

**TOWN OF HUNTERSVILLE
TOWN BOARD MEETING
MINUTES**

**January 17, 2023
6:00 p.m. – Huntersville Town Hall
101 Huntersville-Concord Road**

PRE-MEETING

The Huntersville Board of Commissioners held a Pre-meeting at Huntersville Town Hall, 101 Huntersville-Concord Road, at 5:00 p.m. on January 17, 2023.

GOVERNING BODY MEMBERS PRESENT: Mayor Melinda Bales; Commissioners Dan Boone, Rob Kidwell, Amber Kovacs, Lance Munger, Derek Partee and Stacy Phillips.

Mayor Bales called the Pre-meeting to order.

The Town Board held a joint meeting with the Downtown Plan Steering Committee and the Planning Board to receive update on the Draft Downtown Plan.

Planning Board Members Present: Jeff Sny, Frank Gammon, Jodi Wright, Trina Loomis, Jay Henson, Scott Hensley, Stephen Swanick (ex-officio member of the Downtown Steering Committee), and Chris Boyd.

Downtown Steering Committee Members Present: Sarah McAulay, Lee Hallman, Charles Guignard, Sean Flynn, Bob Lemon, Elaine Kerns, Gatewood Campbell, Jessika Tucker, John Foster, John O'Neill (ex-officio member), Barbara Gerhardt and Janelle Harris.

Jack Simoneau, Planning Director, presented the Draft 2022 Downtown Master Plan. *Refer to PowerPoint attached hereto as Exhibit No. 1.*

The Plan will go to the Planning Board for a recommendation and then to the Town Board for a public hearing and adoption.

There being no further business, the Pre-meeting was adjourned.

**REGULAR MEETING
TOWN OF HUNTERSVILLE
BOARD OF COMMISSIONERS**

The Regular Meeting of the Huntersville Board of Commissioners was held at the Huntersville Town Hall, 101 Huntersville-Concord Road, at 6:00 p.m. on January 17, 2023.

GOVERNING BODY MEMBERS PRESENT: Mayor Melinda Bales; Commissioners Dan Boone, Rob Kidwell, Amber Kovacs, Lance Munger, Derek Partee and Stacy Phillips.

Mayor Bales called the meeting to order.

Mayor Bales called for a moment of silence.

Mayor Bales led the Pledge of Allegiance.

STAFF QUESTIONS

Commissioner Partee asked why the Town of Huntersville does not have an Architectural Review Board and if it would be possible to develop one.

Jack Simoneau, Planning Director, explained that it would be a Town Board decision whether to create one or not and briefly reviewed the process to create an Architectural Review Board.

Commissioner Partee suggested a discussion about creating an Architectural Review Board be added to the Retreat Agenda.

Commissioner Kidwell requested staff look into holding a public meeting at the Dukes Water Plant, preferably with NCDOT there, to provide update on the Highway 73/Beatties Ford Road project. Also requested staff to check to see if the developer of Anchor Mill was to put in the infrastructure by a certain date.

Commissioner Kovacs requested an update on the new town hall.

Bobby Williams, Assistant Town Manager, noted that it is in the schematic design phase. An update will be provided at the Retreat with exterior options to give feedback on.

Commissioner Boone expressed appreciation to Anthony Roberts, Stephen Trott and Energy United for getting the new traffic light at Northdowns Lane and US 21 functional. Also expressed appreciation to Mr. Roberts for getting staff to track the source of yellow paint that was in a stream.

Mayor Bales requested an update on upcoming community engagement events.

Kim Strickland, Public Information Officer, announced a community engagement event on January 19 at Lowes Foods.

PUBLIC COMMENTS, REQUESTS, OR PRESENTATIONS

The Year of the Trail Proclamation. Mayor Bales proclaimed 2023 as *The Year of the Trail*.

Town of Huntersville Proclamation

WHEREAS, Town of Huntersville's natural beauty is critical to its residents' quality of life, health, and economic wellbeing; and

WHEREAS, the trails that span across our community are an integral part of the recreational and transportation possibilities of our area and promote an enjoyment of scenic beauty by our residents and our visitors; and

WHEREAS, the parks, greenways, trails and natural areas in our community are welcoming to all and provide a common ground for people of all ages, abilities and backgrounds to access our rich and diverse natural, cultural, and historic resources; and

WHEREAS, Town of Huntersville's natural assets and resources are integral to disaster recovery and resiliency to climate change for future generations; and

WHEREAS, nature trails within the Town of Huntersville vary from less than a mile in length to 8.5 miles within Mecklenburg County's Latta Nature Preserve; range from footpaths within parks and nature preserves, from canoe trails down the Catawba River; to greenways through local neighborhoods; and

WHEREAS, trails offer quality-of-life benefits to all as expressions of local community character and pride, as outdoor workshops for science education, as tools for economic revitalization, as free resources for healthy recreation, as accessible alternative transportation, and as sites for social and cultural events; and

WHEREAS, the Greenway, Trail, & Bikeway Commission, Tarheel Trailblazers, Carolina Thread Trail, & trail volunteers impact our community by making trails and greenways accessible to the Town of Huntersville residents; and

WHEREAS, the North Carolina General Assembly designated 2023 as the Year of the Trail in North Carolina to promote and celebrate the state's extensive network of trails that showcase our state's beauty, vibrancy and culture; and

WHEREAS, North Carolina is known as the "Great Trails State;"

NOW, THEREFORE, I, Melinda Bales, Mayor of the Town of Huntersville, do hereby proclaim 2023 as "**THE YEAR OF THE TRAIL**" in Town of Huntersville, and commend its observance to all people.

IN WITNESS WHEREOF, I do hereby set my hand and cause the Seal of the Town of Huntersville to be affixed, this the 17th day of January, 2023

Susan Irvin, Attorney for North American Properties, 19726 Zion Avenue, Cornelius, said I want to thank the Commissioners and the Mayor for the input that they have given to us over the last three weeks. We were able to have significant conversations and we also had very constructive comments from Huntersville voters and members of the community. We have taken those to heart. Over the last week and a half since we have received those comments we worked on major revisions to the plans. Because of the agenda deadline, the plans that were submitted prior are the only ones that can be considered by the Board. The revisions that we have discussed over the last three weeks will be submitted this week and I assure you they are very significant. In addition to the changes that have been made to the plans you have before you, you will be receiving significant additional changes and for that reason the Board, and I believe the staff will inform you of this, but the Board is required to delay the vote for 30 days. We ask that you defer the decision to delay until the February 6 meeting so that will give you a chance to review the revised plans in full. That is our request to the Town. I just want to thank the Board and the Mayor for taking this case so seriously and being able to look at things that are important to the Town of Huntersville but also the personal comments from the citizens of Huntersville and the voters of Huntersville. I'm happy to answer questions.

Adam Holbrook, 143 S. Church Street, said I just want to thank the Board and the Mayor for your consideration of deferring Other Business 10.E, the condemnation of the Gibson Park Drive Phase 2. It was brought to my attention by Charles Guignard this morning that this was on the agenda, where myself and my father had not been notified by anyone with the Town or PPS that this was going on. The last communication we had with PPS was on December 13 where the gentleman that works there said that he was meeting with the Town yesterday to figure out what was going on and we have not had any phone calls, emails, or any letters since. The fact that this got on the agenda for today is kind of baffling to myself and my father.

Mike Murphy, 8514 Brentfield Road, said I've lived on both sides of Birkdale Village. I moved to the golf course side in 2017 and this is the fourth time I'm here to speak in opposition of the Birkdale plans as they are currently proposed. I don't know if Ms. Irvin is still here. I'm going to try to avoid duplicative comments for the sake of my neighbors. I would challenge Ms. Irvin on Tim Perry's behavior. I don't want to spread misinformation, but I spent a better part of today reading through some e-mail traffic that was shared with me and it seems like a lot of it is selling and marketing and social engineering of

this to the Town staff. It's always on the agenda, so it's concerning to me that even the invitation of the former mayor and Town Manager to celebrate the christening of Birkdale, he mentioned that there's a company tradition of taking a shot of tequila and that just to me is not a good look for the town. I'm sure that this occurs in other areas and folks have the right to be diligent, but I'm looking through the e-mail traffic, I see former Commissioner Munger, current Commissioner Phillips and Commissioner Dan Boone all express either outright concern about what's going on and how this is paid for. We are just kind of leery in general to the point where the Town Attorney is reminding folks of some of the laws and regulations around this sort of behavior. It's just not a good look for the town in light of everything that has unfolded and it just adds further confusion and stress to the citizens. In closing, let's think about that statement in the proclamation we just made about the Year of the Trail. I can't remember it word for word but let's think about that statement that we just made. That's like counter to everything that we're talking about with Birkdale Village.

Suzanne Villar, 17130 Bridgeton Lane, said I would like to say, and I don't want to use individuals' names because I don't want to get into the area that might be perceived as a personal attack, but I will say that North American Properties is here asking for a rezoning extension again and we are here to object again. I would like for the record, for those who want to dismiss our group as just being drawbridge objectors or people with a NIMBY mindset, let me assure you that we are not. Many of us who have spoken against this rezoning and will continue to do so were originally supporters of the vision the North American Properties presented to the neighbors of Birkdale Village, which was I believe in the fall of 2019. I for one believed at that point that the Village had been neglected by DDR and needed a facelift. I supported the ideas originally presented to the residents by North American Properties and felt that they would address many of our problems. But eventually we learned how deceptive and incomplete North American Properties' original presentation had been and how ill-conceived North American's plans were. That was when North American Properties lost my support. They failed to divulge their full intentions to rezone Birkdale to make way for high-rise buildings, which I think is totally incongruous to put a high-rise building in any area that is labeled a village. It's simply not appropriate. Mr. Perry, because he has been the point person on this, has been educated about this numerous times by members of our community, so there shouldn't be a need for a last minute major revision. These concerns and complaints have been put before North American Properties on numerous occasions by numerous individuals and why we are just now being told that there's a major revision is somewhat of a mystery to me. It seems like there was time and opportunity for this to have been addressed in the beginning. It seems like a committed developer would have come to the table with a full presentation from day one, revealing all of their intentions, including high-rise buildings, a 350-room apartment building and 150-room hotel, but that was not disclosed initially. They would have come if they were a committed developer with well delineated drawings and that wasn't provided. I am asking you to please not approve this postponement and not approve this rezoning.

Tammy Davis, 17114 Bridgeton Lane, said this is the third time that I have been here standing behind this podium pleading for your support. The first time I spoke it was out of frustration, concern and anger. The second time I spoke it was for fear of my family and fellow neighbors. Today I'm just going to speak from my heart. I love my community and all it has to offer. If I felt for one moment NAP's plans were beneficial to a place I hold so dear and near to my heart, I would not be so adamant about trying to stop them. Many people in our community share in these feelings, but quite simply just don't have it in them to publicly stand here and speak to you all today. I assure you that they are watching and they are listening. They care about this. It's important. We as a community are upset. I don't know if we are allowed to use names, but Mr. Perry has overpromised and underdelivered to us. We were told construction would be done before the year mark and our parking would be accommodating to all the masses. Reality is we have been left with two unfinished structures and the traffic and parking

are an absolute and total nightmare. Tim has changed his narrative repeatedly to fit his everchanging motives and has just blatantly lied to us. Unfortunately, trust has been broken and without trust, anger and suspicion have been born. If you look at our online petition, it is 10 to 1 against NAP's plan to overexpand Birkdale Village. If your decision was based purely on votes alone, this would be an absolute no to NAP's current conquest. The heartbreaking truth is that this decision may very well be influenced solely on tax revenue and that is what I find so incredibly disturbing. Quality of life should play a pivotal role in our town leaders' decisions. When you all as elected officials were on this side of the microphone vying for our votes, your constituents voted for you believing that you had our best interest at hand. The promises and oath were taken for us, your townspeople, not a Georgian with questionable character and smoking mirror. For this my third and final plea I am asking for you to do the right thing, be here for us as we were there for you all. Please stand up for your people.

Mayor Bales said as we move forward, please let's keep our personal attacks – we should not be doing that. I am sure that you can get your point across without doing so.

Nick O'Shaughnessy, 8217 Parkton Gate Drive, said I'm going to have to ask you for a slight exemption from the personal attack because I am responding to Mr. Perry's Facebook in which he stated Nick, you've had your 15 minutes of fame and now it's your turn to quit. He also called me a fearmonger and totally non-constructive in this process. Having said that, that's all I'm going to say about him. What I do not understand about this rezoning proposal is that it knowingly not knew how unique the Village was conceived. Why did they do cheap way out. Again, this is not anything derogatory against the local people, but they hired a local landscape architect who happens to be on the Planning Board rather than the architect to the same caliber as Terry Shook of Shook and Kelly who were the original local architects for Birkdale Village. The answer is unfortunately, and I apologize for being slightly repetitive, in that the used car salesman approach to real estate is all about minimal capital outlay for maximum revenue in return in the short term with no consideration for long-term permanent effects as a result of their actions. And those actions would be left with us, the neighborhoods, the community and you the town. The scope and size and visual depictions of their proposed big buildings are an architectural joke. The reimagining of the central boulevard is also a joke with the Warby Parker building being the prime eyesore. Build quality is mediocre to poor and as previously mentioned there are two unfinished structures which have been unfinished for more than two months. Perhaps the contractor didn't get paid. That's usually the reason for no construction happening. NAP's ignorance of the concept of Birkdale Village was exemplified to me when they closed off the roundabout in the center. The whole TND concept of interconnectivity from village to residential was destroyed. Those are public streets in Birkdale Village, did everybody know that. They are not private streets. They are public, owned by the Town. Did somebody at the Town authorize the closure because you just ruined the central focal point of the whole development. Now all the traffic that really exits has only one way out because everybody has to go right and go to that one exit rather than the two exits. Birkdale Village was the first TND nationwide to be built at one time. Forest City, the original landowners, were going to build yet another strip center, but for the insight of Mayor Jill Swain, God rest her soul, and Ann Hammond, Town Planner and David Walters who wrote the TND Huntersville received a true jewel of a prime example of Traditional Neighborhood Development. I literally implore you to deny this proposal and deny the request.

Noelle Burton, 12940 Cadgwith Cove Drive, said I don't even live in Birkdale Village. I live in Northstone Country Club, but I was compelled to come here tonight because I'm very upset by all the changes occurring in Birkdale Village. Why would I want to go to Birkdale Village when all the stores are closing or have been closed that I frequented. The parking is a nightmare. What is the draw. I'm the perfect demographic in which you would want. A 40 something year old mom, shopper and in all of my social

circles as well as my social media groups I can tell you that not one single person is excited about going to the already congested Birkdale Village area. This new project has seemed to attract unruly teenagers at the movie theater and the surrounding areas. They are loud, obnoxious, vulgar and that was my main reason for not going to malls. Christmas was a disaster and we left when we couldn't find a parking spot. I literally live 10 minutes away and it took me 45 minutes to get home because of all of that traffic on Sam Furr Road. I really hope you stop these money hungry greedy developers in their tracks.

Nadine Wynn, 8127 Strandhill Road, said I want to say thank you to all the Commissioners, the Mayor, all the elected officials for allowing us to speak here tonight. July 4, 1776, United States signed a Declaration of Independence. One of our greatest forefathers Thomas Jefferson penned the sentence that all citizens of the United States have the right to life, liberty and the pursuit of happiness. What does that have to do with me. Let me share my little story. I moved here in 2002. Driving through Birkdale Village just being finished, I was so excited. I fell in love with this little community. Low and behold my happiness was greatly accelerated 2-1/2 years ago when I had the opportunity to buy a little house in Birkdale Village. My cute little cottage. I love it. I still love it to this day. My concern is that the community has changed. I am no longer able just to take my car and drive around and go to the shops there, even though I literally live on the other side of the park. I could walk, but I have severe arthritis and I can't. Trying to find a parking spot as we all know is a living nightmare. I really started to panic the night that Santa came to Birkdale because I couldn't get to my home. My own street to my home was blockaded. Even the little secret road behind Walgreens was blocked off by the people who were doing construction on the apartments and their signs said construction traffic only. That made me realize that the changes that are occurring when I first thought they were awesome suddenly they are not anymore. I thought ice skating was a fabulous idea to come to Birkdale. Oh no, wait, when I tried to park the day after Christmas to return some Christmas presents, there was literally nowhere to park. Cars were parking up and down the residential streets of Birkdale Village and that's during the day. Elected officials, I want to thank you for your patience, your persistent and your perseverance in supporting the citizens of Huntersville and Birkdale Village. They voted for you. It is your responsibility to be their voice, to listen to them, to listen to what they are saying. Please support us in stopping this change.

MaryAnn Turetsky, 16927 Birkdale Commons Parkway, said I've been researching our distinguished Board members to refresh my memory as to their platforms that they ran on to get my vote. I found out that Stacy Phillips and her family own the Old Store. I buy them out of their mistletoe candles every year. Then an address popped up with the name Phillips and I couldn't believe it. The address was 16500 Birkdale Commons Parkway. That's the street that I live on. I got in my car with my friend and it led us to that address and I found myself sitting in front of the Birkdale Golf Clubhouse. I found out that the Phillips family does in fact have an interest in this property and their plans to develop it, just like NAP does with Birkdale, with a six-story hotel, apartments, high-end restaurants. I feel that Stacy like her father did in the past should recuse herself from this vote. It is ethically and more important morally the right thing to do. At one meeting I heard her ask if she should recuse herself but the Mayor said it wasn't necessary. Stacy proved to me that she wanted to do the right thing at that time. The Phillips family has all to gain in this vote and the people of Birkdale have all to lose.

Mayor Bales said you are dipping into personal attacks at this point. Please share your concerns about the project itself, but let's not dive into personal attacks on individuals.

Ms. Turetsky said okay, you're not going to like this. Then in 2020 I read that NAP hosted several Board members on a trip to Avalon to show them what Birkdale could become. That seems like a conflict of interest, but what do I know. Then I heard that Tim made a substantial donation to one of the Board's

favorite charities, Angels & Sparrows. That sounded like a soft petal bribe. In closing all I want to say is that the NAP executive came in here like a snake oil salesman in day of old pulling his wagon into Birkdale with a promise of fixing us. We were not broken. We just needed some maintenance, paint and love to revive us. The kind man was eventually unmasked and all the people realized he was not here to help us, he could care less about Birkdale or its residents. The NAP executive is just interested in staying on top of the heap. Shame on you. To the Board, all we ask is that you vote with your truths, not your pocketbook or sweet talks from NAP. The shiny new toy of NAP breaks down and we will be left holding the pieces. A special thanks to Amber and Derek for reaching out to us after receiving our concerns.

Nicholas Giampa, 16977 Bridgeton Lane, said I have lived in Birkdale for the last two years and the changes that I've seen haven't really been positive ones. Since Christmas, I've seen police at Victoria Secret twice for theft. It's not uncommon to witness alarms going off and police in front of stores searching for criminals. People are now parking near and in front of my townhouse every weekend and I can't even park in front of my own residence. The noise has increased with cars racing up and down Townley at all hours of the night. My neighbor's car was sideswiped because she parked on Townley when Bridgeton was taken up by visitors to the Village. Personally, I feel like adding more buildings, people and cars to this already congested community would be dangerous and for lack of better words irresponsible to Birkdale's existing residents. For example, when I was younger I could walk straight to the Village and go to Starbucks and the last year or so that I've moved myself into the townhouses as I've grown up, I can't even walk down my street because there's cars parked straight on the sides, each side, a bunch of congestion all through Birkdale Village and it's just really congested. If I had to sum it up all I'd simply say is the Village used to be a cool little place where I could hang out and relax. It felt like home to me. But now I have decided to not renew my lease. I'm speaking here tonight in hopes that you all will vote no to NAP's greedy, self-serving, undesirable plans of expansion.

Kim Zarsadias, 17303 Inglewood Lane, said yes, Birkdale Village did need an update. At first, I liked it. The more I look at it, though, it just looks like.....I mean today when it was raining out sitting at eeZ eating, it just looked dreary and sad. In reference to a recent Opendoor Survey that has all of Huntersville buzzing, Huntersville was named the No. 1 zip code in the Charlotte area. The reason given for this rating is it offers a small-town feel, while still being accessible to Center City Charlotte. Adding a 145' glass building to a charming village does not preserve that small town feel. I am wondering why the plans that North American Properties has cannot be accomplished on a smaller scale. There must be a way to bring more foot traffic using a hotel of four to six stories and keeping within the current architecture. Look at the hotel Bella Grace in Charleston for example, which falls under the Marriott umbrella. Why can't they use Classic instead of Class A office space. An office building that mimics the Banana Republic building would be beautiful. Modern architecture of an all glass building does not age well and is proven to look dated quicker than any other style of architecture. The style and size just don't fit in Birkdale Village. The Hub in Davidson, although a different feel and size than what might fit in Birkdale Village has worked well for Davidson because it fits the architecture, it blends in. Why can't we do that. Why do we need that ugly big glass building. Surely, we can come up with an office building that fits the architecture of Birkdale Village in four to six stories. I'm not aware of any professional architectural drawings that were done for this very important project. The whole plan does not feel strong. It feels unplanned and chaotic. It just feels like there's a different answer every time a question is asked. It doesn't feel truthful. It feels like there's no small area plan for this section of Huntersville. Huntersville needs to take the reins and make a detailed professional plan for how this small area will look forever before it just lets developers come in and plan it in a haphazard way leaving it looking like a hodgepodge of different architectural styles. I've also noticed that a lot of details have not been

completed. The paint is scratching off all the doors. It might not make a difference to some people, but it's not going to age well, what they've done.

Cindy Stockwell, 8112 Parkton Gate, said I believe Birkdale Village can definitely benefit from new development, but there must be infrastructure in place to support it. The main roads in Birkdale Village – Lindholm, Townley, already have a lot of traffic congestion. They frequently back-up and Christmas was a disaster. The two entrances to Birkdale Village cannot handle the current amount of traffic they see now. Adding more traffic with all this development will negatively affect people's living, working and just enjoying Birkdale Village the way it was. One ideal solution would be to add an additional entrance or exit to Birkdale Village or adding more lanes to existing ones. At one point there was talk of extending Townley Road to Northcross Drive. I feel like this should be explored further as somewhat of a solution, but I still think the infrastructure to Birkdale Village does not support the kind of buildings they are wanting to build.

Kim DiBenedictis, 8814 Camberly Road, said I've lived in the same house since 2001. Before my husband and I bought our own, we considered Atlanta, but only for a second because we knew it was too large and congested with more growth to face. We then looked at south Charlotte, but didn't love the city feel and having to keep up with the Jones' so to speak. We then came upon Birkdale Village and right away we fell in love with it. It was like the dream. The small town quaint with old fashioned values of loving and knowing your neighbors. I'm that touchy, feely, girl from California, love all people, so I just really needed a place where I could shop, visit, grow, have my family. It was my answer. Walkability, shopping, date nights, dining, movies, Easter Bunny, Santa, art shows, music, all of that was amazing. I know time brings change and growth, but let's be careful and wise and aware of what building an atrocity of an office building will do to our quaint village. It's just not changing a paint color and repainting it later if we don't like it. Haven't we learned with COVID that office buildings really aren't in high demand. I'm kind of confused with that. I don't really know why we need that. If NAP has the mentality of we build it they will come, then build your glass towering building in an office park that already exists, like the Rubbermaid NorthPoint area. It would fit in there perfectly I think and it's close to the interstate, all of those things that they were wanting it to be, or even in the Huntersville Business Park off Gilead. Those locations I think fit well. These proposed changes don't just affect us who live there, but it truly affects everyone that lives in the surrounding areas. This used to be a fun, safe, shopping, eating and drinking and socializing place, but now I hear from many that they avoid coming to Birkdale Village. Their favorite stores are leaving. Parking is hard to find and if you try to leave you can expect to wait for multiple light changes before even getting out onto Sam Furr. I want to impress upon you this analogy. This of this – I am your child. I depend on you for keeping me safe and meeting my needs. You are the Board of Commissioners, the Mayor, you are my parents. You were voted by the citizens of Huntersville to protect us and our neighborhood like it's your children and home. I trust in all of you that you will make the best and most responsible decision based on Birkdale Village's current state and future. Please choose to preserve Birkdale Village and allow for change and positive growth. Please ensure that NAP remains transparent and honest. I know that this is a lot on your shoulders and I do really appreciate you all.

Peter Romanello, 15823 Trenton Place, said I just wanted to start out by thanking Commissioner Boone and Commissioner Kidwell for actually responding to e-mails. I appreciate that. When it's sent out to everybody and you only get two out of seven, that's not good odds. There's three sides to this political game as I see it. On one side we have the developer. The sole purpose of the developer is to make money. At the end of the day, that's all they care about. The next side is us, the residents, and we have to bear the brunt of all of the hell that will happen with that construction. We have already endured all of the problems with the parking, with the traffic and with the safety and with potential growth that's

not aesthetically or practically appropriate for the Village. And last is you, the elected officials for the Town of Huntersville. You either ran for office to do good things for the town or to enjoy some level of power, local fame and control. And it happens at every level of politics. All we have to do is look at our state government and our federal government to see what happens when there's any level of let's say something that gets in the way of doing what is correct. For almost the past year you have heard legitimate concerns about parking, traffic and safety and those concerns have yet to be addressed with anything other than a glossing over by the main salesman for NAP, Mr. Tim Perry. His job, of course, is to paint a pretty picture of the Village, only speaking of the benefits without addressing the negatives. Your job, hopefully, is to see through that. At the end of the day your responsibility is to listen to the needs and concerns of your constituents. While over 1,400 residents have signed a petition against the expansion, only 140 or so have signed a petition in favor of the expansion. That means that 10 times as many of the constituents who voted you into office are saying that they unequivocally do not want this to happen. You have to listen to them. That's not 4 to 1, that's 10 to 1. We do not want it. And of those 1,400 people in that poll, that is not just people in the Village, that is people in the entire town of Huntersville and you have to listen to that. If you vote in favor of the expansion, you will then have to answer to each and every one of your constituents as to why you did that. And we have the responsibility to hold our elected officials accountable for their actions. Every time you are out in public, every time you go to a store, every time you are seen shopping in Birkdale Village for example, you are going to be confronted, peacefully and respectfully of course, but you are going to have to answer for your actions.

David Schurr, 17142 Pennington Drive, said last time I spoke I said that each person who was in attendance represented dozens of families that were unable to attend in person due to other obligations. I would say now that number is even higher. Many people have or will speak of the issues that the proposal by North American Properties may cause, and I concur, so I won't delve into those same reasons with my time. Instead let me reflect on something I took note of while attending a previous meeting. The fiscal year 2022 financials were presented. I noted that revenues exceeded budget, expenses were under budget and most importantly revenues exceeded expenses and provided a surplus to reserves. That was a great job. What does the North American Properties zoning proposal do to approve upon this performance. Has any of this been reviewed or vetted. Can it be provided to the residents. What I can tell you is that we have discussed the safety, infrastructure and quality of life impacts from the proposed changes. As it stands, the main beneficiary of the changes would be North American Properties, which is headquartered in Cincinnati, 450 miles away. They are concerned with the negative impacts they will cause here. North American Properties knew the zoning laws in Birkdale Village when they purchased it. Why are we looking to appease people 450 miles away from Huntersville rather than its residents. Please do not allow for the deferral of the decision once again and please deny the rezoning and let's put this issue to rest.

Lisa Schurr, 17142 Pennington Drive, said I find myself in uncharted territory as I've spent my career working in corporate finance doing business case analysis, assembling data to determine whether to proceed or squash a project, making lease versus buy decisions. I've always said I don't make difficult decisions, I let the numbers make the decision for me. Clearly, the developer is no different and is in business to make a profit. However, the difference is their proposal is not in keeping with the zoning that impacted purchasing decisions for hundreds of homeowners in the surrounding communities. If you don't like the rules of the game, you can't just keep moving the goal post. Secure a non-residential area that's zoned accordingly for the build-out. There are plenty of other opportunities in the Huntersville area. The disconnect for me that I keep asking myself is what is in this for the Town of Huntersville. Once again, my finance background never fails me. Money.....unless I'm incorrect the Town is not in the red. We are afforded the luxury of time to make thoughtful and meaningful change

for our community and owe it to our constituents to do just that. We need to pause, run the numbers and truly quantify the impact to the Town's resources. The homeowners have spoken and outlined their concerns, their interactions, their experiences. We have problems now and doubling the amount of traffic to the area is clearly not the solution. If you don't believe the homeowners, a quick Google search can highlight incidences covered by our media. Police investigate brutal assault by group of teens in Birkdale Village. Three nabbed in Birkdale Village's Victoria Secret heist where four suspects stole over \$6,000 in merchandise and of course everyone remembers the murder of 19-year-old Peter Jordan at the apartments across the street at the Landings at Northcross. Ask yourself will the developer's expansion eliminate or reduce such headlines. Thank you for your attention and thank you for your service. We all want a better, safer community and with proper planning we can get it right. I applaud the county building out the new Huntersville Rec Center. It's a joy to see our youth getting fit, playing team sports and providing them a Rec Center as a gathering place. The only downside is that we kick the kids out of the center at 6 p.m. on Friday and Saturday nights. It is our duty to provide a gathering space for the youth to prosper and to grow. Birkdale Village is not that place to develop our youth. Let's create that place.

Julia Savage, 17036 Pennington Drive, said everyone here has basically said over and over again how this will impact our lives and what I want you to do is to imagine living in my home when I cannot back out of my street. It would not be uncommon on a daily basis and perhaps hourly to see a car doing in excess of 40 mph down Pennington Drive. Two or three years ago I asked Huntersville and Cornelius to do an evaluation. I'm in a unique position because half of my home is in Cornelius and half of my home is in Huntersville. When I'm in my dining room I am in Cornelius and when I'm in my great room I am in Huntersville. I reached out to both communities and I said this is a very serious problem. I don't have children, but I hope to have grandchildren and I know my neighbors do have children and I'm not kidding you, 40 mph is not an exaggeration. When we look at adding all this additional traffic, we are not talking about adding additional means to move that traffic in and out, we will become that highway for people to leave Birkdale to go 40 mph to 50 mph down my street to get to Catawba. When you sit here and you listen to all of us, we all truly want to see improvement in our community. We truly are praying that you all understand that this is highly emotional to us because it is truly the safety of our families that we are talking about and why we bought and live where we are is because of what all of us have just said to you. I'm originally from Michigan. I came here and absolutely fell in love with Birkdale. That's why I'm here. I hear that from many of the people in my community, so we are truly depending on you to understand that we do not want to stand in the way of improvements and growth. But it was said earlier when they purchased this property, they knew what they were buying. When I bought my home, I didn't buy a lakefront. I knew I wasn't getting that. It's unfair for them to come in and try to claim that it is their investment, so now they shall make it what they want it to be. They should have purchased another property. We are going to be their consumers. We are your constituents. We beg of you to not approve this. That doesn't mean we want to be difficult, it means we want responsible, safe means to deal with this and we absolutely have to address the parking issue. Several of us have already told you please put your feet in my shoes and imagine living in your home that you cannot get to. People have literally parked in front of your driveway. Please decline and deny this request and let's come back to the table and do something reasonable.

Errol Genois, 8537 Camberly Road, said obviously our community stands at a crossroad of positive versus negative progress. I want positive progress. I want to live among people in a community that reflects positive attitudes. As a result, I don't want Exit 25 to become more congested like Exit 36. I don't want more traffic through Birkdale Village and The Greens and in the Birkdale area. I don't want increases in noise and pollution of all kinds. I don't want the increase of mobile units at our schools. I don't want a negative impact on the property values of our homes. I don't want a 7-story

office/commercial building, 12-story hotel, a mixed-use commercial residential building with 350 multi-family units, and I don't want a new 6-story parking deck. I don't want our greenway and our natural wildlife compromised. I don't want economic activities that will naturally attract crimes. I don't want additional homeowner costs to maintain basic maintenance, for example changing furnace air filters twice a year and the need for power washing the exterior of our home from construction pollution as well as Sam Furr Road work. This is a factual expense noted from the history of Robbins Park and I-77 construction. I don't want a 25 mph speed limit anywhere in the business area of Birkdale Village. And I don't want the apartments and the hotel planned in the Birkdale Golf Course community. I don't want negative progress. Negative progress will only create more negative people than ever. I want positive thinking to produce positive progress.

Gay Rudisill, 17204 Bridgeton Lane, said just because I have white hair doesn't mean I don't add good anymore. In an article in the Observer on January 9 it was talking about the number of spaces and it says 125-room hotel, 350 multi-family units, then there's the commercial part of the building. Just the 125 and 350, that's 475 cars for that number of people. That's not adding in the fact that each apartment may have two people that have cars and the people that work aren't necessarily going to go home at night right away. A lot of people stay to work late. A lot of people work Saturdays, so you are going to have it used also on weekends, but it adds up to 475 cars without even adding in the commercial building. In their plan was a quote and I won't say the person I quoted it from, but it said the plan calls for 450 more parking spaces which would more than make-up for the uses that were needed. I'm going wait a minute, we're 475 cars, 450 spots, that doesn't come out. I thought even that, without adding in all those cars I know what that traffic is like, what all these people have talked about because of where I live. I've lived there 19 years. Beautiful community.....I have loved it. I have loved growing older there. There's so much. But it has changed so much. My 20-year-old granddaughter who has visited me very often through her years came and said at Christmas, what happened – it's not a village anymore. It doesn't even look like it used to. And I had to agree with her. Things have changed. The traffic has changed, the circle is gone. I would like to mention also there was a quote in the article about the wonderful Christmas parade. It was nice having a parade there. It was massive traffic. Long before they took the property, back before COVID, we used to have hometown parades there that Huntersville I think would claim they are very proud of.

Catherine Wright, 8203 Strandhill Road, said thank you for allowing us to speak tonight. I am not going to be as eloquent. My mother recently died but it was so important to me to come and just share my heart with you and tell you I'm kind of feeling like maybe some people have misjudged you and that you are going to stand on our side because you care about each of us because you are a part of us. There's always another developer that's going to come in with big money and try to change everything for their own purposes. But I really feel that each of you understand what we are saying. We don't have to stand up here and say traffic is awful. I've been here 36 years. I have lived in Davidson, Cornelius and Huntersville. One of the things I've always kind of felt is that Davidson has kind of had more control over their building and stuff. Cornelius is starting to have a task management force to manage all of this and try to downsize some of the zoning and stuff. You guys are our people and I just hope that you will stand with us and help us make this a special place. I love that you applauded the trails and the scenic beauty around here. I'm on those trails a lot riding my bike and walking and my husband and neighbors and people from all around Huntersville and I try to imagine what it would look like when we start having these almost skyscraper kind of looks through the trees, it's just going to change everything and change comes and I hear people say you can't stop change and progress, but what is really progress and is it inevitable that it has to look like what NAP's presenting. Could it be something more special that we hold our culture more dearly in that we separate and different from all the other places that just slap up a new skyscraper and overbuild and everybody feels congested and claustrophobic. I just wanted to say

I think you guys are awesome. You do so much for us and I'm just asking you to step up and do the right thing, because I think you will and I'm counting on you and thank you.

Jon Boggiono, 17318 Inglewood Lane, said I wanted to talk about a slightly different topic than what was already spoken about in Birkdale. I have in my hands here the Downtown Master Plan. I followed along with this. I don't know all the details, but I think this is wonderful. There's a lot of attention and effort that has gone into the area immediately surrounding here. One of the things that we've talked about both with NAP and as a community, you had this box or there was this box the Town staff has of the 73 and I-77 corridor as a high-density corridor. Birkdale Village is included in that. It's one of the justifications for the buildings that Birkdale wants. Regardless of this specific project, we need something like this for the Birkdale area. Just the sheer amount of development that's coming on the other side of the highway by the Northcross Development, by us on the Cornelius side, the widening of 73, this isn't going to be the only project in that immediate area. It took me 15 minutes yesterday, in the middle of the day, to get out of Birkdale. I had to come down here for a doctor's appointment over here by the hospital and it took me longer to get out of Birkdale to the highway entrance than it did to go the rest of the way down here. I try to walk and bike as much as possible. My son and kids would bike to school even though it wasn't necessarily safe along Northcross getting across 73. We need something like this. Everything seems to be banking on widening 73, but if you drive in Atlanta, that's not a solution for long. Five years 73 is going to be just as packed as it is now and it's going to be worse unless there's some plan to connect us beyond just this. I know there's a few additional roads coming from the highway toll funds, but that's not enough. We need greenway extensions over the highway up there, we need more accessibility beyond just the widening of 73. That's all I wanted to say and thank you all for listening tonight.

Dawn Snow, 8132 Evanston Falls Road, said I've said this before, we're not against development all together but we just want responsible development. There's really no need for an office building and it doesn't fit, however if the motivation for the office building happens to be a convention center, then who is paying for it. Will it be funded at all by the taxpayers and citizens. Has a cost analysis been done and will there be a bond referendum. What is the potential overhead cost to the Town for this proposed rezoning project including the cost of increased infrastructure, impact on property values, crime, emergency services, loss of thriving businesses and demand on schools. How do these overhead costs compare to the potential revenue. The Town does not really have the bandwidth right now to approve the scale of this project without slowing down and digging into the details and answering these questions. To approve this without doing so is irresponsible. I really don't understand why the Town keeps bending over backwards to the demands of North American Properties and granting all these extensions when they have yet to make any material changes to their proposal. In the meantime, North American Properties has showed zero commitment to our community as they have continued to kick out many small local businesses that our community loves such as Nina's and Corkscrew. And just this week I learned that Claire's, Kilted Buffalo and Loft are also being kicked out. No, we are not against development all together. We are just against irresponsible development. Our Village deserves better. Birkdale Village has helped make our zip code one of the most desirable in the area according to a recent article for Axios. Let's not ruin it by acting irresponsibly and destroying the small town feel that has made it so popular. Please deny this extension and deny this rezoning.

Kitty Giese, 9525 Devonshire Drive (Suzanne Villar deferred her three minutes to Ms. Giese), said my thought during the middle of the night one night was that why doesn't North American Properties buy the part at the beginning of Northcross Drive across 73 where Newell Rubbermaid and all those businesses were. It's down and there's a bridge that goes over to Birkdale Village and so it seems like it would just kind of make everybody happy to do that and I read in an e-mail that I think that they have

proposed to buy the business park there, so that would take care of the office building and the hotel and we could all be happy.

Tim Perry, 2008 W. Cavendish Court, Joan Creek, Georgia, said thank you for your time this evening. I just want to mention a few things concerning our plans at Birkdale. We have spent.....someone said earlier that it seems fluid, and conversations seem fluid and I would agree with that. It has been fluid as we have spent time speaking to citizens, speaking to council members, and the changes having to remove some of the filings in order to be able to meet with the council in December is what led us to some of these changes. We met some of you on December 20, others of you on January 3. Retail is fluid. National tenants leave for national tenant reasons. Right now in 2022 there were a little over 4 million people that came to Birkdale Village. In 2019 that number was 4.5 million, so traffic is down and yet the parking is the one thing we have heard from almost every comment here tonight, almost everyone. We are going to make substantial changes to the plan. We are going to deal with the apartments later. That could be 10 years, it could be never. But it's certainly not something that solves the number one problem today, because it self-parks and provides no additional net new parking. Same with the hotel. It needs to go in a different place. It needs to aesthetically fit in better with the arrival experience and the offering of Birkdale Village. One thing that you will see when it comes back is this is all about parking. Every comment. I've heard no solutions, really, other than people park on the streets, there's not enough parking, I have to walk from up around the building to get there. This was all about parking. That's what drove it. That's what we want to focus on and that's what our new plan is going to focus on. It's going to focus on parking and at our suggestion, our idea, adding a lane onto Lindholm there at Townley so that more cars can exit faster. I just wanted to thank you for your time. I look forward to presenting to you in a week or so an updated plan that's going to be about parking. That would add in the case of our submission 450 spaces, about 70 percent of the guests of Birkdale are there after 5:00 p.m. or on the weekends. This is about parking and the non-stop comments that we hear from the citizens about needing a better alternative and needing that to be convenient, that deck behind J. Jill, behind Barnes and Noble, is where we would propose to put it. Thank you for your leadership. Thank you for the comments over the past month as we have nurtured a solution.

Kerry Edelstein, 8810 Camberly Road (Casey Childers deferred her three minutes to Ms. Edelstein), said I am pleased to be here tonight in my corduroy slacks from Banana Republic, my sweater from Loft, my poncho from Nina's – you know those stores that none of us allegedly supported and my comments tonight are dedicated to them and to Corkscrew and apparently also Kilted Buffalo and Claires as I learned tonight. NAP would like for you to believe that those of us expressing concern tonight and throughout the last few months about the rezoning plan, smaller or larger as it may be right now, I'm really naysaying [inaudible] who lack sophistication. I would like to directly address that deeply misguided, misperception. And if you bought Birkdale because they see value in our community's alleged affluence, so why is it that they talk to us and about us, that aspirational community that is the hottest zip code in Charlotte as if we lack sophistication. Let's compare notes. NAP has conducted no business analysis of the revenue to the Town versus the cost to the Town for their proposal or any part of their proposal including the convention center to persuade us that this is a fiscally responsible or even financially feasible endeavor. In fact, I'm the one that brought that to your attention at the last meeting. They may not be required to do this, but it certainly seems the wise thing to do if they want us to be confident that the revenue from this will outweigh the cost. NAP has also not addressed the infrastructure investments, the many variations of those that we have talked about required by the Town to ensure success of this project. We all brought that to your attention and some of you brought that to their attention. NAP has suggested and this is fascinating in light of the comments that were just made that live, work, play destinations are our future, but for who exactly. Where's that vision addressing the different employees at Birkdale like the janitorial staff that will be at the offices. The

housekeeping and bellhops and receptionists at a hotel or restaurant servers, none of whom will be likely to afford luxury housing without a meaningful affordable housing accommodation which nobody has been discussing, let alone promising. There's no transportation infrastructure. There's no public transportation to Birkdale. If there's any part of me that's indeed a NIMBY, it's that I don't want that disgraceful brand of classism in my backyard. Now suddenly they are changing this to be a smaller proposal. Is that really true. Do we really believe that or are they just not wanting all of us to be here when they ask for you to vote on this on February 6. I think it's the latter. NAP has exhibited a complete lack of ingenuity and resourcefulness in ensuring design inspirations and by the way you don't need an architect to share design inspirations. You need a Pinterest account, a Google image and an intern and I sent you some of those ideas last night without the intern. NAP has shown no capacity for community engagement. In fact, they have actively lashed out, and you have heard about this, at different community members, including myself, and perpetuated lies about us. They'll say we've shared no other ideas, but I have personally heard tons of really great ideas coming from this community. It's made me really grow to even love and respect my community even more. Of course, I'm not actually seeing NAP taking notes as we've shared these ideas to them, which might be why they don't remember them. And it is not all about parking. It is a piece of the mix, but it is clearly not just about that. You've heard a lot of variety tonight and not that many people brought up parking. It says to me they are not listening. Finally, it seems like NAP can't manage successfully the existing project. I feel like those unfinished eyesores on the green right now. It seems like they were either surprised that we have weather here or labor shortages or an economic slowdown. Maybe they were surprised by all of the above, or maybe they just lied to us about their timelines. As some have mentioned few of us are really opposed to any redevelopment and actually really love to see smart redevelopment or issues that we hold ourselves to a higher standard than this. A standard of responsible redevelopment, aesthetic continuity, appropriate scale and fiduciary responsibility in our backyards. We, the residents of this community are not the ones lacking sophistication there. Everyone in this room would be pretty naive to believe that NAP would come up with a materially revised new plan that comprehensively addresses our new concerns for the next meeting. A sophisticated company would have already done that. The only way to demand that sophistication that standard that put Birkdale on the map in the first place is to deny the request for a delay, vote no tonight and send them back to the drawing board to truly engage the community in a plan we actually love and a plan that embraces design continuity, financial responsibility and effective infrastructure planning. That's what this is going to take.

Brian Rice, 17232 Bridgeton Lane (Shannon Rice deferred her time to Mr. Rice), said before I get started I would just like to reiterate I think Susan Irvin did a nice job. I do want to remind her that this is Huntersville that she's talking about even though I believe she lives in Cornelius. Town Board, I'm asking again as I have in prior meetings, that you say no to the current proposal shared by NAP and no longer delay this vote. Again, I come to you not as a single family but as a representative of 1,442 people that have signed our petition. And so there's a matter of record to the folks at NAP who have reached out on social media, the people that are signing this petition are locals. I can attest that my wife looks at every single one of them. They are locals, they are voters and most importantly they're your guests as you like to call them at Birkdale Village. While we are not against development, this is not the right development and not the right time giving other developments on Sam Furr, current insufficient parking in Birkdale Village and current traffic patterns in this area. Furthermore, the consistent half-truths and arrogant antagonistic attitude by NAP continues to erode trust that they have Huntersville's best interest at hand. Board, please do not delay this vote. NAP continues to use delay tactics to its advantage so they can pursue a false narrative to meet their goals. As an example of this tactic, NAP, they have an interview with the Charlotte Observer dated January 11, 2023, and I'd like to share a few quotes that were provided. So in any case the argument that doing nothing is a better solution than adding 450 spaces is non-sensical. We are non-sensical. Well, to suggest that we said do nothing and to

suggest that we said no to 450 parking spaces is only half the story. That certainly does sound non-sensical. Of course, as we know, those 450 spaces come with all the apartments, hotels, office spaces, and convention center. Again, another example of NAP driving a half-truth and false narrative to get this project approved. Dare I say this was January 11 and now all of a sudden there's no other development and you are going to hear about that in a couple of weeks. Also, in the article "attendance at the Santa event and traffic leaving Birkdale Village afterward about maxed the previous years' numbers" this person added, yet this time some seem to have forgotten and are inflating the issue to support a [inaudible]. Again, many of us residents have seen these events, even prior to NAP ownership. I believe we have a better view than NAP. As someone who lives on the corner of Bridgeton Lane, I've seen it for 17 years. Frankly, we have more to gain or lose through their investment than they do, and they haven't done much to convince us that they aren't the ones driving the false narrative. I wonder is this simply arrogance, incompetence or a conscious effort to avoid the discussion because their job is simply to get the deal done and worry about the consequences after they are hours away in Georgia or Ohio. NAP and the folks that are making these decisions are not Huntersville residents, but they have a full-time job to convince you of a flawed plan. For people like me, the people that have come here and tried to speak out against for the 1,442 people that signed this petition, this is my part-time job to convince you that as a full-time resident of Huntersville we will have to endure the consequences of this flawed plan. In summary, again I ask that you say no to this current proposal and let NAP come with a different proposal that both in scale and time represent a real opportunity to help our city grow in line with the 2040 vision. Development is critical for our growth. This proposal is not the right development and not the right time. Please don't delay this vote again so that NAP can continue this PR campaign to share opinions and flawed vision. All they have to do is get the vision approved, but will be hours away in Georgia and could care less about the consequences.

Mayor Bales called for a 5-minute recess.

The Board reconvened following the recess.

AGENDA CHANGES

Commissioner Phillips made a motion to adopt the agenda as presented.

Commissioner Partee seconded motion.

Motion carried unanimously.

CONSENT AGENDA

Approval of Minutes. Commissioner Phillips made a motion to approve the minutes of the January 3, 2023, Regular Town Board Meeting. Commissioner Munger seconded motion. Motion carried unanimously.

PUBLIC HEARINGS

Petition #TA22-12. Mayor Bales called to order continuation of public hearing on Petition #TA22-12, a request by the Huntersville Town Board to amend Article 4 of the Zoning Ordinance clarifying first floor residential and commercial area requirements for Shopfront and Workplace mixed-use buildings.

Jack Simoneau, Planning Director, entered the Staff Report into record. *Staff Report and Staff PowerPoint attached hereto as Exhibit No. 2.*

Staff recommends approval based on the amendment being consistent with LU-6, EV-1, EV-2 and DT-1 of the Huntersville 2040 Community Plan.

At their January 5, 2023, meeting, the Huntersville Ordinances Advisory Board recommended Petition #TA22-12 move forward for Public Hearing, Planning Board recommendation and Town Board decision as written with the following change: Delete first floor diagram wording in Section 2 and Section 3 and replace with "Commercial use, or up to 40% residential use of 1st floor area." The recommendation is based on the amendment being consistent with LU-6, LU-7, LU-10, EV-1, EV-2, DT-1 and DT-10 of the Huntersville 2040 Community Plan.

Mayor Bales recognized Planning Board members present: Frank Gammon, Jodi Wright, Scott Hensley, Chris Boyd.

Commissioner Kovacs requested clarification that commercial use does not include shared space.

Mr. Simoneau said commercial use, if it's shared space, is going to be categorized residential.

There being no further questions or comments, Mayor Bales closed the public hearing.

OTHER BUSINESS

Petition #R22-01. Petition #R22-01 is a request by DDRTC Birkdale Village, LLC to rezone +/- 8.82 acres located at the intersection of Townley Drive and Lindholm Drive (Parcels 00537157 and 00537197) from Highway Commercial Conditional District to Highway Commercial Conditional District for 350 multi-family units, 125-room hotel, 150,000 sq. ft. office, and 25,000 sq. ft. commercial.

Brian Richards, Assistant Planning Director, entered the Staff Report into the record. *Staff Report and PowerPoint attached hereto as Exhibit No. 3.*

Staff has deemed the changes with the withdrawal of the special use permit and the text amendment and then those languages being integrated into the rezoning case a substantial change. This requires that the Board defer action for a minimum of 30 days. We've had continuing discussions with North American Properties over the last several weeks and have recently been informed of some additional changes that they would like to make. Staff at this time would like to ask the Board to continue to February 6. At that time the Board could make a decision to deem if the additional changes are substantial in nature.

Commissioner Kovacs said so they are substantial in nature, but we are not starting the whole process again.

Mr. Richards said because they are going to have additional changes that they are going to introduce to us later this week, we don't have those on paper or on drawings yet, so I can't evaluate those. Instead of evaluating what they've done tonight, continuing 30 days, getting new changes and then continuing it another 30 days, we've asked them, and they've agreed, to combine all sets of changes so we get one final set of changes and then you will be able to make the determination on February 6 if those are substantial in nature. At this time staff would say that those would be substantial.

Commissioner Partee said I would like to address our Town Attorney. Regarding to deny continuance, are we leaving ourselves open to litigation.

Emily Sloop, Town Attorney, said the changes that have already been submitted per our ordinance, if they are deemed by this Board to be substantial changes, and Planning staff is recommending that they are substantial changes, we would either have to defer for 30 days and wait for the applicant to resubmit additional changes and then defer for an additional 30 days per ordinance requirements if those additional changes are considered substantial, so rather than deferring twice and delaying the decision, the proposal is to have the final decision continued to the first February meeting and at that time the Board can make a decision as an entire Board as to whether the combined changes as submitted are substantial and do one 30-day deferral rather than two.

Commissioner Munger made a motion to continue the final decision on Petition #R22-01 until February 6, 2023, at 6:00 p.m. at Huntersville Town Hall, to allow the Town Board to determine if the submitted changes are substantial and require a 30-day deferment per the Town's Zoning Ordinance.

Commissioner Phillips seconded motion.

Commissioner Kidwell said just because we have an ordinance that says you have to do it, doesn't make it right. I've got a lot of concerns about this. Seven days ago an article appeared in the Charlotte Observer that said if we don't do this, we're holding Huntersville back. What a horrible thing we are. It was quite comically written. And then over the past two weeks we hear nothing about change. We hear nothing for the past month about changes. We get this agenda, it's presented to us with zero changes and then suddenly we have a meeting today between the Town Manager, the Mayor, NAP and suddenly changes appear. The rest of the Board wasn't involved in those conversations. I've got a problem with that. That just seems, and I'm not calling you shady, but that whole process seems shady. We've been inundated with emails and if I didn't answer emails or if we didn't all answer emails it's not because we are ignoring you, it's we're getting that many emails, we're getting that many communications. I've tried to call some of you back. I've tried to email as many people back as possible. It wasn't the emails that were catching my attention, it was the screenshots of interactions between members with NAP and Mr. Rice called them guests. When you are trying to win over a community about a development, you don't engage and cause more angst. This Board I know is going to vote to move this forward. They are scared of litigation. They're scared of saying no, but they are listening to you. I will not be supporting the movement. I heard it in Mr. Perry's own words there. They are discontinuing the apartments for now. They are going to look for a different place for the hotel. Fine, whatever. For now – those words matter, for now. A couple of years ago there was a big uproar with a development going on across the street. And then just recently we spoke about the development how the developer used certain language to modify the proposal to basically lessen the commercial spaces. That's why we had our public hearing today. There were a lot of people up here who were on that Board at the time who have had heartburn from that. Pay attention to what's going on. Listen to the words – for now. This isn't going away. This isn't an alright we're going to get in this Class A office space which is good for 15 years, somewhere in that ballpark, until the shiny new wears off. We are going to get an additional parking space, or parking level, potentially, maybe, I don't know. It's still got to go in front of this Board to be voted on. But I will say, and I just want the residents to know this, whether anybody up here in February votes for or against this project, I can tell you that the conversations are happening amongst us. They are reading your emails. They are listening, so just keep sending those emails.

Commissioner Kovacs said my questions are for Ms. Sloop just to clarify. There's substantial changes to the project and it's prior to the final vote. It doesn't specify how prior to the final vote it needs to be. Can it be the same day.

Ms. Sloop said to clarify, the applicant has already submitted changes to the original plan sets and those changes that have already been submitted, not the changes tonight and they are going to submit by the end of the week, but those changes in and of themselves that have already been submitted, Planning staff has advised and of course the Town Board would have to make that decision on its own that those changes that have already been submitted are considered substantial, so rather than this Board making a determination on half of the changes that have been submitted, the proposal is to continue a final decision to the point where we would have all of the changes and at one time the Town Board can make a decision as to whether all of the submitted changes are substantial and at that point defer action for 30 days rather than doing it piecemeal.

Commissioner Kovacs said what are the substantial changes that have been made.

Mr. Richards said originally they were going to ask for changes in a text amendment, Text Amendment #22-06, to increase the building height. They have withdrawn that text amendment and that text amendment would require a special use permit be granted, that was SPU #22-01, that was also withdrawn. They then introduced the height into the rezoning application, that's the main substantial change. Before they weren't asking for additional height in the rezoning, they were asking through the special use permit and text amendment, now they are asking for the height via the rezoning.

Commissioner Kovacs said but that occurred previously, so why didn't we consider that a substantial change in December.

Mr. Richards said in December they had not given us the paperwork, which is why they asked for the deferral to tonight's meeting for the decision.

Mayor Bales said to be clear, you were already recommending that there were substantial changes based off of that. The Town Attorney has suggested that we continue this discussion to February 6 so that if there is a continuation it's one and not two, a 30 day versus a 60 day.

Mr. Richards said correct.

Ms. Sloop said if you made the decision tonight based on the current plan set that those were substantial changes, you would have to defer 30 days, but then in the interim the applicant has indicated they are going to submit additional changes which will also likely be considered substantial. Therefore, again, the proposal is to continue the final decision on the application so that the Town Board would have the full plan set including all proposed changes and at that meeting and make a determination as a Board as to whether or not the combined changes are substantial and whether or not to defer action for 30 days as required by the Town Zoning Ordinance.

Commissioner Partee said I'm going to speak from my heart and I'm going to use the word hooked metaphorically. As a resident of this community, my wife Michelle and I chose to live here in Huntersville and in 2003 we liked the John Wieland type of home and the realtor brought us up here to Huntersville. We went to the Hamptons first looking at John Wieland homes. We went to Birkdale behind the golf course looking at John Wieland homes. And then when it was time to get lunch, the realtor took us past the golf course, across Sam Furr, right into this little village with shops, restaurants,

theatre at the end of the village and my wife said this reminds me of Back to the Future. We went to a restaurant, we sat down, we had a meal. We walked out, sat down, walked around and guess what, we became hooked. That's all it took and not knowing that Birkdale was not the town downtown, we just loved the ambience. We just loved the aesthetics and we decided to build our home in Latta Springs in 2004 and thereafter when we came down to watch and monitor our house being built, where do you guess we went and hung out – Birkdale. In 2004 we closed on our house and then friends would come down to visit us, where did we take them – Birkdale Village. And guess what, they got hooked also. They love Huntersville. Now I'm going to talk as a commissioner and I'm going to use the word hooked metaphorically as a commissioner. If you remember, if you're my age, I'm 70 years old, there was a circuit called vaudeville and in the vaudeville circuit you had actors and you had entertainers who would if they were bombing and their act was not up to par and people were throwing vegetables at them, from the left of the stage came what and took them right off the stage. I understand and I get it because I was elected to represent and I'm not about to get hooked off this stage. That's not my intent. Now I'm going to address the developer. You are on the hook. You are on the hook to come back with a project, with a development that the community, the voters, if they accept it, fine, if they don't accept it, I have to make the decision....I can't speak for my other commissioners. I will make the appropriate decision because the bottom line is there are 1,500 hooks and I'm talking about e-mails and petition signatures....1,500 that I'm paying attention to and those 1,500 signatures can hook me right off this dais. With that, I hope that the developer can come back with something that's substantial in nature that's approved by the residents and this Board.

Commissioner Phillips said the only two Phillips' that I'm related to that live in Huntersville are my mom and dad and if they owned a golf course, I would be very grateful, but unfortunately, they don't. Otherwise, I probably wouldn't be sitting up here. I'd probably live on a yacht or do something really far more exciting than raise chickens and be a commissioner. I say that because this is starting to get very personal and I think that's not good for anybody, but I get it being personal. I am the only native sitting up here and I say that because I remember when there was no Birkdale. I remember when that was a farm. I remember when the only Target we could go to was down in Charlotte and that was like the biggest birthday treat to turn 7 and get to go to Target in Charlotte. I don't know where I stand with Birkdale, but I can't make a darn decision if I can't see the full plan and I'm not doing my job if I don't support getting to see these changes and I don't know if they are throwing unicorns and rainbows at us or something real, but I think it's worth us doing our jobs to be able to look at it and then go from there. This isn't NorthState and I hated NorthState and this guy and I, we were two of six against that project. We've seen the worst of it, but the thing is we have been through really bad times and what that has done is make our eyes sharper to look for defects and things that are going to screw over the citizens and I know that's a bad word. I care about this community more than I care about anything. I have no personal life because everything I do is for the betterment of my town and my community. I want this to be a place that my niece doesn't want to move from, and I get your passion. I started out as an activist and the whole reason I'm sitting up here is because I got mad over the toll roads and got the same people out of office who seats I'm taking now. I take this community seriously and I love Huntersville and I want to grow old here, so saying yes we want to defer this isn't about heck yeah, I'm for Birkdale, it's about heck yeah I want to be able to do the due diligence for my people and my community to make sure that we are doing the right thing. I just wanted to put that out there because I'm telling you sitting here and taking a beating is not a good time and I do appreciate your passion and I feel it and God bless you all for sticking it out this long.

Commissioner Boone said Commissioner Kidwell said something that yes, we are listening. It might not go unnoticed, but I know I am. We've got a couple of things going on here. This deferring it – the way I look at it is it's two deferments. One going from this month to next month and then here comes some

changes that some of us don't know about, just happened today. Then I've got to look at this as a commissioner for all the developers that are coming into Huntersville, that if we say no to this deferment what is that message sent out to everybody who is doing the right thing and listening to the community and making a good product. We don't know what North American Properties' new program looks like. Some people do. I think I'm going to give them the opportunity to show us a product that I would be proud to vote for and you would be proud to support. If we get something up here in 30 days and it doesn't look like this, I hope that you will have an opportunity to look at these plans and go through them and come back and tell us what you think and then we will be prepared to vote on this, but right now I'm going to vote to defer this until next month.

Commissioner Kovacs said Ms. Sloop, is it your legal opinion that we cannot deny the deferment tonight and vote on the project as is tonight and then allow the applicant to resubmit, if it did not pass or allow the applicant to resubmit a full plan if that did not pass.

Ms. Sloop said the Town Board on its own prerogative can vote to deny the application tonight.

Mayor Bales said the one thing that I'm going to say is that this Board is working diligently to find common ground that meets the needs of our community as a whole, while still understanding that we have a landowner that wants to expand their business. Their job, all six of them, is to find balance to that. Their job is to figure out what is in the best interest of the whole. I want to personally thank each and every one of them because they are doing their job and I know it's not easy with the emails and with some of the rhetoric that is happening within our community. This isn't personal. I say it's not personal. This is about our whole. It's about each and every one of us and how our community is going to continue to grow and be successful, so we can't allow ourselves to get personal. What we have to do is allow ourselves to be open and have honest conversation. That's where solutions are found. Again, I want to commend the Board for continuing to work with all sides so that there's an understanding of what's being proposed. With that, if there's not any other comment, there is a motion on the floor and a second to continue this discussion to February 6 that would allow the developer to bring back a final design February 6.

Called for the vote.

Motion carried 4 to 2, with Commissioners Kidwell and Kovacs opposed.

Mayor Bales called for a minute recess to allow people to leave.

The Board reconvened following the recess.

Resolution – RAISE Grant Application Consultant. Heather Maloney, Senior Planner, requested the Board consider approving contract for grant writing services for the RAISE Grant. aid I'm here to ask for approval for grant writing services Alta Planning + Design. RAISE Grant funds can be used for roadway, highway and bridge projects, as well as non-motorized projects. There's a minimum grant request of \$5 million and a maximum of \$25 million, with a 20 percent match requirement and a required cost benefit analysis. The grant application is due at the end of February. Three firms were contacted to solicit their help in preparing an application package. Two firms submitted a response, but only Alta Planning + Design provided pricing (\$65,000) for the grant application package and cost benefit analysis. The project identified is a sidepath along Church Street from Dellwood Drive north to Huntersville-Concord Road. This is an extension of the sidepath and Church Street Extension project that is already funded through the CIP in fiscal years 2022, 2023, and 2024. Alta Planning + Design has suggested that CIP

funding of \$2.38 million in fiscal years 2023 and 2024 be used as our local match to leverage another \$7.89 million to complete the rest of the project which is a sidepath on Church Street as described north of Dellwood Street and then a sidewalk on Dellwood and a sidepath on Holbrooks Street to complete connectivity to the nearby neighborhoods and parks. *Refer to PowerPoint attached hereto as Exhibit No. 4.*

Commissioner Kidwell made a motion to adopt Resolution to approve contract with Alta Planning + Design for RAISE grant writing services.

Commissioner Boone seconded motion.

Commissioner Kidwell requested that the PowerPoint presentation be sent to the Board.

Commissioner Phillips said I'm going to be voting against this because I had asked for the supporting documents prior and I feel like I'm not doing my job if I don't have what I asked for before I vote.

Mayor Bales called for the vote to adopt Resolution to approve contract with Alta Planning + Design for RAISE grant writing services

Motion carried 5 to 1, with Commissioner Phillips opposed.

Resolution attached hereto as Exhibit No. 5.

Budget Amendment – RAISE Grant Application. Commissioner Kidwell made a motion to approve budget amendment appropriating Unallocated Interest Income (103600.999) in the amount of \$65,000 to the Planning Department Contract Services (104800.0314) for a consultant to assist in the RAISE grant application.

Commissioner Boone seconded motion.

Motion carried unanimously.

Resolution/Purchase Agreement – Expansion of Public Works Facility. Kevin Fox, Director of Public Works, explained that Parcel 011-201-30 located 11835 Ramah Church Road is currently available on the market and is needed for the future expansion and construction of the Public Works Facility.

Commissioner Boone made a motion to adopt Resolution #R-2023-03 and the Purchase Agreement for the acquisition of the necessary property as described on Exhibit A of Resolution #R-2023-03. The Town Manager, acting on advice of counsel, is authorized to take actions necessary to carry out the provision of Resolution #R-2023-03 and to execute the Purchase Agreement.

Commissioner Phillips seconded motion.

Mayor Bales called for the vote to adopt Resolution #R2023-03.

Motion carried unanimously.

Resolution attached hereto as Exhibit No. 6.

Resolution – Condemnation of Property for Gibson Park Drive Phase 2. Commissioner Phillips made a motion to continue this until our February 6 meeting. On that date, new plans will be submitted which will allow for a deferral to March 20.

Commissioner Munger seconded motion.

Emily Sloop, Town Attorney, requested that the time and location be included.

Commissioner Phillips amended her motion to include Huntersville Town Hall at 6:00 p.m.

Commissioner Munger seconded motion.

Commissioner Kidwell requested staff contact the Town's vendor to find out why there had been no contact with the property owner since December 13.

Mayor Bales called for the vote to continue decision to February 6.

Motion carried unanimously.

MAYOR AND COMMISSIONER REPORTS/CLOSING COMMENTS

Commissioner Phillips

- No Report

Commissioner Boone

- No Report

Commissioner Kovacs

- No Report

Commissioner Kidwell

- I reached out to NCDOT regarding the Highway 73 superstreet concept and the Gilead/Beatties Ford Road project. I've included Town staff on the email and copied all my fellow commissioners on separate emails so they have that information.
- Next meeting of the Charlotte Regional Transportation Planning organization is January 25.

Commissioner Partee

- Gave a shoutout to Michael Conner, a lecturer at the Hugh Torance House and Store, who gave a great rendition of Martin Luther King's I have a Dream speech Sunday.
- Next meeting of the Parks & Recreation Commission is January 18.
- Advocate for gun safety. Huntersville Police Department has free gun safety locks.

Commissioner Munger

- Next meeting of the Public Arts Commission is tomorrow night.
- Tomorrow night Charlotte-Mecklenburg Schools will be holding a community engagement session at North Mecklenburg High School about the Comprehensive Plan.
- Consider supporting local non-profits.

Mayor Bales

- Next meeting of the Metropolitan Transit Commission is January 31.

- Lake Norman Economic Development Corporation is currently working on 34 active projects, of which 26 are Huntersville site or building submitted projects. Two Huntersville project announcements are expected soon. The EDC is presenting at the North Carolina EDA Emerging Executive Conference in early February.
- Woodlawn School just north of Davidson is holding STEAMfest on March 26.
- Reminded everyone of the Community Engagement event at Lowes Foods this Thursday.

There being no further business, the meeting was adjourned.

Approved this the 6th day of February 2023.


Janet Pierson, Town Clerk

1/17/2023 Joint Meeting: DPSC, Huntersville Planning Board, Huntersville Town Board



2022 Downtown Master Plan



ADOPTED
TBD 2023 - Pending

'Accepted' on December 15, 2022
by the Downtown Plan Steering Committee

Executive Summary

DRAFT

Acknowledgments

Downtown Plan Steering Committee (DPSC)

Voting Members

Sarah McAulay, *Chair*
Lee Hallman, *Vice Chair*
Robert "Nate" Bowman
Gatewood Campbell
Doug Ferguson
Sean Flynn
John Foster
Barbara Gerhardt
Charles Guignard
Janelle Harris
Elaine Kerns
Bob Lemon
Elizabeth Rodriguez
Cindy Trevisan
Jessika Tucker

Ex-Officio,

Non-Voting Members

Stephen Swanick
Kathy Jones
Diane McLaine
John O'Neill
April Dunn
John McClelland
Mike Russell

Committee Interest

Adjacent Neighborhoods
Adjacent Neighborhoods
Business / Development
Community At-Large
Community At-Large
Business / Development
Business / Development

Business / Development
Adjacent Neighborhoods
Adjacent Neighborhoods
Community At-Large
Adjacent Neighborhoods
Business / Development
Community At-Large

Representing

Planning Board
Ordinances Advisory Board
Greenway, Trail & Bikeway Commission
Parks and Recreation Commission
Public Art Committee
Huntersville Chamber of Commerce
Lake Norman Chamber of Commerce

Town of Huntersville - Staff Project Team

Project Manager:
Project Director:
Project Coordinator:
Project Assistant:

Dave Hill, Senior Planner
Jack Simoneau, Planning Director
Brian Richards, Assistant Planning Director
Tracy Barron, Executive Assistant

Engineering:
Transportation:
GIS Coordination:

Stephen Trott, Director of Engineering
Heather Maloney, Senior Transportation Planner
Francis Tucker, GIS Coordinator

Project Consultant Team

Master Planning & Urban Design (Project Lead)

Shook Kelley CLT, PLLC
1545 West Trade Street
Charlotte NC 28216
(704) 377-0661
www.shookkelley.com

Terry Shook, FAIA
Alex Borisenko, CNU-A LEED GA
Henry Stepp, CTO
Larry Zinser

Founding Partner & Principal
Senior Associate
Partner & Principal
Partner & Principal

Infrastructure Planning & Traffic Analysis

Gannett-Fleming, Inc.
One Glenwood Avenue
Suite 900
Raleigh NC 27603
(919) 420-7660
www.gannettfleming.com

Michael Holder, PE
Rick Tipton, PE, PLS
Lance Hartland, PE

Vice President, Transportation Services
Vice President, Area Roadway Design Manager - NC
Senior Traffic Engineer

Retail Market Analysis

Gibbs Planning Group
240 Martin Street
Birmingham, MI 48009
(248) 642-4800
www.gibbsplanning.com

Robert "Bob" Gibbs, FASLA, AICP President

EXHIBIT

tabbles

1



2022 Downtown Master Plan - General Framework Process and Timeline.

Phase 1: Discovery. (November 2021 - March 2022)

- Preliminary Assessment.
 - Infrastructure.
 - Land Use / Urban Design.
 - Economic Development.
- Communication.
 - DPSC Meetings.
 - Town Staff Workshop.
 - Public Forum #1: *Our Essential Downtown.*

4,113 Web Site Visitors &
257 Email Sign-Up

Online: 600 Attended &
490 Survey Participants

Phase 2: Organizing Principles and Alternative Futures. (March - June 2022)

- Organizing Principles.
- Alternative Futures (1-3).
- Composite Alternative Future.
- Communication.
 - DPSC Meetings.
 - Town Staff Workshop.
 - Public Forum #2: *Options for the Future.*

40 Attended &
50 Survey Participants

Phase 3: Final Strategy and Master Plan. (September - December 2022)

- Draft Master Plan.
- Final Master Plan.
- Master Development Strategy.
- Communication.
 - DPSC Meetings.
 - Town Staff Workshop.
 - Public Forum #3: *Our Plan for Getting There.*

80 Attended &
88 Survey Participants

"Importantly, the 2022 Downtown Master Plan is not intended as a blueprint or mechanism for implementation of eminent domain - government expropriation (taking) of private property for public use, with payment of compensation. Current individual property owners may or may not elect to participate at their sole discretion. Furthermore, the 2022 Downtown Master Plan depicts concepts and recommendations for a full build-out of development within the core study area, which are expected to occur incrementally over a 10-20-year timeframe."

Organizing Principles

MOBILITY

- Treat the car as Guest on all streets.
- Create an optimal pedestrian environment—along all streets and within nature.
- Plan for automobile circulation with a street network approach vs. the current dendritic (branched, tree-like form) and disconnected pattern.
- Advance Transit planning....for now and for whatever future may unfold.
- Seek on-street parking solutions in policy, design and in law.

LIVING

- Include housing options for all—in socio-economic status, family type, and ownership structure.
- Be respectful of existing neighborhoods.
- Develop with a scale and intensity in proportion to other uses.

GATHERING

- Encourage uses that support, facilitate and celebrate a walking environment.
- Promote a balance of food and beverage venues and those stores that support town life and that appeal to visitors.
- Provide for office uses in step with Post-COVID expectations of Live/Work/Play.
- Establish a downtown that supports and encourages the creation of rituals—from 1 person to a 1,000 people.

NATURE

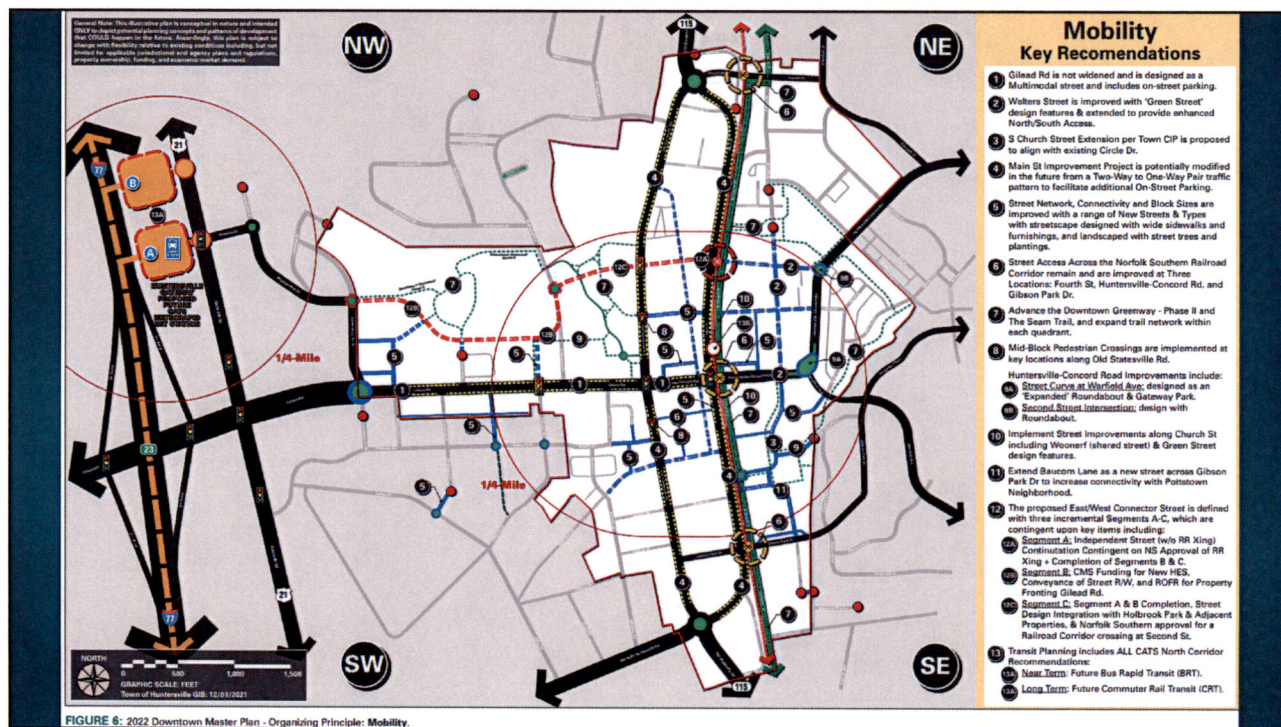
- Integrate a variety of natural parks and public greens into the passive and active recreation and events of everyday urban life.
- Plant and protect street trees, which enhance beautification and pedestrian walkability, and help to calm traffic.
- Preserve and protect the existing tree canopy with a sensitive balance of new development within significant wooded areas.
- As a Lake Adjacent town situated along the ridge-line of two watershed basins, seek creative water solutions that are environmentally based while enhancing urban life.

CIVIC

- Provide a place for all institutions of government, faith and the non-profit sector.
- Welcome and manage an institutional responsibility to be a good neighbor, supporting and adding to the life of the street.
- Strive toward being the example for the change the community wants to see.

SOUL

- Reflect a natural and moderated evolution and integration of a small rural town into a 21st Century metropolitan region.
- Build at a scale, at a rhythm, and according to patterns that respect historical precedent.
- Bend the arc of change more toward supporting small town livability and less toward simply accommodating typical market-based development products.
- Recognize that balance in all things is the hallmark of great small towns: They are more than the sum of their parts.
- Strive for the "X" Factor: An experience lived that becomes your identity.



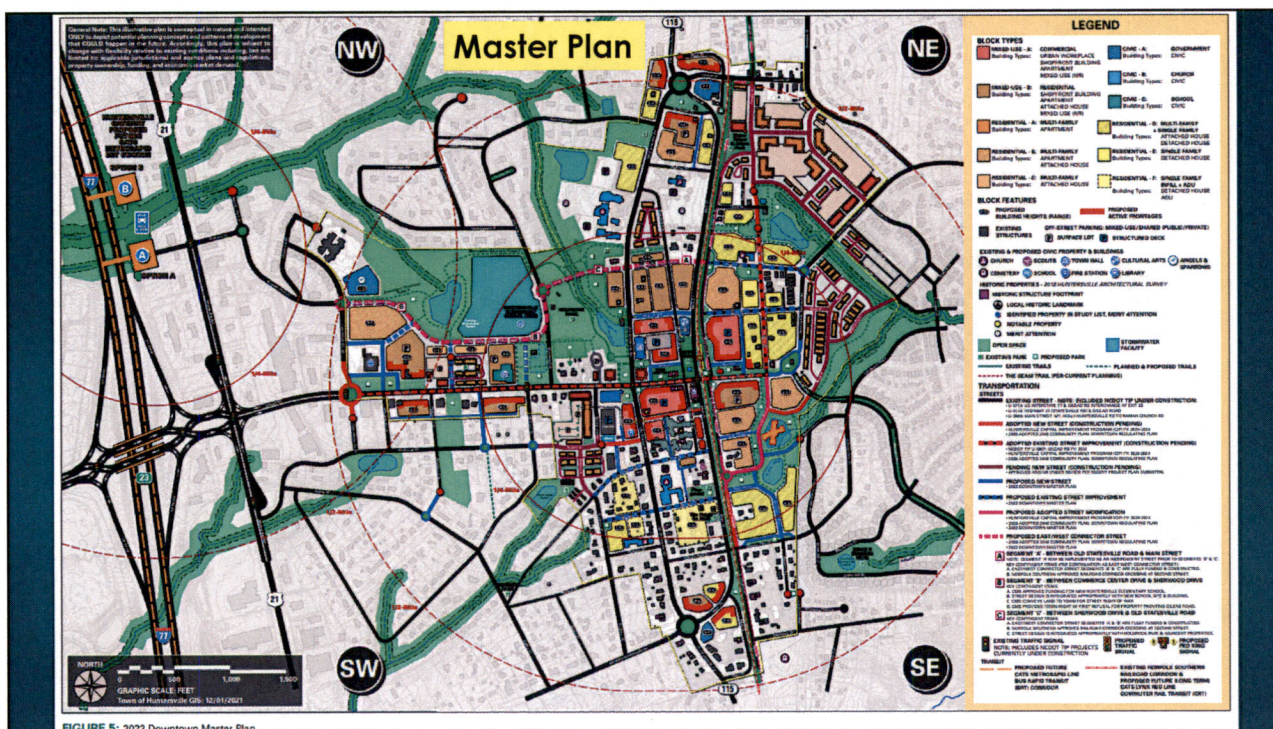


FIGURE 5: 2022 Downtown Master Plan

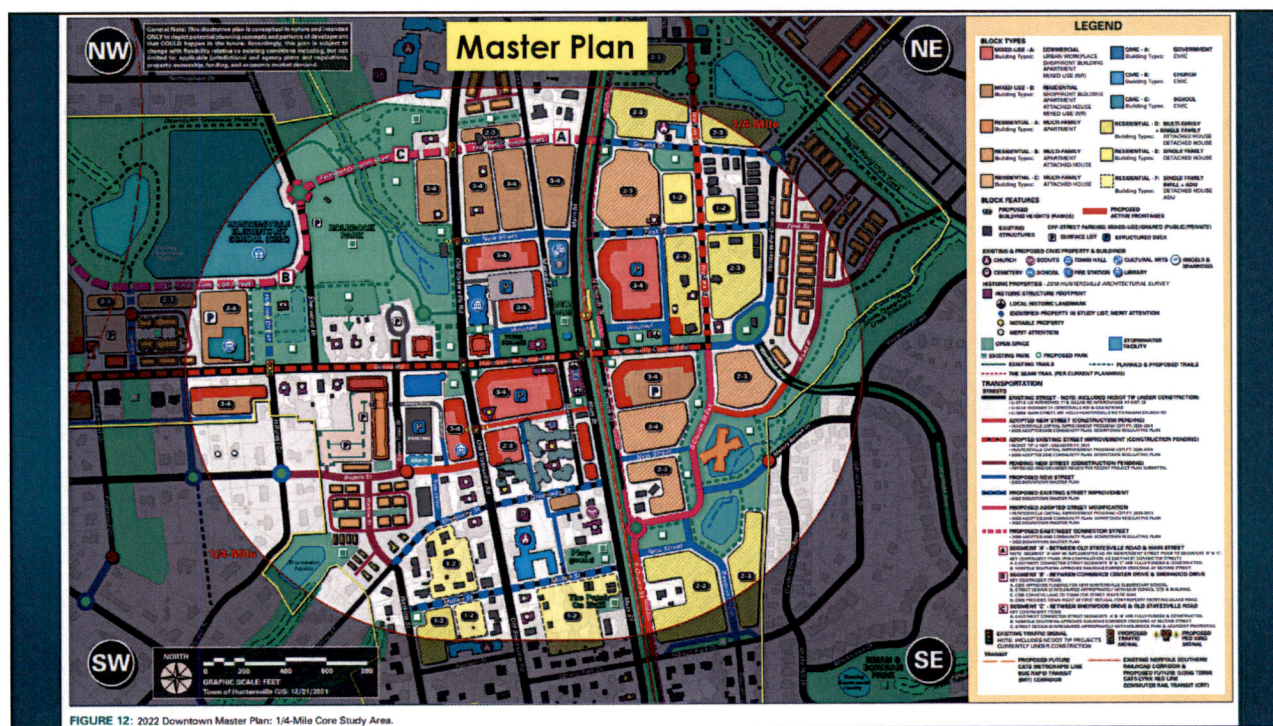
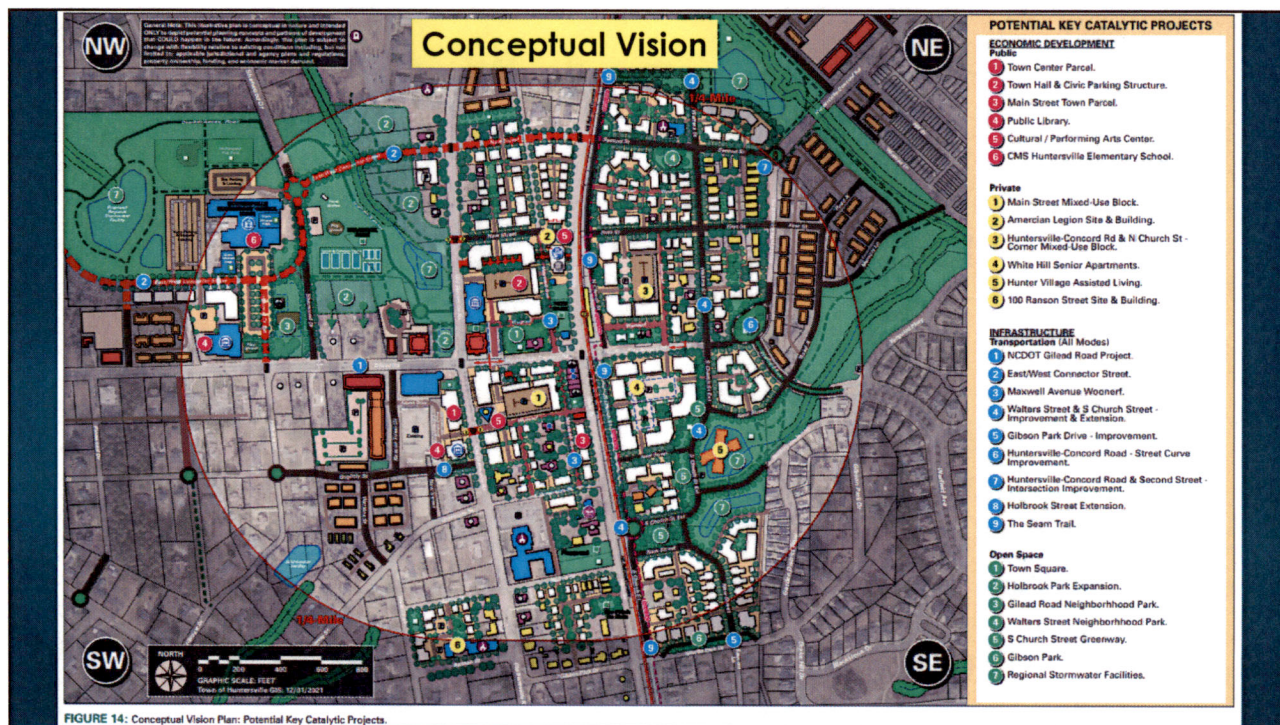
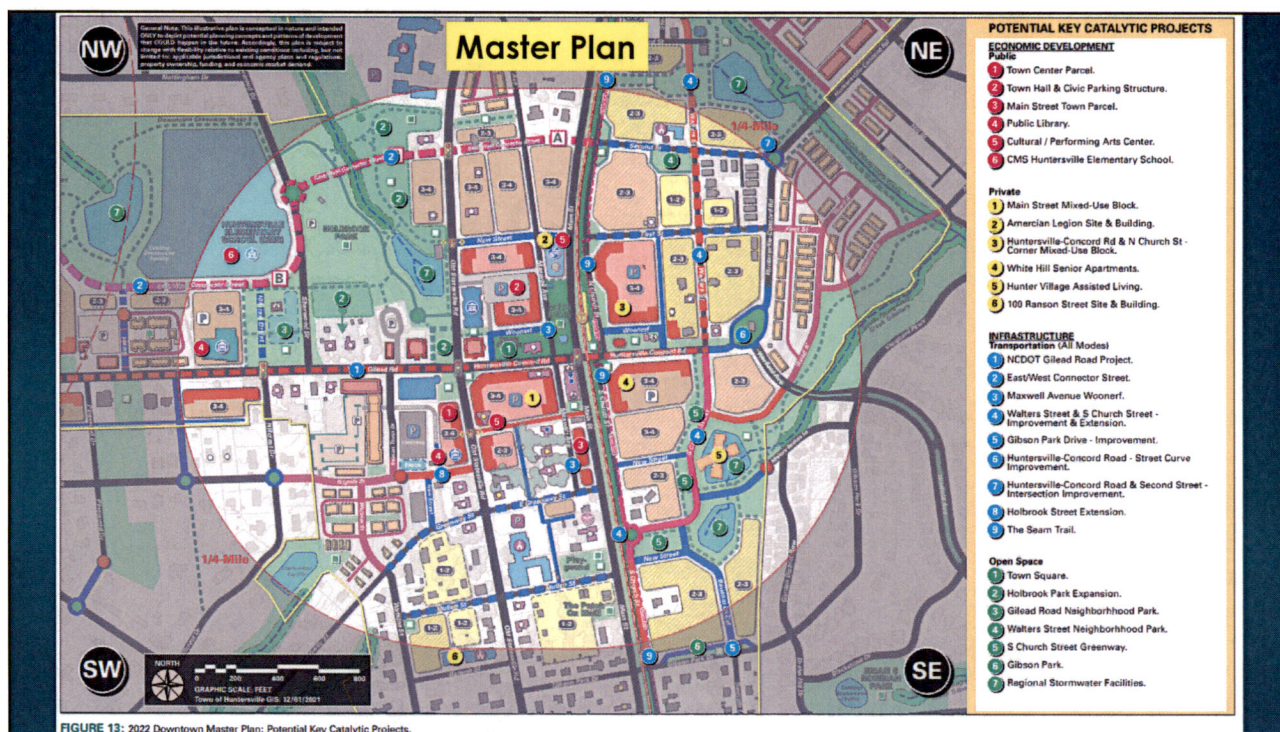


FIGURE 12: 2022 Downtown Master Plan: 1/4-Mile Core Study Area



Executive Summary

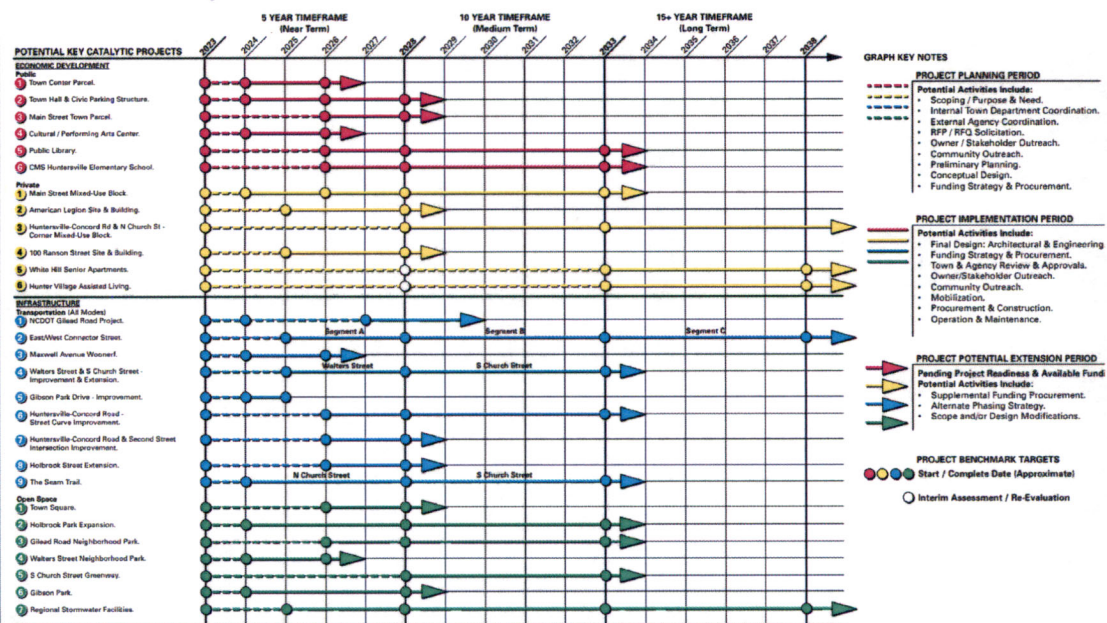


FIGURE 2: Potential Key Catalytic Projects: Preliminary Implementation and Phasing Timeline.

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Town of Huntersville, North Carolina 2022 Downtown Master Plan 7

Executive Summary

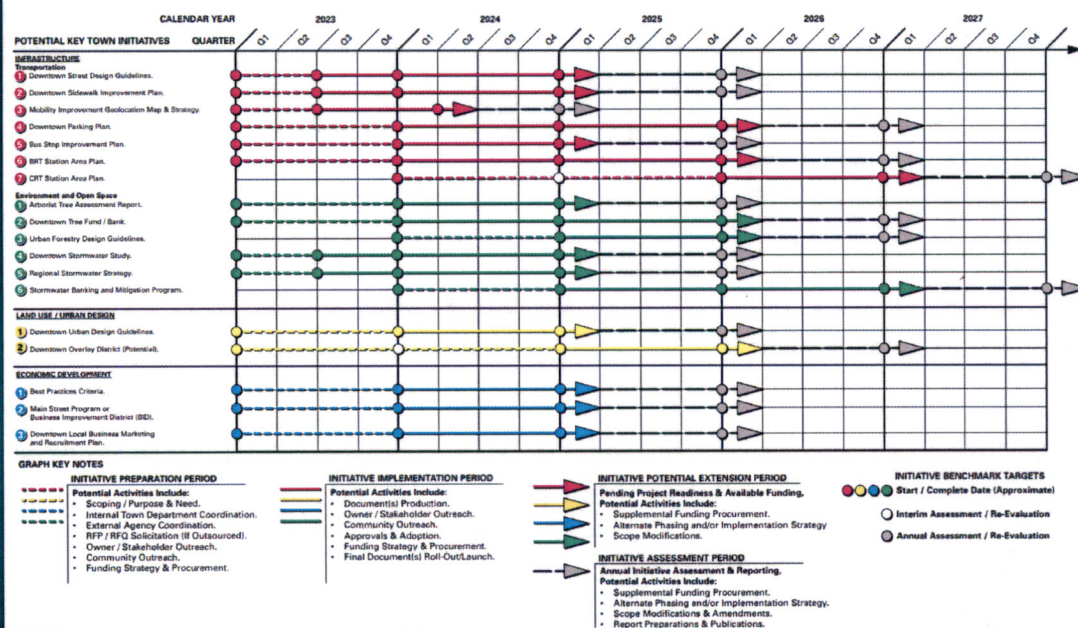
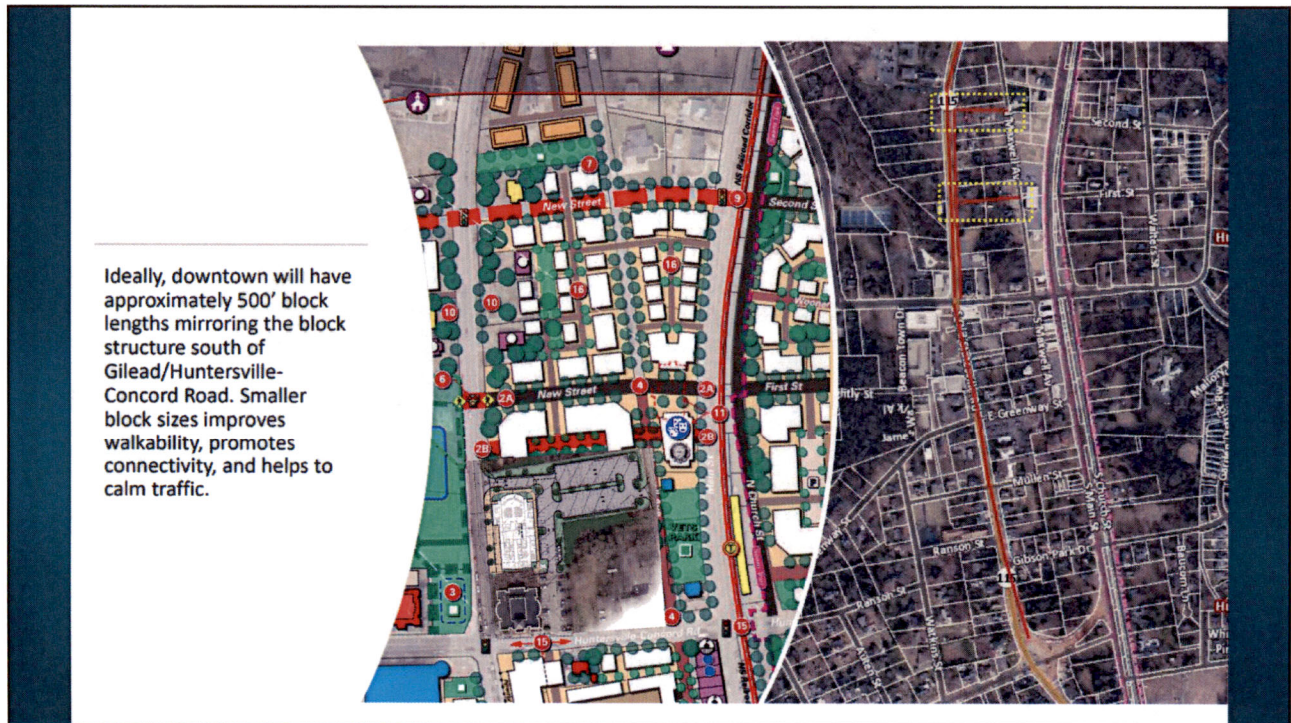
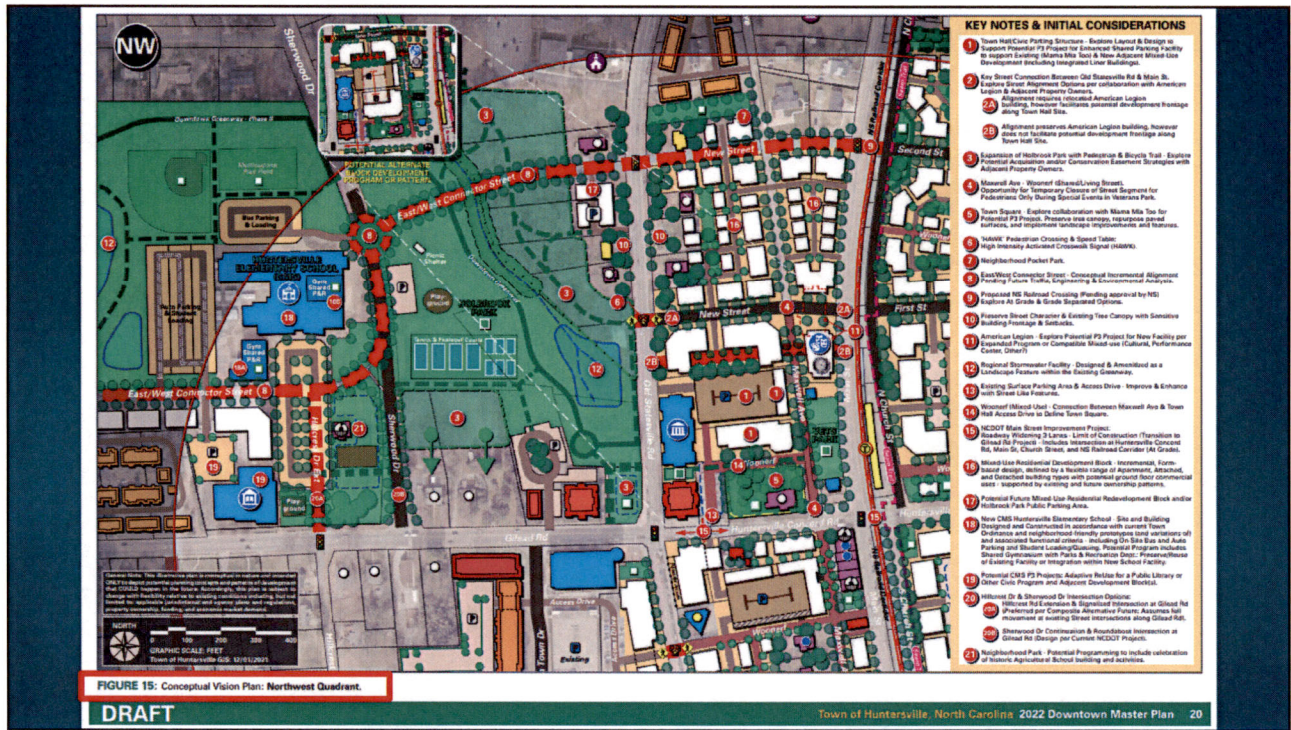
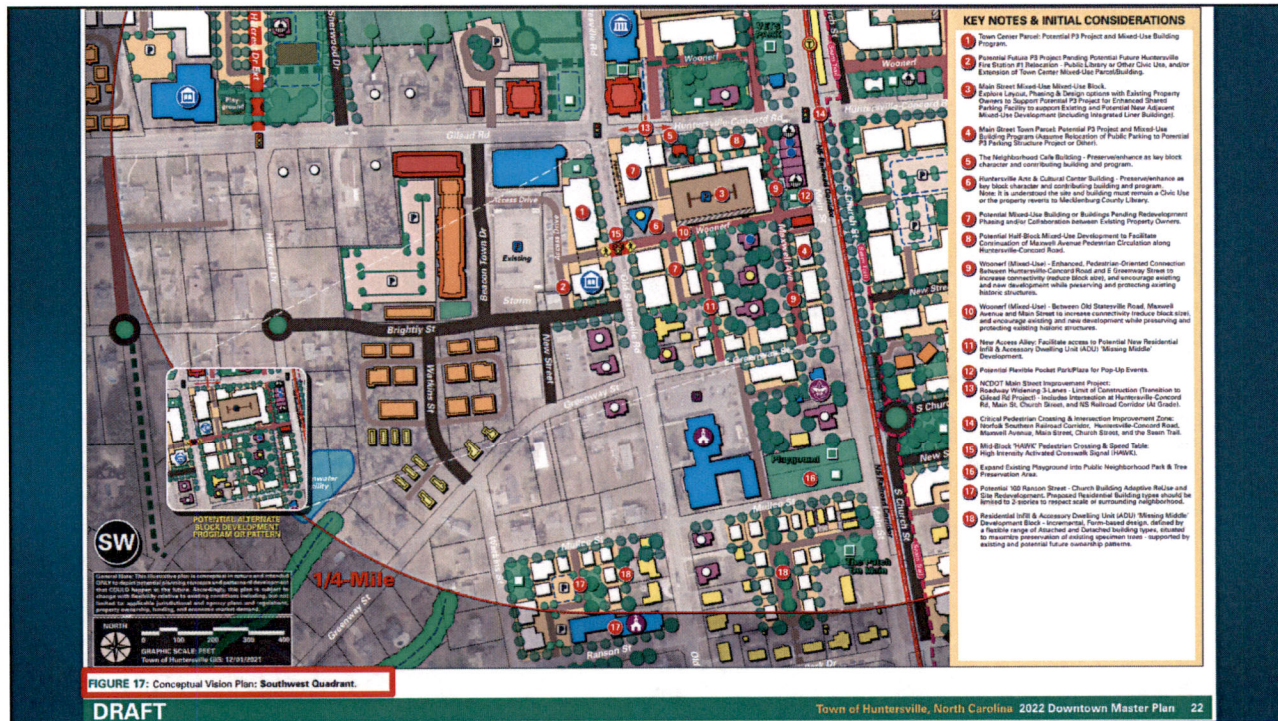
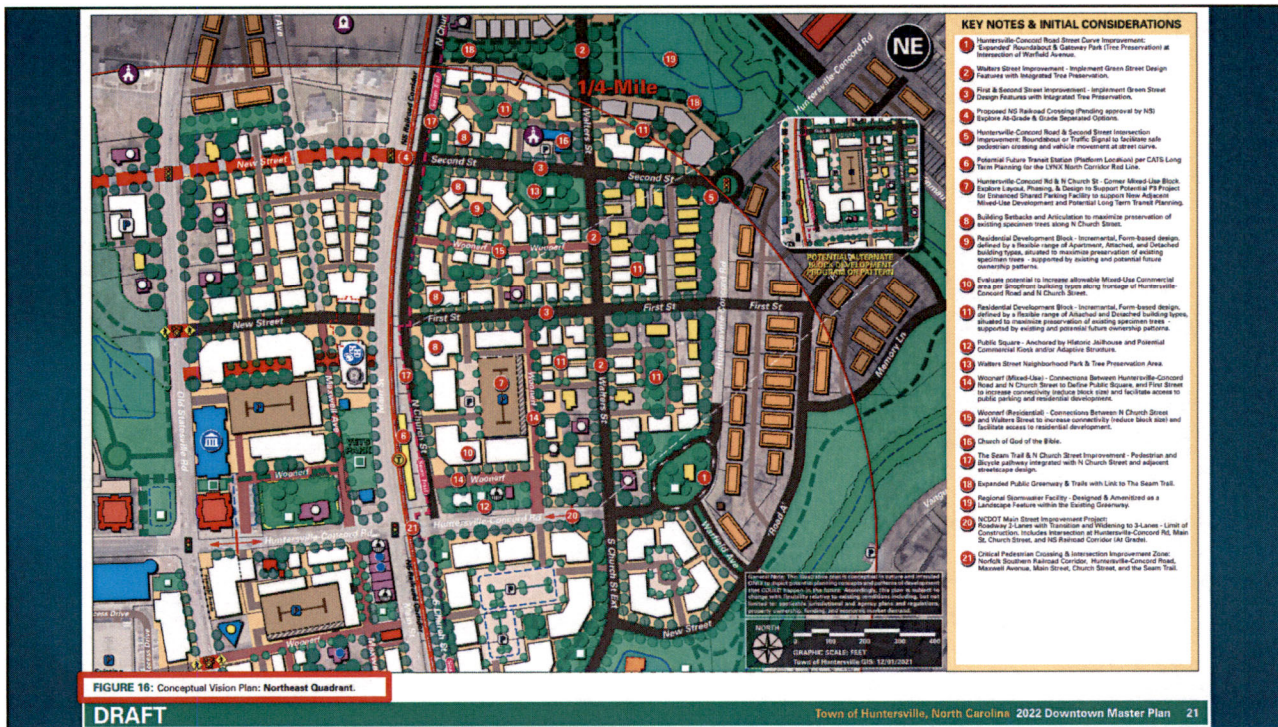


FIGURE 3: Potential Key Town Initiatives: Preliminary Preparation and Implementation Timeline.

DRAFT

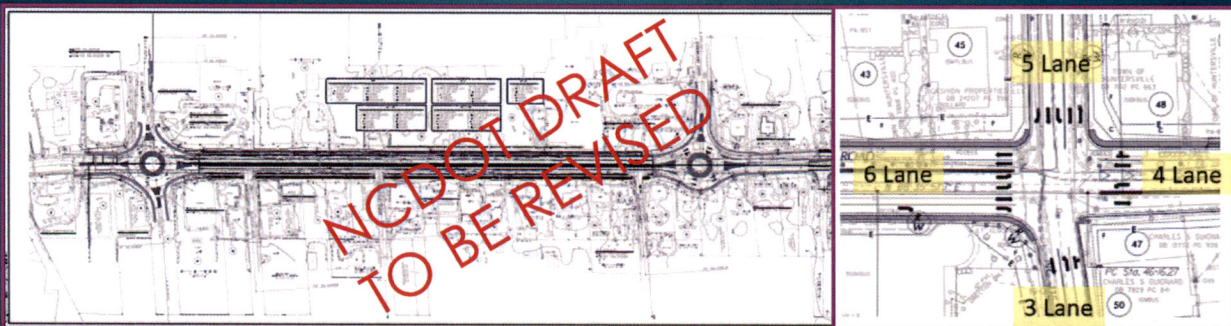
Town of Huntersville, North Carolina 2022 Downtown Master Plan 8







NCDOT – Gilead Widening Project funding has been restored; design to resume



Metropolitan Planning Organization To Study Gilead Rd.

AT WWW.LETSPLANHUNTERSVILLE.ORG

The screenshot shows the homepage of the website. At the top, there are two links: "Current Plan" and "Current Public Events & Meetings", each with a "Learn More" button. Below these is a section titled "Select A Topic That Interests You" which contains a grid of six green boxes. A red arrow points to the "Project Details" box.

Current Plan		Current Public Events & Meetings
Learn More	Learn More	

Select A Topic That Interests You

Meeting Schedule	Steering Committee	Project Details
Meeting Agendas	Information Resources	Project Status

Draft Plan

As of January 12, 2023

- [Executive Summary - DRAFT](#)
- [Appendix A - DRAFT](#)
- [Appendix B - DRAFT](#)
- [Appendix C - DRAFT](#)
- [Appendix D.1 Retail Market Analysis Placemaking](#)
- [Appendix D.2 Retail Market Analysis Report](#)
- [Appendix E.1 Huntersville Traffic Analysis Report](#)
- [Appendix E.2 Huntersville Traffic Analysis Appendix](#)
- [Appendix F.1 DPSC Topical Issues Survey](#)
- [Appendix F.2 DPSC and Public Input Report](#)
- [Appendix F.3 DPSC Homework Assignment - Place Preference Images](#)
- [Appendix F.4 Public Visual Preference Survey Results](#)
- [Appendix F.5 Interactive Public Input Map Results](#)
- [Appendix F.6 Supplemental Public Inputs - In-person and Online](#)
- [Appendix F.7 Public Forum #2 - Public Input Turning Point Results](#)
- [Appendix F.7 Public Forum #2 - Public Input Turning Point Results Report](#)
- [Appendix F.8 Public Forum #3 - Real Time - By Question](#)
- [Appendix F.8 Public Forum #3 - Real Time - By Participant](#)
- [Appendix F.8 Public Forum #3 - Survey Written Responses During Forum](#)
- [Appendix F.8 Public Forum #3 - Survey Written Responses Post Forum](#)
- [Appendix F.8 Public Forum #3 - Survey Online Responses Post Forum](#)
- [Appendix F.8 Public Forum #3 - Survey Result Summary](#)

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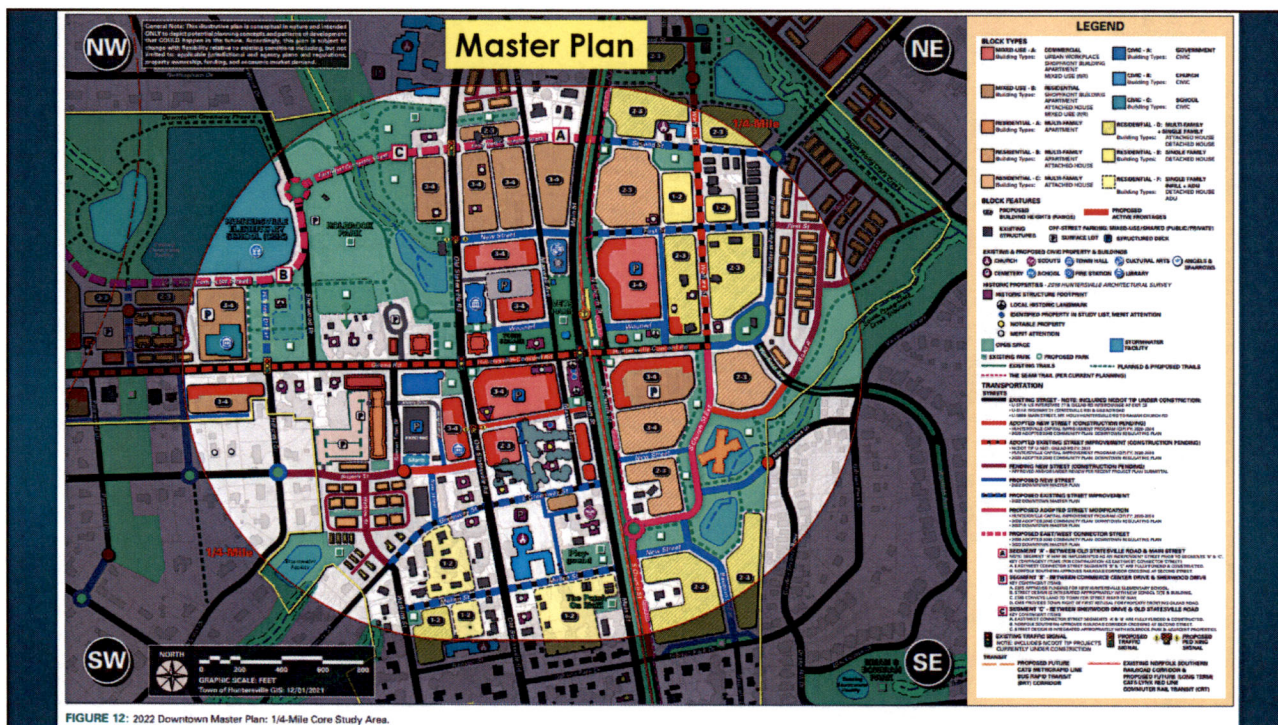
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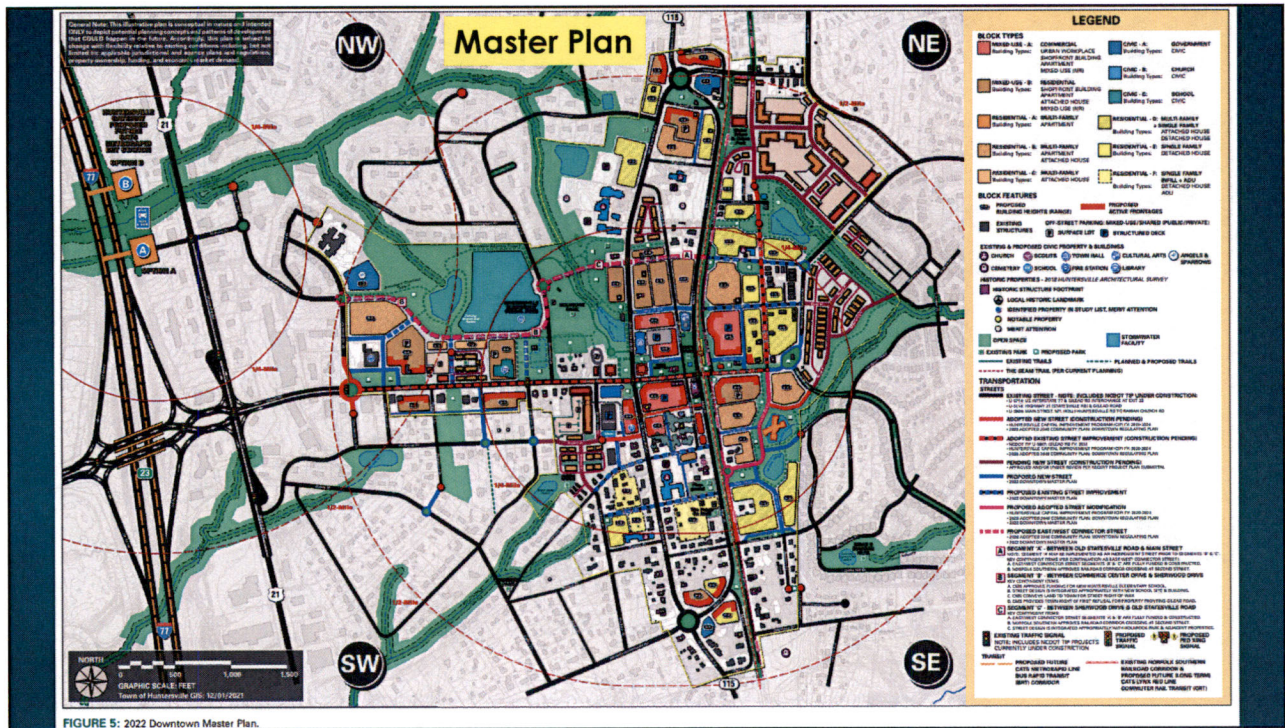
- Organizing Principles.
- Alternative Futures (1-3).
- Composite Alternative Future.
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 - Town Staff Workshop.
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Phase 3: Final Strategy and Master Plan. (September - December 2022)

- Draft Master Plan.
- Final Master Plan.
- Master Development Strategy.
- Communication.
 - DPSC Meetings.
 - Town Staff Workshop.
 - Public Forum #3: *Our Plan for Getting There.*

- Planning Board Recommendation
- Town Board Public Hearing and Adoption





USE 15-20 MPH TARGET SPEEDS IN DOWNTOWNS AND NEIGHBORHOODS



HIT BY A VEHICLE
TRAVELING AT:

**20
MPH**



9 out of 10 pedestrians survive

HIT BY A VEHICLE
TRAVELING AT:

**30
MPH**



5 out of 10 pedestrians survive

HIT BY A VEHICLE
TRAVELING AT:

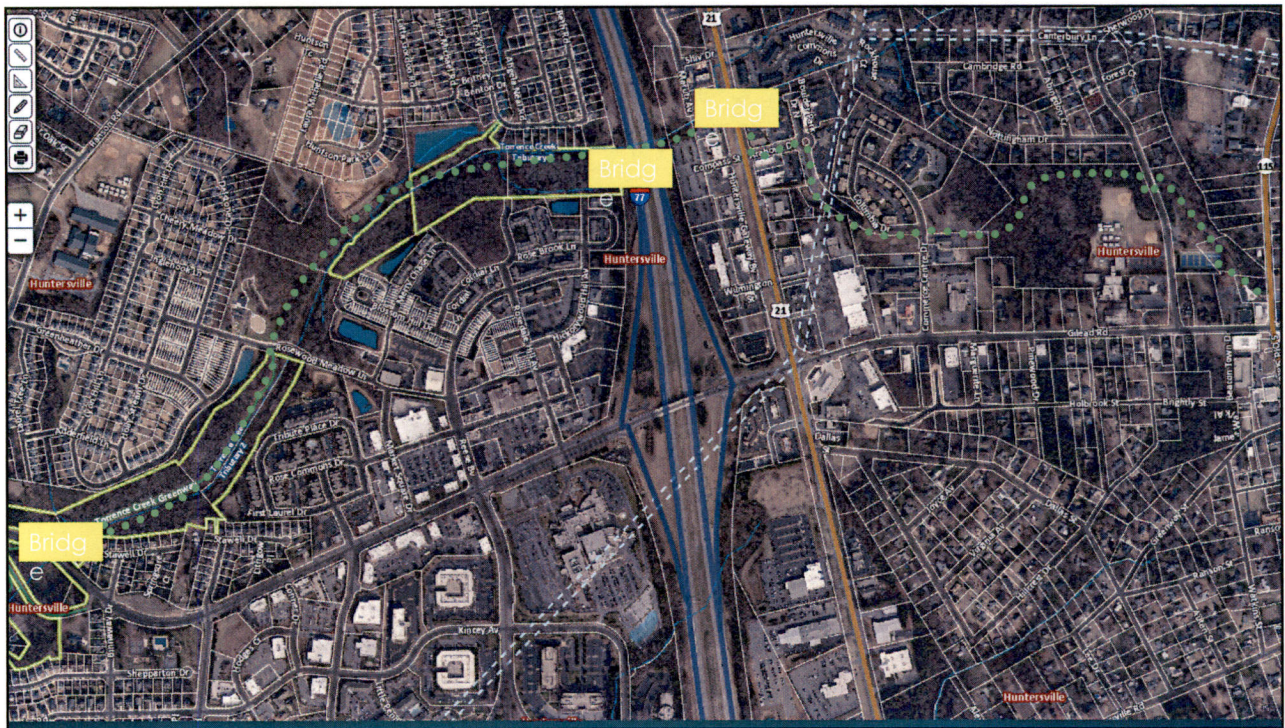
**40
MPH**



Only 1 out of 10 pedestrians survive

Higher speeds increase the likelihood and severity of crashes while lower speeds improve safety and comfort for everyone, especially people walking and cycling. Survival for pedestrians and bicyclists is directly tied to vehicular speed. Why would we want motorists to put themselves and others in danger when we know the impacts of inducing higher speeds through outdated design practices?





Considering proposed block sizes in the draft Downtown Plan, should the Town reconsider the parking lot connection to Old Statesville Road (delete and plan to use proposed street connection 2 A or B; modify to be the new street connection in place of 2B). If the proposed connection stays as proposed, new street option 2B will not be feasible.

- 2 Key Street Connection Between Old Statesville Rd & Main St. Explore Street Alignment Options per collaboration with American Legion & Adjacent Property Owners.
- 2A Alignment requires relocated American Legion building, however facilitates potential development frontage along Town Hall Site.
- 2B Alignment preserves American Legion building, however does not facilitate potential development frontage along Town Hall Site.

Note: Using a new street access to Old Statesville Road would allow to open space between the new and old Town hall to be expanded (below).



MOBILITY

- Treat the car as Guest on all streets.
- Create an optimal pedestrian environment – along all streets and within nature.
- Plan for automobile circulation with a street network approach vs. the current dendritic (branched, tree-like form) and disconnected pattern.
- Advance Transit planning...for now and for whatever future may unfold.
- Seek on-street parking solutions in policy, design and in law.

KEY WORDS:

- [illegible]

NATURE

- Integrate a variety of natural parks and public greens into the passive and active recreation and events of everyday urban life.
- Plant and protect street trees, which enhance beautification and pedestrian walkability, and help to calm traffic.
- Preserve and protect the existing tree canopy with a sensitive balance of new development within significant wooded areas.
- As a Lake Adjacent town situated along the ridge-line of two watershed basins, seek creative water solutions that are environmentally based while enhancing urban life.

KEY WORDS

- [illegible]

GATHERING

- Encourage uses that support, facilitate and celebrate a walking environment.
- Promote a balance of food and beverage venues and those stores that support town life and that appeal to visitors.
- Provide for office uses in step with Post-COVID expectations of Live/Work/Play.
- Establish a downtown that supports and encourages the creation of rituals—from 1 person to a 1,000 people.

KEY WORDS

- ART AND GARDEN, WALKING NEEDED
- WHEELCHAIR WALK BLAST
- OUTDOOR FACILITY/COMMITTEE COURTYARD
- CREATE DESTINATIONS TO WALK TO
- COOPERATED FACILITIES AND ACTIVITIES
- DEVELOPMENT STAGE BRINGS THE COMMUNITY TOGETHER
- RESIDENTS AND STAKEHOLDERS ARE HEARD
- BRINGING OUTSIDE TO COMMUNITY AND DESTINATION ARE

LIVING

- Include housing options for all—in socio-economic status, family type, and ownership structure.
- Be respectful of existing neighborhoods.
- Develop with a scale and intensity in proportion to other uses.

KEY WORDS

- GROCERY STORE
- AFFORDABLE HOUSING
- LIFESTYLE: Family-Oriented
- MIXED-USE HOUSING: FROM HIGH DENSITY TO LOW
- POTENTIAL AS FRUIT OF URBANISM
- THOUGHTFUL PLANNING AND DESIGN OF INFRASTRUCTURE, BUILDINGS

CIVIC

- Provide a place for all institutions of government, faith and the non-profit sector.
- Welcome and manage an institutional responsibility to be a good neighbor, supporting and adding to the life of the street.
- Strive toward being the example for the change the community wants to see.

KEY WORDS

- JOHANN EGGST, 1015 TOWNSHALL DR. NEXT TO DISCOVERY PLACE KIDS
TAKES OLD JAIL AS ALL COURTS - (LARGEST MUNICIPAL JAIL 1980)
MAYED MOTIV - CHAD (Jail)
"CHAD PLAZA"
DISCOVERY PLACE KIDS IS BUSY AREA
NEW GOVERNMENT CITY CENTER PLAZA IN DOWNTOWN
EXPERIENCE LEARNING WITH SCHOOL SITE AS OPPORTUNITY FOR LEARNERS WITH OPENING
WATER ST. CHAD (Jail)
DISCOVERY
DISCOVERY

SOUL

- Reflect a natural and moderated evolution and integration of a small rural town into a 21st Century metropolitan region.
- Build at a scale, at a rhythm, and according to patterns that respect historical precedent.
- Blend the art of change more toward supporting small town livability and less toward simply accommodating typical market-based development products.
- Recognize that balance in all things is the hallmark of great small towns: They are more than the sum of their parts.
- Strive for the "X" Factor: An experience lived that becomes your identity.

KEY WORDS

- [illegible]

- ▶ Phase 1 Discovery (November 2021- March 2022)
- ▶ Organizing Principles and Alternative Futures (March – June 2022)
- ▶ Final Strategy (September – December 2022)
- ▶ Adoption Process (January 2023 -)
 - 1. Planning Board Recommendation
 - 2. Town Board Public Hearing and Adoption

2022 Downtown Master Plan - General Framework Process and Timeline.**Phase 1: Discovery.** (November 2021 - March 2022)

- Preliminary Assessment.
 - Infrastructure.
 - Land Use / Urban Design.
 - Economic Development.
- Communication.
 - DPSC Meetings.
 - Town Staff Workshop.
 - Public Forum #1: *Our Essential Downtown.*

Phase 2: Organizing Principles and Alternative Futures. (March - June 2022)

- Organizing Principles.
- Alternative Futures (1-3).
- Composite Alternative Future.
- Communication.
 - DPSC Meetings.
 - Town Staff Workshop.
 - Public Forum #2: *Options for the Future.*

Phase 3: Final Strategy and Master Plan. (September - December 2022)

- Draft Master Plan.
- Final Master Plan.
- Master Development Strategy.
- Communication.
 - DPSC Meetings.
 - Town Staff Workshop.
 - Public Forum #3: *Our Plan for Getting There.*

Non-Linear Services & Supplemental Activities.

- Gilead Road Mixed-Use Project Considerations. (February 2022)
- CMS – Huntersville Elementary School Conceptual Planning. (May - June 2022)
- Traffic Analysis Report. (May - June 2022)

"Importantly, the 2022 Downtown Master Plan is not intended as a blueprint or mechanism for implementation of eminent domain - government expropriation (taking) of private property for public use, with payment of compensation. Current individual property owners may or may not elect to participate at their sole discretion. Furthermore, the 2022 Downtown Master Plan depicts concepts and recommendations for a full build-out of development within the core study area, which are expected to occur incrementally over a 10-20-year timeframe."

TA 22-12 – Town of Huntersville: Clarifying First Floor Residential and Commercial Area for Shopfront and Workplace Mixed-Use Buildings

PART 1: DESCRIPTION

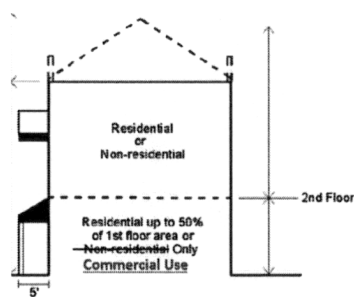
TA 22-12 is a request by the Huntersville Town Board to amend Article 4 of the Zoning Ordinance clarifying first floor residential and commercial area requirements for Shopfront and Workplace mixed-use buildings.

PART 2: BACKGROUND

First floor Shopfront and Workplace Buildings have the following standard: “Residential up to 50% of 1st floor area or Non-residential Only”.

The Town Board disagreed with staff assigning shared residential and non-residential floor area (i.e., mechanical rooms, maintenance space, etc.) as non-residential floor area. They requested an amendment indicating that only floor area dedicated 100% to non-residential uses would qualify as non-residential floor area.

Through the review process, it was determined the term “non-residential” should be replaced by the term ‘commercial’ as it better aligned with the Town Board’s intentions and is defined in the Zoning Ordinance (see below).



1. Building height shall be measured as the vertical distance from the highest finished grade relative to the street frontage, up to the eaves or the highest level of a flat roof.
2. The height of parapet walls may vary depending upon the need to screen mechanical equipment.
3. Building height to the ridge may vary depending on the roof pitch.
4. Permitted uses are indicated above and are further controlled by district regulations.
5. Where an existing residential building converts to a mixed-use building, at least 40% of the habitable floors area shall be residential
6. First floor commercial area shall include floor area used exclusively for commercial use and shall not include any floor area that contains or is shared with residential uses, such as storage, mechanical rooms, etc. Any floor area devoted partially or wholly to serving residential uses, shall be considered residential floor area.

PART 3: RELEVANT SECTIONS OF THE HUNTERSVILLE 2040 COMMUNITY PLAN

The proposed text amendment **could be supported** by the following policies in the Huntersville 2040 Community Plan:

Policy LU-6: Support a mix of land uses in key locations.

LU 6.1: A mix of land uses is encouraged in Mixed Use Centers, Activity Centers, Employment Centers identified on the Future Land Use Map.

LU 6.2: Commercial uses are encouraged in the Town Core and as specified in adopted Small Area Plans.

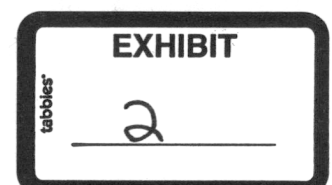
LU 6.3: Small scale, neighborhood-serving commercial and office uses may be allowed in Town Core and Moderate Density areas specified on the Future Land Use map at key locations if designed in a context sensitive manner.

Staff Comment: The proposed text amendment clarifies ambiguities for calculating residential and commercial floor area and may remove barriers to constructing mixed-use buildings.

Policy EV-1: Support a balanced economy through job growth in target industry sectors.

EV 1.4: Review development standards to support business growth.

- Support efforts to improve efficiency and responsiveness of the development review process for development proposals. Regularly review the market to ensure that standards are in line with current demand.
- Prioritize changes to standards that would encourage small business growth.



Staff Comment: The proposed text amendment clarifies ambiguities for calculating residential and commercial floor area and may remove barriers to constructing mixed-use buildings.

Policy EV-2: Encourage existing economic assets and entrepreneurial business development.

EV 2.1: Promote and encourage local businesses, particularly small businesses.

EV 2.2: Leverage Downtown as a unique destination.

EV 2.3: Attract businesses to Downtown.

Staff Comment: The proposed text amendment clarifies ambiguities for calculating residential and commercial floor area and may remove barriers to constructing mixed-use buildings.

Policy DT-1: Encourage future development in the Downtown area to adhere to the Regulating Plan.

DT 1.1: Encourage vertical mixed-use development with active visual engagement between the street and the ground and upper floors along Active Frontages

DT 1.2: In Tier 1 areas, encourage multistory buildings and allow for a mix of uses, including commercial, office, and residential.

Staff Comment: The proposed text amendment clarifies ambiguities for calculating residential and commercial floor area and may remove barriers to constructing mixed-use buildings.

PART 4: STAFF RECOMMENDATIONS

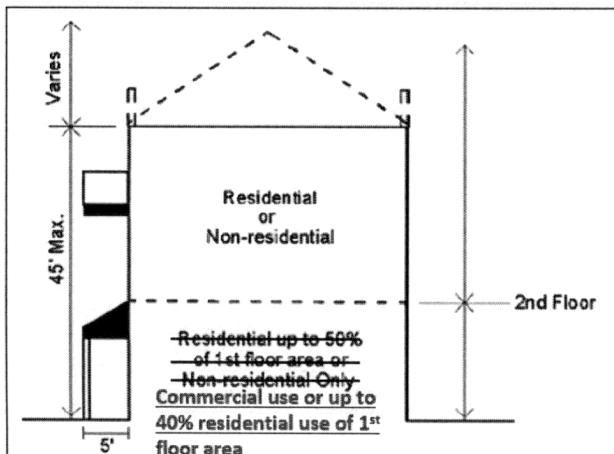
Approval. See Part 9 below.

PART 5: HUNTERSVILLE ORDINANCE ADVISORY BOARD

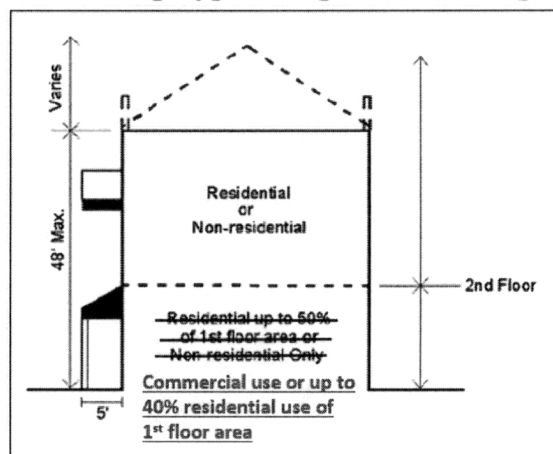
The HOAB discussed the request on November 3, December 1, and December 15, 2022. On January 5, 2023, the HOAB voted 5 to 2 (Skelly, Whittaker) as follows:

The Huntersville Ordinance Advisory Board (HOAB) recommends that Text Amendment 22-12, move forward for Public Hearing, Planning Board recommendation, and Town Board decision as written with the following change: Delete first floor diagram wording in Section 2 and Section 3 and replace with: "Commercial use, or up to 40% residential use of 1st floor area" This recommendation is based on the amendment being consistent with LU-6, LU-7, LU-10, EV-1, EV-2, DT-1 and DT-10 of the Huntersville 2040 Community Plan. It is reasonable and in the public interest to amend the Zoning Ordinance because the amendment clarifies first floor residential and commercial area requirements.

Building Type / Urban Workplace



Building Type / Shopfront Building



PART 6: PUBLIC HEARING

January 3, 2023

PART 7: PLANNING BOARD RECOMMENDATION

To be held January 24, 2023

PART 8: ATTACHMENTS

1. Application
2. Ordinance
3. Huntersville Ordinance Advisory Board Minutes November 3, December 1 and December 15, 2022, Minutes
4. Floor Area Requirement Comparison of Nearby Cities

PART 9: STATEMENT OF CONSISTENCY

Planning Department	Planning Board	Board of Commissioners
APPROVAL: In considering the proposed amendment TA22-12, the Planning Staff recommends approval based on the amendment being consistent with LU-6, EV-1, EV-2, and DT-1 of the Huntersville 2040 Community Plan. It is reasonable and in the public interest to amend the Zoning Ordinance because the amendment clarifies first floor residential and commercial area requirements.	APPROVAL: In considering the proposed amendment TA22-12, the Planning Board recommends approval based on the amendment being consistent with <u>(insert applicable plan reference)</u> of the Huntersville 2040 Community Plan. It is reasonable and in the public interest to amend the Zoning Ordinance because...(Explain)	APPROVAL: In considering the proposed amendment TA22-12, the Town Board recommends approval based on the amendment being consistent with <u>(insert applicable plan reference)</u> of the Huntersville 2040 Community Plan. It is reasonable and in the public interest to amend the Zoning Ordinance because...(Explain)
	DENIAL: In considering the proposed amendment TA22-12, the Planning Board recommends denial based on the amendment being <u>(consistent OR inconsistent)</u> with <u>(insert applicable plan reference)</u> of the Huntersville 2040 Community Plan. It is not reasonable and in the public interest to amend the Zoning Ordinance because.... (Explain)	DENIAL: In considering the proposed amendment TA22-12, the Town Board recommends denial based on the amendment being <u>(consistent OR inconsistent)</u> with <u>(insert applicable plan reference)</u> of the Huntersville 2040 Community Plan. It is not reasonable and in the public interest to amend the Zoning Ordinance because.... (Explain)



Text Amendment Application

Date of Application October 4, 2022

Fee

See Current Town of Huntersville Fee Schedule for Text Amendment to the Zoning/Subdivision Ordinance

Type of Change

☐ New Addition to text of Zoning Ordinance / Subdivision Ordinance / Other

☒ Revision/Modification to text of Zoning Ordinance / Subdivision Ordinance / Other

Description of Change

Proposed text amendment will affect the following:

Ordinance(s): Zoning Ord. Article(s): 4 Section(s): Shopfront & Workplace Bldg.

Current Ordinance	<u>See attached</u>
	<u></u>
	<u></u>

Proposed Text	<u>See attached</u>
	<u></u>
	<u></u>

Reason for Proposed Change	<u>To clarify determination of residential/ non-residential/commercial floor area</u>
	<u>in a mixed-use building (Shopfront & Workplace building type)</u>
	<u></u>

Attach additional pages if needed.

NOTE: If the proposed text amendment effects property located along Hwy 73; is 2000 feet from an adjoining municipality, and/or the Mountain Island and Lake Norman Watersheds, additional peer review is required.

Applicant

Printed Name Jack Simoneau

☐ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

Signature Jack Simoneau (For Huntersville Town Board) Date 10/4/22

Title Planning Director Email jsimoneau@huntersville.org

Address of Applicant PO Box 664, Huntersville, NC 28070

Property Owner (if different than applicant)

* Printed Name N/A

☐ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

Signature _____ Date _____

Title _____ Email _____

Address of Property Owner _____

* Property owner hereby grants permission to the Town of Huntersville personnel to enter the subject property for any purpose required in processing this application.

Every owner of each parcel included in this application, or the owner (s) duly authorized agent, must sign this application. If signed by an agent on behalf of the Owner, this petition **MUST** be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an **INVALID APPLICATION**. **If additional space is needed for signatures, attach the Town of Huntersville Signature Addendum Form.**

Contact Information

Town of Huntersville
Planning Department
PO Box 664
Huntersville, NC 28070

Phone: 704-875-7000
Fax: 704-875-6546
Physical Address: 105 Gilead Road, Third Floor, Huntersville, NC 28078
Website: <https://www.huntersville.org/228/Planning-Department>

Date Received By Planning Department: October 4, 2022

Staff Initials: JS

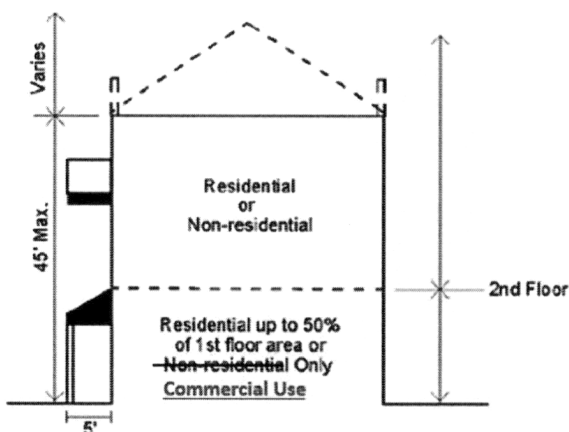
AN ORDINANCE TO AMEND ARTICLE 4, URBAN WORKPLACE AND SHOPFRONT BUILDINGS OF THE ZONING ORDINANCE TO CLARIFY THE RESIDENTIAL AND COMMERCIAL FLOOR AREA REQUIREMENTS

Section 1. Be it ordained by the Board of Commissioners of the Town of Huntersville that Article 12, Definitions, of the Zoning Ordinance is hereby amended by modifying the definition of Commercial Use and adding a new definition of non-residential use as follows:

Commercial use. A category of uses that includes retail establishments, offices, professional and personal services, light manufacturing and assembly, branch banks, financial services, health care services, indoor motion picture theatres, conference centers, laboratories and associated research facilities whose products or waste products entail no special environmental handling requirements, studios, broadcast facilities (excluding towers), inns, theatres, restaurants without drive-through windows, bars, and day care facility as a principle use. Each use permitted in the commercial use category shall also meet any applicable conditions set out in Article 9, Conditions for Certain Uses. Excluded from the commercial use category are adult uses; vehicle, boat, or manufactured home sales, service, and repair; drive-through windows as a principal or accessory use; wholesale sales; heavy manufacturing; outdoor storage; **floor area that is shared with residential uses as provided in Article 4**; outside commercial kennels, and other uses that, by their nature or service characteristics are auto dependent, have potential for environment degradation, or are otherwise incompatible with nearby residential use.

Non-residential use. All uses that are not a residential use.

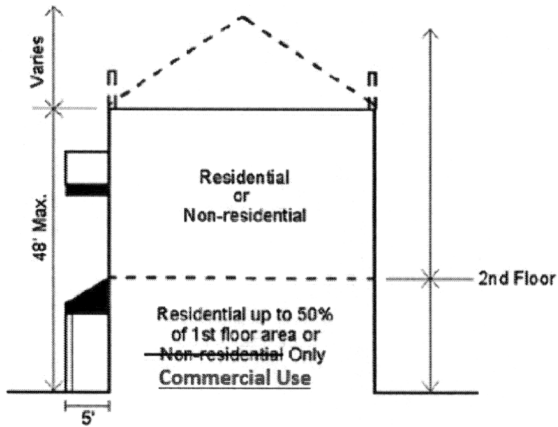
Section 2. Be it ordained by the Board of Commissioners of the Town of Huntersville that Article 4, Workplace Building, of the Zoning Ordinance is hereby amended as follows:



1. Building height shall be measured as the vertical distance from the highest finished grade relative to the street frontage, up to the eaves or the highest level of a flat roof.
2. The height of parapet walls may vary depending upon the need to screen mechanical equipment.
3. Building height to the ridge may vary depending on the roof pitch.
4. Permitted uses are indicated above and are further controlled by zoning district standards.
5. Hotels in the Highway Commercial (HC) zoning district may exceed the maximum building height (shown above), not to exceed six (6) stories, subject to the provisions of Article 9.45.
6. **First floor commercial floor area shall include floor area used exclusively for commercial use and shall not include any floor area that contains or is shared with residential uses, such as storage, mechanical rooms, etc. Any floor area devoted partially or wholly to serving residential uses, shall be considered residential floor area.**

Section 3. Be it ordained by the Board of Commissioners of the Town of Huntersville that Article 4, Shopfront Building, of the Zoning Ordinance is hereby amended as follows:

TA 22-12: Residential and Commercial Floor Area



1. Building height shall be measured as the vertical distance from the highest finished grade relative to the street frontage, up to the eaves or the highest level of a flat roof.
2. The height of parapet walls may vary depending upon the need to screen mechanical equipment.
3. Building height to the ridge may vary depending on the roof pitch.
4. Permitted uses are indicated above and are further controlled by district regulations.
5. Where an existing residential building converts to a mixed-use building, at least 40% of the habitable floors area shall be residential
6. First floor commercial area shall include floor area used exclusively for commercial use and shall not include any floor area that contains or is shared with residential uses, such as storage, mechanical rooms, etc. Any floor area devoted partially or wholly to serving residential uses, shall be considered residential floor area.

Section 4. This ordinance shall become effective upon adoption.

HUNTERSVILLE ORDINANCE ADVISORY BOARD: November 3, December 1, and December 15, 2022

PUBLIC HEARING DATE: January 3, 2023

PLANNING BOARD MEETING: January 24, 2023

TOWN BOARD DECISION: February 20, 2023

HOAB November 3, 2022, Minutes

Item 4C: Consider a Town Board sponsored amendment to Article 4, Urban Workplace and Shopfront Building Types clarifying how to count residential and non-residential floor areas in mixed-use buildings.

J. Simoneau, Planning Director reviewed the recent approved plan that identified that referencing non-residential space may not be achieving the desired results of the use of the space. The proposed amendment would adjust 'non-residential' to 'commercial' use for shopfront and workplace building types with the added wording to achieve the percentage indicated being used for commercial purposes only.

K. Jones reviewed the use of 'up to' in the proposed language and when would a developer be allowed to adjust this requirement. Staff confirmed that the proposed language would allow for the residential use to vary from 0 – 50% with the remaining square footage being used for commercial and a developer can always request a conditional rezoning that the Town Board would have to decide to grant or not grant on a variance from the standard.

K. Jones asked if 100% commercial could be proposed. Staff stated that the Board could offer that recommendation, staff would recommend keeping it as it is since there are times that commercial may not make sense on the first floor of these buildings, such as when facing a side property yard.

F. Gammon commented on approaches to the language that could create the requirement for this to be a conditional rezoning and allow for the developer to come before the Planning and Town Board to assist with avoiding further issues.

A. Hallman commented that she would like to see greater commercial percentage on the first floor in Town Center and that commercial areas that do not face the storefront may be a good opportunity for start-up businesses with a lower rent option that can be connected to larger businesses.

M. Jones commented that there seems to be two pieces to this, the ordinance, and the interpretation. Staff agreed that clarity is the goal and the proposed language is intended to achieve that. M. Jones commented that a clear and consistent method for interpretation of the Board, motions, Staff, and the Ordinances.

NOTE: NO MOTION WAS MADE AS THIS WAS A DISCUSSION ITEM.

HOAB December 1, 2022, Minutes

Item 4C: Consider a Town Board sponsored amendment to Article 4, Urban Workplace and Shopfront Building Types clarifying how to count residential and non-residential floor areas in mixed-use buildings.

J. Simoneau, Planning Director presented the proposed amendment that would adjust 'non-residential' to 'commercial' use for shopfront and workplace building types with the added wording to achieve the percentage indicated being used for commercial purposes only. Staff reviewed research completed of a comparison of mixed-use standards in Downtown for local area municipalities.

F. Gammon referenced paragraph 5 of Article 4, Shopfront Building Types and asked about the reference to 40% habitable area requirement. Staff responded that this refers to an existing building and would be different criteria than the land development criteria being discussed.

F. Gammon shared that there is no definition for 'commercial, residential or non-residential' in the Ordinance and this could leave it open to interpretation which seems to lend to the confusion. Staff responded that the proposed amendment is to clarify the text and use and staff is comfortable with interpreting this in reviewing land development.

K. Jones commented that she would like the requirement to be 75% or greater for commercial use.

A. Hallman agreed that it should be 75% or greater for commercial use particularly because this is for Town Center, and we are focused on invigorating our Downtown and we do not have that many existing store front/shop front roads, so we need this type of requirement to attract as much commercial development as possible. She then expressed her support of definitions for words as F. Gammon stated. She agreed that the purpose of the definitions is not for staff but rather for developers who may have one use and definition of terms and may not choose to update the descriptions on their plans which can lead to lack of clarity between developers, planners, and citizens as to what the intended use is for that space. The definition and the implementation of the words would be important. Staff commented that the new software for the Ordinances will allow you to search for a word and find all references to that word which will assist with accessing existing definitions such as commercial.

F. Gammon commented that he agreed with the recommendations of 75% commercial, but he does not want to be too restrictive for a developer. He would recommend a 75% commercial, 25% residential through a modification request to be approved by the Town Board so they could view the circumstances of that development and not overregulate the developer.

Commissioner Munger agreed that the true definition of commercial would be beneficial to alleviate confusion. He then referred to the local area municipality research that was shared and commented that the wording of Concord is good phrasing. Staff agreed that presenting the definition with the proposed amendment would be beneficial. The current definition of commercial use is all encompassing.

Commissioner Munger responded that the goal is to clearly identify that a mailroom, storage room or other shared space are not what is intended. The intention is tax revenue generating space.

M. Jones requested staff bring up MuniCode and the definition for Commercial in the Zoning Ordinance.

F. Gammon recommended the implied understandings be included in the definition such as storage rooms, HVAC space when used for commercial only versus HVAC that is shared with commercial and residential. E. Sloop commented that the Ordinances currently define residential and commercial, and she would recommend the addition of non-residential to the definitions as 'everything not residential.'

M. Jones commented that the definition piece and interpreting Town Board conditions and the Ordinance in a consistent fashion is also critical, and he recommends it be wrapped into this as well.

Motion: M. Jones made a motion to call a virtual Special Meeting of the Ordinance Advisory Board on Thursday, December 15, 2022, at 3:30 p.m. to hear Items 4C, 5A, 5B & 5C from the December 1, 2022, agenda and to include an Item 5D to discuss forming sub-committees. K. Jones seconded the motion.

Vote: The motion passed unanimously (8-0).

HOAB December 15, 2022, Minutes

Item 4A: Consider recommendation on petition TA22-12, a Town Board sponsored text amendment to Article 4, Urban Workplace and Shopfront Building Types to clarify how to count residential and non-residential floor areas in mixed-use buildings.

J. Simoneau, Planning Director reviewed the proposed amendment with the normal definition of commercial use, exclusions to commercial use category as outlined in Article 4. Staff reviewed local area communities and it is staff's recommendation for commercial use requirement to be at 50%. This is an increase over the current requirements, and it is Staff's opinion that it would be a disincentive to increase the first-floor commercial requirement to 75-100%.

A. Hallman commented that she would support an increased percentage requirement for commercial since developers would still have the opportunity to request that be reduced with the Town Board.

M. Jones asked Staff to confirm that definition of non-residential and commented on concerns over the clarity. Staff stated that this is not a new definition and Staff is comfortable with it.

M. Jones asked Staff if the definition should be improved with the statements added by E. Sloop that all Commercial is Non-Residential but not all Non-Residential is Commercial. Staff responded that the Board is welcome to make a recommendation of that. M. Jones followed up that he thinks the definition of Non-Residential should be more specific because in his mind he does not necessarily think Commercial.

A. Hallman asked when this will go to Public Hearing. Staff responded that Public Hearing is January 3, 2023, and a recommendation from the Ordinance Advisory Board would be preferable. The Town Board could also keep the Public Hearing open and not close it and forward it to the Planning Board, otherwise it would go to the Planning Board on January 24, 2023, and then to the Town Board for final decision on February 20, 2023.

A. Hallman followed up and said it would be nice to understand more of what the Non-Residential uses could be that are not Commercial and additional time to figure that out would be helpful.

M. Jones commented that the interpretation is also important to create a more comprehensive solution which he believes is what the Town Board was trying to address. He then stated that he has written up some recommendations to the rules of construction for the Zoning Ordinance and Subdivision Ordinance that he thinks would be in keeping with the solution that the Town Board is seeking. Staff responded that they would defer to Legal to weigh in since staff's concern is that the rules of construction amendments have not been advertised so if there is going to be discussion on amending Section 2.2 of the Subdivision Ordinance or Section 12.1 of the Zoning Ordinance, that needs to be a clear agenda item. E. Sloop responded that this is a Special Meeting, and that discussion is not on the agenda we should wait until it is properly advertised to discuss it. M. Jones commented that he brought this up at each of the previous two discussions on this item so he does not understand how this would be new or unrelated. Staff commented that it was understood M. Jones wanted to work on those sections, but it was not clear that was meant to be in conjunction with TA22-12, so the sections referenced have not been advertised.

F. Gammon commented that his understanding of the Rules of Procedure was that the Board had more leniency to discuss the ordinances that may apply but he would defer to Legal.

A. Hallman said that if it cannot legally be discussed now then the Board should not spin their wheels discussing part of the problem versus the entire solution that as a Board they should be considering for clarity for all future users of the Zoning Ordinance for years to come.

F. Gammon followed up that he does not want to encumber this text amendment with discussion that has not been totally vetted and will slow down the process. It may be appropriate for discussion in Item 5A on how to improve the Zoning Ordinance.

M. Jones asked Commissioner Munger if in his opinion the proposed text amendment is a comprehensive solution that addresses the concerns expressed by the Town Board that led to the proposal of the amendment. Commissioner Munger commented that while he can see room for improvement it is a step in the right direction, and he would be open to the Ordinance Advisory Board trying to work out whatever additions may be appropriate. Another consideration is that the Town Board does review the notes forwarded from the Ordinance Advisory Board meetings and that is taken into consideration when determining how to proceed and what the final amendment should look like when the Town Board reviews it.

M. Jones then asked Commissioner Munger if he felt like conditions imposed by the Town Board that the applicant agrees to should have precedence over other aspects or everything else. Commissioner Munger stated he would defer to Legal. Staff clarified that the Board is specifically authorized in the Ordinance through conditional rezoning to modify existing codes which takes precedence.

M. Jones said he would entertain a motion to defer if the Board was with him to broaden the discussion related to this text amendment to include the aspects he has brought up.

Motion: K. Jones made a Motion to Defer TA22-12 until next regularly scheduled meeting and include aspects of rules of construction in that recommendation. A. Hallman seconded the motion to support some more thought about what non-residential but not commercial is.

Vote: The motion passed (5-3) with T. Finlay, F. Gammon, B. Skelly opposed

	Definiton of Residential?	Definiton of Non-Residential?	Definiton of Commercial?	Definiton of Non-Commercial?	Definition of Mixed-Use?	Limit of commercial/residential in mixed-use buildings?
Huntersville	Yes, definition of Residential Use	Yes, definition for Nonresidential Development	Yes, definition of Commercial Use	No	Yes, definition of mixed-use land use and mixed-use building	Yes, limit based on building type
Charlotte	Yes, definition of Residential Development	Yes, definition for Nonresidential Development	Yes, definition of Commercial Development	No	Yes, definition of Mixed-Use Development & Mixed-Use Building	No, could not find a limit of the SF of residential and commercial in mixed-use buildings
Cornelius	No	No	Yes, definition of Commercial, Retail and Service Use	No	Yes, definition of Mixed-Use and Mixed-Use Building	Yes, limit based on conditions of the mixed-use building use or the multi-family dwelling use
Davidson	No	Yes, definition for Nonresidential Development	Yes, definition of Primary Commercial, Secondary Commercial, Commercial Services, & Restircted Commercial	No	No	Yes, limit dependent on building type requirements
Matthews	Yes, definition of Residential Area, Net Residential Area, & Residential Use	No	No	No	Yes, definition of Mixed-Use Development	Yes, limit dependent on zoning district, land use, and commercial & mixed-use building lot development standards
 Mooresville	No	No	No	No	Yes, definition of Mixed-Use	Yes, limit dependent on zoning district, conditions of land use, and commercial
Concord	Yes, definition of Residential Use	No	No	No	Yes, definition of Mixed Use Building, Mixed Use Dwelling, & Mixed Use Development or Mixed Use Project	Yes, limit dependent on what mixed-use zoning district the development is in (4 mixed-use zoning districts)

Shopfront Building Proposed	TA22-12	Workplace Building Proposed
	<u>First floor commercial floor area shall include floor area used exclusively for commercial uses and shall not include any floor area that contains or is shared with residential uses, such as storage, mechanical rooms, etc. Any floor area devoted partially or wholly to serving residential uses, shall be considered residential floor area.</u>	
<u>Commercial use.</u> A category of uses that includes retail establishments, offices, professional and personal services, light manufacturing and assembly, branch banks, financial services, health care services, indoor motion picture theatres, conference centers, laboratories and associated research facilities whose products or waste products entail no special environmental handling requirements, studios, broadcast facilities (excluding towers), inns, theatres, restaurants without drive-through windows, bars, and day care facility as a principle use. Each use permitted in the commercial use category shall also meet any applicable conditions set out in Article 9, Conditions for Certain Uses. Excluded from the commercial use category are adult uses; vehicle, boat, or manufactured home sales, service, and repair; drive-through windows as a principal or accessory use; wholesale sales; heavy manufacturing; outdoor storage; <u>floor area that is shared with residential uses as provided in Article 4;</u> outside commercial kennels, and other uses that, by their nature or service characteristics are auto dependent, have potential for environment degradation, or are otherwise incompatible with nearby residential use. <u>Non-residential use. All uses that are not a residential use.</u>		

Shopfront Building Proposed	TA22-12	Workplace Building Proposed
	Huntersville Ordinances Advisory Board Recommendation	

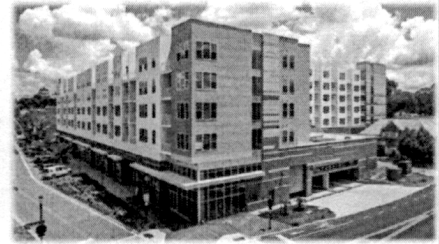
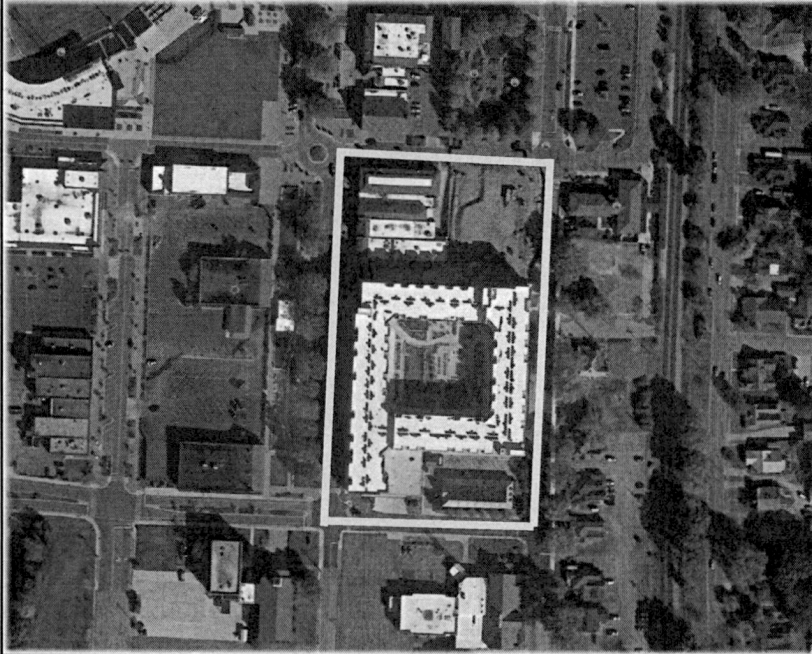
Commercial use. A category of uses that includes retail establishments, offices, professional and personal services, light manufacturing and assembly, branch banks, financial services, health care services, indoor motion picture theatres, conference centers, laboratories and associated research facilities whose products or waste products entail no special environmental handling requirements, studios, broadcast facilities (excluding towers), inns, theatres, restaurants without drive-through windows, bars, and day care facility as a principle use. Each use permitted in the commercial use category shall also meet any applicable conditions set out in Article 9, Conditions for Certain Uses. Excluded from the commercial use category are adult uses; vehicle, boat, or manufactured home sales, service, and repair; drive-through windows as a principal or accessory use; wholesale sales; heavy manufacturing; outdoor storage; **floor area that is shared with residential uses as provided in Article 4;** outside commercial kennels, and other uses that, by their nature or service characteristics are auto dependent, have potential for environment degradation, or are otherwise incompatible with nearby residential use.

Non-residential use. All uses that are not a residential use.

Comparison of Mixed-Use Standards in Downtown

	Definition of Mixed-Use?	1st Floor Use Restriction for Mixed-Use Buildings in the Downtown?
Huntersville	Mixed-Use Building: The mixed-use building duplicates the shopfront building type and has at least two occupiable stories; at least 50% of the habitable area of the building shall be in residential use, the remainder shall be in commercial use.	Yes, mixed-use buildings allowed up to 50% of the 1st floor area as residential
Charlotte	Mixed-Use Development: Development of a project with a residential component listed in the Residential Uses category and a nonresidential component listed in the Commercial Uses category or the Industrial Uses category of the Use Matrix in Article 15.	No
Cornelius	Mixed-Use Building: Buildings with the ground floor occupied by commercial/retail/service uses and residential units above	Yes, the ground floor of any mixed-use building shall exclusively contain retail, service, or office uses.
Davidson	None	Yes, the 1st floor facing the primary streets of a mixed-use building (storefront building type) shall be designed to accommodate retail uses
Matthews	Mixed Use Development: A development which includes at least two of the following uses: office, institutional, civic, residential, and/or service/retail in 1 or more buildings or a combination of single and mixed use buildings in a pedestrian-oriented environment.	Yes, 1st floor of a mixed-use building in the Historic Urban Core zoning district must devote 50% of the gross floor area to "retail activities". The term "retail" includes the sales of merchandise and personal services, but not drive-through financial services.
 Mooresville	Mixed-Use: A single structure or tract of land containing more than one type of use, where the different types of uses are in close proximity, planned as a unified complementary whole, and functionally integrated to the use of shared vehicular and pedestrian access and parking areas.	In the Traditional Downtown zoning district, vertical mixed-use development with residential uses above ground-floor nonresidential development is encouraged but not required.
Concord	Mixed Use Building: A vertically integrated mixed-use building. The building is able to accommodate a wide variety of uses, including apartments for sale or rent, small professional offices, ground floor retail or restaurant.	Yes, the first floor (street level) of any new multi-story building in the City Center zoning district shall be devoted to retail, commercial, and service uses. Such buildings shall include said uses along not less than 50% of its street frontage.

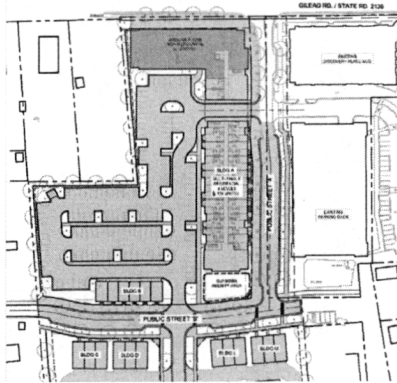
Vida -Kannapolis



   Mixed-use building with partial 1st floor commercial, partial residential	   Mixed-use building with commercial only fronting road, remainder residential
   Mixed-use building with commercial 1st floor except for residential stair access.	   Mixed-use building with commercial 1st floor except for residential access.

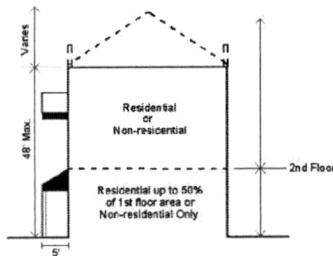
Huntersville Town Center with **non-residential** (dark grey) facing Gilead Road representing 34% first floor area. Through a conditional rezoning, Town Board approved a reduction of minimum 50% first floor **non-residential** use to 34%.

Under the proposed text amendment, the word **non-residential** will be replaced with **commercial**. Additionally, spaces shared between the commercial and residential uses (i.e., mechanical & maintenance areas) that were approved as **non-residential** for this project will be counted as residential under the proposed text amendment.

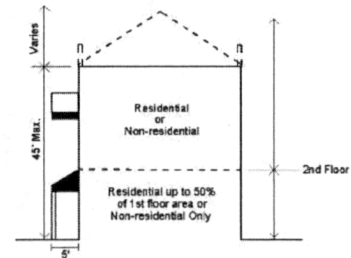


Item 4A: TA22-12

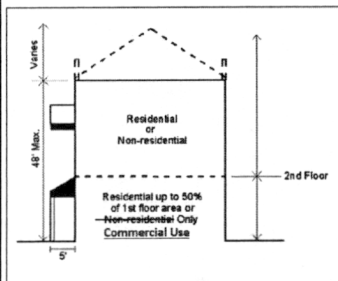
Shopfront Building Existing



Workplace Building Existing

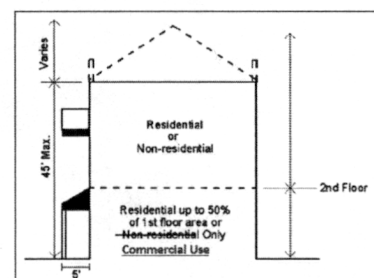


Shopfront Building Proposed



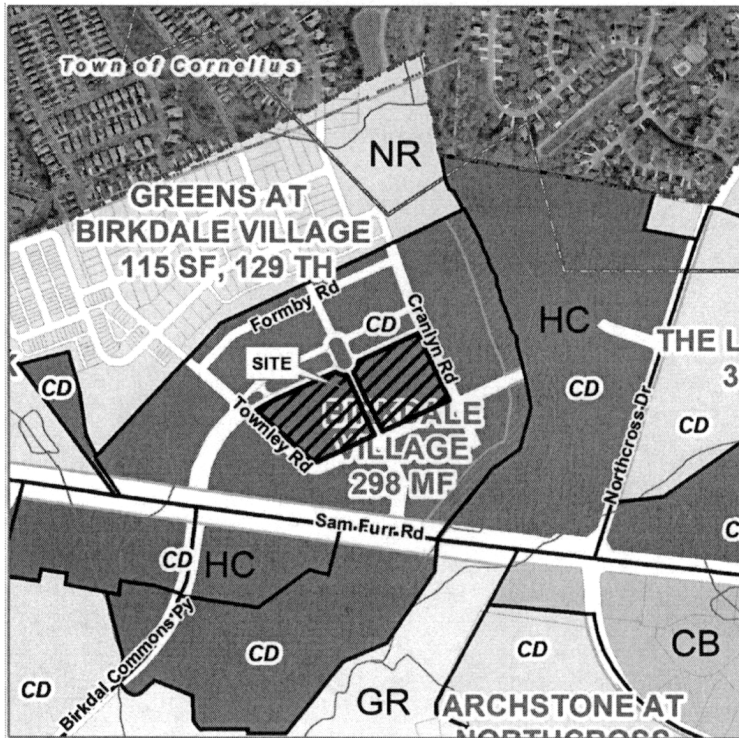
First floor commercial floor area shall include floor area used exclusively for commercial uses and shall not include any floor area that contains or is shared with residential uses, such as storage, mechanical rooms, etc. Any floor area devoted partially or wholly to serving residential uses, shall be considered residential floor area.

Workplace Building Proposed



Petition R22-01 Birkdale Village

PART 1: PROJECT SUMMARY



Applicant: DDRTC Birkdale Village, LLC

Property Owner: DDRTC Birkdale Village, LLC

Property Address: 8725 Townley Dr

Project Size: (+/-) 8.82 acres

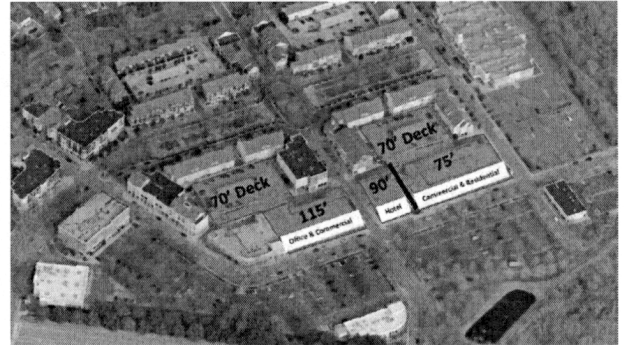
Parcel Numbers: 00537157 & 00537197

Current Zoning: Highway Commercial Conditional District (HC-CD)

Current Land Use: Multifamily, Commercial, Office.

Proposed Zoning: Highway Commercial Conditional District (HC-CD)

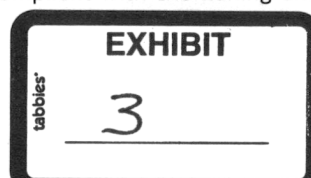
Proposed Land Use: 350 Multifamily Units, 25,000 sf Commercial, 150,000 sf Office, and a 125 Room Hotel.



- 1. Applicant has requested a deferral until the January 17, 2023, Town Board Meeting.**
- 2. Purpose:** Rezone 8.82 acres at the intersection of Townley Dr and Lindholm Dr. from Highway Commercial Conditional District (HC-CD) to Highway Commercial Conditional District (HC-CD) for up to 350 Units Multifamily Units, 125 Room Hotel, 150,000 sf Office, and 25,000 sf Commercial.
- 3. Adjoining Zoning and Land Uses.**
 - North:** Neighborhood Residential – Greens at Birkdale Village Subdivision.
 - South:** Highway Commercial – Birkdale & Birkdale Landing Developments
 - East:** Highway Commercial – North Pointe Office Park.
 - West:** Neighborhood Residential – Greens at Birkdale Village Subdivision.
- 4. A neighborhood meeting was held on September 22, 2022, and the questions asked by residents and the responses from the applicants are summarized in the Neighborhood Meeting Report (see Attachment C).**
- 5. Birkdale Village was originally rezoned in 1996 (R96-07) and has had two revisions (R97-23 & R01-03). A Major Sketch Plan revision was approved in 2021 and construction is wrapping up now.**
- 6. Notice for this rezoning petition was sent via a postcard to adjoining property owners; a legal ad placed in the Charlotte Observer; and posting of rezoning signs on the property along Sam Furr Rd and inside of Birkdale Village.**

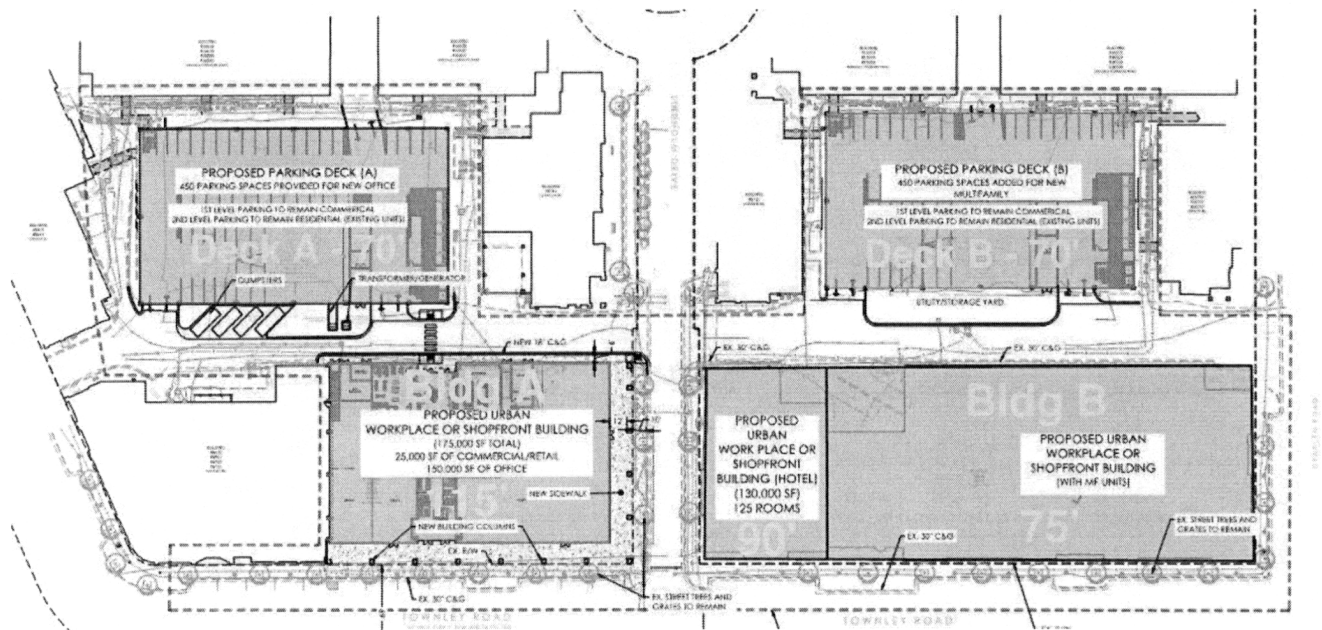
PART 2: REZONING/SITE PLAN

The proposed Conditional District Rezoning Plan is generally compliant with the Zoning and Subdivision Regulations. Significant elements include:



- Replacement of two existing buildings with two new buildings. Building A (150,000 sf Office, 25,000 sf Commercial) and Building B (125 Room Hotel, 350 Multifamily Units). See site plan image below.
- Replacement of Two Existing parking decks with two new parking decks of 70' (450 spaces each – 900 total). There will be an overall increase of 900 parking spaces (2,762 total for Birkdale Village – 2,362 are required to meet Article 5).
- The new buildings and parking decks exceed current height limit allowed by the Zoning Ordinance (Article 4 - Urban Workplace 48'). The applicants are requesting modification of the current height amendment as provided in Section 11.4.7(k).

"In approving a conditional zoning district, the Town Board may modify standards established in the Zoning or Subdivision ordinance provided the spirit of the regulations are maintained."



Use	Currently Allowed (sf)	Existing (sf)	Proposed (sf)	Total (sf)
Indoor Movie Theatre	75,000	53,270	53,270	53,270
Commercial/Retail/Restaurant	275,000	252,090	25,000	277,090
Office	160,000	150,829	150,000	300,829
Multifamily Units	320	320	350	670 Units
Hotel	0	0	130,000 (125 Room)	125 Room

- Urban Open Space is being provided by the existing McDowell Creek Greenway (4.62 acres) and a Promenade (0.16 acres). There are 2.2 acres of Common Open Space. All are existing and there are no changes proposed.
- There will be no impacts to the existing tree canopy or specimen tree count as part of this rezoning.
- There are no identified Heritage Trees on site.
- Building elevations for the proposed structure have not been submitted. Architectural renderings have been provided (Attachment E).
- The applicant has requested a 5-year vesting period for the Rezoning Plan. The Zoning Ordinance currently offers a 2-year vesting period (Article 2.2.3).
- Planning, Transportation, and Storm Water Engineering staff have minor rezoning plan comments outstanding that need to be addressed prior to final plan approval.
- Two (2) Ordinance Modifications are Proposed:

- Article 4.2 Urban Workplace – Has a maximum building height of 45'. The applicant is requesting to increase the maximum height to 115'
- Article 4.4 Shopfront Building – Has a maximum building height of 48'. The applicant is requesting to increase the maximum height to 115'
- Office building (115'), Hotel building (90'), Muti-Family building (75'), and two accessory parking decks (70').

Staff Comment - The request would allow for a significant increase in building height over what is curenntly permitted by the Zoning Ordiance. This is not in keeping with the Spirit of the Ordiance, staff DOES NOT SUPPORT this modification request.

PART 3: TRANSPORTATION ISSUES

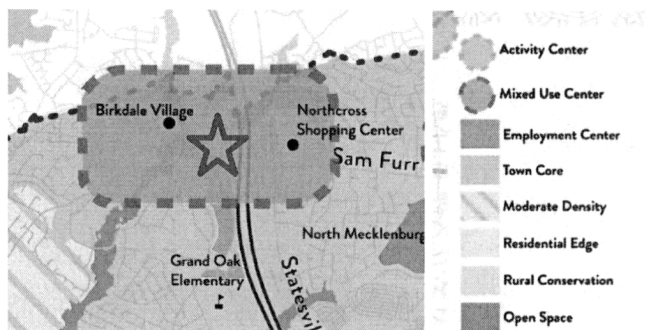
Traffic Impact Analysis (TIA)

Both the Town and NCDOT required a TIA. The Town deferred the TIA to NCDOT. The TIA did not recommend any additional improvements. Please note NCDOT project U-5765 is programmed for construction to begin in 2026 with Right-of Way acquisition to beginning in 2023.

PART 4: REZONING CRITERIA

Article 11.4.7(d) of the Zoning Ordinance states that “in considering any petition to reclassify property, the Planning Board in its recommendation and the Town Board in its decision shall take into consideration any identified relevant adopted land-use plans for the area including, but not limited to, comprehensive plans, strategic plans, district plans, area plans, neighborhood plans, corridor plans, and other land-use policy documents”.

2040 Huntersville Community Plan



STAFF COMMENT – The 2040 Huntersville Community Plan DOES SUPPORT this project through the following sections:

- **Policy LU 2.1:** Higher intensity residential uses will be focused generally within 2 miles of the I77/NC115 corridor and future activity centers in the eastern and western areas of Huntersville zoning jurisdiction.
- **Policy LU 6.1:** A mix of land uses is encouraged in Mixed-Use Centers, Activity Centers, Employment Centers identified on the Future Land Use Map.
- **Policy LU 6.2:** Commercial uses are encouraged in the Town Core and as specified in adopted Small Area Plans.
- **Policy LU 7.1:** Require all new development to adhere to the following design principles: In Mixed Use Centers, Activity Centers, Town Core, and Moderate Density Areas, Streets and sidewalk are meant to be attractive and inviting. New development in these areas shall follow these principles:
 - In Mixed-Use Centers, Activity Centers, Town Core, and Moderate Density Areas, streets and sidewalks are meant to be attractive and inviting. New development in these areas shall follow these principles:
 - All buildings shall front a public street or open space.
 - Streets should be connected, have short blocks and sidewalks on both sides of streets.

- Improve connectivity, particularly for pedestrians and vehicles.
 - Parking lots, if required, should be predominately located behind buildings screened from view and larger lots should be broken by buildings and or landscape features.
 - In lower intensity areas (including MD, RE, RC, CW) preservation of rural character and natural resources are prioritized.
 - In these areas, structures can be set back further from the road and should blend into the landscape and the scenic nature of roadways should be preserved.
- **Policy LU 8.1:** Continue to emphasize form and flexibility in development regulations for these areas.
 - The current zoning ordinance has basic form based standards with flexibility built-in. Key elements include allowing multiple types of land uses, a mix of uses, minimal setbacks, and parking requirements.
 - **Policy LU 8.2:** Evaluate and strengthen incentives to encourage the achievement of higher design standards. Consider incentives that allow applicants to demonstrate excellence in design and exceptional public benefit for projects in key areas.
 - Offer flexibility using performance standards, guided by the design principles.
 - Specify intended outcomes and how site or building-specific design solutions can better achieve desired outcomes.
 - Evaluate incentives periodically to determine their value given shifting market and neighborhood conditions.
 - Incentives that could include:
 - Modification of height limit.
 - Increase in percent of allowable attached residential.
 - Reduced parking requirements.
 - Reduced buffer yard requirements
 - **Policy EV 1.2:** Focus economic development in areas that support growth
 - Preserve areas suitable for business and industrial development, along with a mixture of support uses, to ensure an adequate inventory of land for future growth and development, with increases to this inventory as required. These areas should have proximity to existing or future activity centers, have access to transportation options and utility service, and offer amenities for employees.

STAFF COMMENT – The 2040 Huntersville Community Plan **DOES NOT SUPPORT** this project through the following sections:

- **Policy LU 5.1:** Allow for more intense development only where transportation infrastructure and utilities already exist. Staff Comment – NCDOT widening project will not begin until 2026. The widening project completion will most likely occur after the construction of the new buildings at Birkdale.
- **Policy LU-11: Protect Existing Housing Stock.**
 - **LU 11.1:** Protect and enhance the unique character of Huntersville’s neighborhoods by using planning tools to safeguard from potentially negative impacts of development and redevelopment.
 - Promote quality design and neighborhood improvements including increasing access to parks and recreation and mobility options.
 - Encourage coordination with neighborhoods to address infrastructure needs such as sidewalks and drainage.
 - **LU 11.2:** Along existing streets, encourage new buildings to respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings.
- **Policy LU 12.3:** Blend new development with existing neighborhoods, structures and landscapes through the use of transitions in building types and placement of open space, buffers, and other site features.

Article 11 Section 11.4.7(e) of the Zoning Ordinance states that: “in considering any petition to reclassify property the Planning Board in its recommendation and the Town Board in its decision should consider:

1. **Whether the proposed reclassification is consistent with the overall character of existing development in the immediate vicinity of the subject property.**

STAFF COMMENT:

The proposed rezoning for the Birkdale Village is consistent with envisioned uses and development pattern set forth in the 2040 Community Plan.

2. **The adequacy of public facilities and services intended to serve the subject property, including but not limited to roadways, transit service, parks and recreational facilities, police and fire protection, hospitals and medical services, schools, storm water drainage systems, water supplies, and wastewater and refuse disposal.**

STAFF COMMENT:

- A Transportation Impact Analysis was not required – see Part 3 of this report.
- Charlotte Water currently provides service to the site.
- CMS Student Generation Report:

<i>Schools Affected</i>	<i>Total Classroom Teachers</i>	<i>Building Classrooms/ Teacher Stations</i>	<i>20th Day, Enrollment (non-ec)</i>	<i>Building Classroom/ Adjusted Capacity (Without Mobiles)</i>	<i>20th Day, Building Utilization (Without Mobiles)</i>	<i>Additional Students As a result of this development</i>	<i>Utilization As of result of this development (Without Mobiles)</i>
J. V. WASHAM ELEMENTARY	51.80	39	861	648	133%	19	135%
BAILEY MIDDLE	73.65	57	1370	1060	129%	10	129%
WILLIAM AMOS HOUGH HIGH	117.8	100	2470	2097	118%	14	119%

3. **Whether the proposed reclassification will adversely affect a known archeological, environmental, historical, or cultural resource.”**

STAFF COMMENT:

Planning staff has no indication that the request will adversely affect known archeological, environmental, or cultural resources. Staff and applicant are awaiting a final determination from the Historic Landmarks Commission. Currently the site is not encumbered by any historic easements or deed restrictions.

PART 5: STAFF RECOMMENDATION

While there are multiple Huntersville 2040 Plan policies the proposed rezoning plan is consistent with, in considering the proposed rezoning petition R22-01, Birkdale Village, staff recommends denial based on the amendment being inconsistent with Huntersville 2040 Community Plan policies LU 5.1, LU 11.1, LU 11.2, and LU 12.3.

It is not reasonable and in the public interest to amend the Zoning Ordinance because the building height modifications requested under Section 11.4.7(k) of 70', 75', 90' & 115', substantially exceed the maximum 48' established for Shopfront buildings (and 45' Urban Workplace buildings) and is not "in the spirit of the regulations". Previous height modifications requested under Section 11.4.7(k) have been several feet to one story and some involved unusual topography to demonstrate the modifications were in the "spirit of the regulations".

PART 6: PUBLIC HEARING COMMENTS

A Public Hearing was held on for October 3, 2022.

PART 7: PLANNING BOARD RECOMMENDATION

NOTE: The Huntersville Planning Board hearing was October 25, 2022, when the height modification was 145'. The proposed rezoning plan was amended January 3, 2023.

Amended Motion: F. Gammon made a Motion to recommend approval of the petition R22-01 Birkdale Village. The Planning Board has considered and finds that the rezoning is consistent with Huntersville Zoning Ordinance Articles 11.4.7 (d) and 11.4.7 (e). Furthermore, the petition is consistent with the Huntersville 2040 Community Plan policies LU2.1, LU6.1, LU7.1, LU8.1 and LU8.2. This recommendation for approval is contingent upon Huntersville Town Board approval of TA22-06 Building Height and SUP22-01, all outstanding staff comments are addressed, and that hotel and commercial building maximum heights be changed from 145 to 115 feet. It is reasonable in the public interest to amend the zoning ordinance because the rezoning is consistent with the envisioned uses and development pattern set forth in the 2040 Community Plan. S. Swanick seconded the motion.

Amended Motion Vote: The motion passed (4-2-1) with C. Boyd and T. Loomis opposed and S. Hensley abstaining.

PART 8: TOWN BOARD CONSIDERATION

Town Board consideration is scheduled for January 17, 2023

PART 9: ATTACHMENTS/ENCLOSURES

Attachments

- A – Rezoning Application
- B – R22-01 Rezoning Plan
- C – Neighborhood Meeting Report (September 22, 2022)
- D – CMS Student Generation
- E – Building Facade Perspectives

PART 10: CONSISTENCY STATEMENT – R22-01 Birkdale Village

Planning Department	Planning Board	Board of Commissioners
	Amended Motion: F. Gammon made a Motion to recommend approval of the petition R22-01 Birkdale Village. The Planning Board has considered and finds that the rezoning is consistent with Huntersville Zoning Ordinance Articles 11.4.7 (d) and 11.4.7 (e). Furthermore, the petition is consistent with the Huntersville 2040 Community Plan policies LU2.1, LU6.1, LU7.1, LU8.1 and LU8.2. This recommendation for approval is contingent upon Huntersville Town Board approval of TA22-06 Building Height and SUP22-01, all outstanding staff comments are addressed, and that hotel and commercial building maximum heights be changed from 145 to 115 feet. It is reasonable in the public interest to amend the zoning ordinance because the rezoning is consistent with the envisioned uses and development pattern set forth in the 2040 Community Plan. S. Swanick seconded the motion. Amended Motion Vote: The motion passed (4-2-1) with C. Boyd and T. Loomis opposed and S. Hensley abstaining.	APPROVAL: In considering the proposed rezoning application R22-01, Birkdale Village, the Town Board recommends approval based on the Plan being consistent with <u>(insert applicable plan reference)</u>. <u>It is reasonable and in the public interest to approve the Rezoning Plan because... (Explain)</u>
DENIAL: While there are multiple Huntersville 2040 Plan policies the proposed rezoning plan is consistent with, in considering the proposed rezoning petition R22-01, Birkdale Village, staff recommends denial based on the amendment being inconsistent with Huntersville 2040 Community Plan policies LU 5.1, LU 11.1, LU 11.2, and LU 12.3. It is not reasonable and in the public interest to amend the Zoning Ordinance because the building height modifications		DENIAL: In considering the proposed rezoning application R22-01, Birkdale Village, the Town Board recommends denial based on the Plan being <u>(consistent OR inconsistent) with (insert applicable plan reference)</u>. <u>It is not reasonable and in the public interest to approve the Rezoning Plan because... (Explain)</u>

requested under Section 11.4.7(k) of 70', 75', 90' & 115', substantially exceed the maximum 48' established for Shopfront buildings (and 45' Urban Workplace buildings) and is not "in the spirit of the regulations". Previous height modifications requested under Section 11.4.7(k) have been several feet to one story and some involved unusual topography to demonstrate the modifications were in the "spirit of the regulations".		
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General Application

INCOMPLETE SUBMISSIONS WILL NOT BE ACCEPTED. PLEASE CHECK ALL ITEMS CAREFULLY.

1. Application Type

Please indicate the type of application you are submitting. In addition to the application, the submission process for each application type can be found at <https://www.huntersville.org/528/Permits-Process>

- ☐ Change of Use
- ☐ Commercial Site Plan
- ☒ Conditional Rezoning
- ☐ General Rezoning
- ☐ Master Signage Program
- ☐ Special Use Permit
- ☐ Revision to
Original Project # _____
- ☐ Other _____

- SUBDIVISION CATEGORIES: Per the Huntersville Subdivision Ordinance
- ☐ Sketch Plan
 - ☐ Preliminary Plan
 - ☐ Final Plat (Includes Minor Subdivision)
 - ☐ Exempt Subdivision
 - ☐ Final Plat Revision
 - ☐ Farmhouse Cluster

2. Project Data

Date of Application 03/30/2022

Name of Project Birkdale Village Rezoning Phase # (if subdivision) _____

Project Address 8725 Townley Rd, Huntersville NC 28078

Parcel Identification Number(s) (PIN) 00537157 & 00537197

Current Zoning District HC-(CD) Proposed District (for rezoning only) HC-(CD)

Property Size (acres) 8.82 acres (2 parcels) Street Frontage (feet) 1,651 feet + 1,544 feet

Current Land Use Commercial

Proposed Land Use(s) Office, Hotel, Multi-Family, Commercial

Is the project within Huntersville's corporate limits?

Yes X No _____ If no, does the applicant intend to voluntarily annex? _____

3. Description of Request

Explain the nature of this request. If a separate sheet is necessary, please attach to this application.

The request is to amend the existing rezoning plans for Birkdale Village so that the owner can develop a 7-story office/commercial building, 12-story hotel, and a mixed use commercial/ residential building with 350 multifamily units. 2 new 6-story parking decks will also be added to accommodate the new development, in replacement of the existing ones.

4. Site Plan Submittals

Consult the particular type of *Review Process* for the application type selected above. These can be found at <https://www.huntersville.org/528/Permits-Process>.

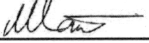
5. Outside Agency Information

Other agencies may have applications and fees associated with the land development process. The *Review Process* list includes plan documents needed for most town and county reviewing agencies. For major subdivisions, commercial site plans, and rezoning petitions please enclose a copy of the Charlotte-Mecklenburg Utility *Willingness to Serve* letter for the subject property.

6. Applicant

Printed Name DDRTC Birkdale Village, LLC Phone 404-946-0939
☐ Corporation ☒ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

☒ By signature below, I hereby acknowledge, as/on behalf of (circle one) the applicant my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the Board of Commissioners except through sworn testimony at the public hearing. (Applicable for Special Use Permits and Subdivisions)

Signature  Printed Name: Mike Lant

Title Senior VP Development Email Mike.Lant@NAProperties.com

Address of Applicant 1175 Peachtree Street, Suite 1650, Atlanta Georgia 30361

7. Property Owner (if different than applicant)

*Printed Name _____ Phone _____
☐ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

☐ By signature below, I hereby acknowledge, as/on behalf of (circle one) the owner my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the Board of Commissioners except through sworn testimony at the public hearing. (Applicable for Special Use Permits and Subdivisions)

Signature _____ Printed Name _____

Title _____ Email _____

Address of Property Owner _____

* Property owner hereby grants permission to the Town of Huntersville personnel to enter the subject property for any purpose required in processing this application.

Every owner of each parcel included in this application, or the owner (s) duly authorized agent, must sign this application. If signed by an agent on behalf of the Owner, this application MUST be accompanied by a notarized Limited Power of Attorney signed by the property owner (s), specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION. **If additional space is needed for signatures, attach the Town of Huntersville Signature Addendum Form.**

8. Development/Design Firm Contact Information

North American Properties	Nick Lombardo	404-946-0939	nick.lombardo@naproperties.com
Development Firm	Name of Contact	Phone	Email
HensonFoley	Jay Henson	704-875-1615	jay@hensonfoley.com
Design Firm	Name of Contact	Phone	Email

Contact Information

Town of Huntersville	Phone:	704-875-7000
Planning Department	Fax:	704-992-5528
PO Box 664	Physical Address:	105 Gilead Road, Third Floor
Huntersville, NC 28070	Website:	https://www.huntersville.org/228/Planning-Department

The Applicant has requested a deferral until February 20, 2023

11.4 Amendment Process

4. Withdrawal or Amendment of Petition.

C. If the Town Board deems any requested amendment to be a substantial change to the petition prior to a final decision, which does not result in an intensification of the petition, it shall defer action on the petition for 30 days to allow interested parties the opportunity to comment on the amendment to the petition.

“BY 2040, HUNTERSVILLE WILL BE
THE MOST LIVABLE
COMMUNITY IN
NORTH CAROLINA”

- Huntersville 2040 Community Plan’s Mobility Principles:

“The Town should promote multimodal connectivity to Activity Centers through on-street improvements, strategic sidewalk projects and the continued construction of its greenway network.”



RAISE Grant Program

Rebuilding **A**merican Infrastructure with **S**ustainability and **E**quity

- Funds surface transportation projects including:
 - highway, bridge, or other road projects
 - public transportation projects
 - **non-motorized projects (pedestrian & bicycle)**
- \$5 million minimum request (\$25M max)
- 20% match requirement
- Required cost-benefit analysis
- Due February 28, 2023



Holbrooks Road, Dellwood Drive, S. Church Street

Town of Huntersville, North Carolina

January 11, 2023

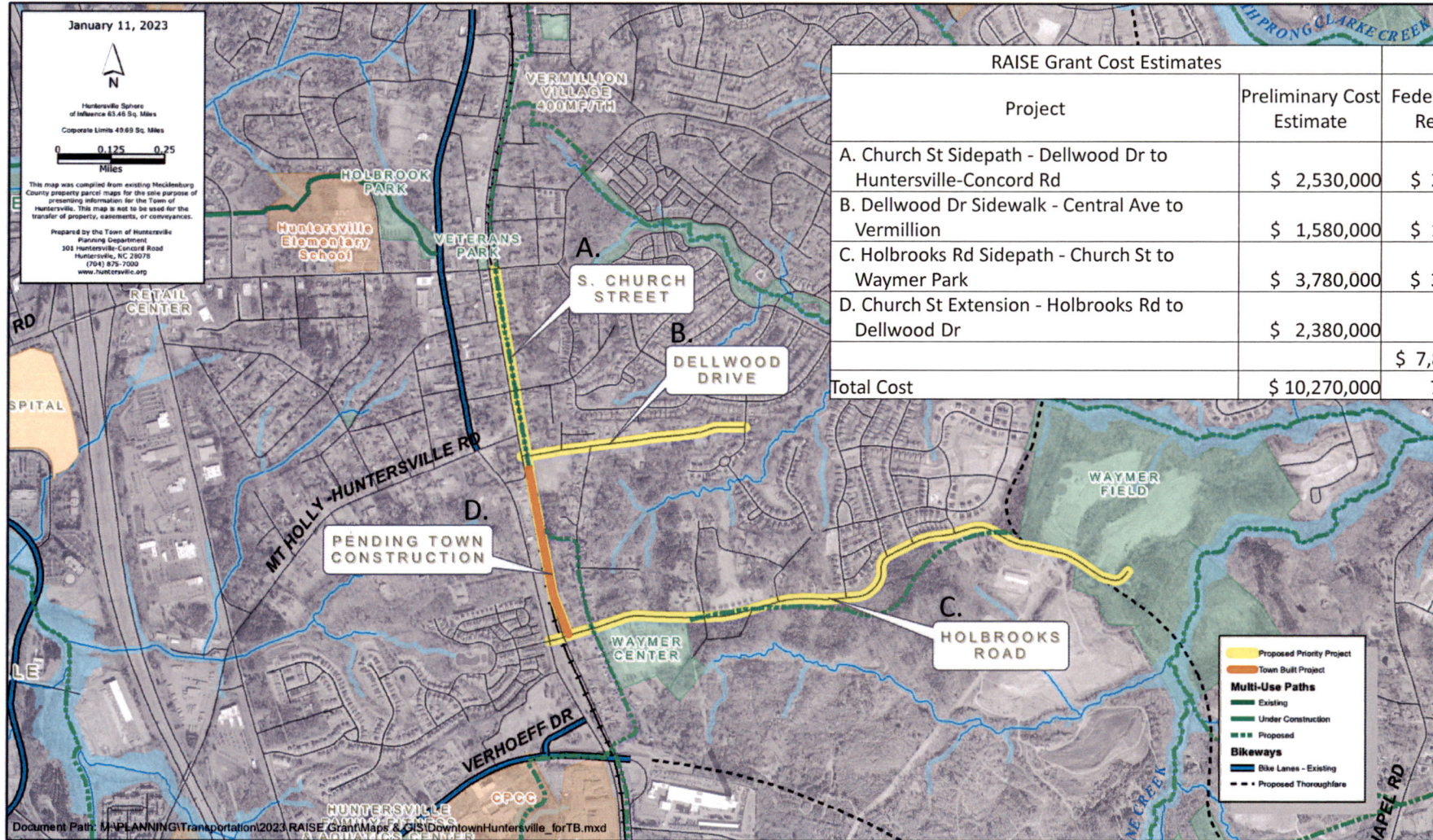


Huntersville Sphere
of Influence 63.46 Sq. Miles
Corporate Limits 40.69 Sq. Miles

0 0.125 0.25
Miles

This map was compiled from existing Mecklenburg
County property parcel maps for the sole purpose of
presenting information for the Town of
Huntersville. This map is not to be used for the
transfer of property, easements, or conveyances.

Prepared by the Town of Huntersville
Planning Department
303 Huntersville-Concord Road
Huntersville, NC 28078
(704) 875-7000
www.huntersville.org



RAISE Grant Cost Estimates

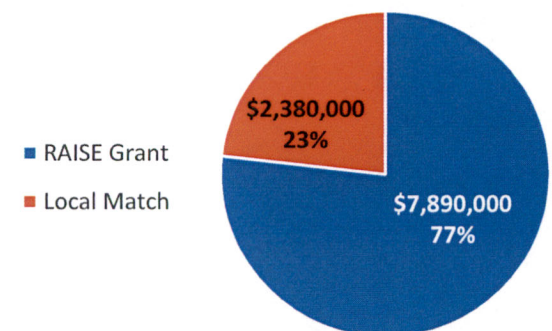
Cost Share

Project	Preliminary Cost Estimate	Federal RAISE Request	Local Match (CIP)
A. Church St Sidepath - Dellwood Dr to Huntersville-Concord Rd	\$ 2,530,000	\$ 2,530,000	
B. Dellwood Dr Sidewalk - Central Ave to Vermillion	\$ 1,580,000	\$ 1,580,000	
C. Holbrooks Rd Sidepath - Church St to Waymer Park	\$ 3,780,000	\$ 3,780,000	
D. Church St Extension - Holbrooks Rd to Dellwood Dr	\$ 2,380,000		
		\$ 7,890,000	\$ 2,380,000
Total Cost	\$ 10,270,000	77%	23%

Request to approve contract with Alta Planning + Design for Federal RAISE Grant Application

- Contract for Grant Application Services \$65,000
 - Complete grant application package
 - Required cost-benefit analysis

RAISE Grant Project Cost
\$10.3 Million





**RESOLUTION TO APPROVE CONTRACT WITH ALTA PLANNING + DESIGN FOR GRANT
WRITING SERVICES**

WHEREAS, the Town has received the attached contract from Alta Planning + Design, Inc., for grant writing services; and

WHEREAS, The Town desires to contract with Alta Planning + Design, Inc., for the prescribed services and to approve the Contract;

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. Approves the Contract with Alta Planning + Design, Inc., for grant writing services (the "Contract") attached hereto as Exhibit A.
2. The Board authorizes the Town Manager for the Town of Huntersville to execute the Contract on behalf of the Town.
3. The Board authorizes the Town Manager to, on the advice of counsel, to take any actions necessary to execute the provisions of this resolution.

Adopted this the 17th day of January, 2023.

ATTEST:

Janet Pierson, Town Clerk

Melinda Bales, Mayor

APPROVED AS TO FORM:

Emily Sloop, Town Attorney

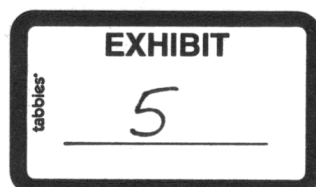


EXHIBIT A



105 Gilead Road, Suite 300
Huntersville, NC 28078
(704) 766-2220

CONTRACT FOR SERVICES

CONTRACTOR: Alta Planning + Design

508 West 5th Street, Suite 100
Charlotte, NC 28202
Spencer Finch
spencerfinch@altaplanning.com

PROJECT: RAISE Grant 2023
Application
SITE Huntersville
LOCATION(S):

This Contract for Services, and all exhibits, (collectively this "Contract") is entered into this _____ day of _____, 20____ by and between the Town of Huntersville, a municipal corporation of the State of North Carolina, (the "Town") and _____ located at _____ (the "Contractor").

WITNESSETH:

That for and in consideration of the mutual promises set forth in this Contract, the sufficiency of which is acknowledged by the parties hereto, the parties do mutually agree as follows:

1. Scope of Services. The Contractor agrees to perform for the Town the services, which are further described and incorporated herein by reference as Exhibit C. The Contractor agrees to provide the labor, service, equipment, and materials, and other services included in Exhibit C, which shall constitute the "Work." The Contractor warrants that the Contractor has visited the location of the project and is familiar with all field conditions bearing upon the Contractor's performance of the Work; that the materials and equipment furnished under the Contract are of good quality and new (unless otherwise permitted); that the Work meets or exceeds the standards ordinarily observed in the industry; and that the Work conforms to the requirements of the Contract and to all applicable codes, ordinances, laws, or regulations. During such period, the Contractor will remedy at Contractor's expense any nonconformities or defects in the Work within a reasonable time after receiving notice thereof from the Town.
2. Fees: Fees for the Work shall be specified in a fee schedule, attached hereto in Exhibit D, (the "Contract Price").
3. Historically Underutilized Businesses (HUB). It is the policy of the Town of to provide minorities and women equal opportunity for participating in all aspects of the Town's contracting and procurement programs, including but not limited to employment, construction development projects, materials/services contracts and/or lease agreements, consistent with the laws of the State of North Carolina.

4. Contract Insurance. Contractor shall be required to purchase and maintain, during its performance under this Contract, insurance coverage as shown on the Insurance Requirements as stated in Exhibit B, which is incorporated herein by reference. All insurance purchased shall have a specific endorsement, copy of which shall be provided to the Town, naming the Town as an additional insured and providing that such insurance will not be cancelled without providing thirty (30) days advance written notice to the Town.
5. Materials, Equipment, Employees. The Contractor shall, unless otherwise specified, supply and pay for all labor, transportation, materials, tools, apparatus, and incidentals necessary for the completion of the work.
6. Protection of Work, Property, the Public, and Safety. The Contractor shall be responsible for any damage to the owner's property or of that of others on the job, by them, their personnel, or their subcontractors, and shall make good such damages. The Contractor shall be responsible for and pay for any damages caused to the owner.
7. Standard Terms and Conditions. The Standard Terms and Conditions, attached hereto as Exhibit A, shall be a part of this Contract. The Standard Terms and Conditions are hereby incorporated by reference, and all parties agree to be bound thereby.
8. Contract Term. This Contract shall be for a period of 2 months, ending on February 28, 2023.
9. Payment for Services. In consideration of the above services, the Town will pay the Contractor, in accordance with the submitted fee schedule in Exhibit D, attached hereto and incorporated by reference.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals at Huntersville, North Carolina, this _____ day of _____, 20_____.

Contractor

Town of Huntersville

Name:

Name of Contractor (type or print)

Town Manager

By:

(Signature)

Attest: _____
Town Clerk

Title:

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

Attest:

(Secretary, if a corporation)

Finance Director

EXHIBIT A
STANDARD TERMS & CONDITIONS

1. **Acceptance.** Contractor's acknowledgment of the terms of this Contract constitutes an agreement to: (i) all terms and conditions set forth or referenced herein, (ii) on any attachments hereto, (iii) any applicable solicitation documentation related to this Contract (including without limitation any request for proposals or invitation for bids or Contractor's response thereto) that deal with the same subject matter as this Contract, and (iv) any other terms and conditions of a written agreement signed by Contractor and the Town that deals with the same subject matter as this Contract (collectively, the "Contract Documents"). The terms and provisions set forth in the Contract Documents shall constitute the entire agreement between Contractor and the Town with respect to the purchase by the Town of the: (i) goods ("Goods") and/or (ii) services provided or work performed ("Services") as described in the Contract Documents. The agreements set forth in the Contract Documents are sometimes referred to herein as the "Contract." In the event of any conflict between any terms and conditions of the Contract Documents, the terms and conditions most favorable to the Town shall control. No additional or supplemental provision or provisions in variance herewith that may appear in Contractor's quotation, acknowledgment, invoice, or in any other communication from Contractor to the Town shall be deemed accepted by or binding on the Town. The Town hereby expressly rejects all such provisions which supplement, modify, or otherwise vary from the terms of the Contract Documents, and such provisions are superseded by the terms and conditions stated in the Contract Documents, unless and until the Town's authorized representatives expressly assent, in writing, to such provisions. Stenographic and clerical errors and omissions by the Town are subject to correction.
2. **Entire Agreement.** These terms and conditions and any other specifications contained in any other documents referenced shall constitute and represent the complete and entire agreement between the Town and Contractor and supersede all previous communications, either written or verbal with respect to the subject matter of this Contract.
3. **Changes, Additions, Deletions.** No changes, additions, deletions, or substitutions of scope of work, specifications, terms and conditions, quantity, unit of issue, delivery date, delivery charges or price will be permitted without the prior written approval from the Town.
4. **Relationship of the Parties.** The Contractor is an independent contractor and not an employee of the Town. The conduct and control of the work will lie solely with the Contractor. The Contract shall not be construed as establishing a joint venture, partnership, or any principal-agent relationship for any purpose between the Contractor and the Town. Employees of the Contractor shall remain subject to the exclusive control and supervision of the Contractor, which is solely responsible for their compensation.
5. **Prices.** If Contractor's price or the regular market price of any of the Goods or Services covered hereunder is lower than the price stated in the Contract Documents on the date of shipment of such Goods or performance of such Services, Contractor agrees to give the Town the benefit of such lower price on any such Goods or Services. In no event shall Contractor's price be higher than the price last quoted or last charged to the Town unless otherwise agreed in writing. No charges for transportation, boxing, crating, etc. are allowable unless such charges are included in the Contract Documents.
6. **Taxes.** Any applicable taxes shall be invoiced as a separate item.
7. **Substitutions.** No substitutions or cancellations shall be permitted without prior written approval from the Town.
8. **Indemnification.** To the greatest extent allowed by North Carolina law the Firm shall indemnify and hold harmless the Town, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorneys' fees ("Claims"). In the event that any portion

of the Service performed under the Contract shall be defective in any respect whatsoever, the Firm shall indemnify and save harmless the Town, its officers, agents, employees, and assigns from all loss or the payment of all sums of money, but only to the extent allowed by law.

9. **Invoices and Payment Terms.** It is understood and agreed that orders will be shipped at the established Contract prices in effect on dates orders are placed. Invoicing that does not comply with this provision will subject the Contract to cancellation. Upon satisfactory delivery of the Goods or satisfactory completion of the Work, all invoices and statements shall reference the Contract number and be submitted to: Town of Huntersville, Accounts Payable, PO Box 664, Huntersville, North Carolina, 28070. Payment terms are Net 30 days after receipt of correct, undisputed invoice or acceptance of Goods or Services, whichever is later.

When the Contract is for construction services, the Contractor will submit monthly Requests for Payment for Work performed, for review. The Request for payment shall be based upon the Contractor's estimate of the percentage of the total Work completed during the period represented on the Request for Payment. The Contractor must certify that the Work represented in the Contractor's Request for Payment has been completed in accordance with the Contract Documents and certify that the Request for Payment is appropriate for payment before the Town shall be obligated to make such payment to the Contractor. If any Request for Payment is disputed by the Town, in whole or in part, the Town shall provide a written explanation for such dispute to Contractor within five days of receipt of the certified Request for Payment and shall pay all undisputed amounts therein.

10. **Anti-Discrimination and Equal Employment.** During the performance of the Contract, Contractor shall comply with all federal and state requirements concerning fair and equal employment and shall not discriminate against or deny the Contract's benefits to any person on the basis of race, religion, color, creed, national origin, age, sex (including sexual orientation, gender identity, and pregnancy), disability or handicapping condition, or genetic information.
11. **Insurance.** The Firm shall provide the insurance coverages shown on Exhibit B, attached hereto and incorporated herein by reference. The Firm shall provide the Town with a North Carolina Certificate of Insurance and such endorsements as may be required by the Contract Documents prior to the commencement of any work under the Contract and agrees to maintain such insurance until the completion of the Contract. Such certificates of insurance shall be considered part of the Contract.
12. **Ethics in Public Contracting.** By submitting their prices and acceptance of this Contract, all Contractors certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other supplier, manufacturer, or subcontractor in connection with their offer, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
13. **Applicable Laws and Courts.** All Town Contracts for Services shall be governed in all respects by the laws of the State of North Carolina. All matters, whether sounding in contract or tort relating to the validity, construction, interpretation, and enforcement of the Contract, shall be governed in all respects by the laws of the State of North Carolina and venue shall be proper only in a court of competent jurisdiction located in Mecklenburg County, North Carolina. The Contractor represents and warrants that it shall comply with all applicable federal, state, and local laws, regulations, and orders, including, not limited to, licensure requirements.
14. **Codes and Permits.** When applicable, the Contractor shall obtain all required permits, give all required notices, and comply with all laws, ordinances, codes, rules, and regulations bearing on the conduct of the work under this contract. If the Contractor observes that the drawings and

specifications are at variance therewith, he shall promptly notify the designer in writing. All work under this contract shall conform to the current North Carolina Building Code and other state and national codes as are applicable. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without such notice to the Owner, he shall bear all cost arising therefrom.

15. **License Requirement.** If applicable, the Contractor must be a licensed General Contractor as required by North Carolina General Statutes Section 87-1 and must have a good ethical and professional standing with the North Carolina General Contractor's Licensing Board. The Contractor will be responsible for providing properly qualified, licensed (if required) personnel to complete the Work in accordance with the standard of care ordinarily used by members of the Contractor's profession practicing under similar circumstances and at the same time in Mecklenburg County.
16. **Strict Compliance.** The Town may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous course of dealing or course of performance between the parties to the contrary.
17. **Assignment.** Contractor may not assign, pledge, or in any manner encumber Contractor's rights under this Contract or delegate the performance of any of its obligations hereunder, without Town's prior, express written consent.
18. **General Provisions.** The Town's remedies as set forth herein are not exclusive. Any delay or omission by the Town in exercising any right hereunder, or any waiver by the Town of any single breach or default hereunder, shall not be deemed to be a waiver of such right or of any other right, breach, or default.
19. **Warranties.** The Contractor warrants it shall adhere to all laws, codes, ordinances, and regulations of the United States, the State of North Carolina, the County of Mecklenburg, and the Town of Huntersville in the performance of the Services outlined in this Contract and any attached specifications. Contractor warrants that any finished work completed hereunder shall also adhere to all laws, codes, ordinances, and regulations of the United States, the State of North Carolina, the County of Mecklenburg, and the Town of Huntersville. Contractor warrants that all Services delivered hereunder will be free from defects in materials and workmanship and will conform strictly to the specifications, drawings, or samples specified or furnished. This warranty shall survive any inspection, delivery, acceptance, or payment by the Town of the Services and shall run to the Town and any user of the Services. Contractor warrants that all Services will be performed in a professional and workman like manner in accordance with best industry practices. This express warranty is in addition to Contractor's implied warranties of merchantability and fitness for a particular purpose which shall not be disclaimed. In addition to any other rights available at law or in equity, the Town shall be entitled to consequential and incidental damages.
20. **Quality and Workmanship.** All work shall be performed to the satisfaction of the Town. The work shall not be considered complete nor applicable payments rendered until the Town is satisfied with the Services provided.
21. **Default.** The Town may terminate the Contract, in whole or in part, immediately and without prior notice upon breach of the Contract by the Contractor. In addition to any other remedies available to the Town in law or equity, the Town may procure upon such terms as the Town shall deem appropriate, Services substantially similar to those so terminated, in which case the Contractor shall be liable to the Town for any excess costs for such similar supplies or services and any expenses incurred in connection therewith.
22. **Termination for Convenience.** The Town shall have the right, without assigning any reason therefore, to terminate any work under the Contract, in whole or in part, at any time at its complete discretion by providing 10 days' notice in writing from the Town to Contractor. If the Contract is

terminated by the Town in accordance with this paragraph, the Contractor will be paid in an amount which bears the same ratio to the total compensation as does the Services actually delivered or performed to the total originally contemplated in the Contract. The Town will not be liable to the Contractor for any costs for materials acquired or contracted for if such costs were incurred prior to the date of this Contract.

23. **Risk of Loss.** Risk of Loss for all supplies, materials, the Work performed, and the Project as it is being constructed, shall be on the Contractor until such time as substantial completion is achieved, and approved by the Town.
24. **No Third-Party Beneficiaries.** There shall be no intended nor incidental third-party beneficiaries of this Contract. Contractor shall include in all contracts, subcontracts, or other agreements relating to the Contract an acknowledgment by the contracting parties that the Contract creates no third-party beneficiaries.
25. **Exclusivity.** Nothing in this Contract shall require the Town to use the Contractor or prohibit the Town from soliciting third parties for the good or services provided in this Contract.
26. **Confidentiality.** The Contractor acknowledges the Town is subject to public records law and no term shall be inconsistent with N.C.G.S. §132 et al.
27. **Valid Contract for Services.** In order for a Contract for Services of the Town to be valid, it must be executed by the Town Manager or his or her authorized designee, and must be pre-audited in that manner required by the Local Government Budget and Fiscal Control Act, as the same may be amended.
28. **Verification of Work Authorization.** Contractor shall comply with, and require all contractors and subcontractors to comply with, the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, "Verification of Work Authorization," sometimes known as E-verify, for all contractors and subcontractors.
29. **Iran Divestment List.** With the execution hereof, Contractor, certifies that they are not on the Iran Final Divestment List created by the N.C. State Treasurer pursuant to N.C.G.S. § 147-86.58, and will not contract with anyone on such List in performance of the work hereunder.
30. **Buyer.** All references to Buyer or Town, throughout these terms and conditions, shall refer to the Town of Huntersville, North Carolina.
31. **Contractor.** All references to Contractor, Seller, or Firm throughout these terms and conditions shall refer to the contractor identified on page 1 of this Contract.
32. **Availability of Funds.** Any and all payments to the Contractor are dependent upon and subject to the availability of funds to the Town for the purpose set forth in this agreement.
33. **Severability.** If any provision of this Contract is found to be invalid or unlawful, then remainder of this Contract shall not be affected thereby, and each remaining provision shall be valid and enforced to the fullest extent permitted by law.
34. **Companies that Boycott Israel.** With the execution hereof, Contractor, certifies that they are not on the Companies that Boycott Israel List created by the N.C. State Treasurer pursuant to N.C.G.S. § 147-86.80, and will not contract with anyone on such List in performance of the work hereunder.
35. **Governmental Immunity.** Nothing contained in this Contract shall constitute a waiver of the Town's governmental immunity or of any limitation on liability or damages created by law.

ADDITIONAL TERMS AND CONDITIONS FOR FEDERAL CONTRACTS

For contracts using federal funds, the following additional terms and conditions shall apply:

1. **Davis-Bacon Act.** For all contracts in excess of \$2,000.00 for construction, alteration, or repair, including painting and decorating, of public buildings or public works, the Contractor shall comply with the Davis-Bacon Act, including payment of no less than the locally prevailing wages as determined by the Secretary of Labor. The contract shall not be valid unless the current prevailing wage as determined by the North Carolina Department of Labor is accepted. The Contractor shall also be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Town shall report all suspected or reported violations to the Federal awarding agency.
2. **Contract Work Hours and Safety Standards Act.** For contracts in excess of \$100,000 that involve the employment of mechanics or laborers, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. For construction work, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.
3. **Funding Agreements.** If a Federal award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the Town or Contractor enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 C.F.R. Part 401.
4. **Clean Air Act and Federal Water Pollution Control Act.** Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act and Federal Water Pollution Control Act as amended for any Contract in excess of \$150,000.00.
5. **Debarment and Suspension.** Contractor acknowledges and warrants that it is not listed on the governmentwide exclusions in the System Award Management (SAM) Exclusions, in accordance with the OMB guidelines at 2 C.F.R. § 180 for "Debarment and Suspension."
6. **Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).** For an award exceeding \$100,000, Contractors must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Town.
7. **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.** The Contractor warrants that their systems or equipment are not covered under telecommunication equipment as described in Public Law 115-232.
8. **Domestic Preference for Procurements.** As appropriate and to the extent consistent with law, the Contractor will, to the greatest extent practicable under a Federal award, provide a preference for the

purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products), as required under 2 C.F.R. § 200.322.

9. **Procurement of Recovered Material.** The Contractor agrees to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
10. **Conflict of Interest.** The Contractor agrees to be bound by the Town's Uniform Guidance Conflict of Interest Policy, which is included herein by reference.
11. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 include, by reference, the equal opportunity clause provided under 41 CFR 60-1.4(b). The Contractor agrees to abide by 41 CFR 60-1.4(b) during the performance of the contract¹.

¹ 60 CFR Part 60-1.4(b) can be accessed at: [https://www.ecfr.gov/current/title-41/subtitle-B/chapter-60/part-60-1/subpart-A/section-60-1.4#p-60-1.4\(b\)](https://www.ecfr.gov/current/title-41/subtitle-B/chapter-60/part-60-1/subpart-A/section-60-1.4#p-60-1.4(b))

EXHIBIT B
MINIMUM INSURANCE REQUIREMENTS

The Work under this Contract shall not commence until the Contractor has obtained all required insurance and verifying certificates of insurance have been approved in writing by the Town. Except for Worker's Compensation and Professional Liability policies, the Town shall be named as additional insured on all policies. These certificates shall document that coverages afforded under the policies will not be cancelled, reduced in amount or coverages eliminated until at least thirty (30) days after mailing written notice, by certified mail, return receipt requested, to the insured and the Town of such alteration or cancellation. If endorsements are needed to comply with the notification or other requirements of this article copies of the endorsements shall be submitted with the certificates.

a. **Worker's Compensation and Employer's Liability**

The Contractor shall provide and maintain, until final acceptance, workmen's compensation insurance, as required by law, as well as employer's liability coverage with minimum limits of \$100,000.

b. **Comprehensive General Liability Insurance**

The Contractor shall provide and maintain, until final acceptance, comprehensive general liability insurance, including coverage for premises operations, independent contractors, completed operations, products and contractual exposures, as shall protect such contractors from claims arising out of any bodily injury, including accidental death, as well as from claims for property damages which may arise from operations under this contract, whether such operations be by the Contractor or by any subcontractor, or by anyone directly or indirectly employed by either of them and the minimum limits of such insurance shall be as follows:

Bodily Injury: \$1,000,000 per occurrence/\$2,000,000 aggregate
Professional Liability: \$1,000,000 per occurrence/\$2,000,000 aggregate
Property Damage: \$1,000,000 per occurrence/\$2,000,000 aggregate

Such coverage for completed operations must be maintained for at least two (2) years following final acceptance of the Work performed under the contract.

c. **Deductible**

Any deductible, if applicable to loss covered by insurance provided, is to be borne by the Contractor.

d. **Other Insurance**

The Contractor shall obtain such additional insurance as may be required by the Town or by the General Statutes of North Carolina including motor vehicle insurance, in amounts not less than the statutory limits.

e. **Proof of Carriage**

The Contractor shall furnish the Town with satisfactory proof of carriage of the insurance required before written approval is granted by the Town.

EXHIBIT C – SCOPE OF SERVICES

(insert service description)

EXHIBIT D – FEE SCHEDULE

Company Name

Date

Print Name

Title

Signature



**RESOLUTION OF THE TOWN OF HUNTERSVILLE BOARD OF COMMISSIONERS TO ACQUIRE
PROPERTY NECESSARY FOR THE CONSTRUCTION OF FUTURE PUBLIC WORKS FACILITY**

WHEREAS, the Town of Huntersville (the "Town") has determined that the acquisition of property is necessary for the construction of a future Public Works Facility (the "Project"); and

WHEREAS, the statutory powers of the Town include the power to acquire real property (N.C.G.S. §160A-11 and §160A-240.1), including the power of eminent domain (N.C.G.S. Chapter 40); and

WHEREAS, the Town has certified that the parcel ("the Property"), represented on Exhibit A, is needed for the Project.

***NOW THEREFORE, BE IT RESOLVED BY THE TOWN OF HUNTERSVILLE BOARD OF
COMMISSIONERS (the "Town Board") AS FOLLOWS:***

1. The Town Board approves and authorizes the acquisition of the necessary Property as described on Exhibit A. No further action is required by the Town Board to authorize the acquisition pursuant to this subsection.
2. The Town Board hereby authorized the Town Manager, acting on advice of counsel, to take any actions necessary to carry out the provisions of this Resolution; and
3. This Resolution shall be effective as of the date its adoption.

Adopted this 17th day of January, 2023.

ATTEST:

TOWN OF HUNTERSVILLE

Town Clerk

Town Mayor

APPROVED AS TO FORM:

Town Attorney

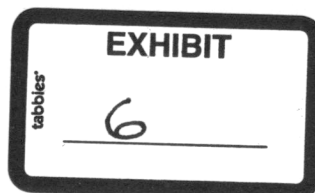


EXHIBIT A - PARCEL INDEX
Future Public Works Facility

PARCEL #	PARCEL ID #	PROPERTY OWNER NAME
1	011-201-30	William H. Stewart, Jr.



AGREEMENT FOR PURCHASE AND SALE
OF IMPROVED REAL PROPERTY

THIS AGREEMENT, including any and all addenda attached hereto ("Agreement"), is by and between

The Town of Huntersville

a(n) NC Municipality ("Buyer"), and
(individual or State of formation and type of entity)

William H. Stewart, Jr.

a (n) Individual ("Seller").
(individual or State of formation and type of entity)

(NOTE: If the Buyer or Seller is an entity, in order to form a binding agreement and complete a transaction, the entities listed as Buyer or Seller in this Agreement should be validly formed and in good standing with the Secretary of State in the State of formation of the entity.)

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Terms and Definitions: The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) "**Property**": (Address) 11835 Ramah Church Rd. Huntersville, NC 28078

Plat Reference: Lot(s) 63, Block or Section 470, as shown on Plat Book or Slide 63 at Page(s) 470, Mecklenburg County, consisting of 6.073 +/- acres.

☒ If this box is checked, "Property" shall mean that property described on **Exhibit A** attached hereto and incorporated herewith by reference,

(For information purposes: (i) the tax parcel number of the Property is: 011-201-30; and,
(ii) some or all of the Property, consisting of approximately 6.073 +/- acres, is described in Deed Book 08574, Page No. 913, Mecklenburg County.)

together with all buildings and improvements thereon and all fixtures and appurtenances thereto and all personal property, if any, itemized on **Exhibit A**.

\$ 900,000.00

(b) "**Purchase Price**" shall mean the sum of Nine Hundred Thousand

Dollars,

payable on the following terms:

\$ 0.00

(i) "**Earnest Money**" shall mean Dollars

or terms as follows:

The Earnest Money shall be deposited in escrow with (name of person/entity with whom deposited- "Escrow Agent") within five (5) calendar days of the Contract Date, to be applied as part payment of the Purchase Price of the Property at Closing, or disbursed as agreed upon under the provisions of Section 10 herein. Should Buyer fail to deliver the Earnest Money by the date required hereunder, or should any check or other funds paid by Buyer be dishonored, for any reason, by the institution upon which

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This form jointly approved by:
North Carolina Bar Association
North Carolina Association of REALTORS®, Inc.

STANDARD FORM 580-T
Revised 7/2020
© 7/2020

Buyer Initials _____ Seller Initials _____

the payment is drawn, Buyer shall have one (1) banking day after written notice of such dishonor to deliver cash, official bank check, wire transfer or electronic transfer to the Escrow Agent. If Buyer fails to deliver the required funds within one (1) banking day after written notice, then Seller may terminate this Agreement by written notice to Buyer at any time thereafter, provided Seller has not then received acknowledgement by Escrow Agent of its receipt of funds from Buyer. If the Escrow Agent has not delivered to the Seller the acknowledgement of Earnest Money on the last page of this Agreement by the calendar day following the date the Earnest Money is required to be delivered hereunder, it shall be presumed that the Earnest Money was not delivered by the required time (unless, upon the written request of Seller, Escrow Agent can provide proof of its receipt of the Earnest Money by the required time). Buyer and Seller consent to the disclosure by the Escrow Agent, to the parties to this Agreement, the Broker(s) and any Buyer lender, of any material facts pertaining to the Earnest Money.

☐ **ANY EARNEST MONEY DEPOSITED BY BUYER IN A TRUST ACCOUNT MAY BE PLACED IN AN INTEREST BEARING TRUST ACCOUNT, AND:** (check only ONE box)

☐ **ANY INTEREST EARNED THEREON SHALL BE APPLIED AS PART PAYMENT OF THE PURCHASE PRICE OF THE PROPERTY AT CLOSING, OR DISBURSED AS AGREED UPON UNDER THE PROVISIONS OF SECTION 10 HEREIN. (Buyer's Taxpayer Identification Number is: _____)**

☐ **ANY INTEREST EARNED THEREON SHALL BELONG TO THE ACCOUNT HOLDER IN CONSIDERATION OF THE EXPENSES INCURRED BY MAINTAINING SUCH ACCOUNT AND RECORDS ASSOCIATED THEREWITH.**

\$ _____ (ii) **Delivery of a promissory note** secured by a deed of trust, said promissory note in the amount of _____ Dollars being payable over a term of _____ years, with an amortization period of _____ years, payable in monthly installments of principal, together with accrued interest on the outstanding principal balance at the rate of _____ percent (_____%) per annum in the amount of \$ _____, with the first principal payment beginning on the first day of the month next succeeding the date of Closing, or such other terms as may be set forth on **Exhibit B**. At any time, the promissory note may be prepaid in whole or in part without penalty and without further interest on the amounts prepaid from the date of such prepayment. (NOTE: In the event of Buyer's subsequent default upon a promissory note and deed of trust given hereunder, Seller's remedies may be limited to foreclosure of the Property. If the deed of trust given hereunder is subordinated to senior financing, the material terms of such financing must be set forth on Exhibit B. If such senior financing is subsequently foreclosed, the Seller may have no remedy to recover under the note.)

\$ _____ (iii) **Assumption** of that unpaid obligation of Seller secured by a deed of trust on the Property, such obligation having an outstanding principal balance of \$ _____ and evidenced by a note bearing interest at the rate of _____ percent (_____%) per annum, and a current payment amount of \$ _____.

\$ \$900,000.00 (iv) **Cash, balance of Purchase Price**, at Closing in the amount of Nine Hundred Thousand Dollars.

Buyer, at Buyer's expense, shall be entitled to pursue qualification for and approval of any loan Buyer intends to obtain in connection with the transaction contemplated by this Agreement. (Note: Buyer's obligations under this Agreement are not conditioned upon obtaining or closing any loan. Therefore, Buyer is advised to consult with Buyer's lender prior to signing this offer to assure that the Examination Period allows sufficient time for Buyer's lender to provide Buyer sufficient information to decide whether to proceed with or terminate the transaction.)

(c) **"Closing"** shall mean the date of completion of the process detailed in Section 11 of this Agreement. Closing shall occur on or before _____ or _____ Within 60 days after this Agreement has been ratified by the Town Board of Commissioners on January 17, 2023, which shall be the effective date of the Agreement _____.

(d) **"Contract Date"** means the date this Agreement has been fully executed by both Buyer and Seller.

- (e) **“Examination Period”** shall mean the period beginning on the first day after the Contract Date and extending through 5:00pm (based upon time at the locale of the Property) on

March 17, 2023. ***TIME IS OF THE ESSENCE AS TO THE EXAMINATION PERIOD.***

- (f) **“Broker(s)”** shall mean:

____ (“Listing Agency”),
____ (“Listing Agent” – License # _____)

Acting as: ☐ Seller’s Agent; ☐ Dual Agent

and _____ (“Selling Agency”),
____ (“Selling Agent”- License # _____)

Acting as: ☐ Buyer’s Agent; ☐ Seller’s (Sub)Agent; ☐ Dual Agent

- (g) **“Seller’s Notice Address”** shall be as follows:

212 Park Road, Mount Holly, NC 28120

e-mail address: _____ fax number: _____

except as same may be changed pursuant to Section 12.

- (h) **“Buyer’s Notice Address”** shall be as follows:

c/o Emily Sloop

P.O. Box 664, Huntersville, NC 28078

e-mail address: esloop@huntersville.org fax number: _____

except as same may be changed pursuant to Section 12.

- ☐ (i) If this block is marked, additional terms of this Agreement are set forth on **Exhibit B** attached hereto and incorporated herein by reference. (**Note: Under North Carolina law, real estate agents are not permitted to draft conditions or contingencies to this Agreement.**)
- ☐ (j) If this block is marked, additional terms of this Agreement are set forth on the Additional Provisions Addendum (Form 581-T) attached hereto and incorporated herein by reference.
- ☐ (k) If this block is marked, additional terms of this Agreement are set forth on the Back Up Agreement Addendum (Form 581A-T) attached hereto and incorporated herein by reference.

Section 2. Sale of Property and Payment of Purchase Price: Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price.

Section 3. Proration of Expenses and Payment of Costs: Seller and Buyer agree that all property taxes (on a calendar year basis), leases, rents, mortgage payments and utilities or any other assumed liabilities as detailed on attached **Exhibit B**, if any, shall be prorated as of the date of Closing. Seller shall pay for preparation of a deed and all other documents necessary to perform Seller’s obligations under this Agreement, excise tax (revenue stamps), any deferred or rollback taxes, and other conveyance fees or taxes required by law, any fees required for confirming Seller’s account payment information on owners’ association dues or assessments for payment or proration; any fees imposed by an owners’ association and/or a management company as agent of the owners’ association in connection with the transaction contemplated by this Agreement other than those fees required to be paid by Buyer in this Section 3 below, and the following:

Buyer shall pay recording costs, costs of any title search, title insurance, survey, the cost of any inspections or investigations undertaken by Buyer under this Agreement, charges required by an owners' association declaration to be paid by Buyer for Buyer's future use and enjoyment of the Property, including, without limitation, working capital contributions, membership fees, or charges for Buyer's use of the common elements and/or services provided to Buyer, any costs or charges for determining restrictive covenant compliance, and the following:

Each party shall pay its own attorney's fees.

Section 4. Deliveries: Seller agrees to use best efforts to deliver to Buyer, as soon as reasonably possible after the Contract Date, copies of all material information relevant to the Property in the possession of Seller, including but not limited to: title insurance policies (and copies of any documents referenced therein), surveys, soil test reports, environmental surveys or reports, site plans, civil drawings, building plans, maintenance records and copies of all presently effective warranties or service contracts related to the Property. Seller authorizes (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys. If Buyer does not consummate the Closing for any reason other than Seller default, then Buyer shall return to Seller all hard copy materials delivered by Seller to Buyer pursuant to this Section 4 (or Section 7, if applicable), if any, and shall, upon Seller's request, following release of the Earnest Money, provide to Seller copies of (subject to the ownership and copyright interests of the preparer thereof) any and all studies, reports, surveys and other information relating directly to the Property prepared by or at the request of Buyer, its employees and agents, without any warranty or representation by Buyer as to the contents, accuracy or correctness thereof. Notwithstanding the above provisions regarding delivery and return of information and documentation, should there exist a separate non-disclosure, confidentiality, or similar agreement between Buyer and Seller, the terms of which conflict with this provision insofar as delivery and return of information and documentation, then the terms of such non-disclosure, confidentiality, or similar agreement shall control as to the delivery and return of information and documentation.

Section 5. Evidence of Title: Seller agrees to convey fee simple insurable title to the Property without exception for mechanics' liens, free and clear of all liens, encumbrances and defects of title other than: (a) zoning ordinances affecting the Property, (b) Leases (as defined in Section 7, if applicable) and (c) specific instruments on the public record at the Contract Date agreed to by Buyer (not objected to by Buyer prior to the end of the Examination Period), which specific instruments shall be enumerated in the deed referenced in Section 11 (items 5(a), 5(b) and 5(c) being collectively "Permitted Exceptions"); provided that Seller shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens. Seller shall not enter into or record any instrument that affects the Property (or any personal property listed on **Exhibit A**) after the Contract Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 6. Conditions: This Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer, whether explicit or implied) of the following conditions:

(a) **Qualification for Assumption:** The obligations of Buyer under this Agreement are conditioned upon Buyer being able to assume the existing loan described in Section 1(b)(iii) above. If such assumption requires the lender's approval, Buyer agrees to use its best efforts to secure such approval and to advise Seller immediately upon receipt of the lender's decision. Approval must be granted on or before _____. On or before this date, Buyer has the right to terminate this Agreement for failure to be able to assume the loan described above by delivering to Seller written notice of termination by the above date, *time being of the essence*. If Buyer delivers such notice, this Agreement shall be null and void, and the Earnest Money shall be refunded to Buyer. If Buyer fails to deliver such notice, then Buyer will be deemed to have waived this condition. Unless provided otherwise in Section 3 hereof, Buyer shall pay all fees and costs associated with any such assumption, including any assumption fee charged by the lender. At or before Closing, Seller shall assign to Buyer all interest of Seller in any current reserves or escrows held by the lender, any property management company and/or Seller, including, but not limited to: any tenant improvement reserves, leasing commission reserves, security deposits and operating or capital reserves for which Seller shall be credited at Closing.

(b) **Title Examination:** After the Contract Date, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property before the end of the Examination Period. In the event that such title examination shall show that Seller's title is not fee simple insurable, subject only to Permitted Exceptions, then Buyer shall promptly notify Seller in writing of all such title defects and exceptions, in no case later than the end of the Examination Period, and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, then Buyer may terminate this Agreement and receive a return of Earnest Money (notwithstanding that the Examination Period may have expired). If Buyer is to purchase title insurance, the insuring company must be licensed to do business in the state in which the Property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

(c) **Same Condition:** If the Property is not in substantially the same condition at Closing as of the date of the offer, reasonable wear and tear excepted, then the Buyer may (i) terminate this Agreement and receive a return of the Earnest Money or (ii) proceed to Closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property.

(d) **Inspections:** Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting, examining, conducting timber cruises, and surveying the Property; provided, however, that Buyer shall not conduct any invasive testing of any nature without the prior express written approval of Seller as to each specific invasive test intended to be conducted by Buyer. Buyer shall conduct all such on-site inspections, examinations, testing, timber cruises and surveying of the Property in a good and workmanlike manner, at Buyer's expense, shall repair any damage to the Property caused by Buyer's entry and on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Seller's or any tenant's use and enjoyment of the Property. In that respect, Buyer shall make reasonable efforts to undertake on-site inspections outside of the hours Seller's or any tenant's business is open to the public. Buyer shall provide Seller or any tenant (as applicable) reasonable advance notice of and Buyer shall cause its agents or representatives and third party service providers (e.g. inspectors, surveyors, etc.) to give reasonable advance notice of any entry onto the Property. Buyer shall be obligated to observe and comply with any terms of any tenant lease which conditions access to such tenant's space at the Property. Upon Seller's request, Buyer shall provide to Seller evidence of general liability insurance. Buyer shall also have a right to review and inspect all contracts or other agreements affecting or related directly to the Property and shall be entitled to review such books and records of Seller that relate directly to the operation and maintenance of the Property, provided, however, that Buyer shall not disclose any information regarding this Property (or any tenant therein) unless required by law, and the same shall be regarded as confidential, to any person, except to its attorneys, accountants, lenders and other professional advisors, in which case Buyer shall obtain their agreement to maintain such confidentiality. Buyer assumes all responsibility for the acts of itself and its agents or representatives in exercising its rights under this Section 6(d) and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Except as provided in Section 6(b) above, Buyer shall have from the Contract Date through the end of the Examination Period to perform the above inspections, examinations and testing. **IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO SELLER THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, THEN THIS AGREEMENT SHALL TERMINATE, AND BUYER SHALL RECEIVE A RETURN OF THE EARNEST MONEY.**

Section 7. Leases (Check one of the following, as applicable):

☒ If this box is checked, Seller affirmatively represents and warrants that there are no Leases (as hereinafter defined) affecting the Property.

☐ If this box is checked, Seller discloses that there are one or more leases affecting the Property ("Leases"), and the following provisions are hereby made a part of this Agreement.

(a) A list of all Leases shall be set forth on **Exhibit B**. Seller represents and warrants that, as of the Contract Date, there are no other Leases, oral or written, recorded or not, nor any subleases affecting the Property, except as set forth on **Exhibit B**;

(b) Seller shall deliver copies of any Leases to Buyer pursuant to Section 4 as if the Leases were listed therein;

(c) Seller represents and warrants that, as of the Contract Date, there are no current defaults (or any existing situation which, with the passage of time, or the giving of notice, or both, or at the election of either landlord or tenant, could constitute a default) either by Seller, as landlord, or by any tenant under any Lease ("Lease Default"). In the event there is any Lease Default as of the Contract Date, Seller agrees to provide Buyer with a detailed description of the situation in accordance with Section 4. Seller agrees not to commit a Lease Default as Landlord after the Contract Date; and agrees further to notify Buyer immediately in the event a Lease Default arises or is claimed, asserted or threatened to be asserted by either Seller or a tenant under the Lease.

(d) In addition to the conditions provided in Section 6 of this Agreement, this Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon the assignment of Seller's interest in any Lease to Buyer in form and content acceptable to Buyer (with tenant's written consent and acknowledgement, if required under the Lease). Seller agrees to deliver an assignment of any Lease at or before Closing, with any security deposits held by Seller under any Leases to be transferred or credited to Buyer at or before Closing. The assignment shall provide: (i) that Seller shall defend, indemnify and hold Buyer harmless from claims, losses, damages and liabilities (including, without limitation, court costs and attorneys' fees) asserted against or incurred by Buyer which are caused by or the result of any default by Seller under any Lease prior to the date of Closing, and (ii) that Buyer shall defend, indemnify and hold Seller harmless from claims, losses, damages and liabilities (including, without

limitation, court costs and attorneys' fees) asserted against or incurred by Seller which are caused by or the result of any default by Buyer under any Lease after the date of Closing.

(e) Seller also agrees to work diligently to obtain any tenant signatures on any estoppel certificates in such form as Buyer may reasonably request and to work diligently to obtain any subordination, nondisturbance and attornment agreements in such form as Buyer may reasonably request.

Section 8. Environmental: Seller represents and warrants that it has no actual knowledge of the presence or disposal, except as in accordance with applicable law, within the buildings or on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to: those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 311 of the Clean Water Act of 1977 (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act of 1977 (33 U.S.C. §1317), (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6903) or (vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601). Seller has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts.

Section 9. Risk of Loss/Damage/Repair: Until Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.

Section 10. Earnest Money Disbursement: In the event that any condition hereto is not satisfied, then the Earnest Money shall be refunded to Buyer. In the event of breach of this Agreement by Seller, the Earnest Money shall be refunded to Buyer upon Buyer's request, but such return shall not affect any other remedies available to Buyer for such breach. In the event of breach of this Agreement by Buyer, the Earnest Money shall be paid to Seller as liquidated damages and as Seller's sole and exclusive remedy for such breach, but without limiting Seller's rights under Section 6(d) or Section 22 of this Agreement. It is acknowledged by the parties that payment of the Earnest Money to Seller in the event of a breach of this Agreement by Buyer is compensatory and not punitive, such amount being a reasonable estimation of the actual loss that Seller would incur as a result of such breach. The payment of the Earnest Money to Seller shall not constitute a penalty or forfeiture but actual compensation for Seller's anticipated loss, both parties acknowledging the difficulty determining Seller's actual damages for such breach.

NOTE: In the event of a dispute between Seller and Buyer over the disposition of the Earnest Money held in escrow, a licensed real estate broker is required by state law (and Escrow Agent, if not a broker, hereby agrees) to retain the Earnest Money in the Escrow Agent's trust or escrow account until Escrow Agent has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, if a broker or an attorney licensed to practice law in North Carolina is holding the Earnest Money, the broker or attorney may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions of N.C.G.S. §93A- 12.

Seller and Buyer hereby agree and acknowledge that the Escrow Agent assumes no liability in connection with the holding of the Earnest Money pursuant hereto except for negligence or willful misconduct of Escrow Agent. Escrow Agent shall not be responsible for the validity, correctness or genuineness of any document or notice referred to under this Agreement. Seller and Buyer hereby agree to indemnify, protect, save and hold harmless Escrow Agent and its successors, assigns and agents pursuant to this Agreement, from any and all liabilities, obligations, losses, damages, claims, actions, suits, costs or expenses (including attorney fees) of whatsoever kind or nature imposed on, incurred by or asserted against Escrow Agent which in any way relate to or arise out of the execution and delivery of this Agreement and any action taken hereunder; provided, however, that Seller and Buyer shall have no such obligation to indemnify, save and hold harmless Escrow Agent for any liability incurred by, imposed upon or established against it as a result of Escrow Agent's negligence or willful misconduct.

Section 11. Closing: At or before Closing, Seller shall deliver to Buyer a special warranty deed unless otherwise specified on **Exhibit B** and other documents customarily executed or delivered by a seller in similar transactions, including without limitation, a bill of sale for any personalty listed on **Exhibit A**, an owner's affidavit, lien waiver forms (and such other lien related documentation as shall permit the Property to be conveyed free and clear of any claim for mechanics' liens) and a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act), and Buyer shall cause to be delivered the funds necessary to pay to Seller the Purchase Price. The Closing shall be conducted by Buyer's attorney or handled in such other manner as the parties hereto may mutually agree in writing. Possession shall be delivered at Closing, unless otherwise agreed herein. The Purchase Price and other funds to be disbursed pursuant to this Agreement shall not be disbursed until the Buyer's attorney's (or other designated settlement agent's) receipt of authorization to disburse all necessary funds.

Section 12. Notices: Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing (which shall include electronic mail) and shall be deemed to have been properly given and received (i) on the date delivered in person or (ii) the date deposited in the United States mail, registered or certified, return receipt requested, to the addresses set out in Section 1(g) as to Seller, and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith, (iii) at such time as the sender performs the final act to send such transmission, in a form capable of being processed by the receiving party's system, to any electronic mail address or facsimile number, if any, provided in Section 1(g) as to Seller, and in Section 1(h) as to Buyer or (iv) on the date deposited with a recognized overnight delivery service, addressed to the addresses set out in Section 1(g) as to Seller, and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith. If a notice is sent by more than one method, it will be deemed received upon the earlier of the dates of receipt pursuant to this Section.

Section 13. Counterparts; Entire Agreement: This Agreement may be executed in one or more counterparts, which taken together, shall constitute one and the same original document. Copies of original signature pages of this Agreement may be exchanged via facsimile or e-mail, and any such copies shall constitute originals. This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto. The invalidity of one or more provisions of this Agreement shall not affect the validity of any other provisions hereof and this Agreement shall be construed and enforced as if such invalid provisions were not included.

Section 14. Enforceability: This Agreement shall become a contract when signed by both Buyer and Seller and such signing is communicated to both parties; it being expressly agreed that notice given in accordance with Section 12 is not required for effective communication for the purposes of this Section 14. The parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Agreement are merely evidence of their having reviewed the terms of each page, and (ii) the complete execution of such initials lines shall not be a condition of the effectiveness of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

Section 15. Adverse Information and Compliance with Laws:

(a) **Seller Knowledge/Assessments:** Seller has no actual knowledge of (i) condemnation(s) affecting or contemplated with respect to the Property; (ii) actions, suits or proceedings pending or threatened against the Property; (iii) changes contemplated in any applicable laws, ordinances or restrictions affecting the Property; or (iv) governmental special assessments, either pending or confirmed, for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, and no pending or confirmed owners' association special assessments, except as follows (Insert "None" or the identification of any matters relating to (i) through (iv) above, if any):

None

Note: For purposes of this Agreement: (i) a "special assessment" is defined as a charge against the Property by a governmental authority in addition to ad valorem taxes and recurring governmental service fees levied with such taxes, or by an owners' association in addition to any regular assessment (dues), either of which may be a lien against the Property; a special assessment may be either pending or confirmed; (ii) a "confirmed" special assessment is defined as an assessment that has been approved by a governmental agency or an owners' association for the purpose(s) stated, whether, at the time of Closing, it is payable in a lump sum or future installments; (iii) a "pending" special assessment is defined as an assessment that is under formal consideration by a governmental agency or an owners' association but which has not been approved prior to Closing. Seller shall pay, in full at Closing, all confirmed governmental or association special assessments, provided that the amount thereof can be reasonably determined or estimated. The payment of such determined or estimated amount shall be the final payment between Buyer and Seller as to any confirmed special assessments. If the amount of any special assessment cannot be reasonably determined or estimated, the special assessment shall be deemed a pending special assessment. Buyer shall take title subject to all pending special assessments disclosed by Seller herein, if any.

(b) **Compliance:** To Seller's actual knowledge, (i) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; (ii) performance of the Agreement will not result in the breach of, constitute any default under or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property is bound; and (iii) there are no legal actions, suits or other legal or administrative proceedings pending or threatened against the Property, and Seller is not aware of any facts which might result in any such action, suit or other proceeding.

(c) **Owners' Association:** If the Property is subject to regulation by an owners' association, Seller shall deliver the following information to Buyer pursuant to Section 4 as if the same were listed therein (or Seller shall state that Seller does not have same in their possession or that such item is not applicable): (i) the name of the owners' association; (ii) the amount of regular assessments

(dues); (iii) the name, address and telephone number of the president of the owners' association or of the association manager or management company; (iv) the owners' association website address; (v) the Seller's statement of account; (vi) the master insurance policy showing the coverage provided and the deductible amount; (vii) copies of any Declaration and/or Restrictive Covenants; (viii) the Rules and Regulations, (ix) the Articles of Incorporation and Bylaws of the owners' association; (x) the current financial statement and budget of the owners' association; (xi) the parking restrictions and information; and (xii) the architectural guidelines. Seller authorizes and directs any owners' association, any management company of the owners' association, any insurance company and any attorney who has previously represented the Seller to release to Buyer, Buyer's agents, representative, closing attorney or lender true and accurate copies of the foregoing items affecting the Property, including any amendments thereto.

Section 16. Survival of Representations and Warranties: All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Seller shall, at or within six (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

Section 17. Applicable Law: This Agreement shall be construed under the laws of the state in which the Property is located. This form has only been approved for use in North Carolina.

Section 18. Assignment: This Agreement is freely assignable unless otherwise expressly provided on **Exhibit B**.

Section 19. Tax-Deferred Exchange: In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

Section 20. Memorandum of Contract: Upon request by either party, the parties hereto shall execute a memorandum of contract in recordable form setting forth such provisions hereof (other than the Purchase Price and other sums due) as either party may wish to incorporate. Such memorandum of contract shall contain a statement that it automatically terminates and the Property is released from any effect thereby as of a specific date to be stated in the memorandum (which specific date shall be no later than the date of Closing). The cost of recording such memorandum of contract shall be borne by the party requesting execution of same.

Section 21. Authority: Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party.

Section 22. Brokers: Except as expressly provided herein, Buyer and Seller agree to indemnify and hold each other harmless from any and all claims of brokers, consultants or real estate agents by, through or under the indemnifying party for fees or commissions arising out of the sale of the Property to Buyer. Buyer and Seller represent and warrant to each other that: (i) except as to the Brokers designated under Section 1(f) of this Agreement, they have not employed nor engaged any brokers, consultants or real estate agents to be involved in this transaction and (ii) that the compensation of the Brokers is established by and shall be governed by separate agreements entered into as amongst the Brokers, the Buyer and/or the Seller.

Section 23. Attorneys Fees: If legal proceedings are instituted to enforce any provision of this Agreement, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorneys fees and court costs incurred in connection with the proceeding.

☐ **EIFS/SYNTHETIC STUCCO:** If the adjacent box is checked, Seller discloses that the Property has been clad previously (either in whole or in part) with an "exterior insulating and finishing system" commonly known as "EIFS" or "synthetic stucco". Seller makes no representations or warranties regarding such system and Buyer is advised to make its own independent determinations with respect to conditions related to or occasioned by the existence of such materials at the Property.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

BUYER:**Individual**

 Date: _____

 Date: _____

Business Entity

 (Name of Entity)

By: _____

Name: Anthony Roberts

Title: Town Manager

Date: _____

SELLER:**Individual**

William H. Stewart, Jr.
 Date: _____

 Date: _____

Business Entity

 (Name of Entity)

By: _____

Name: _____

Title: _____

Date: _____

WIRE FRAUD WARNING

To Buyers: Before sending any wire, you should call the closing agent's office to verify the instructions. If you receive wiring instructions for a different bank, branch location, account name or account number, they should be presumed fraudulent. Do not send any funds and contact the closing agent's office immediately.

To Sellers: If your proceeds will be wired, it is recommended that you provide wiring instructions at closing in writing in the presence of the closing agent. If you are unable to attend closing, you may be required to send an original notarized directive to the closing agent's office containing the wiring instructions. This directive may be sent with the deed, lien waiver and tax forms if those documents are being prepared for you by the closing agent. At a minimum, you should call the closing agent's office to provide the wire instructions. The wire instructions should be verified over the telephone via a call to you initiated by the closing agent's office to ensure that they are not from a fraudulent source.

Whether you are a buyer or a seller, you should call the closing agent's office at a number that is independently obtained. To ensure that your contact is legitimate, you should not rely on a phone number in an email from the closing agent's office, your real estate agent or anyone else.

The undersigned hereby acknowledges receipt of the Earnest Money set forth herein and agrees to hold said Earnest Money in accordance with the terms hereof.

 (Name of Escrow Agent)

Date: _____

By: _____

Escrow Agent's contact/notice information is as follows:

e-mail address: _____ fax number: _____

except as same may be changed pursuant to Section 12.

BEGINNING at a #4 rebar set in the Right of Way of Ramah Church Road. Thence, from the said POINT OF BEGINNING N02°31'55"W a distance of 603.82' to a #4 rebar set. Thence, N89°41'55"W, a distance of 143.00' to a #4 rebar found. Thence, N00°19'14"E, a distance of 244.42'. Thence, S80°48'37"E, a distance of 399.99'. Thence, S20°57'31"E, a distance of 185.98'. Thence, S69°44'13"W, a distance of 162.69'. Thence, S20°16'36"E, a distance of 639.44 feet, into the right of way of Ramah Church Road. Thence, S73°37'32"W, a distance of 95.41'. Thence, N89°17'32"W, a distance of 100.00'. Thence, N76°15'00"W, a distance of 174.09'. Thence, N02°31'55"W, a distance of 32.10' to the POINT AND PLACE OF BEGINNING, having an area of 6.073 Acres according to a survey by Professional Property Surveyors, Inc., dates 05/08/2018, project #040218-03.