

**TOWN OF HUNTERSVILLE
TOWN BOARD MEETING
MINUTES**

**March 6, 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 5:30 p.m. on March 6, 2023.

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

Mayor Bales called the Pre-meeting to order.

Potential Architectural Review Board Discussion. Commissioner Partee explained he has been asked why Huntersville does not have an architectural review board and thinks the Town should explore an architectural review board and hear what the planners have to say.

Jack Simoneau, Planning Director, reviewed what the Town does today and what we found in other communities that do have architectural review boards. *Refer to PowerPoint attached hereto as Exhibit No. 1.*

Mayor Bales requested the Town Attorney talk about legal concerns.

Emily Sloop, Town Attorney, noted NCGS 160D does not provide specific authority to have an architectural review board. Given that we don't have specific authority to create an architectural review board, we would have to rely on NCGS 160D-306 that allows for general, not specific, authority to create by ordinance other advisory boards. Those boards would only be advisory in nature. They cannot make final decisions and another caveat to that is that when you have general authority rather than specific, you can't exceed the purpose and grant of authority for the zoning regulations themselves. The purpose in the general grant of authority do not touch upon regulating aesthetics. NCGS 160D-702 specifically says that you cannot regulate for residential buildings design elements as defined by statute. The UNC School of Government has a blog that heavily cautions against creating boards that are making decisions on subjective aesthetic type design questions.

Following discussion, Mayor Bales encouraged the Board to send any questions or requests for additional research to the Town Manager.

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 March 6, 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

None

PUBLIC COMMENTS, REQUESTS, OR PRESENTATIONS

Mayor Bales proclaimed February 2023 as Women's History Month.

*Town of Huntersville
Proclamation*

WHEREAS, noted historian, Dr. Carter G. Woodson, announced the second week of February as "Negro History Week" in 1926 in order to increase public awareness and appreciation of the important role that African-Americans have played in shaping America's history; and

WHEREAS, the second week of February was chosen to coincide with the birthdays of Frederick Douglass and Abraham Lincoln, was celebrated by Black people in the United States; and

WHEREAS, the United States government officially recognized Negro History Week in 1976 as part of the U.S. Bicentennial, expanding it to Black History Month; and

WHEREAS, America is a melting pot of cultures and ethnicities; all part of the "Land of the Free." Black History Month fosters cultural awareness and understanding, while encouraging education about contributions made by Americans of color; and

WHEREAS, the omission of much of the history and contributions of African-Americans from textbooks and other literature has impeded awareness and appreciation; and

WHEREAS, the celebration of Black History Month is a positive way of recognizing the culture and history of African-Americans as vital to the core beliefs and values of this society; and

WHEREAS, the contributions of African-Americans have played significant roles and made lasting contributions to our Town's history and the history of our economic, cultural, spiritual and political development, while working tirelessly to contribute to every aspect of American society including business, education, politics, science, and the arts.

NOW, THEREFORE, I, Melinda Bales, Mayor of the Town of Huntersville, on behalf of the citizens, do hereby proclaim the month of February 2023 as "*Black History Month*" in the Town of Huntersville and urge all our citizens to observe this month with appropriate programs, ceremonies and activities.

IN WITNESS WHEREOF, I do hereby set my hand and cause the Seal of the Town of Huntersville to be affixed, this the 6th day of February 2023.

Stephen Hines, 8319 Camberly Road, said I would like to speak in favor of the development. It seems that we have gotten caught up in a whirlwind of negativity and against improvement and against advancements in our society. I hate to see that happen to Birkdale. I hate to see it stagnate. I hate to

see our property values go down. The problems that we are facing and what most people are against are the office building and the hotel. Part of the problem is I see it as that's the part that would help vitalize Birkdale and help vitalize the downtown area and attract the businesses, upgrade the restaurants and the activities and the benefits to living in Birkdale Village, which is why people move there, certainly one of the reasons why I moved there. It's the apartment buildings that are going to bring all of the problems, but you all as I understand it, don't have the ability to say no to those, so I hate to see the good part, the part that will help vitalize the community, be voted down just because of problems which are going to be brought in by something that you all can't control. And when we talk about problems with the parking, if we are going to get the apartments, the parking that is set aside for the apartments isn't going to meet the needs of the apartments and so what we need is we need other parking facilities which come from the hotel and which come from the office building. When you talk about the traffic problems, about the time all this development gets done we are going to be in the throws of the development of Sam Furr Road and that's going to cause horrendous problems as I see it. When they do away with the left-turn lanes and things like that, people aren't going to be able to go out of Birkdale Village. If that's the case, then turn left onto Sam Furr, so we are going to have traffic problems that are presented by issues beyond what's your control unless you all get some say so in how Sam Furr Road is developed. And so I hate to see us lose the benefits of the taxes that hotels will bring into the city, the taxes that office building and offices and businesses will bring into the city. We're stuck with the problems because of the apartments that come in, so I definitely think that we need to consider these and that Huntersville needs to move forward not backward and that we say yes to the development.

Taylor Judge, 17222 Calverton Road, said I have felt very incredibly lucky to be a homeowner right next to Birkdale Village. Since being a homeowner in the area I've seen the equity of my home almost double and that's only about 2-1/2 years. I believe the updates in Birkdale Village have played a big part in that. I'm here to say that I'm in favor of the updates NAP has planned. My peers who live in Charlotte are dying to move to the area. They are attracted to the high-end restaurants, the shopping, and the events. I'm also the Social Chair of my neighborhood and my role is to bring neighbors together and create a better quality of life for those who live in my community, and I think that the changes in Birkdale so far and the ones they have planned are doing the same thing. I'm in favor of change in general, especially if it's going to increase my quality of life.

Lesley Williams said I live in The Cape in Huntersville. It's about 10 minutes from Birkdale. I've been a resident of Huntersville for over 15 years. I'm here this evening because like many of my friends and neighbors, we were delighted to read towards the end of last year that tired old Birkdale was the subject of huge investment and remodeling. Like many others, we were confident our Town representatives were in favor. Birkdale is a unique amenity and a gem, and like all good gems it needs polishing to be its best. Investment in improvement were long overdue. However, we are now equally dismayed to hear that the investment and remodeling is now being progressively scaled back, not by the developer's choice, but due in part to negative pressure from a vocal minority. I'm here not because I don't have anything better to do this evening, but because I felt the necessity to try and balance the voices you are hearing from. Thanks to this investment finally we have public restrooms and baby changing facilities, a proper green where we can sit and enjoy local artists and events, kid size tables and chairs where they can enjoy their ice cream without sitting on a bench where their feet don't even touch the ground. Reduced street parking means less traffic in the center which makes it safer for pedestrians and families with children. Cars in a community development like Birkdale belong in a parking deck. We are excited by an influx of different and exciting tenants, better aesthetics, landscaping and more. Finally, we hear of new tenants choosing south Lake Norman instead of always reading about Southpark, South End. But to attract those good tenants and keep them here, the commercial environment must support them.

That means when the apartment tenants are out during the day, office tenants pick up their coffee from Starbucks, frequent the restaurants, hold business lunches, run errands for that birthday gift. The local employment and revenue that stands to be generated by these improvements are significant. Property taxes, sales taxes, which directly or indirectly will benefit all Huntersville residents, whether they are put into our classrooms, road improvements, sidewalks, greenways or parks, it would be hugely disrespectful to all Huntersville residents if these jobs and taxes go to another town or are lost all together. This is an existing real estate. The debate over improvements should be much less controversial. Thanks to the attention brought to Birkdale this is now on many Huntersville residents' radar and this administration's report card. To the average Huntersville resident, including myself, I'm not educated on which department is responsible for the vote on this particular application. We look to you all as collective representatives to work together for the best outcome for all of Huntersville residents.

Chanda Pope, 16846 Bridgeton Lane, said I also have another property at 9936 Rio Street in Huntersville. I've been in Huntersville for 15 years and I thank you for taking the time to listen to us tonight. Like all of you, I was excited, that's why I moved to Huntersville over 15 years ago. I think it's great. I thought they were going to do like the movie theatre that really needs an upgrade. It's bad, right, which I found out NAP doesn't own the movie theatre. They don't own that building, not at all. They don't own some of the other buildings in Birkdale either. Are they just going to let them sit, look brown and just sit there. They are not going to make them change to make an aesthetic like the charming Birkdale that it was. Birkdale didn't need NAP. NAP needed Birkdale. Shops were full. It was already crazy busy. Traffic on 73, yes. It's crazy. I was there at 2:30 p.m. today and 73 was already backed up. I was here this morning taking pictures....10:30 this morning. This looks like a craft project from 101 elementary grade school. We have buildings that are painted blue. We have brown buildings with white buildings. They own these buildings, but they haven't taken the time to paint them. What are they waiting for. Why is Williams Sonoma just sitting there. They own that building. Why haven't they painted it. It's been 7 months. They said that there's a permit. What about the water feature. I don't see a permit in the public record on here. It says no permit is holding. And that's what they said, the fountain is not done yet, but there's no permit in the public record here that states that they are waiting for it to be fixed. What about the other buildings they said last time they said we are waiting for permits. I can only find one permit for one person coming in. I pay taxes on two properties in Huntersville. I moved here because I love it. I'm a small business owner. I support small business. If I want to go to L'Occitane and Cartier, I can drive to Southpark. I can fly to Italy. I can afford that stuff. I don't want that. And I don't think everyone else does either. That's what's so cute, it's charming, aesthetic, all the places around Huntersville are adorable houses cute set up beautiful places. Why do we want to be the next Avalon in Alpharetta, Georgia. Have you looked at some of NAP's properties that they have done. They said that they build in thriving.....

Sheila Wilson, 8148 Evanston Falls, said I am a homeowner in The Greens at Birkdale Village. I'm here tonight in support of the continued development of Birkdale Village. I don't want this area to be passed by. I want to see continued growth and prosperity. I want my property value to continue to be strengthened and sustained by the vitality and viability of the village. I am a superuser of the village space – retail, restaurants, services, events. I have skated on the ice rink, I've sampled local restaurants at last fall's charity event. I cheered for Santa lighting the tree, enjoyed many summer evenings listening to bands under the oaks and everyday my dogs lead me directly to the concierge's desk where Jade and Jamie wait for us with treats. They know us by name, me and the dogs. We saw what happened when the previous village owners didn't put time and money into maintaining. We now have a company that has increased the usability and enjoyment factor for everyone, whether they are spending money in the village or not. The green space by the stage is packed with families and little kids

playing, folks just enjoying the sun or watching the game on the big screen. I lead economic development programs across the country for a Fortune 10 company as a government affairs director. I see firsthand the impacts of money invested in communities. Why on earth are we making it so hard to do in our own backyard. I look forward to seeing the village continue to evolve and would certainly hope this Board would support those efforts. The little development that time forgot is not a good look for the village and it's not a good look for Huntersville.

Errol Genois, 8537 Camberly Road, said please vote against rezoning the Greens at Birkdale Village. I appeal to the Huntersville Town Board and the Mayor to agree with the recommendation of your Planning Board to deny the rezoning request for 8.2 acres from Townley to Lindholm to build a 110' office building and a 70' parking garage and any other tall buildings in the future that Superman will have a hard time leaping over. Please examine the legitimacy of the compelling evidence that begs for the survival of the village. One, acknowledge the real facts that infer and imply the need to reject rezoning and two, "do unto others as you would have them do unto you" www.thefencepost.com. Whoever realistically heard of a village that required a looming office building and a parking deck. Is there a silent intention that the village homes will disappear unless the councilwomen, the councilmen and the Mayor vote against rezoning.

Suzanne Villar, 17130 Bridgeton Lane (Merlin Villar deferred his 3 minutes), said as the Town Council considers North American Properties latest rezoning request, I am asking you to support the Planning Board's recommendation that this petition is inconsistent with multiple 2040 policies, is not reasonable or in the public interest, substantially exceeds the maximum heights for urban workplace and storefront buildings and is not in the spirit of the regulations. The Planning Board's reasoning certainly reflects the conclusions of so many who live in, near or frequent Birkdale to shop, eat and recreate. We've witnessed firsthand the carnage NAP has already wreaked on traffic, parking and aesthetics. Consequently, I'm here again tonight to encourage the Town Council to deny NAP's petition. In early 2022 North American Properties began construction of multiple projects scheduled to be completed by last Memorial Day weekend. Two of their jewel box structures and the fountain feature remain incomplete, essentially abandoned and poorly secured and have been in this condition for a full six months. NAP's lack of commitment to completing their projects or provide for the basic safety of their guests shows clearly in these photos. This morning like all sunny mornings, the plaza was filled with families with small children. In the top photo by actual count there were more than 36 toddlers within baby steps of the open abandoned and unsecured fountain pit which still contains water from last week's rain. Meanwhile, formerly thriving businesses are replaced by empty storefronts. The first two kiosk tenants Back on Main and Cosmo Gypsy, vacated their spaces without announcement last week after less than 9 months of occupancy. There are now far more vacancies in the Village than there ever were before North American Properties took over. This is not a sign of a vital development. This situation represents a serious disservice to the town and its residents. And now NAP wants rezoning approval to start even larger and more ambitious projects before the originally permitted projects are anywhere near completion. As you know, NAP is asking to build a 110' Class A office building which will clearly dwarf every other structure in the village. They also want you to approve a start time extension from the standard 2 years to 5 years. NAP's explanation for needing the extra time is that they can't get financing until the rezoning is approved and they can't solicit tenants until they get financing. Many of us dispute the need for additional Class A office space, especially in Birkdale Village, but for the sake of argument let's imagine that there is demand for Class A space as NAP and their paid consultants claim. If that were true, corporations and realtors would already be trying to reserve space with NAP, but that clearly is not happening and NAP is demonstrating a lack of confidence in their own ability to attract tenants hence the request for the seriously protracted 5-year start date. Further, Class A office space that NAP is proposing is not targeted at local businesses. As the rates for rent and TICAN meaning taxes

insurance common area maintenance fees would be far out of reach for local businesses and would be better targeted toward larger entities who can afford urban office space. If a financial analysis of the vision of Birkdale with the original zoning limitations did not suit North American Properties.....excuse me, one of our commissioners has left the dais, can we interrupt my time until he returns.

Anthony Roberts said he may have went to the restroom.

Mayor Bales said I would say continue, please.

Ms. Villar said noted, thank you. If a financial analysis of North American Properties vision of Birkdale with the original zoning limitations did not suit NAP's business model, they should not have bought into Birkdale Village in the first place. For while NAP certainly has a right to request rezoning, they have no right to expect that it will be granted. Lack of due diligence and poor financial planning on NAP's part does not create an obligation for the Town of Huntersville or the taxpayers to subsidize North American Properties' bottom-line by granting them rezoning that is so out of character for the village. Once again, I ask you to deny this rezoning request.

Brian Rice, 17232 Bridgeton Lane (Shannon Rice deferred her 3 minutes), said before I get started, I request that my time doesn't start until the commissioner comes back. *Note: Commissioner Munger stepped away from dais at 6:24 p.m. and returned at 6:27 p.m.*

Mayor Bales said I'll defer to you.

Emily Sloop, Town Attorney, said he will receive the minutes which will have your comments included in them.

Mr. Rice said duly noted, thank you.

Mr. Rice said Brian Rice, 17232 Bridgeton Lane, Huntersville. Mayor and Commissioners, here we are again. My message is the same, please say no to this proposal for the Birkdale Village redevelopment. However, I would like to point out a few additional reasons to say no to this proposal as is and at this juncture. During the Planning Board meeting last week both the Planning Staff and Planning Board recommended a denial of this proposal. Although there are discretions about a technicality and it's a good project, the fact is that both groups recommended denial. That's two other groups in the Town besides some of the citizens you see here and those that have signed our petition, over 1,625 that say no. Please consider these facts. Furthermore, I believe the Town was presented with the latest NCDOT plan for improving Sam Furr Road. I believe this proposal makes the no decision even more clear. From last week's meeting, NAP.....excuse me, I'm glad I have extra time, in the proposal NCDOT are proposing more right turns and less left turns out of the development. This was apparently based on their simulation that took only one day Tuesday, April 5, 2022 as a data point. They did their whole simulation based on one day. I'm not sure that tells the entire story, but that's kind of out of our control as others have said. What is in our controls are common sense. Just imagine the affect that this has on traffic into and out of Birkdale Village.....only Lindholm and turn left, with the closure of the traffic circle. This means that this can mess traffic up all the way back to the movie theatre on Cranleigh and that's how it was on Saturday when I was trying to leave. As for Birkdale Village Commons Parkway, NCDOT proposes a right turn, so Birkdale Village Commons a right turn that will have the impact of pushing traffic further west on Sam Furr as drivers try to find a less congested u-turn spot. Of course, the safety of u-turns is well documented. In fact, that's why roundabouts or traffic circles are the more popular traffic alternative. As mentioned by Suzanne from the last meeting, NAP does not currently

have any potential leads to fill up that one thing that they have left, this office building or this office space. Like Suzanne said, according to NAP they can't get the funding until they get the building 50 percent preleased and they can't get it preleased without the zoning and they are asking for 5 years instead of 2 years to get this done. If this is the case, why not wait for Phase 1 to complete. That's what most people have been talking about already....the sausage company that's coming, the beer garden and the Cheesecake Factory. Why not just wait for that and see how it goes. Remind us how great the water feature is. I want to mention they call it a water feature. When we were at Pier One a few years ago we said is that a splash pad, because our kids love to run around in a splash pad. Tim Perry from NAP said well, it's a water feature. So is it a water feature, is it a splash pad, are kids going to be able to play in it or not, I don't know. Again, let's wait. We can say no. The Board can say no. NAP will come back. You're not missing out on anything. They can come back with a new plan, a new proposal and in that time as residents of Birkdale and Birkdale Village, we can see how great the sausage company is, we can see how great the new beer garden is. We can see how great the water feature is. We can see how that impacts our tax revenue, because that's what it's all about, right. It's all about generating more tax revenue. And you know what, maybe we can generate the tax revenue without the office space. As far as the traffic, having an office space won't that just make traffic worse for us and for all of us that live at the Greens at Birkdale Village whether you are in Huntersville or you're in Cornelius. It's the only two ways we have to get out. That's it. We can't get out any other way. If you are going to put more office buildings or office space and you have less parking, you have more traffic. How are we going to get out. With these points the denial recommendation by the staff and the board and the NCDOT plan, rezoning Birkdale to accommodate more traffic will only serve to drive less guests to the property and thereby lowering tax revenue that was and still can be the crown jewel of Huntersville, so please deny this request, have them finish what they started so we can see how this impacts our tax revenue and let NAP come back with a proposal that meets current zoning guidelines. As a citizen of Huntersville that has more than most to gain by improved development in Birkdale Village. I live 200 yards away. This is not the right development and it's not the right time for this development.

Peter Romaniello, 15821 Trenton Place Drive (Christine Romaniello deferred her 3 minutes), said I have given copies of drawings to the Town Clerk for each one of you. *Refer to Exhibit No. 2.* You've all heard our comments and concerns about traffic, parking and aesthetics over the past several months. In researching this further, I'm of the strong opinion that the proposal from North American Properties R22-01 does not align with the specific guidelines and standards that were established in the Town of Huntersville 2040 Community Plan. As quoted from the plan, the 2040 Community Plan is meant to establish a framework for growth and development while maintaining the character of livability of the Town that Huntersville residents hold so dear. The proposed 110' tall Class A office building does not maintain the character of the town nor the area where it would be located. Through its previous alterations to Birkdale Village, NAP has not demonstrated the ability to use aesthetic awareness and there is no evidence that the proposed building will be designed with proper aesthetics in mind. On Page 64 of the plan, yeah I read all of it, it states that Birkdale Village provides "an example of a mixed-use center that was designed according to form based design principles." There is no indication that NAP's proposed office building will follow the same form based design principles. They have presented representative images to you, but have also stated in Town meetings they cannot be used to show exactly what the building will look like. I've taken it upon myself to create scaled images of the building that are far more precise and accurate than what NAP has provided. To note, I am a professional architectural lighting designer and an owner of Conceptual Lighting. We are well trained and proficient in doing renderings like this. As you can see from the renderings, which I'll hold up, and again you have copies of them, we have removed the inaccurate representation from the original design that included a hotel and an apartment building which were removed a couple of months ago. In doing so you can clearly see how out of place the building feels in comparison to its surrounding environment. In the next

two renderings you can see an accurate, scaled representative of the office building rendering that NAP continues to promote on the lefthand side in place of the Barnes and Noble building. First building provided by NAP is only an 80' tall building. Not 110'. We have shown that 80' tall building and then highlighted where the top of the building would actually sit in green at 110'. That is not what they are representing on their proposal. Some of us have been noting that the 110' building is 2.4 times the height of the tallest building in Birkdale Village. While that is correct, the reality is that the Barnes and Noble building is only 30' tall and so it would actually be a building that is 3.6 times the existing structure. I am hammering this point home because we have been lulled into the notion that 110' is totally normal and fitting because it is still less than the originally proposed 145' building, but as you can see it is still too tall and out of place. A much better solution would be two 60' tall buildings flanking Lindholm Drive with 50' parking decks behind both, but that's not what's being proposed. In the Appendix A16 to the 2040 Plan, the images that got the most votes for pictures that were representative of the areas that embraced the look and qualities of mixed-use areas were Baxter Village and Blakeney. Neither of them have large scale Class A office spaces. They have a look that is consistent with the village approach to the current design of Birkdale Village. Adding 110' tall all glass structure would not be in keeping with the clearly expressed views of the respondents to that survey. There is a distinct difference between need and appropriateness. And while we might all agree that there's a justified need for Class A office space in Huntersville, the location at the entrance to Birkdale Village is not appropriate. With regards to traffic, the NCDOT has done an incomplete study that alleged that there was no need to address additional traffic concerns with regards to the proposal. Regardless of that study it does not take a rocket scientist to know that you have an additional 400 cars entering Birkdale Village during morning rush hour and those same cars exiting Birkdale Village during afternoon rush hour. It will absolutely cause traffic problems. I know that some of the commissioners on the dais campaigned on addressing traffic issues if elected. Does addressing mean that you will watch it get worse as a result of your actions. To date, you have had an overwhelming majority of your constituents emphatically stating that this project is not something they want or need. You have the Huntersville staff and the Planning Board recommending that the proposal is denied. Everything is pointing to the reasons why it should not be approved. On the other side, you have only the developer and its paid influencers at town meetings who are advocating for the proposal up until today. You have the 2040 Plan that almost all of you participated in the creation of and this proposal does not align with the clearly stated goals of that plan, so how can you approve it. You would be voting against the residents of Huntersville, the staff of Huntersville, the Planning Board and your own plan for Huntersville if you do. That would not seem like the action of elected officials who are expected to act on behalf of the residents.

David Schurr, 17142 Pennington Drive (Lisa Schurr deferred time), said having watched the last Town meeting online I was very impressed with the attention, excitement and scrutiny from the commissioners and mayor regarding the NC 73 widening project. It was apparent that parts of the presentation were personal and struck a nerve. I hope that we can generate some fervor in getting to the denial of the Birkdale Village proposed rezoning as well. So, let's get caught up. The Planning Staff found that the rezoning request was a significant increase in building height over the current zoning limit and is not in keeping with the spirit of the ordinance. Two, during the Planning meeting, NAP's hired expert explained that most of the Class A office space inventory was below 10,000 sq. ft. and that there was a gap from 12,000 to 30,000 sq. ft. Somehow this gap in supply was supposed to prove there was a demand. Lack of supply does not prove there is a demand. In fact, lack of supply suggests lack of demand. Let me speak from experience as I have actually relocated a business to a 30,000 sq. ft. Class A office location. Would you like to know how many square feet were actually occupied by offices.....4,000. There are not many businesses that are looking for 12,000 to 30,000 sq. ft. of office space alone. Our business, for example, needed lab and demonstration space, warehouse space, and

loading docks – both flush and drive-up. NAP's highrise does not offer any of these. Also shown was a slide titled people do want to live near and it included theatres, restaurants, coffee shops, public transportation, schools, grocery stores and museums. You know what wasn't on that list? Office buildings or office space. Their own expert didn't have that on there. Three, also during the Planning meeting here were some of the more pointed comments from the board. I feel like the people in the Town of Huntersville have said over and over again that they like three to four story buildings. Going this high goes against this and we are not listening. Another comment, I hate the height. It's going to look out of place. I feel like we put building and development before infrastructure all the time in this town and I don't know when someone is going to put a stop to it. It was mentioned that Birkdale Place will have a 91' tall building. Let me point out that Birkdale Place is a greenfield project, not as concentrated a site, and the 91' building also sits in a lower elevation. During public comments I had the opportunity to speak at the Planning meeting and presented the following very simple model. This is to scale and represents 110' with the middle pencil, and the other two pencils represent 48' and 36'. Does the middle pencil look like it fits in a world with the other two pencils. I think not. Ultimately the Planning Board voted 5-2 against recommendation of the rezoning. So now we still have some major open issues that have not been discussed. The traffic impact analysis has been based on exactly a one day study – April 5, 2022. Why not November 19, 2022. Oh yeah, that was the day of the Christmas parade and tree lighting. The point being, how valid can a one day study be. Two, is anyone going to vet the financial impact numbers provided by NAP. Can anyone explain the assumptions made. If the answer is no, then we certainly have not done our due diligence and this borders on betraying the public trust. Can anyone explain how NAP is going to erect the parking structure or the office building without any impact to Lindholm Drive or Townley Road. Townley had been closed for a few weeks now without a building being demoed. If Lindholm Drive happens to be impact, that would leave the Village precariously dependent upon one exit. If this were to happen, wouldn't this be a major safety issue. What is the plan? I've always been told come to a meeting with solutions. So one, vote to deny the rezoning. NAP will come back with another proposal. Two, let's get some actual discussion between NAP, commissioners and concerned citizens. Three, Commissioner Partee suggested creating an architectural review board. Brilliant. Prepare a traffic impact analysis based on an acceptable sample size. Vet the financial impacts provided by the applicant. And then let's get real about the risks and unintended consequences. I applaud Commissioner Kidwell for being so forth right about not foreseeing the unintended consequences of closing the Lindholm circle. Is there something that could be done in the plan to alleviate a negative impact already affecting some residents. Let's get started on the solution. Step one, vote to deny the current rezoning proposal. Thank you.

Nick O'Shaughnessy, 8217 Parkton Gate Drive, said now we have a third iteration of the rezoning, yet it's still a two dimensional site plan with a lot of text. This petitioner if he's serious why doesn't he.....he's had three attempts to make us happy and he hasn't made us realize that is he serious. This is presumably a multi-million dollar project. I can't recall the actual value that Susan Irvin stated. It was a lot of money. If you want to persuade people, you need to show them what it could look like in reality, not a picture of somebody else's product from another city in another state. They also included these pictures after the fact with an isometric sketch, which is a little tiny rendition of what I've built here. It's been a long time since I've built a model from my thesis. This model is to scale. It's 1" equals 3'.....eighth of an inch equals 3'. This is 110, this is 70. These are the apartment buildings and this is the ridgeline, not the easeline. Some of these are 30, this is 70, so all these guys are looking at a parking deck which is probably 10' to 15' away. There's got to be some separation by fire code. You've got very little daylight. You've got no sunlight. If I was living in one of those apartments and they built that parking deck in front of me, I would get out of my lease. I would just leave. You have just changed the whole terms of my lease. Same thing for these guys here. Class A office looking at a parking deck. Parking decks are not pretty. You can put little screens on them. Everybody knows what's behind that

thing. I wouldn't want to look at it and I would not pay Class A office rent to look at a parking deck. The two buildings here. I'm going to do the three D's. I've got three D's in my presentation. These are disproportionate sized buildings to the rest of Birkdale. This is just one quadrant of Birkdale. These are 30' and as Pete said, this is 110, which is 3.66 times the height. That's nearly four times the height of the original building that it's replacing. The scale is totally wrong. It's disproportionate. It's also disrespectful to the original traditional neighborhood design concept that was approved and then Birkdale was built from that design concept. That concept is based on human scale and small mass and texture, street front texture, shop fronts, small scale, not urban or suburban office park buildings. The disrespectful part of this proposal also extends to the office tenants, the residential tenants, of all those people that abut these buildings. The plastic surgeon who has the second floor office here. He's not going to have any daylight in his offices. I don't think he'll be real happy, because he's got a parking deck 15' from his windows. I don't know much they need natural daylight but I'm sure he needs to be able to see people properly so they can pay for their improvements.

The next issue I've got with NAP is the prolonged disruption to the quality of life. If you are going to take down a pre-stressed, pre-cast concrete structure only two stories high. How to you do that. When you break the rebar in a pre-stressed concrete slab or a beam, it literally explodes, so you are going to have some screening to stop huge chunks of concrete flying into the apartments or the office windows. Those people are going to get really p'd off. I'm going to try to keep my language nice here. I know you have called me on it before. I can foresee major rent abatements, business closures and lawsuits to be honest with you, just building the parking deck and it's NAP's choice to go build the parking deck first. How the heck do you get precast concrete beams which are probably 50' in length into that space after you have demolished the deck. With a crane? So, you are going to put a tower crane in here and you are going to use all the parking lot in front of Barnes and Noble so Chase Bank and Chiptole don't have any parking because that's the scale.....so the crane is going to lift all the beams into that. That's very expensive because a semi 60' long cannot turn and get into the alley. So, the logistics of them building this is really debatable. They haven't demonstrated as previous speakers have said, they have not demonstrated to this point in time that they can even effectively deal with small contracts. We've got the splash pad or whatever they want to call it, we've got construction contracts, we've got unfinished buildings and we've got upfits which seem to be taking a lot longer than an upfit would normally take. Why would anybody think if they can't finish two little buildings for permitting purposes Mecklenburg County Building Standards has a 24 hour fast-track permitting process. They would get a permit in 24 hours.

Dawn Snow, 8132 Evanston Falls Road, (Thomas Wright deferred time), said first of all I would like to say this is not about being against development, tax revenue or growth, but it's about doing it with the right components, the right players and a well thought out plan. The first phase of the Birkdale Village redevelopment has resulted in several negative affects that are evident today. In reviewing the Staff Report in the past meetings for this project it appears that it was rubberstamped up to the Board without a thorough analysis or plan as not a single issue with the 2040 Plan was identified and none of the negative aspects of this project were considered or planned for. Some of these negative effects have included the non-conforming and unfinished kiosk cluttering the open space which has taken away from the character and charm. Just look at the big blue box when you come into the Village. The removal of the 78 parking spaces along with the increased traffic that has resulted in people using our neighborhood for parking and blocking our streets, the valet which is a nice concept, it doesn't work well because people aren't willing to pay \$12 to park. And lastly, one of the most harmful affects was the abandonment of half of the Lindholm roundabout which provided connectivity which is a core concept of a Traditional Neighborhood Development. Removing it deprived our residents and guests of one of our two primary means of egress out of the neighborhood, which we enjoyed for 20 years. It's

kind of ironic and non-sensical to take away such an important roundabout without considering the negative affects when the Town is building them all over the place and promoting them. While half of the roundabout for egress was removed the other half remains which has the unwanted affect of driving people searching for parking spaces into our neighborhood. It also increases traffic on our narrow streets since drivers can no longer go around in a full circle. This clearly does not support a 2040 policy of improving connectivity. I am not blaming the Board for this as it was a new board at the time who relied upon the Planning Board and the staff recommendations. But the Planning staff and the Board have recognized the negative affects of this much larger and even more impactful R22-01 rezoning and as such are now recommending denial based on the following 2040 policies. The first one is LU-5.1 which says allow for more intense development only where transportation infrastructure already exists. With the current NC 73 improvements we know that NCDOT always kicks the can down the road. They are infamous for that, just look at what they did with Catawba when they kicked the can down the road just recently and they are going to do it again with 73. When combined with the under construction development across the street known as Birkdale Place, the additional buildings and their proposed uses will create a parking and traffic nightmare. Why approve this and worsen an already chronic infrastructure situation. The second policy, LU-11 says the unique character of Huntersville's neighborhoods must be protected from the negative impacts of redevelopment and building mass and scale should be respected in relation to existing buildings. A max building height of 48' was put into place to be in compliance with our Neo-traditional Pedestrian Oriented Development standards and to create a friendly, human scale that is akin to the character of a village. Both scale and architecture have to be right to maintain character, but the sheer size and mass alone of the proposed 110' office building/conference center is 3.6 times taller than the Barnes and Noble and 2-1/2 times the height of the tallest building and it will destroy the remaining aesthetics and ambience of the village. It will be completely out of context and scale. Additionally, there has been no real evidence presented to justify the need for this massive Class A office building, nor the necessity of installing it at Birkdale Village. But the real reason is pretty clear. If you approve the office building, which is largest and most egregious component of the original proposal then you have no grounds to reject any further rezoning requests for NAP's hotel and apartments, which according to NAP has just been tabled for now. Furthermore, why would the Town even consider further damaging our neighborhood when there is duplication of everything NAP wants right across the street. The last policy is blend new development with existing neighborhoods. NAP has previously stated that their building's architecture is more of a buffer addressing the NC 73 highway corridor rather than being complimentary to the village. This is blatantly obvious in the bland suburban examples that they have shown in their presentations. And the Warby Parker store design does not demonstrate any effort to blend in. In closing, the Town relies upon the recommendations of the Planning Board and the Planning Board in turn relies upon the recommendations of the Planning staff and each needs to trust that due diligence has been done. Let's not make the same mistake that was made with the Lindholm right-of-way by approving this much larger rezoning when there are significant inconsistencies with the 2040 Plan policies and when it's not in the spirit of the regulations as noted by the Planning staff and the Planning Board. Please follow the Planning Board recommendation and deny this proposed rezoning.

Susan Irvin, 19726 Zion Avenue, Cornelius (Robert Irvin deferred his time), said as you all know I am the legal representative for North American Properties. I want to talk briefly about the process because really I think the main thing about the process is that we were given an option. The only option that North American Properties had where they could collaborate with the Town leaders to come up with a design that the Town leaders found was compatible with Birkdale architecture and for the town. We were asked at the Planning Board to drill down into the design of the architecture and to come up with a design that was compatible and that the Town felt was compatible. Under the Special Use Permit process, which we had agreed to follow along with the zoning from the beginning, we received a legal

determination from the Town that we could not speak with Town leaders as long as that process was pending, and we wanted to get the input on the Town leaders as we went through this design. The legal determination was that was our only option and that this project could be approved using the conditional zoning process and I agree the conditional zoning process is very flexible and allows for collaboration between the parties. For instance, if there were an ARB going through the conditional zoning process we could have made use of that ARB. We could not do it as a part of the Special Use Permit process, so we made that choice. Later in the Planning Board meeting, Planning staff preferred that we would have gone through the Special Use Permit process. I think we made the right decision to try to get a collaborative result. I think the design that we have is beautiful and it is articulated brick. North American Properties' architect spent about a month designing that building based on input from the Town leaders and it has great detail, much more than you would normally have in zoning. The result was good. I think everyone agreed that the project was good. I'm going to kind of go off script here and just kind of speak from the heart and say how amazed I am at the people who are here in favor of this project. I've been a zoning attorney for 39 years. People don't come out to the Town Board if they are in favor, they just don't. They read about it in the paper and they say well this is great.....there's going to be a parking garage. I can go there on the weekend. I can park for free on a 450 additional spaces. There's Class A office that are going to help the businesses in Birkdale. I don't have a problem with this. And so then they won't come. They have no reason to come. They don't write the Town Board. It's very rare to have people actually come out in favor and I really respect the people that are here because I know that it has been a hard road for you if you make objections to some of the comments that have been made. I do agree with Ms. Williams who spoke earlier that there is a very large constituency in Huntersville who like her feels like this is a great project. They love what has happened in Birkdale. We've been going to Birkdale since 2001 and we stopped going when it started failing. It was kind of like a ghost town. And we love what is going on there. I love Warby Parker and Beck Bags. I'm sorry that they didn't stay beyond their 3-month term but I understand and I hope that they will come back if there's an office building there, because I think having people during the weekday will help those businesses. This has been a difficult process but I hope that more people will come out and tell the Board how they feel, that they are in favor of the process because I do think that at this point that is the most important thing, sending emails and coming to the Town Board meetings.

AGENDA CHANGES/ADOPTION OF AGENDA

Commissioner Phillips made a motion to adopt the agenda.

Commissioner Munger seconded motion.

Motion carried unanimously.

Mayor Bales called for a 2-minute recess.

The Board reconvened.

CONSENT AGENDA

Property Tax Refund Report. Commissioner Phillips made a motion to approve property tax refund report from Mecklenburg County. Commissioner Kidwell seconded motion. Motion carried unanimously.

Property Tax Refund Report attached hereto as Exhibit No. 3.

Budget Amendment – Parks & Recreation. Commissioner Phillips made a motion to approve budget amendment appropriating \$1,400 from Sponsorship Revenue to Non-capitalized Expense for the 14 Peace Poles, including supplies. Commissioner Kidwell seconded motion. Motion carried unanimously.

Peace Pole Artwork. Each individual school that is participating in the Public Art Peace Pole project has submitted their design for the project. The Public Art Commission approved the designs on March 1, 2023.

Commissioner Phillips made a motion to approve the artwork submitted by individual schools for the Peace Pole public art project. Commissioner Kidwell seconded motion. Motion carried unanimously.

Artwork attached hereto as Exhibit No. 4.

Resolution – Opioid Supplemental Agreement. Commissioner Phillips made a motion to adopt Resolution to approve Opioid Supplemental Agreement. Commissioner Kidwell seconded motion. Motion carried unanimously.

Resolution attached hereto as Exhibit No. 5.

Resolution – Patterson Road Construction Contract. On December 20, 2022, informal bids were received by three qualified contractors to complete the final phase of the Patterson Road North Project. This Project includes the necessary roadway construction items to complete the connection of Patterson Road to Vanstory Drive in The Park Huntersville. The lowest bid received was Country Boy Landscaping, Inc. with a bid of \$498,506.35.

Commissioner Phillips made a motion to adopt Resolution to award Patterson Road Final Construction Contract. Commissioner Kidwell seconded motion. Motion carried unanimously.

Resolution attached hereto as Exhibit No. 6.

Call for Public Hearing – Petition #R22-07. Commissioner Phillips made a motion to call a public hearing for Monday, April 3, 2023 at 6:00 p.m. at Huntersville Town Hall on Petition #R22-07 Town 1 Mixed Use Center, a request by Treenail Development, Inc. to rezone +/- 69.41 acres located at the intersection of Mt. Holly-Huntersville Road and Hambright Road (Parcel #s 01721101, 01721102, 01721103, 01721104, 01721105, 0171106, 01721107, 01721108, 01721109) from Corporate Business and Corporate Business Conditional District to Transit Oriented Development Residential Conditional District, Highway Commercial Conditional District, and Special Purpose Conditional District.

Commissioner Kidwell seconded motion.

Motion carried unanimously.

Call for Public Hearing – Petition #TA22-11. Commissioner Phillips made a motion to call a public hearing for Monday, April 3, 2023 at 6:00 p.m. at Huntersville Town Hall on Petition #TA22-11, a request by the Huntersville Planning Department for a text amendment to the Zoning Ordinance to amend Article 10 Signs to increase flexibility of sign regulations and codify current practices.

Commissioner Kidwell seconded motion.

Motion carried unanimously.

Call for Public Hearing – Petition #TA23-02. Commissioner Phillips made a motion to call a public hearing for Monday, April 3, 2023 at 6:00 p.m. at Huntersville Town Hall on Petition #TA23-02, a request by the Huntersville Planning Department for a text amendment to: 1) Article 14.2.3, Traffic Impact Analysis, Applicability to remove a reference to the Subdivision Ordinance that no longer applies to sketch plan reviews per the approved amendment TA22-05 making the major subdivision review process administrative; 2) Articles 11.8 and 14.4.4 of the Zoning Ordinance to amend requirements for the withdrawal of amendment petitions; 3) Section 6.320 of the Subdivision Ordinance and Article 14.4.3 of the Zoning Ordinance to amend community meeting notification requirements for sketch plan and conditional zoning applications.

Commissioner Kidwell seconded motion.

Motion carried unanimously.

Call for Public Hearing – 2023 Downtown Master Plan. Commissioner Phillips made a motion to call a public hearing for Monday, April 3, 2023 at 6:00 p.m. at Huntersville Town Hall to receive public comments on the 2023 Downtown Master Plan.

Commissioner Kidwell seconded motion.

Motion carried unanimously.

PUBLIC HEARINGS

None

OTHER BUSINESS

Filing Fees for 2023 Election. It was the general consensus of the Board that the filing fees need to be increased.

Commissioner Kidwell made a motion to set the filing fees for Town of Huntersville at \$25 for Board of Commissioners and \$50 for Mayor.

Commissioner Kovacs seconded motion.

Commissioner Munger made a substitute motion to set the filing fee for Commissioner at \$40 and \$80 for Mayor.

Commissioner Kovacs seconded motion.

Mayor Bales called for the vote on the substitute motion to set the filing fees at \$80 for Mayor and \$40 for Board of Commissioners.

Motion failed 2 to 4 (Commissioners Munger and Kovacs in favor; Commissioners Boone, Partee, Kidwell and Phillips opposed).

Mayor Bales called for the vote on the original motion to set the filing fees at \$50 for Mayor and \$25 for Board of Commissioners.

Motion carried 5-1, with Commissioner Boone opposed.

FY24 Goals. Anthony Roberts, Town Manager, noted that the Town of Huntersville FY 2024 Goals were presented at the Town Board Retreat in January. The Board decided to put the goals in eight “buckets” – Land Use Development/Planning, Finance, Public Safety, Transportation Infrastructure, Parks & Recreation/Greenways, Housing, Sustainability/Natural Resources/Environment, and Facilities/Asset Management.

Commissioner Partee made a motion to accept the goals as written and presented by the Town Manager.

Commissioner Boone seconded motion.

Commissioner Phillips made a substitute motion to approve the Town goals, but under Facilities/Asset Management, remove the goal “Decide on location and move forward with a contract regarding Town Hall,” since the location has already been decided.

Mayor Bales said there is a motion to remove under Facility Asset Management, decide on a location and move forward with a contract regarding town hall.

Commissioner Phillips said yes, or Commissioner Partee could amend his motion to include that, if that’s okay.

Commissioner Partee said my motion is amended.

Commissioner Boone seconded amended motion.

Mayor Bales called for the vote on the amended motion with that removal under Facilities/Asset Management.

Motion carried unanimously.

MAYOR AND COMMISSIONER REPORTS/CLOSING COMMENTS

Commissioner Phillips

- Provided update from Visit Lake Norman.

Commissioner Boone

- Huntersville Fire Department is turning 100 years old this year and they will be designing a t-shirt to sell for a fundraiser.

Commissioner Kovacs

- Provided update from the Lake Norman Chamber of Commerce.

Commissioner Kidwell

- Provided update from the Charlotte Regional Transportation Planning Organization.

Commissioner Partee

- Expressed appreciation to Chief Hoyle for his service to Huntersville and congratulated Major Graham on his promotion.
- Advocate for gun safety. Huntersville Police Department has free gun safety locks.
- Advocate for Cool Kids Clubhouse.

Commissioner Munger

- The North Carolina Department of Environmental Quality will hold a public hearing on Colonial Pipeline's wastewater treatment plant permit application on March 16. Noted that if Mayor and Commissioner Reports were at the beginning of the meeting, more people would have been present to hear that announcement.
- The Huntersville Ordinances Advisory Board met on March 3, 2023.
- The Public Arts Commission met on March 1, 2023.
- Consider supporting local non-profits.

Mayor Bales

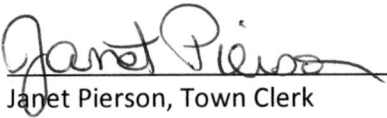
- CATS Micro Transit public meeting is tomorrow. It's my understanding they are looking to replace the Village Rider with micro transit.
- Encouraged everyone to register for the Mayor's Fitness Challenge.

Commissioner Kovacs noted the Buzz City Robotics from David B. Waymer Center traveled to Asheville over the weekend and brought home the District Championship title. Their next First Robotics competition will be on March 18 at the Mecklenburg County Convention Center.

Commissioner Kidwell recommended parents look into the student surveys that CMS and area charter schools will be administering to decide if you want your children to be a part of it. One is a climate survey for Grades 5-12 and a Social Emotional Learning survey for Grades 3-12. They are non-academic surveys that do not affect grades.

There being no further business, the meeting was adjourned.

Approved this the 3rd day of April 2023.


Janet Pierson, Town Clerk

Architectural Review Board

Huntersville Form Based Code (1996): Does not focus on separation of land uses; focus on the relationship of the building façade to the public realm and the form and mass of buildings to one another.

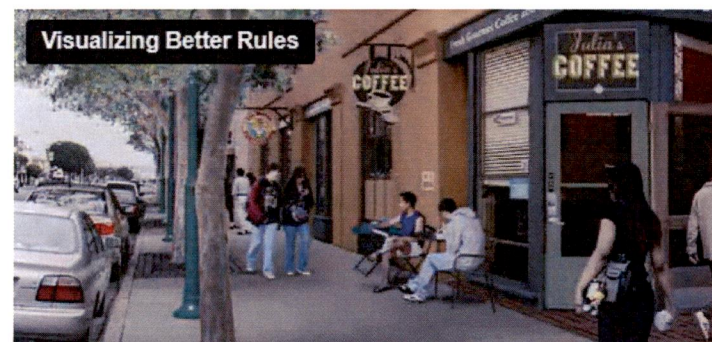
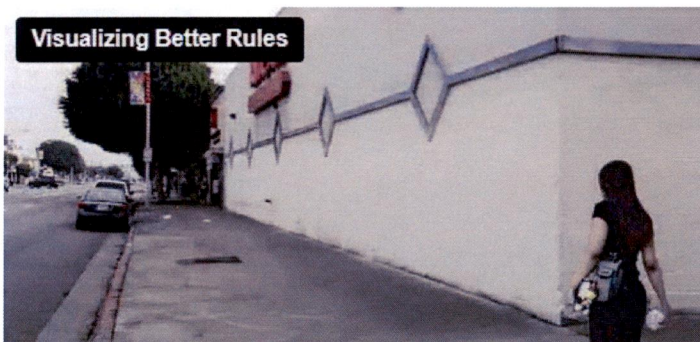
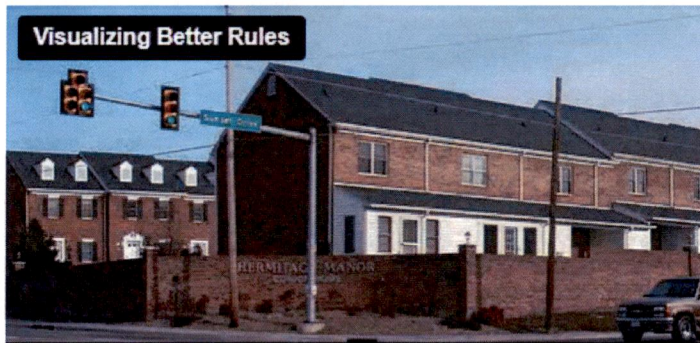


Exhibit No. 1

A Few Thoughts on Community Appearance and Design Controls

Published: 05/17/13

Author Name: Richard Ducker

CAUTION

 Print

Two of the most relevant excerpts from the blog state:

Third, it is probably unwise to establish a design review board or similar organization to administer appearance standards or design controls that apply to properties other than historic properties. Boards of this type are generally established in order to exercise permitting authority and discretion in the process of approving development projects. But this can be a legal problem in circumstances where there is no express enabling authority for the board to make such decisions. Community appearance commissions (see G.S. 160A-452) have been authorized for decades, but they are not allowed to make final decisions regarding permits and approvals. Indeed, the court in the *Jones* case warned that “(w)e feel compelled to caution local legislative bodies charged with the responsibility for and the exercise of the police power in the promulgation of regulations based solely upon aesthetic considerations that this is a matter which should not be delegated by them to subordinate groups or organizations which are not authorized to exercise the police power by the General Assembly.” (305 N.C. at 531). This delegation-of-power problem is potent in part because the role North Carolina historic preservation commissions play in issuing certificates of appropriateness is spelled out in the general statutes in considerable detail.

Fourth, appearance standards and design controls that apply to properties that are not parts of historic preservation efforts need to be concrete and specific. Regulation of appearance and design is plagued by the perceived notion that those regulated are subject to the whims and arbitrariness of regulators with wide-ranging discretion and that decisions are based on highly subjective notions of good taste and beauty. Making standards specific and spelling them out in an ordinance is one way to curtail the risk of arbitrariness that comes with discretion. Doing so also provides some assurance that the standards will not be found to be impermissibly vague. Well-conceived standards can be administered by staff if they are concrete and specific enough.

160D-960 (previous 160A-452 as referenced in the blog) does still allow for the creation of a community appearance commission. However, the enumerated powers and duties in that section are focused more so on the local government and public areas and some overlap with duties already assigned to HOAB and Planning Board.

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_160D/GS_160D-960.pdf

Existing Architectural Standards

- Building Materials
- Emphasis on human scale
- Relationship to other buildings
- Transparent windows
- Etc.

Article 4: Building Types

Principles.

- To perpetuate the unique building character of the town and its environs, and to re-establish its local identity, development shall generally employ building types that are sympathetic to the historic architectural vocabulary of the area in their massing and external materials.
- Building elevations fronting or visible from public streets shall be clad with masonry, wood, vinyl siding, stucco, or similar material. Decorative metal panels such as Aluminum Composite Material (ACM) panels may be used as an accent or trim material and as cladding for building accent elements such as column wraps, entablature, canopies, and their supporting structure. Decorative metal panel accents, however, may not exceed 30% of any façade visible from the street.
- The front elevations facing the street, and the overall massing shall communicate emphasis on the human scale and the pedestrian environment.
- Each building should be designed to form part of a larger composition of the area in which it is situated. Adjacent buildings should thus be of similar scale, height, and configuration.
- Shopfront Building Architectural Standards Principles A-D shall not apply to the residential portion of development on parcels where multifamily structures are an allowable use and the development contains two or more affordable housing units for families or individuals with incomes below eighty percent (80%) of the area median income.
- Trailers (mobile units) may not be used as permanent shopfront buildings.

Configurations.

- Two wall materials may be combined horizontally on one facade. The "heavier" material should be below and can cover the first floor only (i.e. brick below wood siding).
- Street level windows should be untinged. Tinted glass with a minimum visual transmittance factor of 35 is permitted. Mirrored or reflective glass is not permitted in any location.
- Windows shall be of square or vertical proportion. Special windows may be circular or regular polygons.

Techniques.

- Windows should be set to the inside of the building face wall.
- All rooftop equipment shall be enclosed in a building material that matches the structure or is visually compatible with the structure.

(d) **General Requirements.**

- (1) Along existing streets, new buildings shall respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings.
 - a. New buildings which adhere to the scale, massing, volume, spacing, and setback of existing buildings along fronting streets exhibit demonstrable compatibility.
 - b. New buildings which exceed the scale and volume of existing buildings may demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume. The definition of massing in Article 12 illustrates the application of design techniques to reduce the visual perception of size and integrate larger buildings with pre-existing smaller buildings.
 - c. Subsection 3.2.7(d)(1)(a)-(b) shall not apply to development on parcels where multifamily structures are an allowable use and the development contains two or more affordable housing units for families or individuals with incomes below eighty percent (80%) of the area median income.
 - d. Nothing in this subsection shall be interpreted to conflict with the building design element provision as found in N.C.G.S. 160D-702(b) for structures subject to the North Carolina Residential Code for One- and Two-Family Dwellings.

On new streets, allowable building and lot types will establish the development pattern.

Existing Architectural Standards

Article 12: Definitions

Massing. The shape and form a building or assemblage of buildings assumes through architectural design. There are eleven elements which affect the creation of public space and the relationship between one building and another. A specific project should consider, but may not need to incorporate, all eleven elements.



Building silhouette, roof pitch/lines

Spacing between building façades

Setback from property line



Proportion of windows, bays, and doorways

Proportion of primary façade

Location and treatment of entryway

Exterior materials used

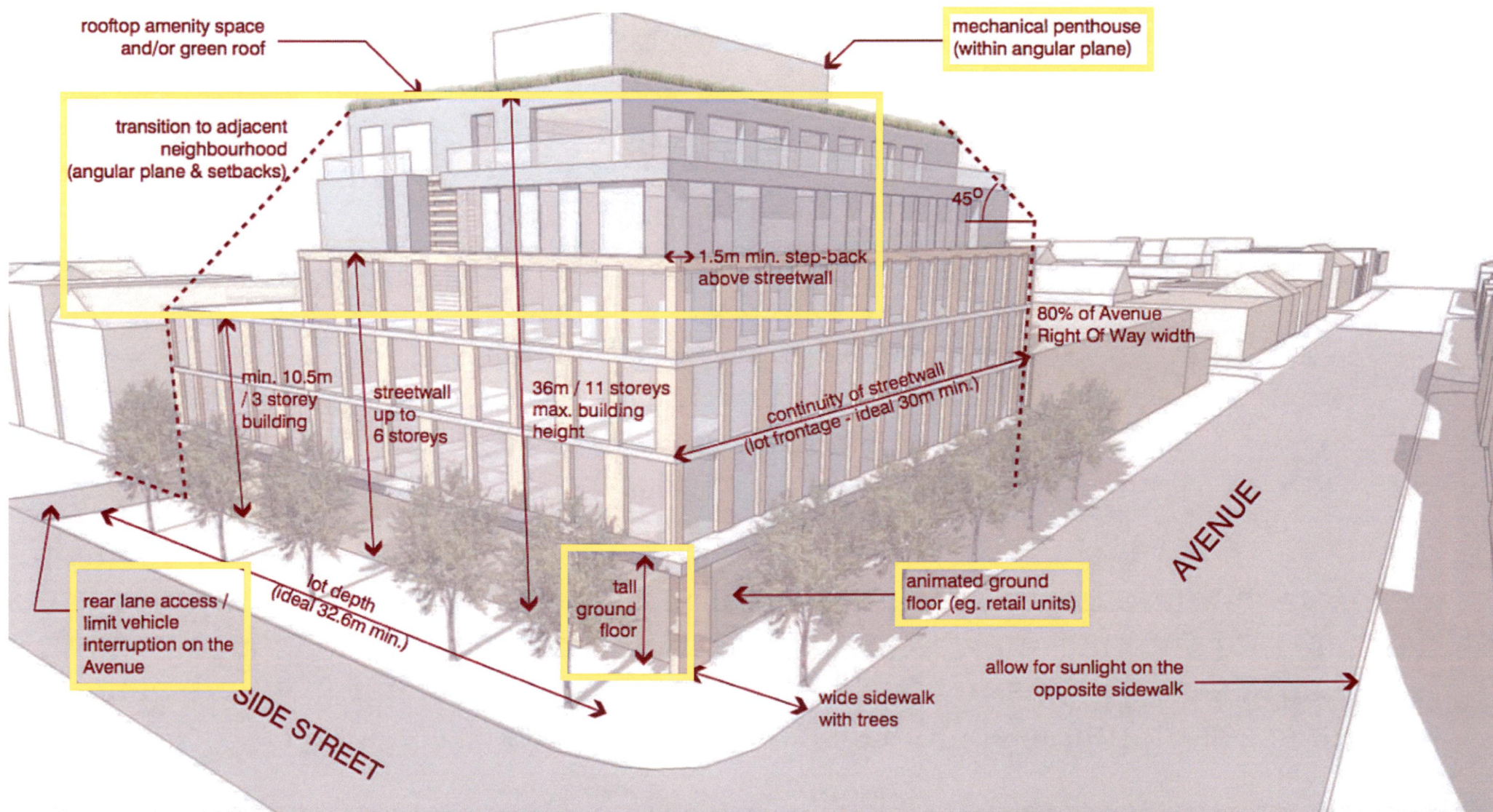


Building scale

Landscaping

Shadow patterns that form decorative features

Proportion of solids to voids



Northcross Hotel Example



FRONT  EXTERIOR RENDERING
NOT TO SCALE



REAR  EXTERIOR RENDERING
NOT TO SCALE

Surrounding Communities & Architectural Review Boards

- Charlotte, Concord, Matthews, Mooresville, Mt. Holly, Pineville, & Mint Hill do not have Architectural Review Boards (ARB).
- Cornelius (ARB) and Davidson (Design Review Board) do have design review.

CORNELIUS

- 7 members w/4 having a design background
- Review commercial, apartments, civic
- Provide valuable feedback
- Lengthens project timeline

DAVIDSON

- 9 members; desire design background
- Review commercial, apartments, civic
- Provide valuable feedback
- Lengthens project timeline
- Also serve as Historic Preservation Board
- Quasi-judicial

Architectural Review Board

- Expect increase costs to the developer
- The approval timeline will increase
- Can expect useful feedback
- Legal concerns
- Expect some extra costs for town (i.e., staffing & development guidelines)

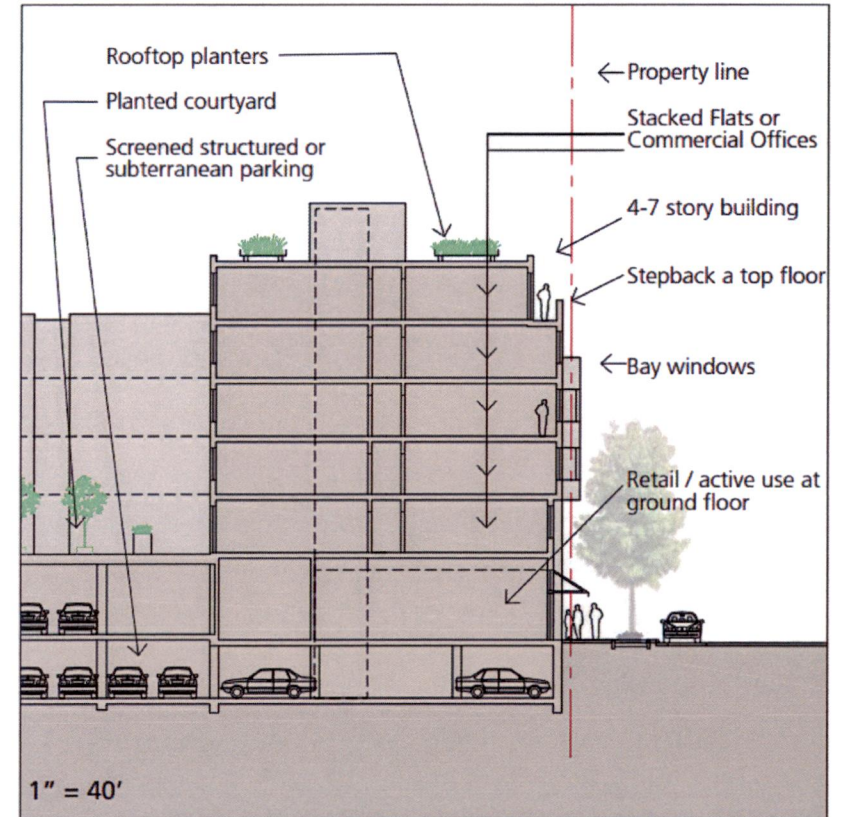


Illustration of 6 story, 65' tall building with 2' front setback

Questions?

1. Will the architectural review board (ARB) increase the pre-development cost to the developer?
2. Will adding another layer of a review process increase the timeline for approval by the Town Board?
3. Are there any statistics that provide proof that proposed developments reviewed by (ARB) have a higher approval rate by Town Boards?
4. Will there be an extra administrative architectural review board cost to the Town?
5. What are the pros and cons for an (ARB) in the Town of Huntersville?



Coates' Canons NC Local Government Law

A Few Thoughts on Community Appearance and Design Controls

Published: 05/17/13

Author Name: Richard Ducker

One of the many bills that has drawn public and media attention this spring has been House Bill 150, a bill dealing with residential “design controls.” With certain notable exceptions it generally prohibits zoning or land subdivision regulations related to “building design elements” from being applied to one- and two-family dwellings. “Design elements” applicable to manufactured housing and historic landmarks and structures in historic districts are excepted. Likewise elements that are integral to the State Building Code, and flood hazard regulations associated with the federal flood insurance program, are also not subject to the bill. The bill has passed the House and awaits further action in the Senate. One of the more bizarre arguments in support of the bill is that local government regulation of community appearance (“design”) is, except with respect to the situations noted above, statutorily unauthorized. In other words some argue that the activity proposed to be banned has been illegal all along. Is that so? If it is not so, what tips can be provided to those local governments who wish to proceed with such regulations?

Opponents of “design controls” would say that the complexion of the debate about whether such standards are legal has changed since the North Carolina Supreme Court case of Lanvale Properties, LLC v. County of Cabarrus, __N.C.__, 731 S.E.2d 800 (2012), was handed down last summer. In that case our state’s highest court ruled that the “adequate public facilities (APF)” provisions of the Cabarrus County Unified Development Ordinance, as applied to public schools, were invalid. A critical element of the program was the payment by developers of “voluntary mitigation fees (VMF)” as a means of ameliorating the lack of capacity in schools that would serve the new development. The court

compared VMF with school impact fees, which had been ruled invalid in an earlier case involving Durham County. Among other things, the *Lanvale* court concluded that the North Carolina zoning enabling statutes clearly failed to authorize APF programs with VMF components.

The court in *Lanvale* first noted that G.S. 153A-340(a), which lists the types of zoning standards that may be used to achieve zoning purposes (e.g., standards affecting the percentage of lots that may be occupied; those affecting the height, location, and use of buildings, structures, and land) did not expressly authorize the county's APF and VMF provisions. Likewise G.S. 153A-341, which describes the permissible purposes of zoning (e.g., preventing "the overcrowding of land," "avoiding undue concentration of population," "conserving the value of buildings and encouraging the most appropriate use of land") also did not provide express authorization.

The court then concluded that G.S. 153A-4 did not apply either. That statute calls for county statutes to be "broadly construed" and grants of power "construed to include any powers that are reasonably expedient to the exercise of that power." According to the court, G.S. 153A-4 applies only when statutes are ambiguous, and the referenced zoning statutes were not ambiguous. Furthermore, the court concluded that APF provisions were not a "reasonably expedient" method of ensuring that school facilities were adequate. (Apparently the court viewed the fees charged either as being unreasonably high, or, perhaps, simply an unreasonable fee-based means for achieving the otherwise allowable purpose of facilitating the efficient and adequate provision of schools.)

How, then, does this case relate to community appearance issues? The zoning enabling statutes for cities are virtually identical in relevant respects to the county statutes interpreted in *Lanvale*. The words "appearance," "aesthetics," and "design" are not mentioned in the zoning statutes. Yet a moderate number of municipalities in North Carolina have adopted "neighborhood conservation districts," zoning districts that do not qualify as historic districts, but in which residential appearance standards apply to new development and alterations to existing development. Other cities have adopted more unconventional design standards that apply in districts where traditional lot-related standards and use standards have given way to form-based standards. These may include aesthetic standards regarding architectural style, exterior materials, and color that seek to ensure that a development project conforms

to the purposes of the community's comprehensive plan. Does *Lanvale* imply that all of these community appearance standards that apply to buildings other than historic properties or manufactured housing units are legally impermissible?

Not necessarily. Below are a few reasons why that conclusion is unwarranted.

The law in North Carolina has long held that reasonable regulation based on aesthetic considerations alone may constitute a valid basis for the exercise of government's regulatory power. In *State v. Jones*, 305 N.C. 520, 290 S.E.2d 675 (1982), the North Carolina Supreme Court upheld an ordinance which required owners of junkyards and auto graveyards in certain areas to screen their premises over objections that the purpose of the ordinance and the means for achieving it were not legally justifiable. Since then, a number of North Carolina courts have upheld or applied zoning measures based on community appearance considerations in particular situations involving signs, telecommunications towers, resource conservation districts, accessory buildings and structures, historic preservation, fences, and manufactured housing. Our courts have held that these measures may be used to protect property values, promote tourism, and preserve the character of the community. G.S. 160A-383 provides that zoning regulations shall be made "with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city." The use of appearance and design standards is an obvious way to achieve these ends.

If a local government is interested in proceeding with community appearance standards, what should the community keep in mind?

First, appearance standards and design controls, particularly those affecting buildings should be carefully conceived and developed with an eye to how they affect the property owners subject to them. The *Jones* case reminds us that any diminution in value of an individual's property must be balanced against the corresponding gain to the public from the regulation. Appearance standards that are applied to buildings have the potential for affecting values more than appearance standards that may apply to incidental commercial signs or landscaping.

Second, the design controls and appearance standards for buildings that work best are those that are based on the context of the affected structures. The standards are based on an inventory of the features and elements of the area or neighborhood in which the regulated property is located that provide its character. Design controls and appearance standards allow new development to fit into those existing areas that give the standards and elements context. The suitability of regulatory standards must, then,

reflect both a prior identification of visual themes for the area and be consistent with future plans for the area. If this sounds like it is similar to the process for planning, developing, and applying historic district and landmark standards and guidelines, it is.

Third, it is probably unwise to establish a design review board or similar organization to administer appearance standards or design controls that apply to properties other than historic properties. Boards of this type are generally established in order to exercise permitting authority and discretion in the process of approving development projects. But this can be a legal problem in circumstances where there is no express enabling authority for the board to make such decisions. Community appearance commissions (see G.S. 160A-452) have been authorized for decades, but they are not allowed to make final decisions regarding permits and approvals. Indeed, the court in the *Jones* case warned that “(w)e feel compelled to caution local legislative bodies charged with the responsibility for and the exercise of the police power in the promulgation of regulations based solely upon aesthetic considerations that this is a matter which should not be delegated by them to subordinate groups or organizations which are not authorized to exercise the police power by the General Assembly.” (305 N.C. at 531). This delegation-of-power problem is potent in part because the role North Carolina historic preservation commissions play in issuing certificates of appropriateness is spelled out in the general statutes in considerable detail. Fourth, appearance standards and design controls that apply to properties that are not parts of historic preservation efforts need to be concrete and specific. Regulation of appearance and design is plagued by the perceived notion that those regulated are subject to the whims and arbitrariness of regulators with wide-ranging discretion and that decisions are based on highly subjective notions of good taste and beauty. Making standards specific and spelling them out in an ordinance is one way to curtail the risk of arbitrariness that comes with discretion. Doing so also provides some assurance that the standards will not be found to be impermissibly vague. Well-conceived standards can be administered by staff if they are concrete and specific enough.

Fifth, even the court in *Lanvale* declared that local governments “enjoy flexibility” in developing and applying zoning regulations and have “considerable latitude” in exercising their zoning power. Some of the most important concepts in urban planning today, such as form-based development and traditional neighborhood development, include strong aesthetic and appearance themes. Courts are influenced by

emerging ideas and trends that affect their disposition of cases, even as they interpret legislative intent.

Courts do not want to seem oblivious to the changing complexion of planning and zoning. It is in the interest of local governments to develop programs that enable that tendency.

House Bill 150, which curtails certain appearance standards and design controls, is on its merry way and may be adopted by this General Assembly in 2013. If adopted, any uncertainty about the application of design standards to single-family residential development would be resolved by the prohibition. The considerations and suggestions noted above, however, would still be important with respect to the use of design standards for multi-family residential development and nonresidential development. In any event, to suggest that the use of community appearance standards for non-historic development projects is at the moment categorically invalid and unauthorized is to miss the mark.

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§ 160D-304. Appearance commission.

(a) **Composition.** - Each local government may create a special commission, to be known as the appearance commission. The commission shall consist of not less than seven nor more than 15 members, to be appointed by the governing board for terms not to exceed four years, as the governing board may by ordinance provide. All members shall be residents of the local government's area of planning and development regulation jurisdiction at the time of appointment. Where possible, appointments shall be made in such a manner as to maintain on the commission at all times a majority of members who have had special training or experience in a design field, such as architecture, landscape design, horticulture, city planning, or a related field. Members of the commission may be reimbursed for actual expenses incidental to the performance of their duties within the limits of any funds available to the commission but shall serve without pay unless otherwise provided in the ordinance establishing the commission. Membership of the commission is an office that may be held concurrently with any other elective or appointive office pursuant to Section 9 of Article VI of the North Carolina Constitution.

(b) **Joint Commissions.** - Local governments may establish a joint appearance commission. If a joint commission is established, it shall have the same composition as specified by this section, and the local governments involved shall determine the residence requirements for members of the joint commission.

(c) **Duties.** - The community appearance commission shall have the duties specified in G.S. 160D-960. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

Part 5. Community Appearance Commissions.

§ 160D-960. Powers and duties of commission.

A community appearance commission shall make careful study of the visual problems and needs of the local government within its planning and development regulation jurisdiction and shall make any plans and carry out any programs that will, in accordance with the provisions of this Part, enhance and improve the visual quality and aesthetic characteristics of the local government. To this end, the governing board may confer upon the appearance commission the following powers and duties:

- (1) To initiate, promote, and assist in the implementation of programs of general community beautification in the local government.
- (2) To coordinate the activities of individuals, agencies, and organizations, public and private, whose plans, activities, and programs bear upon the appearance of the local government.
- (3) To provide leadership and guidance in matters of area or community design and appearance to individuals, to public and private organizations, and to agencies.
- (4) To make studies of the visual characteristics and problems of the local government, including surveys and inventories of an appropriate nature, and to recommend standards and policies of design for the entire area, any portion or neighborhood thereof, or any project to be undertaken.
- (5) To prepare both general and specific plans for the improved appearance of the local government. These plans may include the entire area or any part thereof and may include private as well as public property. The plans shall set forth desirable standards and goals for the aesthetic enhancement of the local government or any part thereof within its area of planning and development regulation jurisdiction, including public ways and areas, open spaces, and public and private buildings and projects.
- (6) To participate, in any way deemed appropriate by the governing board of the local government and specified in the ordinance establishing the commission, in the implementation of its plans. To this end, the governing board may include in the ordinance the following powers:
 - a. To request from the proper officials of any public agency or body, including agencies of the State and its political subdivisions, its plans for public buildings, facilities, or projects to be located within the local government's planning and development regulation jurisdiction.
 - b. To review these plans and to make recommendations regarding their aesthetic suitability to the appropriate agency or to the planning or governing board. All plans shall be reviewed by the commission in a prompt and expeditious manner, and all recommendations of the commission with regard to any public project shall be made in writing. Copies of the recommendations shall be transmitted promptly to the planning or governing board and to the appropriate agency.
 - c. To formulate and recommend to the appropriate planning or governing board the adoption or amendment of ordinances, including zoning regulations, subdivision regulations, and other local development regulations, that will, in the opinion of the commission, serve to enhance the appearance of the city or county and surrounding areas.
 - d. To direct the attention of local government officials to needed enforcement of any ordinance that may in any way affect the appearance of the city or county.
 - e. To seek voluntary adherence to the standards and policies of its plans.
 - f. To enter, in the performance of its official duties and at reasonable times, upon private lands and make examinations or surveys.
 - g. To promote public interest in and an understanding of its recommendations, studies, and plans, and, to that end, prepare, publish, and distribute to the public such studies and reports that will, in the opinion of the commission, advance the cause of improved appearance.
 - h. To conduct public meetings and hearings, giving reasonable notice to the public thereof. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

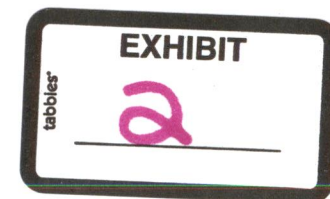
§ 160D-301. Planning boards.

(a) Composition. - A local government may by ordinance provide for the appointment and compensation of a planning board or may designate one or more boards or commissions to perform the duties of a planning board. A planning board established pursuant to this section may include, but shall not be limited to, one or more of the following:

- (1) A planning board of any size or composition deemed appropriate, organized in any manner deemed appropriate; provided, however, the board shall have at least three members.
- (2) A joint planning board created by two or more local governments pursuant to Part 1 of Article 20 of Chapter 160A, of the General Statutes.

(b) Duties. - A planning board may be assigned the following powers and duties:

- (1) To prepare, review, maintain, monitor, and periodically update and recommend to the governing board a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis.
- (2) To facilitate and coordinate citizen engagement and participation in the planning process.
- (3) To develop and recommend policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner.
- (4) To advise the governing board concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by G.S. 160D-604.
- (5) To exercise any functions in the administration and enforcement of various means for carrying out plans that the governing board may direct.
- (6) To provide a preliminary forum for review of quasi-judicial decisions, provided that no part of the forum or recommendation may be used as a basis for the deciding board.
- (7) To perform any other related duties that the governing board may direct. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

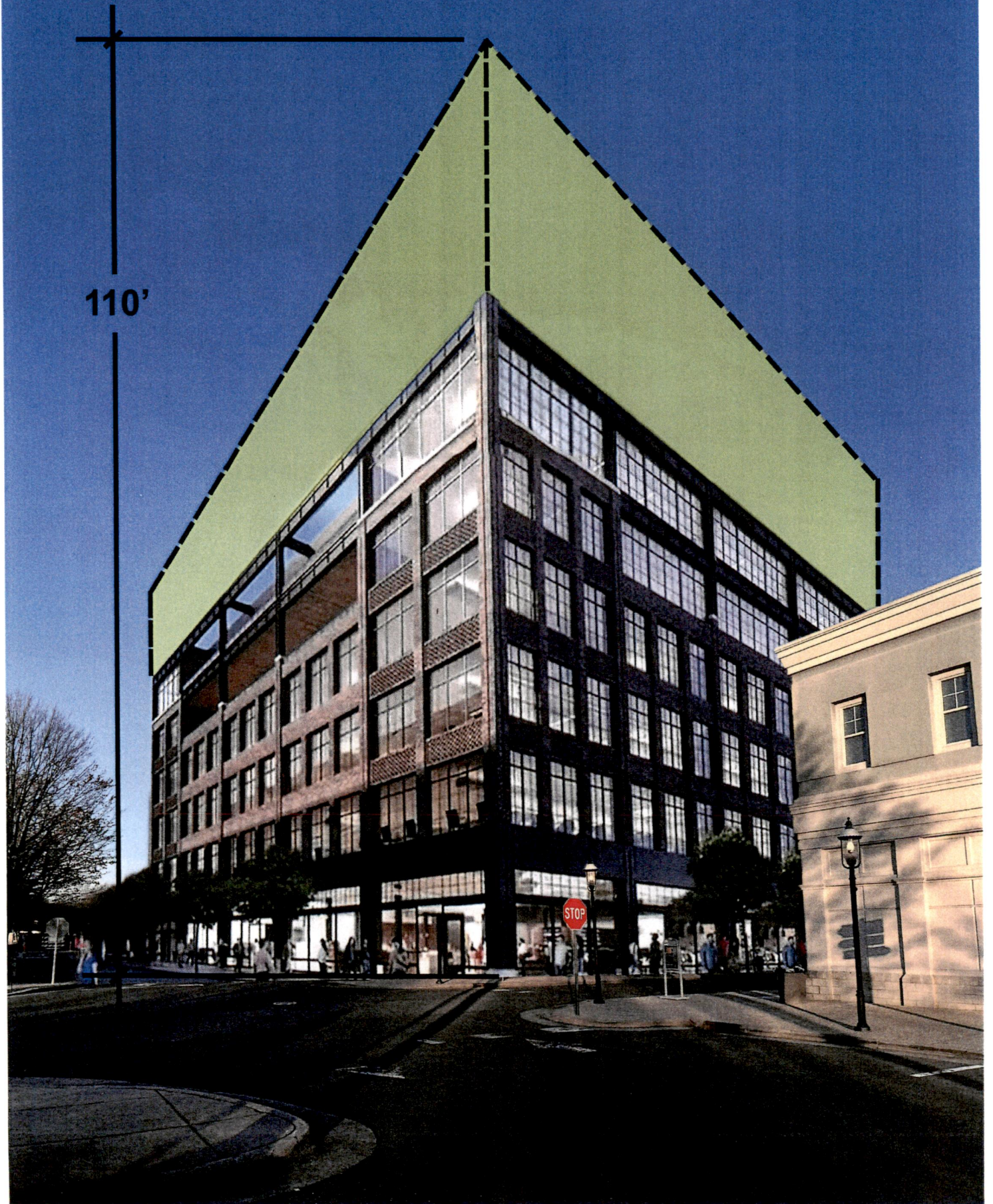




80'

This architectural rendering depicts a modern, multi-story building with a prominent glass and dark metal facade. The building is shown from a low-angle perspective, emphasizing its height. A vertical dimension line on the left side of the image indicates a height of 80 feet. The building features a grid of windows and a flat roof. To the right, a portion of an older, light-colored building is visible. The foreground shows a street with a stop sign and some trees. The sky is a clear, deep blue.

110'

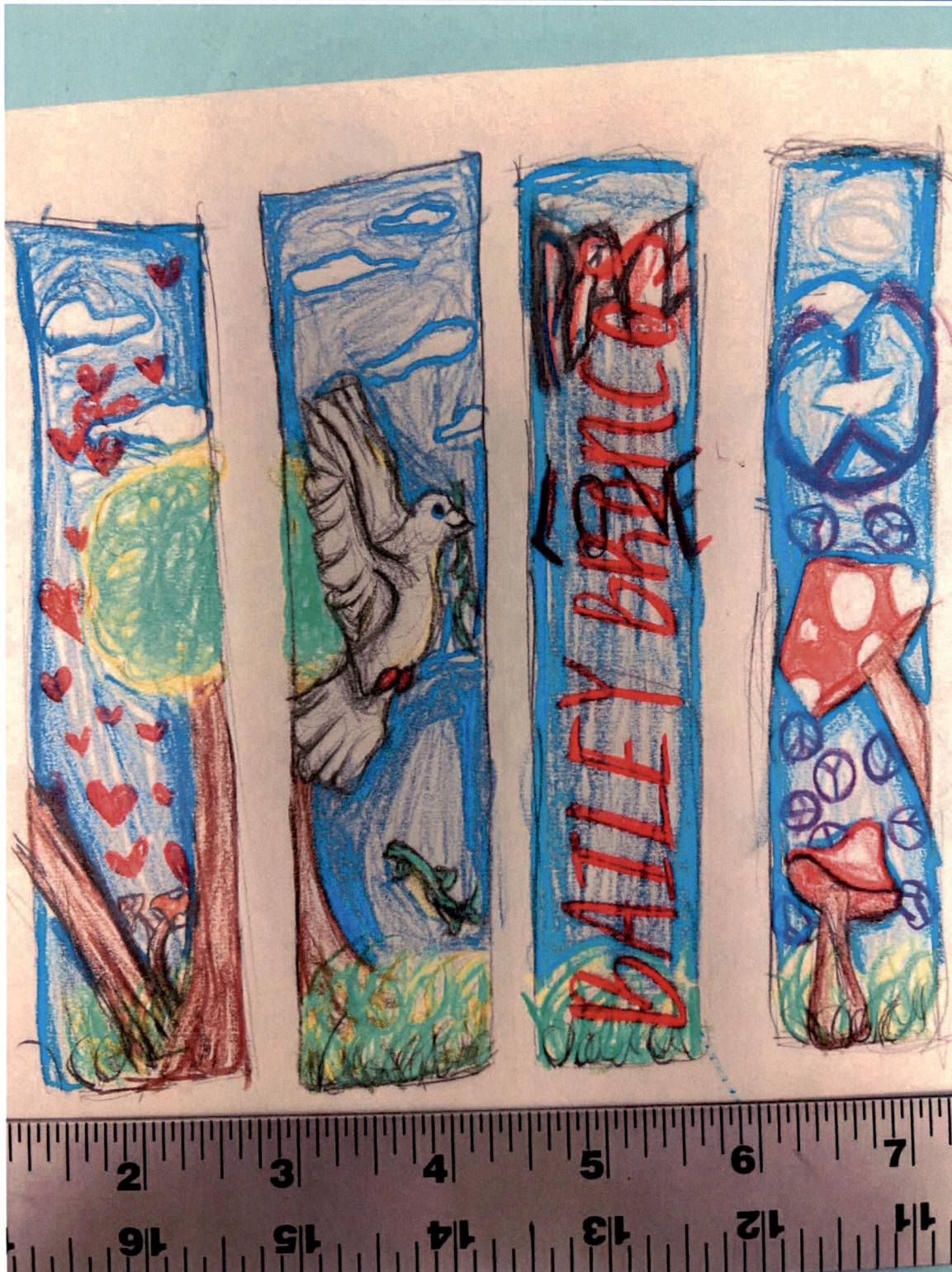


HUNTERSVILLE Refunds

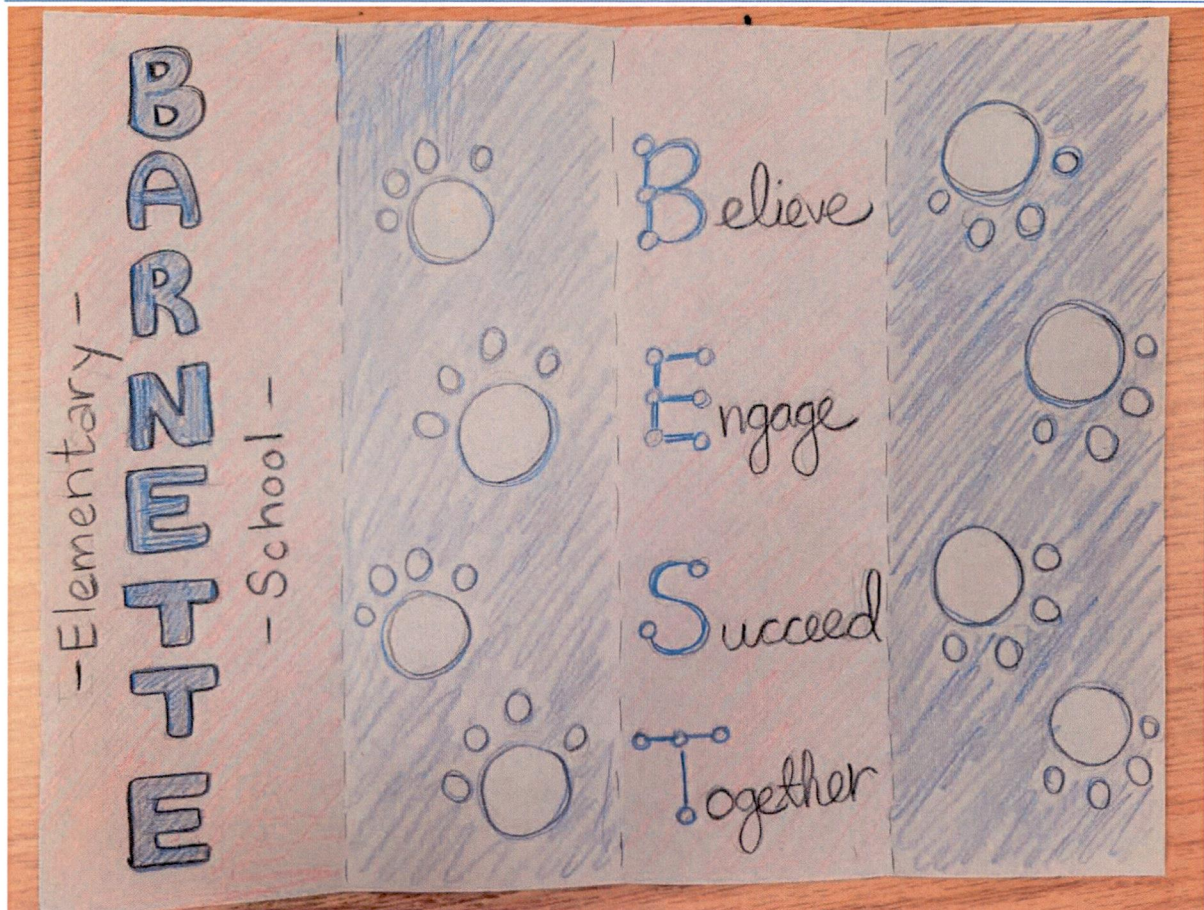
Tax Year	Bill Number	Parcel #	Source Type	Adj #	Adj Reason	Date of Adj.	Recipient Name	Address	City	State	Zip Code	Payment Date for Interest Calculation	Refund Amount (\$)	Total Interest to Pay if mailed on or before 2/13/2023 (\$)
2022	0008094631-2022-2022-0000-01	02114269	REI	610437	BER Decision	12/19/2022	ANYANWU, RYAN MICHAEL & ANYANWU, ANGELA L	8003 FRONT PARK CIRCLE	HUNTERSVILLE	NC	28078	1/6/2023	108.00	2.97
2022	0001483813-2022-2022-0000-01	01728506	REI	610158	BER Decision	12/15/2022	CATERPILLAR MINISTRIES	PO BOX 2155	HUNTERSVILLE	NC	28070	1/6/2023	193.92	5.33
2022	0007148644-2022-2022-0000-01	01945246	REI	610377	BER Decision	12/16/2022	CROSS, CHRISTOPHER G & CROSS, LINDA C & CROSS, DAVID CHRISTOPHER	15803 OXFORD GLENN DR	HUNTERSVILLE	NC	28078	1/6/2023	108.00	2.97
2022	0008110447-2022-2022-0000-01	01909251	REI	610429	BER Decision	12/19/2022	DABNEY, SHARON LORRAINE & DABNEY, JEFFREY WAYNE	8816 KELLER CT	HUNTERSVILLE	NC	28078	1/6/2023	108.00	2.97
2022	0001466695-2022-2022-0000-01	01120637	REI	610458	BER Decision	12/19/2022	HARPER, MICHAEL BRENT & HARPER, BRIDGETT JEEN	12021 FARNBOROUGH RD	HUNTERSVILLE	NC	28078	1/6/2023	108.00	2.97
TOTAL													625.92	17.21

Total 643.13

Exhibit No. 3

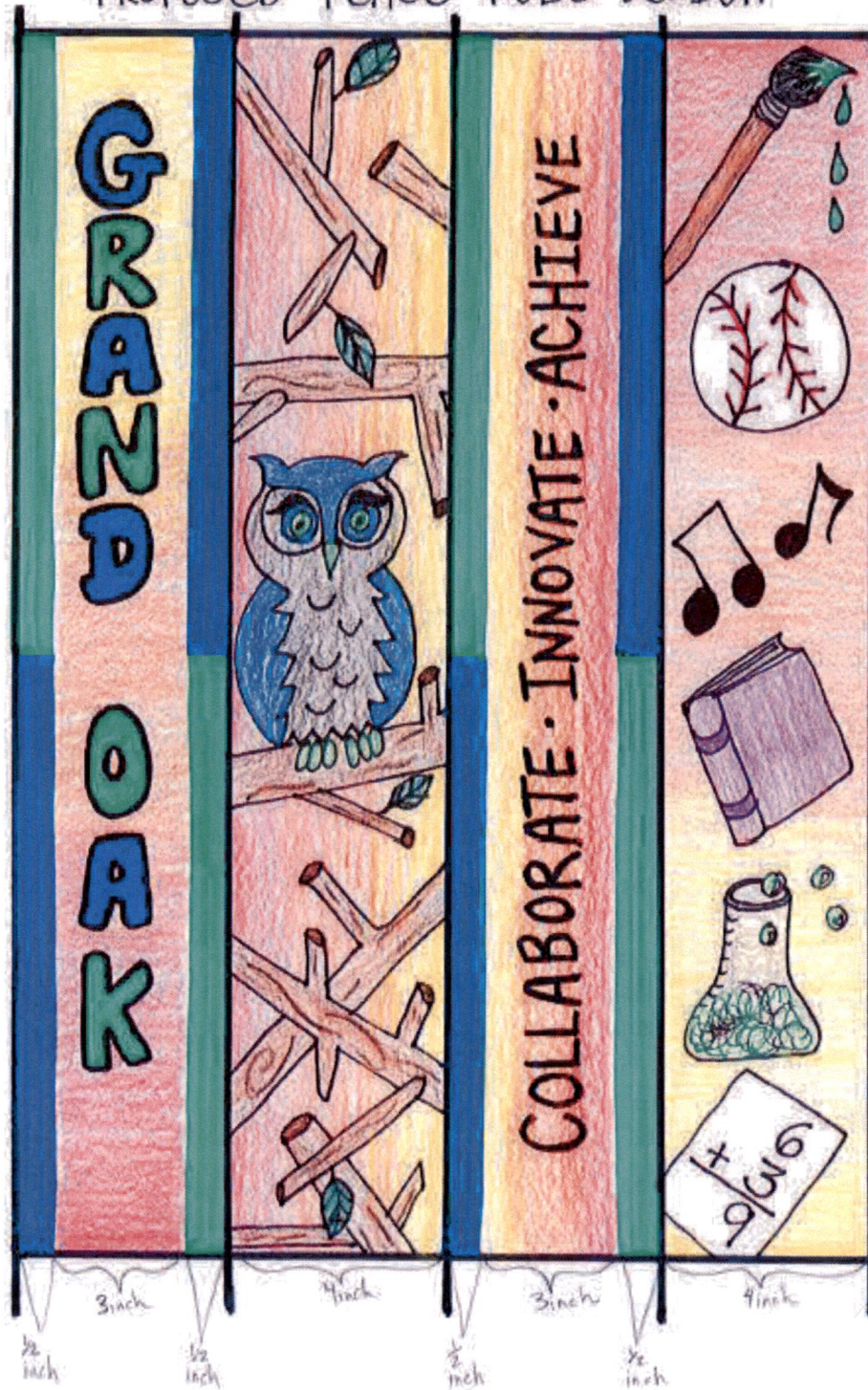


Barnette Elementary School



Grand Oak Elementary

GRAND OAK ELEMENTARY
PROPOSED PEACE POLE DESIGN



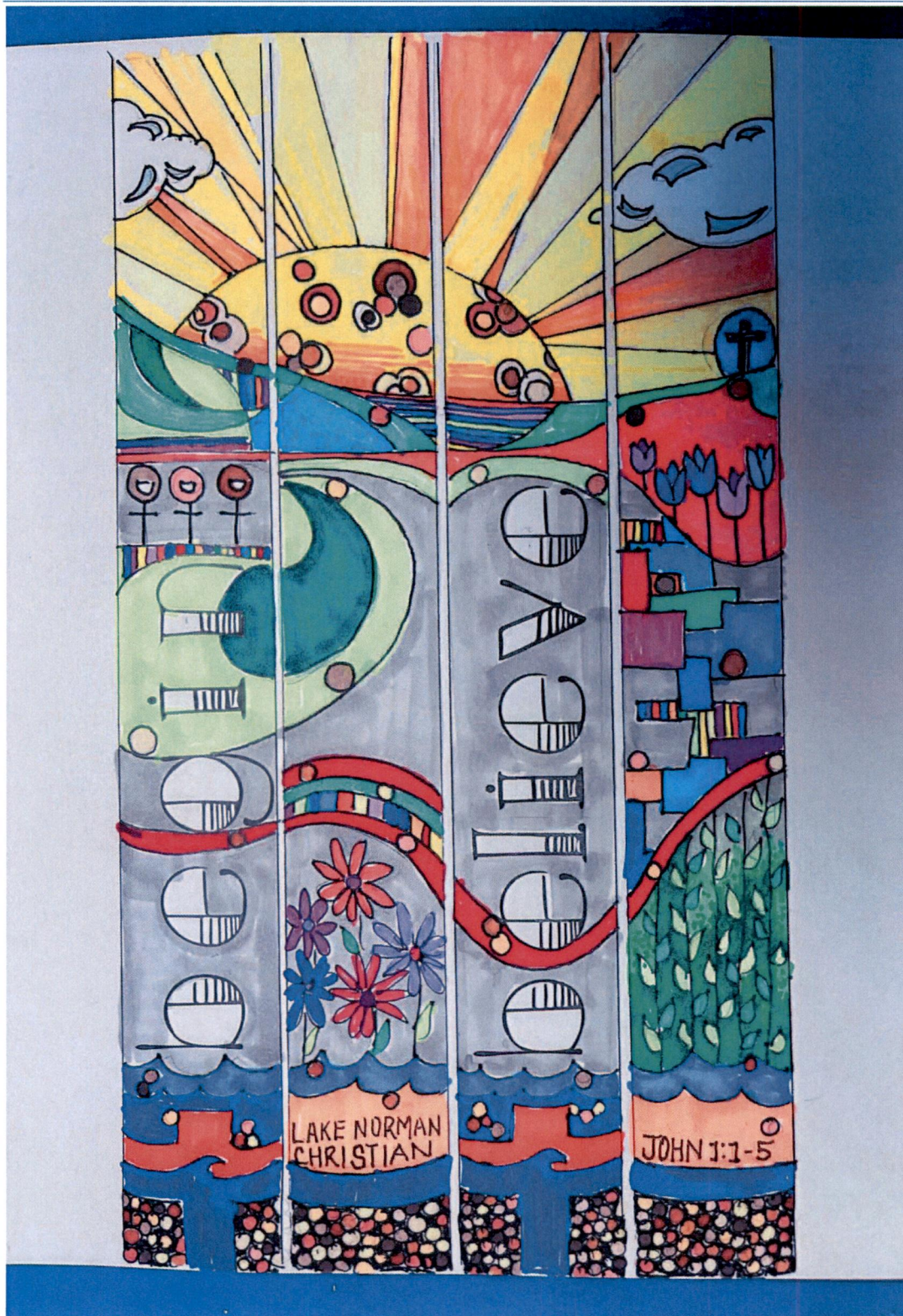
Huntersville Elementary School



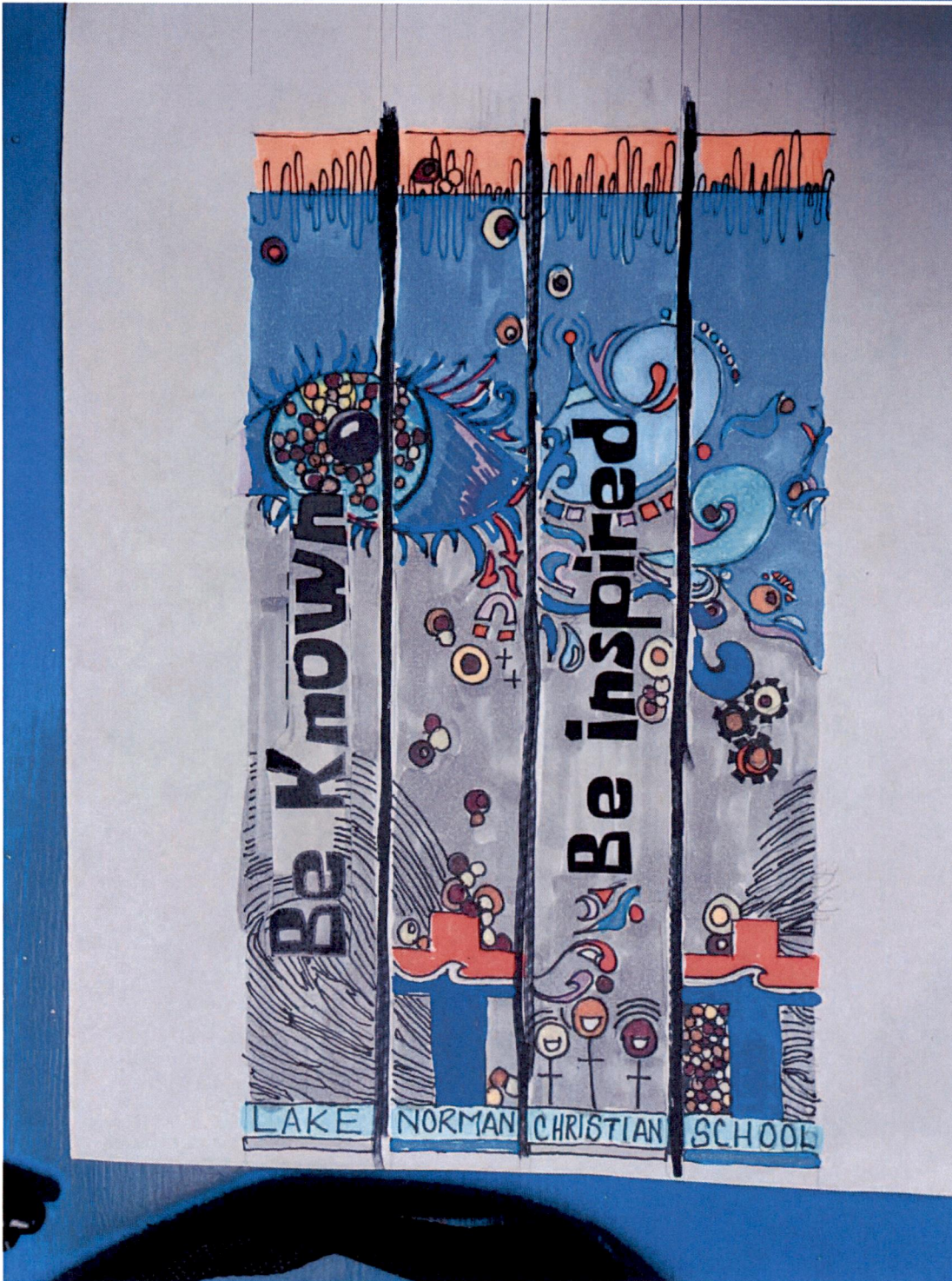
Hopewell High School



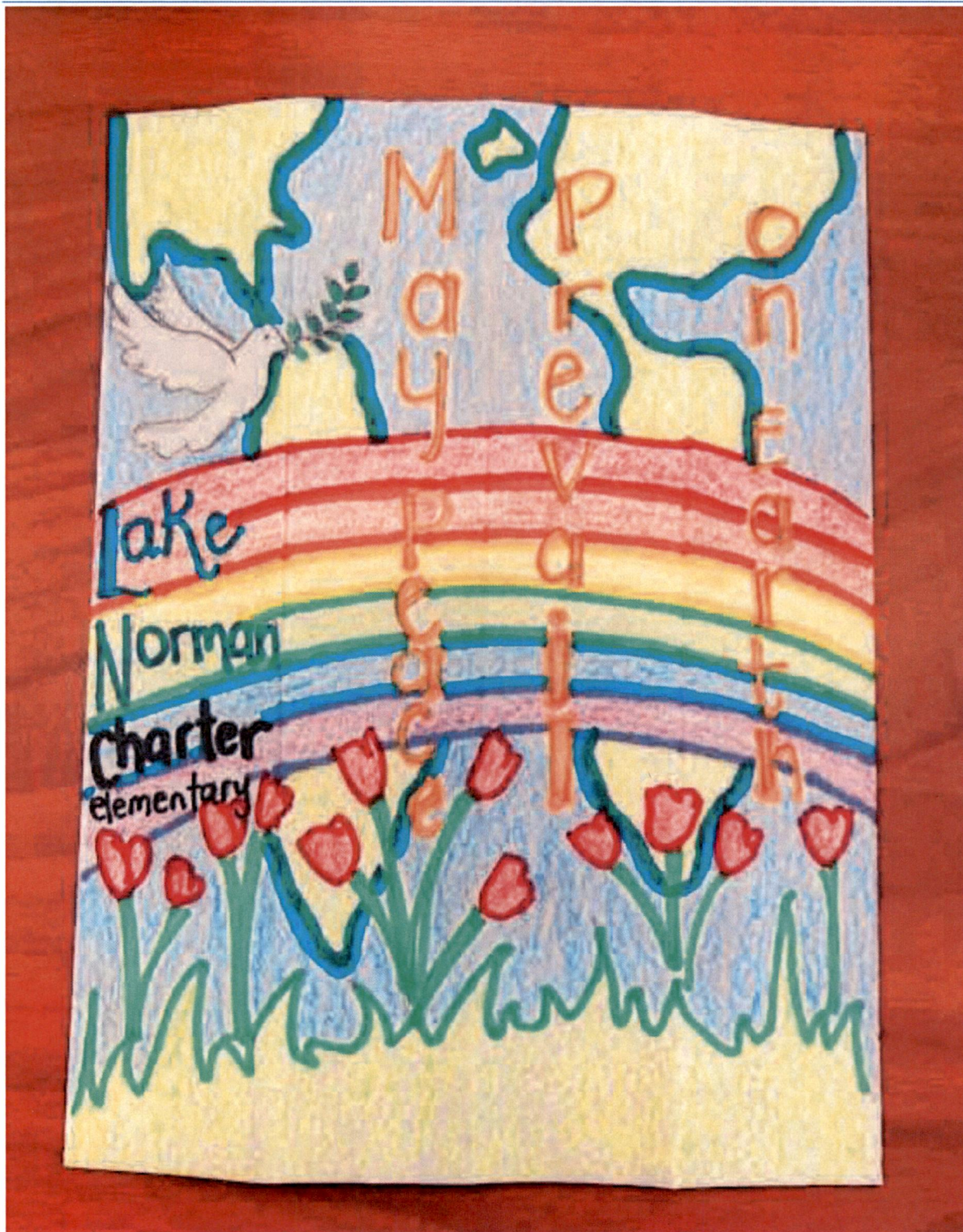
Lake Norman Christian – Lower School



Lake Norman Christian – Upper School



Lake Norman Charter Elementary School



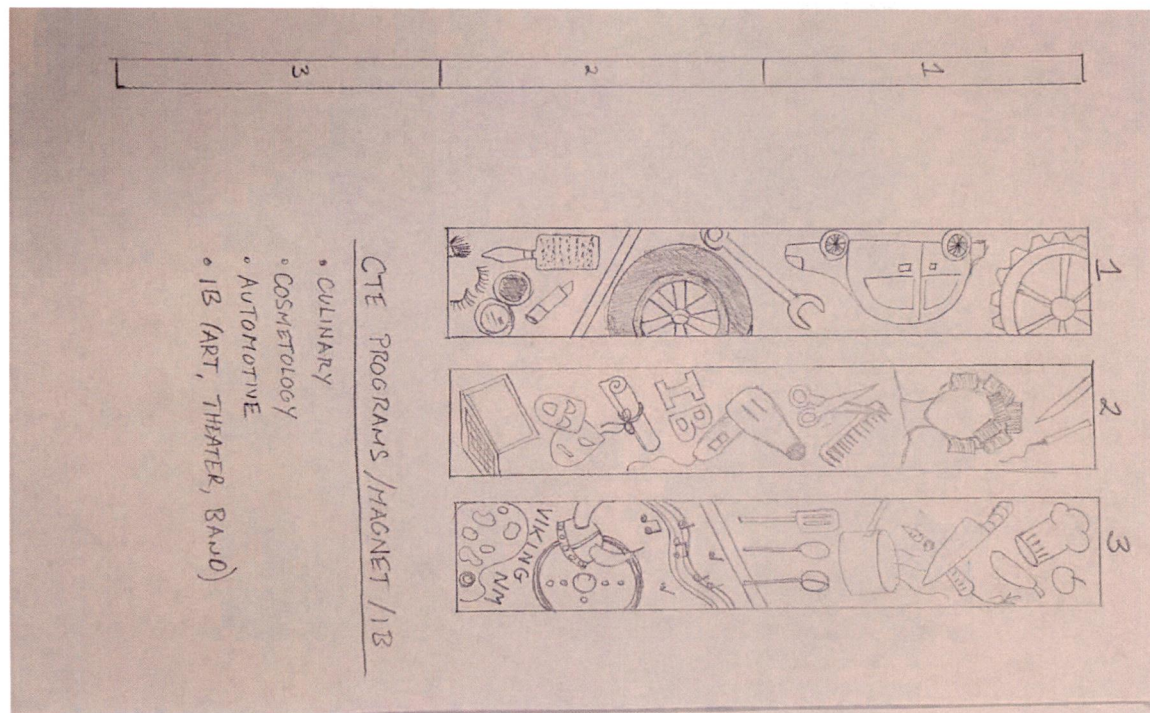
Lake Norman Charter Middle School



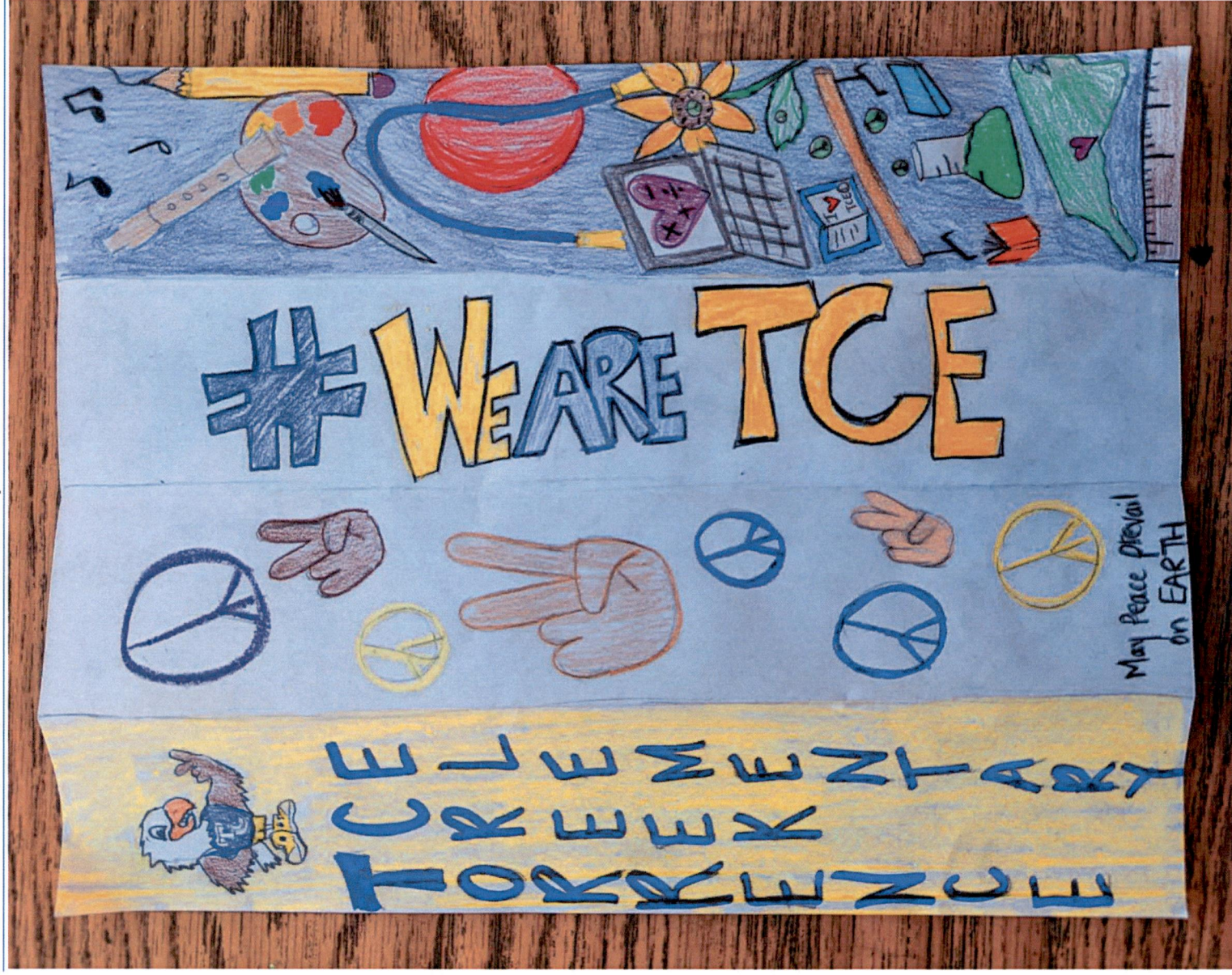
Lake Norman Charter High School



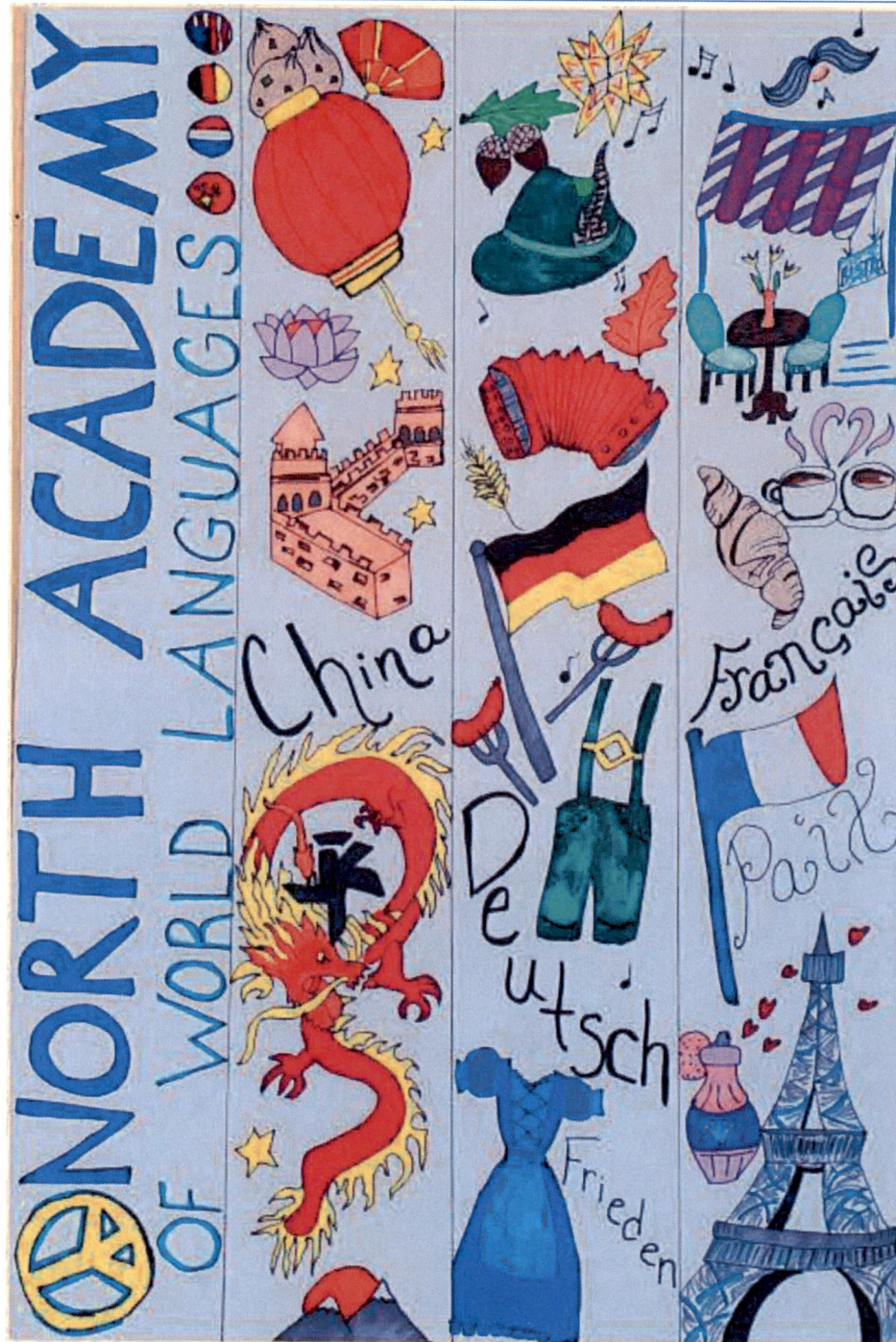
North Mecklenburg High School



Torrance Creek Elementary School



North Academy of World Languages



**RESOLUTION BY TOWN OF HUNTERSVILLE
AUTHORIZING EXECUTION OF OPIOID SETTLEMENTS AND APPROVING THE
SUPPLEMENTAL AGREEMENT FOR ADDITIONAL FUNDS BETWEEN THE STATE
OF NORTH CAROLINA AND LOCAL GOVERNMENTS ON PROCEEDS RELATING
TO THE SETTLEMENT OF OPIOID LITIGATION**

WHEREAS, the opioid overdose epidemic had taken the lives of more than 32,000 North Carolinians (2000-2021);

WHEREAS, the COVID-19 pandemic has compounded the opioid overdose crisis, increasing levels of drug misuse, addiction, and overdose death; and

WHEREAS, the Centers for Disease Control and Prevention estimates the total economic burden of prescription opioid misuse alone in the United States is \$78.5 billion a year, including the costs of healthcare, lost productivity, addiction treatment, and criminal justice involvement; and

WHEREAS, certain counties and municipalities in North Carolina joined with thousands of local governments across the country to file lawsuits against opioid manufacturers, pharmaceutical distribution companies, and chain drug stores to hold those companies accountable for their misconduct; and

WHEREAS, settlements have been reached in litigation against Walmart, Inc., Teva Pharmaceutical Industries Ltd., Allergan Finance, LLC, Allergan Limited, CVS Health Corporation, CVS Pharmacy, Inc., and Walgreen Co., as well as their subsidiaries, affiliates, officers, and directors named in the these Settlements; and

WHEREAS, representatives of local North Carolina governments and the North Carolina Department of Justice have negotiated and prepared a Supplemental Agreement for Additional Funds (SAAF) to provide for the equitable distribution of the proceeds of these settlements; and

WHEREAS, by joining the settlements and approving the SAAF, the state and local governments maximize North Carolina's share of opioid settlement funds to ensure the needed resources reach communities, as quickly, effectively, and directly as possible; and

WHEREAS, it is advantageous to all North Carolinians for local governments, including the Town of Huntersville and its residents, to sign onto the settlements and SAAF and demonstrate solidarity in response to the opioid overdose crisis, and to maximize the share of opioid settlement funds flowing to North Carolina to help abate the harm; and

WHEREAS, the SAAF directs substantial resources over multiple years to local governments on the front lines of the opioid overdose epidemic while ensuring that these resources are used in an effective way to address the crisis;

Exhibit No. 5

NOW, THEREFORE BE IT RESOLVED, that the Town of Huntersville Board of Commissioners hereby authorizes the Town Manager to execute all documents necessary to enter into opioid settlement agreements with Walmart, Walgreens, CVS, Allergan, and Teva, to execute the SAAF, and to provide such documents to Rubris, the Implementation Administrator.

Adopted this the 6 day of March, 2023.

Mayor, Town of Huntersville

ATTEST:

Janet Pierson, Town Clerk

[SEAL]

Supplemental Agreement for Additional Funds From Additional Settlements of Opioid Litigation

I. PURPOSE

The purpose of this Supplemental Agreement for Additional Funds (“SAAF”) is to direct Additional Funds from Additional Settlements of opioid litigation to the state of North Carolina and local governments in a manner consistent with the Memorandum of Agreement (“MOA”) Between the State of North Carolina and Local Governments on Proceeds Relating to the Settlement of Opioid Litigation that has governed the distribution of Opioid Settlement Funds to the State and its Local Governments since May 2022.

This SAAF does not change the scope or meaning of the MOA with respect to Opioid Settlement Funds governed by the MOA. Instead, this SAAF applies the terms of the MOA – with certain clarifications noted below – to the Additional Settlements and Additional Funds described below.

II. SCOPE

- A. Scope of the MOA. Under the terms of the MOA, the MOA governs Opioid Settlement Funds from:
 - 1. The National Settlement Agreement with the drug distributors Cardinal, McKesson, and AmerisourceBergen and the drug maker Johnson & Johnson and its subsidiary Janssen Pharmaceuticals; and
 - 2. The Bankruptcy Resolution with Mallinckrodt; any Bankruptcy Resolution with Purdue; and any other Bankruptcy Resolution as the term “Bankruptcy Resolution” is defined in the MOA.
- B. Scope of this SAAF. This SAAF governs Additional Funds from the Additional Settlements with Additional Settling Defendants Walmart, Inc., Teva Pharmaceutical Industries Ltd., Allergan Finance, LLC, Allergan Limited, CVS Health Corporation, CVS Pharmacy, Inc., and Walgreen Co., as well as their subsidiaries, affiliates, officers, and directors named in the Additional Settlements.

III. APPLICATION OF THE MOA TO ADDITIONAL SETTLEMENTS AND FUNDS

The MOA, which is incorporated herein by reference, governs Additional Settlements and Additional Funds in every respect, except as set forth hereinbelow. In the event of any conflict between the MOA and this SAAF, with respect to Additional Settlements and Additional Funds, the provisions of this SAAF shall take precedence.

A. Definitions.

1. The definitions used in the MOA are incorporated by reference into this SAAF.
2. "Additional Funds" shall mean all funds allocated by the Additional Settlements to the State or Local Governments for purposes of opioid remediation activities, as well as any repayment of those funds and any interest or investment earnings that may accrue as those funds are temporarily held before being expended on opioid remediation strategies. Not included are funds made available in Additional Settlements for the payment of the Parties' litigation expenses or the reimbursement of the United States Government.
3. "Additional Settlements" means a national opioid settlement agreement with the Parties and one or more of the Additional Settling Defendants concerning alleged misconduct in manufacture, marketing, promotion, distribution, or dispensing of an opioid analgesic.
4. "Additional Settling Defendants" means the defendants listed in section II.B of this SAAF.
5. "Local Counsel" means legal counsel and law firms who have a principal office in North Carolina and represented one or more North Carolina counties and municipalities in litigation against one or more Additional Settling Defendant concerning opioids.
6. "National Counsel" means legal counsel and law firms who have a principal office outside of North Carolina and represented various North Carolina counties and municipalities in litigation against one or more Settling Defendant or Additional Settling Defendant concerning opioids.
7. "Required Local Governments" means all North Carolina counties and municipalities that have filed litigation against any of the Settling Defendants or Additional Settling Defendants.

B. Allocation of Additional Funds

1. Method of distribution. Pursuant to any Additional Settlements, Additional Funds shall be distributed directly to the State, Local Governments, and Local Counsel for such uses as set forth in the MOA and this SAAF, provided Opioid Settlement Funds shall not be considered funds of the State, any Local Governments, or any Local Counsel unless and until such time as each distribution is made.
2. Overall allocation of funds. Additional Funds shall be allocated as follows with respect to each payment from the Additional Settling Defendants: (i) 15% directly to the State ("State Additional Abatement Fund"), (ii) 84.62% to abatement funds established by Local Governments ("Local Additional Abatement Funds"), and (iii) 0.38% to a Local Counsel Fee Fund described in section IV of this SAAF.
3. The allocation of Local Additional Abatement Funds between Local Governments shall be as described in MOA section B.3. However, to the extent required by the terms of an Additional Settlement, the proportions set forth in MOA Exhibit G shall be adjusted: (i) to provide no payment from an Additional Settlement to any listed county or municipality that does not participate in the Additional Settlement; and (ii) to provide a reduced payment from an Additional Settlement to any listed county or municipality that signs onto the Additional Settlement after the deadline specified by the Additional Settlement.
4. Municipal allocations of Local Additional Abatement Funds shall be as described in MOA section B.4. Consistent with the manner in which MOA section B.4.b has been interpreted by the parties to the MOA with respect to Opioid Settlement Funds, a municipality that directs Local Additional Abatement Funds to the county or counties in which it is located pursuant to MOA section B.4 shall be relieved of any reporting or other obligations under the MOA with respect to the redirected funds.
5. The use of Additional Funds for opioid remediation activities shall be as described in MOA section B.5.
6. All Parties acknowledge and agree the Additional Settlements will require a Local Government to release all its claims against the Additional Settling Defendants to receive Additional Funds. All Parties further acknowledge and agree based on the terms of the Additional Settlements, a Local Government may receive funds through this SAAF only after complying with all requirements set forth in the Additional Agreements to release its claims.

C. Payment of Litigating and Non-Litigating Parties

No party engaged in litigating the MDL Matter shall receive a smaller payment than a similarly situated non-litigating Party, other than as based on the Allocation Proportions in MOA Exhibit G.

D. Special Revenue Fund

Every Local Government receiving Additional Funds shall either (1) deposit the Additional Funds in the special revenue fund that the Local Government created for Opioid Settlement Funds pursuant to MOA section D.1 or (2) create a separate special revenue fund as described in MOA section D.1 that is designated for the receipt and expenditure of the Additional Funds. In either case, every Local Government receiving Additional Funds shall abide by MOA section D and other relevant provisions of the MOA with respect to the Additional Funds in the special revenue fund.

E. Opioid Remediation Activities

1. Local Governments shall expend Additional Funds according to the requirements for Opioid Settlement Funds stated in MOA section E.
2. The coordination group established by MOA section E.7 and described in MOA Exhibit D shall have the same responsibilities with respect to remediation activities funded by Additional Funds and related requirements and procedures that it has with respect to the Opioid Settlement Funds covered by the MOA.

F. Auditing, Compliance, Reporting, and Accountability

1. The Auditing, Compliance, Reporting, and Accountability provisions stated in MOA section F shall apply to Additional Funds in the way they apply to Opioid Settlement Funds.
2. The coordination group established by MOA section E.7 and described in MOA Exhibit D shall have the same responsibilities with respect to auditing, compliance, reporting, and accountability provisions relating to Additional Funds that it has with respect to the Opioid Settlement Funds covered by the MOA.

G. Effectiveness

1. When this SAAF takes effect. This SAAF shall become effective at the time a sufficient number of Local Governments have joined the SAAF to qualify the SAAF as a State-Subdivision Agreement under the Additional Settlements. If this SAAF does not thereby qualify as a State-Subdivision Agreement, this SAAF will have no effect.
2. Amendments to the SAAF.
 - a. Amendments to conform to final national documents. The Attorney General, with the consent of a majority vote from a group of Local Government attorneys appointed by the Association of County Commissioners, may initiate a process to amend this SAAF to make any changes required by the final provisions of the Additional Settlements. The Attorney General's Office will provide written notice of the necessary amendments to all the previously joining parties. Any previously joining party will have a two-week opportunity to withdraw from the SAAF. The amendments will be effective to any party that does not withdraw.
 - b. Coordination group. The coordination group may make the changes to the SAAF described and authorized in MOA Exhibit D.
 - c. No amendments to allocation between Local Governments. Notwithstanding any other provision of this SAAF, the allocation proportions set forth in MOA Exhibit G may not be amended.
 - d. General amendment power. After execution, the coordination group may propose other amendments to the SAAF, subject to the limitation in Section G.2.c of this SAAF. Such amendments will take effect only if approved in writing by the Attorney General and at least two-thirds of the Local Governments who are Parties to this SAAF. In the vote, each Local Government Party will have a number of votes measured by the allocation proportions set forth in MOA Exhibit G.
3. Acknowledgement. The Parties acknowledge this SAAF is an effective and fair way to address the needs arising from the public health crisis due to the misconduct committed by the Pharmaceutical Supply Chain Participants.

4. When SAAF is no longer in effect. This SAAF is effective until one year after the last date on which any (a) Opioid Settlement Funds are being spent by Local Governments pursuant to the National Settlement Agreement and any Bankruptcy Resolution or (b) Additional Funds are being spent by Local Governments pursuant to the Additional Settlements.
5. Application of SAAF to settlements. This SAAF applies to the Additional Settlements.
6. Applicable law and venue. Unless required otherwise by the Additional Settlements, this MOA shall be interpreted using North Carolina law and any action related to the provisions of this SAAF must be adjudicated by the Superior Court of Wake County. If any provision of this SAAF is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision which can be given effect without the invalid provision.
7. Scope of this SAAF. The Parties acknowledge this SAAF does not excuse any requirements placed upon them by the terms of the Additional Settlements, except to the extent those terms allow for a State-Subdivision Agreement to do so.
8. No third party beneficiaries. No person or entity is intended to be a third party beneficiary of this SAAF.
9. No effect on authority of parties. Nothing in this SAAF shall be construed to affect or constrain the authority of the Parties under law.
10. Signing and execution of this SAAF. This SAAF may be signed and executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. A signature transmitted by facsimile, electronic image, or DocuSign shall be deemed an original signature for purposes of executing this SAAF. Each person signing this SAAF represents he or she is fully authorized to enter into the terms and conditions of, and to execute, this SAAF, and all necessary approvals and conditions precedent to execution have been satisfied.

IV. LOCAL COUNSEL FEE FUND

Local Counsel have reviewed the Additional Settlements, find them to be equitable, and recommend their clients execute these Additional Settlements and this SAAF. If (1) all Local Counsel sign this SAAF whereby they consent to the terms of this SAAF and agree to be legally bound by this SAAF, including but not limited to Section IV of this SAAF, and (2) all Required Local Governments agree on or before April 18, 2023 to dismiss all litigation against the Additional Settling Defendants as required by the Additional Settlements, then each Local Counsel shall be entitled to receive a portion of the Local Counsel Fee Fund for the Additional Settlements, in such proportions as set forth below. If one or more Required Local Governments does not dismiss litigation as required by the Additional Settlements, then the 0.38% share of Additional Funds set forth in Section III.B.2 of this SAAF for the Local Counsel Fee Fund shall be included in the Local Additional Abatement Funds, such that 85% of the Additional Funds will be allocated to Local Additional Abatement Funds, and 0% will be allocated to the Local Counsel Fee Fund.

Local Counsel release all North Carolina counties and municipalities from any claim regarding the obligation to pay legal fees or costs relating to their representation of North Carolina counties and municipalities regarding opioid claims and litigation against the Settling Defendants and Additional Settling Defendants. Local Counsel retain their rights to recover legal fees from any national legal fee fund established by a national settlement and to collect any fees due from National Counsel. If one or more National Counsel fails to release its North Carolina client counties and/or municipalities from any contractual obligation to pay legal fees or costs relating to their representation of North Carolina counties and municipalities regarding opioid claims and litigation against the Settling Defendants and Additional Settling Defendants, as required for National Counsel and Local Counsel to receive a portion of the national fee funds created by the National Settlement Agreements and Additional Settlement, then the 0.38% share of Additional Funds set forth in Section III.B.2 of this SAAF for the Local Counsel Fee Fund shall be included in the Local Additional Abatement Funds, such that 85% of the Additional Funds will be allocated to Local Additional Abatement Funds, and 0% will be allocated to the Local Counsel Fee Fund.

As soon as practicable, but in any event no later than May 1, 2023, Local Counsel shall report to the settlement administrator the proportion of the Local Counsel Fee Fund to be received by each Local Counsel. No funds shall be paid out of the Local Counsel Fee Fund until such report is received. Each Local Counsel's release of claims against all North Carolina counties and municipalities as provided above shall remain in full force and effect regardless of the proportion of the Local Counsel Fee Fund that any Local Counsel receives.

IN WITNESS WHEREOF, the parties, through their duly authorized officers, have executed this Supplemental Agreement for Additional Funds under seal as of the date hereof.

By: _____

Name: _____

Title: _____

County/City/Town of _____

Date: _____



**RESOLUTION OF THE TOWN OF HUNTERSVILLE TO AWARD THE BID FOR PATTERSON ROAD
EXTENSION PROJECT – FINAL PHASE AND ACCEPT AND APPROVE THE BID PROPOSAL AS
THE CONTRACT**

Whereas, the Town of Huntersville received informal, written bids for the roadway construction of Patterson Road Extension Project – Final Phase (the “Project”); and

Whereas, N.C.G.S. 143-131(a) requires the procedures of letting public contracts through an informal bid process for projects in the amount of thirty thousand dollars (\$30,000) or more, but less than the limits prescribed in G.S. 143-129; and

Whereas, informal bid procedures were conducted in accordance with N.C.G.S. 143-131, the lowest responsible bidder being Country Boy Landscaping; and

Whereas, the Town now desires to enter into a construction services agreement with Country Boy Landscaping, (the “Agreement”), the Agreement being attached hereto as Exhibit A; and;

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Board of Commissioners awards the Project to the Low Bidder, in accordance with the Bid Proposal submitted:

- Base Bid of:

1. <u>Subtotal</u>	\$498,506.35
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<u>Total Bid:</u>	\$498,506.35
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<u>Total Bid Amount:</u>	\$498,506.35
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2. The Bid Proposal, attached hereto as Exhibit 1, is hereby accepted and approved. As used herein, the Bid Proposal is deemed to include all Exhibits attached thereto, and all Contract Documents identified and incorporated therein by reference.
3. The Board hereby authorizes the Town Manager, acting on advice of counsel, to take any actions necessary to effect the provisions of this Resolution. Provided a budget amendment is not necessary, the Town Manager shall have the authority to approve change orders to the Project for time and price, however the total of all change

Exhibit No. 6

Resolution No. R-2022-XX
Page 1 of 2

orders approved by the Town Manager may not exceed five percent (5%) of the Total Bid Amount stated in paragraph 1, above.

4. This Resolution shall be effective as of the date its adoption.

Adopted this 6th day of March, 2023.

ATTEST:

TOWN OF HUNTERSVILLE

Town Clerk

Town Mayor

APPROVED AS TO FORM:

Town Attorney



Engineering & Public Works
105 Gilead Road, Suite 300
Huntersville, NC 28078
(704) 766-2220

CONTRACT FOR CONSTRUCTION SERVICES

CONTRACTOR: Country Boy Landscaping, Inc.

429 Old Mocksville Rd.

Statesville, NC 28625

Patterson Road Final Construction

seth@cblinc.net

PROJECT:

Patterson Road Final
Construction

SITE

Patterson Rd.

LOCATION(S):

This Contract for Construction and Repair, and all exhibits, (collectively this "Contract") is entered into this 10 day of January, 2022~~23~~ by and between the Town of Huntersville, a municipal corporation of the State of North Carolina, (the "Town") and Country Boy Landscaping, Inc. located at 429 Old Mocksville Rd. Statesville, NC (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 according to the following construction design drawings, plans, and specifications, which is 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. The Contractor further warrants and promises that the Work shall be free from defects and nonconformities in materials and workmanship for a period of one year from the later of the "Date of Completion" or such date as the Contractor actually completes all the Work. 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 as Exhibit D, (the "Contract Price").
3. **Change Orders.** The Contractor agrees that the Town may order changes to the general scope of the Work, including additions, deletions, and similar revisions ("Change Orders"). The parties agree to adjust the Contract Price to reflect the effects of such changes. These changes shall be authorized

only upon execution of a written Change Order. The amount of any increase or decrease in the Contract Price shall be by mutual acceptance of a total amount supported by sufficient data and information to substantiate the change. If the Town and Contractor do not mutually agree on the amount of the change in the Contract Price, the Contractor will proceed with the Work described in the Change Order and the Town will pay the reasonable costs of any additional work as determined by the Town, including a reasonable amount for the Contractor's overhead and profit. Any decrease in Contract Price for a decrease in the Work will be the reasonable costs of the Work deleted as determined by the Town, including a reasonable amount for the decrease in the Contractor's overhead. The Contractor may submit claims for an increase in the Contract Price or an extension of the Date of Completion by means of a written Change Request. The Contractor agrees to submit the Change Request within a reasonable time after the event giving rise to the requested change and before the Contractor undertakes any additional work. Upon receipt of a Change Request, the Town, at its sole discretion, shall inform the Contractor whether to proceed with the additional work and shall approve any adjustment in the Contract Price or Date of Completion by issuing a Change Order as provided above. The timely submission of a written Change Request shall be a condition precedent to the issuance of a Change Order, and the Town will have no obligation to pay the Contractor for additional work performed by the Contractor without a Change Order approved in writing by the Town.

4. 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.
5. Personal Protective Equipment (PPE). The Contractor and his/her employees will wear the proper equipment such as, but not limited to, high visibility clothing, safety glasses, hearing protection, etc. at all times when performing the Work at the Site Location(s). Failure to be in the appropriate PPE will result in removal from the project site.
6. 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.
7. Working Drawings and Specifications at the Job Site. The Contractor shall maintain, in readable condition at his job site one complete set of working drawings and specifications for his work including all shop drawings. Such drawings and specifications shall be available for use by the owner, designer, or his authorized representative. The Contractor shall also maintain at the job site, a day-to-day record of work-in-place that is at variance with the contract documents. Such variations shall be fully noted on Project drawings by the Contractor and submitted to the designer upon Project completion and no later than 30 days after acceptance of the Project.
8. Materials, Equipment, Employees. The Contractor shall, unless otherwise specified, supply and pay for all labor, transportation, materials, tools, apparatus, lights, power, fuel, heat, sanitary facilities, water, scaffolding and incidentals necessary for the completion of the work, and shall install, maintain and remove all equipment of the construction, other utensils or things, and be responsible for the safe, proper and lawful construction, maintenance and use of same, and shall construct in the best and most workmanlike manner, a complete job and everything incidental thereto, as shown on the plans, stated in the specifications, or reasonably implied therefrom, all in accordance with the contract documents.

9. Cleaning Up and Restoration of Site. The Contractor shall keep the sites and surrounding area reasonably free from rubbish at all times and shall remove debris from the site from time to time or when directed to do so by the Owner. Before final inspection and acceptance of the Project, the Contractor shall thoroughly clean the sites, and completely prepare the Project and site for use by the Owner. At the end of construction, the Contractor shall oversee and implement the restoration of the construction site to its original state. Restoration includes but not limited to walks, drives, lawns, trees and shrubs, corridors, stairs, and other elements shall be repaired, cleaned, or otherwise restored to their original state.
10. Protection of Work, Property, the Public, and Safety. The Contractor shall be solely responsible for the entire site and the building or construction of the same and provide all the necessary protections, as required by the owner or designer, and by laws or ordinances governing such conditions. 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.
11. As-Built Marked-Up Construction Documents. Contractor shall provide one complete set of legible "as-built" marked-up construction drawings and specifications recording any and all changes made to the original design during the course of construction. In the event no changes occurred, submit construction drawings and specifications set with notation "No Changes." The Designer/Owner must receive "As-built" marked-up construction drawings and specifications before the final pay request can be processed.
12. Retainage. Retainage on periodic or final payments on public construction contracts in which the total project costs are \$100,000 or more are allowed pursuant to N.C.G.S. § 143-134.1.
13. Addendums: If applicable, Contractor acknowledges that it has received, executed, and shall abide by any addendums issued by the Town prior to this Contract.
14. 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.
15. Contract Term. Work will begin within ten (10) days of receipt of the Notice to Proceed from the Town. The Contractor and the Town recognize that time is of the essence for completion of the Work. Any Notice to Proceed shall also contain a date that the Contractor shall complete the Work by (the "Date of Completion"). The terms of this Contract shall apply to every Notice to Proceed issued by the Town.
16. Liquidated Damages. Contractor and Town recognize that time is of the essence and that Town will suffer financial and other losses if the Work is not completed by the Date of Completion, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Town if the Work is not completed on time. Accordingly, instead of requiring any such proof, Town and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Town \$500 for each day that expires after the end of the Date of Completion (as duly adjusted pursuant to the Contract) until the Work is complete.
17. Payment for Work In consideration of the above Work, the Town will pay the Contractor the sum as further described on Exhibit D.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals at Huntersville, North Carolina, this 10 day of January, 20 2023

Contractor

Town of Huntersville

Name:

Country Boy Landscaping, Inc.
Name of Contractor (type or print)

Town Manager

By:

[Signature]
(Signature)

Attest: _____

Town Clerk

Title:

President

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

Attest:

[Signature]
(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 Contractor 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 Work performed under the Contract shall be defective in any respect whatsoever, the Contractor 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 Contractor shall provide the insurance coverages shown on Exhibit B, attached hereto and incorporated herein by reference. The Contractor 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 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 Town, Contractor 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 in the performance of the Work 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. Contractor warrants that all Work 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 for the Work and shall run to the Town and any user of the Work. Contractor warrants that all Work 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 Work 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, Work 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 Work 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 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. **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.
31. **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.
32. **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.
33. **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 – PLANS AND SPECIFICATIONS

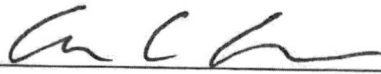
(insert plans and specs)

EXHIBIT D – FEE SCHEDULE

<u>Service</u>	<u>Unit Cost</u>	<u>Quantity</u>	<u>Total</u>
Mobilization	\$14,500.00	1 LS	\$14,500.00
Construction Staking	\$7,255.00	1 LS	\$7,255.00
Grading	\$46,712.00	1 LS	\$46,712.00
Asphalt Surface Course S9.5C (3")	\$92.00	606 Ton	\$55,752.00
Asphalt Intr. Course I 19.0C (4")	\$81.00	806 Ton	\$65,286.00
Asphalt Base Course B25.0C (5")	\$69.00	1,110 Ton	\$76,590.00
Asphalt Binder Mix	\$831.00	126 Ton	\$104,706.00
Milling	\$1.00	184 SY	\$184.00
5' Concrete Sidewalk	\$58.50	870 SY	\$50,895.00
2'-6" Curb and Gutter	\$26.55	2,517 LF	\$66,826.35
Traffic Control	\$3,600.00	1 LS	\$3,600.00
Erosion Control	\$6,200.00	1 LS	\$6,200.00
Total Cost =			\$498,506.35

Country Bay Landscaping, Inc. 2/17/23
Company Name Date

Chris C. Cartner 2/15/23
Print Name Title


Signature



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

02/15/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Shelia King PHONE (A/C, No, Ext): (704)838-0837 E-MAIL ADDRESS: shelia@wootenins.com FAX (A/C, No): (704)873-0215
DJBB dba Wooten Insurance Po Box 827 Statesville, NC 28687	INSURER(S) AFFORDING COVERAGE INSURER A: Auto Owners Ins Co INSURER B: Auto Owners Ins Co INSURER C: INSURER D: INSURER E: INSURER F:
INSURED	NAIC # 32700 18988
Country Boy Landscaping Inc PO Box 290 Harmony, NC 28634-0290	

COVERAGES

CERTIFICATE NUMBER: 00017019-5547221

REVISION NUMBER: 11

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:		35041456	03/28/2022	03/28/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	☐ AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☒ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY		5038095401	06/10/2022	06/10/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$		4765676302	03/28/2022	03/28/2023	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
A	☐ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ N/A	35036047	06/10/2022	06/10/2023	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	☐ Rented/Leased Equipm		35666439	11/21/2022	11/21/2023	150,000 150,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Project: Patterson Road Final Construction
Additional Insured: Town of Huntersville, NC

CERTIFICATE HOLDER

CANCELLATION

Town of Huntersville
105 Gilead Road, Suite 300
Huntersville, NC 28078

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

(SHK)

THE AMERICAN INSTITUTE OF ARCHITECTS



Bond No. 2338235

AIA Document A312

Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Country Boy Landscaping, Inc.
429 Old Mocksville Road
Statesville, NC 28625

OWNER (Name and Address):

Town of Huntersville
105 Gilead Road, Suite 300
Huntersville, NC 28078

SURETY (Name and Principal Place of Business):

Swiss Re Corporate Solutions America Insurance
Corporation
1200 Main Street, Suite 800
Kansas City, MO 64105

CONSTRUCTION CONTRACT

Date: January 10, 2022

Amount: \$498,589.45 Four Hundred Ninety Eight Thousand Five Hundred Eighty Nine Dollars and 45/100

Description (Name and Location): Patterson Road Final Construction

BOND

Date (Not earlier than Construction Contract Date): February 10, 2023

Amount: \$498,589.45 Four Hundred Ninety Eight Thousand Five Hundred Eighty Nine Dollars and 45/100

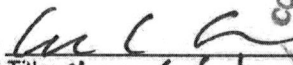
Modifications to this Bond:

☒ None

☐ See Page 3

**CONTRACTOR AS PRINCIPAL
Company:**

Country Boy Landscaping, Inc.

Signature: 

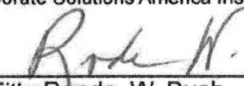
Name and Title: *Chris L. Carter Pres.*

(Any additional signatures appear on page 3)



**SURETY
Company:**

Swiss Re Corporate Solutions America Insurance Corporation

Signature: 

Name and Title: Ronda W. Bush
Attorney-in-Fact

(Corporate Seal)



(FOR INFORMATION ONLY - Name, Address and Telephone)

AGENT or BROKER:

McGriff Insurance Services, LLC
4309 Emperor Blvd., Ste. 300
Durham, NC 27703
919-281-4500

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for

which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation avail-

able to sureties as a defense in the jurisdiction of the suit shall be applicable.

10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12 DEFINITIONS

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Con-

tractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL
Company:

(Corporate Seal)

SURETY
Company:

(Corporate Seal)

Signature: _____
Name and Title:
Address:

Signature: _____
Name and Title:
Address:

THE AMERICAN INSTITUTE OF ARCHITECTS



Bond No. 2338235

AIA Document A311

Labor and Material Payment Bond

THIS BOND IS ISSUED SIMULTANEOUSLY WITH PERFORMANCE BOND IN FAVOR OF THE OWNER CONDITIONED ON THE FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT

KNOW ALL MEN BY THESE PRESENTS: that Country Boy Landscaping, Inc.
(Here insert full name and address or legal title of Contractor)

429 Old Mocksville Road Statesville, NC 28625

as Principal, hereinafter called Principal, and, Swiss Re Corporate Solutions America Insurance Corporation
(Here insert full name and address or legal title of Surety)

1200 Main Street, Suite 800, Kansas City, MO 64105

as Surety, hereinafter called Surety, are held and firmly bound unto Town of Huntersville
(Here insert full name and address or legal title of Owner)

105 Gilead Road, Suite 300 Huntersville, NC 28078

as Obligor, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the

amount of Four Hundred Ninety Eight Thousand Five Hundred Eighty Nine Dollars and 45/100
(Here insert a sum equal to at least one-half of the contract price) Dollars (\$ 498,589.45),

for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Principal has by written agreement dated January 10, 2022, entered into a contract with Owner
for
(Here insert full name, address and description of project)
Patterson Road Final Construction

in accordance with Drawings and Specifications prepared by
(Here insert full name and address or legal title of Architect)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

LABOR AND MATERIAL PAYMENT BOND

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void, otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The owner shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:

a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: the Principal, the Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed

and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

b) After the expiration of one (1) year following the date on which principal ceased Work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

c) Other than in state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety or mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this

10th

day of February, 2023.

ATTEST:

By: Amber B. Hepler (Witness) Country Boy Landscaping, Inc. (Principal) (Seal)
By: [Signature] (Title) President

WITNESS:

By: Joseph Kelly (Witness) Swiss Re Corporate Solutions America Insurance Corporation (Surety) (Seal)
By: Ronda W. Bush (Title) Attorney-in-Fact

SWISS RE CORPORATE SOLUTIONS

SWISS RE CORPORATE SOLUTIONS AMERICA INSURANCE CORPORATION ("SRCSAIC")
SWISS RE CORPORATE SOLUTIONS PREMIER INSURANCE CORPORATION ("SRCSPIC")

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, THAT SRCSAIC, a corporation duly organized and existing under laws of the State of Missouri, and having its principal office in the City of Kansas City, Missouri, and SRCSPIC, a corporation organized and existing under the laws of the State of Missouri and having its principal office in the City of Kansas City, Missouri, each does hereby make, constitute, and appoint: Ronda W. Bush

Principal: Country Boy Landscaping, Inc.
Obligee: Town of Huntersville
Bond Description: Patterson Road Final Construction
Bond Number: 2338235
Bond Amount: See Bond Form

Its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its act and deed, bonds or other writings obligatory in the nature of a bond on behalf of each of said Companies, as surety, on contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract or suretyship executed under this authority shall exceed the amount of:

FIFTY MILLION (\$50,000,000.00) DOLLARS

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both SRCSAIC and SRCSPIC at meetings duly called and held on the 9th of May 2012:

"RESOLVED, that any two of the President, any Managing Director, any Senior Vice President, any Vice President, the Secretary or any Assistant Secretary be, and each or any of them hereby is, authorized to execute a Power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Corporation bonds, undertakings and all contracts of surety, and that each or any of them hereby is authorized to attest to the execution of any such Power of Attorney and to attach therein the seal of the Corporation; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Corporation may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be binding upon the Corporation when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached."



By Erik Janssens
Erik Janssens, Senior Vice President of SRCSAIC & Senior Vice President of SRCSPIC

By Gerald Jagrowski
Gerald Jagrowski, Vice President of SRCSAIC & Vice President of SRCSPIC

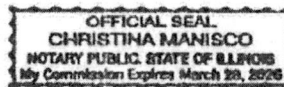
IN WITNESS WHEREOF, SRCSAIC and SRCSPIC have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers this 10TH day of NOVEMBER, 20 22

State of Illinois
County of Cook

SS

Swiss Re Corporate Solutions America Insurance Corporation
Swiss Re Corporate Solutions Premier Insurance Corporation

On this 10TH day of NOVEMBER, 20 22, before me, a Notary Public personally appeared Erik Janssens, Senior Vice President of SRCSAIC and Senior Vice President of SRCSPIC and Gerald Jagrowski, Vice President of SRCSAIC and Vice President of SRCSPIC, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.



Christina Manisco
Christina Manisco, Notary

I, Jeffrey Goldberg, the duly elected Senior Vice President and Assistant Secretary of SRCSAIC and SRCSPIC, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney given by said SRCSAIC and SRCSPIC, which is still in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 10th day of February, 20 23

Jeffrey Goldberg
Jeffrey Goldberg, Senior Vice President &
Assistant Secretary of SRCSAIC and
SRCSPIC

Item #	Description	Quantity	Unit	Country Boy Landscaping		Church Brothers Grading		Smith-Rowe, LLC	
				Unit Price	Total	Unit Price	Total	Unit Price	Total
1	Mobilization	1	LS	\$ 14,500.00	\$ 14,500.00	\$ 16,000.00	\$ 16,000.00	\$ 20,000.00	\$ 20,000.00
2	Construction Staking	1	LS	\$ 7,255.00	\$ 7,255.00	\$ 7,700.00	\$ 7,700.00	\$ 9,500.00	\$ 9,500.00
3	Grading	1	LS	\$ 46,712.00	\$ 46,712.00	\$ 60,000.00	\$ 60,000.00	\$ 55,000.00	\$ 55,000.00
4	Asphalt Surface Course S9.5C (3")	606	Ton	\$ 92.00	\$ 55,752.00	\$ 93.48	\$ 56,648.88	\$ 95.00	\$ 57,570.00
5	Asphalt Intr. Course I 19.0C (4")	806	Ton	\$ 81.00	\$ 65,286.00	\$ 85.19	\$ 68,663.14	\$ 92.00	\$ 74,152.00
6	Asphalt Base Course B25.0C (5")	1,110	Ton	\$ 69.00	\$ 76,590.00	\$ 73.88	\$ 82,006.80	\$ 75.00	\$ 83,250.00
7	Asphalt Binder Mix	126	Ton	\$ 831.00	\$ 104,706.00	\$ 800.00	\$ 100,800.00	\$ 875.00	\$ 110,250.00
8	Milling	184	SY	\$ 1.00	\$ 184.00	\$ 25.00	\$ 4,600.00	\$ 25.00	\$ 4,600.00
9	5' Concrete Sidewalk	870	SY	\$ 58.50	\$ 50,895.00	\$ 61.00	\$ 53,070.00	\$ 75.00	\$ 65,250.00
10	2'-6" Curb and Gutter	2,517	LF	\$ 26.55	\$ 66,826.35	\$ 25.80	\$ 64,938.60	\$ 30.00	\$ 75,510.00
11	Traffic Control	1	LS	\$ 3,600.00	\$ 3,600.00	\$ 1,800.00	\$ 1,800.00	\$ 6,500.00	\$ 6,500.00
12	Erosion Control	1	LS	\$ 6,200.00	\$ 6,200.00	\$ 4,966.00	\$ 4,966.00	\$ 12,500.00	\$ 12,500.00
Total					\$ 498,506.35		\$ 521,193.42		\$ 574,082.00

TOWN OF HUNTERSVILLE

FY 2024 GOALS

LAND USE DEVELOPMENT / PLANNING

Maintain a diverse long-range transportation and land use vision that provides a high quality of life

- Implement recommendations in the 2040 Huntersville Community Plan
- Finalize Downtown Plan
- Finalize Mobility Plan
- Review land development plan related to zoning and uses allowed on infill lots

FINANCE

Maintain a balanced budget with a healthy fund balance to provide excellent services

- Maintain AAA bond rating which will lower future borrowing costs of funding the CIP
- Create Bond package for Board and citizen approval November 2023 to provide for future capital needs
- Seek federal, state, and county grants/partnerships to fund projects

PUBLIC SAFETY

Provide competent, courteous, professional, and community-oriented Police and Fire Services

- Renegotiate ETJ police contract and dispatch contract
- Enhance recruitment efforts to attract/retain quality officers and enhance training efforts such as additional investigative certifications for detectives
- Implement Magistrate services at HPD
- Finalize site for Station 2 replacement and continue to pursue future site for a new Station 5
- Start the process of hiring fulltime HFD employees and/or increase firefighter pay

TRANSPORTATION INFRASTRUCTURE

Advance transportation projects to completion

- Push municipal street, sidewalk, and bike projects forward
- Advocate/partner with NCDOT to advance local and regional projects

- Work with northern towns to improve local bus transit services
- Utilize technology to enhance infrastructure improvements

PARKS AND RECREATION / GREENWAYS

Provide safe, attractive, and high-quality parks, facilities, programs, and greenways

- Advance greenway construction to serve 30,000 people by 2030
- Diversify/expand event offerings
- Diversify/expand park facilities (i.e., splash pads, pickleball courts, etc.)

HOUSING

Provide a variety of housing options for all citizens

- Seek opportunities/partnerships to advance affordable and workforce housing
- Help revitalize and/or repair homes in areas of need such as Pottstown and Huntington Green

SUSTAINABILITY / NATURAL RESOURCES / ENVIRONMENT

Seek sustainable options to protect our natural resources and environment

- Seek opportunities to convert the town fleet toward electric/hybrid vehicles and streetlights/parking lot lights to LED
- Seek comprehensive stormwater solution for downtown
- Review/recommend update to tree species/location impact on sidewalks

FACILITIES / ASSET MANAGEMENT

Provide sufficient space for community meetings and municipal services

- ~~Decide on location and move forward with a contract regarding Town Hall~~
- Renovate air filtration system and determine long term goals for HFFA
- Pursue aesthetic and system reliability upgrades to the Town electric distribution system