



CITY OF HENDERSONVILLE
CITY COUNCIL SECOND MONTHLY MEETING
Operations Center - Assembly Room | 305 Williams St. | Hendersonville NC 28792
Wednesday, October 26, 2022 – 4:00 PM

AGENDA

1. **CALL TO ORDER**
2. **CONSENT** - *Items are considered routine, noncontroversial in nature and are considered approved by a single motion and vote.*
 - A. Sole Source Purchase of a Standby Engine-Generator for the French Broad River Intake & Pumping Station Project- *Adam Steurer, Utilities Engineer*
 - B. Housing Selection Committee Neighborhood Assistance Policy – *John Connet, City Manager*
 - C. Exchange Agreement with Henderson County Board of Public Education – *Angela Beeker, City Attorney*
 - D. Amendment to Rezoning: Conditional Zoning District – Cottages @ Mastermind (P22-55-CZD) – *Angela S. Beeker, City Attorney*
3. **NEW BUSINESS**
4. **PRESENTATIONS**
 - A. Stantec Water and Sewer Rate Study Presentation – *Drew Finley, Asst. to the Utilities Director*
5. **CLOSED SESSION**
 - A. Closed Session – *John Connet, City Manager*
6. **ADJOURN**

The City of Hendersonville is committed to providing accessible facilities, programs and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or an accommodation for this meeting please contact the City Clerk no later than 24 hours prior to the meeting at 697-3005.



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Adam Steurer, Utilities Engineer **MEETING DATE:** October 26, 2022

AGENDA SECTION: Consent Agenda **DEPARTMENT:** Utilities

TITLE OF ITEM: Sole Source Purchase of a Standby Engine-Generator for the French Broad River Intake & Pumping Station Project- *Adam Steurer, Utilities Engineer*

SUGGESTED MOTION(S):

I move City Council adopt the *Resolution by the City of Hendersonville City Council to Authorize the Sole-Source Purchase of a Standby Engine-Generator for the French Broad River Intake & Pumping Station Project* as presented.

SUMMARY:

The French Broad River Intake & Pumping Station Project will provide a redundant source of non-potable water to improve the resiliency of the Water Treatment Facility general operations and will require installation of a stand-by generator to operate in times of power outages. NCGS 143-129(e) lists the authorized exceptions to the formal bid procedures. NCGS 143-129(e)(6) allows for purchases of apparatus, supplies, materials, or equipment to be purchasing using sole-source exception when: (i) performance or price competition for a product are not available; (ii) a needed product is available from only one source of supply; or (iii) standardization or compatibility is the overriding consideration. The governing board of a political subdivision of the State shall approve the purchases listed in the preceding sentence prior to the award of the contract.

In this case, Utility Staff and consulting engineer are requesting to continue to standardize on generators system-wide by asking that Council approve the sole source purchase of a stand-by generator from Cummins.

BUDGET IMPACT: \$216,500.00 plus applicable tax

Is this expenditure approved in the current fiscal year budget? YES. The project is funded through a CPO

If no, describe how it will be funded.

ATTACHMENTS:

Resolution
Sole-source Justification letter from Black & Veatch
Quotation from Cummins for stand-by engine generator

Resolution #__-____

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO
AUTHORIZE THE SOLE-SOURCE PURCHASE OF A STANDBY ENGINE-GENERATOR
FOR THE FRENCH BROAD RIVER INTAKE & PUMPING STATION PROJECT**

WHEREAS, the French Broad River Intake and Pumping Station (DWSRF Project No. WIF1940) is intended as a redundant source of non-potable water to improve the resiliency of the Water Treatment Facility general operations. The intake and pumping station is also designed for future expansion to serve future water demands within the City's water service area. The new water source associated with this project will be utilized as needed for maintenance as well as interchangeably with existing raw water sources during normal operations. The City will have the flexibility to operate one or all of its raw water sources simultaneously as required to adjust to changing conditions and treatment needs; and

WHEREAS, the French Broad River Intake and Pumping Station will require a standby engine-generator to operate in times of power outages; and

WHEREAS, NCGS 143-129(e) lists the authorized exceptions to the formal bid procedures. NCGS 143-129(e)(6) allows for purchases of apparatus, supplies, materials, or equipment to be purchasing using sole-source exception when: (i) performance or price competition for a product are not available; (ii) a needed product is available from only one source of supply; or (iii) standardization or compatibility is the overriding consideration. The governing board of a political subdivision of the State shall approve the purchases listed in the preceding sentence prior to the award of the contract; and

WHEREAS, Utility Staff and consulting engineer is requesting to continue to standardize on generators within the system by asking that Council approve the sole source purchase of a stand-by generator from Cummins.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville, North Carolina that:

1. A sole-source purchase of a standby engine-generator is authorized for the French Broad River Intake & Pumping Station in the amount of \$216,500 plus applicable sales tax.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 26th day of October, 2022.

Attest:

Deputy City Clerk

Barbara G. Volk, Mayor, City of Hendersonville

Approved as to form:

Angela S. Becker, City Attorney

December 15, 2021

City of Hendersonville
French Broad River Intake and Pumping Station

Project No. 195560
B&V File 60.1000

City of Hendersonville
305 Williams Street
Hendersonville, NC 28792

Attention: Brent Detwiler, PE, City Engineer
Subject: Sole-Sourcing Justification for Standby Engine-Generator
French Broad River Intake & Pumping Station Project

Dear Mr. Detwiler

Based on discussions with the City utility staff regarding the desire to standardize on generators within the system, Black & Veatch is recommending a direct purchase of a 550 kW 277/480 V Cummins Diesel generator with 24-hour subbase fuel tank and NEMA-3R weatherproof enclosure for installation at the new French Broad River Pumping Station.

This equipment would be installed at the site by the general contractor contracted for the project.

A majority of the existing generators in the system are Cummins. Maintaining this standardization moving forward will both improve the ability to maintain spare parts and increase staff knowledge of the equipment.

Best Regards,
BLACK & VEATCH INTERNATIONAL COMPANY



Zachary Collins, PE
Civil Engineer

Enclosures

October 12, 2022

Prepared by

Nicole Michael
(864) 641-5077
hq689@cummins.com

We are pleased to provide you this quotation based on your inquiry.

Item	Description	Qty
1	DQCA, Commercial Diesel Generator Set, 600kW Standby 60Hz U.S. EPA, Stationary Emergency Application 600DQCA, Diesel Genset, 60Hz, 600kW Duty Rating - Standby Power (ESP) Emission Certification, EPA, Tier 2, NSPS CI Stationary Emergency Listing - UL 2200 Cert - Seismic, IBC2000, IBC2003, IBC2006, IBC2009, IBC2011 Voltage - 277/480, 3 Phase, Wye, 4 Wire Alternator - 60Hz, Wye, 480 Volts, 105C - Standby Alternator Heater, 120 Volt AC Housing-None Fuel Water Separator Control Mounting - Front Facing PowerCommand 2.3 Controller Control Cabinet Heater, 120/240 Volt AC Compatible LCD Control Display Alarm - Audible, Engine Shutdown Signals - Auxiliary, 8 Inputs/8 Outputs Control Display Language - English Circuit Breaker or Entrance Box or Terminal Box - Left Only Circuit Breaker - 1200A, Left, 3P, 600/415V, UL/IEC, Serv Ent, 100%UL Terminal Box-Low Voltage, Right-None Bottom Entry, Left Circuit Breaker or Entrance Box or Terminal Box, Top Entry, Right-None Indication - Ground Fault, Terminal Box (or) Circuit Breaker Box - Left Circuit Breaker Accessory, 24 Volts DC Trip, Aux and Trip Contacts, Left Side Engine Air Cleaner - Normal Duty Engine Cooling - Radiator, 50C Ambient Shutdown - Low Coolant Level Coolant Heater - 208/240/480 Volts AC, 40F Minimum Ambient Temperature Cummins Certified Test Record Genset Warranty - 2 Years Base Literature - English Packing - None	1
2	Battery Charger-10Amp, 120/208/240VAC, 12/24V, 50/60Hz	1
3	CXRE, CXR Series Transfer Switch with PowerCommand Control: 1000A/1200A CXR1200, Transfer Switch, PowerCommand, 1200 Amp Listing - UL 1008 IBC Seismic Certification Application - Utility to Genset Cabinet - Type 1 Cable Lugs - Mechanical, 1/0 - 750 MCM UL1008 3 - Cycle Withstand Ratings Transfer Mode - Delayed Transition Poles - 3 (Solid Neutral) Frequency - 60 Hz System - 3 Phase, 3-Wire (No Neutral) Voltage - 480 Volts AC PC80 Control	1



	Standard Customer I/O S1 SPD, 120KA, For WYE Systems Transfer Switch Warranty - 2 Year Comprehensive Packing - Wooden Crate	
4	Nickel Cad Batteries with Nema 3R enclosure and battery Charger	1
5	Remote fuel fill	1
6	Service - start up & 2 2 hour loadbank testing	1
7	Weather proof Aluminum Enclosure with stainless steel silencer, 1000 gallon UL 142 sub base fuel tank with vent extensions.	1
8	Freight & other charges	1

TOTAL: \$ 286,500.00

Staff and Engineer are electing to use deduct \$70,000 from the price detailed below.

Quote value does not include any tax.

You may deduct \$70,000.00 to change the silencer to carbon steel from stainless steel. If this deduct is taken you will receive a factory enclosure and 1000-gallon sub base fuel tank. The silencer will be located inside the enclosure. This will also reduce the leadtime by 4 weeks.

NOTES:

- Current Submittal Lead Time: **3** weeks
- Current Production Lead Time (after receipt of approved submittal and accepted PO):
 - Transfer Switch(es): **current leadtime is 25** weeks
 - Generator: **current leadtime is 50** weeks
- Proposal based upon supplied quote from Logan Hickey at Henderson County, spec section 263213, drawing E-20-103 and comments from Henderson County.
- This quote is at Sourcewell pricing and only includes the equipment and start up. No installation is included.
- All fuel pipping from the remote fill to generator to be done by others.
- Nickel Cad batteries will ship loose with enclosure and battery charger. Contractor will need to wire and install.
- Price quoted is F.O.B. factory with freight allowed to the first U.S. destination.
- Price does not include any applicable taxes unless listed above.
- All ship loose items installed by others.
- Unloading, installation, and fuel are not included and will be the responsibility of others.
- **Warranty:**Cummins **2**-year warranty begins at the successful completion of startup and testing in lieu of acceptance or substantial completion.
- **Startup & Training:**
 - Providing Cummins standard startup and the specific testing listed above only. All other testing including NETA testing is provided by others.
 - Our proposal includes **3** trips during normal business hours to complete the onsite services listed above. If additional trips or after-hours trips are required, additional cost will be incurred.
 - Training for maintenance personnel will be concurrent at time of startup unless otherwise noted.
 - No videotaping is included with this quotation. All taping is supplied by others.
- **PMA:**Generator Maintenance Agreement is not included and will be negotiated directly with the owner once equipment has been successfully started up and tested.
- **NOTICE:** As a result of the outbreaks of the disease COVID-19 arising from the novel coronavirus, temporary delays in delivery, labor, or services from Cummins and its sub-suppliers or subcontractors may occur. Among other factors, Cummins' delivery is subject to correct and punctual supply from our sub-suppliers or subcontractors, and Cummins reserves the right to make partial deliveries or modify its labor or service. While Cummins shall make every commercially reasonable effort to meet the delivery, service, or completion described herein, such date(s) is(are) subject to change.

Please feel free to contact me if you require any additional information; or if you have any further questions or concerns that I may be of assistance with.

Thank you for choosing Cummins.

Submitted by:

Nicole Michael, Sales Engineer
hq689@cummins.com
(864) 641-5077

SUBMITTALS. An order for the equipment covered by this quotation will be accepted on a hold for release basis. Your order will not be released and scheduled for production until written approval to proceed is received in our office. Such submittal approval shall constitute acceptance of the terms and conditions of this quotation unless the parties otherwise agree in writing.

THERE ARE ADDITIONAL CONTRACT TERMS AND CONDITIONS ATTACHED TO THIS QUOTATION, INCLUDING LIMITATIONS OF WARRANTIES AND LIABILITIES, WHICH ARE EXPRESSLY INCORPORATED HEREIN. BY ACCEPTING THIS QUOTATION, CUSTOMER ACKNOWLEDGES THAT THE CONTRACT TERMS AND CONDITIONS HAVE BEEN READ, FULLY UNDERSTOOD AND ACCEPTED.

Authorized Signature

Date

Company Name

Printed Name & Title

Purchase Order No

<Rest of the page is intentionally left blank>

TERMS AND CONDITIONS FOR SALE OF POWER GENERATION EQUIPMENT

These Terms and Conditions for Sale of Power Generation Equipment, together with the Quote, Sales Order, and/or Credit Application on the front side or attached hereto, are hereinafter referred to as this "Agreement" and shall constitute the entire agreement between the customer identified in the quote ("Customer") and Cummins Inc. ("Cummins") and supersede any previous representation, statements, agreements or understanding (oral or written) between the parties with respect to the subject matter of this Agreement. Customer shall be deemed to have made an unqualified acceptance of these Terms and Conditions and it shall become a binding agreement between the parties on the earliest of the following to occur: (i) Cummins' receipt of Customer's purchase order or purchase order number; (ii) Customer's signing or acknowledgment of this Agreement; (iii) Cummins' release of Products to production pursuant to Customer's oral or written instruction or direction; (iv) Customer's payment of any amounts due to Cummins; or (v) any other event constituting acceptance under applicable law. No prior inconsistent course of dealing, course of performance, or usage of trade, if any, constitutes a waiver of, or serves to explain or interpret, the Terms and Conditions set forth in this Agreement. Electronic transactions between Customer and Cummins will be solely governed by the Terms and Conditions of this Agreement, and any terms and conditions on Customer's website or other internet site will be null and void and of no legal effect on Cummins. In the event Customer delivers, references, incorporates by reference, or produces any purchase order or document, any terms and conditions related thereto: (i) shall be null and void and of no legal effect on Cummins, and (ii) this Agreement shall remain the governing terms of the transaction.

SCOPE

Cummins shall supply power generation equipment and any related parts, materials and/or services expressly identified in this Agreement (collectively, "Equipment"). No additional services, parts or materials are included in this Agreement unless agreed upon by the parties in writing. A Sales Order for Equipment is accepted on hold for release basis. The Sales Order will not be released and scheduled for production until written approval to proceed is received. A Quote is limited to plans and specifications section set forth in the Quote. No other sections shall apply. Additional requirements for administrative items may require additional costs. The Quote does not include off unit wiring, off unit plumbing, offloading, rigging, installation, exhaust insulation or fuel, unless otherwise stated.

SHIPPING; DELIVERY; DELAYS

Unless otherwise agreed in writing by the parties, Equipment shall be delivered FOB origin, freight prepaid to first destination. For consumer and mobile products, freight will be charged to Customer. Unless otherwise agreed to in writing by the parties, packaging method, shipping documents and manner, route and carrier and delivery shall be as Cummins deems appropriate. Cummins may deliver in installments. A reasonable storage fee, as determined by Cummins, may be assessed if delivery of the Equipment is delayed, deferred, or refused by Customer. Offloading, handling, and placement of Equipment and crane services are the responsibility of Customer and not included unless otherwise stated. All shipments are made within normal business hours, Monday through Friday. Any delivery, shipping, installation, or performance dates indicated in this Agreement are estimated and not guaranteed. Further, delivery time is subject to confirmation at time of order and will be in effect after engineering drawings have been approved for production. Cummins shall use best efforts to meet estimated dates, but shall not be liable to customer or any third party for any delay in delivery, shipping, installation, or performance, however occasioned, including any delays in performance that result directly or indirectly from acts of Customer or any unforeseen event, circumstance, or condition beyond Cummins' reasonable control including, but not limited to, acts of God, actions by any government authority, civil strife, fires, floods, windstorms, explosions, riots, natural disasters, embargos, wars, strikes or other labor disturbances, civil commotion, terrorism, sabotage, late delivery by Cummins' suppliers, fuel or other energy shortages, or an inability to obtain necessary labor, materials, supplies, equipment or manufacturing facilities.

AS A RESULT OF THE OUTBREAK OF THE DISEASE COVID-19 ARISING FROM THE NOVEL CORONAVIRUS, TEMPORARY DELAYS IN DELIVERY, LABOUR OR SERVICES FROM CUMMINS AND ITS SUB-SUPPLIERS OR SUBCONTRACTORS MAY OCCUR. AMONG OTHER FACTORS, CUMMINS' DELIVERY OBLIGATIONS ARE SUBJECT TO CORRECT AND PUNCTUAL SUPPLY FROM OUR SUB-SUPPLIERS OR SUBCONTRACTORS, AND CUMMINS RESERVES THE RIGHT TO MAKE PARTIAL DELIVERIES OR MODIFY ITS LABOUR OR SERVICE. WHILE CUMMINS SHALL MAKE EVERY COMMERCIALY REASONABLE EFFORT TO MEET THE DELIVERY, SERVICE OR COMPLETION OBLIGATIONS SET FORTH HEREIN, SUCH DATES ARE SUBJECT TO CHANGE.

PAYMENT TERMS; CREDIT; RETAINAGE

Unless otherwise agreed to by the parties in writing and subject to credit approval by Cummins, payments are due thirty (30) days from the date of the invoice. If Customer does not have approved credit with Cummins, as solely determined by Cummins, payments are due in advance or at the time of supply of the Equipment. If payment is not received when due, in addition to any rights Cummins may have at law, Cummins may charge Customer eighteen percent (18%) interest annually on late payments, or the maximum amount allowed by law. Customer agrees to pay Cummins' costs and expenses (including reasonable attorneys' fees) related to Cummins' enforcement and collection of unpaid invoices, or any other enforcement of this Agreement by Cummins. Retainage is not acceptable nor binding, unless required by statute or accepted and confirmed in writing by Cummins prior to shipment.

TAXES; EXEMPTIONS

Unless otherwise stated, the Quote excludes all applicable local, state and federal sales and/or use taxes, permits and licensing. Customer must provide a valid resale or exemption certificate prior to shipment of Equipment or applicable taxes will be added to the invoice.

TITLE; RISK OF LOSS

Unless otherwise agreed in writing by the parties, title and risk of loss for the Equipment shall pass to Customer upon delivery of the Equipment by Cummins to freight carrier or to Customer at pickup at Cummins' facility.

INSPECTION AND ACCEPTANCE

Customer shall inspect the Equipment upon delivery, before offloading, for damage, defects, and shortage. Any and all claims which could have been discovered by such inspection shall be deemed absolutely and unconditionally waived unless noted by Customer on the bill of lading. Where Equipment is alleged to be non-conforming or defective, written notice of defect must be given to Cummins within three (3) days from date of delivery after which time Equipment shall be deemed accepted. Cummins shall have a commercially reasonable period of time in which to correct such non-conformity or defect. If non-conformity or defect is not eliminated to Customer's satisfaction, Customer may reject the Equipment (but shall protect the Equipment until returned to Cummins) or allow Cummins another opportunity to undertake corrective action. In the event startup of the Equipment is included in the services, acceptance shall be deemed to have occurred upon successful startup.

LIEN; SECURITY AGREEMENT

Customer agrees that Cummins retains all statutory lien rights. To secure payment, Customer grants Cummins a Purchase Money Security Interest in the Equipment. If any portion of the balance is due to be paid following delivery, Customer agrees to execute and deliver such security agreement, financing statements, deed of trust and such other documents as Cummins may request from time to time in order to permit Cummins to obtain and maintain a perfected security interest in the Equipment; or in the alternative, Customer grants Cummins a power of attorney to execute and file all financing statements and other documents needed to perfect this security interest. Cummins may record this Agreement, bearing Customer's signature, or copy of this Agreement in lieu of a UCC-1, provided that it shall not constitute an admission by Cummins of the applicability or non-applicability of the UCC nor shall the failure to file this form or a UCC-1 in any way affect, alter, or invalidate any term, provision, obligation or liability under this Agreement. The security interest shall be superseded if Customer and Cummins enter into a separate security agreement for the Equipment. Prior to full payment of the balance due, Equipment will be kept at Customer's location noted in this Agreement, will not be moved without prior notice to Cummins, and is subject to inspection by Cummins at all reasonable times.

CANCELLATION; CHARGES

Orders placed with and accepted by Cummins may not be cancelled except with Cummins' prior written consent. If Customer seeks to cancel all or a portion of an order placed pursuant to this Agreement, and Cummins accepts such cancellation in whole or in part, Customer shall be assessed cancellation charges as follows: (i) 10% of total order price if cancellation is received in Cummins' office after Cummins has provided submittals and prior to releasing equipment to be manufactured; (ii) 25% of total order price if cancellation is received in Cummins' office after receipt of submittal release to order, receipt of a purchase order for a generator already on order with the factory, or is asked to make any hardware changes to the equipment already on order with the factory; (iii) 50% of total order price if cancellation is received in Cummins' office 60 or fewer days before the scheduled shipping date on the order; or (iv) 100% of total order price if cancellation is received in Cummins' office after the equipment has shipped from the manufacturing plant.

MANUALS

Unless otherwise stated, electronic submittals and electronic operation and maintenance manuals will be provided, and print copies may be available upon Customer's request at an additional cost.

TRAINING; START UP SERVICES; INSTALLATION

Startup services, load bank testing, and owner training are not provided unless otherwise stated. Site startup will be subject to the account being current and will be performed during regular Cummins business hours, Monday to Friday. Additional charges may be added for work requested to be done outside standard business hours, on weekends, or holidays. One visit is allowed unless specified otherwise in the Quote. A minimum of two-week prior notice is required to schedule site startups and will be subject to prior commitments and equipment and travel availability. A signed site check sheet confirming readiness will be required, and Cummins personnel may perform an installation audit prior to the startup being completed. Any issues identified by the installation audit shall be corrected at the Customer's expense prior to the start-up. Portable load banks for site test (if offered in the Quote) are equipped with only 100 feet of cable. Additional lengths may be arranged at an extra cost. Cummins is not responsible for any labor or materials charged by others associated with start-up and installation of Equipment, unless previously agreed upon in writing. Supply of fuel for start-up and/or testing, fill-up of tank after start up, or change of oil is not included unless specified in the Quote. All installation/execution work at the site including, but not limited to: civil, mechanical, electrical, supply of wall thimbles, exhaust extension pipe, elbows, hangers, expansion joints, insulation and cladding materials, fuel/oil/cooling system piping, air ducts, and louvers/dampers is not included unless specified in the Quote. When an enclosure or sub-base fuel tank (or both) are supplied, the openings provided for power cable and fuel piping entries, commonly referred to as "stub-ups", must be sealed at the site by others before commissioning. All applications, inspections and/or approvals by authorities are to be arranged by Customer.

MANUFACTURER'S WARRANTY

Equipment purchased hereunder is accompanied by an express written manufacturer's warranty ("Warranty") and, except as expressly provided in this Agreement, is the only warranty offered on the Equipment. A copy of the Warranty is available upon request. While this Agreement and the Warranty are intended to be read and applied in conjunction, where this Agreement and the Warranty conflict, the terms of the Warranty shall prevail.

WARRANTY PROCEDURE

Prior to the expiration of the Warranty, Customer must give notice of a warrantable failure to Cummins and deliver the defective Equipment to a Cummins location or other location authorized and designated by Cummins to make the repairs during regular business hours. Cummins shall not be liable for towing charges, maintenance items such as oil filters, belts, hoses, etc., communication expenses, meals, lodging, and incidental expenses incurred by Customer or employees of Customer, "downtime" expenses, overtime expenses, cargo damages and any business costs and losses of revenue resulting from a warrantable failure.

LIMITATIONS ON WARRANTIES THE REMEDIES PROVIDED IN THE WARRANTY AND THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES PROVIDED BY CUMMINS TO THE CUSTOMER UNDER THIS AGREEMENT. EXCEPT AS SET OUT IN THE WARRANTY AND THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, CUMMINS EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, ENDORSEMENTS, AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY STATUTORY OR COMMON LAW IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF FITNESS FOR A PURPOSE OR MERCHANTABILITY.

The limited warranty does not cover Equipment failures resulting from: (a) inappropriate use relative to designated power rating; (b) inappropriate use relative to application guidelines; (c) inappropriate use of an EPA-SE application generator set relative to EPA's standards; (d) normal wear and tear; (e) improper and/or unauthorized installation; (f) negligence, accidents, or misuse; (g) lack of maintenance or unauthorized or improper repair; (h) noncompliance with any Cummins published guideline or policy; (i) use of improper or contaminated fuels, coolants, or lubricants; (j) improper storage before and after commissioning; (k) owner's delay in making Equipment available after notification of potential Equipment problem; (l) replacement parts and accessories not authorized by Cummins; (m) use of battle short mode; (n) owner or operator abuse or neglect such as: operation without adequate coolant, fuel, or lubricants; over fueling; over speeding; lack of maintenance to lubricating, fueling, cooling, or air intake systems; late servicing and maintenance; improper storage, starting, warm-up, running, or shutdown practices, or for progressive damage resulting from a defective shutdown or warning device; or (o) damage to parts, fixtures, housings, attachments and accessory items that are not part of the generating set.

INDEMNITY

Customer shall indemnify, defend and hold harmless Cummins from and against any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, brought against or incurred by Cummins related to or arising out of this Agreement or the Equipment supplied under this Agreement (collectively, the "Claims"), where such Claims were caused or contributed to by, in whole or in part, the acts, omissions, fault or negligence of the Customer. Customer shall present any Claims covered by this indemnity to its insurance carrier unless Cummins directs that the defense will be handled by Cummins' legal counsel at Customer's expense.

LIMITATION OF LIABILITY NOTWITHSTANDING ANY OTHER TERM OF THIS AGREEMENT, IN NO EVENT SHALL CUMMINS, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION DOWNTIME, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, LOSS OF OPPORTUNITY, DAMAGE TO GOODWILL, ENHANCED DAMAGES, MONETARY REQUESTS RELATING TO RECALL EXPENSES AND REPAIRS TO PROPERTY, AND/OR DAMAGES CAUSED BY DELAY) IN ANY WAY RELATED TO OR ARISING FROM CUMMINS' SUPPLY OF EQUIPMENT UNDER THIS AGREEMENT OR THE USE OR PERFORMANCE OF EQUIPMENT SUPPLIED UNDER THIS AGREEMENT. IN NO EVENT SHALL CUMMINS' LIABILITY TO CUSTOMER OR ANY THIRD PARTY CLAIMING DIRECTLY THROUGH CUSTOMER OR ON CUSTOMER'S BEHALF UNDER THIS AGREEMENT EXCEED THE TOTAL COST OF EQUIPMENT SUPPLIED BY CUMMINS UNDER THIS AGREEMENT GIVING RISE TO THE CLAIM. BY ACCEPTANCE OF THIS AGREEMENT, CUSTOMER ACKNOWLEDGES CUSTOMER'S SOLE REMEDY AGAINST CUMMINS FOR ANY LOSS SHALL BE THE REMEDY PROVIDED HEREIN EVEN IF THE EXCLUSIVE REMEDY UNDER THE WARRANTY IS DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

DEFAULT; REMEDIES

Customer shall be in breach and default if: (a) any of the payments or amounts due under this Agreement are not paid; (b) Customer fails to comply, perform, or makes any misrepresentation relating to any of the Customer's obligations or covenants under this Agreement; or (c) prior to full payment of the balance due, Customer ceases to do business, becomes insolvent, makes an assignment for the benefit of its creditors, appoints a receiver, commences an action for dissolution or liquidation, or becomes subject to bankruptcy proceedings, or the Equipment is attached, levied upon, seized under legal process, is subjected to a lien or encumbrance, or transferred by operation of law or otherwise to anyone other than Cummins. Upon the occurrence of any event of Customer's default, Cummins, at its sole option and without notice, shall have the right to exercise concurrently or separately any one or all of the following remedies, which shall be cumulative and not alternative: (a) to declare all sums due, and to become due, under this Agreement immediately due and payable; (b) to commence legal proceedings, including collection actions and specific performance proceedings, to enforce performance by Customer of any and all provisions of this Agreement, and to be awarded damages or injunctive relief for the Customer's breach; (c) to require the Customer to deliver the Equipment to Cummins' branch specified on the face of this Agreement; (d) to exercise one or more of the rights and remedies available to a secured party under applicable law; and (e) to enter, without notice or liability or legal process, onto any premises where the Equipment may be located, using force permitted by law, and there to disconnect, remove and repossess the Equipment, the Customer having waived further right to possession after default. A waiver of any event of default by Cummins shall not be a waiver as to any other or subsequent default.

CUSTOMER REPRESENTATIONS; RELIANCE

Customer is responsible for obtaining, at its cost, permits, import licenses, and other consents in relation to the Equipment, and if requested by Cummins, Customer shall make these permits, licenses, and consents available to Cummins prior to shipment. Customer represents that it is familiar with the Equipment and understands operating instructions and agrees to perform routine maintenance services. Until the balance is paid in full, Customer shall care for the Equipment properly, maintain it in good operating condition, repair and appearance; and Customer shall use it safely and within its rated capacity and only for purpose it was designed. Even if Customer's purchase of Equipment from Cummins under this Agreement is based, in whole or in part, on specifications, technical information, drawings, or written or verbal advice of any type from third parties, Customer has sole responsibility for the accuracy, correctness and completeness of such specifications, technical information, drawings, or advice. Cummins makes no warranties or representations respecting the accuracy, correctness and completeness of any specifications, technical information, drawings, advice or other information provided by Cummins. Cummins makes no warranties or representations respecting the suitability, fitness for intended use, compatibility, integration or installation of any Equipment supplied under this Agreement. Customer has sole responsibility for intended use, for installation and design and performance where it is part of a power, propulsion, or other system. Limitation of warranties and remedies and all disclaimers apply to all such technical information, drawings, or advice. Customer acknowledges and agrees by accepting delivery of the Equipment that the Equipment purchased is of the size, design, capacity and manufacture selected by the Customer, and that Customer has relied solely on its own judgment in selecting the Equipment.

CONFIDENTIALITY

Each party shall keep confidential any information received from the other that is not generally known to the public and at the time of disclosure, would reasonably be understood by the receiving party to be proprietary or confidential, whether disclosed in oral, written, visual, electronic, or other form, and which the receiving party (or agents) learns in connection with this Agreement including, but not limited to: (a) business plans, strategies, sales, projects and analyses; (b) financial information, pricing, and fee structures; (c) business processes, methods, and models; (d) employee and supplier information; (e) specifications; and (f) the terms and conditions of this Agreement. Each party shall take necessary steps to ensure compliance with this provision by its employees and agents.

GOVERNING LAW AND JURISDICTION

This Agreement and all matters arising hereunder shall be governed by and construed in accordance with the laws of the State of Indiana without giving effect to any choice or conflict of law provision. The parties agree that the courts of the State of Indiana shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Agreement.

INSURANCE

Upon Customer's request, Cummins will provide to Customer a Certificate of Insurance evidencing Cummins' relevant insurance coverage.

ASSIGNMENT

This Agreement shall be binding on the parties and their successors and assigns. Customer shall not assign this Agreement without the prior written consent of Cummins.

INTELLECTUAL PROPERTY

Any intellectual property rights created by either party, whether independently or jointly, in the course of the performance of this Agreement or otherwise related to Cummins pre-existing intellectual property or subject matter related thereto, shall be Cummins' property. Customer agrees to assign, and does hereby assign, all right, title, and interest to such intellectual property to Cummins. Any Cummins pre-existing intellectual property shall remain Cummins' property. Nothing in this Agreement shall be deemed to have given Customer a license or any other rights to use any of the intellectual property rights of Cummins.

PRICING

To the extent allowed by law, actual prices may vary from the price at the time of order placement, as the same will be based on prices prevailing on the date of shipment. Subject to local laws, Cummins reserves the right to adjust pricing on goods and services due to input and labor cost changes and other unforeseen circumstances beyond Cummins' control.

MISCELLANEOUS

Cummins shall be an independent contractor under this Agreement. All notices under this Agreement shall be in writing and be delivered personally, mailed via first class certified or registered mail, or sent by a nationally recognized express courier service to the addresses set forth in this Agreement. No amendment of this Agreement shall be valid unless it is in writing and signed by the parties hereto. Failure of either party to require performance by the other party of any provision hereof shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver by a party of a breach of any of the provisions hereof constitute a waiver of any succeeding breach. Any provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms hereof. These terms are exclusive and constitute entire agreement. Customer acknowledges that the provisions were freely negotiated and bargained for and Customer has agreed to purchase of the Equipment pursuant to these terms and conditions. Acceptance of this Agreement is expressly conditioned on Customer's assent to all such terms and conditions. Neither party has relied on any statement, representation, agreement, understanding, or promise made by the other except as expressly set out in this Agreement. In the event of a conflict in the terms of this Agreement with any Customer terms or conditions or agreement (whether referenced in an order submitted by Customer as the terms that govern the purchase of the Equipment or otherwise) or any terms set forth in any other documentation of Customer with respect to the Equipment, the terms of this Agreement shall govern. Cummins may incur additional charges which will be passed on to the Customer, as applicable.

COMPLIANCE

Customer shall comply with all laws applicable to its activities under this Agreement, including, without limitation, any and all applicable federal, state, and local anti-bribery, environmental, health, and safety laws and regulations then in effect. Customer acknowledges that the Equipment, and any related technology that are sold or otherwise provided hereunder may be subject to export and other trade controls restricting the sale, export, re-export and/or transfer, directly or indirectly, of such Equipment or technology to certain countries or parties, including, but not limited to, licensing requirements under applicable laws and regulations of the United States, the United Kingdom and other jurisdictions. It is the intention of Cummins to comply with these laws, rules, and regulations. Any other provision of this Agreement to the contrary notwithstanding, Customer shall comply with all such applicable all laws relating to the cross-border movement of goods or technology, and all related orders in effect from time to time, and equivalent measures. Customer shall act as the importer of record with respect to the Equipment and shall not resell, export, re-export, distribute, transfer, or dispose of the Equipment or related technology, directly or indirectly, without first obtaining all necessary written permits, consents, and authorizations and completing such formalities as may be required under such laws, rules, and regulations. In addition, Cummins has in place policies not to distribute its products for use in certain countries based on applicable laws and regulations including but not limited to UN, U.S., UK, and European Union regulations. Customer undertakes to perform its obligations under this Agreement with due regard to these policies. Strict compliance with this provision and all laws of the territory pertaining to the importation, distribution, sales, promotion and marketing of the Equipment is a material consideration for Cummins entering into this Agreement with Customer and continuing this Agreement for its term. Customer represents and warrants that it has not and shall not, directly or through any intermediary, pay, give, promise to give or offer to give anything of value to a government official or representative, a political party official, a candidate for political office, an officer or employee of a public international organization or any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities for the purposes of inducing such person to use his influence to assist Cummins in obtaining or retaining business or to benefit Cummins or any other person in any way, and will not otherwise breach any applicable laws relating to anti-bribery. Any failure by Customer to comply with these provisions will constitute a default giving Cummins the right to immediate termination of this Agreement and/or the right to elect not to recognize the warranties associated with the Equipment. Customer shall accept full responsibility for any and all civil or criminal liabilities and costs arising from any breaches of those laws and regulations and will defend, indemnify, and hold Cummins harmless from and against any and all fines, penalties, claim, damages, liabilities, judgments, costs, fees, and expenses incurred by Cummins or its affiliates as a result of Customer's breach.

To the extent applicable, this contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The employee notice requirements set forth in 29 CFR Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this contract.

☐ Check if this Agreement pertains to government work or facilities



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: John Connet **MEETING DATE:** 10/26/2022

AGENDA SECTION: CONSENT **DEPARTMENT:** Administration

TITLE OF ITEM: Housing Selection Committee Neighborhood Assistance Policy – *John Connet, City Manager*

SUGGESTED MOTION(S):

I move that the City Council adopt the 2020 Housing Selection Committee Neighborhood Assistance Policy

SUMMARY:

As part of our CDBG program, we must have a policy stating who is eligible under the NC Neighborhood program and what types of assistance are available. Ashlynn McCoy, HAC Executive Director, has drafted the following policy for your consideration.

BUDGET IMPACT: \$NA

Is this expenditure approved in the current fiscal year budget? EnterTextHere

If no, describe how it will be funded. EnterTextHere

ATTACHMENTS:

Proposed Policy

Housing Selection Committee
Assistance Policy
For the 2020 Cycle of the
North Carolina Revitalization CDBG Program

What is the North Carolina Neighborhood Realization Program (NC Neighborhood)?

The City of Hendersonville is applying for \$750,000 by the North Carolina Department of Commerce under the 2020 cycle of the North Carolina Revitalization Program. This program provides funds to assist low-and-moderate income persons with special needs in addressing housing conditions which pose imminent threats to their life and/or safety or to provide accessibility modifications and other repairs necessary to prevent displacement of low-and-moderate income individuals. A total of 3 households will be assisted under this program in the City of Hendersonville.

This Assistance Policy describes who is eligible to apply for assistance under NC Neighborhood, how applications for assistance will be rated and ranked, what the form of assistance is and how the repair/modification process will be managed.

Eligibility To be eligible for assistance under NC Neighborhoods applicants

- 1) must reside within the county limits of the City of Hendersonville and own and occupy the home in need of repair
- 2) must have a household income which does not exceed 80% of the median income for the household size
- 3) must have repair needs, which cannot be met through other state or federally-funded housing assistance programs

Number in Household	80% of Median (moderate income)	50% of Median (low income)	30% of Median (very low income)
1	\$40,150	\$25,100	\$15,050
2	\$45,850	\$28,650	\$17,240
3	\$51,600	\$32,250	\$21,720
4	\$57,300	\$35,800	\$26,200
5	\$61,900	\$38,700	\$30,680
6	\$66,500	\$41,550	\$35,160
7	\$71,100	\$44,400	\$39,640
8	\$75,650	\$47,300	\$44,120

HUD 2020 Income Limits* for Henderson County

*Income limits are subject to change based on annually published HUD HOME Limits and will be updated each year. This update will not require a re-approval of the governing authority.

Outreach Efforts of the Program The City of Hendersonville and the Housing Assistance Corporation called and dropped off information to homeowners in the project area about the program. The City of Hendersonville's CDBG application was published through their website and social media pages.

Selection of applicants The Housing Selectin Committee has devised the following priority system to rank eligible applicants, determine which of them will be selected for assistance and in what order. Under this system, applicants will receive points for falling into certain categories of special need and income. The applications will be ranked according to which receive the most points.

Priority Ranking System for NC Revitalization Program

<i>Special Needs (for definitions, see below)</i>	<i>Points</i>
Disabled and/or Elderly Head of Household (62 or older)	4
Single Head of Household	3
Large Family (5 or more permanent residents)	2
<i>Income (See Income Table above)</i>	<i>Points</i>
Less than 30% of County Median Income	10
30% to 50% of County Median Income	5
50% to 80% of County Median Income	3

Under NC Neighborhood Program Guidelines, all applicant must have incomes which are less than 80% of the area median income for the household size, and no household with an income exceeding 80% of the area median income will be eligible. This guideline will be adhered to strictly and will be the primary factor in the selection of those households to be assisted under this program.

Recipients of assistance under the NC Revitalization Program will be chosen by the above criteria without regard to race, color, religion, national origin, sex, familial status and disability.

The definitions of special needs populations are:

- **Elderly:** An individual aged 62 or older.
- **Disabled:** A person who has a physical, mental or developmental disability that greatly limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.
- **Large Family:** A large family household is composed of five or more individuals; at least four are immediate family members.
- **Head of Household:** The person or persons who own(s) the house.
- **Occupant:** An occupant is defined as any immediate family member (mother, father, spouse, son/daughter of the head of the household, regardless of the time of occupancy).

Client Referral and Support Services: Many homeowners assisted through the NC Neighborhood Program may also need other services. When the Housing Assistance Corporation staff meet the homeowner during the work write-up process, they will discuss the resources and programs available in the area and provide pamphlets and a list of the agencies with contact information.

What is the form of assistance under NC Neighborhood? The City of Hendersonville will provide assistance to homeowners, whose homes are selected for repair/modification in the form of a loan. Homeowners will receive a forgivable deferred, interest-free loan, forgiven at an amount per year that will reduce the principal balance to zero over the recapture period. To calculate the amount to be forgiven each year, the principal balance of the loan will be divided by number of years in the recapture period in accordance with the table below. The deferred loan is repaid when the house is sold, or the recipient no longer occupies the home during the recapture period. As the level of NC Neighborhood assistance increases the recapture period must lengthen according to the following table:

<i>CDBG Assistance</i>	<i>Recapture Period</i>
Less than \$12,000	5 years
\$12,001-16,000	6 years
\$16,001-\$20,000	7 years
\$20,001 or more	8 years

What is the amount of the loan? The amount of the loan will depend on the scope of work necessary to address the identified imminent threats to life and/or safety, and that will be determined by Housing Assistance Corporation's or other rehabilitation specialist. There is no minimum to the amount of the loan; however, the maximum life-time limit is \$75,000.

What kinds of work will be done? Only repairs that address imminent threats to the life and/or safety of occupants of the dwelling unit or accessibility modifications will be performed. All work that is completed under the NC Neighborhood program must meet or exceed NC Residential Building Code.

Who will do the work on the homes? The City of Hendersonville will work with The Housing Assistance Corporation to ensure that quality work is done at reasonable prices and that all work is contracted through a fair, open and competitive process. To meet

those very difficult requirements, the agency will invite bids only from contractors who are part of a list of approved contractors. Please request a copy of the agency's Procurement and Disbursement Policy for further information.

What are the steps in the process, from application to completion? Now that you have the information about how to qualify for the N.C. Neighborhood Program, what work can be done, and who will do it, let's go through all the major steps in the process:

- 1. Completing an Application form:** Homeowners applied for assistance contacted Stefanie Kompathoum, Home Repair Coordinator at (828) 692-4744 ext.107 by phone or by email. All homeowners in the project area were contacted through phone, in person, or flyer left in their mail box.
- 2. Inspection and Work write-up:** The Rehabilitation Specialist will visit the home again for a more thorough inspection. All parts of the home must be made accessible for inspection, including the attic and crawlspace, if any. The owner should report any known problems such as electrical short circuits, blinking lights, roof leaks and the like. The Rehabilitation Specialist will prepare complete and detailed work specifications (known as the "work write-up"). A final cost estimate will also be prepared by the Rehabilitation Specialist and held in confidence until bidding is completed.
- 3. Screening of applicants:** Applications will be rated and ranked by the agency based on the priority system outlined in this document. Household income will be verified for program purposes only (information will be kept confidential). Ownership of property will be verified. From this review, the three (3) most qualified applicants will be chosen according to the priority system described above. There will also be a list of alternates (waiting list) in the order of qualification and application time.
- 4. Applicant interviews:** After program award by N.C. Department of Commerce, approved applicants will be provided detailed information on assistance, program repair/modification standards and the contracting procedures associated with their project at this informational interview.
- 5. Formal agreement:** After approval of the work write-up, the homeowner will sign a formal agreement that will explain and govern the repair/modification process and an explanation of the Promissory Note, which is considered a forgivable loan. This agreement will define the roles of the parties involved throughout the process.
- 6. Bidding and Contractor Selection:** All bidding procedures will follow The City of Hendersonville's Procurement and Disbursement Policy.
- 7. Pre-construction conference:** A pre-construction meeting will be held at the home. At this time, the homeowner, contractor and program representatives will be present and discuss the details of the work to be done. Starting and ending dates will be agreed upon, along with any special arrangements such as weekend or evening work hours and disposition of items to be removed from the home (such as old plumbing, etc.). If the contract has been executed, the agency will issue a "proceed order" within 24 hours of the pre-construction meeting, formally instructing the contractor to commence by the agreed-upon date.

8. **Construction:** The contractor will be responsible for obtaining any required building permits for the project before beginning work. The permit must be posted at the house during the entire period of construction. Program staff will closely monitor the contractor during the construction period to make sure that the work is being done according to the work write-up (which is made a part of the rehabilitation contract by reference) and in a timely fashion. Code Enforcement Officers will inspect new work for compliance with the State Building Code. The homeowner will be responsible for working with the contractor toward protecting personal property by clearing work areas as much as practicable.
9. **Payments to contractor:** The contractor will be paid following inspection of and satisfactory completion of all items on the work write-up and change orders, if any, as outlined in the Procurement and Disbursement Policy.
10. **Post-construction meeting:** Following construction, the contractor and the Rehabilitation Specialist will sit down with the homeowner one last time. At this meeting the contractor will hand over all owner's manuals and warranties on equipment. The contractor and Rehabilitation Specialist will go over operating and maintenance requirements for any new equipment installed and discuss general maintenance of the home with the homeowner. The homeowner will have the opportunity to ask any final questions about the work and the loan.
11. **Closeout:** Once each item outlined in section 10 has been satisfied and the homeowner has signed a Certificate of Satisfaction, the job will be closed out (fully completed).

Will the personal information provided remain confidential? Yes. All information in applicant files will remain confidential. Access to the information will be provided only to Agency employees who are directly involved in the program, Housing Selection Committee Member, and the North Carolina Department of Commerce.

What about favoritism? All activities under the N.C. Neighborhood Program, including rating and ranking applications, inviting bids, selecting contractors and resolving complaints, will be conducted in a fair, open and non-discriminatory manner, entirely without regard to **race, color, religion, national origin, sex, familial status and disability**

This Assistance Policy is adopted this 31st day of August 2022.

Ashlynn Landreth McCoy

 Member, Housing Selection Committee



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Angela Beeker, City Attorney **MEETING DATE:** October 26, 2022
AGENDA SECTION: CONSENT **DEPARTMENT:** Legal
TITLE OF ITEM: Exchange Agreement with Henderson County Board of Public Education –
Angela Beeker, City Attorney

SUGGESTED MOTION(S):

I move City Council to adopt the *Resolution to Approve the Exchange Agreement with the Henderson County Board of Public Education for Edwards and Berkeley Parks* as presented.

SUMMARY:

Attached for the Council's consideration is a contract to give final approval for the exchange of +/- 16.0 Acres of Berekeley Park (the historic ballfield portion) for Edwards Park, and to authorized closing.

A Resolution to Approve the Exchange Agreement with the Henderson County Board of Public Education for Edwards and Berkeley Parks is attached for adoption.

FINANCIAL IMPACT: \$250,000

INCLUDED IN BUDGET: Yes

ATTACHMENTS:

Resolution

Proposed Contract, including Exhibits A and B

Resolution #R-22-_____

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO APPROVE
THE EXCHANGE AGREEMENT WITH THE HENDERSON COUNTY BOARD OF
PUBLIC EDUCATION FOR EDWARDS AND BERKELEY PARKS**

WHEREAS, the Henderson County Board of Public Education, hereinafter “Board of Education,” is the owner of that property, commonly known as Edwards Park, being that +/- 1.47 acre parcel of property shown on plat slide 13621 of the Henderson County Registry, having acquired it by that deed recorded in Book 825 at Page 670 of the Henderson County Registry, said 1.47 acre parcel being hereinafter referred to as “Edwards Park”;

WHEREAS, the City of Hendersonville, hereinafter “City,” is the owner of that property, commonly known as “Berkely Park, being that property shown on Plat Slide 7333 of the Henderson County Registry, having acquired it by that deed recorded in Deed Book 1363 at Page 221 of the Henderson County Registry, said property being hereinafter referred to as “Berkely Park,”; and

WHEREAS, the City of Hendersonville wishes to acquire Edwards Park, for the relocation of the Laura Corn Mini-Golf; and

WHEREAS, Board of Education wishes to acquire approximately 16 acres of Berkeley Park, including the historic baseball stadium, for Hendersonville High School athletic facilities, the approximate 16 acres being substantially shown and identified as “+/- 16.0 acre parcel” on Exhibit A, attached hereto and incorporated herein by reference, said +/- 16.0 acre parcel being hereinafter referred to the “+/- 16.0 Acre Tract; and

WHEREAS, the City of Hendersonville is willing to convey the +/- 16.0 Acre Tract and pay \$250,000, to the Board of Education in exchange for the Board of Education’s conveyance of Edwards Park to the City; and

WHEREAS, the City of Hendersonville is willing to give the Board of Education a right of first refusal for the +/- 21.34 acre remaining portion of Berkely Park located on the north side of Balfour Road if not used or conveyed by the City for economic development purposes, upon the terms set forth hereinbelow, said +/- 21.34 acres being shown and identified on the attached Exhibit A as “+/- 21.34 acre parcel,” and referred to hereinafter as the “Berkely Remainder Parcel”; and

WHEREAS, NCGS 160A-274 authorizes the City to sell, lease convey or exchange properties with the Board of Education upon such terms as City Council deems advisable; and

WHEREAS, City Council wishes to approve the draft agreement between the City of Hendersonville and the Henderson County Board of Public Education to carry out the terms of that Resolution approving the exchange, adopted on August 4, 2022;

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville, North Carolina that:

1. The agreement between the City of Hendersonville and the Henderson County Board of Public Education, attached hereto as Exhibit 1, is approved. The City Manager, in consultation with the City Attorney, is authorized to approve modifications to the agreement, provide they do not involve incurring additional financial obligations by the City.
2. The Mayor, City Manager and City Attorney are authorized to negotiate, make, enter into, and execute such other contracts, and such deeds, easements, boundary line agreements, the right of first refusal, the option agreement, and any and all other documents, and to take any and all actions, reasonably necessary to carry out the terms of the approved agreement, including but not limited to making conveyances and reasonable expenditures for costs and expenses for the purposes stated herein.
3. This Resolution shall serve as the authority for the Mayor, City Manager, City Attorney to enter into legally binding obligations on behalf of the City of Hendersonville, consistent with the terms of this Resolution.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 26th day of October, 2022.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

REAL PROPERTY EXCHANGE AGREEMENT

THIS AGREEMENT, is made and entered this ____ day of _____, 2022, by and between the **City of Hendersonville**, a North Carolina municipal corporation (“City”) and The Henderson County Board of Public Education, a North Carolina limited liability Board of Education (the “Board of Education”);

WITNESSETH

THAT WHEREAS, the City,,” is the owner of that property, commonly known as “Berkeley Park, being that property shown on Plat Slide 7333 of the Henderson County Registry, having acquired it by that deed recorded in Deed Book 1363 at Page 221 of the Henderson County Registry, said property being hereinafter referred to as “Berkeley Park,”; and

WHEREAS, the Board of Education, is the owner of that property, commonly known as Edwards Park, being that +/- 1.47 acre parcel of property shown on plat slide 13621 of the Henderson County Registry, having acquired it by that deed recorded in Book 825 at Page 670 of the Henderson County Registry, less that portion of Edwards Park conveyed to the County of Henderson as described in Deed Book 3804 Pages 70 – 71 recorded in the Henderson County Registry, said remaining portion of the +/- 1.47 acre parcel being hereinafter referred to as “Edwards Park,”; and

WHEREAS, the City of Hendersonville wishes to acquire Edwards Park, for the relocation of the Laura Corn Mini-Golf; and

WHEREAS, the Board of Education wishes to acquire approximately 16 acres of Berkeley Park, including the historic baseball stadium, for Hendersonville High School athletic facilities, the approximate 16 acres being substantially shown and identified as “+/- 16.0 acre parcel” on Exhibit A, attached hereto and incorporated herein by reference, said +/- 16.0 acre parcel being hereinafter referred to the “+/- 16.0 Acre Tract; and

WHEREAS, the City of Hendersonville is willing to convey the +/- 16.0 Acre Tract and pay \$250,000, to the Board of Education in exchange for the Board of Education’s conveyance of Edwards Park to the City. The +/- 16.0 Acre Tract and Edwards Park are sometimes collectively referred to in this Agreement as the “Exchanged Properties”; each an “Exchange Property”); and

WHEREAS, the City of Hendersonville is willing to give the Board of Education an option to purchase the +/- 21.34 acre remaining portion of Berkeley Park located on the north side of Balfour Road if not used or conveyed by the City for economic development purposes, upon the terms set forth hereinbelow, said +/- 21.34 acres being shown and identified on the attached Exhibit A as “+/- 21.34 acre parcel,” and referred to hereinafter as the “Berkeley Remainder Tract”; and

WHEREAS, NCGS 160A-274 authorizes the City and Board of Education to sell, lease convey or exchange properties with each other upon such terms as their governing boards deem advisable.

NOW THEREFORE THIS AGREEMENT, that for an in consideration of the mutual terms and promises contained hereinbelow, the sufficiency of which is hereby acknowledged by all parties hereto, the parties agree as follows:

1. **WHEREAS CLAUSES.** The Whereas clauses above are incorporated herein and made an integral part of this Agreement.
2. **EXCHANGE AGREEMENT.** The parties agree to the following terms and conditions:
 - a. The City will convey the +/- 16.0 Acre Tract to the Board of Education. The conveyance shall be subject to the following specific encumbrances in favor of the City:
 - i. The City shall have the right to reserve a 20 foot utility easement for the City's existing sewer subject to the same terms and conditions as are in the City's standard utility easement deeds. The centerline of the 20 foot utility easement shall coincide with the existing sewer lines. Additionally, the City shall have an additional 10 foot construction easement on each side of the 20 foot utility easement to be available for use by the City during periods of time that active construction, maintenance or repair activities of the City are occurring within the 20 foot utility easement. The utility easement shall be available to the City for the placement of water, sewer, stormwater, but not conduit for the purpose of telecommunications facilities, such as fiber.
 - ii. The City shall have the right to reserve a 30 foot greenway easement around the entire perimeter of the +/- 16.0 Acre Tract. Additionally, the City shall have an additional 10 foot construction easement having one of its boundaries running coincident with the inner boundary of the 30 foot greenway easement to be available for use by the City during periods of time that active construction, maintenance or repair activities of the City are occurring within the 30 foot greenway easement. The greenway easement shall be dual purpose, and shall also be permitted to be used the placement of utilities within the easement, including water, sewer, stormwater, and conduit infrastructure for the purpose of telecommunications facilities, such as fiber. Additionally, the City shall be permitted to allow economic development grading and activity as needed within this 30 foot greenway easement should the balance of the Berkeley Mills Property be used by the City for economic development purposes and Balfour Road be relocated. Lastly, the City shall grant concurrent use of the greenway easement to the Board of Education for use by the Henderson County public schools for cross-country athletics purposes; provided, however, that construction of a greenway within the greenway easement by the City shall be subject to available funding.

- iii. From and after the conveyance of the +/- 16.0 Acre Tract to the Board of Education, the Board of Education shall assume full responsibility for maintenance of the entirety of the +/- 16.0 Acre Tract, including all facilities located thereon. The terms of this paragraph shall survive closing on the conveyance of the +/- 16.0 Acre Tract to the Board of Education.
- iv. From and after the conveyance of the +/- 16.0 Acre Tract to the Board of Education, the Board of Education shall assume full responsibility for maintenance of the water service line serving the restroom/concession building on the +/- 16.0 Acre Tract. The City shall be responsible only for the maintenance of the associated meter(s). Location and placement of the meter(s) shall at times remain subject to the sole discretion of the City. The terms of this paragraph shall survive closing on the conveyance of the +/- 16.0 Acre Tract to the Board of Education.
- v. The City shall retain an access easement across the entirety of the +/- 16.0 Acre tract for the purposes of exercising all of its rights with respect to the utility easement, the greenway easement, and maintenance of the meter.
- b. The City will pay \$250,000 to the Board of Education at closing, representing the difference in value between the Exchange Property conveyed to the Board of Education, and the Exchange Property received by the City pursuant to this Exchange Agreement (excluding the property to be put under option, the Berkeley Remainder Tract).
- c. The Board of Education will convey Edwards Park to the City. This conveyance shall be without restrictions imposed by the Board of Education in the deed. The County of Henderson has formally declined to negotiate for the acquisition of Edwards Park.
- d. The City will grant an option to the Board of Education for the Berkeley Remainder Tract upon the following terms:
 - i. The option shall only be effective if the Berkeley Remainder Tract is not used or conveyed by the City for economic development purposes within a reasonable time from the date of closing on Exchanged Properties, and once effective, the option shall be valid for a term of one year;
 - ii. The price for the Board of Education's exercise of the option (i.e. the purchase of the Berkeley Remainder Tract) shall be the payment to the City of \$350,000, plus the conveyance to the City of a +/- 1.0 acre tract that is a portion of the Board of Education administrative offices property, located at 414 4th Avenue West, Hendersonville, NC, having a PIN of 9568676778, said 1.0 acre tract being substantially as shown on Exhibit B, attached hereto and incorporated by reference. The City's option to purchase shall be subject to Henderson County's statutory right of first

refusal. In the event Henderson County elects to exercise its statutory right of first refusal, thereby precluding the Board of Education's conveyance of the +/- 1.0 acre tract to the City, the Board of Education shall pay to the City the fair market value of the +/- 1.0 acre tract. The fair market value shall be determined according to paragraph 11 below.

- iii. The Board of Education shall be entirely responsible for all maintenance and upkeep of the Berkeley Remainder Tract from and after the date of the conveyance. The maintenance requirement shall survive closing on the conveyance of the Berkeley Remainder Tract
 - iv. The City shall have the right to reserve a 30 foot greenway easement around the entire perimeter of the Berkeley Remainder Tract. The greenway easement shall be dual purpose, and shall also be permitted to be used pursuant to the same terms and conditions as 30 foot greenway easement in paragraph 2a ii above. Additionally, the City shall have an additional 10 foot construction easement having one of its boundaries running coincident with the inner boundary of the 30 foot greenway easement to be available for use by the City during periods of time that active construction, maintenance or repair activities of the City are occurring within the 30 foot greenway easement. The City shall grant concurrent use of the greenway easement to the Board of Education for use by the Henderson County public schools for cross-country athletics purposes; provided, however, that construction of a greenway within the greenway easement by the City shall be subject to available funding.
 - v. The City shall retain an access easement across the entirety of the Berkeley Remainder Tract for the purposes of exercising all of its rights with respect to the utility easement, the greenway easement, and maintenance of the meter on both the Berkeley Remainder Tract and the +/- 16.0 Acre Tract.
 - vi. The Board of Education shall be responsible for procuring at its expense the survey and subdivision plat required for the conveyance of the Berkeley Remainder Tract to the Board of Education, if required. The survey and subdivision plat shall be subject to the approval of the City, prior to its finalization and recordation, such approval to not be unreasonably withheld.
 - vii. The +/- 1.0 acre tract shown on Exhibit B shall be restricted to use as a park or green space available for public use between the hours of 7 am and 7 pm only. The City of Hendersonville may hold supervised events after 7 pm upon advanced notice to the Superintendent of the Board of Education.
- e. At no cost to the public, the Board of Education will grant the public access to the +/- 16.0 Acre tract, and if conveyed, the Berkeley Remainder Tract, including but not limited to any tennis courts constructed, but specifically excluding the historic

baseball stadium and any athletic fields constructed by or on behalf of the Board of Education. The terms of this paragraph shall survive all closings.

- f. The City will grant a right of first refusal to the Board of Education for Edwards Park and the 1.0 acre tract shown on Exhibit B.
 - g. The Board of Education will grant a right of first refusal to the City for the +/- 16.0 acre tract and, if conveyed, the Berkeley Remainder Tract. Any right of first refusal granted by the Board of Education will be subject to Henderson County's statutory right of first refusal.
 - h. With respect to an Exchange Property, the party obligated to convey title to the Exchange Property will be referred to as the "Conveying Party," and the party receiving title will be referred to as the "Acquiring Party" in this Agreement
3. CONVEYANCES INCLUDES HEREDITAMENTS. The conveyances of the Exchanged Properties between the parties hereto shall be by Special Warranty Deed and shall include all improvements, easements, appurtenances and hereditaments pertaining to the Exchanged Properties.
 4. EXISTING ENCUMBRANCES. The conveyances of the Exchanged Properties shall be subject to all existing easements, restrictions, and other encumbrances of record, except as otherwise required by the terms of this Agreement.
 5. POSSESSION. Each Conveying Party shall provide possession to the Acquiring Party at the Closing of the property being conveyed and received.
 6. CLOSING DATE. The closing ("Closing") shall occur not later than 30 days after the effective date of this Agreement at a location and time to be agreed upon by both parties hereto.
 7. AS-IS EXCHANGE. Both the City and the Board of Education agree that the Exchanged Properties are being conveyed to the other party, AS-IS, with no warranties, guarantees as to title (except as set forth in the special warranty deeds and other documents to be delivered at Closing), nor as to the condition of the Exchanged Properties, nor as to their fitness for any particular purpose or use. Nothing in this paragraph shall be interpreted so as to remove or lessen the obligations of the parties under this Agreement.
 8. CLOSING COSTS AND EXPENSES. Each party shall bear its own closing costs and expenses, including attorney's fees, and recording fees. The Board of Education shall pay all revenue stamps for its deed conveying the Edwards Park to the City, if applicable. The Board of Education shall pay the cost of preparing the deed conveying the Edwards Park to the City. The City shall pay the cost of preparing the deed conveying the +/- 16.0 Acre Tract to the Board of Education.
 9. BROKERS. There are no realtors or brokers involved in this transaction, and therefore each party represents that no realtors' or brokers' fees or commissions are owed.

10. SURVEYS. Except as otherwise provided herein, the Conveying Party shall be responsible for securing such surveys (as the selling party's expense) as may be needed to convey the Exchanged Property they are conveying pursuant to this Exchange Agreement. The survey shall be subject to the approval of the Acquiring Party, prior to the finalization and recordation of the survey, such approval to not be unreasonably withheld.
11. DETERMINATION OF FAIR MARKET VALUE. For purposes of this Agreement, fair market value shall be determined by an appraisal, performed by an MAI appraiser, to be selected and paid jointly by the City and the Board of Education. In the event the parties are unable to agree on the selection of the appraiser, the parties will each select an appraiser at their own expense, and the appraised values determined by of each parties' appraisers would be averaged together to determine the fair market value of the property being valued.
12. ASBESTOS ABATEMENT. The Board of Education grants to the City permission to begin asbestos abatement activities for any of the existing buildings located on Edwards Park property prior to closing. The City shall indemnify, defend and hold the Board of Education harmless from all losses, costs (including reasonable attorneys' and consultants' fees), damages, obligations, claims and liabilities (collectively, "Losses") arising out of the acts or omissions of the City, its employees, agents, contractors or representatives, on the Edwards Park property, including those Losses arising out of liens, injury or death to persons, except that the City shall have no obligation to indemnify the Board of Education to the extent such Losses arise from the acts or omissions of the Board of Education.
13. CLOSING CONDITIONS. Both the City's and the Board of Education's obligation to close on the Exchanged Properties is subject to the satisfaction of the following conditions as of Closing, any of which may be waived in writing by the Board of Education or the City:
- (a) If a subdivision plat is required to create the parcels comprising the Exchanged Properties and/or Berkeley Remainder Tract, then that subdivision plat has been approved by the applicable governmental authorities and recorded in the Henderson County Registry.
 - (b) From and after the Effective Date until the Closing, neither party shall not create or suffer any additional easements, restrictions, claims, rights-of-way, encroachments or other encumbrances or other matters affecting the property they are conveying whatsoever without the other party's prior written approval, which approval shall not be unreasonably withheld.
14. ASSIGNMENT. Neither party shall be authorized to assign this Agreement without the consent of the other party.
15. ENTIRE AGREEMENT. This Agreement represents the entire agreement between the parties, and all prior agreements are deemed to be superseded hereby.

16. AMENDMENT. This Agreement may be amended only by a written amendment, signed by both parties hereto.
17. LIEN WAIVER AFFIDAVITS. If requested by the other party, each party shall furnish at Settlement an affidavit and indemnification agreement in form satisfactory to the other executed by the party and any person or entity who has performed or furnished labor, services, materials or rental equipment as described in [N.C.G.S. § 44A-8](#) to their respective properties within 120 days prior to the date of Settlement verifying that each such person or entity has been paid in full and agreeing to indemnify the Acquiring Party and their title insurer against all loss from any cause or claim arising therefrom.
18. LIENS. All deeds of trust, liens, judgments and other such charges against the Conveying Party's Exchange Property must be paid and satisfied by the Conveying Party as of the date of Closing such that cancellation may be promptly obtained following Closing. Alternatively, the Conveying Party may obtain a release of its Exchange Property from the beneficiary of such deed of trust, lien, judgments or other such charges. The Conveying Party shall remain obligated to obtain any such cancellations following Closing. The terms of this paragraph shall survive all closings.
19. BINDING OBLIGATION. This Agreement shall not be binding on the parties hereto until it has been duly authorized by the City Council and the Board of Education at a properly called public meeting, and the Agreement has been signed by both parties and pre-audited in that manner required by the Local Government Budget and Fiscal Control Act.
20. HEADINGS. The use of headings, captions and numbers in this Exchange Agreement is solely for the convenience of identifying and indexing the various provisions in this Exchange Agreement and shall in no event be considered otherwise in construing or interpreting any provision in this Exchange Agreement.
21. APPLICABLE LAW, VENUE. This Exchange Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of North Carolina. The sole and exclusive venue for any suit, claim or action shall be in a state or federal court having jurisdiction in Henderson County, North Carolina. Nothing herein shall be deemed to confer jurisdiction upon the federal courts, except as may be otherwise provided by law. This paragraph shall survive the closing of the Exchanged Properties, and shall also survive any termination of this Exchange Agreement.
22. ENTIRE OFFER; MODIFICATION. This Exchange Agreement supersedes all prior discussions and agreements among the City and Board of Education with respect to all matters contained herein, and this Exchange Agreement contains the sole and entire understanding among the City and Board of Education with respect thereto. This Exchange Agreement shall not be modified or amended except by an instrument in writing executed by or on behalf of the City and Board of Education.
23. AUTHORITY. Each party hereto warrants and represents that such party has full and complete authority to enter into this Exchange Agreement, and each person executing this Exchange Agreement on behalf of a party warrants and represents that he/she has been fully authorized to execute this Exchange Agreement on behalf of such party and that such party is bound by the signature of such representative. These representations and warranties shall

survive the closing of the purchase and sale of the Exchanged Properties, and shall also survive any termination of this Exchange Agreement.

24. COUNSEL. Each party hereto warrants and represents that each party has been afforded the opportunity to be represented by counsel of its choice in connection with this Exchange Agreement and has had ample opportunity to read, review, and understand the provisions of this Exchange Agreement. These representations and warranties shall survive the closing on the Exchanged Properties and shall also survive any termination of this Exchange Agreement.
25. NO CONSTRUCTION AGAINST PREPARER. No provision of this Exchange Agreement shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party's having or being deemed to have prepared or imposed such provision. This paragraph shall survive the closing on the Exchanged Properties, and shall also survive any termination of this Exchange Agreement.
26. NO LIEN. This Exchange Agreement is not and shall not be deemed or considered to convey or be an interest in or lien against any of the Exchanged Properties.
27. TIME; DATES. Anywhere a day certain or time period is stated for payment or for performance of any obligation, the day certain or time period so stated enters into and becomes a part of the consideration for this Exchange Agreement. Any time period stated shall refer to consecutive calendar days. If any date set forth in this Exchange Agreement shall fall on, or any time period stated in this Exchange Agreement shall expire on, a day which is a Saturday, Sunday, federal or state holiday, or other non-business day, such date shall automatically be extended to, and the expiration of such time period shall automatically be extended to, the next day which is not a Saturday, Sunday, federal or state holiday or other non-business day. The final day of any time period under this Exchange Agreement or any deadline under this Exchange Agreement shall be the specified day or date, and shall include the period of time through and including such specified day or date. All references to the "Effective Date," if any, shall be deemed to refer to the date the council for the City and the Board of Education issues a final approval of this Exchange Agreement, whichever occurs last.
28. E-VERIFY. Each party hereto shall comply with, and require all contractors and subcontractors performing the obligations under this Agreement 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 CONTRA. With the execution hereof, the Board of Education certifies that it is 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 obligations hereunder.
30. DUPLICATE ORIGINALS. This Agreement shall be executed in duplicate originals.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

**THE HENDERSON COUNTY BOARD OF PUBLIC
EDUCATION**

By: _____ (SEAL)
Print Name and Title:

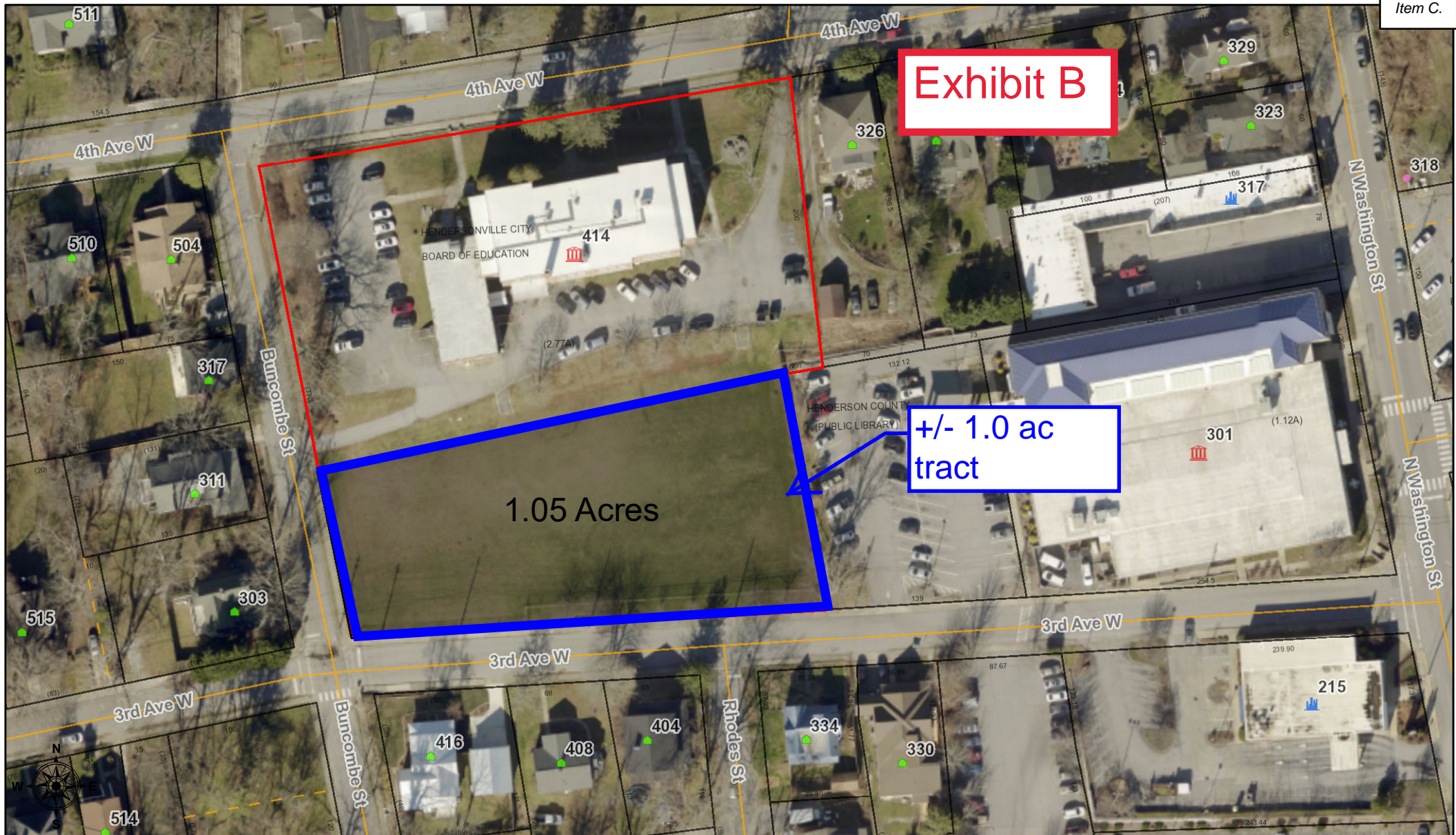
CITY OF HENDERSONVILLE

By: _____ (SEAL)
Print Name and Title:

DRAFT

Bd of Ed Admin Bldg

Item C.



July 27, 2022

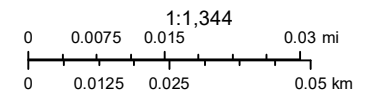
Streets and Highways

- FREEWAY
- INTERSTATE
- BOULEVARD

- THOROUGHFARE
- COLLECTOR
- Local Roads
- Parcels

THIS IS NOT A SURVEY.

All information or data provided, whether subscribed, purchased or otherwise distributed, whether in hard copy or digital media, shall be at the user's own risk. Henderson County makes no warranties or guarantees, including the warranties of merchantability or of fitness for a particular purpose. Map data is not appropriate for, and is not to be used as, a geodetic, legal, or engineering base system. The data is not intended as a substitute for surveyed locations such as can be determined by a registered Public Land Surveyor, and does not meet the minimum accuracy standards of a Land Information System/Geographic Information System Survey in North Carolina (21 NCAC 56.1608).





CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY PLANNING DIVISION

SUBMITTER: Angela Beeker, City Attorney **MEETING DATE:** October 26, 2022

AGENDA SECTION: Public Hearing **DEPARTMENT:** Legal

TITLE OF ITEM: Amendment to Rezoning: Conditional Zoning District – Cottages @ Mastermind (P22-55-CZD) – *Angela S. Beeker, City Attorney*

SUGGESTED MOTION(S):

I move that City Council adopt *An Ordinance Of The City Of Hendersonville City Council To Amend The Official Zoning Map Of The City Of Hendersonville For Parcels Possessing Pin Numbers 9579-48-2415 & 9579-48-6832 By Changing The Zoning Designation From R-40 (Low Density Residential) And C-2 (Secondary Business) To Prd (Planned Residential Development – Conditional Zoning District) – Amended*, as presented.

SUMMARY:

On September 1, 2022, the City Council adopted 0-22-52, **AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE FOR PARCELS POSSESSING PIN NUMBERS 9579-48-2415 & 9579-48-6832 BY CHANGING THE ZONING DESIGNATION FROM R-40 (LOW DENSITY RESIDENTIAL) AND C-2 (SECONDARY BUSINESS) TO PRD (PLANNED RESIDENTIAL DEVELOPMENT – CONDITIONAL ZONING DISTRICT)**. The Applicant has requested an amendment to provide that in the event the Applicant is unable to obtain sufficient right of way for the left turn lane into the development, required by City Council, the City will consider condemning the additional right of way needed. If City Council did not elect to condemn additional right of way, the applicant would not be required to construct the left turn lane. The latest design plans for the construction of the left turn lane received from the Applicant indicate that impacts on adjacent property owners will be minimal. The City's consulting traffic engineer has concurred with this approach. A copy of the latest proposed design is included in the agenda packet for informational purposes only. Final design will be subject to the approval of City Staff and NCDOT.

PROJECT/PETITIONER NUMBER:	P22-55-CZD
PETITIONER NAME:	Tom Martinson & Elam Hall / DR Horton (DHIC, LLC) [Applicant] John Hammond / Hammond Family Trust [Owner]
ATTACHMENTS:	1. O-22-52A, Amended Ordinance Proposed

	<ol style="list-style-type: none">2. O-22-55A Redlined, showing proposed amendment to O-22-553. Updated left turn lane plans (for informational purposes only)4. September 1, 2022 Meeting Minutes Excerpt5. September 1, 2022 Staff Report6. September 1, 2022 Site Plan
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Ordinance #O-22-52A

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND THE
OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE FOR PARCELS
POSSESSING PIN NUMBERS 9579-48-2415 & 9579-48-6832 BY CHANGING THE ZONING
DESIGNATION FROM R-40 (LOW DENSITY RESIDENTIAL) AND C-2 (SECONDARY
BUSINESS) TO PRD (PLANNED RESIDENTIAL DEVELOPMENT – CONDITIONAL ZONING
DISTRICT) - AMENDED**

IN RE: Parcel Number: 9579-48-2415 & 9579-48-6832
 Addresses: 102 Francis Rd & 228 Mastermind Ln
 Cottages at Mastermind (File # P22-55-CZD)

WHEREAS, the City is in receipt of a Conditional Rezoning application from applicant, Elam Hall of DHIC, LLC. and property owners, The Hammond Family Trust & John Hammond Trustee for the development of 99 residential units on approximately 12.8 acres, and

WHEREAS, the Planning Board took up this application at its regular meeting on August 8, 2022; voting 10-0 to recommend City Council approve an ordinance amending the official zoning map of the City of Hendersonville, and

WHEREAS, City Council took up this application at its regular meeting on September 1, 2022, and

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

1. Pursuant to Article XI of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of the following: Parcel Numbers: 9579-48-2415 & 9579-48-6832, changing the zoning designation from R-40 (Low Density Residential) and C-2 (Secondary Business) to PRD (Planned Residential Development – Conditional Zoning District)
2. Development of the parcel pursuant to this Ordinance is subject to the following.
 - a. Development shall comply with the site plan submitted by the applicant dated September 1, 2022, including the conditions listed therein including modifications approved by City Council which shall be added to the site plan. The updated site shall be submitted to the City at or the applicant's execution of this Ordinance.
 - b. Permitted uses shall include:
 - i. Two-family residential
 - ii. Single-family residential

- c. Additional conditions that shall be satisfied prior to final site plan approval include:

- i. Within the requirements of the Americans with Disabilities Act and per safety regulations, lighting shall be downward facing and fully shielded. Sidewalks away from the parking areas will use pedestrian-scale lighting as approved by City staff.
 - ii. Subject to NCDOT standards and approvals, construct a left-hand turn lane on south-bound Francis Road at the access point to the development. Should said left-hand turn lane extend beyond the existing in-place right-of ways, then the developer shall use best efforts to obtain a sufficient right-of-way easement from affected property owners for construction of left-hand turn lane. In this instance, best efforts include an offer to purchase a right-of-way easement on the affected land at market value as determined by a certified MAI appraisal. If the developer is unable to obtain a right-of-way easement from the affected property owners, then the developer may request that the City of Hendersonville obtain the needed right-of-way easement from the affected property owner subject to the developer repaying the fair market value of the easement obtained by eminent domain. In this instance, fair market value shall be the value as determined by the condemning authorities' certified MAI appraisal or jury verdict, including any cost and attorneys' fees. If the City chooses not to use their powers of eminent domain, the developer will not be responsible for constructing a left-hand turn lane.
 - iii. A Transportation Impact Analysis will not be required.
- 3. Except where modified by the terms of this Ordinance, development of the parcel(s) shall occur in accordance with the final site plan requirements of Article VII of the Zoning Ordinance of the City of Hendersonville, North Carolina.
- 4. Except where explicit relief is granted by the terms of this Ordinance, the development of the parcel(s) shall occur in accordance with all applicable standards within local ordinances and policies.
- 5. This ordinance shall not be effective until the list of use(s) and conditions, established herein, is consented to in writing by the applicant and all owners of the subject property. Upon such written consent, this ordinance shall be effective retroactive to the date of its adoption.

Adopted this 26thst day of October, 2022.

Barbara G. Volk, Mayor, City of Hendersonville

Attest:

Angela L. Reece, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney

With their signatures below, the undersigned applicant(s) and property owner(s) consent to and agree to all conditions imposed pursuant to the terms of this Ordinance.

IN RE: Parcel Number: 9579-48-2415 & 9579-48-6832
 Addresses: 102 Francis Rd & 228 Mastermind Ln
 Cottages at Mastermind (File # P22-55-CZD)

Applicant/Developer: Elam Hall, DHIC, LLC.

Property Owner: The Hammond Family Trust

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Property Owner: John & Betty Hammond

Signature: _____

Printed Name: _____

Signature: _____

Printed Name: _____

Date: _____

Ordinance #O-22-52A

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND THE
OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE FOR PARCELS
POSSESSING PIN NUMBERS 9579-48-2415 & 9579-48-6832 BY CHANGING THE ZONING
DESIGNATION FROM R-40 (LOW DENSITY RESIDENTIAL) AND C-2 (SECONDARY
BUSINESS) TO PRD (PLANNED RESIDENTIAL DEVELOPMENT – CONDITIONAL ZONING
DISTRICT- AMENDED)**

IN RE: Parcel Number: 9579-48-2415 & 9579-48-6832
 Addresses: 102 Francis Rd & 228 Mastermind Ln
 Cottages at Mastermind (File # P22-55-CZD)

WHEREAS, the City is in receipt of a Conditional Rezoning application from applicant, Elam Hall of DHIC, LLC. and property owners, The Hammond Family Trust & John Hammond Trustee for the development of 99 residential units on approximately 12.8 acres, and

WHEREAS, the Planning Board took up this application at its regular meeting on August 8, 2022; voting 10-0 to recommend City Council approve an ordinance amending the official zoning map of the City of Hendersonville, and

WHEREAS, City Council took up this application at its regular meeting on September 1, 2022, and

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

1. Pursuant to Article XI of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of the following: Parcel Numbers: 9579-48-2415 & 9579-48-6832, changing the zoning designation from R-40 (Low Density Residential) and C-2 (Secondary Business) to PRD (Planned Residential Development – Conditional Zoning District)
2. Development of the parcel pursuant to this Ordinance is subject to the following.
 - a. Development shall comply with the site plan submitted by the applicant dated September 1, 2022, including the conditions listed therein including modifications approved by City Council which shall be added to the site plan. The updated site shall be submitted to the City at or the applicant's execution of this Ordinance.
 - b. Permitted uses shall include:
 - i. Two-family residential
 - ii. Single-family residential

c. Additional conditions that shall be satisfied prior to final site plan approval include:

- i. Within the requirements of the Americans with Disabilities Act and per safety regulations, lighting shall be downward facing and fully shielded. Sidewalks away from the parking areas will use pedestrian-scale lighting as approved by City staff.
 - ii. Subject to NCDOT standards and approvals, construct a left-hand turn lane on south-bound Francis Road at the access point to the development. Should said left-hand turn lane extend beyond the existing in-place right-of ways, then the developer shall use best efforts to obtain a sufficient right-of-way easement from affected property owners for construction of left-hand turn lane. In this instance, best efforts include an offer to purchase a right-of-way easement on the affected land at market value as determined by a certified MAI appraisal. If the developer is unable to obtain a right-of-way easement from the affected property owners, then the developer may request that the City of Hendersonville obtain the needed right-of-way easement from the affected property owner subject to the developer repaying the fair market value of the easement obtained by eminent domain. In this instance, fair market value shall be the value as determined by the condemning authorities' certified MAI appraisal or jury verdict, including any cost and attorneys' fees. If the City chooses not to use their powers of eminent domain, the developer will not be responsible for constructing a left-hand turn lane.
 - ~~iii. A southbound left hand turn lane on Francis Rd will be constructed according to NCDOT standards at the access point to the development.~~
 - ~~iv.~~ iii. A Transportation Impact Analysis will not be required.
3. Except where modified by the terms of this Ordinance, development of the parcel(s) shall occur in accordance with the final site plan requirements of Article VII of the Zoning Ordinance of the City of Hendersonville, North Carolina.
 4. Except where explicit relief is granted by the terms of this Ordinance, the development of the parcel(s) shall occur in accordance with all applicable standards within local ordinances and policies.
 5. This ordinance shall not be effective until the list of use(s) and conditions, established herein, is consented to in writing by the applicant and all owners of the subject property. Upon such written consent, this ordinance shall be effective retroactive to the date of its adoption.

Adopted this 26th^{1st} day of ~~September~~ October, 2022.

Barbara G. Volk, Mayor, City of Hendersonville

Attest:

Angela L. Reece, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney

With their signatures below, the undersigned applicant(s) and property owner(s) consent to and agree to all conditions imposed pursuant to the terms of this Ordinance.

IN RE: Parcel Number: 9579-48-2415 & 9579-48-6832
 Addresses: 102 Francis Rd & 228 Mastermind Ln
 Cottages at Mastermind (File # P22-55-CZD)

Applicant/Developer: Elam Hall, DHIC, LLC.

Property Owner: The Hammond Family Trust

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

~~Applicant/Developer: Tom Martinson~~

Property Owner: John & Betty Hammond

~~Signature: _____~~

Signature: _____

~~Printed Name: _____~~

Printed Name: _____

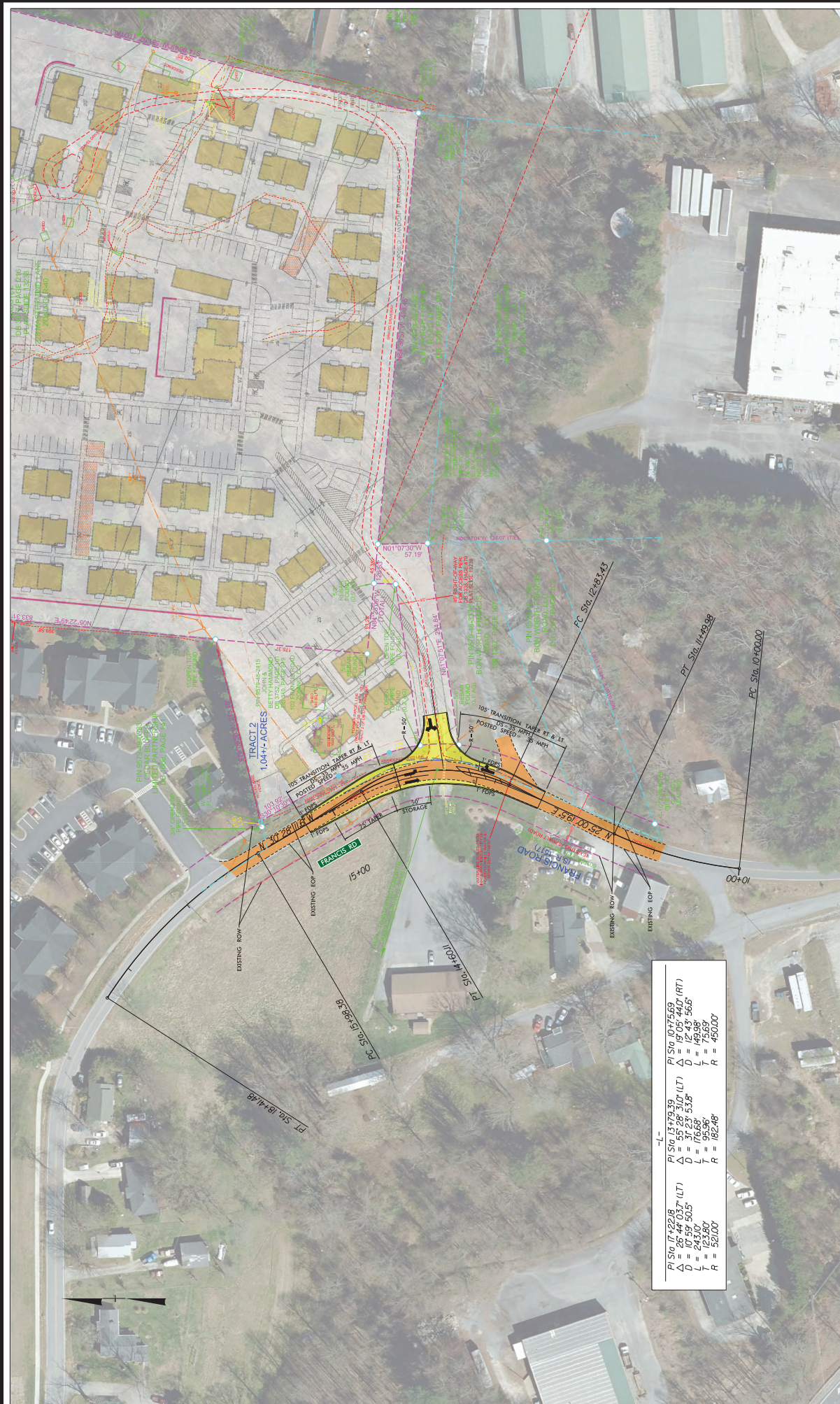
~~Title: _____~~

Signature: _____

~~Date: _____~~

Printed Name: _____

Date: _____



-L-			
PI STA 17+29.8	PI STA 31+39.39	PI STA 0+175.69	
Δ = 25° 44' 03.7" (LT)	Δ = 55° 28' 30.4" (LT)	Δ = 19° 05' 44.0" (RT)	
D = 107.59 50.5'	D = 37' 23" 5.3"	D = 12' 43" 56.6'	
L = 243.0'	L = 76.68'	L = 49.98'	
L = 123.80'	L = 95.96'	L = 75.89'	
R = 52.00'	R = 182.46'	R = 450.00'	

SCALE
0 20 40
FEET

DWG: 2022_MasterMind_Lsp_04r4
DATE: 10-1-2022

MASTERMIND LTL
Master Drawing
Hersheyville, North Carolina

LEGEND
 EXISTING PAVEMENT
 PROPOSED PAVEMENT
 CONCRETE MEDIAN

Item D.



MINUTES

September 1, 2022

REGULAR MEETING OF THE CITY COUNCIL

CITY OPERATIONS CENTER | 305 WILLIAMS ST. | 5:45 p.m.

Present: Mayor Barbara G. Volk, Mayor Pro Tem Lyndsey Simpson and Council Members: Dr. Jennifer Hensley, Debbie O'Neal-Roundtree, and Jerry A. Smith Jr., J.D.

Staff Present: City Manager John F. Connet, Assistant City Manager Brian Pahle, City Attorney Angela Becker, City Clerk Angela Reece, Communications Manager Allison Justus, Budget Manager Adam Murr, and others

1. CALL TO ORDER

Mayor Volk called the meeting to order at 5:45 p.m. and welcomed those in attendance. A quorum was established with all members in attendance.

2. INVOCATION AND PLEDGE OF ALLEGIANCE TO THE FLAG

The City Council observed a moment of silence for prayer or reflection followed by the Pledge of Allegiance to the Flag.

3. PUBLIC COMMENT *Up to 15 minutes is reserved for comments from the public not listed on the agenda.*

Steven Trombly addressed City Council regarding support of additional pickleball facilities in the City of Hendersonville.

Debra Romaine addressed City Council regarding support of covered pickleball facilities in the City of Hendersonville. Ms. Romaine asked consideration of a partnership with the County.

Chrisna Doss addressed City Council regarding support of additional pickleball facilities in the City of Hendersonville to provide recreational opportunities for all ages.

Sharon Gordon addressed City Council regarding support of additional pickleball facilities in the City of Hendersonville and provided counts of participation.

Al Jones addressed City Council regarding support of additional pickleball facilities in the City of Hendersonville stating the sport is important for older participants.

Lynne Williams addressed City Council via Zoom electronic software regarding preservation of Boyd Park and additionally expressed concerns regarding The Cedars and Mastermind projects.

Mayor Volk read comments submitted electronically from the following persons.

Dennis Justice submitted digital comments regarding support of regional pickleball facilities in the City of Hendersonville.

Jeff and Robyn Hayes submitted digital comments regarding support of increasing the number of pickleball courts and facilities in the City of Hendersonville.

Kalee Wulfers submitted digital comments regarding support of additional pickleball facilities in the City of Hendersonville.

Katherine Ulrich submitted digital comments regarding support of covered pickleball facilities in the City of Hendersonville.

Patricia MacDuff submitted digital comments regarding support of additional pickleball facilities in the City of Hendersonville.

Susan Wellband submitted digital comments regarding support of covered public pickleball facilities in the City of Hendersonville.

Anita Das submitted digital comments regarding support of covered public pickleball facilities in the City of Hendersonville.

4. CONSIDERATION OF AGENDA

WHEREAS, the Community Development Department Downtown Division has solicited proposals in an effort to hire a reputable and responsible Contractor to perform the Project; and

WHEREAS, WNC Pressure Washing submitted proposal with references that indicate that they are a responsible Contractor able to complete the Project within the bid or price stated, and within the time frames requested, and other proposers did not receive as good of a reference as WNC and therefore WNC is best suited to achieve the needs of the service district; and

WHEREAS, the Community Development Department, Downtown Division is recommending that the Project be awarded to WNC Pressure Washing and the Agreement be approved; and

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville, North Carolina that:

1. The Project is awarded to WNC Pressure Washing in the amount of \$9,900 each year for a term of five years.
2. The City Manager is authorized to enter into an Agreement with WNC Pressure Washing containing such terms as he may deem appropriate, after consultation with the City Attorney, provided that the price may not be changed without approval from the City Council.
3. The City Manager, City Attorney, and City Staff are authorized to take such other actions as may be necessary to carry out the terms and provisions of the Agreement as signed by the City Manager.

Adopted by the City Council of the City of Hendersonville, North Carolina this 1st day of September 2022.

/s/Barbara G. Volk, Mayor

Attest: /s/Angela L. Reece, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

B. Rezoning: Conditional Zoning District – Cottages at Mastermind (P22-55-CZD) –
Matthew Manley, AICP, Planning Manager

Community Development Planning Manager, Matt Manley stated the City received is in receipt of an application for a Conditional Zoning District from Tom Martinson & Elam Hall of DHI Communities, applicant and John and Betty Hammond, property owners. Mr. Manley stated the applicant is requesting to rezone the subject property, PINs 9579-48-2415 and 9579-48-6832 located off Francis Road/Mastermind Lane, from C-2 Secondary Business and R-40 Low Density Residential to PRD-CZD, Planned Residential Development Conditional Zoning District for the construction of 98 two-family units and 1 single-family home on approximately 12.76 acres. Mr. Manley stated the proposal includes the addition of 49 – 2-unit “casitas”, 1 – 1-unit casita, a clubhouse/mailroom and 3 garage structures and said the proposal would include a recombining of the subject properties to create a single parcel. The proposed density of the projects equates to 7.8 units/acres. Mr. Manley stated there no other uses are proposed to be permitted by the rezoning.

The developer’s engineer, Warren Suggs with Civil Design Concepts addressed City Council regarding the project plans and discussed conditions stating they are opposed to plantings near the stormwater retention pond as this may affect the performance as well as discussed the traffic impact analysis stating they are agreeable to conducting it while school is in session.

The City Attorney confirmed this public hearing has been advertised in accordance with North Carolina General Statutes. The public hearing was opened at 7:23 p.m.

Steven Tromley addressed City Council expressing concerns of recreational activities being added into developments to reduce the burden on taxpayers.

Ken Fitch addressed City Council remotely via Zoom online software expressing concerns of imminent domain to accommodate the project.

Jim McKinley addressed City Council expressing concerns about approving zoning changes before information is received on the effect on traffic in the area.

Lynne Williams addressed City Council remotely via Zoom online software expressing concerns regarding the loss of trees and asked Council to follow the recommendations of the Tree Board.

The public hearing was closed at 7:33 p.m.

Mayor Volk advised consideration may want to be given to recreational structures for families with young children. After much discussion Council and the developer agreed to the following additional conditions:

- i. Within the requirements of the Americans with Disabilities Act and per safety regulations, lighting shall be downward facing and fully shielded. Sidewalks away from the parking areas will use pedestrian-scale lighting as approved by City staff.
- ii. A southbound left-hand turn lane on Francis Rd will be constructed according to NCDOT standards at the access point to the development.
- iii. A Transportation Impact Analysis will not be required.

Council Member Jerry A. Smith Jr., J.D. moved that City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject property (PINS: 9579-48-2415 & 9579-48-6832) from R-40 (Low Density Residential) and C-2 (Secondary Business) to PRD (Planned Residential Development – Conditional Zoning District) based on the site plan and list of conditions submitted by and agreed to by the applicant, [dated July 29, 2022,] and presented at this meeting and subject to the following: The development shall be consistent with the site plan, including the list of applicable conditions contained therein, and the following permitted uses

1. *Two-Family Residential*
2. *Single-Family Residential*

2. Permitted uses and applicable conditions presented on the site plan shall be amended to include:

1. *Within the requirements of the Americans with Disabilities Act and per safety regulations, lighting shall be downward facing and fully shielded. Sidewalks away from the parking areas will use pedestrian height lighting as negotiated with city staff.*
2. *A left-hand turn lane on Francis Rd. according to NCDOT standards.*
3. *A traffic impact analysis (TIA) will not be required.*

The petition is found to be consistent with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and because the subject property is located in an area designated as a ‘development opportunity’ and ‘priority growth area’ according to the City’s 2030 Comprehensive Plan. Furthermore, the Regional Activity Center Future Land Use designation recommends densities exceeding those proposed for this development. Furthermore, we find this petition to be reasonable and in the public interest based on the information from the staff analysis, public hearing and because the development of two-family residential dwellings will provide a needed housing type and the development would provide housing in close proximity to shopping and employment opportunities. The motion carried by a vote of 4-1 with Council Member Dr. Jennifer Hensley voting against.

Ordinance #O-22-52

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE FOR PARCELS POSSESSING PIN NUMBERS 9579-48-2415 & 9579-48-6832 BY CHANGING THE ZONING DESIGNATION FROM R-40 (LOW DENSITY RESIDENTIAL) AND C-2 (SECONDARY BUSINESS) TO PRD (PLANNED RESIDENTIAL DEVELOPMENT – CONDITIONAL ZONING DISTRICT)

IN RE: Parcel Number: 9579-48-2415 & 9579-48-6832
 Addresses: 102 Francis Rd & 228 Mastermind Ln
 Cottages at Mastermind (File # P22-55-CZD)

WHEREAS, the City is in receipt of a Conditional Rezoning application from applicant, Elam Hall of DHIC, LLC. and property owners, The Hammond Family Trust & John Hammond Trustee for the development of 99 residential units on approximately 12.8 acres; and

WHEREAS, the Planning Board took up this application at its regular meeting on August 8, 2022; voting 10-0 to recommend City Council approve an ordinance amending the official zoning map of the City of Hendersonville; and

WHEREAS, City Council took up this application at its regular meeting on September 1, 2022.

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

1. Pursuant to Article XI of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of the following: Parcel Numbers: 9579-48-2415 & 9579-48-6832, changing the zoning designation from R-40 (Low Density Residential) and C-2 (Secondary Business) to PRD (Planned Residential Development – Conditional Zoning District)
2. Development of the parcel pursuant to this Ordinance is subject to the following.
 - b. Development shall comply with the site plan submitted by the applicant dated September 1, 2022, including the conditions listed therein including modifications approved by City Council which shall be added to the site plan. The updated site shall be submitted to the City at or the applicant's execution of this Ordinance.
 - c. Permitted uses shall include:
 - i. Two-family residential
 - ii. Single-family residential
 - d. Additional conditions that shall be satisfied prior to final site plan approval include:
 - i. Within the requirements of the Americans with Disabilities Act and per safety regulations, lighting shall be downward facing and fully shielded. Sidewalks away from the parking areas will use pedestrian-scale lighting as approved by City staff.
 - ii. A southbound left-hand turn lane on Francis Rd will be constructed according to NCDOT standards at the access point to the development.
 - iii. A Transportation Impact Analysis will not be required.
3. Except where modified by the terms of this Ordinance, development of the parcel(s) shall occur in accordance with the final site plan requirements of Article VII of the Zoning Ordinance of the City of Hendersonville, North Carolina.
4. Except where explicit relief is granted by the terms of this Ordinance, the development of the parcel(s) shall occur in accordance with all applicable standards within local ordinances and policies.
5. This ordinance shall not be effective until the list of use(s) and conditions, established herein, is consented to in writing by the applicant and all owners of the subject property. Upon such written consent, this ordinance shall be effective retroactive to the date of its adoption.

Adopted by the City Council of the City of Hendersonville, North Carolina this 4th day of August 2022.

/s/Barbara G. Volk, Mayor

Attest: /s/Angela L. Reece, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

8. UNFINISHED BUSINESS

A. Pickleball Court Discussion – Tom Wooten, Public Works Director and Mark Stierwalt, Public Works Superintendent

Public Works Director Mark Stierwalt addressed City Council and recalled prior discussions and presented additional options for consideration.

Council Member Jerry A. Smith Jr., J.D. moved that City Council direct staff to move forward with the development of pickleball courts in the following manner: six dedicated pickleball courts and two dedicated tennis courts in the location of the old racquet ball courts and tennis courts. A unanimous vote of the Council followed. Motion carried.

Mayor Volk recessed the meeting at 8:25 p.m. for a short break and reconvened at 8:30 p.m.

REZONING: CONDITIONAL REZONING – COTTAGES @ MASTERMIND (P22-55-CZD)

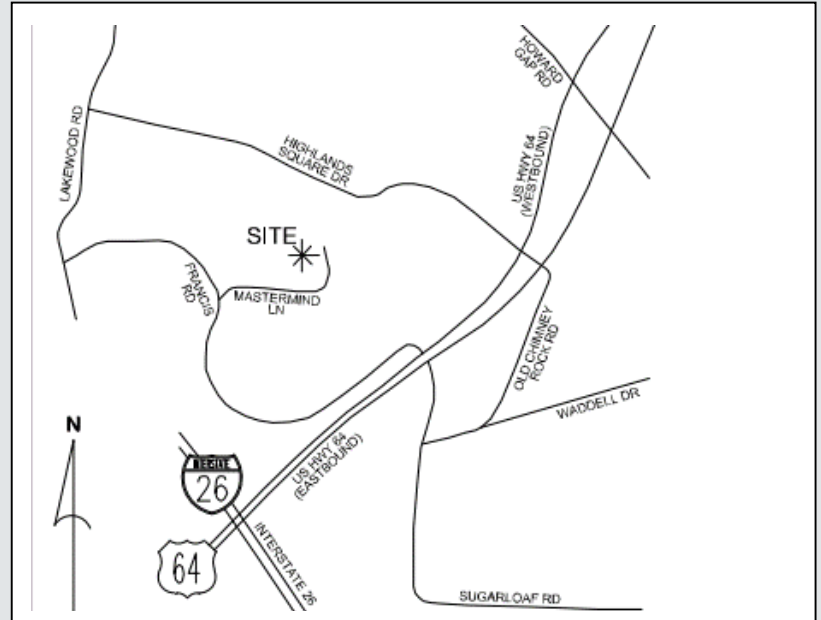
CITY OF HENDERSONVILLE - COMMUNITY DEVELOPMENT STAFF REPORT

PROJECT SUMMARY	2
EXISTING ZONING & LAND USE	3
SITE IMAGES.....	4
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SITE IMAGES.....	Error! Bookmark not defined.
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PROJECT SUMMARY

- Project Name & Case #:
 - Cottages at Mastermind
 - P22-55-CZD
- Applicant & Property Owner:
 - Tom Martinson & Elam Hall / DR Horton (DHIC, LLC) [Applicant]
 - John Hammond / Hammond Family Trust [Owner]
- Property Address:
 - 102 Francis Rd
 - 228 Mastermind Ln
- Project Acreage:
 - 12.76 Acres
- Parcel Identification (PIN):
 - 9579-48-2415
 - 9579-48-6832
- Current Parcel Zoning:
 - R-40 Low Density Residential
 - C-2 Secondary Business
- Future Land Use Designation:
 - Regional Activity Center
- Requested Zoning:
 - Planned Residential Development Conditional Zoning District (PRD)
- Requested Uses:
 - Two-Family Residential
- Neighborhood Compatibility Meeting:
 - June 3, 2022



SITE VICINITY MAP

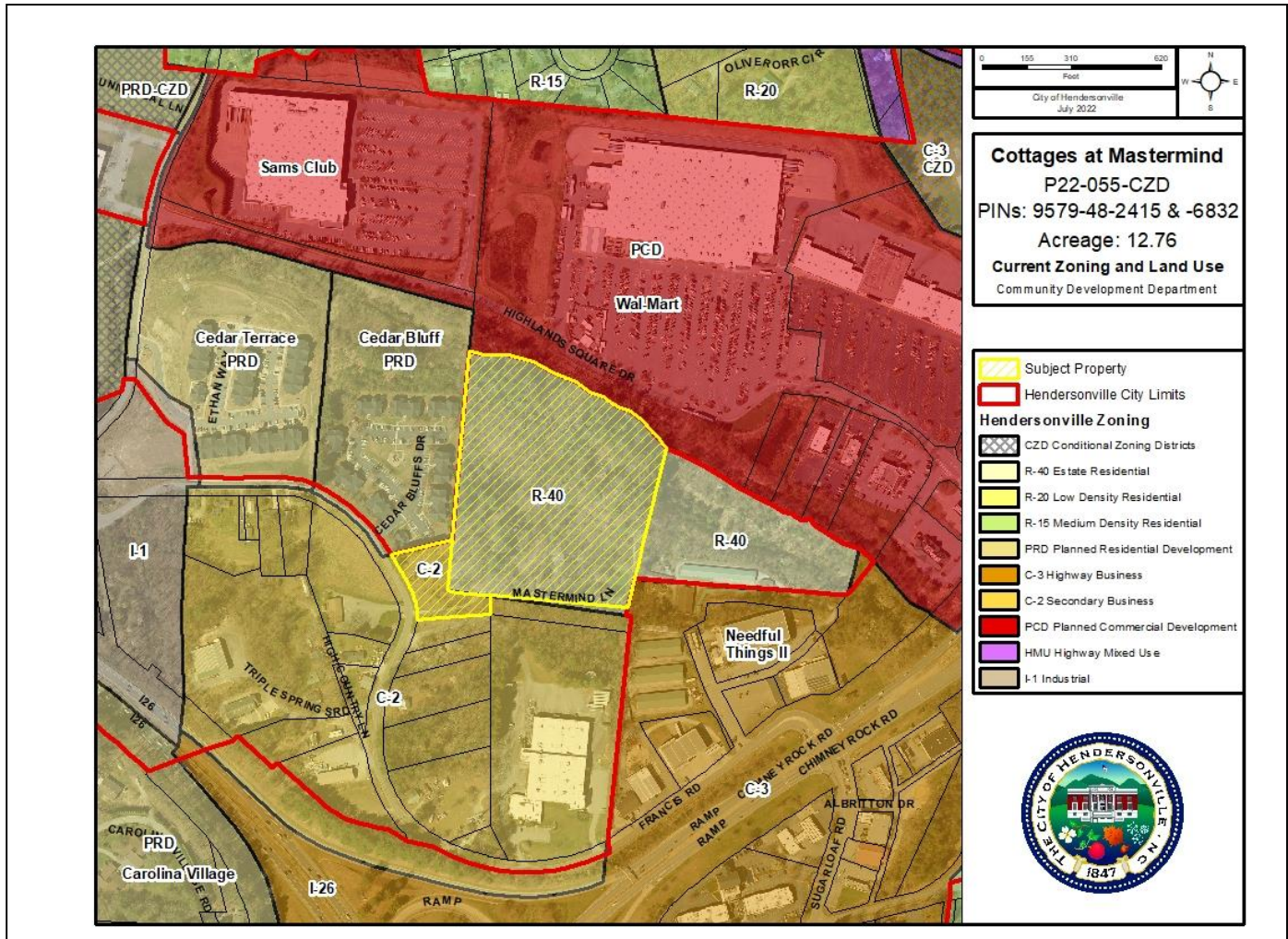
The City of Hendersonville is in receipt of an application for a Conditional Zoning District from Tom Martinson & Elam Hall of DHI Communities, applicant and John and Betty Hammond, property owners. The applicant is requesting to rezone the subject property, PINs 9579-48-2415 and 9579-48-6832 and located off Francis Road/Mastermind Lane, from C-2 Secondary Business and R-40 Low Density Residential to PRD-CZD, Planned Residential Development Conditional Zoning District for the construction of 98 two-family units and 1 single-family home on approximately 12.76 acres

The proposal includes the addition of 49 – 2-unit “casitas”, 1 – 1 unit casita, a clubhouse/mailroom and 3 garage structures.

The proposal would include a recombining of the subject properties to create a single parcel. The proposed density of the projects equates to 7.8 units/acre.

No other uses are proposed to be permitted by the rezoning.

EXISTING ZONING & LAND USE



City of Hendersonville Current Zoning & Land Use Map

The subject property is unique in that it is split zoned between the City's least intense zoning districts (R-40) and one of its most intense districts (C-2). The property also borders another R-40 tract to the east yet further to the east is the C-3, Highway Business zoning districts which flanks Chimney Rock Rd / US 64. To the north, the property borders the Planned Commercial Development (PCD) associated with the Highlands Square development (Wal-Mart & Sam's Club shopping center). This development is buffered from the subject property by Allen Branch creek as well as a large retaining wall. To the east of the subject property is the PRD development of Cedar Bluff apartments (approx. 32 units) and adjacent to that is Cedar Terrace apartments (apprx. 80 units) for a combined density of 5.6 units/acre. All properties to the south are zoned C-2, Secondary Business.

SITE IMAGES



View of existing principal structure



View of dry creek/wet weather conveyance and secondary residence on subject property

SITE IMAGES



View of typical wooded scene



View of tree-lined drive running along property boundary

SITE IMAGES

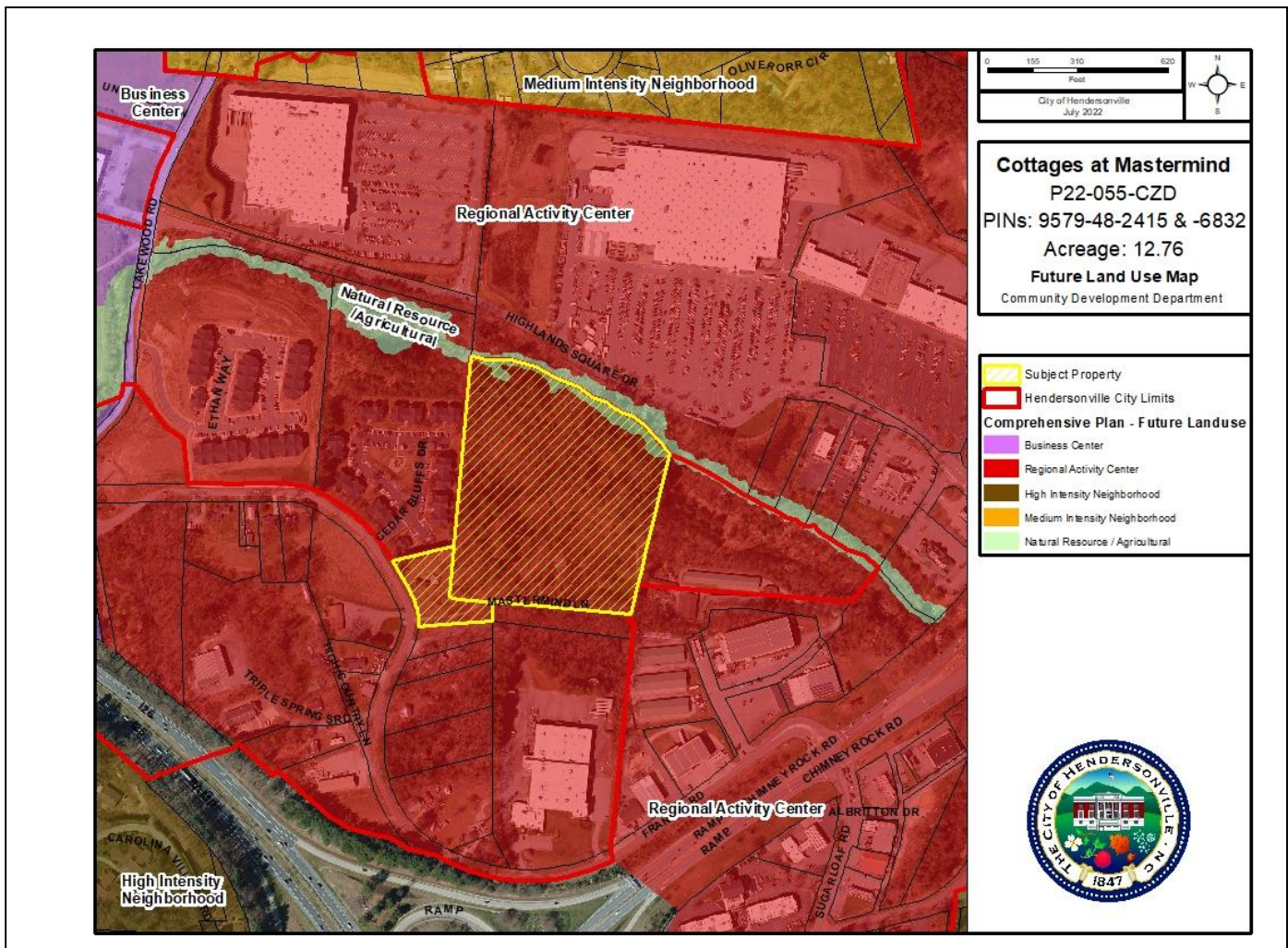


View of rock wall at wet weather conveyance on subject property



View of Allen Branch at rear of subject property

FUTURE LAND USE



City of Hendersonville Future Land Use Map

The subject property and the surrounding parcels are designated as Regional Activity Center on the 2030 Comprehensive Plan Future Land Use Map due to its proximity to I-26 and Chimney Rock Rd.

Other designations in proximity to the site include Business Center, Natural Resource / Agriculture, Medium Intensity Neighborhood and High Intensity Neighborhood.

Francis Rd is designated as a Local Street.

REZONING ANALYSIS – COMPREHENSIVE PLAN CONSISTENCY (ARTICLE 11-4)

GENERAL REZONING STANDARDS: COMPREHENSIVE PLAN CONSISTENCY	
Future Land Use	The subject property is designated as <i>Regional Activity Center</i> on the <i>Future Land Use Map</i> . Goal LU-9. Meet the large-scale retail needs of Hendersonville residents while encouraging mixed-use, walkable design through redevelopment and infill projects [CONSISTENT]
	Strategy LU-9.2. Primary recommended land uses: <i>Community and regional retail sales and Services and Restaurants</i> [INCONSISTENT]
	Strategy LU-9.3 Secondary recommended land uses: • <i>Multi-family residential</i> [CONSISTENT – two-family residential] • <i>Pedestrian amenities</i> [CONSISTENT]
	Strategy LU-9.4. Development guidelines: • <i>Mitigation of bulk of large buildings through façade detailing and window coverage</i> [N/A] • <i>Hiding of large parking lots (more than one double-row deep) from thoroughfares with outlot structures</i> [N/A] • <i>Provision of pedestrian connections to parking and other buildings and properties</i> [CONSISTENT]
Land Use & Development	The property is designated as a “Priority Infill Area” on the <i>Growth Management Map (Map 8.3a)</i> . “Areas that are considered a high priority for the City to encourage infill development on remaining vacant lots and redevelopment of underutilized or underdeveloped properties”. [CONSISTENT]
	The project area is identified as a “Development Opportunity” in the <i>Comprehensive Plan’s Map 8.2b: Development Framework</i> . This includes vacant land, agricultural land, and single-family residential properties greater than five acres. [CONSISTENT]
	<i>Strategy LU-1.1. Encourage infill development and redevelopment in areas planned for high-intensity development</i> [CONSISTENT]
Population & Housing	<i>Strategy PH-2.1. Encourage variation in lot sizes and housing types within new developments</i>
	<i>Strategy PH-3.2. Encourage mixed land use patterns that place residents within walking distance of services.</i>
Natural & Environmental Resources	<i>Strategy NR-1.2. Protect land adjacent to streams in order to protect water quality, reduce erosion, and protect wildlife habitat</i>
	<i>Strategy NR-1.3. Encourage restoration of natural habitat and drainage patterns in developed areas.</i>
Cultural & Historic Resources	No Goals, Strategies or Actions are directly applicable to this project.
Community Facilities	No Goals, Strategies or Actions are directly applicable to this project.
Water Resources	<i>Strategy WR-2.3. Enable and encourage Low-Impact Development practices in stormwater management</i>
Transportation & Circulation	<i>Strategy TC-1.1. - Encourage mixed-use, pedestrian-friendly development that reduces the need to drive between land uses.</i>

REZONING ANALYSIS – GENERAL REZONING STANDARDS (ARTICLE 11-4)

GENERAL REZONING STANDARDS	
Compatibility	Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property –
	A mix of commercial and residential uses are found in the immediate area. Low density single family residential as well as multi-family residential are both found near the proposed project area. Additionally, intense uses such as manufacturing, a regional-scale shopping center and self-storage units are all adjacent to the site.
Changed Conditions	Whether and the extent to which there are changed conditions, trends or facts that require an amendment -
	The Francis Rd / Lakewood Rd area has seen significant development activity in recent years with additional development proposed in close proximity of the subject property. Recent developments include the Universal at Lakewood multi-family development which is currently under construction and will provide 291 apartment units.
Public Interest	Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety and general welfare -
	Based on the 2021 Bowen Housing Needs Assessment for Western North Carolina, Henderson County has an estimated rental housing gap of 1,650 to 2,008 Units for incomes between <50%-120% AMI. This represents one of the largest gaps in the WNC region. Over the last 3 years, the City of Hendersonville has approved 1,138 rental units. If this project is approved, Hendersonville's recently-approved rental units would total 1,237. It should also be noted that the Housing Needs Assessment Study does not account for the housing gap for incomes above 120% AMI. An additional gap, beyond that reflected in this 1,650 to 2,008-unit gap, exist for those income levels greater than 120% AMI.
Public Facilities	Whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment
	The site will be served by City water and sewer service. Francis Rd is designated as a Local street on the Comprehensive Transportation Plan and is maintained by NCDOT. The subject property will be serviced by the City Fire Dept and will also be served by the City of Hendersonville Police.
Effect on Natural Environment	Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, storm water management, streams, vegetation, wetlands and wildlife -
	The subject property features 340 trees of 12+” in dbh. 240 of these are proposed to be cleared. Allen Branch runs along the rear of the property where no site disturbance beyond a sewer crossing is proposed. There is also a blue line stream running through the center of the property according to the USGS Map. A field inspection by staff concluded that this is not an active stream but rather a dry creek / wet weather conveyance. The developer is working with the US Army Corp of Engineers to update the status of the creek. This ditch is proposed to be piped and utilized for stormwater management.

DRAFT COMPREHENSIVE PLAN CONSISTENCY AND REZONING REASONABLENESS STATEMENT

The petition is found to be **consistent** with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:

The subject property is located in an area designated as a 'development opportunity' and 'priority growth area' according to the City's 2030 Comprehensive Plan. Furthermore, the Regional Activity Center Future Land Use designation recommends densities exceeding those proposed for this development.

We **[find/do not find]** this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

DRAFT [Rationale for Approval]

- *The development of two-family residential dwellings will provide a needed housing type.*
- *The development would provide housing in close proximity to shopping and employment opportunities.*

DRAFT [Rational for Denial]

- *Regional Activity Center recommends uses with greater density and intensity than two-family residential. (LU-9.2 & LU-9.3)*

STAFF SITE PLAN REVIEW – SUMMARY COMMENTS

PROPOSED REQUEST DETAILS

- Site Plan Summary:
 - The site plan accompanying this petition contains the following provisions:
 - 99 Residential Units (Casitas) & Clubhouse totaling 2.09 Acres (16.4%)
 - 49 – Two-family Structures
 - 1 – Single-family Structure
 - Drives, Parking Spaces (188) and Sidewalks totaling 1.75 Acres (13.6%)
 - Open Space totaling 8.92 Acres (70%)
 - Common Open Space totaling 1.28 Acres (10%)
 - Fire Access with Grass Pavers
 - Greenway Easement on Allen Branch
- Proposed Uses:
 - Two-family & Single-family residential
- Developer Agreed Conditions (included on Site Plan):
 - Conditions Exceeding Standards:
 - Developer to provide non-exclusive, 20' wide greenway easement that runs parallel to Allen Branch Creek. [Staff-initiated – Agreed]
 - Developer to replace 50%, a total of 11, of the proposed Linden and Zelkova tree plantings with native medium or large canopy trees from the following Genera (Quercus and Acer). [Tree Board - Agreed]
 - Developer to protect preserved trees from construction activities as prescribed in the zoning code 15-4 regardless of use as tree credits. [Tree Board - Agreed]
 - Developer to plant an additional 15 oak, maple, and/or poplar trees than shown within the “Proposed Planting Schedule” shown on L110 – Landscape & Resource Plan, throughout the open spaces created by this development. [Tree Board – Counter]
 - Developer will perform a TIA after the rezoning is considered due to the location of the project on a Local Street as stipulated by the PRD zoning. The developer will be responsible for any mitigation of traffic impacts recommended as a result of the findings from the TIA. [Staff-initiated – Counter]
 - Conditions Reducing Standards:
 - The developer requests relief from the 75' requirement for parking space distance from the residential units [Developer-initiated]
 - Developer to be granted relief from second fire/emergency access requirement [Developer-initiated]
 - Any developer-provided aerial stream crossing shall be elevated above the 100-Year Floodway/NEZ and permitted under applicable codes [Staff-initiated – Counter].

OUTSTANDING ISSUES & PROPOSED CONDITIONS

COMMUNITY DEVELOPMENT

Site Plan Comments:

The site plan accompanying this petition meets the standards established by the Zoning Ordinance for Planned Residential Development (5-14) with the following exceptions:

- A number technical corrections were provided to the applicant. Each of these were resolved.

Proposed City-Initiated Conditions:

- None

CITY ENGINEER

Site Plan Comments:

- None

Proposed City-Initiated Conditions:

- None

WATER / SEWER

Site Plan Comments:

- Resolved

Proposed City-Initiated Conditions:

- None

FIRE MARSHAL

Site Plan Comments:

- Primary entrance and all drive aisles required to be 26-feet wide [resolved]
- Grass paved areas need to be extended and straightened. Marked up site plan provided [resolved]
- Grass paved areas require ""EMERGENCY ACCESS ONLY"" signage [resolved]
- Curbs at all turns need to be softened to allow fire apparatus to turn [resolved]
- The two proposed ""CC"" trees by fire access roads may block emergency apparatus; recommend substitution [resolved]
- A second entrance is required, It is recommend that road be extended to Cedar Bluff Drive to provide second emergency access. [resolved]

Proposed City-Initiated Conditions:

- None

STORMWATER ADMINISTRATOR

Site Plan Comments:

- Resolved - Jurisdictional Determination made by the Army Corps of Engineers to remove the blue line stream for a non-jurisdictional ephemeral drainage feature

Proposed City-Initiated Conditions:

- None

FLOODPLAIN ADMINISTRATOR

Site Plan Comments:

- Please note that utility service lines must be connected individually to the main. Each roofline must have its own connection to the sewer main. Water meters shall be located within the street right of way. [resolved]
- Provide a greenway trail easement along Allen Branch stream buffer. [resolved]
- Sewer plan should not show aerial stream crossing. Look at connecting to sewer on same side of Allen Branch to avoid aerial crossing of stream – possibly utilizing Cedar Bluff Dr. [outstanding]

Proposed City-Initiated Conditions:

- Developer to provide a flood study for use of aerial stream crossing for sewer connection to show no impact to flood hazard areas.
- Developer to increase greenway easement from 10' to 20' and include utility maintenance access to the easement. Easement location will not be impacted by aerial stream crossing.

PUBLIC WORKS

Site Plan Comments:

- Resolve Trash Cart Issues – individual carts are required. Could have central collection points but these often get quite messy if all carts are placed in a single location. Consider dispersing the collection point [resolve at final site plan]

Proposed City-Initiated Conditions:

- None

NCDOT

Site Plan Comments:

- Driveway permit and sidewalk encroach will be required at Final Site Plan

Proposed City-Initiated Conditions:

- None

TRANSPORTATION CONSULTANT

Site Plan Comments:

- The proposed use did not trigger a TIA

Proposed Condition:

- A TIA will be performed after the rezoning is considered due to the location of the project on a Local Street as stipulated by the PRD zoning. The developer will be responsible for any mitigation of traffic impacts recommended as a result of the findings from the TIA.

TREE BOARD**Site Plan Comments & Recommended Conditions:**

- See attached Tree Board Summary



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Drew Finley **MEETING DATE:** 10/26/2022

AGENDA SECTION: PRESENTATIONS **DEPARTMENT:** Water & Sewer

TITLE OF ITEM: Stantec Water and Sewer Rate Study Presentation – *Drew Finley, Asst. to the Utilities Director*

SUGGESTED MOTION(S):

N/A. Presentation Only.

SUMMARY:

The City of Hendersonville has partnered with Stantec’s Financial Services Team to complete a water and sewer rate study and system development fee analysis. Stantec’s Financial Services Team specializes in utility financial management and has provided their services to over 30 communities in the State of North Carolina alone. Stantec also maintains a robust national and international consulting presence. The City and Stantec have worked together in recent months to collect relevant data and metrics to support the rate study. At this time, Stantec will provide an overview presentation on the rate study process, opportunities for guidance, and desired outcomes.

A critical component of this rate study’s success is the incorporation of stakeholder feedback. The City and Stantec value the input of both the City Council and the Water & Sewer Advisory Council on the future of the City’s water and sewer rates. Stantec is presenting this overview presentation to both bodies and seeks input from members.

BUDGET IMPACT: TBD

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

ATTACHMENTS:

1. Stantec Water and Sewer Rate Study Overview Presentation



City of Hendersonville Water and Sewer Rate Study Overview

October 26, 2022

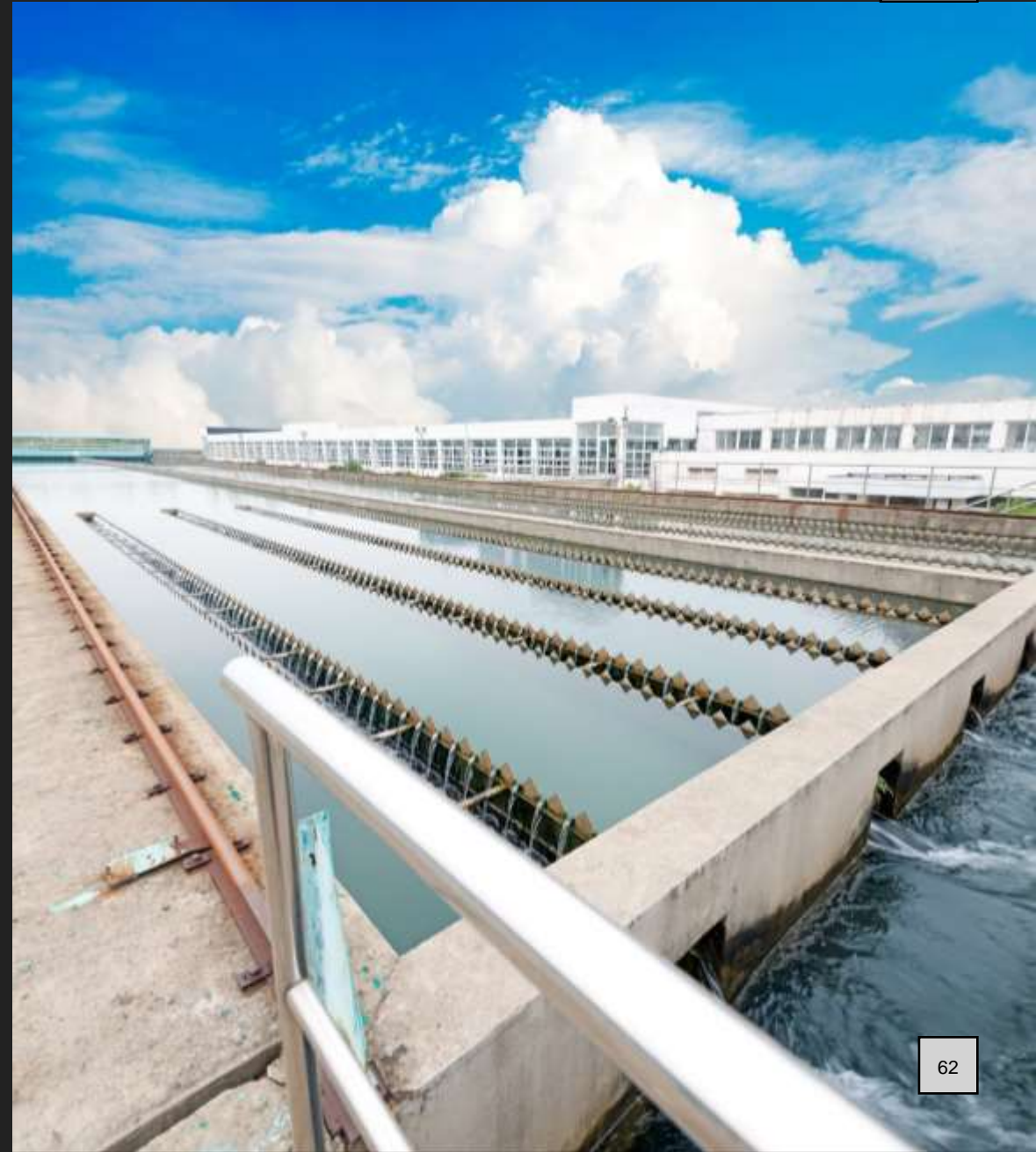


Agenda

Item A.

2

- 1) Overview of Rate Study Process
- 2) Key Challenges
- 3) Review of Current Rate Structures
- 4) System Development Fees
- 5) Project Schedule





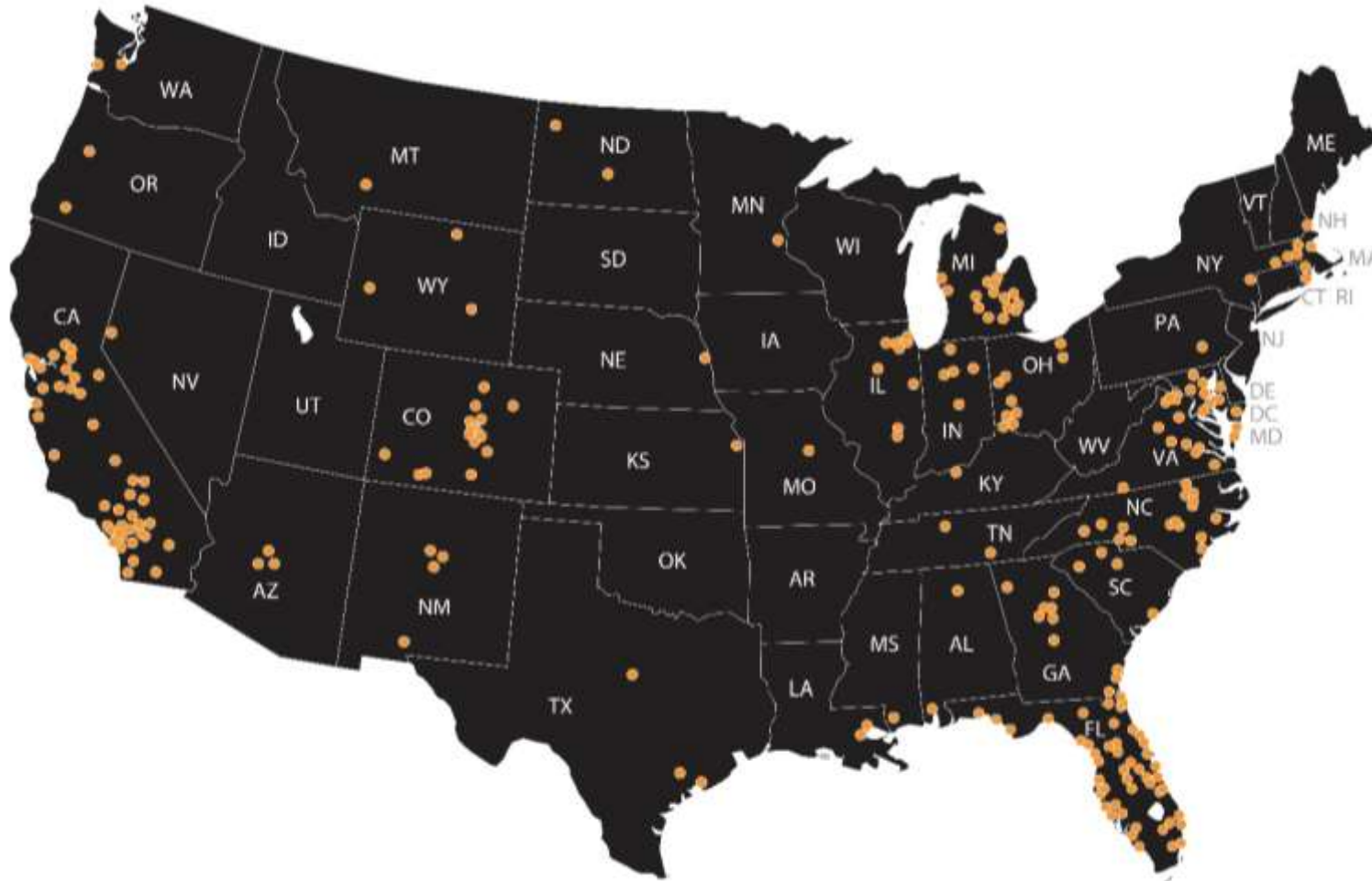
Introduction: Stantec's Financial Services Team

Item A.

3

30+

Communities served
by Stantec Financial
Services in North
Carolina



>360

Communities served,
accounting for 25+%
of the US population

400+

Combined years
of **experience**

1.5K+

Studies in the last
10 years

35+

Specialists in utility
financial management

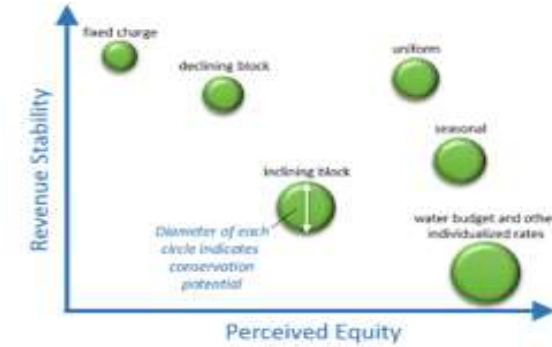
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Utilities in our
benchmarking
database

\$4B+

Debt support in
past five years

63



Financial Plan

How Much?

Defines how much total revenue is needed each year

Cost of Service

From Whom?

Defines proportional revenue recovery between customer classes

Rate Design

How to Collect?

Structure of how revenues are recovered by class



Revenue Requirements

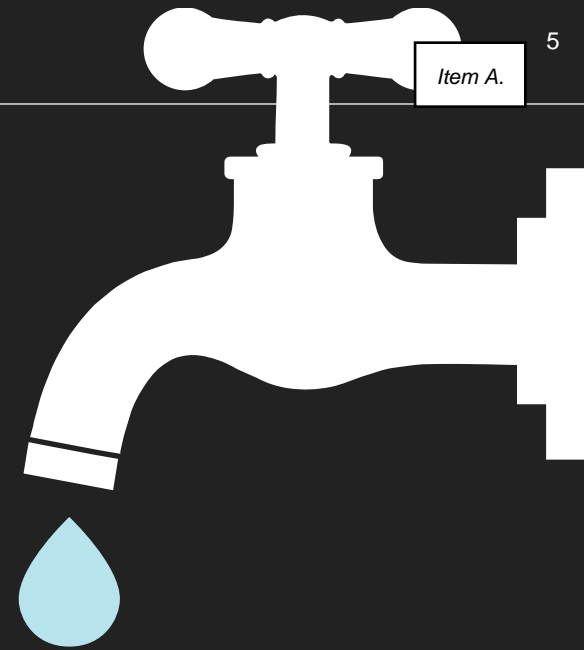
- Forecast of system operating expenditures
- Forecast of capital investments including existing debt obligations

Revenue Forecast

- Forecast of system demands and customer counts
- Development of revenue forecast with existing rates and fees

Evaluate Key Metrics

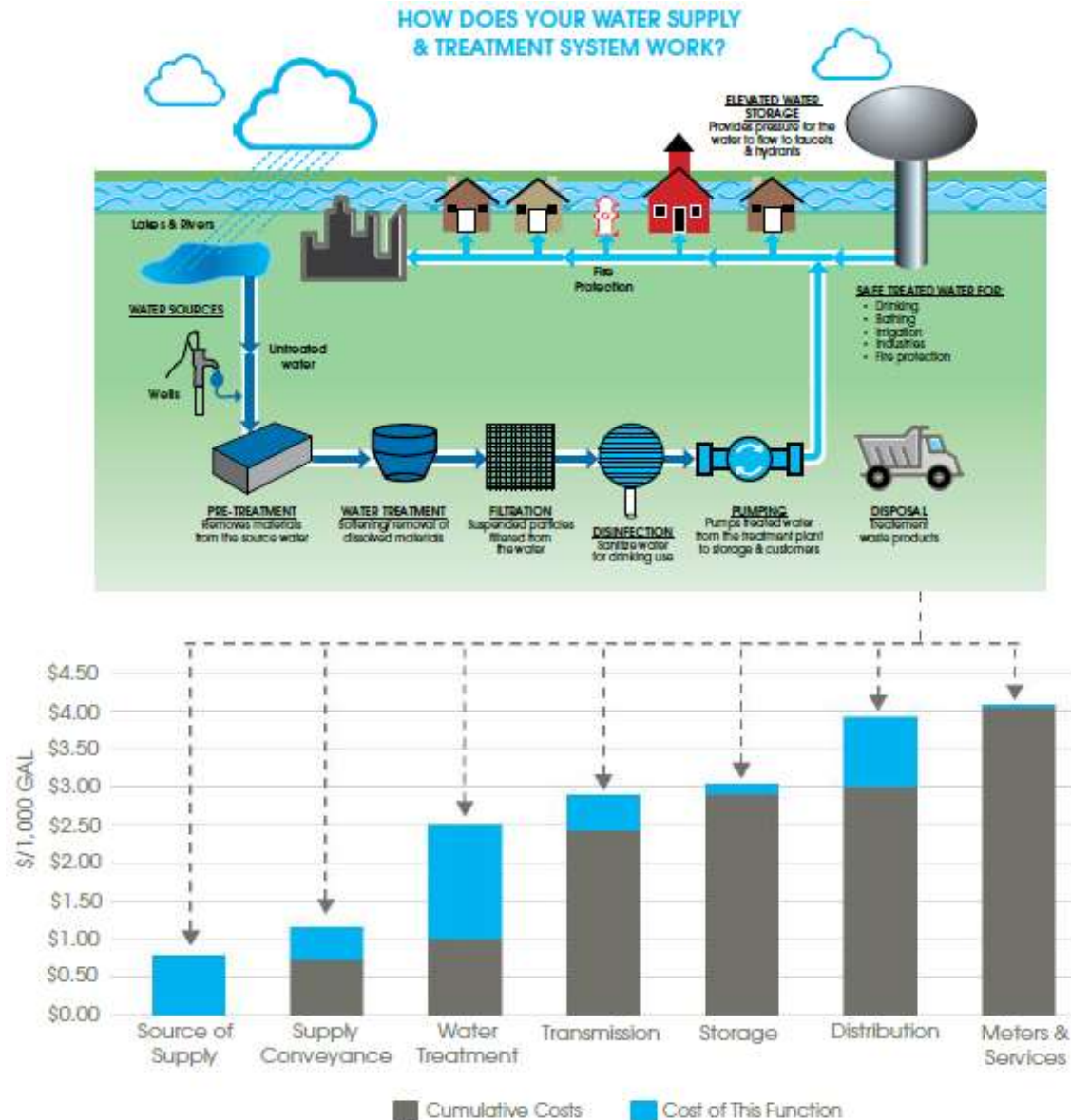
- Sufficiency of revenue to meet revenue requirements
- Ability to fall within range of reserve targets
- Meet debt service coverage requirements



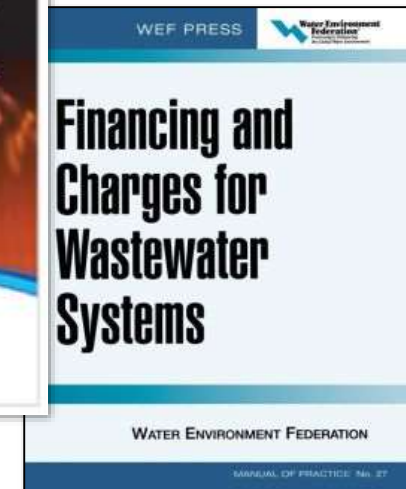
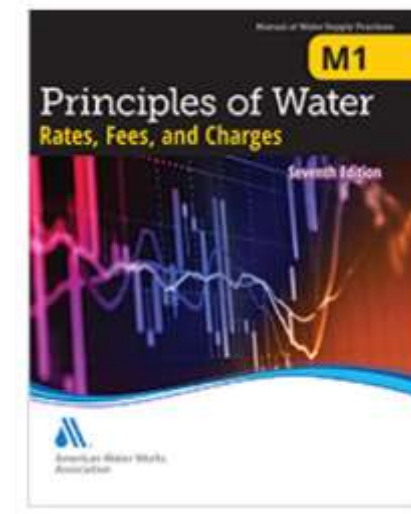
Capital Costs

Debt Service

Operating Costs



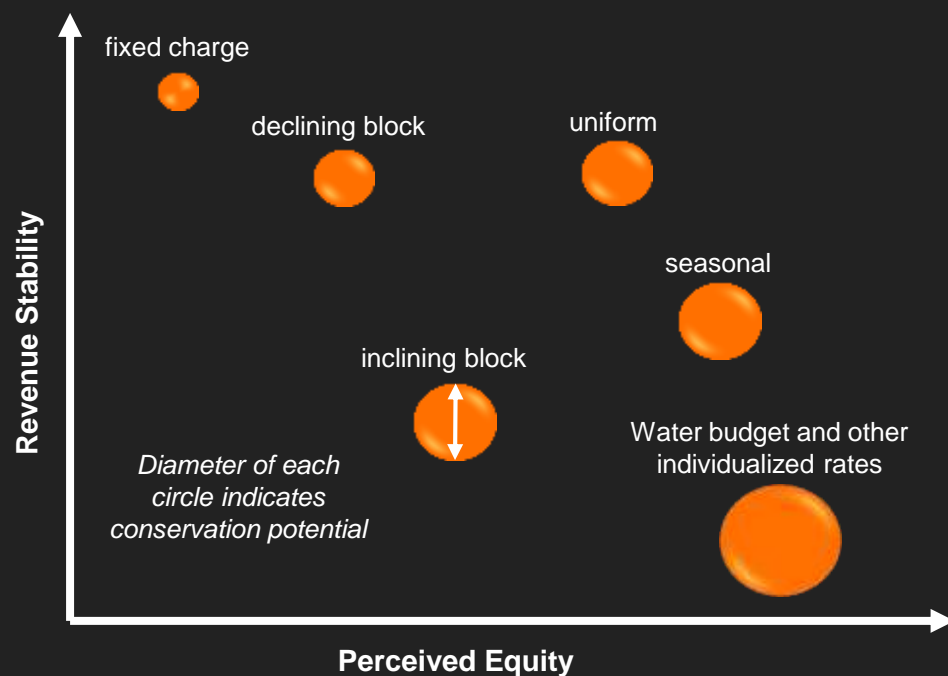
Goal: Determine the equitable distribution of revenue to be recovered by customer class based on the **cost to serve** each class



Use of Industry Standard Approaches



Rate Design → How costs are specifically recovered from customers



Requires Consideration of Pricing Goals and Objectives

Revenue Stability

VS

Conservation Signal

Revenue Stability

VS

Low Income Impacts

Alignment with Cost of Service

VS

Administrative Burden

Affordability

VS

Equity



Key Challenges

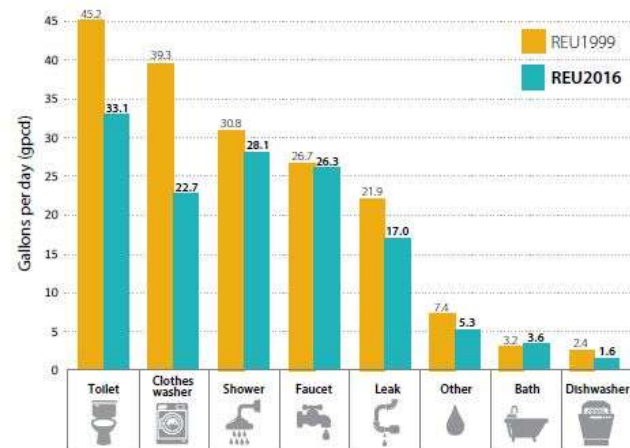


Current Industry Challenges

Item A.

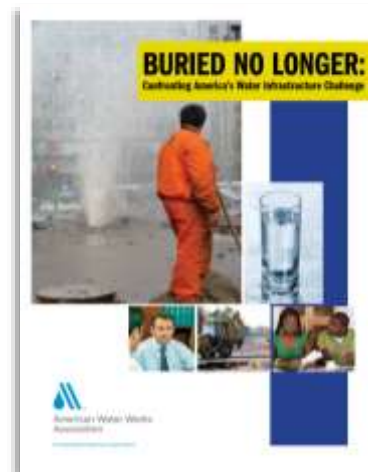
9

Reductions in Use / Revenue Impacts



22%
DECREASE
PER HOUSEHOLD
DAILY WATER USE
1999 TO 2016

Aging Infrastructure



Regulatory and Resilience



Aging Workforce



Customer Affordability



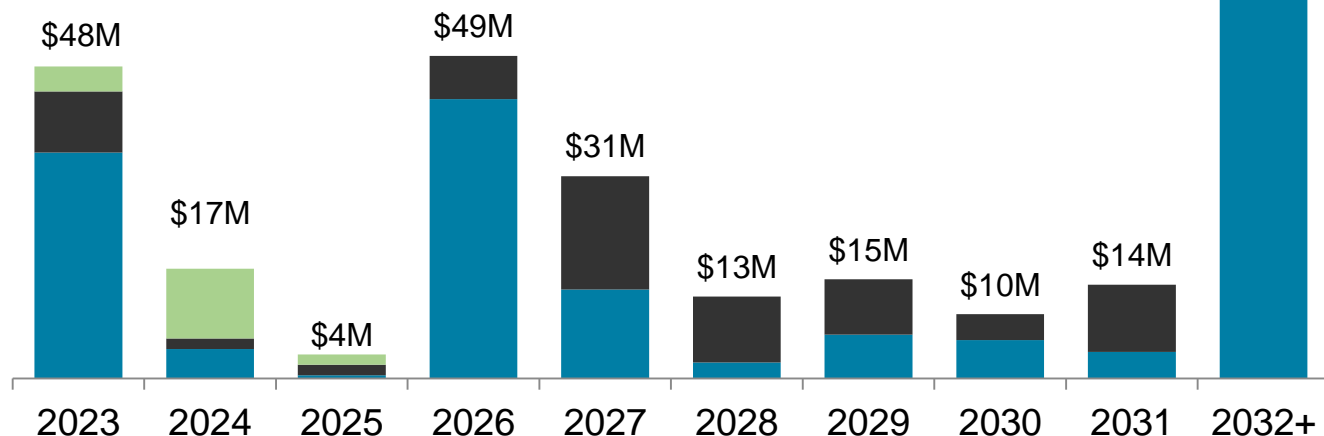
Operational Costs Increases





Primary Challenge Facing City's Utilities

\$292 Million Water and Sewer Capital Investments



- Equipment - \$16M
- Repair / Replacement - \$74M
- Capacity and Expansion - \$202M



Impacts on Water
and Sewer Rates
and Affordability of
Service



Water and Sewer Structures



Pricing Goals and Objectives

Item A.

12



Customer Affordability - Ability to provide service for basic needs at affordable prices



Rate and Revenue Stability - Limit volatility in annual revenues and rate adjustments



Cost of Service Based - Alignment between use of service and utility bill



Administrative and Customer Understanding - Ability to administrate and customer to understand



Legal Defensibility - Comply with industry standard and legal requirements



City's Current Water Rate Structure

Item A.

13

Water Base Charges	Inside City	Outside City
3/4"	\$8.32	\$11.23
1"	\$9.71	\$13.11
1.5"	\$13.15	\$17.75
2"	\$17.55	\$23.69
3"	\$27.88	\$37.64
4"	\$42.60	\$57.51
6"	\$79.40	\$107.19
8"	\$123.56	\$166.81

Water Usage Rates (per 1,000 gallon)	Inside City	Outside City
Residential		
0 to 6,000 gal.	\$4.48	\$6.05
6,001 to 14,000 gal.	\$4.93	\$6.65
14,001 gal. and over	\$5.60	\$7.56
Commercial/Industrial		
0 to 40,000 gal.	\$4.48	\$6.05
40,001 to 200,000 gal.	\$4.28	\$5.78
200,001 gal. and over	\$3.80	\$5.13
Irrigation		
0 to 40,000 gal.	\$5.60	\$7.56
40,001 gal. and over	\$6.10	\$8.06
Municipal/Wholesale	\$4.48	
Bulk Water	\$7.56	

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Base charge provides revenue stability and fixed cost recovery

- Potential to increase the portion of revenues collected from base charge
- Potential to consider alternative scaling between meters

Residential/Irrigation inclining water block rates promote conservation

- Potential modifications to tier quantities and differences in pricing between tiers
 - Creation of a “life-line” tier
 - Enhance conservation incentive

Commercial/Industrial declining water block rates are less common

- City plans to move to a uniform rate by FY 2024

City provides water service to a significant number of water accounts outside the City acting as a regional service provider

- City plans to move to eliminate differential by 2030



Example Pricing Considerations

Example Rate Structure Changes

Consideration of Pricing Goals and Objectives

Increase Revenue Collected in Base Charges

Increase Revenue Stability

vs

Decrease Conservation Signal

Add a “Life-Line” Tier

Enhance Affordability

vs

Increase Administrative Burden

Increase Water Tier Pricing Differentials

Enhance Conservation Signal

vs

Decrease Revenue Stability

Elimination of Commercial Declining Block

Enhance Alignment with Cost of Service

vs

Impact on Large Commercial Users



City's Current Sewer Rate Structure

Item A.

16

Sewer Base Charges	Inside City	Outside City
3/4"	\$8.92	\$13.38
1"	\$11.25	\$16.88
1.5"	\$17.05	\$25.58
2"	\$24.03	\$36.05
3"	\$40.44	\$60.66
4"	\$63.89	\$95.84
6"	\$122.45	\$183.68
8"	\$192.75	\$289.13

Sewer Usage Rates (per 1,000 gallon)	Inside City	Outside City
Residential / Commercial		
All Usage	\$6.33	\$9.50
Public Schools		
All Usage	\$6.33	
Wholesale / Municipal / Henderson County / Internal		
All Usage	\$9.50	



Average Monthly Household Spending

Item A.

17



\$150
on electricity



\$105
on cell phone
service



Water: **\$22**
Sewer: **\$28**
Total: \$50
Hendersonville



Water: **\$27**
Sewer: **\$33**
Total: \$60
NC Average

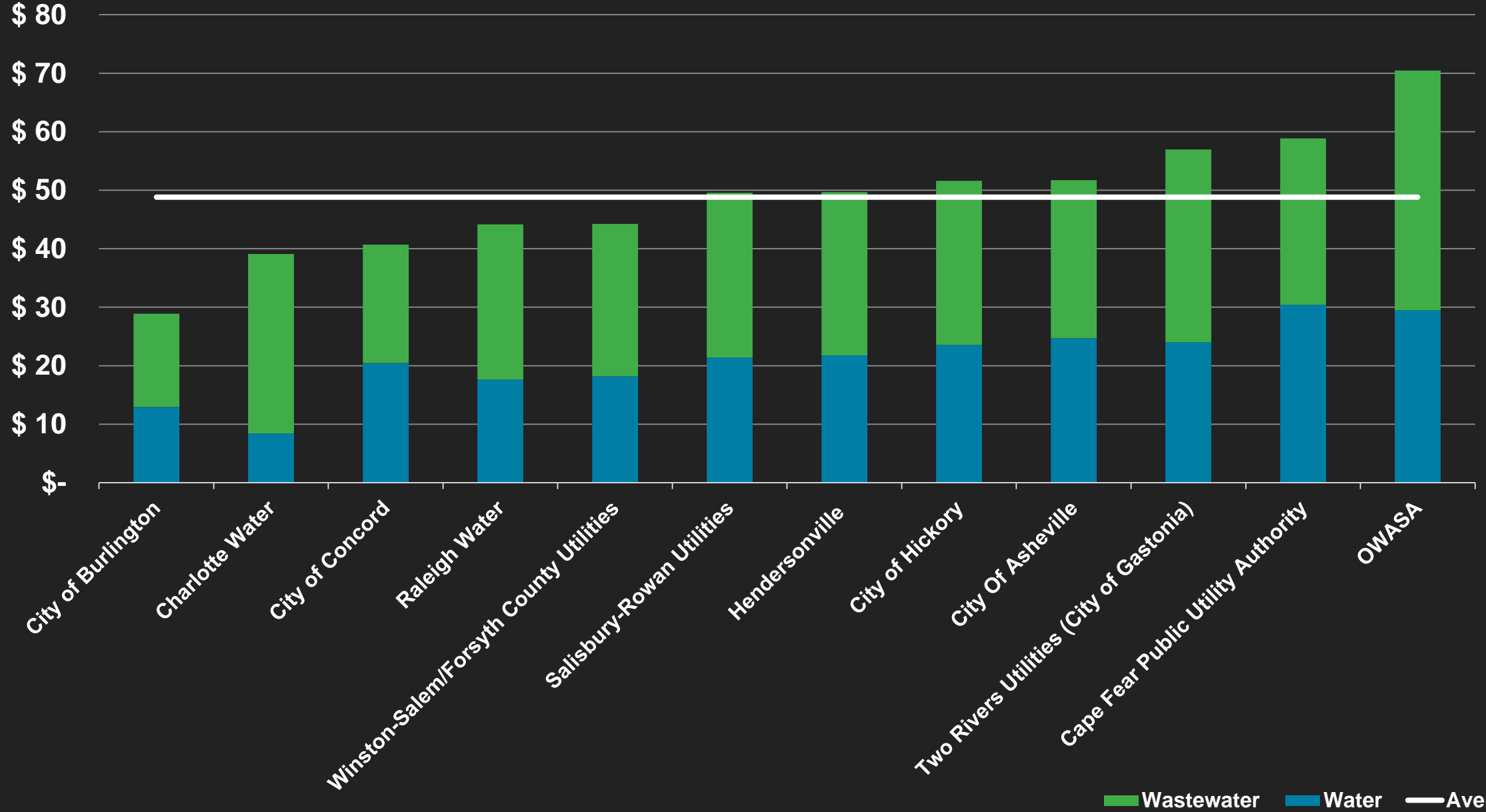
- US Energy Information Administration, 2022 Electricity Reports
- US Bureau of Labor Statistics, Consumer Expenditure Survey, August 2022
- Current inside city residential rates for 3,000 gallons per month



Residential Bill Comparisons (3,000 gallon per month)

Item A.

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System Development Fees



- Fees charged for new connections joining the water and sewer system
- Intended to recover cost of constructing water and sewer capacity, “growth pays for growth”
- Fees are applied based on units of service (representing potential demand on utility system)
- Fees are legislated in North Carolina
 - Public Water and Sewer System Development Fee Act (NC General Statutes - Chapter 162A Article 8) approved July 2017

Methodology	Description	Appropriate For
Buy-In Method	Fees are based on cost of constructing existing utility system	System with ample existing capacity to sell
Incremental Cost Method	Fees are based on planned growth-related capital improvements	System with limited or no existing capacity to sell
Combined Method	Fees are based on cost of existing system and planned capital improvements	System with existing capacity to sell and with planning growth-related capital projects



- SDFs must be applied based on units of service (represents potential demand)
- SDFs are often scaled by meter size based on hydraulic capacity of meter
- Common to use number of bedrooms for scaling single family residential

Meter size	Equivalent Residential Units (ERU)
3/4"	1.00
1"	1.67
1 1/2"	3.33
2"	5.33
3"	11.67
4"	21.00
6"	43.33



- SDFs allow community to recover at least a portion of cost of constructing system infrastructure
- Lack of SDFs places full cost of infrastructure on user rates
- SDFs have potential impact on development
- Requirements and limitations on the use of SDFs given legislation
 - Separate tracking of revenues from SDFs
 - Limitations on use of proceeds depending on approach



Project Schedule

Item A.

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Financial Plan

Draft
Complete



**Cost of Service and
System Development
Fees**

November



Rate Design

Early
December



**Agreed Upon
Procedures Letter
for Bond Issuance**

Late
December



**Provide Initial
Recommendations**

February



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Additional Questions/Discussion



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: John Connet

MEETING DATE: 10/26/2022

AGENDA SECTION: CLOSED SESSION

DEPARTMENT: Administration

TITLE OF ITEM: Closed Session – *John Connet, City Manager*

SUGGESTED MOTION(S):

I move that City Council enter closed session pursuant to NCGS § 143-318.11 (a) (1) and (6) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes, And the public body and to consider the qualifications, competence, performance, character, fitness of an individual public officer or employee.

SUMMARY:

City staff is requesting a closed session to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes and to consider the qualifications, competence, performance, character, fitness of an individual public officer or employee.

BUDGET IMPACT: \$ TBD

Is this expenditure approved in the current fiscal year budget? NA

If no, describe how it will be funded. NA

ATTACHMENTS:

None