capital campaign are still members. She stated the Cultural Arts Foundation has not had a fundraiser in the past ten years. She stated the Foundation realized more technical support is needed. She stated the fundraiser event is a gala on December 1st with 7 PM cocktails, 8 PM performance, after the performance is dinner and dancing with music by the Central Park Band. She provided an overview of the displays slated for the lobby area for the upcoming gala. Ms. Austin provided a packet to each of the Council members of the sponsorship opportunities for the gala.

Based upon question by Council, Ms. Austin stated the goal of the fundraiser is \$50,000.

Based upon question by Council, Ms. Austin stated the gala is December 1st.

Mayor Pro Tem Grannis thanked Ms. Austin and the staff of Clayton Center for the dedication to making a mark in this community with respect to entertainment brought to Clayton.

Mayor McLeod stated December 1st will be a big time in our small town.

Ms. Austin stated the tickets are \$100 each and is for a show, cocktails, dinner and dancing.

ITEM 4. INTRODUCTIONS & SPECIAL PRESENTATIONS

Item 4a. Introduction of new Town of Clayton employees.

The following new Town of Clayton employees were introduced:

- Amber Bond, part-time Admin Support Specialist in Planning Department

Item 4b. Presentation by Waste Management on the status and performance of the Town of Clayton residential recycling program.

Ms. Chip Dodd of Waste Management provided an overview of the recycling program in Clayton and she provided a spreadsheet; herewith attached and incorporated into the record. She stated the Town of Clayton has had an

increase in volume for recycling and the Town has a 95 percent participation rate in this program.

Ms. Dodd extended an invitation to the Clayton Town Council to see the Raleigh recycling plant in operation. She stated 10 AM is the best time and the available dates are August 28, August 30, and September 6 and the site is located on Capital Blvd just north of downtown Raleigh.

Ms. Dodd stated more recyclables are allowable:

- Paper – newspaper, magazines, catalogs, phone books, junk mail
- Cardboard – broken down to fit in container
- Cereal boxes
- Shoe boxes
- Pizza boxes – provided it is not have food
- Plastic bottles with cap
- Aluminum and steel cans
- Glass bottles – blue, amber, clear and green
- Plastic bottle and containers with a number with a recyclable sign are acceptable

Ms. Dodd stated items that are not recyclable are:

- Food
- Plastic grocery bags

Ms. Dodd stated last October there was an electronics day. She added Waste Management is working with Town staff for another electronics day. She stated the following items will be accepted:

- Televisions
- Computers
- Telephones
- Irons
- Blenders

Based upon question by Council, Ms. Dodd stated she is not aware of the pink recyclable containers and she will check availability.

Ms. Dodd stated when Waste Management picks up yard waste it is taken to the Johnston County landfill. She stated in turn, Johnston County mulches the yard waste and residents of Johnston County can go to the landfill and get the mulch for free.

Ms. Dodd stated sludge is not part of the Waste Management operation. She stated there is a special waste person who may be able to discuss the program with the Town.

Councilman Holder stated he has had several inquiries from residents who want to know how the Town is doing in recycling. He stated it is good for the Council to see this, but this needs to be shared with the residents of Clayton. He stated

the residents have also inquired on what is and what is not recyclable and it would be in the best interest to have the Public Information Officer to prepare information that can be included with the utility bill to all the residents of Clayton on how we are doing and what is recyclable.

Mayor Pro Tem Grannis questioned the percentage of recyclables that goes off shore and what remains.

Ms. Dodd stated she will find out.

Councilman Lawter suggested putting what is recyclable on the Town's website. He questioned how the Town of Clayton compares to other municipalities participating in the recycling program.

Ms. Dodd stated she has not seen statistics from other municipalities.

Councilman Holder stated he wants to see the recyclable information on more than just the website.

ITEM 5. ITEMS SCHEDULED FOR THE REGULAR MEETING AGENDA

Item 5a. Presentation of rezoning request RZ 2012-58 to rezone seven parcels in the 500 block of East Second Street from O&I to R-6.

Planning Director David DeYoung provided a PowerPoint presentation, herewith attached as Exhibit A, RZ 2012-58; and incorporated into the record.

Planning Director DeYoung provided the following overview:

- Section of Second Street between Smith and John Streets
- History: Part of a larger rezoning by the Town in 1987
- Request is for seven parcels
- 1.52 acres
- Area is predominantly single family residential
- One of the owners is requesting to re-build a home on the lot
- Staff is of the opinion R-6 is a compatible request for the area

Based upon question by Council, Planning Director DeYoung stated there is a parcel with a house in need of repair. He stated because it is zoned O&I, a single family home is not permitted to be rebuilt on the parcel. He added by rezoning to R-6, it enables the owners to make repairs to homes.

Mayor Pro Tem Grannis stated he lives next door to one of the properties and he knows the requestor. He stated he thinks this is long time coming. He stated he does not believe it will affect his property.

Item 5b. Presentation of preliminary subdivision request SUB 2012-60 for East Village of Clayton located on East Front Street.

Planning Director David DeYoung provided a PowerPoint presentation, herewith attached as Exhibit B, SUB 2012-60; and incorporated into the record.

Planning Director DeYoung provided the following overview:

- **East Village of Clayton and a portion of the planned development district**
- **74 acre tract in total**
- **North side of future extension of Front Street**
- **All access points are off of Front Street**
- **Request is for 151 single family lots**
- **Amenities were approved in the overall master plan**
- **Buffer will go around the perimeter of the development**
- **Traffic study was submitted and reviewed**
 - **Some improvements necessary along Front Street Extension**
- **Consistent with Strategic Growth Plan, UDO, and master plan**
- **Staff recommends approval**

Based upon question by Council, Planning Director DeYoung stated the Front Street Extension is in design phase with the consultant. He stated this is moving forward and completion is expected October or November of 2013.

Town Manager Biggs stated there is a 12 month construction. He added this is a weather driven project.

Mayor McLeod stated the project looks extremely dense.

Planning Director DeYoung stated this could be denser. He stated lots were cut since the prior approval.

Based upon question by Council, Planning Director DeYoung stated these are standard streets.

Planning Director DeYoung stated this is a typical street section. He added there is on street parking and there will be sidewalk on one-side of the street.

Based upon question by Council, Planning Director DeYoung stated he believes the units will have garages.

Based upon question by Council, Planning Director DeYoung stated material samples of the homes have not been requested. He stated a builder has not yet been selected.

Based upon question by Council, Planning Director DeYoung stated the amenities were approved in the Master Plan.

- Item 5c. Presentation of planned development district request PDD-MU 2012-10 for Johnston Medical Center Clayton located on NC 42 HWY West and adjacent to the existing hospital.

Planning Director David DeYoung provided a PowerPoint presentation, herewith attached as Exhibit C, PDD-MU 2012-10; and incorporated into the record.

Planning Director DeYoung provided the following overview:

- Request for planned development district with a master plan modification and major subdivision approval
- Formerly approved as PDD-MU 2007-02
- 76 acre parcel
- Subdivision is for five lots and the five lots broken into two phases
 - Phase one is a 13 acre site
 - Phase two
- Secondary entrance on 42 and will align with the 42 West property
 - No signal is anticipated
 - Cross access with the existing hospital site
- Consistent with the strategic growth plan
- Major subdivision is consistent with the code
- Seven original conditions of approval and two additional conditions of approval.

Based upon question by Council, Planning Director DeYoung stated the signal light is in place as are some of the road improvements at the hospital. He added tract one of phase one is the hospital.

- Item 5d. Presentation of amendment to the FY 12-13 budget ordinance to reflect appropriation of fund balance to purchase equipment for police investigations with the proceeds from unauthorized substance tax distributions received from the State in FY 11-12.

Finance Director Robert McKie stated by statute these proceeds can only be used for law enforcement activities.

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

- Item 5e. Presentation of the following reimbursement resolutions:
- Expenditures made and/or to be made in connection with the purchase of trucks and equipment for the Electric Fund.
 - Expenditures made and/or to be made in connection with the purchase of rolling stock.
 - Expenditures made and/or to be made in connection with the purchase of a SCADA system – Phase I for the water and sewer fund.

Finance Director Robert McKie provided an overview of the reimbursement resolutions.

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

Item 5f. Presentation of PEG Interlocal Agreement.

Deputy Town Manager Nancy Medlin stated the PEG interlocal agreement recognizes the name change of the agency and integrates additional Towns into the partnership.

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

ITEM 6. ITEMS CONTINGENT FOR THE REGULAR MEETING

No items contingent for the regular meeting were presented to the Council.

ITEM 7. ITEMS FOR DISCUSSION

- Item 7a. Discussion of and Council action requested for the following economic development items with the Rural Center:
- i. Agreement between the Rural Center and Town of Clayton for Project Bee Infrastructure Improvements [Council action requested].
 - ii. Resolution authorizing application for grant assistance that will spur economic activity and job creation by assisting a new business, Deep River Brewery and Zogreo, LLC [Council action requested].
 - iii. Resolution of request for North Carolina Department of Transportation participation in construction of certain roadway improvements on Glen Laurel Road at HWY 42 East in relation to Project Bee [Council action requested].

Councilman Satterfield motioned to suspend the Council's rules in order to take action; Councilman Lawter seconded the motion. Motion carried unanimously at 7:26 PM.

Town Manager Steve Biggs stated a number of different grant sources are being looked at for funding infrastructure improvements associated with Project Bee. He stated Project Bee is the two part expansion of Caterpillar. He stated the first part is now the product development center and replacing the modular units with a permanent building. He added further product development space in the form of large commercial scale garages. He stated the second part of Project Bee is expansion of the production facilities at the existing assembly plant and certain structure improvements including improved fire protection and

improved access. He stated the improved access will be a new driveway connection from the assembly plant facility to Glen Laurel Road. He stated this has been made necessary by the HWY 42 widening project that includes limited left turn access. He stated the resolution distributed this evening is a standard resolution for seeking NCDOT funding. He stated an additional item of consideration to be worked out is the Town owns a sliver of property, a remnant north of the existing Dog Park, and it is not usable by the Town. He stated a dedication will be made to the NCDOT for an access to Glen Laurel Road.

Town Manager Biggs stated the resolution for Deep River Brewery is an opportunity for an allowance per job. He stated depending on total project cost, the grant is at least \$40,000 and up to \$64,000. He stated the Town will provide a five percent match based on the total cost.

Based upon question by Council, Town Manager Biggs stated the location is the Bartex Mill. He added the company will use 6,000 square feet.

Town Manager Biggs stated the brewery anticipates construction early October. He stated the pre-application cost to the Town is \$2,000.

Mayor Pro Tem Grannis motioned to approve the agreement and resolution for Project Bee and the resolution for Deep River Brewery. Councilman Holder seconded the motion. Motion carried unanimously at 7:31 PM.

Item 7b. Discussion of Council Rules and Procedures with amendments.

Town Manager Biggs stated this is an administrative item.

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

ITEM 8. OLD BUSINESS

Item 8a. Update to expansion of façade improvement grant program.

Planning Director David DeYoung stated the two façade grant programs were reviewed, modified and compiled into one document. He stated exhibits were created for the downtown district and the thoroughfare overlay district (TOD). He stated the request letter was modified for the two options:

- Option 1 - Increase from \$5000 up to \$6250 and a 75% match for both areas.
- Option 2 – Allow \$6250 and 75% match for those areas in downtown designated as challenges and allow \$5000 and 50% match for all other areas.

Councilman Satterfield stated he does not like the idea of the budgeted money for the TOD. He stated if the Council is funding improvements in the TOD it should be a budgeted item and be placed in next year's budget. He stated he is

favoring Option 2 as it does not include the TOD. He stated it should be for buildings that are in downtown.

Mayor Pro Tem Grannis stated he concurs with Councilman Satterfield. He stated the available budget is \$20,000 and is dedicated for downtown. He stated based on that, if the additional areas are included it would take away from downtown. He suggested reviewing this as a separate line item in the upcoming budget. Mayor Pro Tem Grannis stated he would like the statement “50 percent reimbursement of \$5,000 cap would apply to all other projects” amended to “to apply to all other projects in the downtown area.”

Based upon question by Council, Town Manager Biggs stated he can have that researched.

Councilman Holder stated he concurs with leaving the \$20,000 for downtown. He stated he also believes that if funds are available, to pursue the TOD.

Mayor McLeod stated he would like for the Town to study the TOD. He stated he likes the concept and he would like to target areas in a fiscal year budget that qualify for façade improvement funds. He stated if branching out into the TOD, his preference is for the Council to identify specific locations.

Councilman Satterfield stated just because the Town has the money does not mean spend the money.

Councilman Lawter stated the area of downtown would not include the Deep River Brewery for façade improvement funds. He stated it would be nice to see what the Town could do.

Mayor McLeod stated the DDA completed the project on identifying sites that are challenges for downtown those would be considered prior to taking on the Brewery.

Councilman Lawter stated several of those sites have had opportunities and he does not see those being improved through a grant façade.

Item 8b. Revisions to the Town’s Code of Ordinances pertaining to cemeteries.

Town Manager Steve Biggs stated the ordinance has been revised to reflect no animals.

Item 8c. Status update of noise ordinance.

Town Manager Steve Biggs stated he is seeking to contact the Clayton High School band director. He stated it was learned the number of days and hours of the day for band practice are less intense than in past years.

Mayor Pro Tem Grannis stated the noise ordinance is for all of Clayton and to not just focus on the Clayton High School. He stated the area around the school is important, but he does not want to lose sight of what is an acceptable decibel level.

Town Manager Biggs stated he is still working with Caterpillar for a demonstration.

ITEM 9. STAFF REPORTS

Item 9a. Town Manager

Town Manager Steve Biggs stated the Agreement Letter with Mitchiner Hills has been finalized.

Item 9b. Town Attorney

Town Attorney Katherine Ross stated no additional report.

Item 9c. Town Clerk

Town Clerk Sherry Scoggins stated the consultant for the Parks & Recreation comprehensive plan update is requesting a workshop meeting between the Council and Recreation Advisory Board on Monday, September 10, 2012, at 7 PM in the Art Room at the Clayton Community Center, 715 Amelia Church Road. She added the purpose of the workshop is to hear the vision for the North Clayton Community Park site.

Town Clerk Scoggins stated a special work session on paperless agenda training is scheduled for the Clayton Town Council on Monday, October 1, 2012, from 4:30 – 6 PM in the Council Chambers. She added following the special work session, the Council will have its regular meeting at 6:30 PM.

Town Clerk Scoggins stated the 2012 NCLM Annual Conference is being hosted in Charlotte from October 21 – 23, 2012. She added if a member would like to attend to please let her know.

Item 9d. Other Staff

No other staff came before Council.

ITEM 10 OTHER BUSINESS

Item 10a. Informal Discussion & Public Comment.

- Emails reference junk vehicles located on properties in the ETJ.

The emails were provided as information.

Item 10b. Council Comments.

Mayor Pro Tem Grannis requested for the next meeting a status of the percentage of fund balance and what that is in cash amount. He also requested the minimum and maximum percentages allowable for fund balance.

Town Manager Biggs stated eight percent is the minimum for cash flow purposes and there is no cap on the maximum on cash flow purposes.

Councilman Satterfield stated he received a concern about a property on Horne Street between the Town and the fire department with wood and blue tarp. He requested the Town follow up to have the lot cleaned up.

Councilman Lawter requested a schedule on the Riverwood Athletic Club streets.

ITEM 11. ADJOURNMENT

With there being no further business brought before the Council, Councilman Satterfield motioned to adjourn; Councilman Lawter seconded the motion. Motion carried unanimously at 7:52 PM.

Duly adopted by the Clayton Town Council this ____ day of September 2012, 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: 9/04/12

TITLE: AMENDMENT TO THE FY 12-13 BUDGET ORDINANCE TO REFLECT APPROPRIATION OF FUND BALANCE TO PURCHASE EQUIPMENT FOR POLICE INVESTIGATIONS WITH THE PROCEEDS FROM UNAUTHORIZED SUBSTANCE TAX DISTRIBUTIONS RECEIVED FROM THE STATE IN FY 11-12.

DESCRIPTION: Attached.

RELATED GOAL: Financially Responsible Town Government Providing Quality Service

ITEM SUMMARY:

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
8-20-12	Presentation	Budget ordinance.
9-04-12	Approval.	Budget ordinance.

Town of Clayton
Amendment to the FY 12-13 Budget Ordinance

BE IT HEREBY ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF CLAYTON that the following amendments shall be made to the FY 12-13 Budget:

Fund: General Fund

Line Item	Previous Appropriation	Adjustment	Revised Appropriation
Expenditures			
100-50-00-55 06	Drug Seizure Funds – State \$0	+14,564	\$14,564
Revenue			
100-40-00-48 99	Fund Balance Appropriated \$6,061	+14,564	\$20,625

-Explanation: Amendment necessary to reflect the appropriation of Fund Balance to purchase equipment for police investigations with the proceeds from unauthorized substance tax distributions (USTD) from the State, which were received in FY 11-12. The General Statutes (G.S. 105-113.113) mandates the Department of Revenue to distribute 75% of the USTD funds to the local law enforcement agency that conducted the investigation of a dealer that led to the assessment. The State establishes a special nonreverting account for the USTD funds. The USTD funds are intended to directly enhance the law enforcement activities of the Clayton Police Department.

Duly adopted this 4th day of September 2012, 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: 3c

Meeting Date: 9/04/12

TITLE: THE FOLLOWING REIMBURSEMENT RESOLUTIONS:

- EXPENDITURES MADE AND/OR TO BE MADE IN CONNECTION WITH THE PURCHASE OF TRUCKS AND EQUIPMENT FOR THE ELECTRIC FUND.
- EXPENDITURES MADE AND/OR TO BE MADE IN CONNECTION WITH THE PURCHASE OF ROLLING STOCK.
- EXPENDITURES MADE AND/OR TO BE MADE IN CONNECTION WITH THE PURCHASE OF A SCADA SYSTEM – PHASE I FOR THE WATER AND SEWER FUND.

DESCRIPTION: Attached.

RELATED GOAL: Financially Responsible Town Government Providing Quality Service

ITEM SUMMARY:

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
8-20-12	Presentation	Reimbursement Resolutions (3).
9-04-12	Approval.	Reimbursement Resolutions (3).

**TOWN OF CLAYTON
REIMBURSEMENT RESOLUTION**

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF CLAYTON DECLARING ITS INTENTION TO REIMBURSE ITSELF FROM THE PROCEEDS OF A FUTURE FINANCING CONTRACT FOR CERTAIN EXPENDITURES MADE AND/OR TO BE MADE IN CONNECTION WITH THE PURCHASE OF TRUCKS AND EQUIPMENT FOR THE ELECTRIC FUND.

WHEREAS, the Town of Clayton (the “Town”) is a Town organized and existing under the laws of the state of North Carolina; and

WHEREAS, the Town has paid and/or will pay certain expenditures (the “Expenditures”) in connection with the purchase of a trucks and equipment for the Electric Fund (the “Project”); and

WHEREAS, the Town Council of the Town (the “Council”) has determined that those moneys previously advanced and to be advanced on and after the date hereof to pay the Expenditures are available only for a temporary period and it is necessary to reimburse the Town for the Expenditures from the proceeds of a future financing contract (the “Contract”);

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL AS FOLLOWS:

Section 1. The Council hereby declares the Town’s intent to reimburse the Town with the proceeds of the Contract for the Expenditures with respect to the Project made prior to adoption of this resolution and on and after the date hereof. The Town reasonably expects on the date hereof that it will reimburse the Expenditures with the proceeds of the Contract.

Section 2. Each Expenditure will be either (a) of a type properly chargeable to a capital account, (b) a cost of issuance with respect to the Contract, or (c) a nonrecurring item that is not customarily payable from current revenues.

Section 3. The maximum principal amount of the Contract expected to be entered into for the Project is \$414,083

Section 4. The Town will make a reimbursement allocation, which is a written allocation by the Town that evidences the Town’s use of proceeds of the Contract to reimburse an Expenditure, no later than 18 months after the later of the date on which the Expenditure is paid or the Project are placed in service or abandoned, but in no event more than three years after the date on which the Expenditure is paid. The Town recognizes that exceptions are available for certain “preliminary expenditures”, and costs of issuance.

Section 5. This resolution shall take effect immediately upon its passage.

Duly resolved this 4th day of September 2012, while in regular session.

**Jody L. McLeod
Mayor**

ATTEST:

**Sherry L. Scoggins, MMC
Town Clerk**

**TOWN OF CLAYTON
REIMBURSEMENT RESOLUTION**

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF CLAYTON DECLARING ITS INTENTION TO REIMBURSE ITSELF FROM THE PROCEEDS OF A FUTURE FINANCING CONTRACT FOR CERTAIN EXPENDITURES MADE AND/OR TO BE MADE IN CONNECTION WITH THE PURCHASE OF ROLLING STOCK.

WHEREAS, the Town of Clayton (the “Town”) is a Town organized and existing under the laws of the state of North Carolina; and

WHEREAS, the Town has paid and/or will pay certain expenditures (the “Expenditures”) in connection with the purchase of rolling stock (the “Project”); and

WHEREAS, the Town Council of the Town (the “Council”) has determined that those moneys previously advanced and to be advanced on and after the date hereof to pay the Expenditures are available only for a temporary period and it is necessary to reimburse the Town for the Expenditures from the proceeds of a future financing contract (the “Contract”);

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL AS FOLLOWS:

Section 1. The Council hereby declares the Town’s intent to reimburse the Town with the proceeds of the Contract for the Expenditures with respect to the Project made prior to adoption of this resolution and on and after the date hereof. The Town reasonably expects on the date hereof that it will reimburse the Expenditures with the proceeds of the Contract.

Section 2. Each Expenditure will be either (a) of a type properly chargeable to a capital account, (b) a cost of issuance with respect to the Contract, or (c) a nonrecurring item that is not customarily payable from current revenues.

Section 3. The maximum principal amount of the Contract expected to be entered into for the Project is \$342,100.

Section 4. The Town will make a reimbursement allocation, which is a written allocation by the Town that evidences the Town’s use of proceeds of the Contract to reimburse an Expenditure, no later than 18 months after the later of the date on which the Expenditure is paid or the Project are placed in service or abandoned, but in no event more than three years after the date on which the Expenditure is paid. The Town recognizes that exceptions are available for certain “preliminary expenditures”, and costs of issuance.

Section 5. This resolution shall take effect immediately upon its passage.

Duly resolved this 4th day of September 2012, while in regular session.

**Jody L. McLeod
Mayor**

ATTEST:

**Sherry L. Scoggins, MMC
Town Clerk**

**TOWN OF CLAYTON
REIMBURSEMENT RESOLUTION**

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF CLAYTON DECLARING ITS INTENTION TO REIMBURSE ITSELF FROM THE PROCEEDS OF A FUTURE FINANCING CONTRACT FOR CERTAIN EXPENDITURES MADE AND/OR TO BE MADE IN CONNECTION WITH THE PURCHASE OF A SCADA SYSTEM - PHASE I FOR THE WATER AND SEWER FUND.

WHEREAS, the Town of Clayton (the “Town”) is a Town organized and existing under the laws of the state of North Carolina; and

WHEREAS, the Town has paid and/or will pay certain expenditures (the “Expenditures”) in connection with the purchase of a SCADA System - Phase 1 for the Water and Sewer Fund (the “Project”); and

WHEREAS, the Town Council of the Town (the “Council”) has determined that those moneys previously advanced and to be advanced on and after the date hereof to pay the Expenditures are available only for a temporary period and it is necessary to reimburse the Town for the Expenditures from the proceeds of a future financing contract (the “Contract”);

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL AS FOLLOWS:

Section 1. The Council hereby declares the Town’s intent to reimburse the Town with the proceeds of the Contract for the Expenditures with respect to the Project made prior to adoption of this resolution and on and after the date hereof. The Town reasonably expects on the date hereof that it will reimburse the Expenditures with the proceeds of the Contract.

Section 2. Each Expenditure will be either (a) of a type properly chargeable to a capital account, (b) a cost of issuance with respect to the Contract, or (c) a nonrecurring item that is not customarily payable from current revenues.

Section 3. The maximum principal amount of the Contract expected to be entered into for the Project is \$255,000

Section 4. The Town will make a reimbursement allocation, which is a written allocation by the Town that evidences the Town’s use of proceeds of the Contract to reimburse an Expenditure, no later than 18 months after the later of the date on which the Expenditure is paid or the Project are placed in service or abandoned, but in no event more than three years after the date on which the Expenditure is paid. The Town recognizes that exceptions are available for certain “preliminary expenditures”, and costs of issuance.

Section 5. This resolution shall take effect immediately upon its passage.

Duly resolved this 4th day of September 2012, while in regular session.

**Jody L. McLeod
Mayor**

ATTEST:

**Sherry L. Scoggins
Town Clerk**

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

Agenda Item: 3d

Meeting Date: 9/04/12

TITLE: PEG INTERLOCAL AGREEMENT.

DESCRIPTION: Attached.

RELATED GOAL: Financially Responsible Town Government Providing Quality Service

ITEM SUMMARY:

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
8-20-12	Presentation	Agreement.
9-04-12	Approval.	Agreement.

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (the "Agreement") is hereby entered into by, between, and among the **TOWN OF KNIGHTDALE**, a North Carolina municipal corporation ("Knightdale"); the **TOWN OF WENDELL**, a North Carolina municipal corporation ("Wendell"); the **TOWN OF ZEBULON**, a North Carolina municipal corporation ("Zebulon"); the **TOWN OF ROLESVILLE**, a North Carolina municipal corporation ("Rolesville"); the **TOWN OF CLAYTON**, a North Carolina municipal corporation ("Clayton"); the **TOWN OF GARNER**, a North Carolina municipal corporation ("Garner"); and the **TOWN OF ARCHER LODGE**, a North Carolina municipal corporation ("Archer Lodge"). Knightdale, Wendell, Zebulon, Rolesville, Clayton, Garner and Archer Lodge collectively shall be known as the "Parties".

WITNESSETH

WHEREAS, East Wake Television (EWTV), a North Carolina non-profit corporation is owned by the towns of Knightdale, Wendell, Zebulon and Rolesville. EWTV currently provides community access television programming on two PEG Channels for Knightdale, Wendell, Zebulon and Rolesville; and

WHEREAS, East Wake Television currently operates the community access television channels for the Town of Clayton and the Town of Garner by contract; and

WHEREAS, the Parties are committed to the delivery of the highest possible level of community access television programming to the citizens of the Parties; and

WHEREAS, the Parties desire to formalize their existing practices of cooperation and expand the flexibility and terms relating to previous agreements for the joint funding and operations of community access television programming for the citizens of the Parties; and,

WHEREAS, the Parties desire to share the benefits and responsibilities involved in providing community access television programming for the citizens of the Parties by adding the towns of Clayton, Garner and Archer Lodge to the partnership; and

WHEREAS, the Parties desire to enter into this Agreement pursuant to Section 160A460 et seq. of the North Carolina General Statutes authorizing interlocal agreements.

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained in this Agreement, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1. Definitions

For all purposes of this Agreement, unless the context requires otherwise, the following capitalized and underlined terms shall have the following meanings:

"Act" shall mean Session Law 2006-151 of the State of North Carolina titled "An Act to Promote Consumer Choice in Video Service Providers and to Establish Uniform Taxes for Video Programming Services" as signed into law by Governor Michael F. Easley on or about July 20, 2006 as subsequently codified in the North Carolina General Statutes and as subsequently amended.

"PEG Media Partners" shall mean the organization that operates the PEG Channels funded pursuant to this Agreement along with the appurtenant management and operations of said channels.

"Effective Date" shall mean the latest date of execution by anyone of the Parties as evidenced from the signature pages of this Agreement.

"Expiration Date" shall mean 11:59 p.m. Eastern Time on that date marking the end of the Term.

"PEG Channels" shall mean any public, educational, or governmental access channels provided to any or all Parties to this Agreement by Time Warner Cable and/or AT&T, its successors in interest, or other Cable System (as defined by the Act) providing Cable Service (as defined by the Act) within the jurisdictions of the Parties.

"Permanently Installed Equipment" shall mean equipment and cabling fastened to real property where removal would damage the real property.

"State" shall mean the State of North Carolina along with any agency of the State of North Carolina, including the e-NC Authority, charged with administering the provisions of the Act.

"Term" shall mean collectively the Initial Term plus any Subsequent Terms created pursuant to this Agreement.

ARTICLE 2. Joint Operations Agreement

2.1 The corporate name East Wake Television is hereby changed to PEG Media Partners.

2.2. Knightdale, Wendell, Zebulon, Rolesville, Clayton, Garner and Archer Lodge hereby agree and covenant that they shall jointly fund and operate PEG Media Partners, a North Carolina non-profit corporation, pursuant to the terms of this Agreement.

2.3. Initial Term. The term of this Agreement shall be five years (5) years from the Effective Date.

2.4. Subsequent Terms. The Parties agree and acknowledge that this Agreement may be terminated by anyone Party to this Agreement by Notice to the other Parties made no less than ninety (90) days prior to the Expiration Date (the "Termination Right"). Should any Party exercise its Termination Right, this Agreement shall terminate upon the Expiration Date. Should no Party exercise its Termination Right pursuant to this subsection, the Term shall automatically renew for an additional three (3) years measured from the end of the Term (the "Subsequent Terms").

2.5. Management. Responsibility for the management of PEG Media Partners shall be vested with the Town Managers of the Parties, ~~including~~ *SL*

2.5.1. Conform programming to the requirements set forth by Article 3 herein below;

2.5.2. Adopt a budget and monitor the status of receipts from funds allocated for PEG Media Partners from the PEG Channel Fund and other distributions made pursuant to the Act ("Act Funds");

2.5.3. Expend receipts of Act Funds in accordance with restrictions imposed by the Act;

2.5.4. Employ appropriate staff, including a Studio Director. Paid employees of PEG Media Partners, if any, shall be considered employees of PEG Media Partners and shall not be considered employees of the individual Parties and shall not be eligible for town benefits, including Local Government Retirement System.

2.5.5. Contract with other towns, organizations or companies.

2.5.6. The Studio Director shall manage the daily operations of the channels, sign documents on behalf of PEG Media Partners, purchase supplies and equipment provided for in the budget, set the programming schedules, hire staff, utilize professional consultants and serve as chief liaison between the Parties, the appropriate State agencies, charged with administering the provisions of the Act and the cable providers.

2.5.7. The Town of Knightdale will provide PEG Media Partners with certain administrative functions, including accounting, purchasing and personnel as requested.

2.5.8. PEG Media Partners shall follow the general rules and laws as required of municipalities in regard to accounting, purchasing and personnel.

2.6. Meetings of Parties.

2.6.1. Annual Meeting. The Parties shall meet at least quarterly to adopt a budget and to discuss and adopt rules or policies governing the management, operations, programming, maintenance, or funding of PEG Media Partners.

2.6.2. Other Meetings. For any of the purposes expressed by this Agreement and in recognition of the mutual benefits accruing to the Parties from the active coordination and cooperation of the Parties, in supplement to the Annual Meeting the Parties agree to meet from time to time (in person or online), as is reasonable and necessary, to coordinate, discuss, decide, adopt, or amend rules or policies governing the management, operations, programming, or maintenance of PEG Media Partners.

2.6.3. Voting. The Parties hereby designate their town managers, or each manager's designee, as the proper representative at meetings described by this Section 2.5. The adoption or amendment of any budget, rule, or policy of PEG Media Partners shall require a 4/7 vote of the Parties.

ARTICLE 3. Programming

3.1. All programming provided on PEG Media Partners PEG Channels shall be non-commercial in nature.

3.2. Programming shall be provided on the PEG Channels to meet requirements of North Carolina state statutes.

3.3. It is anticipated by the Parties that the Parties may wish to acquire additional PEG Channels during the Term or broadcast on additional Cable Services. The Parties intend that any future-acquired PEG Channels be governed pursuant to this Agreement.

ARTICLE 4. PEG Media Partners Funding

4.1. Source of Funds. For the purpose of ensuring that adequate financial resources are available to accomplish the goals of the Parties, hereto, each of the Parties hereby commits individually and severally to making all best efforts reasonably necessary to financially support PEG Media Partners. Without limiting the foregoing, the Parties explicitly commit as follows:

4.1.1. 1. Each of the Parties individually shall certify to the State on or before the due date established by the North Carolina Department Revenue each year of Term the number of qualifying PEG Channels operated by the Parties, currently two.

4.1.2. At the request of the Studio Director, the Parties shall apply, either individually or collectively as determined by the Studio Director, for any grant monies available to PEG Channels, including but not limited to the PEG Channel Fund established by the Act (ref. N.C. Gen. Stat. § 66-359).

4.1.3. It is the expectation of the Parties that funds received in accordance with the provisions of the Act shall be sufficient to fund the operations and capital needs of PEG Media Partners. The Parties acknowledge, however, that from time to time the Studio Director may request from the Parties that additional funds be committed from the Parties' general funds for the benefit of PEG Media Partners. No provision of this Agreement is

intended to obligate any Party to the expenditure of general funds for the purposes set forth by this Agreement.

4.2. Use of Funds.

4.2.1. Any funds received by a Party as a distribution under the Act from efforts made in accordance with Section 4.1 of this Article, shall be allocated as follows:

4.2.1.1. Franchise Fees. Funds distributed annually to the Parties from subscriber fees, franchise fees, or other fees received pursuant to § 105-164.44I(c) - (d) shall be expended in accordance with the provisions of the Act (ref. § 105-164.44(I)(e)). Each of the individual Parties shall appropriate and spend these funds as they see fit.

4.2.1.2. Supplemental PEG Support. Funds distributed annually to the Parties from Supplemental PEG Support shall be transferred immediately to and expended only for the operation and support of PEG Media Partners.

4.2.1.3. PEG Channel Fund Grants. In accordance with the Act, funds distributed from the PEG Channel Fund and corresponding matching funds from the Parties shall be expended only for capital expenditures necessary to provide programming for PEG Media Partners.

ARTICLE 5. Title to Property

5.1. Title to all personal property, equipment, and inventory previously committed to PEG Media Partners shall remain in the Party or Parties owning such property immediately prior to the Effective Date.

5.2. Notwithstanding the foregoing paragraph, title to any permanently installed equipment or fixtures acquired during the Term shall be with the fee owner of the real property to which the installed equipment or fixtures are affixed.

5.3 Title to any real property constructed on previously owned property shall remain in the Party holding title to such property.

ARTICLE 6. Assets

6.1. The Studio Director may sell surplus assets of PEG Media Partners as necessary. Funds received from the sell of surplus equipment shall be used for the operation of PEG Media Partners.

6.2 Upon the dissolution of PEG Media Partners, assets not permanently installed shall be sold as surplus and the proceeds shall be split evenly between the parties remaining at the time of dissolution. Real Property will remain with the Party with title to the property.

6.3 Should any Party exercise its Termination Right and the remaining parties agree to continue the operation of PEG Media Partners, all real property, personal property, equipment, and inventories shall remain with PEG Media Partners. The Terminating Party shall lose their right to any proceeds in case of a future dissolution.

ARTICLE 7. Termination

7.1. Except in accordance with the provisions of Section 2.3 hereinabove, no Party shall have the right to withdraw participation in this Agreement without the consent of all other Parties.

7.2. This Agreement shall not be terminated prior to the end of its Term except by agreement of all Parties.

ARTICLE 8. Miscellaneous Provisions

8.1. Notices. Any notice, demand, consent, agreement, request or other communication required to be given, served, sent or obtained hereunder (a "Notice") must be in writing, and must be either (i) mailed by first-class mail, registered or certified, return-receipt requested, postage prepaid, (ii) hand delivered personally or by nationally recognized courier service, fees prepaid or (iii) transmitted by telecopy, addressed as follows:

8.1.1. If to Knightdale:

Town of Knightdale
c/o Town Manager
950 Steeple Square Court
Knightdale, NC 27545

8.1.2. If to Wendell:

Town of Wendell
c/o Town Manager
PO Box 828
Wendell, NC 27591

8.1.3. If to Zebulon:

Town of Zebulon
c/o Town Manager
Zebulon Town Hall
1003 N. Arendell Avenue
Zebulon, NC 27597

8.1.3. If to Rolesville:

Town of Rolesville
c/o Town Manager

Rolesville Town Hall
PO Box 250
Rolesville, NC 27571

8.1.3. If to Clayton:
Town of Clayton
c/o Town Manager
Clayton Town Hall
P.O. Box 879
Clayton, NC 27528

8.1.3. If to Garner:
Town of Garner
c/o Town Manager
Garner Town Hall
900 Seventh Ave.
Garner, NC 27529

8.1.3. If to Archer Lodge:
Town of Archer Lodge
c/o Mayor
Archer Lodge Town Hall
P.O. Box 1500
Clayton, NC 27528

8.1.4. Each party may designate by notice a new address to which any Notice thereafter may be given, served, or sent. Each Notice that is delivered in the manner described above will be deemed given and received for all purposes at the earlier of such time as it is delivered to the addressee (with the return-receipt, courier delivery receipt or telecopy answer-back confirmation being deemed conclusive evidence of such delivery) or such time as delivery is refused by the addressee upon presentation.

8.2. Amendments. No modification or amendment of this Agreement will be valid or binding upon any Party unless in writing and signed by the Party against whom such modification or amendment is asserted.

8.3. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to an interlocal agreement for the joint funding and operations of PEG Media Partners. All previous undertakings or agreements between the parties with respect to these matters are merged herein and superseded hereby. No representation, promise, or inducement not included herein shall be binding on any Party hereto.

8.4. Transferability. No additional Parties shall be allowed to participate during the Initial Term of this Agreement. This Agreement shall not be transferred or assigned, either voluntarily or involuntarily. Any purported transfer or assignment of a Party's rights under

this Agreement shall be null and void, and shall not transfer any rights, interest or title to the purported transferee.

8.5. Interpretation. If there arises any issue regarding the intent of the Parties to this Agreement or the interpretation of any provision of this Agreement or any ambiguity arising from this Agreement, no presumption or burden of proof shall arise favoring or disfavoring any Party, and this Agreement shall not be strictly construed against any party. When the context in which a word is used in this Agreement indicates that such is the intent, a word in the singular number shall include the plural and vice-versa, and a word in the masculine gender shall include the feminine and neuter and vice-versa. Any use in this Agreement of any form of the verb "to include" means the word stated but not limited to. The paragraph headings or titles used in this Agreement are for convenience only, and shall not define, limit, extend or interpret the scope of this Agreement or any particular section, paragraph or provision of this Agreement. Any reference in this Agreement to any statute, code, rule or law (collectively or individually, a "Law") shall include any amendments to the Law referred to, any comparable successor Law that replaces the Law referred to, as well as any amendments to any such successor Law.

8.6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina without giving effect to any conflict of law rule or provision thereof that would cause the application of the laws of any other jurisdiction.

8.7. Faxed Signatures. Any Party to this Agreement transmitting its signature on this Agreement by telecopy shall be deemed to have accepted and adopted such telescoped signature as that Party's original signature, and to have accepted that the same is sufficient to bind that party to this Agreement as if that Party's original handwritten signature were attached hereto, it being the intention of the Parties that a telescoped signature on this Agreement is binding from the time a copy of this Agreement with a party's signature is telescoped to another party hereto, and that any person may rely on the authority thereof for implementing the provisions of this Agreement.

8.8. Severability. The Parties intend that this Agreement be enforced to the fullest extent permissible under the Law and public policy applied by any jurisdiction in which enforcement is sought. Accordingly, if any provision, sentence, phrase or word of this Agreement, or the application thereof to any person or circumstance, or the enforceability thereof in any jurisdiction, is held invalid, the remainder of this Agreement, or the application of such provision, sentence, phrase or word to persons or circumstances other than those as to which it is held invalid, or the enforceability thereof in other jurisdictions, shall not be affected thereby.

8.9. Agreement in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature pages, and this Agreement may be executed by the affixing of the signatures of each of the Parties to one of such counterpart signature pages. All of such signature

pages shall be read as though one and they shall have the same force and effect as though all of the signers had signed a single signature page.

8.10. Definitions. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Act.

8.11. Other Documents. The Parties agree to execute such other documents as may be necessary for the implementation and consummation of this Agreement and the covenants contained herein.

8.12. Force Majeure. If either party is delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of strike, lockouts, labor troubles, power failure, riots, insurrection, war, fire, earthquake, flood, explosion, governmental sanctioned embargo, acts of God, inclement weather or other reason beyond such party's control of like or unlike nature or cause, then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

8.13. Third-party Beneficiaries. Except as may be otherwise expressly provided herein, this Agreement shall not confer any rights or remedies upon any person or entity other than the Parties hereto, and their respective successors and permitted assigns.

8.14. Injunctive Relief. The Parties acknowledge that any breach or violation of this Agreement will cause irreparable harm to the non-breaching Parties for which there is no adequate remedy at Law. Accordingly, in addition to any other remedies available at law or equity, any Party hereto that is aggrieved by a breach or threatened breach of any of the provisions of this Agreement shall be entitled to seek from any court of competent jurisdiction an order for specific performance and/or for temporary and/or permanent injunctive relief to enforce the provisions of this Agreement without the necessity of proving actual damages or posting bond or other security.

REMAINDER OF PAGE INTENTIONALLY BLANK SIGNATURE PAGES FOLLOW

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

Agenda Item: 3e

Meeting Date: 9/04/12

TITLE: COUNCIL RULES AND PROCEDURES.

DESCRIPTION: Amendments to the Council rules and procedures include:

- Rule 1 & 2 – Update to include amendment to NC GS 143-318.12.
- Rule 5 – Update to include the NC GS reference and amend time frame for inclusion of special presentations on the agenda.
- Rule 8 – Update to include the NC GS reference for selection of Mayor Pro Tem.
- Rule 23 – Inclusion of Zoning Statement of Consistency and Reasonableness.
- Rule 27 – Request to strike the “Note”.
- Rule 31 – Request to strike the highlighted text and replace with the underscored.

RELATED GOAL: Administrative

ITEM SUMMARY:

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
8-20-12	Discussion.	Council Rules & Procedures With mark-ups.
9-04-12	Approval.	Council Rules & Procedures, Final draft.

Introduction

THESE RULES OF PROCEDURE were designed for use by a municipal Council. They incorporate general principles of parliamentary procedure and applicable North Carolina laws. Essentially the rules are a modified version of *Robert's Rules of Order Newly Revised* (hereinafter referred to as *RONR*). However, *RONR* is intended primarily to guide the deliberations of large legislative bodies; its detailed rules are not always appropriate for a small governing board. A small board can afford to do some things that are not appropriate for a large body, and in some cases the procedure prescribed by *RONR* for larger assemblies is unnecessarily cumbersome. *RONR* itself recognizes that more informality is desirable with small boards (*RONR*, Sec. 48, pp. 477–78); these rules detail the more informal procedures that might be expected with a small board. This book modifies *RONR* with the following principles in mind:

1. The Council must act as a body.
2. The Council should proceed in the most efficient manner possible.
3. The Council must act by at least a majority.
4. Every member must have an equal opportunity to participate in decision-making.
5. The Council's rules of procedure must be followed consistently.
6. The Council's actions should be the result of a decision on the merits and not a manipulation of the procedural rules.

Many of the rules suggested here reflect the provisions of the North Carolina Town Council meeting procedure statutes, Chapter 160A, Article 5, Parts 1–3, of the North Carolina General Statutes (hereinafter G.S.) (G.S. 160A-68 to -81) and the North Carolina open meetings law, G.S. Chapter 143, Article 33C (G.S. 143-318.9 to 143-318.18). When the rules in this book state procedures that are required by sections of these statutes, that fact is noted in the Comments. Town Councils must follow procedures required by these laws, whether or not they adopt some version of the rules in this book.

Note that G.S. 160A-82 provides that nothing in G.S. 160A-68 through G.S. 160A-81 (with certain exceptions not pertinent here) is to be construed to repeal any inconsistent provision of any Town charter. (See also G.S. 160A-3, which provides rules for resolving conflicts between charter provisions and other statutes.) Town officials should examine the Town charter whenever a Comment refers to a general law, to determine whether the charter conflicts with the cited general law.

A Town Council has a relatively free hand in designing its own rules of procedure, as long as the requirements of the general laws mentioned above and the Town's charter are followed and the board adheres to the general principles listed earlier. Most of the rules in this book are merely suggested procedures, and each Council should feel free to change them to suit local needs and customs. For example, Rule 11 eliminates the requirement of a second to a motion. A Council may choose to adopt that rule or not. Alternative wordings and optional language for some of the rules are shown enclosed in brackets.

Throughout these rules the Town governing board is referred to as the “Council,” in keeping with the wording of G.S. Chapter 160A.

Suggested Rules of Procedure

Rule 1. Regular Meetings

(a) Meeting Dates and Time. The Council shall hold regular meetings on the first and third Monday of each month, except that if a regular meeting day is a legal holiday, the meeting shall be held on the next business day. Regular meetings shall be held at The Town Council Chambers, 111 E. Second Street and shall begin at 6:30 p.m. A copy of the Council's current meeting schedule shall be filed with the Town Clerk and on the Town's website (NC GS 143-318.12).

(b) First Monthly Meeting. The first regular meeting of each month shall be organized as an action meeting primarily for the holding of public hearings, adoption and amendment of ordinances, setting of policy, appointments to boards and committees and similar official and final actions by the Town Council.

(c) Second Monthly Meeting. The second regular meeting of each month shall be organized as a work session intended primarily to identify priority, identify needed information, present or discuss preliminary background information on items, and generally organize the agenda for the second monthly meeting. Normally action shall not be taken at the work session meeting except for those items in the consent agenda, such as approval of minutes, setting of public hearings, adoption of resolutions and similar routine or administrative actions.

Rule 2. Special, Emergency, and Recessed [or Adjourned] Meetings

(a) Special Meetings. The Mayor, the Mayor Pro Tempore, or any two members of the Council may at any time call a special Council meeting by signing a written notice stating the time and place of the meeting and the subjects to be considered. At least forty-eight hours before a special meeting called in this manner, written notice of the meeting stating its time and place and the subjects to be considered shall be (1) delivered to the Mayor and each Council member or left at his or her usual dwelling place; (2) be posted on the principal bulletin board of the public body or, if the public body has no such bulletin board, at the door of its usual meeting room, and (3) be mailed, e-mailed, or delivered to each newspaper, wire service, radio station, and television station that has filed a written request for notice with the Town Clerk. Only those items of business specified in the notice may be transacted at a special meeting called in this manner, unless all members are present or have signed a written waiver of notice. [Even in such a case, the Council shall only discuss or transact items of business not specified in the notice if it determines in good faith at the meeting that it is essential to discuss or act on the item immediately.]

A special meeting may also be called or scheduled by vote of the Council in open session during another duly called meeting. The motion or resolution calling or scheduling the special meeting shall specify its time, place, and purpose. At least forty-eight hours before a special meeting called in this manner, notice of the time, place, and purpose of the meeting shall be (1) posted on the Council's principal bulletin board, or if none, at the door of the Council's usual meeting room; and (2) mailed or delivered to each newspaper, wire service, radio station, television station, and person who has filed a written request for notice with the Town Clerk. [Such notice shall also be mailed or delivered at least forty-eight hours before the meeting to each Council member not present at the meeting at which the special meeting was called or scheduled and to the Mayor if he or she was not present at that meeting.] [Only those items of business specified in the notice may be discussed or transacted at a special meeting called in this manner, unless all members are present or those not present have signed a written waiver of notice, and the Council determines in good

faith at the meeting that it is essential to discuss or act on the item immediately.

Comment: In accordance with the requirements of G.S. 160A-71(b)(1), only those items of business specified in the notice may be transacted at a special meeting called in this manner, unless all members are present or have signed a written waiver of notice. An optional provision of this rule establishes an additional requirement: no items may be added to the agenda for a special meeting called in this manner unless the Council determines in good faith that the item to be added must be discussed or acted on immediately.

b) Emergency Meetings. Emergency meetings of the Town Council may be called only because of generally unexpected circumstances that require immediate consideration by the Council. Only business connected with the emergency may be considered at an emergency meeting. One of the following two procedures must be followed to call an emergency meeting of the Council.

(1) The Mayor, the Mayor Pro Tempore, or any two members of the Council may at any time call an emergency Council meeting by signing a written notice stating the time and place of the meeting and the subjects to be considered. The notice shall be delivered to the Mayor and each Council member or left at his or her usual dwelling place at least six hours before the meeting.

(2) An emergency meeting may be held at any time when the Mayor and all members of the Council are present and consent thereto, or when those not present have signed a written waiver of notice, but only in either case if the Council complies with the notice provisions of the next paragraph.

Notice of an emergency meeting under (1) or (2) shall be given to each local newspaper, local wire service, local radio station, and local television station that has filed a written emergency meeting notice request, which includes the newspaper's, wire service's, or station's telephone number, with the Town Clerk. This notice shall be given either by email, by telephone or by the same method used to notify the Mayor and the Council members and shall be given at the expense of the party notified.

Comment: Rule 2(b) states the requirements of the open meetings law concerning emergency meetings [G.S. 143-318.12(b)(3)]. It adds to these requirements the two possible ways that emergency meetings might be called under G.S. 160A-71(b). The Town Council procedural statutes do not mention emergency meetings, so they must be considered a type of special meeting. The first method, described in G.S. 160A-71(b)(1), requires six hours' minimum notice to Council members and the Mayor. The second method, specified in G.S. 160A-71(b)(2), allows a meeting to be held whenever the entire Council can be assembled or written waivers can be obtained from those not present, as long as the emergency meeting notice requirements are satisfied.

The third method for calling special Council meetings, see G.S. 160A-71(b)(3), is not allowed for emergency meetings. Because emergency meetings are by their nature unexpected, it is assumed that they will not be called during the course of another meeting, but will be scheduled when needed using one of the other two methods.

(c) Recessed [or Adjourned] Meetings. A properly called regular, special, or emergency meeting may be recessed [or adjourned] to a time and place certain by a procedural motion made and adopted as provided in Rule 18, Motion 2, in open session during the regular, special, or emergency meeting. The motion shall state the time and place when the meeting will reconvene. No further notice need be given of a recessed [or adjourned] session of a properly called regular, special, or emergency meeting, and that it shall be posted on the Town website prior to the scheduled time of that meeting (NC GS 143-318.12)

Comment: In Rule 2(c), note that a motion to recess (or adjourn) a meeting to a time and place certain must comply with the requirements of Rule 18 concerning procedural motions. See both

the rule's general requirements and the particular requirements of Motion 2. It must be made in open session, since under the open meetings law the making of such a motion is not listed as an action that is permitted during a closed session. (See Rule 26 concerning closed sessions.) The open meetings law specifies that if proper notice was given of the original meeting, and if the time and place at which the meeting is to be continued is announced in open session, no further notice is required for the adjourned or recessed session. No notice requirements are imposed by the Town Council procedure statutes for adjourned or recessed sessions. As explained in the *Comment* to Rule 18, Motion 2, the terms “recess to a time and place certain” and “adjourn to a time and place certain” are both forms of the motion to adjourn, and are used interchangeably in these rules and in North Carolina law and practice. G.S. 160A-71(b1) states the terms recess and adjourn as alternatives.

The provisions of Rule 24 that concern notice of meetings to consider the budget should also be considered in conjunction with this rule.

Rule 3. Organizational Meeting

On the date and at the time of the first regular meeting in December following a general election in which Council members are elected, or at an earlier date, if any, set by the incumbent Council, the newly elected members shall take and subscribe the oath of office as the first order of new business. As the second order of new business, the Council shall elect a Mayor Pro Tempore. This organizational meeting shall not be held before the municipal election results are officially determined, certified, and published in accordance with Subchapter IX of Chapter 163 of the North Carolina General Statutes. Upon taking the oath of office the Mayor shall be empowered to make appointments of Council members or him or herself to serve as liaison or delegate to the various Town boards and committees and other agencies or associations to which the Town is a member.

Comment:

Who presides at the organizational meeting until the new Mayor is sworn in is a question best resolved by local custom. In the Town of Clayton the retiring Mayor presides until the new Mayor is sworn in.

The incumbent Council may fix the date and time of the organizational meeting. If it does not do so, the meeting is held on the date and at the time of the first regular meeting in December after the municipal election results have been certified under the state election laws.

Rule 4. Agenda

(a) **Proposed Agenda.** The Town Clerk shall prepare a proposed agenda for each meeting. A request to have an item of business placed on the agenda must be received the Monday preceding the meeting. Any Council member may, by a timely request, have an item placed on the proposed agenda. A copy of all proposed ordinances shall be attached to the proposed agenda. [An agenda package shall be prepared that includes, for each item of business placed on the proposed agenda, as much background information on the subject as is available and feasible to reproduce.] Each Council member shall receive a copy of the agenda package and the agenda shall be available for public inspection when they are distributed to the Council members.

(b) **Adoption of the Agenda.** As its first order of business at each meeting, the Council shall, as specified in Rule 6, discuss and adjust the proposed agenda and adopt an agenda for the meeting. If items

are proposed to be added to the agenda of a meeting, the Council may, by majority vote, require that written copies of particular documents connected with the items be made available at the meeting to all Council members.

The Council may by majority vote to add items to or subtract items from the proposed agenda, except that (a) the Council may not subtract items from the proposed agenda stated in the notice of a special meeting called by the Mayor, Mayor Pro Tempore, or two Council members, unless those calling the meeting consent to the deletion, (b) the Council may not add items to the proposed agenda stated in the notice of a special meeting called by the Mayor, Mayor Pro Tempore, or two Council members, unless all members are present, or those who are absent sign a written waiver of notice, and (c) only business connected with the emergency may be considered at an emergency meeting. The Council may add items to the proposed agenda of a special meeting only if it determines in good faith at the meeting that it is essential to discuss or act on the item immediately.

The Council may designate certain agenda items “for discussion and possible action.” Such designation means that the Council intends to discuss the general subject area of that agenda item before making any motion concerning that item.

Comments: G.S. 160A-71(b)(1) requires that all Council members be present or consent in writing before additions can be made to the subjects listed on the notice of a special meeting called by the Mayor, Mayor Pro Tempore, or two Council members. Also, since the agenda of such a special meeting is set by those calling it, this rule requires those persons’ consent before items may be deleted from that agenda. Note also that G.S. 143-318.12(b)(3) limits the agenda of emergency meetings to business connected with the emergency.

The Town Clerk or Town Manager may maintain a mailing list of interested parties, aka Sunshine List, who wish to receive a copy of the proposed agenda and/or agenda package regularly. Since the background materials included with the proposed agenda in the agenda package may be quite voluminous, the Town shall charge those parties, other than media representatives, who wish to receive the full agenda package for the cost of reproduction. At the very least, the Council should make provision for the public to inspect and copy the agenda package in the Town offices, since the agenda package is generally a matter of public record open to public inspection. No fee shall be charged for notices sent by e-mail (NC GS 143-318.12 (b) (2)).

(c) **Consent Agenda.** The Council may designate a part of the agenda as the “consent agenda.” Items shall be placed on the consent agenda by prior action of the Council or by those preparing the proposed agenda if they are judged to be non controversial and routine. Any member may remove an item from the consent agenda and place it on the regular agenda while the agenda is being discussed and revised prior to its adoption at the beginning of the meeting or by consent of the members prior to discussion and action on the listed consent agenda. All items on the consent agenda shall be voted on and adopted by a single motion, with the minutes reflecting the motion and vote on each item.

Comment to (c):

The Council reviews the “consent agenda” as part of its review of the proposed agenda at the beginning of the meeting. Each member is free to remove items from the consent agenda to the regular agenda. A member may wish to do so if, for example, he or she would like to debate the proposal or vote against the item.

(d) **Open Meetings Requirements.** The Council shall not deliberate, vote, or otherwise take action on any matter by reference to a letter, number, or other designation, or other secret device or method, with the intention of making it impossible for persons attending a meeting of the Council to understand what is

being deliberated, voted, or acted on. The Council may, however, deliberate, vote, or otherwise take action by reference to an agenda, if copies of the agenda—sufficiently worded to enable the public to understand what is being deliberated, voted, or acted on—are available for public inspection at the meeting.

Rule 5. Public Address to the Council

The Council shall provide opportunity for public comment in accordance with the following procedures.

The agenda for all regular meetings shall include an item for “Informal Discussion and Public Comment”. This section shall follow conclusion of all regular and known items on the agenda for discussion and action. Any person may address the Council during this section of the agenda regarding items of public interest. The Mayor shall have authority to recognize speakers under this item and to set reasonable limits on the length of such presentations (NC GS 160A-81.1)

In addition, the regular monthly work session agenda shall allow for citizens and speakers to address the Council under the item titled, “Introductions and Special Presentations.” This section of the agenda shall immediately follow the section titled “Action Agenda.” In order for a citizen or presenter to address the Council under Introductions and Special Presentations he or she must submit a request and explanation of their topic with relevant support materials to the Town Clerk ~~five~~ seven business days prior to a regular scheduled work session. Such presentations shall be limited to five (5) minutes in length unless the length of time restriction is waived by vote of the Town Council. Presentations made in accordance with this rule shall be limited in scope and content to topics that do not otherwise or elsewhere appear on the agenda.

In addition, the Mayor may choose to recognize individuals attending a Council meeting to address the Council about matters of relevance and public interest.

Comment: The Council may decide as a matter of general policy to set aside part of each meeting for individuals or groups to address the Council, although it is not legally required to do so. This rule allows any individual or group to be placed on the proposed agenda, but reserves to the Council the right to decide whether to hear its comments. If the Council chooses to open the meeting for public comments on a particular issue, it must be careful not to censor individuals or groups based on their point of view on that issue, in order to avoid violating the speakers’ constitutional right to freedom of speech. Presentations, which include a request for action by the Council, shall be subject to the Rules of Procedure, Rule 1, (b) and (c), above.

Rule 6. Order of Business

Items shall be placed on the agenda according to the order of business. The order of business for each regular meeting shall be as follows:

- Discussion and revision of the proposed agenda, including consent agenda; adoption of an agenda
- Consent Agenda including approval of the minutes
- Public hearings
- Special Presentations
- Old business
- New business
- Staff reports

Informal discussion and public comment.
Other business
Adjourn

The following agenda format for each work session meeting shall be used:

Discussion and revision of the proposed agenda, including consent agenda; adoption of an agenda
Action Agenda
Special Presentations
Items scheduled for regular meeting agenda
Items contingent for the regular meeting
Items for discussion
Old business
Staff reports
Informal discussion and public comment
Other business
Adjourn

By general consent of the Council, items may be considered in an order different than as listed on the agenda.

Rule 7. Office of Mayor

The Mayor shall preside at all meetings of the Council but shall have the right to vote only when there is a tie. In order to address the Council, a member must be recognized by the Mayor.

The Mayor or other presiding officer shall have the following powers:

- (a) To rule motions in or out of order, including any motion patently offered for obstructive or dilatory purposes;
- (b) To determine whether a speaker has gone beyond reasonable standards of courtesy in his or her remarks and to entertain and rule on objections from other members on this ground;
- (c) To entertain and answer questions of parliamentary law or procedure;
- (d) To call a brief recess at any time;
- (e) To adjourn in an emergency.

A decision by the presiding officer under (a), (b), or (c) may be appealed to the Council upon motion of any member, pursuant to Rule 18(b), Motion 1. Such a motion is in order immediately after a decision under (a), (b), or (c) is announced and at no other time. The member making the motion need not be recognized by the presiding officer, and the motion if timely made may not be ruled out of order.

Comment:

There are two exceptions to this right of appeal. A Mayor or other presiding officer may adjourn without the board's vote or appeal in an emergency, and he or she may also call a brief recess without a vote at any time.

Rule 8. Office of Mayor Pro Tempore

At the organizational meeting, the Council shall elect from among its members a Mayor Pro Tempore to serve at the Council's pleasure (NC GS 160A-70). A Council member who serves as Mayor Pro Tempore shall be entitled to vote on all matters and shall be considered a Council member for all purposes, including the determination of whether a quorum is present. In the Mayor's absence, the Council may confer on the Mayor Pro Tempore any of the Mayor's powers and duties. If the Mayor should become physically or mentally unable to perform the duties of his or her office, the Council may by unanimous vote declare that the Mayor is incapacitated and confer any of the Mayor's powers and duties on the Mayor Pro Tempore. When a Mayor declares that he or she is no longer incapacitated, and a majority of the Council concurs, the Mayor shall resume the exercise of his or her powers and duties. If both the Mayor and Mayor Pro Tempore are absent from a meeting, the Council may elect from among its members a temporary chairman to preside at the meeting.

Rule 9. When the Presiding Officer Is in Active Debate

If the Mayor or other presiding officer becomes actively engaged in debate on a particular proposal, he or she may designate another Council member to preside over the debate. The Mayor or other presiding officer shall resume presiding as soon as action on the matter is concluded.

Rule 10. Action by the Council

The Council shall proceed by motion, except as otherwise provided for in Rule 4 and in Rule 31. Any member may make a motion.

Comment:

In those municipalities where the Mayor may vote only to break a tie, he or she should probably not make motions. The reason for this rule is that legally the Mayor is not part of the decision-making body unless a tie vote occurs. Traditionally, if a nonvoting Mayor wishes to have a motion made, instead of making it personally, he or she states, "The Chair will entertain a motion that . . ."

Rule 11. Second Required

A motion shall require a second.

Rule 12. One Motion at a Time

A member may make only one motion at a time.

Rule 13. Substantive Motions

A substantive motion is out of order while another substantive motion is pending.

Comment: This rule sets forth the basic principle of parliamentary procedure that distinct issues will be considered and dealt with one at a time, and a new proposal may not be put forth until action on the preceding one has been concluded.

The term *substantive motion* is used here to underscore the distinction between this type of motion and the various procedural motions listed in Rule 18. Basically, a substantive motion is any motion other than the procedural motions listed in Rule 18.

Rule 14. Adoption by Majority Vote

A motion shall be adopted by a majority of the votes cast, a quorum as defined in Rule 27 being present, unless otherwise required by these rules or the laws of North Carolina. A majority is more than half. In the event of a tie vote the Mayor shall be responsible for casting a vote to break the tie and thereby decide the motion.

Comment: In a few instances, these rules require a vote equal to two-thirds of the entire membership of the Council for adoption of a particular motion. Also see Rule 23 concerning the number of votes necessary to adopt an ordinance, adopt a change in a zoning ordinance when a protest petition has been received, or approve a contract. Other extraordinary voting requirements imposed by particular statutes are not specified in these rules. The Town attorney should be consulted as questions arise.

Rule 15. Voting by Written Ballot

The Council may choose by majority vote to use written ballots in voting on a motion. Such ballots shall be signed, and the minutes of the Council shall show the vote of each member voting. The ballots shall be available for public inspection in the office of the Town Clerk immediately following the meeting at which the vote took place and until the minutes of that meeting are approved, at which time the ballots may be destroyed.

Comment: The open meetings law allows public bodies such as Town Councils to use written ballots, *so long* as they follow the procedures set out in G.S. 143-318.13(b) and paraphrased in this rule.

Rule 16. Debate

The Mayor shall state the motion and then open the floor to debate on it. The Mayor shall preside over the debate according to the following general principles:

- (a) The maker of the motion is entitled to speak first;
- (b) A member who has not spoken on the issue shall be recognized before someone who has already spoken;
- (c) To the extent possible, the debate shall alternate between proponents and opponents of the measure.

Rule 17. Ratification of Actions

To the extent permitted by law, the Council may ratify actions taken on its behalf but without its prior approval. A motion to ratify is a substantive motion.

Comment: Ratification of actions taken on the Council's behalf but without its prior approval is permitted under these rules, to the extent that such after-the-fact approval of actions is legally allowed. The principle behind the motion to ratify is that an assembly may subsequently approve that which it could have authorized. This rule treats the motion to ratify as a *substantive* proposal rather than as a *procedural* motion, since ratification is in effect and after-the-fact substantive action by the Council concerning something that was done without Council approval when advance authorization should have been obtained.

Rule 18. Procedural Motions

(a) **Certain Motions Allowed.** In addition to substantive proposals, only the following procedural motions, and no others, are in order. Unless otherwise noted, each motion is debatable, may be amended, and requires a majority of the votes cast, a quorum being present, for adoption. Procedural motions are in order while a substantive motion is pending and at other times, except as otherwise noted.

Comment: Rule 18 reflects substantial departure from the rule in *RONR*. Each procedural motion in *RONR* was reviewed to determine whether it was appropriate for use by a small board; substantial modifications and deletions were the result. The following enumeration of procedural motions is exhaustive; if a procedural option is not on the list, then it is not available.

Procedural motions are frequently used to “act upon” a substantive motion by amending it, delaying consideration of it, and so forth. They are in order while substantive motions are pending as well as at other times.

In addition, as in *RONR*, several procedural motions can be entertained in succession without necessarily disposing of the previous procedural motion. The order of priority establishes which procedural motion yields to which—that is, which procedural motion may be made and considered while another one is pending.

The procedural motions are summarized in table form in the appendix. Note that the appended table is intended only to provide a quick reference guide to the motions; this rule and its comments should be consulted for a discussion of how each procedural motion is used.

(b) **Order of Priority of Motions.** In order of priority (if applicable), the procedural motions are:

Motion 1. To Appeal a Procedural Ruling of the Presiding Officer. A decision of the presiding officer ruling a motion in or out of order, determining whether a speaker has gone beyond reasonable standards of courtesy in his or her remarks, or entertaining and answering a question of parliamentary law or procedure may be appealed to the Council, as specified in Rule 7. This appeal is in order immediately after such a decision is announced and at no other time. The member making the motion need not be recognized by the presiding officer and the motion, if timely made, may not be ruled out of order.

Comment: Rule 7 allows the ruling of the presiding officer on certain procedural matters to be appealed to the Council. This appeal must be made as soon as the presiding officer's decision is announced, so this motion is accorded the highest priority. See Rule 7 and its *Comment* for further discussion of this motion.

Motion 2. To Adjourn. This motion may be made only at the conclusion of Council consideration of a pending substantive matter; it may not interrupt deliberation of a pending matter. A motion to recess [or adjourn] to a time and place certain shall also comply with the requirements of Rule 2(c).

Comment: This motion differs from the *RONR* motion to adjourn in several respects. The *RONR* motion to adjourn is not debatable or amendable and can be made at any time, thus interrupting substantive deliberations. Here, however, since the number of members is small and procedures are available to limit debate, Motion 2 allows both debate and amendment, but specifies that the motion is in order only when consideration of a pending matter has concluded.

If the Council wants to adjourn before completing final action on a matter, it must, prior to adjourning, first temporarily conclude its consideration of that matter. This is done with one of three motions: to defer consideration of the matter, to postpone the matter to a certain time or day, or to refer the matter to a committee. Only as a last resort should the Council use a motion to suspend the rules, in order to allow the motion to adjourn to interrupt deliberation on the matter.

Another adjournment option is to recess (or adjourn) the meeting to reconvene at a specified time and place, in accord with Rule 2(c). The motion to recess or adjourn to a time and place certain is a form of the motion to adjourn. As explained in the *Comment* to Rule 2(c), various North Carolina General Statutes and North Carolina practice refer both to the terminology “recess to a time and place certain” and the phrase “adjourn to a time and place certain,” [see, for example, G.S. 160A-71(b1) and 143-318.12(b)(1)]. Thus both “recess” and “adjourn” are provided here as options. The motion has the same meaning regardless of the option chosen.

Motion 3. To Take a Brief Recess.

Comment: This motion, which allows the Council to pause briefly in its proceedings, is similar to the motion to recess under *RONR*. To avoid confusing this motion with the motion “to recess to a time and place certain,” which is a form of the motion to adjourn under these rules and in North Carolina practice [see Rule 18(b), Motion 2 above], Motion 3 is a “motion to take a brief recess” rather than a “motion to recess.” Debate is allowed on this motion. A motion to take a brief recess is in order at any time except when a motion to appeal a procedural ruling of the presiding officer or a motion to adjourn is pending. Under these rules, the Mayor also has the power to call a brief recess at any time [see Rule 7(d)].

Motion 4. Call to Follow the Agenda. The motion must be made at the first reasonable opportunity, or the right to make it is waived for the out-of-order item in question.

Comment: This motion may be debated.

Motion 5. To Suspend the Rules. The Council may not suspend provisions of the rules that state requirements imposed by law on the Council. For adoption, the motion requires a vote equal to two-thirds of the actual membership of the Council.

Comment: This motion is debatable and amendable. It is in order when the Council wishes to do something that it may legally do but cannot accomplish without violating its own rules.

Motion 6. To Go into Closed Session. The Council may go into closed session only for one or more of the permissible purposes listed in G.S. 143-318.11(a). The motion to go into closed session shall cite one or more of these purposes and shall be adopted at an open meeting. A motion based on G.S. 143-318.11(a)(1) shall also state the name or citation of the law that renders the information to be discussed privileged or

confidential. A motion based on G.S. 143-318(a)(3) shall identify the parties in each existing lawsuit concerning which the Council expects to receive advice during the closed session, if in fact such advice is to be received.

Comment: The requirements for this motion are found in G.S. 143-318.11(c). They include extra requirements for motions based on G.S. 143-318.11(a)(1), and for those motions based on G.S. 143-318.11(a)(3) that concern a closed session where the Council expects to receive advice about an existing lawsuit or lawsuits. Part of G.S. 143-318.11(a)(3), also cited, allows the Council in closed session to “consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, mediation, arbitration, or administrative procedure.”

Motion 7. To Leave Closed Session.

Comment: This motion provides a procedural mechanism for returning from closed session to an open meeting. Under the open meetings law, public bodies probably must return to open session once they have concluded their closed session business, even if they have no other business to transact except adjourning the meeting.

Motion 8. To Divide a Complex Motion and Consider It by Paragraph. The motion is in order whenever a member wishes to consider and vote on subparts of a complex motion separately.

Comment: This motion is debatable.

Motion 9. To Defer Consideration. The Council may defer a substantive motion for later consideration at an unspecified time. A substantive motion the consideration of which has been deferred expires [100] days thereafter unless a motion to revive consideration is adopted. If consideration of a motion has been deferred, a new motion with the same effect cannot be introduced while the deferred motion remains pending (has not expired). A member who wishes to revisit the matter during that time must take action to revive consideration of the original motion [Rule 18(b), Motion 14], or else move to suspend the rules [Rule 18(b), Motion 5].

Comment: This motion allows the Council temporarily to defer consideration of a proposal. It may be debated and amended.

This motion should be distinguished from the motion to postpone to a certain time or day (Rule 18, Motion 11). A matter that has been postponed to a certain time or day is brought up again automatically when that time arrives. Council action (approval of a motion to revive consideration) is required, however, before the Council may again consider a substantive motion of which the consideration has been deferred under this motion.

Motion 10. Motion for the Previous Question. The motion is not in order until there have been at least 10 minutes of debate, and every member has had an opportunity to speak once.

Comment: With a small board a minimum period of debate on every proposal that comes before it strikes a balance between efficiency and effective representation by all Council members. Since every member will have an opportunity to speak, the debate may be ended by a majority vote.

Motion 11. To Postpone to a Certain Time or Day. If consideration of a motion has been postponed, a new motion with the same effect cannot be introduced while the postponed motion remains pending. A

member who wishes to revisit the matter must either wait until the specified time, or move to suspend the rules [Rule 18(b), Motion 5].

Comment: This motion allows the Council to postpone consideration to a specified time or day and is appropriate when more information is needed or the deliberations are likely to be lengthy. It should be distinguished from the motion to defer consideration (see *Comment* to Rule 18(b), Motion 9). Note the restriction on making a new motion with the same effect while a postponed motion remains pending.

Motion 12. To Refer a Motion to a Committee. The Council may vote to refer a substantive motion to a committee for its study and recommendations. Ninety days or more after a substantive motion has been referred to a committee, the introducer of the substantive motion may compel consideration of the measure by the entire Council, whether or not the committee has reported the matter to the Council.

Motion 13. To Amend. (a) An amendment to a motion must be pertinent to the subject matter of the motion. An amendment is improper if adoption of the motion with that amendment added would have the same effect as rejection of the original motion. A proposal to substitute completely different wording for a motion or an amendment shall be treated as a motion to amend.

(b) A motion may be amended, and that amendment may be amended, but no further amendments may be made until the last-offered amendment is disposed of by a vote.

(c) Any amendment to a proposed ordinance, policy, or resolution shall be reduced to writing before the vote on the amendment.

Comment: Some Councils allow a “substitute motion” when major changes in a motion are proposed. Such a motion is in effect a type of amendment. To avoid confusion, “substitute motions” are not allowed under these rules. All proposals for changes in a motion or in an amendment are treated as motions to amend, no matter how major their potential effect.

Part 13(b) of the rules governing this motion limits the number of proposed amendments that may be pending at one time to two, in order to reduce confusion. Amendments are voted on in reverse order; that is, the last-offered amendment, which would amend the first amendment, is voted on first. Once the last-offered of the two pending amendments is disposed of, an additional amendment may be offered.

Part 13(c) of the rules for this motion imposes an additional writing requirement for amendments to ordinances and other, sometimes lengthy, documents such as orders, policies, or resolutions.

Some Councils may have a practice of requiring the person making the original motion to approve of any proposed amendments to that motion. Such a practice is not recommended. Once a motion has been offered to the Council, it is up to the Council to decide whether or not it should be changed by amendment. If the person making the motion does not favor a proposed amendment, he or she is free to vote against it. And so long as the original motion has not been voted on and no amendment to it has passed, the introducer is free under these rules to withdraw it (see Rule 20). If a motion has been withdrawn, the Council members are generally free to make their own separate motions on the same subject.

Motion 14. To Revive Consideration. The board may vote to revive consideration of any substantive motion earlier deferred by adoption of Motion 9 of Rule 18(b). The motion is in order at any time within ninety days after the day of a vote to defer consideration. A substantive motion on which consideration has been deferred expires ninety days after the deferral unless a motion to revive consideration is adopted.

Comment: If the motion to revive consideration is not successful within the specified number of days of the date on which consideration was deferred, the substantive motion expires. Its subject matter may be brought forward again by a new motion.

Motion 15. To Reconsider. No question decided by the Town Council shall be again brought forward at any subsequent meeting until at least 90 days have elapsed. However, the Council may vote to reconsider its action on a matter at any time by a vote of two-thirds of the Town Council. The motion to do so must be made by a member who voted with the prevailing side (the majority side except in the case of a tie; in that case the "noes" prevail) and at the meeting during which the original vote was taken, including any continuation of that meeting through recess or adjournment to a time and place certain. The motion cannot interrupt deliberation on a pending matter, but is in order at any time before final adjournment of the meeting.

Comment: To avoid placing a measure in limbo, these rules restrict the availability of the motion to the same meeting as the original vote, including any continuation of that meeting if it is recessed or adjourned to a time and place certain pursuant to Rule 2(c) and Rule 18(b), Motion 2. If a member wishes to reverse an action taken at a previous meeting, he or she may generally make a new motion having the opposite effect of the prior action. Note that in some cases reversal may not be possible; for example, where rights have vested because of the original vote, or where a binding contract has already been signed in reliance on that decision.

Motion 16. To Rescind or Repeal. The Council may vote to rescind actions it has previously taken or to repeal items that it has previously adopted. The motion is not in order if rescission or repeal of an action is forbidden by law.

Comment: Each meeting of a Town Council is in many respects a separate legal event. Unless prohibited by law, a Council may at a subsequent meeting "undo" action taken at a previous meeting.

The motion to rescind is in order only for those measures adopted by the Council that can legally be repealed or rescinded. It is not intended to suggest that the Council may unilaterally rescind a binding contract, or may repeal an action where a person's rights have already vested.

Motion 17. To Prevent Reintroduction for Six Months. The motion shall be in order immediately following the defeat of a substantive motion and at no other time. The motion requires for adoption a vote equal to two-thirds of the actual membership of the Council excluding the Mayor, and vacant seats. If adopted, the restriction imposed by the motion remains in effect for six months or until the next organizational meeting of the Council, whichever occurs first.

Comment: This is a "clincher" motion to prevent the same motion from being continually introduced when the subject has been thoroughly considered.

Because this motion curtails a member's right to bring a matter before the Council, the required vote is two-thirds of the actual membership of the Council. This supermajority requirement is imposed because such a two-thirds vote is needed for the Council to adopt certain items. The same number of votes should be required if the Council is to forbid dealing further with such an issue.

Rule 19. Renewal of Motion

A motion that is defeated may be renewed at any later meeting unless a motion to prevent reintroduction has been adopted.

Rule 20. Withdrawal of Motion

A motion may be withdrawn by the introducer at any time before it is amended or before the presiding officer puts the motion to a vote, whichever occurs first.

Rule 21. Duty to Vote

Every member must vote unless excused by the remaining members according to law. A member who wishes to be excused from voting shall so inform the presiding officer, who shall take a vote of the remaining members. No member shall be excused from voting except upon matters involving the consideration of his or her own direct financial interest or official conduct. In all other cases, a failure to vote by a member who is physically present in the Council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote.

Comment: This rule states most of the requirements of the first paragraph of G.S. 160A-75.

Rule 22. Introduction of Ordinances

A proposed ordinance shall be deemed to be introduced on the date the subject matter is first voted on by the Council.

Comment: G.S. 160A-75 provides that an ordinance may not be finally adopted at the meeting at which it is introduced except by a two-thirds vote of all the actual membership of the Council, excluding vacant seats and not including the Mayor. The statute also specifies that an ordinance is deemed to be introduced “on the date the subject matter is first voted on by the Council.”

Rule 23. Adoption of Ordinances and Approval of Contracts

(a) **Generally.** An affirmative vote equal to a majority of all the members of the Council not excused from voting on the question in issue (including the Mayor’s vote in case of an equal division) shall be required to adopt an ordinance, to take any action that has the effect of an ordinance, or to make, ratify, or authorize any contract on behalf of the Town. In addition, no ordinance or action that has the effect of an ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two-thirds of all the actual membership of the Council, excluding vacant seats. No ordinance shall be adopted unless it has been reduced to writing before a vote on adoption is taken.

Comment: This rule paraphrases the special voting requirements in the second paragraph of G.S.

160A-75 for adoption of ordinances and approval of contracts.

See Rule 22 and the accompanying *Comment* for the definition of “introduction” of an ordinance. See also Procedural Motion 13 in Rule 18(b) concerning amendment of ordinances, and G.S. 160A-76(a) for requirements for franchises, including the requirement of adoption of franchise ordinances at two regular meetings.

b) **Zoning Protest Petitions.** An affirmative vote equal to three-fourths of all the members of the Town Council shall be required for an ordinance making a change in a zoning boundary to become effective, if a valid protest petition is received in accordance with the requirements set out in G.S. 160A-385(a) and G.S. 160A-386. This rule shall not apply in those cases excepted by G.S. 160A-385(a).

Comment: This paragraph states the three-fourths vote requirement of G.S. 160A-385(a), which applies when neighboring property owners, as defined in the statute, protest a proposed rezoning and file a proper petition with the Town Clerk in a timely manner under G.S. 160A-386.

c) **Zoning Statement of Consistency and Reasonableness.** When adopting or rejecting any zoning amendment, the Town Council shall also approve a statement describing whether its action is consistent with an adopted comprehensive plan and any other officially adopted plan that is applicable, and briefly explaining why the board considers the action taken to be reasonable and in the public interest (NC GS 160A-383).

Rule 24. Adoption of the Budget Ordinance

Notwithstanding the provisions of the Town charter, general law, or local act:

- (1) Any action with respect to the adoption or amendment of the budget ordinance may be taken at any regular or special meeting of the Council by a simple majority of those present and voting, a quorum being present;
- (2) No action taken with respect to the adoption or amendment of the budget ordinance need be published or is subject to any other procedural requirement governing the adoption of ordinances or resolutions by the Council; and
- (3) The adoption and amendment of the budget ordinance and the levy of taxes in the budget ordinance are not subject to the provisions of the Town charter or local act concerning initiative or referendum.

During the period beginning with the submission of the budget to the Council and ending with the adoption of the budget ordinance, the Council may hold any special meetings that may be necessary to complete its work on the budget ordinance. Except for the notice requirements of the open meetings law, which continue to apply, no provision of law concerning the call of special meetings applies during that period so long as (a) each member of the board has actual notice of each special meeting called for the purpose of considering the budget, and (b) no business other than consideration of the budget is taken up. This rule does not allow, and may not be construed to allow, the holding of closed meetings or executive sessions by the Council if it is otherwise prohibited by law from holding such a meeting or session.

Rule 25. Special Rules of Procedure

The board may adopt its own special rules of procedure, to be specified here.

Rule 26. Closed Sessions

The Council may hold closed sessions as provided by law. The Council shall only commence a closed session after a motion to go into closed session has been made and adopted during an open meeting. The motion shall state the purpose of the closed session. If the motion is based on G.S. 143-318.11(a)(1) (closed session to prevent the disclosure of privileged or confidential information or information that is not considered a public record), it must also state the name or citation of the law that renders the information to be discussed privileged or confidential. If the motion is based on G.S. 143-318.11(a)(3) (consultation with attorney; handling or settlement of claims, judicial actions, or administrative procedures), it must identify the parties in any existing lawsuits concerning which the public body expects to receive advice during the closed session. The motion to go into closed session must be approved by the vote of a majority of those present and voting. The Council shall terminate the closed session by a majority vote.

Only those actions authorized by statute may be taken in closed session. A motion to adjourn or recess shall not be in order during a closed session.

Comment: This rule states some of the requirements of G.S. 143-318.11(c) for calling closed sessions. In particular, note the special requirements for motions to call closed sessions that are based on G.S. 143-318.11(a)(1) or, in some cases, on G.S. 143-318.11(a)(3). No attempt is made here to set forth all of the provisions of the open meetings law concerning the purposes for which closed sessions may be held and the actions that may be taken in closed session; specific information can be found in G.S. 143-318.11(a). Minutes and general accounts of closed sessions are discussed in Rule 30.

Rule 27. Quorum

A majority of the actual membership of the Council plus the Mayor, excluding vacant seats, shall constitute a quorum. A majority is more than half. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.

Comment: This is G.S. 160A-74, with the addition of the usual definition of “majority.”

Rule 28. Public Hearings

Public hearings required by law or deemed advisable by the Council shall be organized by a special order (adopted by a majority vote) that sets forth the subject, date, place, and time of the hearing as well as any rules regarding the length of time allotted for each speaker, and other pertinent matters. The rules may include, but are not limited to, rules (a) fixing the maximum time allotted to each speaker; (b) providing for the designation of spokespersons for groups of persons supporting or opposing the same positions; (c)

providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall (so long as arrangements are made, in the case of hearings subject to the open meetings law, for those excluded from the hall to listen to the hearing); and (d) providing for the maintenance of order and decorum in the conduct of the hearing.

All notice and other requirements of the open meetings law applicable to Council meetings shall also apply to public hearings at which a majority of the Council is present; such a hearing is considered to be part of a regular or special meeting of the Council. These requirements also apply to hearings conducted by appointed or elected committees of the Council, if a majority of the committee is present. A public hearing for which any notices required by the open meetings law or other provisions of law have been given may be continued to a time and place certain without further advertisement. The requirements of Rule 2(c) shall be followed in continuing a hearing at which a majority of the Council is present.

The Council may vote to delegate to Town staff members, as appropriate, the authority to schedule, call, and give notice of public hearings required by law or the Council. The Council shall provide adequate guidelines to assist staff members in fulfilling this responsibility, and it shall not delegate the responsibility in cases where the Council itself is required by law to call, schedule, or give notice of the hearing.

At the time appointed for the hearing, the Mayor or his or her designee shall call the hearing to order and then preside over it. When the allotted time expires or when no one wishes to speak who has not done so, the presiding officer shall declare the hearing ended.

Comment: Town Councils may be required or may desire to hold public hearings from time to time concerning particular matters. G.S. 160A-81 provides that public hearings may be held at any place within the Town or within the county where the Town is located. It also gives the Council the authority to adopt reasonable rules governing the conduct of the hearing (specifically including the type of rules listed here) and to continue public hearings without further advertisement.

Rule 29. Quorum at Public Hearings

A quorum of the Council shall be required at all public hearings required by law. If a quorum is not present at such a hearing, the hearing shall be continued until the next regular Council meeting without further advertisement.

Comment: G.S. 160A-81 implies that a quorum of Council members is necessary for a public hearing by providing that a hearing shall be deferred to the next regular meeting if a quorum is not present at the originally scheduled time. If, however, the Council decided to hold a public hearing that was not required by state law to gather a consensus of public opinion on an issue, it could hold the hearing at several sites, with a few members in attendance at each place. Such a hearing would not be subject to the quorum requirement of G.S. 160A-81. Note also that if a majority of the Council was not present at such a hearing, it would not be subject to the notice, continuation, and other requirements of the open meetings law, unless the Council members conducting the hearing were a majority of an appointed or elected Council committee (see Rule 32).

Rule 30. Minutes

Full and accurate minutes of the Council proceedings shall be kept. The Council shall also keep a general

account of any closed session so that a person not in attendance would have a reasonable understanding of what transpired. These minutes and general accounts shall be open to inspection of the public, except as otherwise provided in this rule. The exact wording of each motion and the results of each vote shall be recorded in the minutes, and on the request of any member of the Council, the “ayes” and “noes” upon any question shall be taken. Members’ and other persons’ comments may be included in the minutes if the Council approves.

Minutes and general accounts of closed sessions may be sealed by action of the Council. Such sealed minutes and general accounts may be withheld from public inspection so long as public inspection would frustrate the purpose of the closed session.

Comment: G.S. 160A-72 requires that full and accurate Council minutes be maintained, and G.S. 143-318.10(e) requires that full and accurate minutes be kept of all official meetings of all public bodies, including closed sessions [G.S. 143-318.11(a)].

Finally, the rule includes the permission granted in G.S. 143-318.11(e) to withhold minutes and general accounts of closed sessions from public inspection for as long as necessary to avoid frustrating the purpose of the closed session. The Council should vote to seal these records if it wishes to do so or is advised to do so by its attorney. It must also provide for their unsealing, either by Council action or by action of an agent of the Council such as the Town attorney, if and when the closed session's purpose would no longer be frustrated by making these records public. For a discussion of the legal requirements for minutes and general accounts of closed sessions, see the following publications by David M. Lawrence: “1997 Changes to the Open Meetings and Public Records Laws,” *Local Government Law Bulletin* 80 (August 1997) and “The Court of Appeals Addresses Closed Sessions for Attorney-Client Discussions,” *Local Government Law Bulletin* 93 (March 2000).

Rule 31. Appointments

The Council may consider and make appointments to other bodies, including its own committees, if any, only in open session. The Council may not consider or fill a vacancy among its own membership except in open session.

The Mayor shall not have a right to vote on appointments that come before the Council except in the event of a tie on a motion to appoint.

The Council shall use the following procedure to make appointments to various other boards and offices: The Town Clerk shall cause a public advertisement of committee and board vacancies on an annual basis and shall at any time receive applications from individuals interested in serving. Applications for each committee are forwarded to the staff liaison and Council ex-officio for review and comment. The applications with recommendations are forwarded to the Town Clerk for inclusion in the work session agenda packet. Each Council ex-officio is the lead for his or her committee to discuss suggested appointments. Appointments to the committee are made by the Council during a regular meeting.

Rule 32. Committees and Boards

(a) Establishment and Appointment. The Council or the Mayor, if the Mayor is delegated that power by the Council, may establish and appoint members for such temporary and standing Town committees and boards as are needed to help carry on the work of Town government. Any specific provisions of law relating to particular committees and boards shall be followed.

(b) Open Meetings Law. The requirements of the open meetings law shall apply to all elected or

appointed authorities, boards, commissions, Councils, or other bodies of the Town that are composed of two or more members and that exercise or are authorized to exercise legislative, policy-making, quasi-judicial, administrative, or advisory functions. However, the law's requirements shall not apply to a meeting solely among the Town's professional staff.

Comment: The Town Council is authorized by G.S. 160A-146 to "create, change, abolish, and consolidate offices, positions, departments, boards, commissions, and agencies of the Town government . . ." subject to certain limitations. It is also customary in many communities for the Mayor to appoint various committees to aid the Council in its work, although it is up to the Council to decide whether or not the Mayor will be delegated this power. The only board that Mayors have statutory power to appoint are housing authorities. G.S. 157-5. Other specific statutes govern some of these committees and boards; G.S. 160A-388(a), for example, regulates establishment of and appointments to boards of adjustment. The general requirements of Rule 31 for appointments by the Council should also be kept in mind.

Rule 32(b) states requirements of G.S. 143-318.10(b) and (c) (parts of the open meetings law). In determining if a group is covered by the open meetings law, whether the group is called a commission, authority, or committee is generally not important, nor does it matter who within the Town government established the group.

Some ambiguities exist concerning the open meetings law's coverage with respect to cities. For example, the law does not apply to "a meeting solely among the professional staff of a public body." The scope and meaning of this statutory phrase is unclear. For more information on the law, see David M. Lawrence, *Open Meetings and Local Governments in North Carolina: Some Questions and Answers*, 5th ed. (Chapel Hill: Institute of Government, 1998).

Rule 33. Amendment of the Rules

These rules may be amended at any regular meeting or at any properly called special meeting that includes amendment of the rules as one of the stated purposes of the meeting, so long as the amendment is consistent with the Town charter, general law, and generally accepted principles of parliamentary procedure. Adoption of an amendment shall require an affirmative vote equal to or greater than two-thirds of all the actual membership of the Council, excluding vacant seats, and not including the Mayor unless he or she has the right to vote on all questions before the Council.

Comment: Town Councils may generally amend their rules of procedure whenever they choose, so long as the amendment, like the rules being amended, is consistent with the Town charter, general law, and generally accepted principles of parliamentary procedure. G.S. 160A-71(c). Because certain board actions require a two-thirds vote (see, for example, some of the requirements in Rule 23(a), which implements G.S. 160A-75), that standard must also be met to approve an amendment to these rules, which are the guidelines under which such actions are taken.

Rule 34. Reference to *Robert's Rules of Order Newly Revised*

To the extent not provided for in these rules, and to the extent it does not conflict with North Carolina law or with the spirit of these rules, the Council shall refer to *Robert's Rules of Order Newly Revised*, to answer unresolved procedural questions.

Comment: *RONR* was designed to govern a large legislative assembly, and many of its provisions may be inappropriate for small boards. Nevertheless, it is a good source of parliamentary procedure; care should simply be taken to adjust *RONR* to meet the needs of small governing boards such as Town Councils.

Appendix

Permitted Procedural Motions in Order of Precedence¹

Motion	Vote Required²	Special Requirements
1. To Appeal a Procedural Ruling of the Presiding Officer	Majority	Is in order immediately after the presiding officer announces a procedural ruling, as specified in Rule 7, and at no other time. The member making the motion need not be recognized by the presiding officer, and the motion if timely made may not be ruled out of order.
2. To Adjourn	Majority	May not interrupt deliberation of pending substantive matter. Motion to [recess] [adjourn] to a time and place certain must also comply with Rule 2(c).
3. To Take a Brief Recess	Majority	None
4. Call to Follow the Agenda	Majority	Must be made at first reasonable opportunity, or the right to make it is waived for the out-of-order item in question.
5. To Suspend the Rules	Two-Thirds	The Council may not suspend provisions of the rules that state requirements imposed by law on the Council.
6. To Go into Closed Session	Majority	Motion must cite one or more of the permissible purposes for closed sessions listed in G.S. 143-318.11(a) and must be adopted at an open meeting. A motion based on G.S. 143-318.11(a)(1) must also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on G.S. 143-318.11(a)(3) must identify the parties in each existing lawsuit concerning which the Council expects to receive advice during the closed session, if in fact such advice is to be received.
7. To Leave Closed Session	Majority	
8. To Divide a Complex Motion and Consider it	Majority	None

	by Paragraph		
9.	To Defer Consideration	Majority	A substantive motion the consideration of which has been deferred expires [100] days thereafter unless a motion to revive consideration (Motion 14) is adopted. While a deferred motion remains pending, a new motion with the same effect cannot be introduced. CAUTION: Do not confuse with Motion 11.
10.	Motion for the Previous Question	Majority	Not in order until there have been at least [20] minutes of debate, and every member has had an opportunity to speak once.
11.	To Postpone to a Certain Time or Day	Majority	None. While a postponed motion remains pending, a new motion with the same effect cannot be introduced. CAUTION: Do not confuse with Motion 9.
12.	To Refer a Motion to a Committee	Majority	[60] days or more after a motion is referred to a committee, the introducer may compel consideration of the measure by the Council, regardless of whether the committee has reported the matter to the Council.
13.	To Amend	Majority	(a) Amendments must be pertinent to the subject matter of the motion being amended. An amendment is improper if adoption of the motion with that amendment added has the same effect as rejection of the original motion. A proposal to substitute a different motion shall be treated as a motion to amend. (b) A motion may be amended, and that amendment may be amended, but no further amendments may be made until the last-offered amendment is disposed of by a vote. (c) Any amendment to a proposed ordinance must be reduced to writing before the vote on the amendment.
14.	To Revive Consideration	Majority	In order at any time within [100] days after the day of a vote to defer consideration (Motion 9). Failure to adopt Motion 14 within the [100] day period results in expiration of the deferred substantive motion.
15.	To Reconsider	Majority	Must be made by a member who voted with the prevailing side (the majority side except in the case of a tie; in that case the “noes” prevail). May only be made at the meeting at which the original vote was taken, including any continuation of that meeting through [recess] [adjournment] to a time and place certain. Cannot interrupt deliberation on a pending matter, but is in order at any time before final adjournment of the meeting.

16. To Rescind or Repeal	Majority	Not in order if rescission or repeal of an action is forbidden by law.
17. To Prevent Reintroduction for <u>[Six]</u> Months	Two-Thirds	In order immediately following defeat of a substantive motion and at no other time. If adopted, the restriction imposed by the motion remains in effect for <u>[six]</u> months or until the next organizational meeting of the Council, whichever occurs first.

1. Under these rules all procedural motions are debatable and none requires a second. All may be amended, subject to the stated limitations on motions to amend (Motion 13). Except where indicated otherwise, procedural motions may interrupt deliberations on a pending substantive matter.

2. The required vote for adoption of a procedural motion is generally a majority of the votes cast, a quorum being present. In a few cases, the required vote is a vote equal to two-thirds of the actual membership of the Council, excluding the Mayor, unless he or she may vote in all cases, and vacant seats.

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

Agenda Item: 5a

Meeting Date: 9/04/12

**TITLE: PUBLIC HEARING FOR ANNEXATION PETITION 2012-07-01
LOCATED AT 317 PONY FARM ROAD.**

DESCRIPTION: Public notice for Tuesday, September 4, 2012, Council meeting.

RELATED GOAL: Administrative

ITEM SUMMARY:

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
7-16-12	Presentation	Resolution & Map.
8-06-12	Approval.	Resolution & Map.
8-20-12	Public notice.	Certificate of Sufficiency, Resolution and map.
9-04-12	Public hearing.	Annexation ordinance & Map.

Ordinance Number:

**ANNEXATION PETITION 2012-07-01
317 Pony Farm Road (South Tech Park Lane)
Parcel Number: 05I05038Z
Owner: Southern Community Bank & Trust
65.20 acres; Non-Contiguous**

**AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE
TOWN OF CLAYTON, NORTH CAROLINA**

WHEREAS, the Town Clayton has been petitioned under G.S. 160A-58.1 to annex the area described below; and

WHEREAS, the Town Council of Clayton has by resolution directed the Town Clerk to investigate the sufficiency of the petition; and

WHEREAS, the Town Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at Town Hall at 6:30 PM on Tuesday, September 4, 2012; after due notice by publication on August 22, 2012; and

WHEREAS, the Town Council of Clayton finds that the petition meets the requirements of G.S. 160A-58.1, to wit;

- a. The area described is so situated that the Town of Clayton will be able to provide the same services within the proposed satellite corporate limits;
- b. No subdivision, as defined in G.S. 160A-376, will be fragmented by this proposed annexation; and

WHEREAS, the Town Council of Clayton further finds that the petition has been signed by all the owners of real property in the area who are required by law to sign; and

WHEREAS, the Town Council of Clayton further finds that the petition is otherwise valid, and that the public health, safety and welfare of the Town of Clayton and of the area proposed for annexation will be best served by annexing the area described;

NOW, THEREFORE, BE IT ORDAINED by the Town Council of Clayton, North Carolina that:

Section 1. By virtue of the authority granted by G.S. 160A-58.2, the following described non-contiguous territory is hereby annexed and made part of the Town of Clayton as of September 4, 2012:

Area One: The area proposed for annexation is described as the following parcel owned by Southern Community Bank and Trust located on 317 Pony Farm Road:

Parcel ID 05I05038Z containing 65.21 acres more or less located at 317 Pony Farm Road and as described in Deed Book 4047 Pages 762-764 available at the Johnston County Register of Deeds office:

- BEING all of that tract of land containing 79.06 acres total, more or less, as shown on a map recorded in Plat Book 68 Page 37, Johnston County Registry, to which plat reference is hereby made for a full and complete description of said tract of land.

TOGETHER WITH an easement over, under, and across that parcel of land containing 1.90 acres, more or less, which is shown on the map recorded in Plat Book 68, Page 37, Johnston County Registry and which is more fully described in Deed Book 3204, Page 697.

LESS AND EXCEPT all of Lot 29, containing 13.85 acres, more or less, South Tech Park Subdivision, Section 1, as shown on a map recorded in Plat Book 75, Page 123, Johnston County Registry, to which plat reference is hereby made for a full and complete description of said lot.

Section 2. Upon and after September 4, 2012, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the Town of Clayton and shall be entitled to the same privileges and benefits as other parts of the Town of Clayton. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the Town of Clayton shall cause to be recorded in the office of the Register of Deeds of Johnston County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the County Board of Elections, as required by G.S. 163-288.1.

Duly adopted by the Clayton Town Council this 4th day of September 2012, while in regular session.

Jody L. McLeod,
Mayor

ATTEST:

APPROVED AS TO FORM:

Sherry L. Scoggins, MMC
Town Clerk

Katherine Ross
Town Attorney

NORTH CAROLINA
JOHNSTON COUNTY

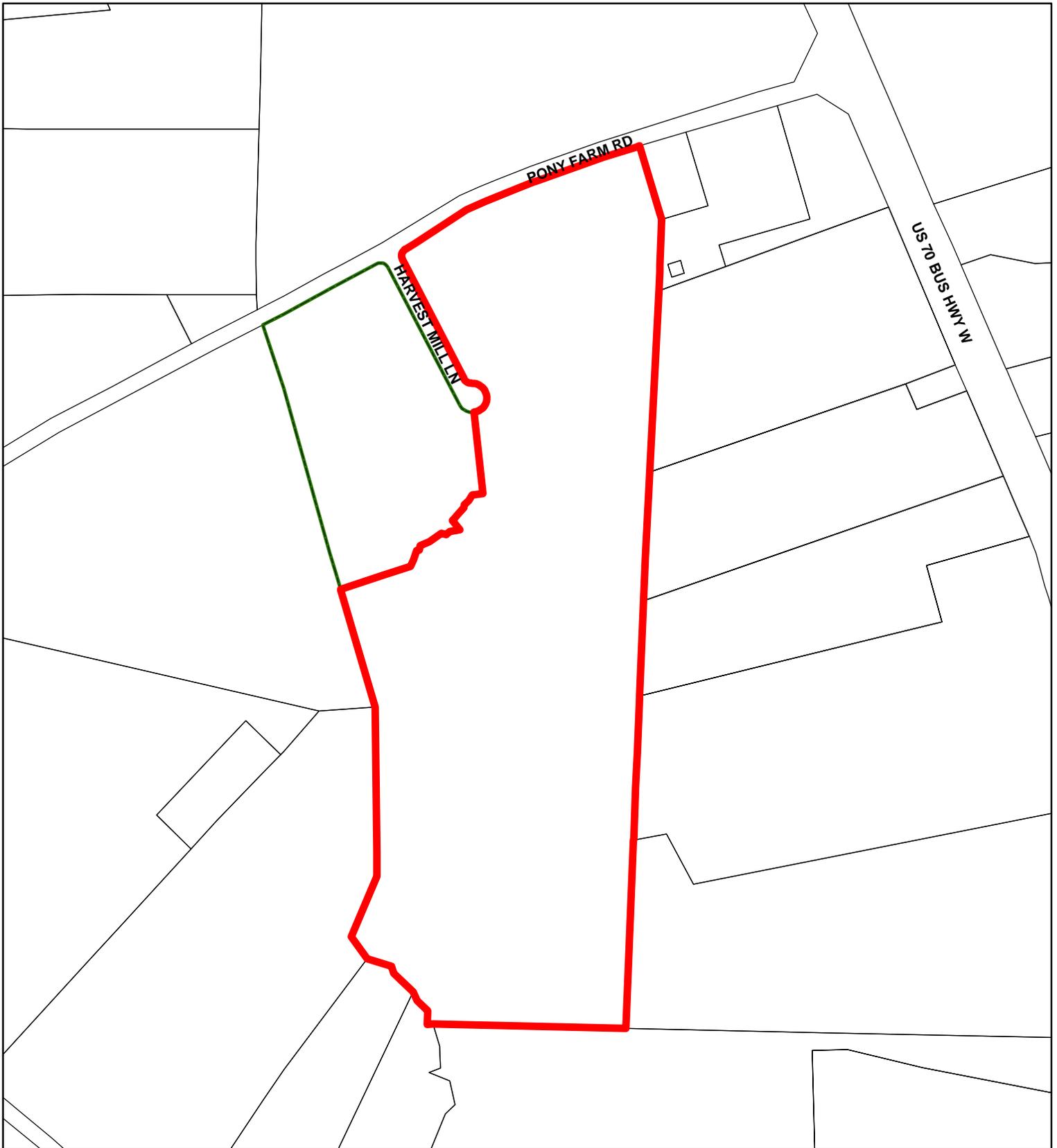
This ____ day of _____ 2012, personally appeared before me Sherry L. Scoggins, Clerk of the Town of Clayton, who, being duly sworn by me, says that she knows the common seal of the Town of Clayton and is acquainted with Jody L. McLeod, who is the Mayor and presiding member of said municipal corporation; and that she saw the said Mayor sign the foregoing instrument and saw the said common seal of said municipal corporation affixed to said instrument by said Mayor, and that she, the said Sherry L. Scoggins, signed her name in attestation of said instrument in the presence of said Mayor.

Witness my hand and notarial seal, this the day and year first above written.

Notary Public: _____

Commission Expires: _____

County of Commission: Johnston



Annexation Map

Applicant(s): Southern Community Bank & Trust
 Property Owner(s): Southern Community Bank & Trust
 Parcel Number(s) 05105038Z
 File Number(s): Annex 2012-07-01

Legend

-  Clayton Town Limits
-  Clayton ETJ
-  Parcels



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

Agenda Item: 5b

Meeting Date: 9/04/12

TITLE: PUBLIC HEARING FOR REZONING REQUEST RZ 2012-58 TO REZONE SEVEN PARCELS IN THE 500 BLOCK OF EAST SECOND STREET FROM O&I TO R-6.

DESCRIPTION: Presently the seven parcels requesting rezoning from O&I to R-6 are serving as single family residences.

At its June 16, 1987, Planning Board meeting, the Planning Board received a presentation from Town staff on existing and proposed zoning classifications. At this presentation, the recommendation to change the zoning classification for the area along East Main and Second Streets from Heritage Court to Hardee Street and Smith Streets from B/R-6/R-8 was made.

At its July 6, 1987, Council meeting, Council set July 20, 1987, and August 3, 1987 as public hearing dates to receive public input on zoning map changes recommended by the Planning Board.

At its August 17, 1987, Council meeting, Council approved the proposed zoning map.

RELATED GOAL: Manage Growth Producing Quality Developments

ITEM SUMMARY:

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
8-20-12	Presentation	Application, Staff report, Aerial maps – now & Proposed.
9-04-2012	Public Hearing.	Application, Staff report, Aerial maps – now & Proposed.



Town of Clayton
 Planning Department
 111 E. Second Street, Clayton, NC 27520
 P.O. Box 879, Clayton, NC 27528
 Phone: 919-553-1545
 Fax: 919-553-1720

REZONING APPLICATION

Pursuant to Article 7, Section 155.704 of the Unified Development Code, an owner of land within the jurisdiction of the Town (or a duly authorized agent) may petition the Town Council to amend the Official Zoning Map.

Rezoning applications must be accompanied by nine (9) sets of the application, nine (9) sets of required plans, an Owner's Consent Form (attached) and the application fee. The application fee is \$400.00 for a rezoning to a Standard District. A rezoning to a Planned Development District requires a fee of \$500.00 +\$5.00 per lot or unit for residential uses or \$500.00 +\$5.00 per acre for non residential uses. All fees are due when the application is submitted.

If the rezoning request is to a Planned Development District, the application must be accompanied by a Major Site Plan application and associated fees.

Please note that Section 155.702(B) of the Unified Development Code requires a Neighborhood Meeting for all Rezoning Petitions.

See attached Sheets

SITE INFORMATION:

Name of Project: Eberhart rezone Acreage of Property: _____
 Parcel ID Number: _____ Tax ID: _____
 Deed Book: _____ Deed Page(s): _____
 Address: _____
 Location: _____

Existing Use: residence Proposed Use: residence
 Existing Zoning District: _____ O & I
 Requested Zoning District _____ R-6
 Is project within a Planned Development: Yes No
 Planned Development District (if applicable): _____
 Is project within an Overlay District: Yes No
 Overlay District (if applicable): _____

FOR OFFICE USE ONLY

File Number: <u>R2 2012-58</u>	Date Received: <u>6-1-2012</u>	Amount Paid: <u>\$ 400.00</u>
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Eberhart Rezone
Site Information:

There are seven parcels in the proposed rezone, four on Second St and three on John St.

	Parcel ID	Tax ID	Deed Book:Page	Acre -age	Address/Location	Owner information
1)	05009019	200001000020	02523:0656	.280	519 E Second St Clayton, NC	Catharine Eberhart 521 E Second St Clayton, NC 27520 919-270-4892 ceberhart@nc.rr.com
2)	05009020	2000112105	02848:0197	.22	521 E Second St Clayton, NC	Catharine Eberhart 521 E Second St Clayton, NC 27520 919-270-4892 ceberhart@nc.rr.com
3)	05009021	2000023079	00651:0205	.27	525 E Second St Clayton, NC	Louise Pollard 525 E Second St Clayton, NC 27520
4)	05009022	20000128967	03270:0557	.25	527 E Second St Clayton, NC	Catharine Eberhart 521 E Second St Clayton, NC 27520 919-270-4892 ceberhart@nc.rr.com
5)	05009023	20000143151	03607:0342	.160	204 John St Clayton, NC	Joyce Lipscomb Canady 315 Crescent Dr Clayton , NC 27520 919-553-7176
6)	05009024	20000143443	03612:0106	.15	206 John St Clayton, NC	Earl J Collins 206 John St Clayton, NC 27520 919-553-6765
7)	05009025	492260	00680:0118	.19	208 John St Clayton, NC	Jeffrey L Adams 209 Hardee St Clayton, NC 27520 919-553-7041

OWNER INFORMATION:

Name: Catharine Eberhart (see attached sheets)
Mailing Address: _____
Phone Number: _____ Fax: _____
Email Address: _____

APPLICANT INFORMATION:

Applicant: Catharine Eberhart
Mailing Address: 521 E Second St Clayton, NC 27520
Phone Number: 919-270-4892 Fax: _____
Contact Person: Catharine Eberhart
Email Address: ceberhart@nc.rr.com

REQUIRED PLANS AND SUPPLEMENTAL INFORMATION

The following items must accompany a rezoning application. This information is required to be present on all plans, except where otherwise noted:

- A signed and sealed boundary survey (**not more than a year old unless otherwise approved by the Planning Department**) with the azimuth or courses and distances of every property line shown. Distances shall be in feet or meters and decimals thereof. The number of decimal places shall be appropriate to the class of survey required. The survey must include any and all easements of record (referenced by Deed Book and Page) and must be prepared by a surveyor registered in the State of North Carolina.
- Property legal description typed (10 pt. font or greater) on an 8.5 inch by 11 inch paper with one inch margins. The legal description must also be submitted electronically in Microsoft Word format.
- A copy of the last recorded deed for the subject property.

JUSTIFICATION STATEMENT

Please provide detailed information concerning all requests. Attach additional sheets if necessary.

see attached

See Attached Sheets

APPROVAL CRITERIA

All applications for a Rezoning must address the following findings:

1. Consistency with the adopted plans of the Town.

2. Suitability of the subject property for uses permitted by the current vs. the proposed district.

3. Whether the proposed change tends to improve the balance of uses, or meets specific demand in the Town.

4. The capacity of adequate public facilities and services including schools, roads, recreation facilities, wastewater treatment, potable water supply and stormwater drainage facilities is available for the proposed use.

5. It has been determined that the legal purposes for which zoning exists are not violated.

6. It has been determined that there will be no adverse effect upon adjoining property owners unless such effect can be justified by the overwhelming public good or welfare.

7. It has been determined that no one property owner or small group of property owners will benefit materially from the change to the detriment of the general public.

APPLICANT AFFIDAVIT

I/We, the undersigned, do hereby make application and petition to the Town Council of the Town of Clayton to amend the Zoning Ordinance and change the Official Zoning Map of the Town of Clayton as requested. I hereby certify that I have full legal right to request such action and that the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the Planning Department of the Town of Clayton, North Carolina, and will not be returned.

Catharine Eberhart
Print Name

Catharine Eberhart
Signature of Applicant

6/1/12
Date

Exhibit A

Justification Statement

Eberhart Rezone

E Second Street properties at 519, 521, 525, 527

John Street properties 204, 206, 208

We are requesting that the above seven properties be rezoned from O&I to R-6.

Presently all properties except for 527, which has been vacant, are serving as single family residences even though the current zoning is O&I. All of the property owners were surprised to learn that their properties were in fact zoned as O&I and are pleased to move forward with a rezoning to R-6 that more accurately describes the current usage. The owner of the lot at 527, Catharine Eberhart, would like to build a new single family residence thereby improving the quality of homes on the street. In order to allow new home construction on the site it would need to be rezoned as R-6.

Approval Criteria

1. Consistency with the adopted plans of the Town.

The current zoning is inconsistent with the properties present use. Maintaining a variety of housing options for residents is crucial to keep the downtown alive and to provide housing for current and new residents. The downtown and town support a viable community with both businesses and residences. Therefore changing the zoning to R-6 would be consistent with the adopted plans of the Town.

2. Suitability of the subject property for uses permitted by the current vs. the proposed district.

If the properties were used under the current zoning seven residences could have to convert to office spaces. There is already ample and many empty office spaces available for use in the downtown area. Building an office space on any one of the properties would create problems for the current residents as there isn't much parking space available. In addition an O&I usage has the potential to require additional infrastructure, increase traffic and stress the roadways and utilities not to mention inconvenience current residents and decrease the quality of life.

The proposed R-6 zoning would simply bring the zoning up-to-date with the area's present usage and keep the downtown area alive with residents who are in the area after regular business hours unlike those who work 9-5 in offices but live elsewhere if the properties were O & I usage. It would keep more people living in Clayton and keep the downtown vibrant after hours.

3. Whether the proposed change tends to improve the balance of uses, or meets specific demand in the Town.

The proposed change would maintain a balance of uses and meet the specific demands of the Town as a vibrant community for active families by continuing to create housing in the downtown. It is necessary to maintain and have adequate housing for those who choose to live in and support the downtown area.

4. The capacity of adequate public facilities and services including schools, roads, recreation facilities, wastewater, potable water supply and storm water drainage facilities available for the proposed us.

Yes! They are already in place for single family residences.

5. It has been determined that the legal purposes for which zoning exists are not violated.

Yes.

6. It has been determined that there will be no adverse effect upon adjoining property owners unless such effect can be justified by the overwhelming public good or welfare.

Rezoning to R-6 would protect the adjoining property owners as their property is already being used as a residence. It would be more detrimental to them if a property was used as for O&I as stated above in question 2.

7. It has been determined that no one property owner or small group of property owners will benefit materially from the change to the detriment of the general public.

All of the property owners support the change of zoning and no one property owner will benefit materially from the change to the detriment of the general public as this change will only benefit the general public and town.

Adjacent Property Owners List (Eberhart rezone)

Parcel Number	Name	Address
05009014	James H Sr and Doris A. Coble	502 E Second St Clayton, NC 27520
05009013A	Ann Life Estate & Levinson, Ginger T RMNDR Johnson	516 E 2 nd St Clayton, NC 27520
05009013	George R & Cathy B Lee	2241 Shotwell Rd Clayton, NC 27520
05009012	Dora M Shell	524 E Second St Clayton, NC 27520
05009011	Tony and Gary Bunn	1025 Ridge Dr Clayton, NC 27520
05009010	Raymond B Medlin	534 E 2 nd St Clayton, NC 27520
05009009	Raymond B Medlin	538 E 2 nd St Clayton, NC 27520
05009037	Ruel Keith & Thomas Mary Alice Compton	613 E Main St Clayton, NC 27520
05009028	Chad Evans & Shirley Sanders Fleetwood	219 John St Clayton, NC 27520
05009027	Lynn Boling	716 E Horne St Clayton, NC 27520
05009026	Cynthia Wright Davis	712 E Horne St Clayton, NC 27520
05009045	Harry G & Ada J Crockers	710 E Horne St
05009018	Joseph & Rita Przywara	2005 Country Trails Dr Clayton, NC 27520
	Marvin & Jean Chappell	11 Redding Ct Smithfield, NC 27577
05009017	Larry & Sonya Michele James	702 E Horne St Clayton, NC 27520
05009016	Diana F and JB Harper	1410 S Brightleaf Blvd Smithfield, NC 27577
05009015	Michael R & Elizabeth E Grannis	507 E Second St Clayton, NC 27520
05009007 05009008	Melody Johnson Thorpe & Richard F Thorpe	2360 Twin Acres Rd Clayton, NC 27520



**Town of Clayton
Planning Department**
111 E. Second Street, Clayton, NC 27520
P.O. Box 879, Clayton, NC 27528
Phone: 919-553-1545
Fax: 919-553-1720

OWNER'S CONSENT FORM

Consent is required from the property owner(s) and if applicable, to an agent if the property owner(s) do not intend to attend all meetings and public hearings and submit in person all material pertaining to the application. A separate form is required from each owner. Consent is valid for one year from date of notary, unless otherwise specified. Attach copy of last recorded deed for subject property.

Project Name: Eberhart rezone **Submittal Date:** June 1, 2012

I hereby give **CONSENT** to Catharine Eberhart (type, stamp or print clearly full name of agent) to act on my behalf, to submit or have submitted this application and all required material and documents, and to attend and represent me at all meetings and public hearings pertaining to the application(s) indicated above. Furthermore, I hereby give consent to the party designated above to agree to all terms and conditions which may arise as part of the approval of this application.

I hereby certify that I have ownership interest in the subject of this application. I understand that any false, inaccurate or incomplete information provided by me or my agent will result in the denial, revocation or administrative withdrawal of this application, request, approval or permits. I further agree to all terms and conditions, which may be imposed as part of the approval of this application.

OWNER INFORMATION: (Corporations must submit verification that signatory has authorization to sign)

Catharine Eberhart
(Name - type, print clearly)

Catharine Eberhart
(Signature)

521 E Second St
(Address)

Clayton, NC 27520
(City, State, Zip)

AGENT INFORMATION:

Catharine Eberhart
(Name - type, print clearly)

Catharine Eberhart
(Signature)

521 E Second St
(Address)

Clayton, NC 27520
(City, State, Zip)

STATE OF NC
COUNTY OF Johnston

Sworn and subscribed before me Catharine Eberhart, a Notary Public for the above State and County, this the 1st day of June, 2012.

SEAL



Sandra Hughes
Notary Public

My Commission Expires: 7-31-14



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Planning Department
 111 E. Second Street, Clayton, NC 27520
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OWNER INFORMATION: (Corporations must submit verification that signatory has authorization to sign)

Joyce Lipscomb Canady (Name - type, print clearly) Joyce Lipscomb Canady (Signature)
315 Crescent Dr (Address) Clayton, N.C. 27520 (City, State, Zip)

AGENT INFORMATION:

Catharine Eberhart (Name - type, print clearly) Catharine Eberhart (Signature)
521 E Second St (Address) Clayton, NC 27520 (City, State, Zip)

STATE OF NC
COUNTY OF Johnston

Sworn and subscribed before me Joyce L. Canady, a Notary Public for the above State and County, this the 29th day of May, 2012.

SEAL



Sandra Hughes
 Notary Public

My Commission Expires: 7-31-16



Town of Clayton
Planning Department
 111 E. Second Street, Clayton, NC 27520
 P.O. Box 879, Clayton, NC 27528
 Phone: 919-553-1545
 Fax: 919-553-1720

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Project Name: Eberhart rezone **Submittal Date:** June 1, 2012

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OWNER INFORMATION: (Corporations must submit verification that signatory has authorization to sign)

JEFFREY L. ADAMS
 (Name - type, print clearly)
909 Hardee St.
 (Address)

Jeffrey L Adams
 (Signature)
Clayton, NC 27520
 (City, State, Zip)

AGENT INFORMATION:

Catharine Eberhart
 (Name - type, print clearly)
521 E Second St.
 (Address)

Catharine Eberhart
 (Signature)
Clayton, NC 27520
 (City, State, Zip)

STATE OF NC
COUNTY OF Johnston

Sworn and subscribed before me Jeffrey Adams, a Notary Public for the above State and County, this the 29th day of May, 2012.

SEAL



Sandra Hughes
 Notary Public

My Commission Expires: 7-31-16



**Town of Clayton
Planning Department**
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Project Name: Eberhart rezone **Submittal Date:** June 1, 2012

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OWNER INFORMATION: (Corporations must submit verification that signatory has authorization to sign)

LOUISE J. POLLARD
(Name - type, print clearly)

Louise J. Pollard
(Signature)

525 E Second St
(Address)

Clayton NC 27520
(City, State, Zip)

AGENT INFORMATION:

Catharine Eberhart
(Name - type, print clearly)

Catharine Eberhart
(Signature)

521 E Second St
(Address)

Clayton, NC 27520
(City, State, Zip)

STATE OF NC
COUNTY OF Johnston

Sworn and subscribed before me Louise J. Pollard, a Notary Public for the above State and County, this the 29th day of May, 2012.

SEAL



Sandra Hughes
Notary Public

My Commission Expires: 7-31-14



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Planning Department
 111 E. Second Street, Clayton, NC 27520
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Project Name: Eberhart rezone **Submittal Date:** June 1, 2012

270-4892
 I hereby give **CONSENT** to Catharine Eberhart (type, stamp or print clearly full name of agent) to act on my behalf, to submit or have submitted this application and all required material and documents, and to attend and represent me at all meetings and public hearings pertaining to the application(s) indicated above. Furthermore, I hereby give consent to the party designated above to agree to all terms and conditions which may arise as part of the approval of this application.

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OWNER INFORMATION: (Corporations must submit verification that signatory has authorization to sign)

EARL J COLLINS
 (Name - type, print clearly)

Earl J Collins
 (Signature)

206 John St
 (Address)

Clayton NC 27520
 (City, State, Zip)

AGENT INFORMATION:

Catharine Eberhart
 (Name - type, print clearly)

Catharine Eberhart
 (Signature)

521 E Second St.
 (Address)

Clayton, NC 27520
 (City, State, Zip)

STATE OF NC
COUNTY OF Johnston

Sworn and subscribed before me Earl Collins, a Notary Public for the above State and County, this the 29th day of May, 2012.

SEAL



Sandra Hughes
 Notary Public

My Commission Expires: 7-31-16

Roster and Minutes for Eberhart Rezone
July 13, 2012
6:30-7:30 pm

Neighborhood Meeting Attendance Roster
Applicant: Eberhart Rezone
Location/Date: 521 East Second Street, Clayton, NC 27520/ July 13, 2012

Raymond B Medlin	534 E Second St. Clayton, NC 27520
Catharine Eberhart	521 East Second Street, Clayton, NC 27520
Bob Maiers	521 East Second Street, Clayton, NC 27520

Minutes:

The meeting began at 6:30 pm.

Bob Maiers introduced the proposed rezoning of 4 properties on Second St and 3 on John St. from O & I to R-6.

Mr. Medlin was pleased that it wasn't going to be business and that houses could be built on the properties. He was happy to sign whatever we needed so that it would be for residences and that was why he showed up.

The conversation then turned to former neighbors, family, friends and health matters.
The meeting was adjourned at 7:15 pm.



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STAFF REPORT

Application Number: RZ 2012-58
Project Name: Eberhart Rezoning
NC PIN: 166917-20-0807, 166917-20-0854, 166917-20-0880,
166917-20-1716, 166917-20-2715, 166917-20-1771,
and 166917-20-1711
Town Limits/ETJ: Town Limits
Applicant: Catherine Eberhart
Owners: Catherine Eberhart, Louise Pollard, Joyce Lipscomb Canady, Earl Collins, and Jeffrey Adams
Agents: Catherine Eberhart
Neighborhood Meeting: Held July 13, 2012

PROJECT LOCATION: The project is located in the 500 block of E. Second Street and the 200 block of John Street in the Town Limits of Clayton.

REQUEST: The request is to rezone the above referenced properties from O-I (Office-Institutional) to R-6 (Residential) to accommodate the existing single family detached homes in the area.

SITE DATA:

Acreage: 1.52 acres
Present Zoning: O-I (Office-Institutional)
Proposed Zoning: R-6 (Residential)
Existing Use: Residential

DEVELOPMENT DATA:

Proposed Use: Same as existing

ENVIRONMENTAL: No environmental concerns.

ADJACENT ZONING AND LAND USES:

North:	Zoning: O-I Existing Use: Residential
South:	Zoning: R-8 Existing Use: Residential
East:	Zoning: O-I Existing Use: Residential
West:	Zoning: O-I Existing Use: Bed & Breakfast Morning Glory Inn

STAFF ANALYSIS AND COMMENTARY:

Although the subject properties are currently zoned O-I (Office-Institutional), the area in question is occupied by single family residential dwellings. The block is located in the downtown area of Clayton, and shown as residential infill on the Strategic Growth Plan. The applicant would like to demolish one of the residences and rebuild a single family detached dwelling which is not permitted in the O-I Zoning District. Staff has reviewed the subject area and has determined that R-6 is an appropriate zoning district for the block based on its location in the downtown area. Consequently the applicant has organized with neighbors and is requesting a rezoning to R-6 (Residential).

- o **Consistency with the Strategic Growth Plan**

The proposed residential use is consistent with the Strategic Growth Plan.

- o **Consistency with the Unified Development Code**

The existing use of the subject site as single family detached dwellings will be consistent with the UDC once rezoned to a Residential Zoning District.

- o **Compatibility with Surrounding Land Uses**

The existing and surrounding uses are residential therefore no additional impact on the surrounding land uses is anticipated.

OTHER:

FIRE PROTECTION: The Town of Clayton Fire Department will provide fire protection.

SCHOOL IMPACTS: NA

PARKS AND RECREATION: NA

ACCESS/STREETS: E. Second Street 500 block range and John Street 200 block range

WATER/SEWER PROVIDER: Town of Clayton

ELECTRIC PROVIDER: Town of Clayton

FINDINGS:

In connection with its legislative decision on a rezoning request, the Town Council may consider certain approval criteria. The applicant has addressed the approval criteria expressly established by Chapter 155.704 (J) of the UDC. Please refer to Exhibit "A" for the applicant's response.

CONDITIONS OF APPROVAL:

Staff is recommending the following conditions of approval: None

PLANNING BOARD RECOMMENDATION:

Planning Board recommended approval of Petition RZ 2012-58 on July 23, 2012.



Legend

Clayton Town Limits	R-6	PD-C
Clayton ETJ	PD-R	I-1
R-E	B-1	I-2
R-10	B-2	O-1
R-8	B-3	PD-MU
Produced by: TOC Planning	SUD	

Existing Zoning/Aerial Map

Applicant(s): Catherine Eberhart
 Property Owner(s): Catherine Eberhart, Louise Pollard,
 Joyce Lipscomb Cannady, Earl Collins
 & Jeffrey Adams
 Parcel Number(s) 05009019, 05009020, 050090201,
 05009022, 05009023, 05009024 & 05009025
 File Number(s): RZ 2012-58

J

Disclaimer: Town of Clayton assumes no legal responsibility for the information represented here.





Legend

Clayton Town Limits	R-6	PD-C
Clayton ETJ	PD-R	I-1
R-E	B-1	I-2
R-10	B-2	O-1
R-8	B-3	PD-MU
Produced by: TOC Planning	SUD	

Proposed Zoning/Aerial Map

Applicant(s): Catherine Eberhart
 Property Owner(s): Catherine Eberhart, Louise Pollard,
 Joyce Lipscomb Cannady, Earl Collins
 & Jeffrey Adams
 Parcel Number(s) 05009019, 05009020, 050090201,
 05009022, 05009023, 05009024 & 05009025
 File Number(s): RZ 2012-58

Disclaimer: Town of Clayton assumes no legal responsibility for the information represented here.

J



MOTION GRANTING REZONING APPROVAL

CONSISTENCY AND REASONABLENESS STATEMENT

RZ 2012-58

MOTION:

THE TOWN COUNCIL OF THE TOWN OF CLAYTON HEREBY STATES RZ 2012-58 is consistent with the Town of Clayton Strategic Growth Plan.

MOTION:

THE TOWN COUNCIL OF THE TOWN OF CLAYTON HEREBY STATES that RZ 2012-58 is consistent with the Town of Clayton Strategic Growth Plan and based upon information presented at the public hearing and by the applicant, and based upon the recommendations and detailed information developed by staff and/or the Planning Board contained in the staff report, and considering the criteria of Section 155.704(J) of the Unified Development Code of the Town of Clayton, RZ 2012-58 is reasonable and in the public interest.

ATTEST:

Jody L. McLeod
Mayor

Sherry L. Scoggins, MMC
Town Clerk

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

Agenda Item: 5c

Meeting Date: 9/04/12

TITLE: EVIDENTIARY HEARING FOR PRELIMINARY SUBDIVISION REQUEST SUB 2012-60 FOR EAST VILLAGE OF CLAYTON LOCATED ON EAST FRONT STREET.

DESCRIPTION: Preliminary subdivision request to develop 52.82 acres into 152 single-family lots. The property is bounded by East Front Street Extension to the south and borders Walden Subdivision to the north and east. The present zoning is PD-R and the property is located within the Town. The property is a portion of parcel number 050370101E.

Upon completion of the evidentiary hearing, the following Council action is requested:

- Action on the four findings for preliminary subdivision
- Action on the application based on the results of the evaluation

RELATED GOAL: Manage Growth Producing Quality Developments

ITEM SUMMARY:

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
8-20-12	Presentation	Application, Staff report, Aerial map and Preliminary Subdivision Plan.
9-04-12	Evidentiary hearing.	Hearing procedures, Application, staff report, Aerial map, & preliminary Subdivision plan.

Town of Clayton Subdivision Review Application Hearing Procedure

1. **REGISTRATION.** Persons desiring to speak at an Evidentiary Hearing for review of a Subdivision Application must register with the Town Clerk by 5:00 PM on the day of the hearing. If time allotment remains for one side or the other once registered speakers have addressed the Council, additional speakers may be recognized by the Mayor to give testimony.
2. **HEARING.** The Mayor shall call the hearing and announce the case.
3. **RULES OF PROCEDURE.** The procedure by which testimony may be given shall be announced by the Town Attorney. The Town Attorney shall be responsible for keeping all testimony within acceptable legal guidelines.
4. **OATHS.** Oaths shall be administered to all speakers. A statement of oath shall be signed by all persons taking the oath.
5. **STAFF REPORT.** The Staff shall give its report.
6. **APPLICANT TESTIMONY.** The applicant shall be called to present their case. If the applicant or a representative is not present to give testimony, the Mayor shall call for a vote of the members present to continue the hearing for thirty days. The applicant shall be notified of such action. The applicant and those speaking in support of the application shall be provided a maximum of fifteen minutes to present their case. The Town Clerk shall keep time. The Mayor shall be responsible for keeping the testimony relevant and factual. No questions shall be asked by the Town Council at this time.
7. **OPPOSITION TESTIMONY.** Those speaking in opposition to the application shall be called upon to present their case. Those in opposition to the application shall be provided a maximum of fifteen minutes. If the opposition has not chosen speakers on their behalf, they shall be called in the order of registration or the order in which the oaths were signed. The Town Clerk shall keep time. The Mayor shall be responsible for keeping the testimony relevant and factual. No questions shall be asked by the Town Council at this time.
8. **APPLICANT REBUTTAL.** The applicant and/or those in support of the application shall be provided a maximum of five minutes to rebut testimony provided by the opposition. The Council may also ask questions of the applicant at this time.

9. **OPPOSITION REBUTTAL.** Those in opposition to the application shall be provided a maximum of five minutes to rebut testimony provided by the applicant. The Council may also ask questions of the opposition at this time.
10. **COUNCIL INQUIRY.** The Council shall ask any additional questions of the applicant, opposition, or staff at this time. There shall be no time limit except that the Mayor shall be responsible for keeping questions and responses relevant and factual.
11. **DELIBERATION.** The Mayor shall call the Council into deliberation. Once called into deliberation no person may address the Council and no questions may be asked by Council to the public.
12. **UTILITY ALLOCATION (WHEN APPLICABLE).** In the event of pending action on a utility allocation request related to the case and there being no additional testimony, the Council shall take action on a utility allocation in accordance with related policies and procedures.
13. **ACTION-FINDINGS FOR DECISION.** Once discussion of the evidence has been completed and action taken on the utility allocation (when applicable); each finding shall be discussed in turn and a motion, second and vote shall be made for each finding by selecting one of the three alternatives. A majority vote shall prevail. All four findings shall be addressed.
14. **ACTION-APPLICATION.** Once all four findings have been decided and based on the results of the evaluation and vote on those findings, the Council shall make a motion and vote to approve or deny the application.



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 Fax: 919-553-1720

SUBDIVISION APPLICATION

Pursuant to Article 7, Section 155.706 of the Unified Development Code, an owner of land within the jurisdiction of the Town (or a duly authorized agent) may petition the Town of Clayton to approve a Subdivision (major, minor, final plat, or exempt) application. Applicants seeking subdivision approval shall schedule a pre-application conference with the Planning Director in accordance with Section 155.702(A).

Subdivision applications must be accompanied by nine (9) sets of the application, nine (9) sets of required plans, an Owner's Consent Form (attached) and the application fee. The application fees are as follows:

- *Minor Subdivision: \$200.00 +5.00/lot.*
- *Major Subdivision: 2-15 Lots = \$200.00 +5.00/lot; 16-40 Lots = \$300.00 +5.00/lot; 41-80 Lots = \$400.00 +5.00/lot; 81+ Lots = \$500.00 +5.00/lot; and. Open Space Subdivision = \$500.00 + \$5/lot.*
- *Final Plat: \$250.00*
- *Exempt Map/Recombination: \$50.00*

All fees are due when the application is submitted. Please note that Section 155.702(B) of the Unified Development Code requires a Neighborhood Meeting for all Major Subdivision applications.

SUBDIVISION TYPE:

Application Type:

- Minor Subdivision
 Major Subdivision
 Final Plat
 Exempt Map
 Recombination

SITE INFORMATION:

Name of Project: East Village of Clayton Single-Family Subdivision
 Acreage of Property: 52.82 Ac
Preliminary Plat Approval Date (if applicable): PDD 07-05 April 2, 2012
Parcel ID Number: 166806-49-7689
 Tax ID: 05037010E
Location: Fronts on E Front Street (Extension) to the south and borders Walden subdivision to the north & east, Town of Clayton
Section(s): _____
 Phase(s): (6) Single-Family Phases
Number of Lots (Existing): 1
 (Proposed): 152
 Min. Lot Size: 5,500 SF
Zoning District: PD-R
 Planned Development? (Y/N): Y
 Electric Provider: CP&L
Specific Use: Single-Family Subdivision
Recreation/Open Space Requirement:
 Fee in lieu
 Land Dedication (acreage) 6.88 Ac

FOR OFFICE USE ONLY

File Number: SUB 2012-60
 Date Received: 6-1-2012
 Amount Paid: \$ 1,260.00

OWNER INFORMATION:

Name: East Village Investments, LLC
Mailing Address: 2217 Stantonsburg Rd, Greenville, NC 27834
Phone Number: (252) 638-4215 Fax: (252) 670-9370
Email Address: hubie@uhfdevelopmentgroup.com

APPLICANT INFORMATION:

Applicant: HagerSmith Design, PA
Mailing Address: 300 S Dawson Street, Raleigh, NC 27601
Phone Number: (919) 821-5547 Fax: (919) 828-4050
Contact Person: Jimmy Thiem
Email Address: jthiem@hagersmith.com

REQUIRED PLANS AND SUPPLEMENTAL INFORMATION

The following items must accompany a Subdivision Plan application. This information is required, except where otherwise noted:

- Required plans (please see the plan requirements checklist below).
- Road Name Approval Application (if applicable). **TO BE SUBMITTED AT A LATER DATE**
- N/A A signed and sealed traffic impact analysis (if required). **PREVIOUSLY SUBMITTED FOR MASTER PLAN**
- N/A Verification of wastewater allocation (granted or requested). **PREVIOUSLY SUBMITTED FOR MASTER PLAN**
- Verification of approval for the potable water and waste water system improvements from North Carolina Department of Environment and Natural Resources (NCDENR). **TO BE SUBMITTED PRIOR TO CONSTRUCTION.**
- N/A Verification of approval for individual well and septic systems from Johnston County Department of Environmental Health Services (if applicable).
- Driveway permits (Town of Clayton or NCDOT encroachment with associated documentation). **TO BE SUBMITTED PRIOR TO CONSTRUCTION.**
- N/A A copy of proposed deed restrictions and/or covenants (if applicable).

APPLICANT AFFIDAVIT

I/We, the undersigned, do hereby make application and petition to the Town of Clayton to approve the subject Subdivision Plan. I hereby certify that I have full legal right to request such action and that the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the Planning Department of the Town of Clayton, North Carolina, and will not be returned.

Jimmy Thiem
Print Name

Jimmy Thiem
Signature of Applicant

5/30/12
Date

Exhibit A

**EAST VILLAGE OF CLAYTON
MAJOR SUBDIVISION
APPLICANT STATEMENT**

May 30, 2012

1. That the subdivision meets all required specifications of the town Subdivision Regulations and conforms to the town Unified Development Code.

This application is submitted under the provisions of PDD-R 2012-05. Specifically, this application addresses the subdivision of the single-family portion of that PDD, including Land Units S1 through S6. Overall design and layout of streets, sidewalks, water and sewer (connections to Town utilities) are proposed to be consistent with present Town of Clayton standards. Proposed open space and greenways are generally consistent in area and location as per the approved PDD.

2. That the subdivision will not be detrimental to the use or orderly development of other properties in the surrounding area and will not violate the character of existing standards for development of properties in the surrounding area.

The majority of properties surrounding the proposed single-family subdivision are either already developed or are a part of the overall East Village of Clayton project. No changes are proposed to the layout or configuration of the East Village non-residential lots or The Arbors multi-family lot. The subdivided property is adjacent to the Walden subdivision along its north and east boundaries. A substantial portion of the East Village property separating these two developments is proposed open space or Resource Conservation Area. A Type C Buffer per PDD requirements is provided along the perimeter of the subdivision where proposed lots directly abut adjacent property not part of the East Village development.

3. That the subdivision design will provide for the distribution of traffic in a manner that will avoid or mitigate congestion within the immediate area, will provide for the unified and orderly use of or extension of public infrastructure, and will not materially endanger the environment, public health, safety, or the general welfare.

Development of the proposed plan relies on the extension of East Front Street from its present terminus south of Mill Street to old N.C. Highway 42. This extension of Front Street, a collector street, serves as the main vehicular access for the East Village of Clayton project. Its location and design was fully coordinated with the Town of Clayton which envisions this street as an important vehicular link between downtown and Highway NC-42. A traffic study assessing the vehicular capacity of East Front Street to accommodate the proposed development was prepared and submitted to the Town as part of the PDD process. This study, via Town of Clayton staff, was also submitted to NCDOT for review and comment. With regard to the single-family portion of the development, two comments pertaining to the public entry drive, the single-family development's primary vehicular access, off of East Front Street, were noted to be provided in the East Front Street design: (1) for west bound traffic provide a 100' right turn lane, (2) for east bound traffic, provide a left turn lane. These elements will be included in the Town's construction of East Front Street. An additional recommendation of the study is related to a traffic signal to be provided at the intersection of East front Street and Highway NC-42. Per the PDD, a warrant analysis is to be prepared by the East Village developer upon completion of East Front Street to determine when the traffic signal needs to be constructed based on traffic volume. In addition to the primary public street entrance off of East Village, a secondary access point is provided via a driveway connection with the proposed Arbors multifamily project. Water service to the subdivision will be via public waterlines which will be tied to the public water main presently being installed by Johnston County in the future East Front Street alignment. Lots will be

serviced by public gravity sewer lines which will tie to a provide pump station to be located on the west side the East Village development. All streets and utilities shall be constructed to Town of Clayton standards where applicable.

4. That the subdivision will not adversely affect the general plans for the orderly growth and development of the town and is consistent with the planning policies adopted by the Town Council.

The original plan for the East Village of Clayton project was prepared in 2004 with the cooperation of the Town Manager's office, Planning Department, Public Works Department, and Parks Department. The overall plan was approved by both the Planning Board and Town Council. At that time, key planning principles for the Town which were considered in the planning of project included:

- a. Transportation – Provide for extension of East Front Street from downtown to N.C. Highway 42. Provide for a safe and efficient network of public and private streets within the development.
- b. Downtown Clayton connection – Provide for housing and other related land uses in close proximity to Downtown Clayton to support and enhance Downtown as a thriving traditional commercial town center.
- c. Mixed-use – Provide, as appropriate and practicable, a variety of residential (single and multi-family) and non-residential (retail, office) land uses appropriate to the surrounding context of adjacent properties.
- d. Development Character – Incorporate development patterns reflective of traditional, older neighborhoods and the Downtown Clayton community.
- e. Utilities – Provide for extension and use of public water and sanitary sewer services.
- f. Natural Resources – Preservation and enhancement of on-site natural resources which primarily focus on perennial streams and woodland stream buffers.
- g. Stormwater management – Provide for management of stormwater runoff consistent with applicable Town of Clayton standards.

The proposed single-family subdivision retains the original planning principles. As the proposed revision does not include any non-residential properties or East Front Street, these aspects of the original plan remain unchanged. The southeast portion of the residential area still retains the original townhouse designation with an option to be developed as single family per the approved PDD. The City Manager's office has indicated that adequate water and sanitary sewer service is available to support the revised plan.



Town of Clayton
 Planning Department
 111 E. Second Street, Clayton, NC 27520
 P.O. Box 879, Clayton, NC 27528
 Phone: 919-553-1545
 Fax: 919-553-1720

OWNER'S CONSENT FORM

East Village of Clayton

Name of Project: Single-Family Subdivision **Submittal Date:** June 1, 2012

OWNERS AUTHORIZATION

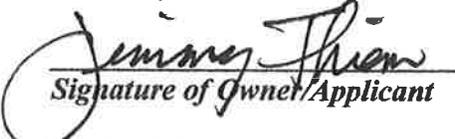
I hereby give CONSENT to Jimmy Thiem (type, stamp or print clearly full name of agent) to act on my behalf, to submit or have submitted this application and all required material and documents, and to attend and represent me at all meetings and public hearings pertaining to the application(s) indicated above. Furthermore, I hereby give consent to the party designated above to agree to all terms and conditions which may arise as part of the approval of this application.

I hereby certify I have full knowledge the property I have an ownership interest in the subject of this application. I understand that any false, inaccurate or incomplete information provided by me or my agent will result in the denial, revocation or administrative withdrawal of this application, request, approval or permits. I acknowledge that additional information may be required to process this application. I further consent to the Town of Clayton to publish, copy or reproduce any copyrighted document submitted as a part of this application for any third party. I further agree to all terms and conditions, which may be imposed as part of the approval of this application.

 Hubie Tolson 5/29/12
Signature of Owner *Print Name* *Date*

CERTIFICATION OF APPLICANT AND/OR PROPERTY OWNER

I hereby certify the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the Planning Department of the Town of Clayton, North Carolina, and will not be returned.

 Jimmy Thiem 5/30/12
Signature of Owner/Applicant *Print Name* *Date*

FOR OFFICE USE ONLY

File Number: _____	Date Received: _____	Parcel ID Number: _____
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NEIGHBORHOOD MEETING ATTENDANCE ROSTER

Applicant: EAST VILLAGE OF CLAYTON SINGLE FAMILY SUBDIVISION

Location/Date: CLAYTON CENTER, POOLE ROOM / JULY 12, 2012, 6:30PM

	NAME	ADDRESS
1	Betty Bell	287 Old 42 E. Clayton 27527
2	Gale Hays	110 Pecan Ln. Clayton 27527
3	Martha Leek	122 Pecan
4	Anthony Trel	2017 Deer Trail
5	Curt Williams	100 Pecan Ln
6	Jimmy Thiem	634 N. Blount St, Raleigh
7	HOBIE TOLSON	520 E. Front St / New Bern, NC 28520
8	LARRY PYLE JR	2021 WARDEN WAY CLAYTON NC
9	RITCHIE M... ..	2025 WARDEN WAY CLAYTON N. W...
10		
11		
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HagerSmith
DESIGN PA

EAST VILLAGE OF CLAYTON Single-Family Subdivision Neighborhood Meeting Notes

S 2012-60

Meeting Date: 07/12/2012

Meeting Time: 6:30-8:00

Meeting Location: The Clayton Center, The Poole Room

Number of attendees: 9 attendees (signed roster) (includes 2 project representatives)

Jimmy Thiem, HagerSmith Design, gives introductions & project history

- Reviewed approved master plan and described proposed single-family subdivision. Explained that the subdivision plan was subject to review and approval by the Planning Board and Town Council.
- Explained overall street layout.
- Discussed greenway system.

Comments from attendees

- Don't build apartments, build small houses. No one will be interested in renting apartments.
 - Response: Thank you for your comment.
- Vacant lot needs to be mowed. Ask mowing service to mow up to woods edge
 - Response: Okay
- Who "owns" Pecan Lane?
 - Response – Suggested they check with Town to confirm. We understand that part is public R.O.W. and part private. Concern for who was responsible for maintaining street.
- What will happen to white house at southeast corner of East Village site?
 - Response: It will eventually be removed from site.
- Is the greenway system public or private?
 - Response: Public. It will be maintained by the Town of Clayton.
- How big is the East Village project?
 - Response: Original development was approximately 114 acres. The subdivision submittal is for 52.82 acres.
- How will Walden entrance be connected to new Front Street?
 - Response: The east end of Front Street is proposed to be located east of the present Old NC-42. A 4-way intersection will be created where Old NC-42 will tie in from the west and a re-aligned driveway from Walden

will tie-in from the east. The final street alignments are still under development.

- Will there be a traffic signal at the intersection of NC-42 and Old NC-42?
 - Response: A traffic signal, to be installed in the future, is proposed at that location.
- Is a restaurant planned for the East Village commercial parcels?
 - Response: No specific uses have been identified for the commercial parcels.
- Would you like to buy some more property out there?
 - Response: Possibly.
- What is planned for the area along the stream adjacent to Walden?
 - Response: It is designated as riparian buffer, wetlands and private park land. The park land will be developed with a gazebo, play area, and picnic area. The riparian and wetlands are proposed to remain undisturbed. There is a public greenway trail just west of the stream.

End of Notes



Town of Clayton
Planning Department
111 E. Second Street, Clayton, NC 27520
P.O. Box 879, Clayton, NC 27528
Phone: 919-553-1545
Fax: 919-553-1720

STAFF REPORT

Application Number: S 2012-60
Project Name: East Village of Clayton
NC PIN: 166806-49-7689 & 166807-59-6372 (portions thereof)
Town Limits/ETJ: Town Limits
Applicant: Jimmy Thiem, HagerSmith Design, PA
Owners: East Village Investments LLC

Agent: Jimmy Thiem, HagerSmith Design, PA

Neighborhood Meeting: Held July 12, 2012

PROJECT LOCATION: The subject site fronts on E Front Street (Extension) to the south and borders Walden Subdivision to the north and east. The property is in the town limits of Clayton.

REQUEST: The applicant is requesting Preliminary Subdivision approval for East Village of Clayton to create 152 single family lots. The property is zoned PD-R (Planned Development-Residential).

SITE DATA:

Acreage: 52.82 Acres
Number of Lots: 152 single family lots
Open Space: 7.38 acres
Present Zoning: PD-R (Planned Development-Residential)
Proposed Zoning: Same
Existing Use: Vacant
Impervious Surface: Max. Impervious 60 percent

DEVELOPMENT DATA:

Proposed Use: Residential single family

ENVIRONMENTAL: The subject site has no significant environmental concerns.

ADJACENT ZONING AND LAND USES:

North:	Zoning:	R-E
	Existing Use:	Residential
South:	Zoning:	R-10, B-2
	Existing Use:	Vacant
East:	Zoning:	R-E
	Existing Use:	Residential Walden Subdivision
West:	Zoning:	R-10, R-E
	Existing Use:	Vacant

STAFF ANALYSIS AND COMMENTARY:

The applicant is requesting preliminary subdivision approval for 152 single family lots for property located on the north side of E Front Street and bounded on the north and east by Walden subdivision. The subject site is included in the PD-R 2012-05 Master Plan, approved by Council (April 2, 2012) and will be developed in six phases.

The preliminary subdivision will have access from E Front Street Extension. A secondary access point is provided via a driveway connection with the recently approved Arbors multi-family project. Driveway permits are subject to Town of Clayton approval.

- o **Consistency with the Strategic Growth Plan**

The proposed use is consistent with the Strategic Growth Plan which designates the Future Land Use of the subject site as Residential. In addition, the development is consistent with Goal 2.1 - Balanced Development, 2.2 - Infrastructure & Services Capacity to Support Growth and Goal 5.1 - more developed parks and parkland (greenways).

- o **Consistency with the Unified Development Code**

The proposed development is consistent with and meets the applicable requirements of the Unified Development Code (UDC).

- o **Compatibility with Surrounding Land Uses**

The land use is compatible with the surrounding area.

- o **Waivers/Deviations/Variances from Code Requirements**

None requested.

OTHER:

FIRE PROTECTION: The Town of Clayton Fire Department will provide fire protection.

SCHOOL IMPACTS: To be determined by Johnston County School system

PARKS AND RECREATION: A minimum 12.5% of the overall East Village site will be set aside for recreation and open space.

ACCESS/STREETS: Access to the subdivision will be off of E Front Street Extension and a secondary access via the Arbors apartments. Driveway permits are subject to Town of Clayton approval.

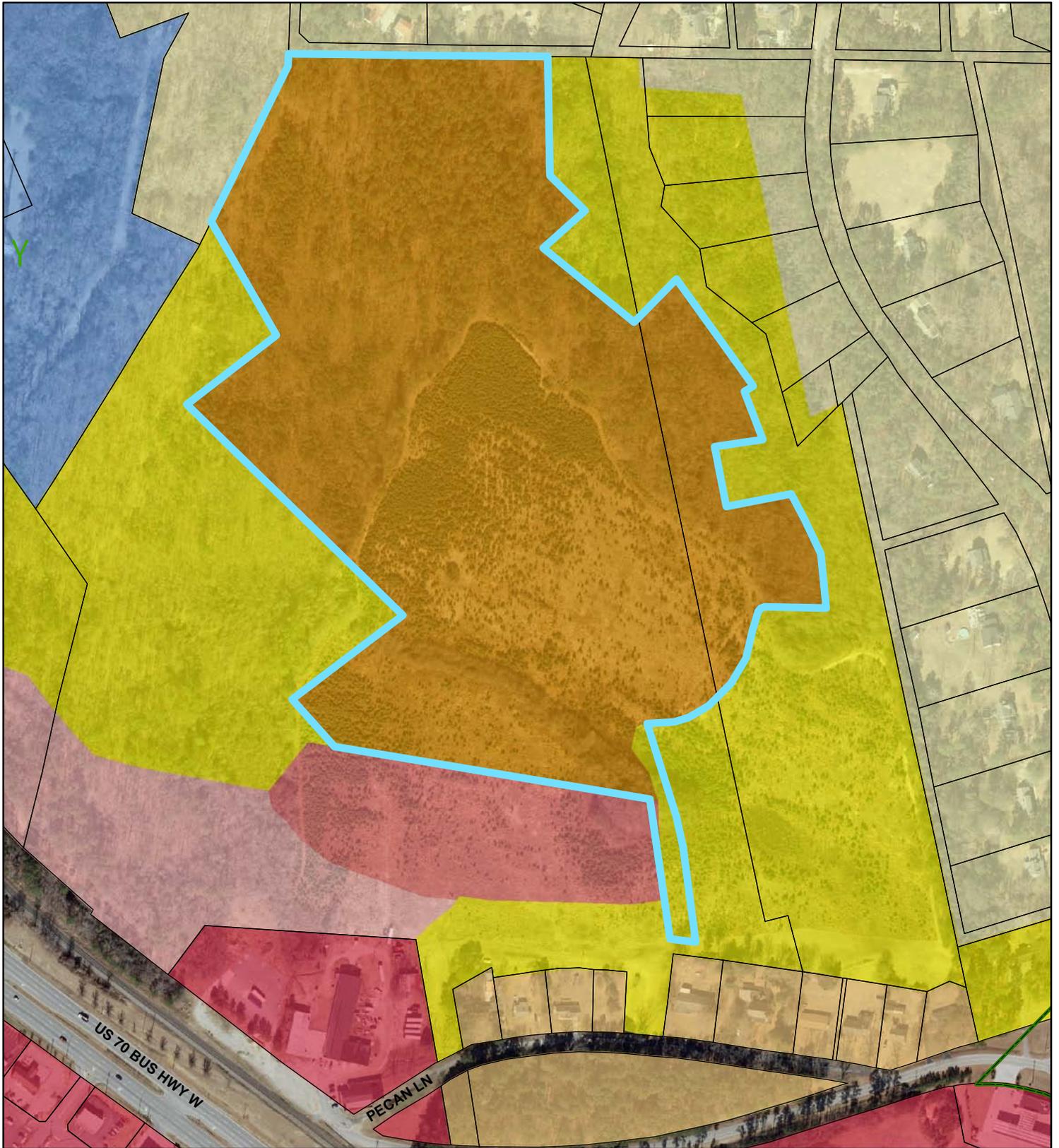
WATER/SEWER PROVIDER: Town of Clayton

ELECTRIC PROVIDER: Town of Clayton

STAFF RECOMMENDATION: Staff is recommending approval of the preliminary subdivision plan.

PLANNING BOARD RECOMMENDATION:

Planning Board recommended approval of Petition S 2012-60 on July 23, 2012.



Legend

Clayton Town Limits	R-6	PD-C
Clayton ETJ	PD-R	I-1
R-E	B-1	I-2
R-10	B-2	O-1
R-8	B-3	PD-MU
Produced by: TOC Planning	SUD	

Zoning/Aerial Map

Applicant(s): Jimmy Thiem/HagerSmith Design, PA
 Property Owner(s): East Village Investments LLC
 Parcel Number(s) 05037010E
 File Number(s): PSD 2012-60 East Village of Clayton

J

Disclaimer: Town of Clayton assumes no legal responsibility for the information represented here.



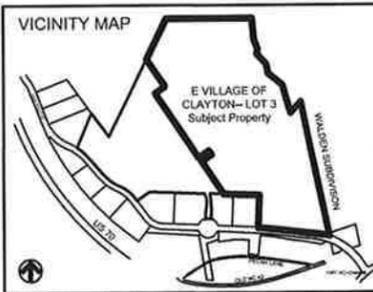
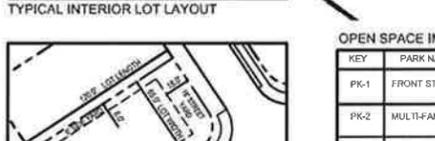
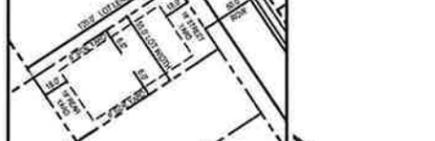
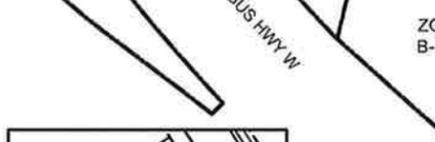
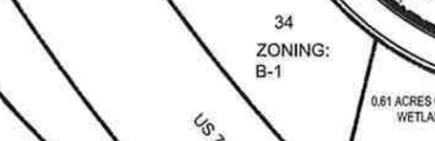
ADJACENT PROPERTY OWNERS

PROJ #	NC PIN	OWNER NAME/ADDRESS
1	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
2	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
3	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
4	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
5	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
6	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
7	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
8	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
9	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
10	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
11	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
12	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
13	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
14	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
15	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
16	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
17	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
18	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
19	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
20	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
21	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
22	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
23	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
24	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
25	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
26	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
27	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
28	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
29	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
30	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
31	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
32	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
33	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517
34	158914-20254	SCA VENTURES LLC 4153 CHAYNA LANE BARTWELL NC 27517

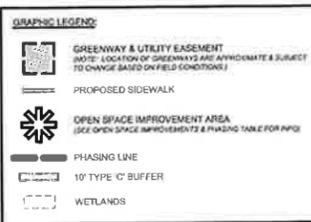
CURVE TABLE

CURVE #	CHORD BEARING	CHORD LENGTH	CHORD BEARING	CHORD LENGTH	CHORD BEARING	CHORD LENGTH
C1	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00
C2	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00
C3	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00
C4	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00
C5	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00
C6	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00
C7	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00
C8	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00
C9	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00
C10	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00
C11	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00
C12	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00
C13	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00
C14	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00
C15	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00
C16	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00
C17	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00
C18	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00
C19	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00
C20	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00	S 89° 51' 11" E	114.00

NOTE: BOUNDARY LINES TAKEN FROM PG 72 PGS 23-34, JOHNSTON COUNTY RECORDS. NO FIELD SURVEY PERFORMED AT THIS TIME. DASHED LINES REPRESENT PROPERTY LINES FROM CAD FILE PROVIDED BY OTHERS.

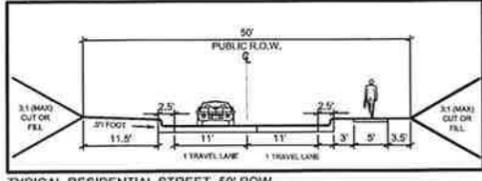


- GENERAL NOTES:
- SUBJECT PROPERTY INFO:
 - A. P.L.N. 18886-49-7689
 - B. SUBJECT PROPERTY IS LOT 3 OF MASTER PLAN AMENDMENT: P00 2012-05, APPROVED APRIL 2, 2012
 - C. LOT 3 TRACT: 2,306.915 SF/52.8217 AC
 - D. TOWN OF CLAYTON JURISDICTION
 - OWNER: EAST VILLAGE INVESTMENTS, LLC 2217 STANTONSBURG RD GREENVILLE, NC 27634
 - ZONING: PD-R, UNDERLYING ZONING: R-6
 - ZONING CONDITIONS: SEE ATTACHED P00 2012-05 CONDITIONS OF APPROVAL DOCUMENT.
 - DENSITY: 152 LOTS/52.8217 AC = 2.88 UNITS/ACRE
 - FEMA FIRM PANEL: 16684, MAP #: 3720166800; EFFECTIVE DATE: 12/22/05
 - PD-R SINGLE-FAMILY DEVELOPMENT SETBACKS:
 - STREET YARD - 18.0'
 - SIDE YARD (INTERIOR) - 5.0'
 - SIDE YARD (STREET) - 12.0'
 - REAR YARD - 18.0'
 - MIN. LOT SIDE - 5,500 SF
 - MAX. BLDGS. HT. - 40'
 - 151 SINGLE-FAMILY LOTS PROPOSED, PLUS (1) LOT DEDICATED FOR FUTURE MULTIFAMILY DEVELOPMENT = 152 LOTS TOTAL.
 - OPEN SPACE & RESOURCE CONSERVATION AREAS:
 - A. RESOURCE CONSERVATION AREAS (RCA):
 - STREAM BUFFERS & WETLANDS: 2.66 AC
 - NET SITE AREA (EXCLUDING RCA'S): 52.82 AC - 2.66 AC = 50.14 AC
 - B. OPEN SPACE REQUIRED (12.5% OF NET AREA): 50.14 AC X 12.5% = 6.27 ACRES
 - C. IMPROVED OPEN SPACE REQUIRED (8.25%): 6.27 AC X 25% = 1.57 AC REQ'D
 - D. OPEN SPACE PROPOSED:
 - 1. PUBLIC GREENWAY: 2.05 AC
 - 2. PRIVATE OPEN SPACE (UNIMPROVED): 2.0 AC
 - 3. PRIVATE OPEN SPACE (IMPROVED): 3.33 AC
 - 4. TOTAL GREENWAY & OPEN SPACE: 7.38 AC
 - SINGLE-FAMILY LOT WIDTHS AND DEPTHS ARE SUBJECT TO CHANGE FOR EACH PHASE, AS NECESSARY BASED ON FIELD CONDITIONS, PRIOR TO FINAL PLAT APPROVAL, AND IN ACCORDANCE WITH THE EAST VILLAGE SINGLE-FAMILY PD-R DEVELOPMENT SETBACKS.



OPEN SPACE IMPROVEMENTS DESCRIPTIONS & PHASING TABLE:

KEY	PARK NAME	AREA	IMPROVEMENTS	PHASING
PK-1	FRONT STREET ENTRY PARK	0.45 AC	GAZEBO, BENCHES, GRILLING STATIONS	PRIOR TO CERT. OF OCCUPANCY FOR ANY UNIT IN S1 OR M1
PK-2	MULTI-FAMILY MINI-PARK	0.15 AC	BENCHES	PRIOR TO CERT. OF OCCUPANCY FOR 36TH UNIT IN M1 OR M2
PK-3	EAST VILLAGE HOBBY/PARK	2.0 AC	TOT LOT, GAZEBO, GRILLING STATIONS	PRIOR TO CERT. OF OCCUPANCY FOR 65TH SINGLE FAMILY UNIT
PK-4	SINGLE FAMILY MINI-PARK	0.15 AC	BENCHES, SMALL "OPEN PLAY" AREA	PRIOR TO CERT. OF OCCUPANCY FOR 101ST SINGLE FAMILY UNIT
PK-6	WATER FEATURE PARK	1.0 AC	LANDSCAPED POND, PICNIC TABLES	PRIOR TO CERT. OF OCCUPANCY FOR 160TH SINGLE FAMILY UNIT



Architecture
Landscape Architecture
Planning
Interior Design

PO Box 1308
300 South Dawson Street
Raleigh, North Carolina 27602
Fax: 919.828.4050
919.821.5547 © Copyright 2012



6310 CHAPEL HILL ROAD
RALEIGH, NC 27607
PHONE: 919.851.4422
FAX: 919.851.8968

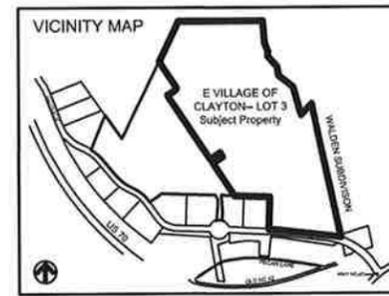
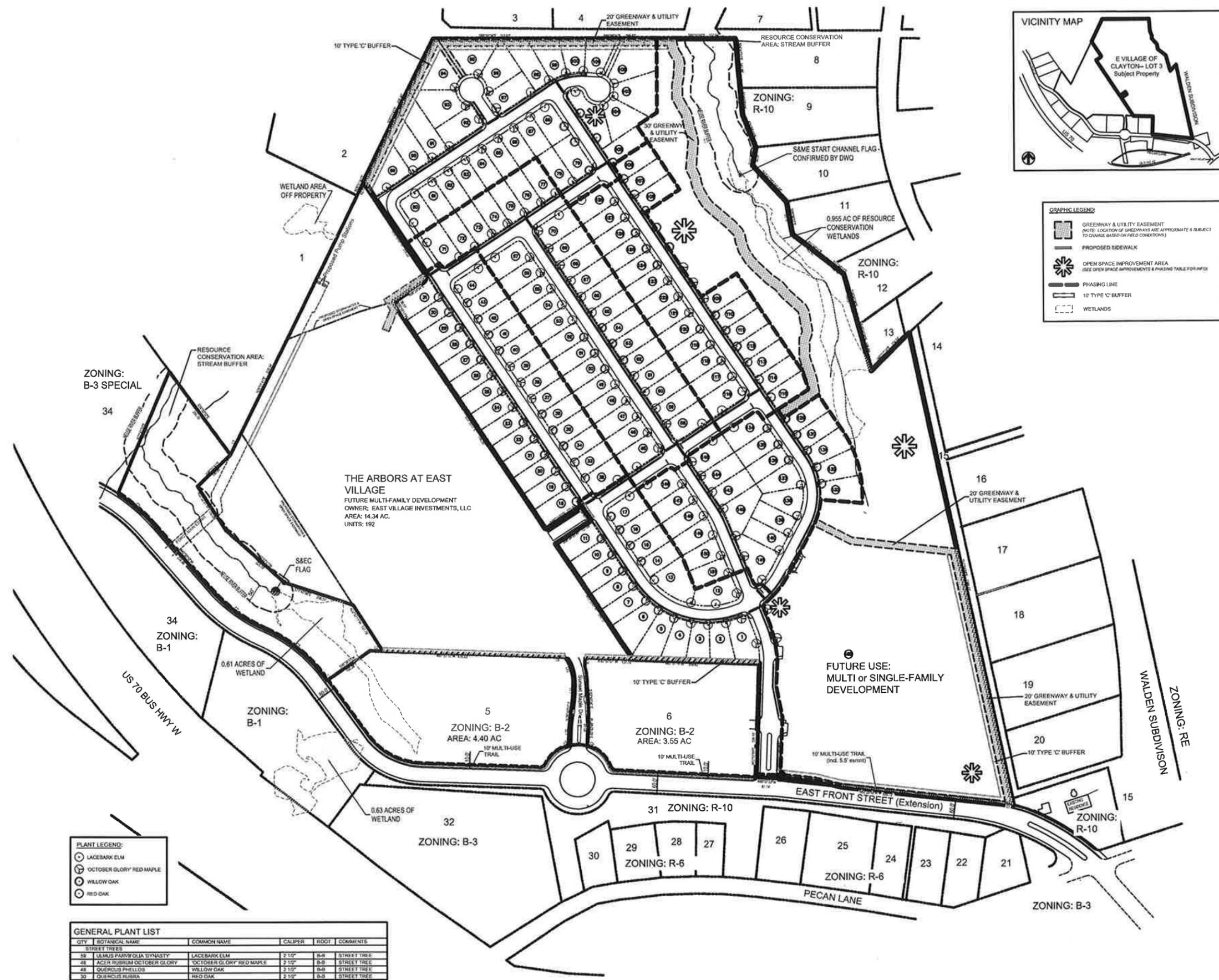
EAST VILLAGE OF CLAYTON SINGLE-FAMILY SUBDIVISION
Clayton, NC Johnston County

East Village Investments, LLC
c/o Hubie Tolson
2217 Stantonsburg Rd
Greenville, NC 27834
Phone: (252) 638-4215
Fax: (252) 670-9370

PRELIMINARY SUBDIVISION LOT LAYOUT

Revision	Number	Description	Date

Drawn By: JET, SMC
Checked By: JET
Date Issued: 6/26/12



PLANT LEGEND:

- LACERBARK ELM
- ⊗ OCTOBER GLORY RED MAPLE
- WILLOW OAK
- RED OAK

GENERAL PLANT LIST

QTY	BOTANICAL NAME	COMMON NAME	CALIPER	ROOT	COMMENTS
STREET TREES					
39	ULMUS PARVIFOLIA DYNASTY	LACERBARK ELM	2 1/2"	B-8	STREET TREE
48	ACER RUBRUM OCTOBER GLORY	OCTOBER GLORY RED MAPLE	2 1/2"	B-8	STREET TREE
48	QUERCUS PHELLOS	WILLOW OAK	2 1/2"	B-8	STREET TREE
30	QUERCUS RUBRA	RED OAK	2 1/2"	B-8	STREET TREE



PO Box 1308
300 South Dawson Street
Raleigh, North Carolina 27602
Fax: 919.828.4050
919.821.5547 © Copyright 2012



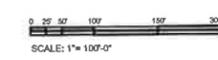
Project:
EAST VILLAGE OF CLAYTON SINGLE-FAMILY SUBDIVISION
Clayton, NC Johnston County

Client:
East Village Investments, LLC
c/o Huble Tolson
2217 Stantonsburg Rd
Greenville, NC 27834
Phone: (252) 638-4215
Fax: (252) 670-9370

Drawing Title:
PRELIMINARY SUBDIVISION STREET TREE LAYOUT

Number	Description	Date

Drawn By: SMC
Checked By: JET
Date Issued: 8/28/12



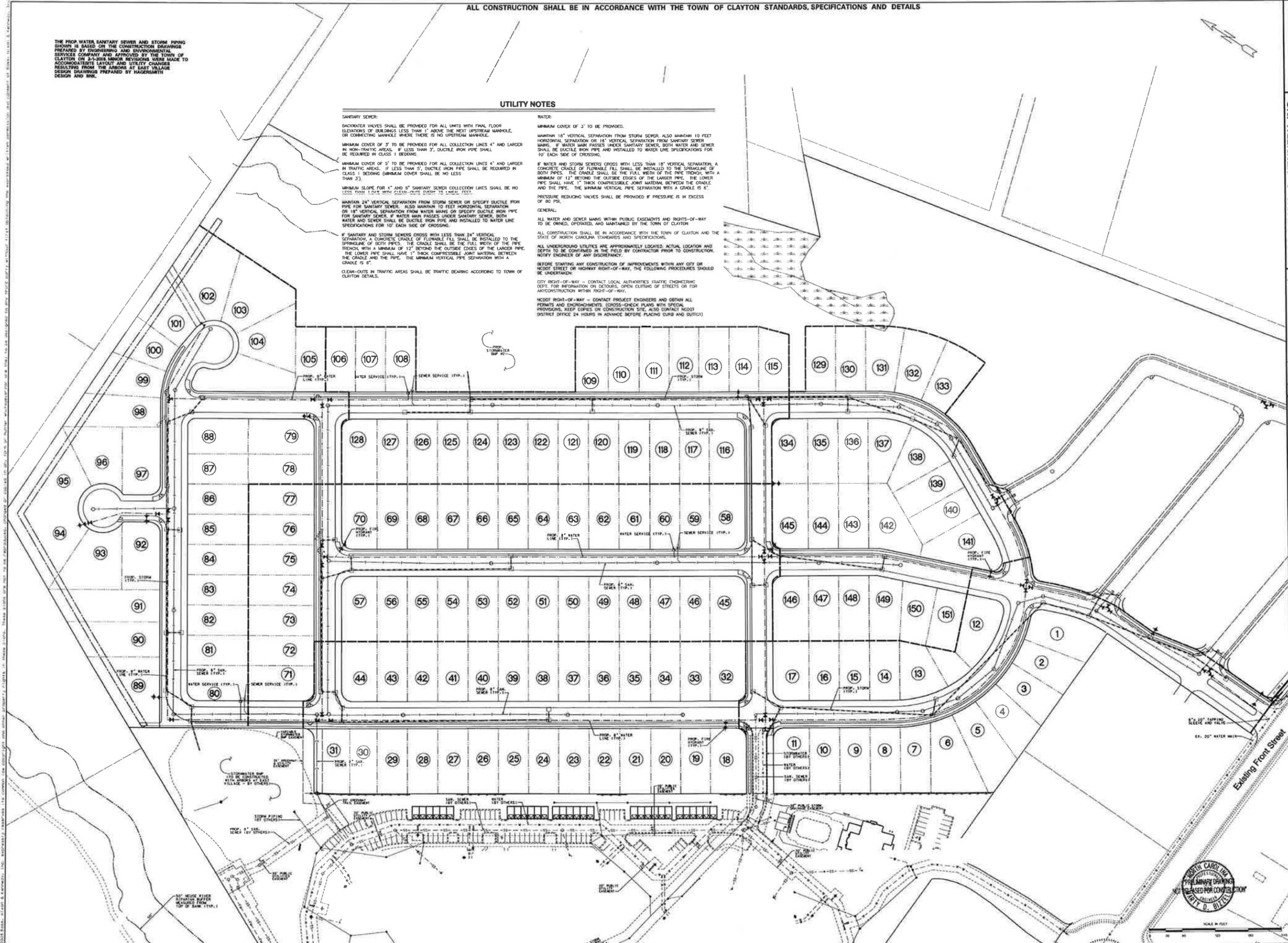
ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE TOWN OF CLAYTON STANDARDS, SPECIFICATIONS AND DETAILS

THE PROP. WATER, SANITARY SEWER AND STORM PIPING SHOWN IS BASED ON THE CONSTRUCTION DRAWINGS PREPARED BY ENGINEERING AND ENVIRONMENTAL SERVICES COMPANY AND APPROVED BY THE TOWN OF CLAYTON ON 5-1-2024. MINOR REVISIONS WERE MADE TO ACCOMMODATE LAYOUT AND UTILITY CHANGES RESULTING FROM THE AMENDS AT EAST VILLAGE DESIGN DRAWINGS PREPARED BY HAGERMARTH DESIGN AND INC.

UTILITY NOTES

SANITARY SEWER: BACKWATER VALVES SHALL BE PROVIDED FOR ALL UNITS WITH FINAL FLOOR ELEVATIONS OF BUILDINGS LESS THAN 1" ABOVE THE NEXT UPSTREAM MANHOLE. OR CONNECTING MANHOLE WHEN THERE IS NO UPSTREAM MANHOLE. MINIMUM COVER OF 3" TO BE PROVIDED FOR ALL COLLECTION LINES 4" AND LARGER IN NON-TRAFFIC AREAS. IF LESS THAN 3", DUCTILE IRON PIPE SHALL BE REQUIRED IN CLASS 1 BEDDING. MINIMUM COVER OF 3" TO BE PROVIDED FOR ALL COLLECTION LINES 4" AND LARGER IN TRAFFIC AREAS. IF LESS THAN 3", DUCTILE IRON PIPE SHALL BE REQUIRED IN CLASS 1 BEDDING (MINIMUM COVER SHALL BE NO LESS THAN 3"). MINIMUM SLOPE FOR 4" AND 6" SANITARY SEWER COLLECTION LINES SHALL BE NO LESS THAN 1/4" PER 100' WITH CLEAN-OUT EVERY 100' FEET. MAINTAIN 24" VERTICAL SEPARATION FROM STORM SEWER OR SPEEDY DUCTILE IRON PIPE FOR SANITARY SEWER. ALSO MAINTAIN 10 FEET HORIZONTAL SEPARATION OR 18" VERTICAL SEPARATION FROM WATER MAINS OR SPEEDY DUCTILE IRON PIPE FOR SANITARY SEWER. IF WATER MAIN PASSES UNDER SANITARY SEWER, BOTH WATER AND SEWER SHALL BE DUCTILE IRON PIPE AND INSTALLED TO WATER LINE SPECIFICATIONS FOR 10' EACH SIDE OF CROSSING. IF SANITARY AND STORM SEWERS CROSS WITH LESS THAN 24" VERTICAL SEPARATION, A CONCRETE CRADLE OF FLOWABLE FILL SHALL BE INSTALLED TO THE SPRINGLINE OF BOTH PIPES. THE CRADLE SHALL BE THE FULL WIDTH OF THE PIPE TRENCH WITH A MINIMUM OF 12" BEYOND THE OUTSIDE EDGES OF THE LARGER PIPE. THE LOWER PIPE SHALL HAVE 1" THICK COMPRESSIBLE JOINT MATERIAL BETWEEN THE CRADLE AND THE PIPE. THE MINIMUM VERTICAL PIPE SEPARATION WITH A CRADLE IS 6". CLEAN-OUTS IN TRAFFIC AREAS SHALL BE TRAFFIC BEARING ACCORDING TO TOWN OF CLAYTON DETAILS.

WATER: MINIMUM COVER OF 3" TO BE PROVIDED. MAINTAIN 18" VERTICAL SEPARATION FROM STORM SEWER. ALSO MAINTAIN 10 FEET HORIZONTAL SEPARATION OR 18" VERTICAL SEPARATION FROM SANITARY SEWER MAINS. IF WATER MAIN PASSES UNDER SANITARY SEWER, BOTH WATER AND SEWER SHALL BE DUCTILE IRON PIPE AND INSTALLED TO WATER LINE SPECIFICATIONS FOR 10' EACH SIDE OF CROSSING. IF WATER AND STORM SEWERS CROSS WITH LESS THAN 18" VERTICAL SEPARATION, A CONCRETE CRADLE OF FLOWABLE FILL SHALL BE INSTALLED TO THE SPRINGLINE OF BOTH PIPES. THE CRADLE SHALL BE THE FULL WIDTH OF THE PIPE TRENCH, WITH A MINIMUM OF 12" BEYOND THE OUTSIDE EDGES OF THE LARGER PIPE. THE LOWER PIPE SHALL HAVE 1" THICK COMPRESSIBLE JOINT MATERIAL BETWEEN THE CRADLE AND THE PIPE. THE MINIMUM VERTICAL PIPE SEPARATION WITH A CRADLE IS 6". PRESSURE REDUCING VALVES SHALL BE PROVIDED IF PRESSURE IS IN EXCESS OF 80 PSI. GENERAL: ALL WATER AND SEWER MAINS WITH PUBLIC EASEMENTS AND RIGHTS-OF-WAY TO BE OWNED, OPERATED AND MAINTAINED BY THE TOWN OF CLAYTON. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE TOWN OF CLAYTON AND THE STATE OF NORTH CAROLINA STANDARDS AND SPECIFICATIONS. ALL UNDERGROUND UTILITIES ARE APPROXIMATELY LOCATED. ACTUAL LOCATION AND DEPTH TO BE CONFIRMED IN THE FIELD BY CONTRACTOR PRIOR TO CONSTRUCTION. NOTIFY ENGINEER OF ANY DISCREPANCY. BEFORE STARTING ANY CONSTRUCTION OF IMPROVEMENTS WITHIN ANY CITY OR TOWN RIGHT-OF-WAY OR HIGHWAY RIGHT-OF-WAY, THE FOLLOWING PROCEDURES SHOULD BE UNDERSTOOD: CITY RIGHT-OF-WAY - CONTACT LOCAL AUTHORITIES TRAFFIC ENGINEERING DEPT. FOR INFORMATION ON DETOURS, OPEN CUTTING OF STREETS OR FOR ANY CONSTRUCTION WITHIN RIGHT-OF-WAY. HIGHWAY RIGHT-OF-WAY - CONTACT PROJECT ENGINEERS AND OBTAIN ALL PERMITS AND ENCROACHMENTS. CROSS-CHECK PLANS WITH SPECIAL PROVISIONS. KEEP COPIES ON CONSTRUCTION SITE. ALSO CONTACT NCDDOT DISTRICT OFFICE 24 HOURS IN ADVANCE BEFORE PLACING CURB AND GUTTER.



BANK
BASS NIXON & KENNEDY, INC.
CONSULTING ENGINEERS
1218 HERITAGE TRACE DRIVE SUITE 201 WAKE FOREST, NC 27887
TELEPHONE: (919) 552-4422 or (919) 552-4423
FAX: (919) 552-4424
CERTIFICATION NUMBER: ICL-0790 (I-0790) (I-0790) (I-0790) (I-0790) (I-0790)

DATE: _____
SCALE: 1" = 40'

UTILITY AND DRAINAGE PLAN

EAST VILLAGE OF CLAYTON
SINGLE FAMILY SUBDIVISION
DEVELOPER: TOLSON & TAFT INVESTMENTS - CLAYTON, LLC
TOWN OF CLAYTON, JOHNSON COUNTY, NORTH CAROLINA

RELEASED FOR CONSTRUCTION OR BID SOLICITATION

SHEET C1.1 OF

**TOWN OF CLAYTON
SUBDIVISION APPLICATION
EVALUATION FORM**

Application Number: SUB 2012-60

The Town Council shall decide the matter of Subdivision Application Number SUB 2012-60 by motion and vote on each of the following four findings of fact. Any motion to find against the application must be supported by statement of specific reasons or conclusions reached in support of the motion.

Finding One of Four:

Circle One

- A. Based on the evidence and testimony presented it is the finding of the Council that the subdivision, if approved, will meet all required specifications and will conform to the Town Unified Development Ordinance. (Applicant meets the criteria for approval).

- B. Based on the evidence and testimony presented it is the finding of the Council that the subdivision, if approved, will meet all required specifications and will conform to the Town Unified Development Ordinance: (Applicant meets the criteria for approval upon acceptance of the noted conditions.)

- C. Based on the evidence and testimony presented it is the finding of the Council that the subdivision, if approved, will not meet all required specifications and/or will not conform to the Town Unified Development Ordinance for the following stated reasons: (Applicant fails to meet the criteria for approval.)

Finding Two of Four:

Circle One

- A. Based on the evidence and testimony presented it is the finding of the Council that the subdivision, if approved, will not be detrimental to the use or orderly development of other properties in the surrounding area and will not violate the character of existing standards for development of properties in the surrounding area. (Applicant meets the criteria necessary for approval.)

- B. Based on the evidence and testimony presented it is the finding of the Council that the subdivision, if approved, will not be detrimental to the use or orderly development of other properties in the surrounding area and will not violate the character of existing standards for development of properties in the surrounding area upon compliance with the following stated conditions: (Applicant meets the criteria necessary for approval upon acceptance of the noted conditions.)

- C. Based on the evidence and testimony presented it is the finding of the Council that the subdivision, will be detrimental to the use or orderly development of other properties in the surrounding area and/or will violate the character of existing standards for development of properties in the surrounding area for the following stated reasons: (Applicant fails to meet the criteria necessary for approval.)

Finding Three of Four:

Circle One

- A. Based on the evidence and testimony presented it is the finding of the Council that the subdivision design, if approved, will provide for the distribution of traffic in a manner that will avoid or mitigate congestion within the immediate area, will provide for the unified and orderly use of or extension of public infrastructure, and will not materially endanger the environment, public health, safety, or the general welfare. (Applicant meets the criteria necessary for approval.)**

- B. Based on the evidence and testimony presented it is the finding of the Council that the subdivision design, if approved, will provide for the distribution of traffic in a manner that will avoid or mitigate congestion within the immediate area, will provide for the unified and orderly use of or extension of public infrastructure, and will not materially endanger the environment, public health, safety, or the general welfare upon compliance with the following stated conditions: (Applicant meets the criteria necessary for approval upon acceptance of the noted conditions.)**

- C. Based on the evidence and testimony presented it is the finding of the Council that the subdivision design, if approved, will not provide for the distribution of traffic in a manner that will avoid or mitigate congestion within the immediate area, will not provide for the unified and orderly use of or extension of public infrastructure, and/or will materially endanger the environment, public health, safety, or the general welfare for the following reasons. (Applicant fails to meet the criteria for approval.)**

Finding Four of Four:

Circle One

A. Based on the evidence and testimony presented it is the finding of the Council that the subdivision, if approved, will not adversely affect the general plans for the orderly growth and development of the town and is consistent with the planning policies adopted by the Town Council. (Applicant meets the criteria necessary for approval.)

B. Based on the evidence and testimony presented it is the finding of the Council that the subdivision, if approved, will not adversely affect the general plans for the orderly growth and development of the town and is consistent with the planning policies adopted by the Town Council upon compliance with the following stated conditions: (Applicant meets the criteria necessary for approval upon acceptance of the noted conditions.)

C. Based on the evidence and testimony presented it is the finding of the Council that the subdivision, if approved, will adversely affect the general plans for the orderly growth and development of the town and/or is not consistent with the planning policies adopted by the Town Council for the following stated reasons: (Applicant fails to meet the criteria necessary for approval.)

Once all findings have been decided one of the two following motions must be made:

Motion to Approve: Based upon satisfactory compliance with the above four stated findings and fully contingent upon acceptance and compliance with all conditions as previously noted herein and with full incorporation of all statements and agreements entered into the record by the testimony of the applicant and applicant's representative I move to approve Subdivision Application # _____.

Motion to Deny: Based upon failure to meet all of the above four stated findings and for reasons stated therein, I move to deny Subdivision Application # _____.

Record of Decision:

Based on a motion and majority vote of the Clayton Town Council Subdivision Application Number SUB 2012-60 is hereby:

_____ approved upon acceptance and conformity with all stated conditions; or,

_____ denied for the noted reasons.

Decision made this ____ day of _____, 2012 while in regular session.

Mayor

ATTEST:

Town Clerk

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

Agenda Item: 5d

Meeting Date: 9/04/12

TITLE: EVIDENTIARY HEARING FOR PLANNED DEVELOPMENT DISTRICT REQUEST PDD-MU 2012-10 FOR JOHNSTON MEDICAL CENTER CLAYTON LOCATED ON NC 42 HWY WEST AND ADJACENT OT THE EXISTING HOSPITAL.

DESCRIPTION: True Line Surveying is requesting rezoning to planned development – mixed use and major subdivision approval for approximately 27 acres. The property is located on NC 42 HWY West and adjacent to the existing hospital and medical office building. The property is located in the Town and within the Small Area Plan. The site is a portion of parcel number 05G03004C. The project includes request for

- Rezoning / Master Plan Modification**
- Major Subdivision Approval**

Upon completion of the evidentiary hearing, the following Council action is requested:

- Action on the rezoning request**
- Action on finding the request is consistent and reasonable**
- Action on the four findings for preliminary subdivision**
- Action on the application based on the results of the evaluation**

RELATED GOAL: Manage Growth Producing Quality Developments

ITEM SUMMARY:

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
8-20-12	Presentation	Application, Staff report, Aerial map and Preliminary Subdivision Plan.
9-04-12	Evidentiary hearing.	Hearing procedures, Application, staff report, Aerial map & preliminary Subdivision plan.

**TOWN OF CLAYTON
PLANNED DEVELOPMENT DISTRICTS
(PD-R, PD-C, PD-I, PD-MU)
HEARING PROCEDURES**

1. **HEARING:** The Mayor shall call the hearing and announce the case.
2. **RULES OF PROCEDURE:** The Town Attorney introduces the planned development rezoning procedures and evidentiary hearing procedures. If a protest petition has been received, the Town Attorney will announce if it meets the requirements to invoke the super majority rule; and if applicable, explain the super majority rule. The Town Attorney shall be responsible for keeping all testimony within acceptable legal guidelines.
3. **STAFF REPORT:** The staff shall give its report.
4. **APPLICANT TESTIMONY:** The applicant shall be called to present their case. The applicant is responsible for successfully addressing the following rezoning Master Plan Approval Criteria [155.705(K)]:
 - a. Compliance with 155.203(K) and all other applicable requirements of this chapter;
 - b. Consistency with the Clayton General Design Guidelines;
 - c. Conformance of the proposal with the stated purpose of the requested planned development district;
 - d. Compatibility of the proposed development with the adjacent community;
 - e. The quality of design intended for each component of the project and the ability of the overall development plan to ensure a unified, cohesive environment at full build-out;
 - f. Self-sufficiency of each phase of the overall project;
 - g. Documentation that the proposed infrastructure improvements accommodate the additional impacts caused by the development, or documentation to assure that the development, as proposed, will not overtax the existing public infrastructure systems;
 - h. The fiscal impact of the proposal and the proposed financing of required improvements;
 - i. The success of the proposal in providing adequate pedestrian and bicycle links within the development and with the adjacent community; and
 - j. The effectiveness with which the proposal protects and preserves the ecologically sensitive areas within the development.

In addition, the applicant will also address the required findings of fact for preliminary subdivision approval [155.706(I) (10)]:

1. Consistency with the adopted plans and of policies of the Town.
2. The subdivision meets all required specifications of this chapter.

3. The subdivision will not be detrimental to the use or orderly development of other properties in the surrounding area and will not violate the character of existing standards for development of properties in the surrounding area.
4. The subdivision design will provide for the distribution of traffic in a manner that will avoid or mitigate congestion within the immediate area, will provide for the unified and orderly use of or extension of public infrastructure, and will not materially endanger the environment, public health, safety, or the general welfare.
5. **OPPOSITION TESTIMONY:** Those speaking in opposition to the application shall be called upon to present their case.
6. **APPLICANT REBUTTAL:** The applicant and/or those in support shall be provided an opportunity to rebut the testimony provided by the opposition.
7. **OPPOSITION REBUTTAL:** Those in opposition shall be provided an opportunity to rebut testimony provided by the applicant.
8. **COUNCIL INQUIRY:** The Council may ask questions of the applicant, opposition, or staff at this time. There shall be no time limit except that the Mayor shall be responsible for keeping questions and responses relevant and factual.
9. **DELIBERATION:** The Mayor shall call the Council into deliberation. Once called into deliberation, no person may address the Council and no questions may be asked by Council to the public.
10. **UTILITY ALLOCATION (WHEN APPLICABLE):** In the event of pending action on a utility allocation request related to the case and after deliberation, the Council shall take action on the utility allocation in accordance with related policies and procedures.
11. **REZONING APPROVAL CRITERIA [155.705(J)]:** In connection with its legislative decision on a rezoning request, the Town Council may consider factors including, but not limited to, the following:
 - a. Consistency with the adopted plans and policies of the town;
 - b. Suitability of the subject property for uses permitted by the current versus the proposed district;
 - c. Whether the proposed change tends to improve the balance of uses, or meets a specific demand in the town;
 - d. The capacity of adequate public facilities and services including schools, roads, recreation facilities, wastewater treatment and water supply facilities and storm water drainage facilities for the proposed use;

- e. It has been determined that the legal purposes for which zoning exists are not contravened;
- f. It has been determined that there will be no adverse effect upon adjoining property owners unless such effect can be justified by the overwhelming public good or welfare; and
- g. It has been determined that no one property owner or small group of property owners will benefit materially from the change to the detriment of the general public.

12. ACTION BY TOWN COUNCIL FOR THE REZONING [155.705(I)]:

The Town Council may:

- ↳ Approve the rezoning,
- ↳ Deny the rezoning, or
- ↳ Send the rezoning back to the Planning Director for additional consideration.

Concurrently with adopting, denying, or remanding any rezoning, the Town Council shall:

- ↳ Adopt a statement describing whether its action is consistent with the adopted plans and policies of the Town; and
- ↳ Explain why the Town Council considers the action taken to be reasonable and in the public interest.

13. ACTION BY TOWN COUNCIL FOR THE PRELIMINARY SUBDIVISION FINDINGS FOR DECISION: After deliberation of the evidence has been completed and action on the utility allocation (when applicable) and the rezoning request; each finding shall be discussed in turn and a motion, second and vote shall be made selecting one of the three alternatives for each finding. A majority vote shall prevail.

14. ACTION – APPLICATION: Once all four findings have been decided and based on the results of the evaluation and vote on those findings, the Council shall make a motion and vote to approve or deny the application. Failure of any single criteria to achieve majority approval by the Council shall necessitate a decision against the application. A majority vote for approval for all of the four criteria shall necessitate a decision in favor of the application.



Town of Clayton
 Planning Department
 111 E. Second Street, Clayton, NC 27520
 P.O. Box 879, Clayton, NC 27528
 Phone: 919-553-1545
 Fax: 919-553-1720

PLANNED DEVELOPMENT APPLICATION

Pursuant to Article 7, Section 155.705 of the Unified Development Code, an owner of land within the jurisdiction of the Town (or a duly authorized agent) may petition the Town of Clayton to rezone property to a Planned Development District. Applicants seeking Planned Development approval shall schedule a pre-application conference with the Planning Director in accordance with Section 155.702(A).

Planned Development applications must be accompanied by nine (9) sets of the application, nine (9) sets of required plans, an Owner's Consent Form (attached) and the application fees. The application fees are \$500.00 plus \$5.00 per lot/unit for residential and/or \$5.00 per acre for non-residential uses.

All fees are due when the application is submitted. Please note that Section 155.702(B) of the Unified Development Code requires a Neighborhood Meeting for all Planned Development applications.

APPLICATION REQUEST:

New

Amended

Planned Development Type:

Planned Development - Residential

Planned Development - Commercial

Planned Development - Mixed Use

Planned Development - Industrial

Justification Statement. Attach to application. Please address the purpose, intent and design objectives of the planned development requested.

SITE INFORMATION:

Development Name: Johnston Memorial Total Acreage of Development: ~~27 Ac ±~~ 73.93 ac

TAG Number(s) (attach additional sheet if necessary): _____ Affected Acreage: ~~27 Ac ±~~ 73.93 ac

Location: Amelia Church and Hwy 42

Overlay District (if applicable): _____

Existing Zoning: PDD-MU Proposed Underlying Zoning: PDD-MU

Number of Lots/Parcels (Existing): 1 (Proposed): 5

Has the Property been Platted? yes Plat Book/Page: 69/326

Will the Plat be affected by request (Y/N)? No If Yes, explain in Justification Statement

Proposed Use (s): _____

FOR OFFICE USE ONLY

Amount Paid: CK# 17908 Date Received: JAN 11 2012 File Number: PDD-MU-2012-10 ^{Amended}
\$ 635.00 Page 112 of 180

OWNER INFORMATION:

Name: Johnston Memorial Hospital Authority
 Mailing Address: P.O. Box 1376, Smithfield, N.C. 27577
 Phone Number: _____ Fax: _____
 Email Address: _____

APPLICANT INFORMATION:

Applicant: True Line Surveying
 Mailing Address: 205 W. Main St Clayton N.C. 27520
 Phone Number: 359-0427 Fax: 359-0428
 Contact Person: Curk T. Lane
 Email Address: curk@truelinesurveying.com

MASTER PLAN REQUIREMENTS:

A Master Plan meeting the following criteria must accompany this application. A Master Plan which also meets the requirements of a preliminary subdivision/plat may be approved as the Master Plan for the development and the Preliminary Plat concurrently.

Master Plan Approval Criteria:

- (1) Compliance with § 155.203(K) and all other applicable requirements of the Unified Development Code;
- (2) Consistency with the Clayton General Design Guidelines;
- (3) Conformance of the proposal with the stated purpose of the requested planned development district;
- (4) Compatibility of the proposed development with the adjacent community;
- (5) The quality of design intended for each component of the project and the ability of the overall development plan to ensure a unified, cohesive environment at full build-out;
- (6) Compatible relationships between each component of the overall project;
- (7) Self-sufficiency of each phase of the overall project;
- (8) Documentation that the proposed infrastructure improvements accommodate the additional impacts caused by the development, or documentation to assure that the development, as proposed, will not overtax the existing public infrastructure systems;
- (9) The fiscal impact of the proposal and the proposed financing of required improvements;
- (10) The success of the proposal in providing adequate pedestrian and bicycle links within the development and with the adjacent community; and
- (11) The effectiveness with which the proposal protects and preserves the ecologically sensitive areas within the development.

PLANNED DEVELOPMENT WAIVER REQUESTS:

Waivers to the general development standards specified in the Unified Development Code (UDC) sections 155.400 through 155.405 and subdivision standards specified in UDC sections 155.600 through 155.607 may be granted by Town Council.

Please list Waiver requests:

Code Section	Requirement	Waiver

If you are requesting waivers, please include appropriate justification for the waivers within the required justification statement.

MAJOR SUBDIVISION/PRELIMINARY PLAT (if applicable)

The following items must accompany the Planned Development application when submitting the preliminary subdivision/plat concurrently. The following information is required, except where otherwise noted:

- Required findings (please address the required findings below).
- Required plans (please see the plan requirements checklist below).
- Road Name Approval Application (if applicable).
- A signed and sealed traffic impact analysis (if required).
- Verification of wastewater allocation (granted or requested).
- Verification of approval for the potable water and waste water system improvements from North Carolina Department of Environment and Natural Resources (NCDENR).
- Verification of approval for individual well and septic systems from Johnston County Department of Environmental Health Services (if applicable).
- Driveway permits (Town of Clayton or NCDOT encroachment with associated documentation).
- A copy of proposed deed restrictions and/or covenants (if applicable).

Exhibit A

REQUIRED FINDINGS – MAJOR SUBDIVISIONS/PRELIMINARY PLAT ONLY

Section 155.706(I)(10) of the Unified Development Code requires that certain findings must be made by the Town Council before a Major Subdivision may be approved. Outline below (you may attach additional sheets) how the application addresses each of the following findings:

- (1) That the subdivision meets all required specifications of the town Subdivision Regulations and conforms to the town Unified Development Code.

Yes

- (2) That the subdivision will not be detrimental to the use or orderly development of other properties in the surrounding area and will not violate the character of existing standards for development of properties in the surrounding area.

No, part of approved PDD

- (3) That the subdivision design will provide for the distribution of traffic in a manner that will avoid or mitigate congestion within the immediate area, will provide for the unified and orderly use of or extension of public infrastructure, and will not materially endanger the environment, public health, safety, or the general welfare.

Yes

- (4) That the subdivision will not adversely affect the general plans for the orderly growth and development of the town and is consistent with the planning policies adopted by the Town Council.

No, part of growth plan and approved PDD



Town of Clayton
 Planning Department
 111 E. Second Street, Clayton, NC 27520
 P.O. Box 879, Clayton, NC 27528
 Phone: 919-553-1545
 Fax: 919-553-1720

OWNER'S CONSENT FORM

Name of Project: _____ Submittal Date: _____

OWNERS AUTHORIZATION

I hereby give CONSENT to _____ (type, stamp or print clearly full name of agent) to act on my behalf, to submit or have submitted this application and all required material and documents, and to attend and represent me at all meetings and public hearings pertaining to the application(s) indicated above. Furthermore, I hereby give consent to the party designated above to agree to all terms and conditions which may arise as part of the approval of this application.

I hereby certify I have full knowledge the property I have an ownership interest in the subject of this application. I understand that any false, inaccurate or incomplete information provided by me or my agent will result in the denial, revocation or administrative withdrawal of this application, request, approval or permits. I acknowledge that additional information may be required to process this application. I further consent to the Town of Clayton to publish, copy or reproduce any copyrighted document submitted as a part of this application for any third party. I further agree to all terms and conditions, which may be imposed as part of the approval of this application.

[Signature]
Signature of Owner
Kyle Mc Dermott
Print Name
1-6-12
Date

CERTIFICATION OF APPLICANT AND/OR PROPERTY OWNER

I hereby certify the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the Planning Department of the Town of Clayton, North Carolina, and will not be returned.

Signature of Owner/Applicant

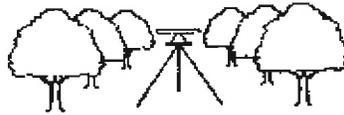
Print Name

Date

FOR OFFICE USE ONLY

File Number: _____	Date Received: _____	Parcel ID Number: _____
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TRUE LINE SURVEYING, P.C.



Town of Clayton
Planning Department
111 East Second Street
Clayton, N.C. 27520

July 18, 2012

Ms. Franson,

True Line Surveying held a neighborhood meeting for Johnston Memorial Hospital on July 17, 2012 at 6:00PM. Jimmy Wooten, Audrey Wooten, Durwood Hargis and Kyle McDermott attended the meeting. Everyone was pleased and had no complaints.

Thank You

A handwritten signature in black ink, appearing to read "Curk T. Lane". The signature is fluid and cursive, with a long horizontal stroke at the end.

Curk T. Lane
True Line Surveying, P.C.

Neighborhood Meeting

Johnston Memorial

7-17-12

Name	Signature
Jimmy Jimmy Woaten	Jimmy Woaten
Audrey Woaten	Audrey Woaten
Durwood G. Hargis	DURWOOD G. HARGIS
Kyle McDermott	Kyle McDermott



Town of Clayton
Planning Department
111 E. Second Street, Clayton, NC 27520
P.O. Box 879, Clayton, NC 27528
Phone: 919-553-1545
Fax: 919-553-1720

STAFF REPORT

Application Numbers: PD-MU 2012-10 (Rezoning/Master Plan modification) and (Preliminary Subdivision modification)
Project Name: Johnston Memorial Hospital
TAG: 05G03004E, 05G03004C
Town Limits/ETJ: Town Limits
Overlay: Thoroughfare Overlay District
Applicant: True Line Surveying
Owners: Johnston Memorial Hospital Authority
Agents: Curk Lane

Neighborhood Meeting: To be held July 17, 2012

PROJECT LOCATION: The project is located on NC 42 Hwy W adjacent to the hospital, within the Small Area Plan and town limits of Clayton.

REQUEST: The applicant is requesting approval for rezoning to Planned Development – Mixed Use (PD-MU), modification to the master plan and preliminary subdivision plan approval.

SITE DATA:

Total Acreage: 73.93 acres
Subdivision Acreage: 25.93 acres (5 new lots)
Present Zoning: PD-MU
Proposed Zoning: PD-MU (Utilizing B-3 Development Standards)
Existing Use: Vacant
Impervious Surface: NA

DEVELOPMENT DATA:

Proposed Uses: Mixed-uses including office, medical office, commercial and nursing home facility development uses over 5 additional phases.

Buildings: The applicant has not submitted a site plan application at this time.

Number of Stories: To be determined during the site plan approval process.

Required Parking: To be determined during the site plan approval process.

Proposed Parking: To be determined during the site plan approval process.

ENVIRONMENTAL: There is limited environmental concern associated with this property. Applicant is proposing to take steps to preserve as much existing vegetation as possible and use the pond on the site as a feature to enhance the quality of the development.

ADJACENT ZONING AND LAND USES:

North:	Zoning:	R-E
	Existing Use:	Residential
South:	Zoning:	PD-MU, R-E
	Existing Use:	Vacant, Residential, and Vacant
East:	Zoning:	R-E
	Existing Use:	Residential
West:	Zoning:	PD-MU
	Existing Use:	Hospital, and Medical Office Building

STAFF ANALYSIS AND COMMENTARY:

The Johnston Memorial Hospital development was originally approved in May of 2007. The proposal included approximately 76.095 acres of land. The original site design included three phases:

- Phase I - the existing hospital and medical office building;
- Phase II - building additions to the hospital; and
- Phase III - building additions to the existing hospital and a medical office building close to NC 42 Hwy W.

The current proposal includes the planning of five additional phases on five lots totaling of 25.93 acres on the east side of the existing lake. The applicant is proposing medical/professional office, commercial and a nursing home facility which will be accessed from two proposed streets. Primary access will be directly from and entrance on NC 42 Hwy W with cross access through the existing hospital development. Since the applicant has not identified a specific intensity for the subdivision, a traffic impact analysis will be required prior to the issuance of site plan approval for any of the five new lots.

- **Consistency with the Strategic Growth Plan**

The proposed uses are consistent with the Strategic Growth Plan and the Small Area Plan.

- **Consistency with the Unified Development Code**

The proposed rezoning, master plan and major subdivision modifications are consistent with and meet the applicable requirements of the Unified Development Code (UDC).

- **Compatibility with Surrounding Land Uses**

The proposed uses are compatible with the existing and proposed surrounding land uses.

- **Landscaping and Buffering**

The landscaping and buffering proposed for the subject site are consistent with the requirements of UDC Section 155.402 (landscaping, screening and buffering) and Section 155.204 Overlay District Standards.

- **Signs**

The development is required to comply with the common signage plan established by the hospital.

- **Site Design**

The development will occur in five phases. Site design will be approved by the Planning Board for each phase and tract of the development.

- **Architecture**

Architectural elevations shall be consistent with the existing hospital. Elevations will be required as a part of site plan approval for all components of the development as individual site plan applications are submitted.

- **Waivers/Deviations/Variances from Code Requirements**

None requested.

OTHER:

FIRE PROTECTION: The Town of Clayton Fire Department will provide fire protection.

ACCESS/STREETS: The development will be accessed by a driveway on NC 42 Hwy W. New/modified driveways are subject to NCDOT approval.

WATER/SEWER PROVIDER: Town of Clayton

ELECTRIC PROVIDER: Progress Energy

CONSIDERTIONS

- The applicant is requesting modification (rezoning) approval to the PD-MU master plan.
- The applicant is requesting major subdivision approval.

FINDINGS:

When adopting or rejecting the Rezoning to PD-MU, the Town Council may consider the Rezoning approval criteria set forth in UDC Section 155.705(J), and shall approve a statement describing whether its action is consistent with an adopted comprehensive plan and any other officially adopted plan that is applicable, and briefly explaining why the board considers the action taken to be reasonable and in the public interest.

In addition to the above, the applicant has addressed the Master Plan Approval Criteria outlined in UDC Section 155.705(K) and the Findings of Fact detailed in UDC Section 155.706(I)(10) required for a subdivision. The applicant's Findings of Fact are incorporated into the record as Exhibit A of the Staff Report.

RECOMMENDATION:

Staff is recommending approval of the PD-MU (rezoning) master plan modification and major subdivision plan subject to the following conditions of approval.

CONDITIONS OF APPROVAL**Previous Conditions:**

- (1) The applicant shall complete the subdivision strictly in accordance with the plans submitted to and approved by this Board, a copy of which is filed in the Planning Department Office.
- (2) If any of the conditions affixed hereto or any part of thereof shall be held invalid or void, then this approval shall be void and have no effect.

Previous Additional Conditions:

1. Utility acreage and access fees shall be paid to the Town prior to issuance of any building permits.
2. The review and approval of project water, sewer, storm drainage and street construction drawings is a separate process. Two sets of these drawings must be submitted for approval to Public Works Department when they become available.
3. Timing and extent of road improvements beyond Phase 1 must be coordinated and approved by NCDOT, to include signalization and construction of the ultimate cross-section of NC HWY 42 West.
4. Driveway Permits must be approved by NCDOT prior to the issuance of zoning permits.
5. A wastewater allocation must be approved prior to the issuance of building permits.

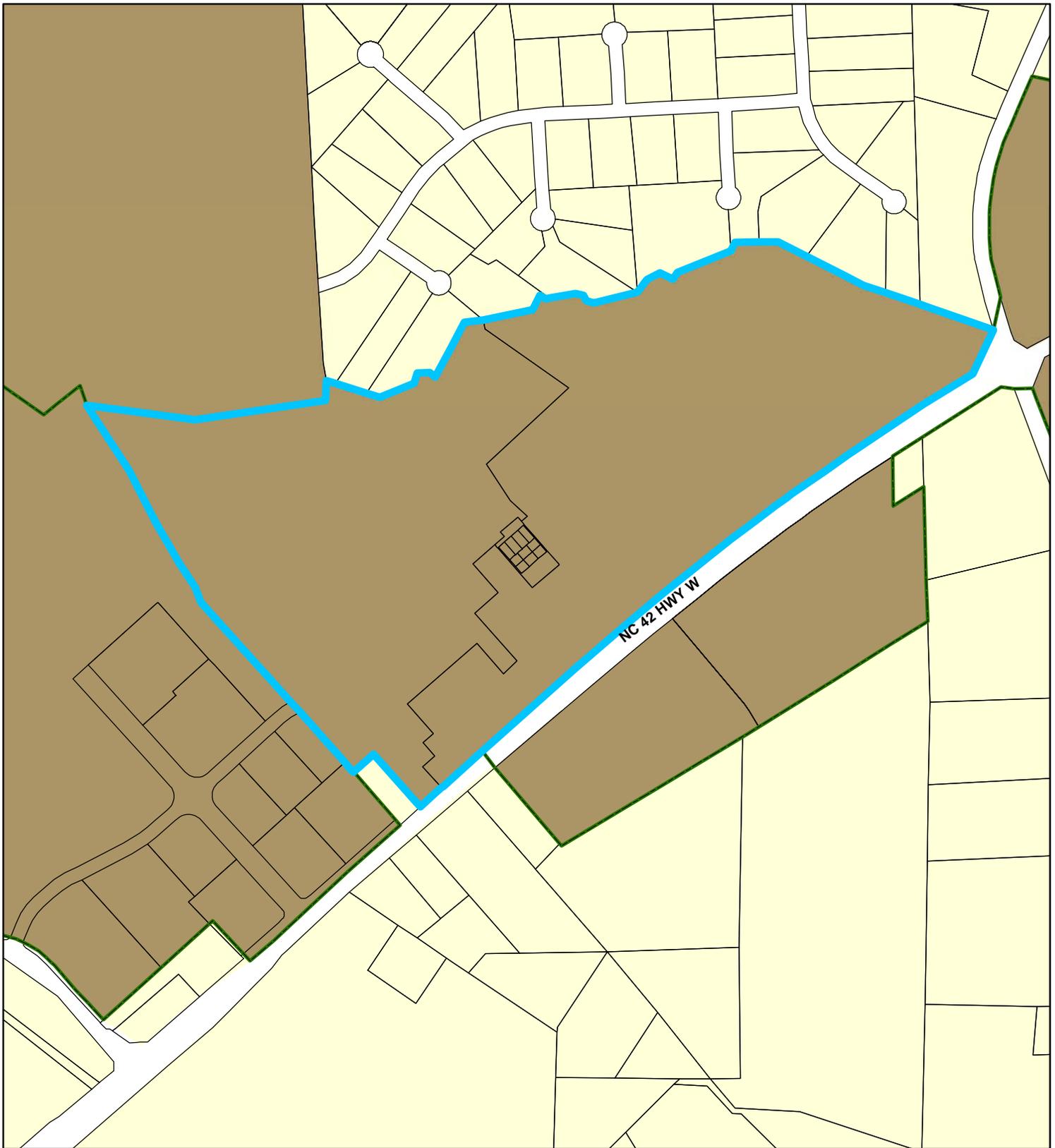
New Conditions:

1. A Traffic Impact Analysis shall be submitted in conjunction with any site plan submittal associated with Tract II.

2. A Certificate of Occupancy for any phase of Tract II shall not be released until the traffic impact associated with phased development has been addressed.
-

PLANNING BOARD RECOMMENDATION:

The Planning Board recommended approval of PD-MU 2012-10 (Rezoning/Master Plan modification) and (Preliminary Subdivision modification) on July 23, 2012 subject to the recommended conditions of approval.



Legend

Clayton Town Limits	R-6	PD-C
Clayton ETJ	PD-R	I-1
R-E	B-1	I-2
R-10	B-2	O-1
R-8	B-3	PD-MU
Produced by: TOC Planning	SUD	

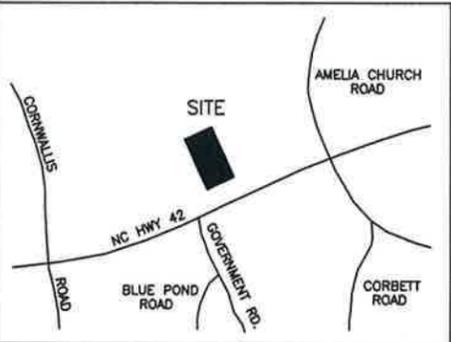
Zoning/Aerial Map

Applicant(s): Curk Lane, True Line Surveying
 Property Owner(s): Johnston Memorial Hospital Authority
 Parcel Number(s) 05G03004C (Portion of)
 File Number(s): PD-MU 2012-10 JMH Master Plan

J

Disclaimer: Town of Clayton assumes no legal responsibility for the information represented here.





VICINITY MAP (NOT TO SCALE)

N/F
UACFE, LLC.
DB 3372 PG 969
PIN 164800-63-4931

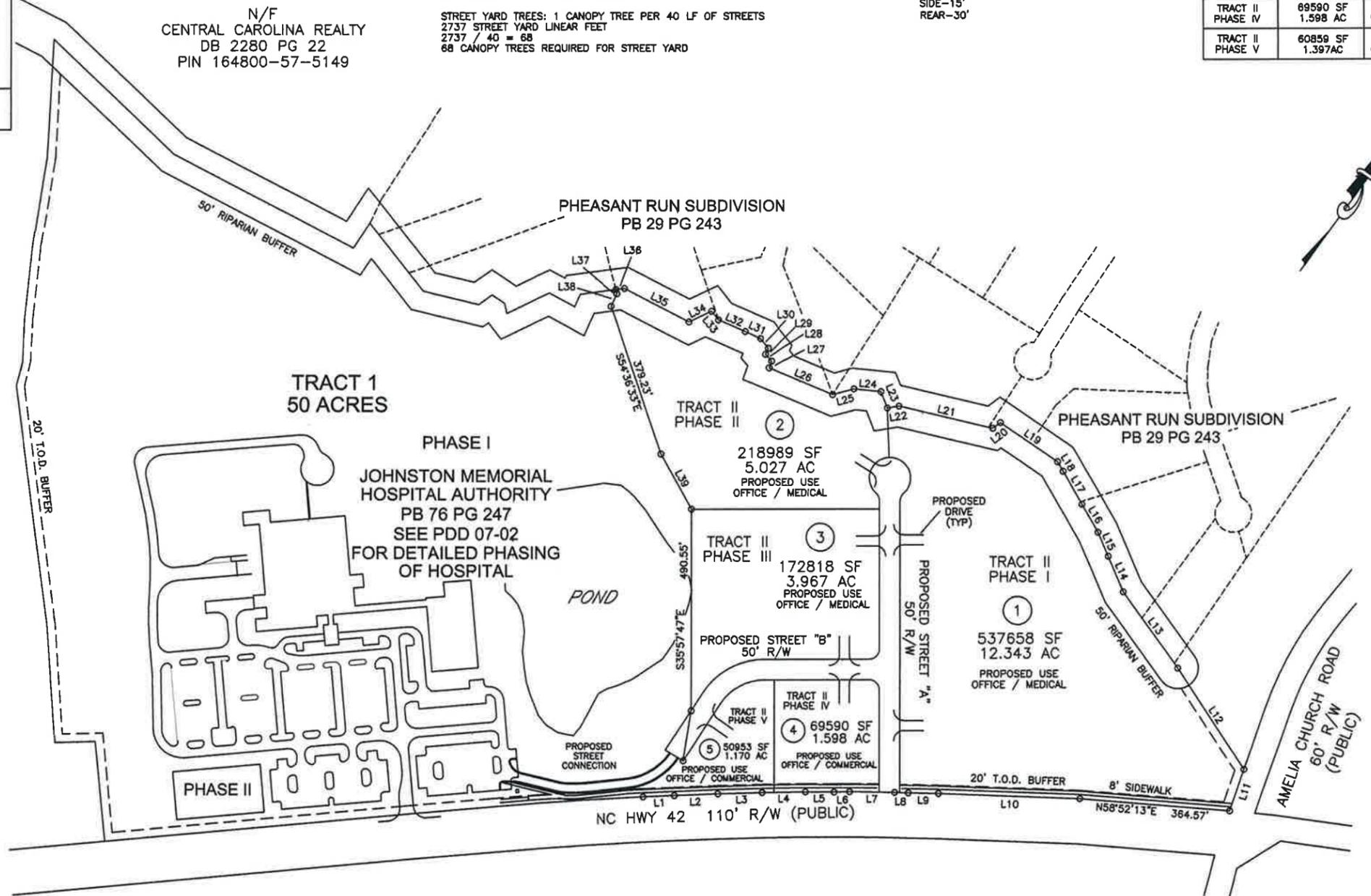
LANDSCAPE CALCULATIONS

LINEAR FEET OF 20' CLASS "C" (TOD) BUFFER.....1627 LF
 LANDSCAPE REQUIREMENTS PER 100' LINEAR FEET OF BUFFER:
 1 WALL OR BERM
 2 CANOPY TREES
 1 UNDERSTORY TREE
 12 SHRUBS
 1627 LF / 100 LF = 163
 2 CANOPY TREES * 163 = 326 CANOPY TREES
 1 UNDERSTORY TREE * 163 = 163 UNDERSTORY TREES
 12 SHRUBS * 163 = 1956 SHRUBS
 STREET YARD TREES: 1 CANOPY TREE PER 40 LF OF STREETS
 2737 STREET YARD LINEAR FEET
 2737 / 40 = 68
 68 CANOPY TREES REQUIRED FOR STREET YARD

SITE DATA

AREA IN TRACT II.....1129474 SF 25.929 AC
 AREA IN R/W.....68145 SF 1.564 AC
 LINEAR FEET IN STREETS.....1273 LF
 AREA IN LOTS.....1061329 SF 24.365 AC
 NUMBER OF LOTS PROPOSED.....5
 AVERAGE LOT SIZE.....4.873 AC
 PROPOSED ZONING: PDD-MU UNDERLYING B-3
 PROPERTY IS LOCATED IN THE TOWN LIMITS
 MAX. BUILDING HEIGHT - 60'
 SETBACKS FRONT-25'
 SIDE-15'
 REAR-30'

PARCEL NO.	SIZE	PROP. USE
TRACT II PHASE I	537658 SF 12.343 AC	OFFICE / MEDICAL
TRACT II PHASE II	218989 SF 5.027 AC	OFFICE / MEDICAL
TRACT II PHASE III	174229 SF 4.000 AC	OFFICE / MEDICAL
TRACT II PHASE IV	69590 SF 1.598 AC	OFFICE / COMMERCIAL
TRACT II PHASE V	60859 SF 1.397 AC	OFFICE / COMMERCIAL



NUMBER	DIRECTION	DISTANCE
L1	N51°26'51"E	74.15'
L2	N51°54'55"E	104.69'
L3	N52°27'45"E	106.11'
L4	N53°14'03"E	105.20'
L5	N54°32'41"E	69.67'
L6	N52°45'05"E	37.67'
L7	N54°54'32"E	109.35'
L8	N56°00'55"E	32.82'
L9	N55°22'09"E	72.00'
L10	N56°16'39"E	340.09'
L11	N17°05'17"W	106.55'
L12	N68°58'37"W	293.86'
L13	N71°26'31"W	228.19'
L14	N58°48'14"W	94.18'
L15	N58°48'14"W	63.43'
L16	N65°42'45"W	78.78'
L17	N65°42'45"W	92.31'
L18	N66°02'20"W	27.04'
L19	S88°41'09"W	167.75'
L20	S17°01'34"W	22.87'
L21	S67°36'37"W	223.02'
L22	S45°09'12"W	28.82'
L23	N57°35'59"W	42.65'
L24	S59°51'22"W	65.76'
L25	S39°18'25"W	53.80'
L26	S76°50'37"W	168.31'
L27	N16°30'58"W	17.24'
L28	N76°23'50"W	21.98'
L29	N12°15'39"W	16.19'
L30	N74°10'05"W	30.16'
L31	S78°57'31"W	40.52'
L32	S77°54'38"W	70.11'
L33	N74°15'59"W	26.89'
L34	S28°48'15"W	60.55'
L35	S81°50'06"W	174.36'
L36	S46°41'59"W	21.46'
L37	S49°57'41"E	10.32'
L38	S12°00'06"E	33.38'
L39	S64°19'29"E	152.59'

MASTER CONCEPT PLAN FOR

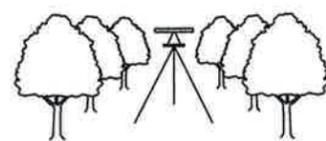
JOHNSTON MEMORIAL HOSPITAL AUTHORITY

CLAYTON TOWNSHIP, JOHNSTON COUNTY
 NORTH CAROLINA
 JUNE 04, 2012

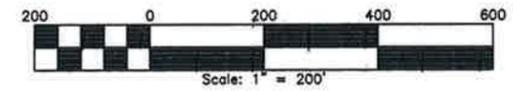
REVISED 7-16-12: TOC COMMENTS

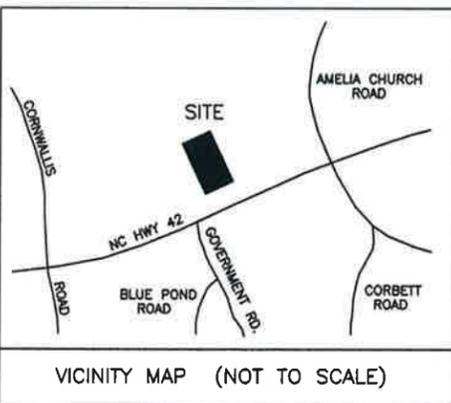
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DRAWN BY:	MIKE
CHECKED BY:	
DRAWING NAME:	MASTER.DWG
SURVEY DATE:	
JOB NO.	1758.001

TRUE LINE SURVEYING, P.C.



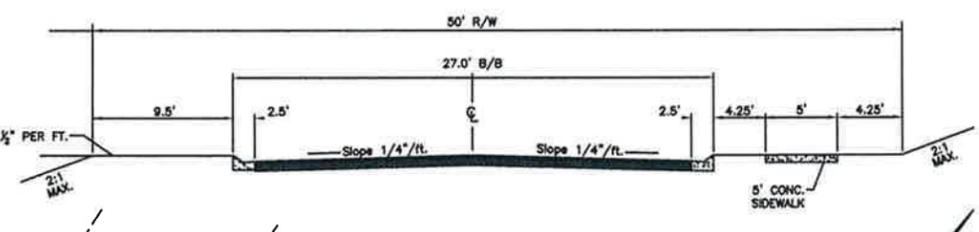
205 WEST MAIN STREET
 CLAYTON, N.C. 27520
 TELEPHONE: (919) 359-0427
 FAX: (919) 359-0428
 www.truelinesurveying.com





**PHEASANT RUN SUBDIVISION
PB 29 PG 243**

NUMBER	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD DIRECTION
C2	25.00	39.65	35.62	N09°28'22"E
C3	25.00	39.27	35.36	N80°57'47"W
C7	25.00	39.27	35.36	N09°02'13"E
C8	25.00	21.03	20.41	N60°03'29"W
C9	50.00	118.71	92.73	N16°08'09"W
C10	50.00	122.47	94.07	S57°58'47"E
C11	25.00	21.03	20.41	S11°52'06"E
C12	25.00	38.69	34.94	S80°17'49"E
C16	175.00	174.18	167.08	S25°29'52"W
C17	125.00	124.41	119.34	S25°29'52"W
C18	175.00	121.37	118.95	S16°51'12"W



LEGEND

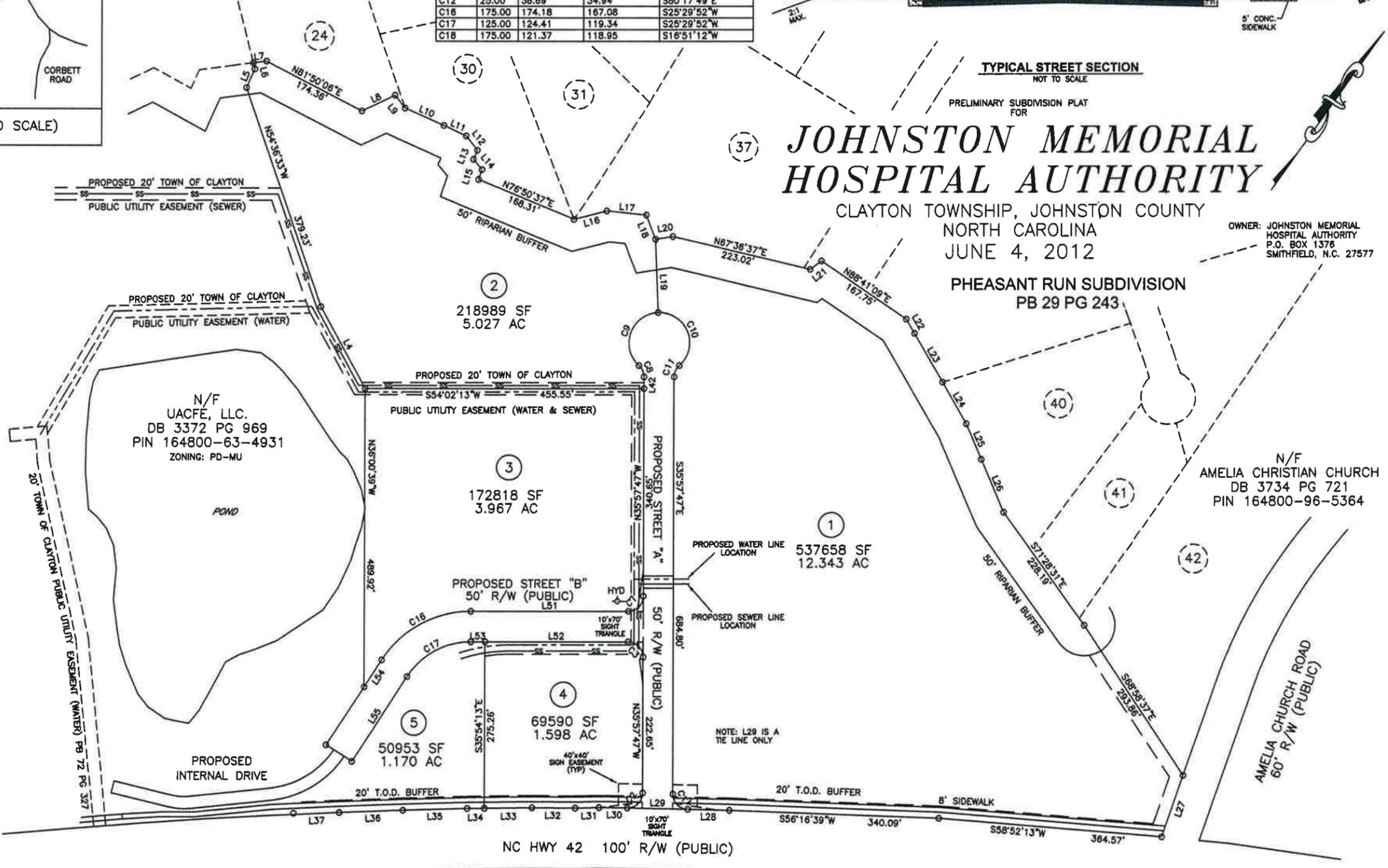
- IRON PIPE FOUND
- IRON PIPE SET
- CONCRETE MONUMENT FOUND
- PARKER-KALON NAIL FOUND
- PARKER-KALON NAIL SET
- RAILROAD SPIKE
- COTTON SPIKE FOUND
- COTTON SPIKE SET
- CONTROL CORNER
- COMPUTED POINT
- POWER POLE
- OVERHEAD POWER LINE
- RIGHT OF WAY
- SQUARE FEET
- ACRE
- DEED BOOK
- PLAT BOOK
- BOOK OF MAPS
- PAGE
- LINEAR FEET
- LOT HAS OFFSITE SEWER
- OFFSITE SEWER LOT
- RECOMBINATION LOT
- STREET ADDRESS
- LINES NOT SURVEYED

NUMBER	DIRECTION	DISTANCE
L4	N64°19'29"W	152.59'
L5	N12°00'08"W	33.38'
L6	N48°57'41"W	10.32'
L7	N48°41'59"E	21.48'
L8	N28°48'15"E	60.55'
L9	S74°15'59"E	26.89'
L10	N77°54'38"E	70.11'
L11	N78°57'31"E	40.52'
L12	S74°10'05"E	30.16'
L13	S12°15'39"E	16.19'
L14	S78°23'50"E	21.98'
L15	S16°30'58"E	17.24'
L16	N38°18'25"E	53.80'
L17	N59°51'22"E	65.76'
L18	S57°35'59"E	42.65'
L19	N38°07'09"W	120.32'
L20	N45°09'12"E	28.82'
L21	N17°01'34"E	22.87'
L22	S66°02'20"E	27.04'
L23	S65°42'45"E	92.31'
L24	S65°42'45"E	78.78'
L25	S58°48'14"E	63.43'
L26	S58°48'14"E	94.18'
L27	S17°05'17"E	106.55'
L28	S55°22'09"W	67.97'
L29	S55°17'28"W	99.82'
L30	S54°54'32"W	46.37'
L31	S52°45'05"W	37.67'
L32	S54°32'41"W	69.67'
L33	S53°14'03"W	76.93'
L34	S53°14'03"W	28.27'
L35	S52°27'45"W	106.11'
L36	S51°54'55"W	104.69'
L37	S51°26'51"W	74.15'
L42	N35°57'47"W	19.32'
L48	S03°00'55"E	113.32'
L51	S54°00'40"W	254.63'
L52	S54°00'40"W	231.00'
L53	N54°00'40"E	23.63'
L54	S03°00'55"E	52.83'
L55	S03°00'55"E	166.15'

**JOHNSTON MEMORIAL
HOSPITAL AUTHORITY**

CLAYTON TOWNSHIP, JOHNSTON COUNTY
NORTH CAROLINA
JUNE 4, 2012

OWNER: JOHNSTON MEMORIAL
HOSPITAL AUTHORITY
P.O. BOX 1376
SMITHFIELD, N.C. 27577



STATE OF NORTH CAROLINA, JOHNSTON COUNTY
I, CURK T. LANE, DO HEREBY CERTIFY THAT
THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN
ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED
DESCRIPTION RECORDED IN BOOK _____, PAGE _____
ETC.); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY
INDICATED AS DRAWN FROM INFORMATION FOUND IN
BOOK _____, PAGE _____. THAT THE RATIO OF PRECISION
AS CALCULATED IS 1:10,000+; THAT THIS PLAT WAS PREPARED
IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY
ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL
THIS _____ DAY OF _____, A.D., 2011

SURVEYOR
L - 3880
LICENSE NUMBER

SUBDIVISION SITE DATA

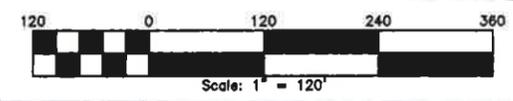
AREA IN TRACT II.....	1129474 SF	25.929 AC
AREA IN R/W.....	68145 SF	1.564 AC
LINEAR FEET IN STREETS.....	1273 LF	
AREA IN LOTS.....	1081329 SF	24.385 AC
NUMBER OF LOTS PROPOSED.....	5	
AVERAGE LOT SIZE.....	4.873 AC	
OPEN SPACE REQUIRED.....	2.593 AC	
OPEN SPACE PROVIDED.....	FEE-IN-LIEU	
PROPOSED ZONING PD-MU UNDERLYING B-3		

PARENT TRACT DEED DB 3557 PG 788
PARCEL NO. 05603004C
NC PIN NO. 164800-85-8610
ZONING: PDD-MU

ELECTRIC SERVICE PROVIDED BY PROGRESS ENERGY
PROPERTY IS NOT LOCATED IN A 100 YEAR FEMA FLOOD ZONE
FEMA FLOOD PANEL NO. 3720184800 J
PROPERTY IS LOCATED WITHIN THE TOWN LIMITS
PROPERTY IS NOT LOCATED WITHIN A WATERSHED PROTECTION OVERLAY

N/F
FRANCES O. AIKEN HEIRS
DB 1451 PG 561
PIN 164800-84-9886
ZONING: PD-MU

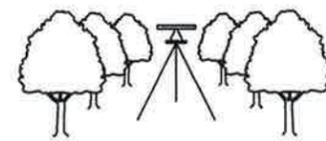
MAX. BUILDING HEIGHT - 60'
SETBACKS FRONT-25'
SIDE-15'
REAR-30'



REVISED: 7-16-12: TOC COMMENTS

SURVEYED BY:
DRAWN BY:
CHECKED BY:
DRAWING NAME:
SURVEY DATE:
JOB NO.

TRUE LINE SURVEYING, P.C.



205 WEST MAIN STREET
CLAYTON, N.C. 27520
TELEPHONE: (919) 359-0427
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MOTION GRANTING WASTEWATER ALLOCATION

~~Motion for Wastewater Allocation Request: Applicant requests Council consideration of a sewer allocation request for _____ gpd; letter submitted by _____ of _____ on _____.~~ *On February 5, 2007, the Clayton Town Council approved a wastewater allocation request of 52,700 gpd for this project.*

**MOTION GRANTING REZONING APPROVAL
CONSISTENCY AND REASONABLENESS STATEMENT
PDD-MU 2012-10**

MOTION:
THE TOWN COUNCIL OF THE TOWN OF CLAYTON HEREBY STATES approval of the revised master plan establishing planned development district commercial.

MOTION:
THE TOWN COUNCIL OF THE TOWN OF CLAYTON HEREBY STATES that PDD-MU 2012-10 is consistent with the Town of Clayton Strategic Growth Plan and based upon information presented at the public hearings and by the applicant, and based upon the recommendations and detailed information developed by staff and/or the Planning Board contained in the staff report, and considering the criteria of Section 155.705(J) of the Unified Development Code of the Town of Clayton, PDD-MU 2012-10 is reasonable and in the public interest.

Duly adopted by the Clayton Town Council this ____ day of ____ 2012.

ATTEST:

Jody L. McLeod, Mayor

Sherry L. Scoggins, MMC Town Clerk

**TOWN OF CLAYTON
SUBDIVISION APPLICATION
EVALUATION FORM**

Application Number: PDD 2012-10

The Town Council shall decide the matter of Subdivision Application Number PDD 2012-10 by motion and vote on each of the following four findings of fact. Any motion to find against the application must be supported by statement of specific reasons or conclusions reached in support of the motion.

Finding One of Four:

Circle One

- A. Based on the evidence and testimony presented it is the finding of the Council that the subdivision, if approved, will meet all required specifications and will conform to the Town Unified Development Ordinance. (Applicant meets the criteria for approval).

- B. Based on the evidence and testimony presented it is the finding of the Council that the subdivision, if approved, will meet all required specifications and will conform to the Town Unified Development Ordinance: (Applicant meets the criteria for approval upon acceptance of the noted conditions.)

- C. Based on the evidence and testimony presented it is the finding of the Council that the subdivision, if approved, will not meet all required specifications and/or will not conform to the Town Unified Development Ordinance for the following stated reasons: (Applicant fails to meet the criteria for approval.)

Finding Two of Four:

Circle One

- A. Based on the evidence and testimony presented it is the finding of the Council that the subdivision, if approved, will not be detrimental to the use or orderly development of other properties in the surrounding area and will not violate the character of existing standards for development of properties in the surrounding area. (Applicant meets the criteria necessary for approval.)

- B. Based on the evidence and testimony presented it is the finding of the Council that the subdivision, if approved, will not be detrimental to the use or orderly development of other properties in the surrounding area and will not violate the character of existing standards for development of properties in the surrounding area upon compliance with the following stated conditions: (Applicant meets the criteria necessary for approval upon acceptance of the noted conditions.)

- C. Based on the evidence and testimony presented it is the finding of the Council that the subdivision, will be detrimental to the use or orderly development of other properties in the surrounding area and/or will violate the character of existing standards for development of properties in the surrounding area for the following stated reasons: (Applicant fails to meet the criteria necessary for approval.)

Finding Three of Four:

Circle One

- A. Based on the evidence and testimony presented it is the finding of the Council that the subdivision design, if approved, will provide for the distribution of traffic in a manner that will avoid or mitigate congestion within the immediate area, will provide for the unified and orderly use of or extension of public infrastructure, and will not materially endanger the environment, public health, safety, or the general welfare. (Applicant meets the criteria necessary for approval.)

- B. Based on the evidence and testimony presented it is the finding of the Council that the subdivision design, if approved, will provide for the distribution of traffic in a manner that will avoid or mitigate congestion within the immediate area, will provide for the unified and orderly use of or extension of public infrastructure, and will not materially endanger the environment, public health, safety, or the general welfare upon compliance with the following stated conditions: (Applicant meets the criteria necessary for approval upon acceptance of the noted conditions.)

- C. Based on the evidence and testimony presented it is the finding of the Council that the subdivision design, if approved, will not provide for the distribution of traffic in a manner that will avoid or mitigate congestion within the immediate area, will not provide for the unified and orderly use of or extension of public infrastructure, and/or will materially endanger the environment, public health, safety, or the general welfare for the following reasons. (Applicant fails to meet the criteria for approval.)

Finding Four of Four:

Circle One

- A. Based on the evidence and testimony presented it is the finding of the Council that the subdivision, if approved, will not adversely affect the general plans for the orderly growth and development of the town and is consistent with the planning policies adopted by the Town Council. (Applicant meets the criteria necessary for approval.)

- B. Based on the evidence and testimony presented it is the finding of the Council that the subdivision, if approved, will not adversely affect the general plans for the orderly growth and development of the town and is consistent with the planning policies adopted by the Town Council upon compliance with the following stated conditions:
(Applicant meets the criteria necessary for approval upon acceptance of the noted conditions.)

- C. Based on the evidence and testimony presented it is the finding of the Council that the subdivision, if approved, will adversely affect the general plans for the orderly growth and development of the town and/or is not consistent with the planning policies adopted by the Town Council for the following stated reasons: (Applicant fails to meet the criteria necessary for approval.)

Once all findings have been decided one of the two following motions must be made:

Motion to Approve: Based upon satisfactory compliance with the above four stated findings and fully contingent upon acceptance and compliance with all conditions as previously noted herein and with full incorporation of all statements and agreements entered into the record by the testimony of the applicant and applicant's representative I move to approve Subdivision Application # _____.

Motion to Deny: Based upon failure to meet all of the above four stated findings and for reasons stated therein, I move to deny Subdivision Application # _____.

Record of Decision:

Based on a motion and majority vote of the Clayton Town Council Subdivision Application Number PDD 2012-10 is hereby:

_____ approved upon acceptance and conformity with all stated conditions; or,

_____ denied for the noted reasons.

Decision made this _____ day of _____ 2012, while in regular session.

Jody L. McLeod,
Mayor

ATTEST:

Sherry L. Scoggins, MMC
Town Clerk

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

Agenda Item: 6a

Meeting Date: 9/04/12

TITLE: UPDATE TO EXPANSION OF FAÇADE IMPROVEMENT GRANT PROGRAM.

DESCRIPTION: A Council goal adopted during the 2012 Council Retreat provided direction to expand and enhance the area and impact of the Downtown Façade Grant program to include properties located within the Thoroughfare Overlay District.

Staff is requesting approval of the “Clayton Business Façade Improvement Grant Program & Application” herewith attached and consideration of one of the reimbursement options for FY 12-13 as noted in the memorandum.

During the July 16, 2012, Council meeting, staff requested direction on allocation and Council requested a diagram of the thoroughfare district.

RELATED GOAL: Think Downtown

ITEM SUMMARY:

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
7-16-12	Presentation	Memorandum and Façade Improvement Grant Program & Application.
8-06-12	Discussion.	Façade Improvement Grant Program & Application (amended).
8-20-12	Discussion.	Memorandum and Façade Improvement Grant Program & Application (amended).
9-04-12	Discussion.	Revised memorandum And Façade Improvement Grant Program & Application.



Town of Clayton
Planning Department
111 E. Second Street, Clayton, NC 27520
P.O. Box 879, Clayton, NC 27528
Phone: 919-553-1545
Fax: 919-553-1720

TO: Town Council Members, Mayor Jody McLeod

FROM: David DeYoung, Planning Director
Bruce Naegelen, Downtown Development Coordinator

DATE: August 28, 2012

SUBJECT: UPDATE - EXPANSION OF FAÇADE IMPROVEMENT GRANT PROGRAM

Background:

A goal adopted during the retreat held this year by Town Council provided direction to expand and enhance the area and impact of the Façade Grant program to include properties located within the Thoroughfare Overlay District. Town Council has identified the **Façade Improvement Grant (FIG) program** as a Policy Action under Goal 5, “Beautify the Town of Clayton and Create an Arts Community” of the Town’s 2012-2017 Strategic Growth Plan.

In March, 2012 Town Council approved a temporary increase in the reimbursement formula of the FIG for buildings within the Downtown District. The program provides a 50% reimbursement of eligible expenses in façade improvements for commercial buildings in the downtown district. The reimbursement was increased to 75% for the remainder of FY11-12 with a review at the end of the fiscal year.

Consideration:

A draft of the proposed new program and application has been developed for review. It is based on the original Downtown program, and includes the original 50% reimbursement formula and \$5,000 project cap.

UPDATED Requested Council Action:

To achieve the façade improvements desired to enhance the appearance of downtown and all of Clayton, staff is requesting approval of the following:

- 1) Expand the *Façade Improvement Grant Program* to include areas outside of the downtown district starting in FY14 if funds are budgeted.
- 2) Extend the temporary reimbursement increase of 75% through FY12-13, and increase the project cap from \$5,000 to \$6,250 (25%). The increases would apply only to eligible expenses for those projects identified as “Challenges” in the Picture Downtown Project completed in May, 2012 and those projects already in discussion with valid application in process. A 50% reimbursement and \$5,000 cap would apply to all other projects in the downtown district.

Town of Clayton



Façade Improvement Grant Program & Application

Town of Clayton
Façade Improvement Grant Program

PURPOSE

The *Clayton Façade Improvement Grant Program* has been developed as part of the Clayton Town Council goal to “Beautify the Town of Clayton.” The objective of the Façade Improvement Grant (FIG) Program has historically been used by the Downtown Development Association to dramatically improve the façades of the downtown buildings so that after completion of work, citizens will notice a marked improvement in the appearance of the buildings downtown. The program has been expanded to include businesses located within the Town’s Thoroughfare Overlay District (TOD). Maps of the areas in which the program is available are attached as Exhibit A. The general purpose of the program is to provide an economic incentive to:

- Promote storefront rehabilitation
- Preserve the unique character of downtown's historic buildings;
- Encourage aesthetic compatibility for improvements to facades of non-historic structures; and
- Encourage the use of quality materials in the rehabilitation of downtown properties.

Façade improvements should be those that are permanent and part of the building.

Funds will be made available periodically on a first-come-first-serve basis.

The program will be administered by the Planning Department and Clayton Downtown Development Association (CDDA).

ELIGIBILITY

- 1) The applicant must be the owner or tenant of a building located within the boundaries of the FIG, which are identified in Exhibit A.
- 2) If the applicant is a tenant, they must have the owner's written permission attached to the application.
- 3) No more than one grant per location per year will be available.
- 4) The property shall be classified as commercial.

GUIDELINES FOR BUILDINGS LOCATED IN THE DOWNTOWN DISTRICT

- 1) The *U.S. Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (attached) and the *2001 Downtown Improvement Project Architectural Guidelines* (available for reference in the DDA office) are guides for façade improvements.
- 2) Rehabilitation work must conform to the Town of Clayton's Building Codes; Unified Development Code; and General Design Guidelines.
- 3) Rehabilitation of structures in the downtown district should respect the architectural integrity of the entire building front and retain those elements that enhance the building.
- 4) Façade grant applications may be made for structures within the downtown business district boundaries, with priority given to renovation projects that visibly improve downtown facades, including buildings with inappropriately applied facades that cover windows, or that are unsightly, out-of-scale, or in need of general repair work.
- 5) All properties classified as commercial within Clayton's Downtown District may apply for grant funds.
- 6) Improvements may include, but are not limited to:
 - Façade improvements
 - Brick or wall surface cleaning
 - Patching and painting of facade walls
 - Signage or lighting replacement/repair (*Only established businesses (3+ years) are eligible for sign replacement*)
 - Structure or frame that contain or hold a sign
 - Canopy, porch, awning installation/repair
 - Window and/or door replacement/repair
 - Mortar joint repair
 - Railings, ironwork repair or addition
 - Cornice repair and/or replacement
 - Design services (architect, etc.) for façade rehabilitation
- 7) Any improvements that have been made through the FIG program and which become a part of the property may not be removed from the property unless they can be used (without significant alterations) on another property within the Downtown District (e.g., awnings).

Note to Applicant: Removal of inappropriate additions to buildings and non-compliant signs may qualify based on the effect removal will have on the appearance of the downtown district.

GUIDELINES FOR BUILDINGS WITHIN THE TOD

- 1) Rehabilitation work must conform to the Town of Clayton's Building Codes; Unified Development Code; and General Design Guidelines.
- 2) Rehabilitation of structures in the district should respect the architectural integrity of the entire building front and retain those elements that enhance the building.
- 3) Façade grant applications may be made for structures within TOD boundaries, with priority given to renovation projects that visibly improve facades, including buildings with inappropriately applied facades that cover windows, or that are unsightly, out-of-scale, or in need of general repair work.
- 4) All properties classified as commercial within Clayton's TOD may apply for grant funds.
- 5) Improvements may include, but are not limited to:
 - Façade improvements
 - Brick or wall surface cleaning
 - Patching and painting of facade walls
 - Signage or lighting replacement/repair (*only established businesses (3+ years) are eligible for sign replacement*)
 - Structure or frame that contain or hold a sign
 - Canopy, porch, awning installation/repair
 - Window and/or door replacement/repair
 - Mortar joint repair
 - Railings, ironwork repair or addition
 - Cornice repair and/or replacement
 - Design services (architect, etc.) for façade rehabilitation
- 6) Any improvements that have been made through the program and which become a part of the property may not be removed from the property unless they can be used (without significant alterations) on another property within the TOD (e.g., awnings).

Note to Applicant: Removal of inappropriate additions to buildings and non-compliant signs may qualify based on the effect removal will have on the appearance of the TOD.

ADDITIONAL GRANTS (Previous grant holders only)

- 1) If a building has received previous grant funding, an application for additional grant funding may be considered if:

- a) At least three (3) years have elapsed since the last grant was awarded and the property is in need of further improvement (e.g., repaint, new awning); under extenuating circumstances an additional grant may be awarded prior to three years from the last grant.
- b) The existing business/property undergoes significant expansion which requires improvement to the property (e.g., window replacement on upper stories).

CRITERIA

- 1) For the purposes of the FIG program, a façade is defined as an individual storefront or side of a building that faces a public street or alleyway or which is otherwise visible to the general public.
- 2) Qualifying projects are eligible for a grant of up to \$5,000 per façade on a 50% (Grant) / 50% (Applicant) matching basis as funds are available.
- 3) Any work done before a grant application is approved is not eligible.
- 4) Work on the project must be completed within six (6) months after the date that the grant is awarded. The grant will be paid to the recipient after the work is completed and all bills relating to said work are paid..
- 5) The property owner must agree to maintain the facade improvement as set forth in the application for a period of three (3) years or until the property is sold. *(Example: if an awning is installed as part of a project and then rips within a three-year period, it must be repaired or replaced.)*

APPLICATION PROCESS

- 1) Applicant will complete the application, which must include design plans/sketches and owner's signature (consent of mortgage or lien holder may be required), and return it to the Façade Grant Coordinator.
- 2) If appropriate, the applicant is encouraged to seek the services of the State Historic Preservation Office (SHPO), including restoration consultants, before an application is completed and designs are formulated. Visits can be arranged by calling (919) 733-6547.
- 3) Two qualified and professional estimates of cost are to be included with the application.
- 4) Applications will be reviewed and signed by the Town Building Inspector for building code compliance.

- 5) Applications will be reviewed and signed by the Planning Department.
- 6) The Planning Department or the DDA Design Committee will review the completed application.
- 7) A notification letter will be sent to applicants concerning the approval or denial of the application within 45 days of receipt of a completed application.
- 8) A Grant Agreement must be signed **BEFORE** any work begins. Parties to the Agreement will be the applicant(s), building owner(s) and the Town of Clayton.
- 9) Upon project completion, copies of paid statements and cancelled checks, etc. must be submitted to Planning Department to claim reimbursement.
- 10) Planning Department staff and SHPO (State Historic Preservation Office) staff (upon request) will inspect work completed and request checks to be issued for the amount of the grant provided the work is accomplished in accordance with the agreement.

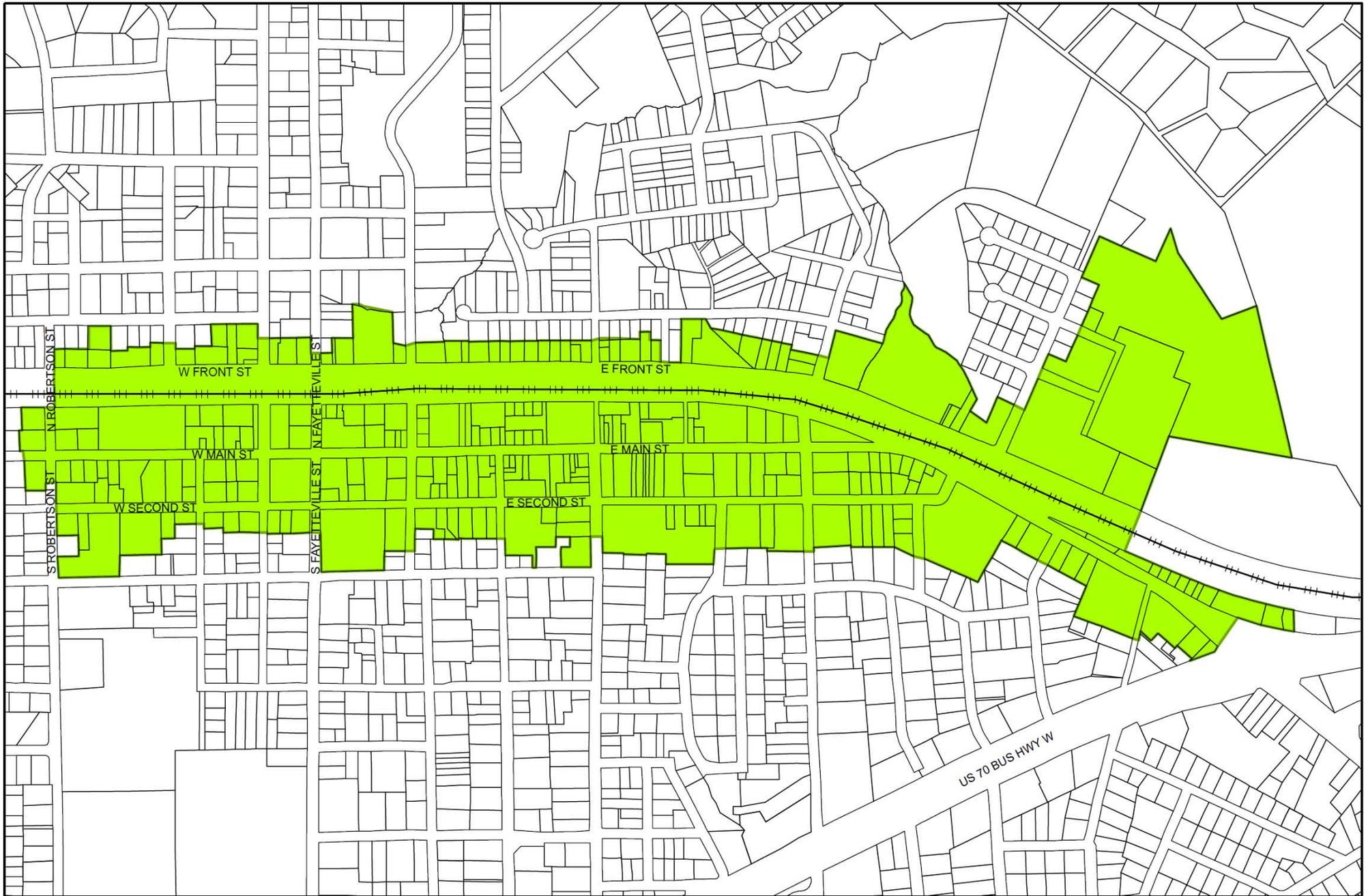


Exhibit A Clayton Downtown Commercial District



Map Produced by TOC Planning
Date: August 9, 2012
Disclaimer: Town of Clayton assumes no legal
responsibility for the information represented here.



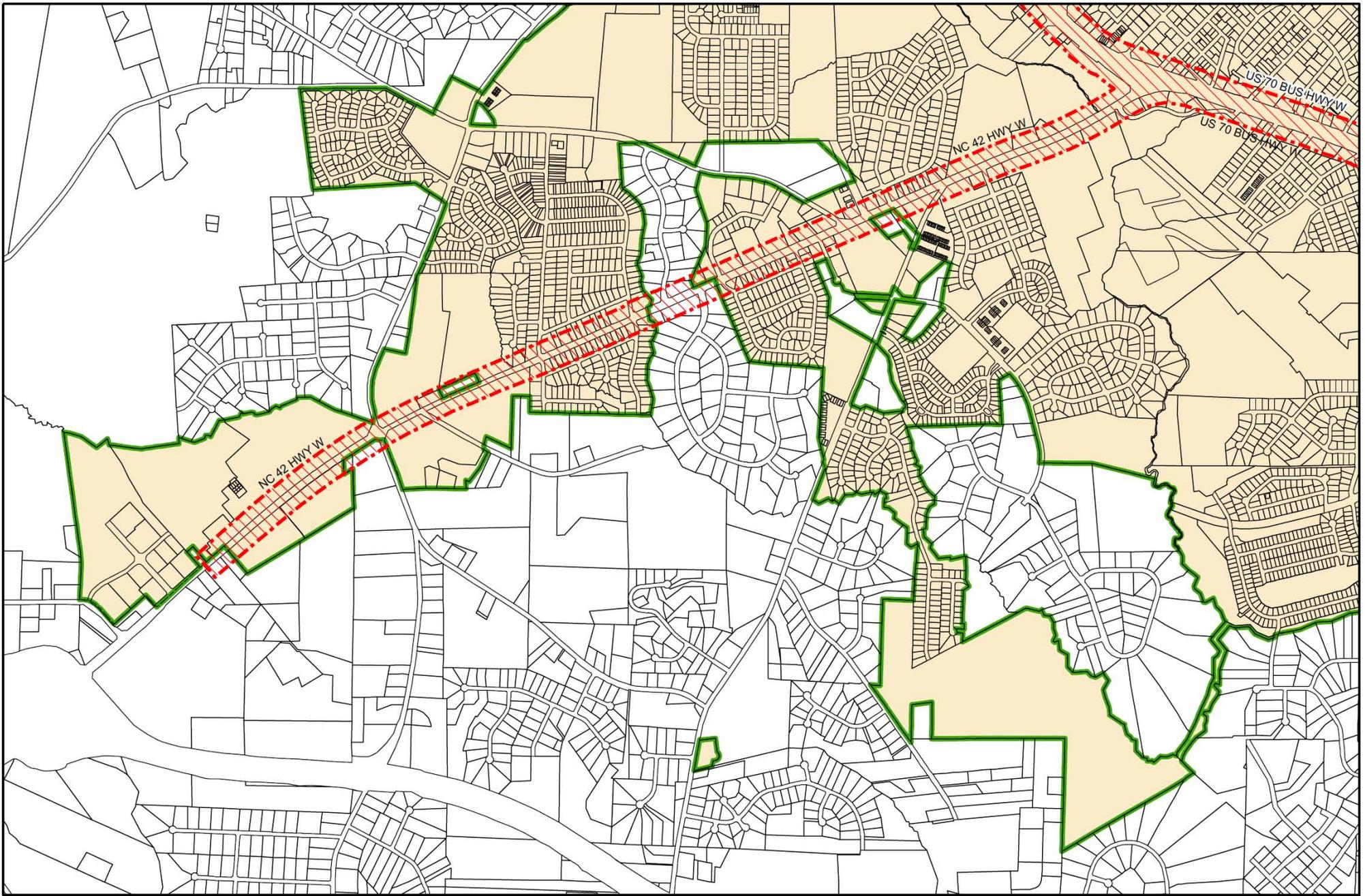


Exhibit A
Thoroughfare Overlay District
South West Section



Map Produced by TOC Planning
Date: August 9, 2012
Disclaimer: Town of Clayton assumes no legal
responsibility for the information represented here.



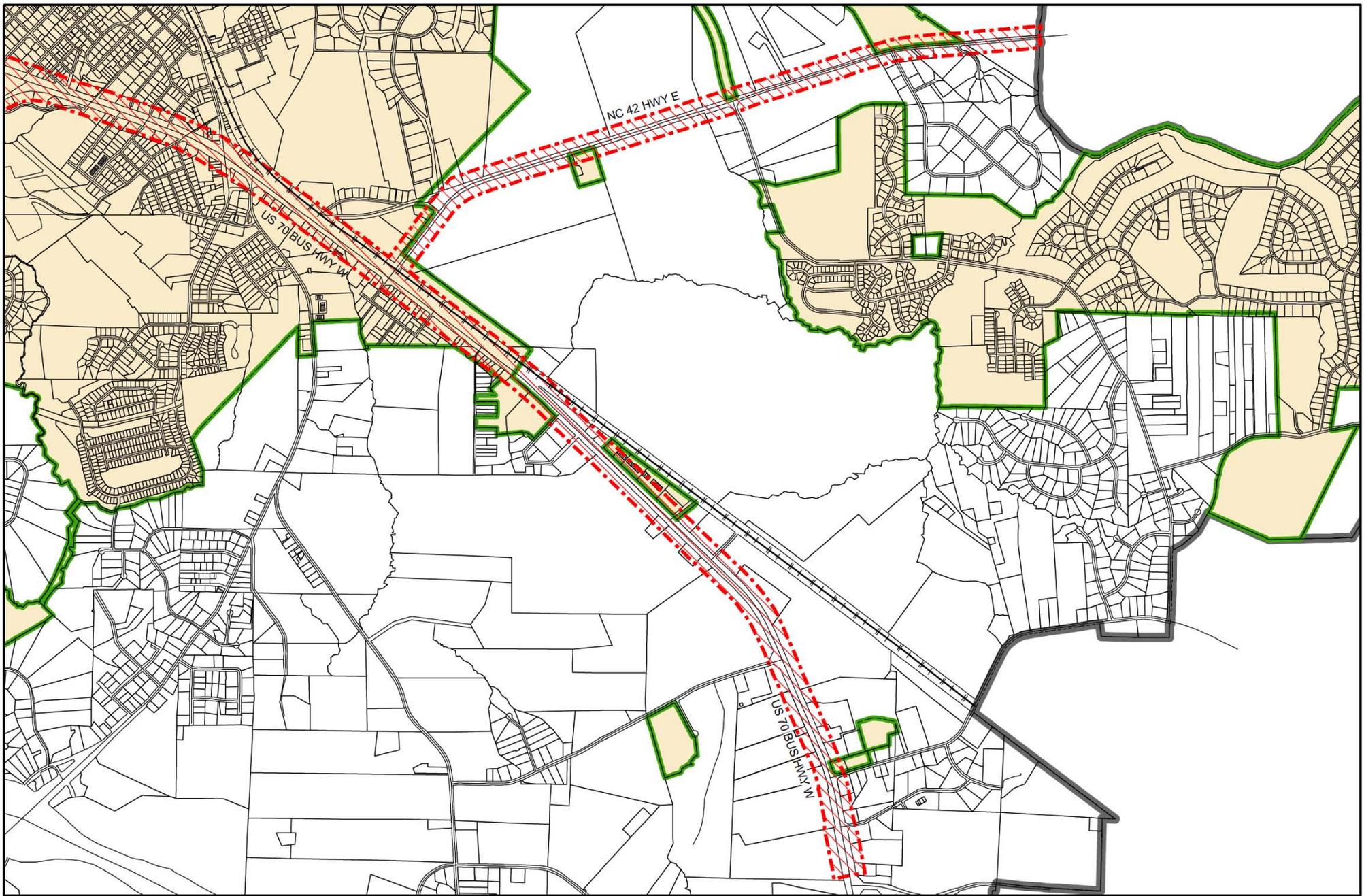


Exhibit A
Thoroughfare Overlay District
Eastern Section



Map Produced by TOC Planning
Date: August 9, 2012
Disclaimer: Town of Clayton assumes no legal
responsibility for the information represented here.



Application Number: _____

Town of Clayton
FACADE IMPROVEMENT GRANT APPLICATION

Applicant's Name _____ Phone # _____

___ Owner ___ Tenant Business/Building Name _____

Applicant Address _____ email _____

Property Owner's Name _____ Phone # _____

Mailing Address _____ email _____

Length of Time at this location _____ Length of remaining lease term (if applicable) _____

Description of Project (attach additional pages as needed)

Total Estimated Cost of Improvement \$ _____

Please Check:

- I have attached project plans, specifications or other appropriate design information. A professional architectural plan is not required.
- I have attached samples of paint colors to be used on facade improvements or signage.
- I have attached a photograph(s) of existing condition of the property.
- I have attached copies of cost estimates for the project (minimum of two (2) estimates required)
- I have attached written permission from the property owner, if applicable.
- I have attached a signed copy of the Secretary of the Interior's Standards for Rehabilitation indicating that I have read and understand the program's requirements and intend to follow the guidelines.
- I understand that grant funds must be used only for the project described in this application. The work must be completed within six (6) months of the date that the grant is awarded. All work must be completed according to state and local building codes and ordinances and approved, when necessary, by the proper authorities.
- I also understand that this application **must** be reviewed **before** any work is done on the project and that no projects will be funded if work was done before the application was approved.

- I understand that I am responsible for the maintenance of the facade improvements described here for a period of three (3) years from the date of project completion or until such time as the building is sold.
- I understand the improvement grant must be used for the project described in this application and that Planning Department and/or the Downtown Development Association must review and approve the application prior to beginning construction. I understand that failure to comply with the approved application and Grant Agreement may result in losing my eligibility to receive funds.
- I acknowledge that the Planning Department / Downtown Development Association are obligated to administer the grant procedures only and are not liable to the applicant, owner or third parties for any obligations or claims of any nature growing out of, arising out of or otherwise related to the project or application undertaken by the applicant and/or owner. There is no principal/agent or employer/employee relationship between the Planning Department / Downtown Development Association and the applicant and/or owner.
- I acknowledge that this application must be accepted and all prerequisite rules and regulations must be complied with before the application can be considered for acceptance.
- I have attached the project plans and specifications or other appropriate design documentation

Applicant's Signature _____ Date _____

Property Owner _____ Date _____
(if different from above)

Complete and return to: **Clayton Downtown Development Association, PO Box 879, Clayton, NC 27528**

This application has been reviewed by the following:

Signature, Town Building Inspector _____ Date _____

Signature, Planning Department _____ Date _____

Signature, Downtown Development Coordinator _____ Date _____

Conditions/Comments:

SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

The following standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.

- 1) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
- 2) The historic character of a property shall be retained and preserved. The removal of historic materials or alterations of features and spaces that characterize a property shall be avoided.
- 3) Each property shall be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings shall not be undertaken.
- 4) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
- 5) Distinctive features, finishes and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
- 6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical or pictorial evidence.
- 7) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
- 8) Significant archaeological resources affected by a project shall be protected and preserved. If such resources might be disturbed, mitigation measures shall be undertaken.
- 9) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale and architectural features to protect the historic integrity of the property and its environment.
- 10) New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

I have read and understand these guidelines.

Signature of Applicant

Date

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

Agenda Item: 6b

Meeting Date: 9/04/12

TITLE: REVISION TO THE TOWN'S CODE OF ORDINANCES PERTAINING TO CEMETERIES.

DESCRIPTION: During the Council's May 30, 2012, budget work session, there was discussion of adding a maintenance position responsible for the Town cemeteries. The position was approved with the adoption of the FY 2012-2012 budget. The current Town ordinances are in need of revision to reflect the direction the Town is pursuing for its cemeteries.

At its August 6, 2012, Council meeting, Council requested section 92.11 be amended.

RELATED GOAL: Administrative

ITEM SUMMARY:

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
8-06-12	Discussion.	Marked-up revision & Cleaned-up revision.
8-20-12	Discussion.	Revised ordinance.
9-04-12	Discussion.	Ordinance.

TOWN OF CLAYTON, NORTH CAROLINA
AMENDMENT TO THE CEMETERY ORDINANCE

BE IT HEREBY DULY ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF CLAYTON, NORTH CAROLINA THAT THE FOLLOWING IS HEREBY AMENDED TO THE CODE OF ORDINANCES:

AMEND TO READ AS FOLLOWS:

TITLE IX: GENERAL REGULATIONS

CHAPTER 92: CEMETERIES

Section

- 92.00 Interment
- 92.01 Sale of lots
- 92.02 Improvements
- 92.03 Orders for grave openings
- 92.04 Manner of opening and closing graves
- 92.05 Plot elevation to conform to curb line
- 92.06 Permission required to dig up, excavate, or remove soil or foliage from cemetery
- 92.07 Grave markers and monuments
- 92.08 Loud or disturbing conduct; disrupting funeral services
- 92.09 Speed of vehicles; vehicles restricted
- 92.10 Curfew hours
- 92.11 Animals
- 92.12 Grave liners
- 92.13 Establishing authority to select an authorized contractor for cemetery interments

Statutory reference:

Authority to regulate cemeteries, see G.S. §§ 160A-341 through 160A-348

§ 92.00 INTERMENT.

Only human remains, properly entombed in coffins or other appropriate burial containers, shall be buried or otherwise interred in any of the cemeteries of the town.

(Ord. 99-07-01, passed 7-19-99)

§ 92.01 SALE OF LOTS.

(A) All persons desiring to purchase lots in the town cemeteries shall apply to the Public Works Director or the Customer Service Director or their designee who, upon approval and payment of the price fixed for each lot, shall cause the use license therefor to be executed to the purchaser. Under no condition shall a use license for a cemetery lot be issued to purchaser nor shall an Interment Authorization be issued until the purchase price is paid in full and approval is given by the Public Works Director or the Customer Service Director. Each use license executed to a purchaser shall be recorded in the office of the Register of Deeds of Johnston County.

(B) No person who shall purchase any lot in a town cemetery from the town shall thereafter convey or alienate the lot to any other person for a greater consideration than that paid for the same lot by the grantor. Any use license executed for the purpose of transferring a lot from the original purchaser shall first be approved by the Public Works Director or the Customer Service Director as to form and content. Further, no transfer of use rights of a lot on the town records shall be complete until the Public Works Director or the Customer Service Director is provided with a receipt from the Johnston County Register of Deeds verifying recording of the license and payment of all revenue stamps and recording fees. Each license executed shall contain language that the use rights are conveyed subject to this section and any amendments thereto.

(C) All persons desiring to purchase cemetery lots on an installment basis will be subject to the following: Each purchase will require a down payment of not less than \$100. A contract for purchase must be executed by the purchaser and the town detailing price, term and payment due dates. The terms are to allow for one year per grave site with payment in full for each site to be completed by June 30 regardless of the date the contract is initiated. Any grave sites not paid in full will revert to the town with no refunds being granted. Hardship cases will be determined by the Town Manager or his designee. As stipulated in division (A) of this section, no burials will take place and no licenses will be issued without payment in full.

(D) The purchase price shall include an amount sufficient for the Town to place a basic permanent marker of Town specifications at the foot of each occupied grave site to ensure all graves are duly identified.

(1) For sites purchased prior to September 4, 2012 a marker deposit shall be collected at the time Interment Authorization is requested.

('71 Code, § 5-16) (Ord. passed 4-5-71; Am. Ord. passed 9-6-89; Am. Ord. passed 1-7-91; Am. Ord. passed 10-3-95; Am. Ord. 99-07-01, passed 7-19-99) Penalty, see § 10.99

§ 92.02 IMPROVEMENTS.

Improvements by the town in town cemeteries shall be made under the direction of the Public Works Director or the Town Council.

('71 Code, § 5-17) (Ord. passed 4-5-71; Am. Ord. 99-07-01, passed 7-19-99)

§ 92.03 ORDERS FOR GRAVE OPENINGS.

(A) It shall be unlawful for any person to make, or cause to be made, any interment, inside the corporate limits except in the cemeteries of the town, existing private cemeteries, cemeteries licensed by the State Burial Association Commission or in church cemeteries.

(B) (1) In the event a grave-side service is scheduled earlier than 12:00 noon on a particular day, then with at least 24 hours advance notice by the funeral director to the Public Works Director, the grave may be opened on the day preceding the scheduled interment.

(2) In the event a grave-side service is scheduled at or later than 12:00 noon on a particular day, then in accordance with the process described in division (B)(1), above, the grave may be opened on the same day as the scheduled interment, but not a day in advance.

(C) No grave openings shall occur on any Sunday, Good Friday, Thanksgiving Day, Christmas Day, or New Year's Day.

('71 Code, § 5-18) (Ord. passed 4-5-71; Am. Ord. passed 10-3-95; Am. Ord. 99-07-01, passed 7-19-99; Am. Ord. passed 1-16-01) Penalty, see § 10.99

§ 92.04 MANNER OF OPENING AND CLOSING GRAVES.

(A) All openings shall be performed in accordance with the Standards and Specifications of the Town of Clayton.

(3) A standard funeral home tent must be immediately erected over the area of the plot containing the open grave.

('71 Code, § 5-19) (Ord. passed 4-5-71; Am. Ord. 99-07-01, passed 7-19-99; Am. Ord. passed 1-16-01)

§ 92.05 PLOT ELEVATION TO CONFORM TO CURB LINE.

It shall be unlawful for any person to raise or cause to be raised the elevation of any cemetery plot above the curb line of the existing curb surrounding the plot, and no curb shall be raised above the curb line of the existing curb line in the general area of the plot.

('71 Code, § 5-20) (Ord. passed 4-5-71; Am. Ord. 99-07-01, passed 7-19-99) Penalty, see § 10.99

§ 92.06 PERMISSION REQUIRED TO DIG UP, EXCAVATE, OR REMOVE SOIL OR FOLIAGE FROM CEMETERY.

It shall be unlawful for any person to dig up, excavate, or remove any soil from any town cemetery, or to remove flowers, shrubs, trees, bushes, markers, pots, boxes, vases, or any other property unless from his own property, or with the consent of the owner, or by permission of the Town Manager.

('71 Code, § 5-21) (Ord. passed 4-5-71; Am. Ord. 99-07-01, passed 7-19-99) Penalty, see § 10.99

§ 92.07 GRAVE MARKERS AND MONUMENTS.

(A) It shall be unlawful for any person to remove, destroy, deface, or any way injure any headstone marker or monument of any sort in any of the cemeteries of the town, unless upon his own property or with the permission of the owner.

(B) No grave marker or monument shall be placed in any of the cemeteries of the town unless and until the Public Works Director has reviewed and approved a photograph, sketch, or other accurate depiction or rendering (including a listing of all applicable materials, dimensions and wording) of such grave marker or monument.

(C) Except as provided in division (D), no grave marker or monument shall be placed in any of the cemeteries of the town unless human remains, properly entombed in a coffin or other appropriate burial container, have been buried or otherwise interred in the burial plot upon which the grave marker or monument is to be placed.

(D) A grave marker or monument may be placed in a cemetery of the town at an empty burial plot where:

(1) (a) An immediately adjacent burial plot contains human remains properly entombed in a coffin or other appropriate burial container; and

(b) A living member of the immediate family of the deceased buried or otherwise interred in the adjacent burial plots is to be buried or otherwise interred in the empty burial plot; or

(2) The owner of the empty burial plot obtains permission from the town to place a grave marker or monument on the empty burial plot in anticipation of his or her burial or interment in that plot, or in anticipation of the burial or interment of an immediate family member in that plot.

(E) No grave marker or monument placed in any of the cemeteries of the town shall contain or reflect any profanity, obscenity, vulgarity, or fighting words.

(F) All grave markers or monuments placed in any of the cemeteries of the town shall be fixed and stationary, and shall not exceed 60 inches in height, 48 inches in width, or 36 inches in depth or diameter.

(G) No grave marker or monument placed in any of the cemeteries of the town shall contain or include any device intended to or capable of generating any form of light or sound.

(H) All occupied graves must have a permanent marker. Beginning October 1, 2012 the Town shall place a marker at the foot of each grave for the purpose of basic identification. This marker does not displace allowance for approved markers or monuments otherwise placed on behalf of the licensee of the site.

- (I) No structure other than an approved monument or vase may be placed at a gravesite. By way of illustration but not limitation the following shall be prohibited:
- a. Coping, curbing, fencing, hedging, border enclosures.
 - b. Cover with stone, gravel, cinders, tile, and cement or other materials.
 - c. Benches, sundials, settees, and lights
 - d. Flags will be allowed only during the weeks of Memorial Day, Veteran's Day, and July 4th.

('71 Code, § 5-21) (Ord. passed 4-5-71; Am. Ord. 99-07-01, passed 7-19-99) Penalty, see § 10.99

§ 92.08 LOUD OR DISTURBING CONDUCT; DISRUPTING FUNERAL SERVICES.

It shall be unlawful for any person to make or cause to be made any unduly loud or disturbing noise in the cemeteries of the town, or close enough thereto to unduly disrupt or interfere with funeral services being conducted therein.

('71 Code, § 5-22) (Ord. passed 4-5-71; Am. Ord. 99-07-01, passed 7-19-99) Penalty, see § 10.99

§ 92.09 SPEED OF VEHICLES; VEHICLES RESTRICTED.

Vehicles shall be driven only upon the roadways within a town cemetery and at a rate of speed not in excess of 15 miles per hour. No vehicles shall enter a town cemetery except for the purposes of attending funerals, visiting graves, or other lawful missions.

('71 Code, § 5-22) (Ord. passed 4-5-71; Am. Ord. 99-07-01, passed 7-19-99) Penalty, see § 10.99

§ 92.10 CURFEW HOURS.

It shall be unlawful for any person to enter any of the cemeteries of the town after the sun has set, or after 7:00 p.m., prevailing time, whichever comes first, and from then until sunrise the following morning.

('71 Code, § 5-23) (Ord. passed 4-5-71; Am. Ord. 99-07-01, passed 7-19-99) Penalty, see § 10.99

§ 92.11 ANIMALS.

It shall be unlawful for any person to take any animals into the cemeteries of the town or to allow any animal to run at large therein, or to ride, drive, or lead any animal on or over any plot or walkway therein.

('71 Code, § 5-24) (Ord. passed 4-5-71; Am. Ord. 99-07-01, passed 7-19-99) Penalty, see § 10.99

§ 92.12 GRAVE LINERS.

Grave liners shall be used for all burials in any town cemetery. Grave liners must meet the Standards and Specifications of the Town of Clayton for use in any Town cemetery.

(Ord. 99-07-01, passed 7-19-99)

§ 92.13 ESTABLISHING AUTHORITY TO SELECT AN AUTHORIZED CONTRACTOR FOR CEMETERY INTERMENTS.

(A) The Town Council may authorize for the exclusive rights to perform all grave openings, closings, and maintenance in any cemetery owned and operated by the town. As an alternative to selecting a firm or person for openings, closings and maintenance operations the Town Council may choose to authorize adequate Town resources for this purpose with associated fees.

(B) In the event the Town Council chooses to perform openings, closings or maintenance on a contract basis the Public Works Director is hereby authorized to develop criteria and solicit proposals from qualified contractors on an annual basis for the purpose of selecting and authorizing an individual or firm to perform all grave openings and closings in town owned and operated cemeteries.

(C) The individual or firm selected under this section shall have sole responsibility, to the exclusion of all others, to perform or have performed all obligations established by contract for the opening, closing, and follow-up maintenance in town owned and operated cemeteries.

(D) The selected contractor may choose to subcontract openings, closings, or maintenance upon the express prior consent of the town. In any event the prime contractor shall continue to be responsible to the town for the proper and acceptable performance of all work performed.

92.14 Responsibility for Loss or Damage

(A) The Town shall accept no responsibility for any loss or damage to any grave marker, vase, or other personal property within the cemetery as a result of the elements, storms, theft, trespass, or the operation of vehicles by visitors to the cemetery.

(B) The Town shall accept no responsibility for loss, destruction or removal of any items or materials left, displayed, or otherwise installed in the cemetery whether authorized or unauthorized.

(Ord. passed 10-21-02)

Duly adopted this 4th day of September 2012 while in regular session.

Jody L. McLeod
Mayor

Attest:

Approved as to form:

Sherry L. Scoggins, MMC
Town Clerk

Katherine Ross
Town Attorney

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

Agenda Item: 6c

Meeting Date: 9/04/12

TITLE: STATUS UPDATE OF NOISE ORDINANCE.

DESCRIPTION: At its May 7, 2012, Council meeting, a spreadsheet comparing noise ordinances was presented to the Town Council.

The purpose of the discussion is to receive Council feedback and direction on this item.

RELATED GOAL: Administrative

ITEM SUMMARY:

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
5-21-12	Discussion.	Spreadsheet.
6-04-12	Tracking.	None.
7-19-12	Discussion.	
8-06-12	Discussion.	N/A.
8-20-12	Discussion.	
9-04-12		

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

Agenda Item: 7a

Meeting Date: 9/04/12

TITLE: GRANT/LOAN AWARD FROM THE RURAL ECONOMIC DEVELOPMENT CENTER FOR RENOVATIONS TO WINSTEAD BUILDING 1 LOCATED AT 107 NORTH TECH DRIVE.

DESCRIPTION: At its June 18, 2012, Council approved a resolution authorizing execution and filing of an application on behalf of the Town of Clayton with the NCRECD (Rural Center) for a Building Restoration and Reuse Grant project. The renovation is to the Winstead Building 1 located at 107 North Tech Drive, Clayton, and is intended to spur economic activity and job creation by assisting a new business, Triangle Confections.

For the Council's consideration is the grant/loan award for an amount not to exceed \$200,000.00 for expenditures relating to the Project. The award has a 30-day acceptance clause.

RELATED GOAL: Administrative

ITEM SUMMARY:

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
6-18-12	Approval.	Resolution.
9-04-12	Approval.	Gran/Loan Agreement.

PRIVATE OWNER AGREEMENT

THIS AGREEMENT, entered into this the 22nd day of August, 2012, by and between the **Town of Clayton** (hereinafter referred to as "GRANTEE") and the **Rural Economic Development Center, Inc.** (hereinafter referred to as "CENTER"), a North Carolina non-profit corporation.

WITNESSETH:

THAT, WHEREAS, the CENTER was organized for the purpose of stimulating economic development and job creation in distressed areas; and

WHEREAS, in its efforts to stimulate and encourage economic development and job creation, the CENTER contracts with local governments to conduct development activities to solidify the location of a business or industry in its jurisdiction;

NOW, THEREFORE, in consideration of the mutual promises and such other valuable consideration as shall be set out herein, the parties hereto do mutually agree to the following terms and conditions:

1. Scope of Program/Other Agreements.

(a) The GRANTEE shall cause the Property Owner to execute a Loan/Performance Agreement, to develop, perform and complete the work set out in Exhibit A, B, C, and D (hereinafter referred to as the "Project") and said Project being that work described in a proposal entitled "**Triangle Confections Winstead Building I Building Renovation Project**" as approved by the CENTER.

(b) The parties acknowledge that the funds provided hereunder have been provided in order to facilitate the creation of jobs in the community, and are subject to return to the CENTER if such jobs are not created and maintained. Therefore, GRANTEE agrees to enter into a Loan/Performance Agreement (the "Performance Agreement") substantially in the form attached hereto as Exhibit E with the owner of any real estate on which the Project is located. In the event any sums are repaid under the Performance Agreement, all such amounts will be paid to the CENTER. The GRANTEE will insure that the Loan Performance Agreement and Promissory Note are properly executed by the Owner and GRANTEE and that the execution constitutes an enforceable agreement against the Owner. Default under this provision will obligate the GRANTEE to repay any sums due back to the Center that may not be recovered from the Owner.

(c) GRANTEE agrees to provide CENTER with any information obtained pursuant to the Performance Agreement, and to allow the CENTER to execute any rights of the GRANTEE thereunder, including any rights of access, review or monitoring.

(d) GRANTEE agrees to exercise all of its rights and duties under the Performance Agreement in a prudent manner to ensure the use of the funds for the intended purposes and objectives and to preserve the rights of the CENTER hereunder and thereunder.

2. Changes in the Project.

(a) If changes or extra work are requested and authorized in writing by the CENTER, the GRANTEE will be available to furnish, or obtain from others, the services required.

(b) Any work referred to in paragraph 2(a) above shall be the subject of a separate written agreement between the CENTER and the GRANTEE stating the costs and schedule for completing said extra work.

(c) The GRANTEE shall immediately notify the CENTER of any change in conditions or local law, or any other event, which may significantly affect its ability to perform the Project in accordance with the provisions of this paragraph.

3. Term of Agreement. The effective period of this Agreement shall commence on **8/22/2012** and shall terminate on **8/22/2014** unless sooner terminated under Paragraph 11 (the "Termination Date").

4. Funding.

(a) The CENTER grants to the GRANTEE an amount not to exceed **\$200,000.00**, for expenditures relating to the Project. The GRANTEE hereby represents and warrants that all such sums as may be awarded under this grant shall be utilized exclusively for the purpose of the Project.

(b) In the event the GRANTEE breaches any of the covenants or agreements contained in this Paragraph 4, or if any of the representations and warranties of Paragraph 14 are untrue as to a material fact, the GRANTEE agrees to repay to the CENTER the full amount of sums awarded under this Agreement.

5. Independent Status of the GRANTEE.

(a) It is agreed between the parties that neither this Agreement nor any provisions hereof shall be deemed to create a partnership or joint venture between the CENTER and the GRANTEE. It is further agreed that except for the rights expressly granted to the CENTER in this Agreement, it shall not have any proprietary rights in the Project.

(b) The parties acknowledge that the GRANTEE is an independent entity. The GRANTEE shall not represent itself as an employee of the CENTER nor is the Agreement intended to be construed so as to make the GRANTEE an employee of the CENTER. The GRANTEE shall not have the ability to bind the CENTER to any agreement for payment of goods or services, nor shall it represent to any person that it has such ability. The GRANTEE shall be responsible for payment of all its expenses, including rent, office expenses and all forms of compensation to employees. The GRANTEE shall provide worker's compensation insurance to the extent required for its operations and shall accept full responsibility for payments of unemployment compensation, social security, income taxes, and any other charges, taxes or payroll deductions required by law in connection with its operations, for itself and its employees who are performing work pursuant to this Agreement. All expenses incurred by the GRANTEE are its sole responsibility, and the CENTER shall not be liable for the payment of any obligations incurred in the performance of the Project.

6. Method of Payment. The sums awarded under this agreement shall be paid to the GRANTEE in accordance with the Schedule of Payments attached hereto as Exhibit B. Each payment set forth in Exhibit B will be paid within twenty (20) days after receipt of a written

request for payment from the GRANTEE, which request shall certify that GRANTEE has performed the required work under this Agreement and that it is entitled to receive the amount so requested.

7. Obligation of Funds. Funds provided by the CENTER may not be obligated by the GRANTEE prior to the effective date or subsequent to the termination date of this Agreement. All obligations outstanding as of the termination date shall be liquidated within thirty days. Prior approval shall not be required for changes, which affect the approved budget unless a budget category is exceeded by ten (10) percent or \$500.00, whichever is greater. Any changes in the approved budget, which would result in the addition or deletion of a budget category, shall require prior approval from the CENTER.

8. Reports.

(a) The GRANTEE will furnish the CENTER with detailed written progress reports on a quarterly basis or other periods specified in Exhibit C.

(b) The reports referred to in paragraph 8(a) above should describe the progress made by the GRANTEE toward achieving the purpose(s) for which the funds were awarded. This should include the successes and problems encountered during the reporting period.

(c) Failure to submit a required report by the scheduled submission date will result in the withholding of any forthcoming payment until the CENTER is in receipt of the delinquent report.

(d) All funds awarded to the GRANTEE under this Agreement are appropriated by the North Carolina General Assembly. Accordingly, the GRANTEE acknowledges and agrees that it will be subject to the audit and reporting requirements prescribed by N.C.G.S §159-34, Local Government Finance Act - Annual Independent Audit; rules and regulations. Such audit and reporting requirements may vary depending upon the amount and source of funding received by GRANTEE, and are subject to change from time to time. Upon completion, the GRANTEE agrees to forward to the CENTER one copy of any audited financial statements and accompanying reports generated covering the period that the GRANTEE has an active award contract with the CENTER. In addition to the audit and reporting requirements mandated by the State of North Carolina, the GRANTEE agrees to comply with any requests made by the CENTER from time to time for other financial and organizational materials to permit the CENTER to comply with its fiscal monitoring responsibilities.

(e) The GRANTEE agrees that within thirty (30) days after the termination of this Agreement, a Final Report shall be submitted to the CENTER, which describes the activities and accomplishments of the Project. The Final Report will include a review of performance and activities over the entire project period and will include a one-page program summary, which the CENTER can use for future publication. In that brief summary, the GRANTEE should describe the project, how it is implemented, to what degree the established project objectives were met and the difficulties encountered, what the project changed, and its cost. In addition to accounting for the use of the Project funds during the current fiscal year, the GRANTEE will submit a detailed final financial report by category showing all expenditures during the entire Project period and reports the source and amount of all other funds used to support the Project.

(f) The CENTER may request from the GRANTEE certain information, which will assist the CENTER with evaluation of the short- and long-range impact of its programs. The GRANTEE recognizes that such request may occur after the termination of this Agreement and agrees, to the extent possible, to provide such information to the CENTER.

9. Project Records.

(a) The GRANTEE shall maintain full, accurate and verifiable financial records, supporting documents, and all other pertinent data for this Project in such a manner as to clearly identify and document the expenditure of the CENTER funds provided under this Agreement separate from accounts for other awards, monetary contributions, or other revenue sources for this Project.

(b) The GRANTEE shall retain all financial records, supporting documents, and all other pertinent records related to the Project for a period of five years from the date of termination of this Agreement. In the event such records are audited, all project records shall be retained beyond the three-year period until any and all audit findings have been resolved.

(c) The GRANTEE agrees to make available to the CENTER, or its designated representative, all of its records which relate to the Project, and agrees to allow the CENTER or said representative to audit, examine and copy any and all data, documents, proceedings, records and notes of activity relating in any way to the Project. Access to these records shall be allowed upon request at any time during normal business hours and as often as the CENTER or said representative may deem necessary.

10 Publications.

(a) At the request of the CENTER, any reports, data, or other information given to, prepared or assembled by the GRANTEE under the Agreement must contain the following acknowledgment and disclaimer statement: "This material is based upon work supported in whole or part by the Rural Economic Development Center." All materials must also contain the following statement: "Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views and policies of the Rural Economic Development Center."

(b) Except as provided in paragraph 10a) above, the GRANTEE may publish or arrange for the publication of scientific and technical information resulting from work carried out under this Agreement.

(c) Upon publication of materials resulting from the work of the project, the GRANTEE shall furnish a minimum of two copies of reprints to the CENTER.

11 Termination; Availability of Funds.

(a) If the GRANTEE shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or shall violate any of the covenants or stipulations of this Agreement, the CENTER shall thereupon have the right to terminate this Agreement by giving written notice to the GRANTEE of such termination and by specifying the effective date of termination. In such event, the CENTER shall have no responsibility to make additional payments under this contract after the date of termination. No further expenditures shall be made under this Agreement except for such work as shall have already been performed prior to the date of termination and the GRANTEE shall repay all unspent grant funds upon the demand of the CENTER.

(b) It is understood that the CENTER'S obligation to pay any amounts under this Agreement is contingent upon the availability and continuation of funds for such purpose. In the event that funds for this Project become unavailable, the CENTER may terminate this Agreement upon thirty (30) days written notice to the GRANTEE. All obligations of the CENTER to make payments under this Agreement shall cease as of the Termination Date.

12. Liabilities and Loss. The CENTER assumes no liability with respect to accidents, bodily injury, illness, breach of contract or any other damages or loss, or with respect to any claims arising out of any activities undertaken by the GRANTEE under this Agreement, whether with respect to persons or property of the GRANTEE, or third parties. The GRANTEE agrees to obtain insurance or otherwise protect itself or others as it may deem desirable. Further, the GRANTEE, to the extent allow by law, agrees to indemnify, defend and save harmless the CENTER and its officers, agents and employees against any liability, including costs and expenses and attorneys' fees, for the GRANTEE'S violation of any proprietary right or right of privacy arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any information published resulting from the work of the Project or based on any libelous or other unlawful matter contained in such information. The GRANTEE, to the extent allowed by law, also further agrees to indemnify, defend and save harmless the CENTER and its officers, agents and employees from any and all claims and losses accruing or resulting to any

and all subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Project and the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the GRANTEE or its agents in the performance of the Project and this Agreement.

13. Entire Agreement. This agreement supersedes all prior agreements between the CENTER and the GRANTEE, and expresses their entire understanding with respect to the transactions contemplated herein, and shall not be amended, modified or altered except pursuant to a writing signed by both the GRANTEE and the CENTER.

14. GRANTEE Representations and Warranties. The GRANTEE hereby represents and warrants that:

(a) The GRANTEE is a unit of local government located in one of the state's 85 rural counties or an economically distressed urban county designated as Tier 1, 2, or 3 by the North Carolina Department of Commerce.

(b) The execution and delivery of this Agreement have been duly authorized by all necessary GRANTEE action and are not in contravention of law nor in contravention of the provisions of any indenture agreement or undertaking to which it is a party or by which it is bound.

(c) There is no action, suit proceeding, or investigation at law or in equity or before any court, public board or body pending, or to the GRANTEE'S knowledge, threatened against or affecting it, that could or might adversely affect the Project or any of the transactions contemplated by this Agreement or the validity or enforceability of this Agreement or the GRANTEE'S ability to discharge its obligations under this Agreement. If it is subsequently found that an action, suit, proceeding, or investigation did or could threaten or affect the development of the Project, the GRANTEE shall be liable to the CENTER for repayment of the entire amount of the grant and this Agreement may be terminated by the CENTER effective upon notice.

(d) No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Agreement by the GRANTEE or the performance of any of its obligations hereunder, or all such requisite governmental consents or approvals have been obtained. The GRANTEE shall provide the CENTER with evidence of the existence of any such necessary consents or approvals at the time of the execution of this Agreement.

(e) The GRANTEE is solvent.

15. Special Provisions and Conditions.

(a) Nondiscrimination. The GRANTEE agrees not to discriminate by reason of age, race, religion, color, sex, national origin, or handicap related to the activities of this Agreement.

(b) Conflict of Interest. The GRANTEE certifies that to the best of its knowledge no GRANTEE employee or officer of the GRANTEE has any pecuniary interest in the business of the CENTER or of the Agreement, and that no person associated with the GRANTEE has any interest that would conflict in any manner with the performance of the Agreement.

(c) Compliance with Laws. The GRANTEE shall at all times observe and comply with all laws, ordinances, and regulation of the State, Federal and Local governments which may in any manner affect the performance of the Agreement.

(d) Non-Assignability. The GRANTEE shall not assign any interest in the Agreement and shall not transfer any interest in the same without prior written consent of the CENTER; provided, however, that claims for money due to the GRANTEE from the CENTER under this Agreement may be assigned to any commercial bank or other financial institution without such approval.

(e) Personnel. The GRANTEE represents that it has, or will secure at its own expense, all personnel required to monitor, carry out and perform the scope of services of this Agreement. Such employees shall not be employees of the CENTER. Such personnel shall be fully qualified and shall be authorized under state and local law to perform such services.

16. Notice. All notices required or permitted to be delivered hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered or when deposited in the United States mails, certified, return receipt requested, first class, postage prepaid and addressed as follows:

If to the CENTER, Attn: **Melody Adams**
Rural Economic Development Center, Inc.
4021 Carya Drive
Raleigh, NC 27610

If to the GRANTEE: Attn: **The Honorable Jody L. McLeod**
Town of Clayton
PO Box 879
Clayton, NC 27528-0879

or addressed to such other address or to the attention of such other individual as the CENTER or the GRANTEE shall have specified in a notice delivered pursuant to this subsection.

17. Execution. This Agreement may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and such counterparts, together, shall constitute one and the same Agreement which shall be sufficiently evidenced by one of such original counterparts.

18. Construction. This Agreement shall be construed and governed by the laws of the State of North Carolina.

19. Acceptance. If you agree to the grant conditions as stated, please return the original contract with your signature in the space provided. This grant may be withdrawn if your acceptance has not been received by the Rural Center within one month from the date the contract is received.

IN WITNESSETH WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Town of Clayton

By: _____

Title: Mayor

Date: _____

Rural Economic Development Center, Inc.

By: Susan Edurne

Title: Vice President, Finance & Administration

Date: 8/22/12



EXHIBIT A
SCOPE OF SERVICES

Project # 2013-014-60501-107

Town of Clayton
Triangle Confections Winstead Building I Building Renovation Project

NC Economic Infrastructure Fund
Building Reuse and Restoration Vacant Grant

The Town of Clayton will carry out the terms of this contract as follows:

I. General Project Description

The Town of Clayton requested **\$200,000** to support the reuse of a 9,840 sq. ft. building located at 107 North Tech Drive. The building was constructed in 1995 and has been vacant for two years. Triangle Confections, LLC will reuse the property to establish a production baking facility to serve Dunkin Donut restaurants within a two-hour radius of the triangle. The company reported a baseline employment of **27** in North Carolina and committed to create **25** new, full-time jobs with an average annual salary of \$19,520 (\$16,000-50,000). The application states that the company will provide medical benefits but does not indicate what percentage is paid by the employer. The total project cost is \$1,898,500.

Recommendation: Fund contingent upon the receipt of:

- 1. Proof of funding availability from the bank/s that were proposed to provide financing for the project.***
- 2. Information regarding the percentage of employer-paid medical benefits.***

Objective:

Applicants and their partners must engage in the activities necessary to make fit the project building to accommodate the business needs. All work should be completed according to the eligible costs provided in the application and contractor's cost estimates submitted. All activities must meet or exceed all applicable state and local building code requirements.

For the Vacant Properties Category: only eligible work completed within the existing building footprint can be included in costs eligible for reimbursement and the required match.

For the Occupied Properties Category: only eligible work completed within the existing building footprint and/or additions to the existing building can be included in costs eligible reimbursement and the required match.

For the Rural Hope/Rural Health Category: eligible work completed within the existing building footprint and/or additions to the existing building, and/or new construction can be included in costs eligible for reimbursement and the required match.

Eligible costs under the program include, but are not limited to: materials and labor to install HVAC, electrical, plumbing, fire alarm/suppression system, roofing, flooring, carpentry, drywall, paint, etc. This is not an exhaustive list, grantees should contact the Rural Center for questions regarding whether a specific expense is eligible under the program.

The following costs are specifically prohibited under the program and may not be submitted for reimbursement or the matching funds requirement: building purchase, architectural costs, engineering costs, permit fees, surveys, legal fees, machinery & equipment, telephone hardware and software, computer hardware and software, furnishings, paving, fencing, kitchen equipment, refrigeration equipment, etc. This is not an exhaustive list, grantees should contact the Rural Center for questions regarding whether a specific expense is eligible under the program.

No company or its employees, in which, any project partner has an ownership or management interest in, may be used as a contractor for the renovation/construction project unless that company holds a valid NC General Contractors license. Licensed contracting companies owned or operated by any project partner that are used in the renovation/construction will be required to submit original invoices from the provider for labor, materials and subcontracted work plus proof that those invoices have been paid in full.

II. Project Financing

Financing Source(s)		Amount
<u>BB&T or Wells Fargo</u>	\$	\$1,000,000.00
<u>Town of Clayton</u>		\$10,000.00
<u>NC Rural Center</u>		\$200,000.00
Total Project Financing	\$	<u>\$1,210,000.00</u>

III. Project Reporting

The Town of Clayton will adhere to the conditions and regulations outlined in the Contract Agreement and the Loan/Performance Agreement. The Town of Clayton will also file reports on the dates set forth in **Exhibit C** of this contract.

EXHIBIT B PAYMENT SCHEDULE

The Rural Economic Development Center, Inc. shall make payable to the **Town of Clayton** a sum in the amount of **\$200,000.00** as outlined below. The grant requires a cash match equal to the amount of Rural Center funding, which may come from either public or private sources or a combination of both. Funds provided for the match must contribute to the eligible project cost. Building acquisition equipment or startup costs will not be considered for the match. The unit of local government must contribute 5% of the grant in cash or in in-kind services.

Eligible expenses:

Eligible costs under the program include, but are not limited to: materials and labor to install HVAC, electrical, plumbing, roofing, flooring, carpentry, drywall, paint, etc. This is not an exhaustive list, grantees should contact the Rural Center for questions regarding whether a specific expense is eligible under the program.

The following costs are specifically prohibited under the program and may not be submitted for reimbursement or the matching funds requirement: building purchase, architectural costs, engineering costs, permit fees, surveys, legal fees, machinery & equipment, telephone hardware and software, computer hardware and software, furnishings, paving, fencing, kitchen equipment, refrigeration equipment, etc. This is not an exhaustive list, grantees should contact the Rural Center for questions regarding whether a specific expense is eligible under the program.

The Rural Center will make all checks payable to the local government grantee. The Rural Center will reimburse 50% of the eligible expenditures submitted. (For example: If invoices for eligible expenses totaling \$20,000 with proof of payment are submitted, the Rural Center will reimburse \$10,000).

To request reimbursement, grantees must submit the following:

1. A completed financial request form,
2. Copies of project invoices that support the reimbursement request,
3. Proof of payment: applicants must provide copies of checks that have cleared the bank or electronic remittance information as evidence that the invoices requested for reimbursement have been paid in full, and
4. Progress reports must be up to date. See "Exhibit C" of the grant agreement for a reporting schedule specific to your project. Reimbursements will not be made if progress reports are not submitted according to the reporting schedule.

All payment requests must be received by the Rural Center within 30 days of the end of the contract period. Payments are subject to the availability of funds. Payment Request forms can be found under the Grant Applications and Reporting Forms link on our website at www.ncruralcenter.org

**EXHIBIT C
REPORTING SCHEDULE**

In accordance with the contractual agreement between the **Town of Clayton** and the Rural Economic Development Center, Inc., progress and final reports should be submitted according to the following guidelines:

Progress and Final Reports:

Grantees should submit progress reports to the Rural Center at least every six months. Refer to the reporting schedule below.

Grantees should submit a Final Report to the Rural Center when all aspects of the construction/renovation, job creation and six-month job verification period are complete.

Due Date:	Report Due:	Reporting Period:
03/22/13	Progress Report	08/22/12 to 02/22/13
09/22/13	Progress Report	02/23/13 to 08/22/13
03/22/14	Progress Report	08/23/13 to 02/22/14
09/22/14	Final Report	02/23/14 to 08/22/14

Progress/Final Reporting forms can be found under the Grant Applications and Reporting Forms link on our website at www.ncruralcenter.org

EXHIBIT D
JOB REPORTING AND CLOSE OUT REQUIREMENTS

Building Reuse/Rural Health Care/Rural Hope loans will be forgiven once the project company creates the required number of jobs and maintains that required number for at least six consecutive months. The jobs must be full-time (at least 35 hours per week) and the number must be above the baseline employment level reported in the application.

Job verification requires the submission of the following:

1. **Letter Certifying Job Creation**—the grantee must submit a letter from the project company that attests to the creation of the number of jobs committed to receive the grant. The letter should include the number of baseline employees reported at the time of application; the total number of current employees; and the six-month date range that the jobs were created and maintained. The letter should be printed on company letterhead and signed by the company's chief operating officer or chief financial officer.
2. **NCUI101 Forms**—the grantee must submit copies of the company's Employment Security Commission *Employer's Quarterly Tax and Wage Report* (NCUI 101) forms as evidence of job creation and maintenance. The forms must correspond to the six-month date range that the required jobs were maintained. If the company has more than one location in North Carolina, the names of the employees working in the project building should be highlighted.
3. **Final Report**—grantees must submit a final report that describes the activities and outcomes of the project.

Loan Release

Once all progress reports, the final report and job verification information are received and approved by the Rural Center, the applicant will be notified that the terms of the grant/loan have been met.

PRIVATE OWNER LOAN/PERFORMANCE AGREEMENT

This Loan Performance Agreement (the "Agreement") is entered into this _____ day of _____, _____ by and between the Owner of the Property located at _____ (hereinafter referred to as the "Owner") and _____ (hereinafter referred to as the "Governmental Unit"), who hereby agree as follows:

WITNESSETH:

WHEREAS, Governmental Unit has provided loan support to or for the benefit of the Owner in order to stimulate and support economic development in the local geographic area by making the Property available to the Business to create new jobs (the "Business"); and

WHEREAS, a portion of such support has come from the Rural Economic Development Center, Inc. (the "Center") pursuant to its mission to stimulate and support economic development in the rural areas of North Carolina; and

WHEREAS, the Center requires the Owner to enter into this Loan/Performance Agreement as a condition of providing the support to the Governmental Unit for this project;

NOW, THEREFORE, in consideration of the mutual promises and other valuable considerations as shall be set out herein, the parties hereto do mutually agree to the following terms and conditions:

1. Program. The parties have agreed to develop, perform, and complete the work set out in *Exhibits A, B, C, and D* (hereinafter referred to as the Project) and said Project being that work described in the proposal entitled **Triangle Confections Winstead Building I Building Renovation Project** as approved by the Center.
2. Loan. Governmental Unit hereby loans to the Owner the sum of **200,000.00** to fund the Project. The parties acknowledge that this Loan will be repayable only in the event the Business fails to achieve certain job creation goals described in paragraph 3 below. In the event such job creation goals are not achieved, the Owner agrees to pay to the Governmental Unit for redistribution back to the Center, the amount set forth in paragraph 5 below. As evidence of the obligation of the Owner hereunder, the Owner shall execute the promissory note, which shall also be executed by any individual owning in the aggregate at least 75% owner, which is attached hereto and incorporated herein by reference.
3. Job Creation. The Owner agrees that the Business shall be required to create **25** number of Jobs (defined below) within twenty-four months of **8/22/2012**, the date of the grant's approval by the Center. The Owner hereby acknowledges that the funding by the Center and the Governmental Unit is predicated upon the satisfaction of this objective by the Business, that failure to achieve this objective will constitute a material default under the terms of this Agreement, and that any such failure shall require the Owner to repay all or a portion of the Loan pursuant to the provisions of paragraph 5 below. For purposes of this Agreement, a "Job" shall mean a full-time job (consisting of at least 35 hours per week of employment and eligibility for all benefits generally available for full-time employees of the Business) with the Business, at a wage at least equal to minimum wage, and located in North Carolina. The owner agrees that the Business reported the existence of **27** full-time jobs in North Carolina (Baseline Number) at the time the application of application to the Center AND the Owner hereby acknowledges that the Jobs created to satisfy the job creation objective must exist above the Baseline Number AND that the Business must maintain the full employment level required to meet the Job Creation objective for a period of six consecutive months.

4. Verification of Jobs. On the date that the required number of required new jobs have been created and maintained for six consecutive months the Owner shall cause the Business to notify the Governmental Unit so that the Governmental Unit and the Center can verify satisfaction of the conditions. The Owner shall cause the Business to provide to the Governmental Unit and the Center, or their respective designees, full and complete access to all records of the Business that would be reasonably necessary to verify the number and types of jobs created, and the wages paid to employees. Failure to provide such access upon reasonable request shall constitute a default under the terms of this Agreement.

5. Repayment. If the Business fails to create the required number of Jobs within twenty-four months from the date of the grant's approval by the Center, the Owner shall repay to the Governmental Unit, for redistribution back to the Center, an amount equal to the product of (i) **\$8,000** (the amount of loan funds divided by the number of Jobs in paragraph 3) and (ii) the number of Jobs required to be created under paragraph 3, minus the number of jobs created, above the baseline number reported, that have been in existence for 6 consecutive months. If a requirement exists to repay any sums hereunder, the Governmental Unit shall notify the Owner in writing of the amount to be repaid, and shall direct it to pay such amount directly to the Center. All such amounts due hereunder shall be due upon demand by the Governmental Unit or the Center. If not paid within 30 days following demand hereunder, the unpaid amount due hereunder or any instrument securing this obligation, shall bear interest at the rate of 10 % per annum after demand until paid. Upon default in such payment, the Governmental Unit or the Center may employ an attorney to enforce their rights and remedies, and the Owner hereby agrees to pay the reasonable attorney's fees or the Governmental Unit or the Center, not exceeding a sum of 15% of the outstanding balance owing hereunder, plus all other reasonable expenses incurred by such party in exercising any of the its rights and remedies upon such defaults.

Termination of the Business prior to completion of the job creation requirements will constitute default and will cause the Local Government to suspend any further payments to the Property Owner and will require the Property Owner to repay to the Local Government any sums previously paid.

6. Records. The Owner agrees to maintain, and to cause the Business to maintain, full, accurate and verifiable records, supporting documents, and all other pertinent data for this Project to enable the verification of the requirements contained in this Agreement. All such financial records, supporting documents, and other pertinent records related to the Project shall be maintained for a period of at least 3 years from the Job Commitment Date. In the event any such records are audited, all such records shall be retained beyond the 3-year period until any and all audit findings have been resolved. The Owner agreed to make available, and to cause the Business to make available, to the Governmental Unit, the Center, or their designated representatives, all of its records which relate to the Project and the creation of Jobs, and agree to allow the Governmental Unit or the Center or their representatives to audit, examine, and copy any and all data, documents, proceedings, records and notes of activity related in any way to the Project or such Job creation. Access to these records shall be allowed upon request at any time during normal business hours, and as often as the Governmental Unit or the Center or said representatives may deem necessary.

7. Reports. The parties acknowledge that a portion of the funds which are the subject of this Agreement are appropriated by the North Carolina General Assembly. Accordingly, the Owner acknowledges and agrees that it may be subject to the audit and reporting requirements prescribed by N.C.G.S. §159-34, Local Government Finance Act-Annual Independent Audit; rules and regulations, or N.C.G.S. §143-6-23, State Grant Funds; Administration; oversight and reporting requirements; as applicable. The Owner agrees to comply with any reasonable requests made from time to time by the Center for other financial and organizational materials to permit the Center to comply with its fiscal monitoring responsibilities.

8. Representations and Warranties. The Owner hereby represents and warrants that:
 - (a) It is duly organized and existing, and, if a corporation, is duly incorporated under the laws of the state of North Carolina.

- (b) The execution and delivery of this Agreement has been duly authorized by all necessary action, and are not in contravention of law nor in contravention of any certificate of authority, bylaws, or other applicable organizational documents of such party, nor the provisions of any indenture, agreement, or undertaking to which it is a party or by which it is bound.
- (c) There is no action, suit, proceeding, or investigation at law or in equity for any court, public board, or body pending, or to such party's knowledge, threatened against or affecting it, that could or might adversely affect the Project, the creation of the Jobs, or any of the transactions contemplated by this Agreement, or the validity or enforceability of this Agreement or such party's ability to discharge its obligations under this Agreement. If it is subsequently found that an act, suit, proceeding or investigation did or could threaten the development of the Project or the creation of such Jobs, such party shall be liable to the Governmental Unit and to the Center for repayment of the entire amount of the Loan.
- (d) Such party shall at all times preserve its legal existence, except that it may merge or consolidate with or into or sell all or substantially all of its assets to any entity that expressly undertakes, assumes for itself, and agrees in writing to be bound by all of the obligations and undertakings of such party contained in this Agreement. If such party so merges, consolidates, or sells its assets without such an undertaking being provided, such party agrees to repay to the Governmental Unit and the Center the full amount of sums loaned under this Agreement.
- (e) No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Agreement by such party or the performance of any of its obligations hereunder, or all such requisite governmental consents or approvals have been obtained. Such party shall provide the Governmental Unit or the Center with evidence of the existence of any such necessary consents or approvals at the time of the execution of this Agreement.
- (f) Such party is solvent.

9. Termination; Availability of Funds

- (a) If the Owner shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or shall, violate any of the covenants or stipulations of this Agreement, the Governmental Unit shall thereupon have the right to terminate this Agreement by giving written notice to the Owner of such termination and by specifying the effective date of termination. In such event, the Governmental Unit shall have no responsibility to make additional payments under this contract after the date of termination. No further expenditures shall be made under this Agreement except for such work as shall have already been performed prior to the date of termination and the Owner shall repay all unspent grant funds upon the demand of the Governmental Unit.
- (b) It is understood that the Governmental Unit's obligation to pay any amounts under this Agreement is contingent upon the availability and continuation of funds for such purpose. In the event that funds for this Project become unavailable, the Governmental Unit may terminate this Agreement upon thirty (30) days written notice to the OWNER. All obligations of the Governmental Unit to make payments under this Agreement shall cease as of the Termination Date.

10. Liabilities and Loss. As between the Owner and the Governmental Unit, the Governmental Unit assumes no liability with respect to accidents, bodily injury, illness, breach of contract or any other damages or loss, or with respect to any claims arising out of any activities undertaken by the Owner under this Agreement, whether with respect to persons or property of the Owner, or third parties. The Owner agrees to obtain insurance or otherwise protect itself or others as it may deem desirable. Further, the Owner agrees to indemnify, defend and save harmless the Governmental Unit and its officers, agents and employees against any liability, including costs and expenses and attorneys' fees, for the Owner's violation of any proprietary right or right of privacy arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any information published resulting from the work of the Project or based on any libelous or

other unlawful matter contained in such information. The owner also further agrees to indemnify, defend, and save harmless Governmental Unit and its officers, agents and employees from any and all claims and losses accruing or resulting to any and all subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Project and the performance of this Agreement and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Owner or its agents in the performance of the Project and this Agreement.

11. Special Provisions and Conditions.

- (a) Nondiscrimination. The Owner agrees that it will not, and will ensure that the Business will not, discriminate by reason of age, race, religion, colors, sex, national origin, or handicap related to the activities of this Agreement.
- (b) Compliance with Laws. The Owner shall at all times comply, and to cause the Business to comply, with all laws, ordinances, and regulations of the State, Federal and Local Governments which may in any manner affect the performance of the Agreement.
- (c) Non-Assignability. The Owner shall not assign any interest in the Agreement, nor should they transfer any interest in the same, without the written consent of the Governmental Unit; provided however, that claims for money due to the Owner from the Governmental Unit under this Agreement may be assigned to any commercial bank or other financial institution without such approval.
- (d) Notice. All notices required or permitted hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered or when deposited in the United States Mail, certified, return receipt requested, postage prepaid, and addressed as follows:

To the Governmental Unit: Attn: _____

If to the Owner: Attn: _____

or addressed to such other address or to the attention of such other individual as either party above shall specify in a notice pursuant to this subsection.

- (e) Execution. This Agreement may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and all such counterparts, together, shall constitute one and the same Agreement which shall be sufficiently evidenced by one of such original counterparts.
- (f) Construction. This Agreement shall be construed and governed by the laws of the state of North Carolina.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

GOVERNMENTAL UNIT NAME: _____

By: _____

Title: _____

OWNER NAME: _____

By: _____

Title: _____

PRIVATE OWNER PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned (which means all the undersigned, jointly and severally) (collectively, the "Borrower") promises to pay to **Town of Clayton**, or assigns (the "Holder"), the principal sum described below, not to exceed 200,000.00, together with interest after default as described below.

The Borrower acknowledges that the Holder has agreed to advance up to the dollar amount indicated above pursuant to a Loan/Performance Agreement of even date by and among the Borrower and the Holder (the "Agreement"), which requires the creation of certain full-time jobs by the Business. In the event all or a portion of the required number of jobs are not created within the time periods indicated in the Agreement, all or a portion of the amount indicated above shall be subject to repayment to the Holder. The Borrower hereby agrees to repay to the Holder, in accordance with the Agreement, an amount equal to the product of (i) \$8,000 and (ii) number of jobs required to be created under the Agreement, minus the number of jobs created, above the baseline number reported, that have been in existence for 6 consecutive months. All such amounts due hereunder shall be due upon demand by the Holder, and shall be paid directly to the Rural Economic Development Center. Holder shall have the right to assign this Note at any time to the Rural Economic Development Center. If not paid within 30 days following demand hereunder, the unpaid principal of this Note, and all other sums due under this Note or any instrument securing this Note, shall bear interest at the rate of 10 % per annum after demand until paid.

Upon default, the Holder may employ an attorney to enforce the Holder's rights and remedies, and the maker, principal, surety, guarantor, and endorsers of this Note hereby agree to pay the Holder reasonable attorney's fees not exceeding a sum of 15% of the outstanding balance owing on the Note, plus all other reasonable expenses incurred by the Holder in exercising any of the Holder's rights and remedies upon defaults. The rights and remedies of the Holder as described in this Note and any instrument securing this Note shall be cumulative and may be pursued singly, successively, or together against the property described in any such security instrument, or any other funds, property, or security held by the Holder for payment or security, in the sole discretion of the Holder. The failure to exercise any such right or remedy shall not be a waiver or release of such rights or remedies or the right to exercise any of them at another time.

All parties to this Note, including the Borrower and any sureties, endorsers, or guarantors hereby waive protest, presentment, notice of dishonor, and notice of acceleration and maturity and agree to remain bound for the payment of principal, interest, and all other sums due under this Note or the Agreement and any instrument securing this Note or the Agreement notwithstanding any change or changes by way of release, surrender, exchange, modification, or substitution of any security for this Note, or by way of any extension or extensions of time for the payment of principal and interest; and all such parties waive all and every kind of notice of such change or changes and agree that the same may be made without notice or consent of any of them.

Holder shall not, by any act, delay, omission, or otherwise, be deemed to have waived any of its rights under this Note or the Agreement. No waiver by the Holder of any of its rights under this Note or the Agreement shall be valid unless in writing, and then only to the extent therein set forth. Waiver by the Holder of any right or remedy under the terms of this Note or the Agreement on any one occasion shall not be construed as a bar to the Holder exercising any right or remedy on any future occasion. This Note may not be amended, changed, or altered except in writing executed by the Holder and the Borrower.

This Note evidences a debt payable by the Borrower.

_____ If initialed by the Borrower, this Note is secured by a deed of trust on certain property owned by the Borrower.

The law governing this transaction shall be that of the State of North Carolina, excluding its conflict of laws provisions. Any capitalized term not defined in the Promissory Note shall have the meanings ascribed in the Agreement.

IN WITNESS WHEREOF, the undersigned has (have) caused these presents to be executed under seal, pursuant to authority duly given, the day and year first above written.

Dated as of _____, 20____.

If By Individual: Borrower: _____ (SEAL)

Borrower Printed Name: _____

If By Entity:

By: _____

Name: _____

Title: _____

LIMITED WAIVER OF CONFIDENTIALITY
UNEMPLOYMENT TAX AND WAGE RECORDS

Name of Taxpayer _____

Address _____

Phone _____

Federal Tax Identification Number _____

NC Unemployment Insurance Account Number _____

I hereby waive the right to confidentiality, as found in N.C.G.S. 96-4(t), for the limited purpose of authorizing disclosure of certain information contained in the above company's quarterly unemployment insurance tax records filed with the North Carolina Employment Security Commission (the "NC ESC") to the Town of Clayton and program administrators (collectively, the Town of Clayton) for the limited purpose of administering a Building Reuse and Restoration Grant, Rural Health Care Initiative Grant, Economic Infrastructure Water/Sewer Grant, Economic Innovations Grant, or any other program administered by the Rural Center from which the above-referenced company has sought assistance.

NC ESC is hereby authorized to disclose information contained in the above company's quarterly unemployment insurance tax records to the Rural Center for this purpose.

Unemployment insurance tax information provided in the aggregate to the NC ESC and disclosed to the Rural Center, and the company's aggregated tax and wage information provided to or otherwise in possession of the Rural Center, may be treated as public information. This waiver is not intended to release the Rural Center from any obligation it may have under North Carolina law to maintain the confidentiality of any and all information which could reveal or permit someone to ascertain the identity of any individual employee or that employee's line item unemployment insurance tax or other tax or wage information.

Signature Chief Financial Officer or Other Authorized Company Official

Print Name: _____

Title: _____

Date: _____

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

Agenda Item: 8c

Meeting Date: 9/04/12

TITLE: TOWN CLERK

DESCRIPTION: Calendar of Events:

- Planning Board Mtg – Monday, August 27, 2012 @ 6 PM
- Council Mtg – **TUESDAY**, September, 4, 2012 @ 6:30 PM
- Special Joint Meeting of the Town Council and Recreation Advisory Committee – Monday, September 10, 2012, @ 7 PM in the Art Room at the Clayton Community Center, 715 Amelia Church Road. The meeting is being facilitated by representatives of Sage Design for the purpose of hearing the vision for the North Clayton Community Park site.
- 2012 Harvest Festival – September 12-16, 2012
- Town Square Concert Series: Nantucket (rock) – Thursday, September 13, 2012, from 7 PM to 9 PM
- Council Mtg – Monday, September 17, 2012 @ 6:30 PM
- Board of Adjustment Mtg – Wednesday, September 19, 2012 @ 6 PM
- Planning Board Mtg – Monday, September 24, 2012 @ 6 PM
- Special Council Mtg – Monday, October 1, 2012, from 4:30 PM to 6 PM to receive Paperless Agenda Training.
- Council Mtg – Monday, October 1, 2012 @ 6:30 PM
- Squealin on the Square – Friday, October 5 & Saturday, October 6 @ Town Square
- Council Mtg – Monday, October 15, 2012 @ 6:30 PM
- Board of Adjustment Mtg – Wednesday, October 17, 2012 @ 6 PM
- NCLM Annual Conference hosted in Charlotte – October 21-23, 2012
- Planning Board Mtg – Monday, October 22, 2012 @ 6 PM
- Council Mtg – Monday, November 5, 2012 @ 6:30 PM
- **ELECTION DAY** – Tuesday, November 6, 2012
- Council Mtg – Monday, November 19, 2012 @ 6:30 PM
- Board of Adjustment Mtg – Wednesday, November 21, 2012 @ 6 PM
- Planning Board Mtg – Monday, November 26, 2012 @ 6 PM
- 10 Year Anniversary Gala of the Clayton Center – Saturday, December 1, 2012
- Council Mtg – Monday, December 3, 2012 @ 6:30 PM
- Clayton Christmas Parade – Saturday, December 8, 2012, 3 PM – 5 PM
- Council Mtg – Monday, December 17, 2012 @ 6:30 PM
- Board of Adjustment Mtg – Wednesday, December 19, 2012 @ 6 PM
- Planning Board Mtg – **THURSDAY**, December 27, 2012 @ 6 PM

Date:
9-04-12

Action:
N/A.

Info. Provided:
Calendar of Events.



**NOTICE OF POSSIBLE ATTENDANCE
BY THE
CLAYTON TOWN COUNCIL**

An invitation by Waste Management for the Town Council to tour its Recycling Center is slated for:

**Thursday
September 6, 2012
10 AM
Waste Management Recycling Center
Capital Boulevard, Raleigh, NC**

It is possible a quorum of the Town Council may tour this facility but no action by Council is expected.

Sherry L. Scoggins, MMC
Town Clerk

Posted: August 23, 2012



PUBLIC NOTICE

The Clayton Town Council and the Recreation Advisory Committee (RAC) will have a joint work session meeting on:

Monday, September 10, 2012

7 PM

**Clayton Community Center
715 Amelia Church Road.**

The purpose of the joint work session is to discuss the vision of the North Clayton Community Park site.

This meeting will be facilitated by representatives of Sage Design. Sage Design is updating the Town's Parks and Recreation Comprehensive Plan.

Larry Bailey
Parks & Recreation Director

Sherry L. Scoggins, MMC
Town Clerk

All meetings of the Clayton Town Council and Recreation Advisory Committee (RAC) are public meetings and citizens are invited to attend.



TOWN OF CLAYTON PUBLIC NOTICE

The Clayton Town Council will have a Special Work Session for the purpose of receiving “Paperless Agenda” training on:

**Monday
October 1, 2012
4:30 PM to 6 PM
Clayton Town Hall – Council Chambers
111 East Second Street**

This is an open meeting.

Jody L. McLeod
Mayor

Sherry L. Scoggins, MMC
Town Clerk
919-553-5002 ext 5004