



Town of Waynesville

**AMENDED
AGENDA
REGULAR MEETING
BOARD OF ALDERMEN
TOWN OF WAYNESVILLE
TOWN HALL - 9 SOUTH MAIN STREET
MARCH 13, 2012
TUESDAY - 7:00 P.M.**

Call to Order

1. Approval of Minutes of February 28, 2012
2. Public Hearing
Consideration of Adoption of Revised Flood Damage Prevention Ordinance
3. Jack Ewing and Buddy Young to Present Preliminary Report on the
Municipal Status of Lake Junaluska
4. Tax Collector James Robertson
Request for Authority to Advertise Delinquent Taxes
5. Adjournment

Additional information regarding this agenda is available at www.townofwaynesville.org

REGULAR MEETING
TOWN OF WAYNESVILLE
BOARD OF ALDERMEN
TOWN HALL – 9 SOUTH MAIN STREET
FEBRUARY 28, 2012
TUESDAY – 7:00 P.M.

The Board of Aldermen of the Town of Waynesville held a regular meeting on Tuesday, February 28, 2012. Members present were Mayor Gavin Brown, Aldermen Gary Caldwell, Julia Freeman, J. Wells Greeley and LeRoy Roberson. Also present were Town Manager A. Lee Galloway, Town Clerk Phyllis McClure, Finance Director Eddie Caldwell, Public Works Director Fred Baker, Streets and Sanitation Superintendent Daryl Hannah, Planning Director Paul Benson and Town Attorney Woodrow Griffin. Mayor Brown called the meeting to order at 7:00 p.m.

Ms. Antionette Burchfield Corridor K Coalition

The Town was contacted by Ms. Antionette Burchfield on behalf of the Corridor K Coalition. This group is working to gain the completion of highways to open up the far western counties of North Carolina to economic development and tourism opportunities. Members of the Coalition Resource Team are appearing throughout the region to make public presentations and get more interest in seeing this work completed.

Ms. Burchfield presented a report to the Board on their work. She said resolutions are being sought from all local governments from Graham County to the Asheville area. These resolutions are being forwarded to Raleigh where a meeting will be held in April. Although there is some environmental opposition, they are moving forward and everything is going well. Funds for this project began to be received during the 1960's with 258 million dollars specifically earmarked for this project not related to any available stimulus monies. The road consists of 127 miles from I-40 near Waynesville into the far western portion of North Carolina. Recent rock slides have been devastating to some businesses and some businesses have been lost.

Mayor Brown asked about the time frame for this project. Ms. Burchfield said 2016 was the projected date but that date is now 2013 with hopes to begin property acquisition in the next year.

Mayor Brown thanked Ms. Burchfield for attending the meeting to present the information and said the Board will take under consideration the sample resolution regarding this project. No action was taken.

Approval of Minutes of February 14, 2012

Alderman Caldwell moved, seconded by Alderman Roberson, to approve the minutes of the February 14, 2012 meeting as presented. The motion carried unanimously.

Consideration of Request of Premier Chemicals to Rezone Property at 12 Commerce Street and 390 Smathers Street (6.7 acres) Central Business (CBD) to Commercial Industrial (C-1)

At the meeting of January 24, 2012, a public hearing was held on the request of Premier Chemicals, formerly Giles Chemical, for a change in the current Central Business District zoning to a Commercial Industrial Zoning area. This would be for their property located at 12 Commerce Street and at 390 Smathers Street. This incorporates 6.7 acres of land.

At the previous meeting, during the public hearing, a number of property owners adjacent to the industry spoke, and there was considerable concern among the neighboring businesses and residents about parking and traffic issues that have arisen with the location of the packaging facility of Premier Chemicals. Representatives of Premier Chemicals also spoke and explained their current and planned operations at the site. After all had spoken, the public hearing was closed by Town Attorney Woody Griffin.

Following the meeting, Premier Chemicals hosted a meeting at the Hazelwood Branch Office. Several board members attended that meeting and heard more about the plans the company has for the site. Many adjacent residents and business owners were present as well and there was a frank and open discussion about the issues which are often present when residential, commercial and industrial properties adjoin one another.

Giles Chemical has been in operation since 1950, and when the Land Development Standards were adopted, the property was placed in the Central Business District. In such a district, the industrial use of hazardous chemicals made the operation a heavy industrial operation, and that is not permitted in the Central Business District. As a non-conforming use, the industry was not eligible to expand, which is what the company wishes to do. In order to carry out their expansion, Premier Chemicals is requesting rezoning to the Commercial Industrial Zoning Classification. Such a zone will allow the company to expand operations; however, this would require a "no-rise" certification to the flood plain which must be submitted by the firm's engineers.

The Planning Board gave approval to the requested rezoning on a majority vote, but it was after receiving a considerable amount of public input on the matter. After the public hearing was closed and Board discussion ended on January 24, the Town Board tabled this matter. At the meeting of February 14, the Board voted to bring this matter back to the February 28 agenda, not to hear further public comment, as that was closed, but for further consideration by the Town Board.

Alderman Greeley said at the public hearing on January 24, the Board was dealing with two issues, a rezoning request and parking issue which was affecting the Frog Level community and its residents. At that point he made a motion to table the issue in order to obtain additional information. On February 8 a community meeting was held. Alderman Greeley commended the residents of the areas and Premier Chemical Co. for having this dialogue and making each other aware of what their concerns were. In this situation the business area abuts a residential area and he felt that the chemical company has made a due diligent effort to put buffers in place and resolve parking issues. He added that it is important to look at the impact of the chemical company in their commitment to make improvements. There may be some issues encountered in

their effort to expand their business, and some regulations that will need to be met from a federal arena before a building can be added on their property.

Alderman Roberson said he agrees with Alderman Greeley and that parking was the issue that stood out to him. The zoning now being requested by Premier Chemicals is the same zoning that was in place before the revised Land Development Standards were adopted. There are some environmental and flood plain regulations that have to be addressed. And the Board will need to look at this in the terms of what the zoning was before the Land Development Standards were adopted.

Alderman Caldwell said he also agrees with Alderman Greeley. Parking has seemed better in the times that he has driven through the area. He noticed that the truck staging is being handled differently now and trucks are not being parked in the street. He still feels that Premier Chemicals has federal and other issues to be resolved. Alderman Caldwell added that he has confidence in Engineer Patrick Bradshaw, representing Premier Chemicals and does not feel that he would recommend changes that would be in a harmful nature to the citizens in Waynesville.

Alderman Freeman said she attended the community meeting in Hazelwood and what the residents had to say was touching and she understands their situation, adding that it is unfortunate that there are issues that have to be battled with commercial and residential. She agrees with Alderman Greeley and hopes the improvements continue as Premier Chemicals continues and feels that they will be a good neighbor.

Alderman Roberson felt that the Board should support the Planning Board's recommendation.

Alderman Roberson moved, seconded by Alderman Greeley, to approve the rezoning as requested by Premier Chemicals to change the zoning from Central Business to Commercial Industrial. The motion carried unanimously. (Ord. No. 5-12)

Solid Waste Study Representatives of Land of Sky Regional Council

After the County Commissioners determined to close the transfer station at Jones Cove Road on July 1, 2012, the Mayor and Board were asked to approve a study of the Town's Solid Waste system. The intent of this study was to have an outside agency conduct an objective study of the Town's existing system and make recommendations on changes to become more efficient. It was felt that efficiency measures might place the town in a better position to deal with the higher costs of transporting the residential and commercial solid wastes to the White Oak Landfill.

Town staff contacted Bill Gibson at the Region A Council of Governments and Mr. Gibson suggested that the Town contact Region B, Land of Sky Regional Council. The Land of Sky personnel have much more experience with solid waste and have worked extensively with the solid waste system management throughout the region. The study began during the summer of 2011 and was completed in December. At the Town Board's planning retreat on Friday, February 17, the Board received a preview of what is contained in the report.

Representatives of Land of the Sky Regional Council, Denese Ballew and Brian Taylor attended the meeting to present the report and answer any questions the Board might have about the study.

The study is comprehensive, one that covers the various types of services which the Town's Sanitation Department provides – commercial and residential garbage service, recycling, yard waste, bulky waste (junk) and street sweeping.

As indicated at the Board Retreat, in order for the Town to transport the garbage from commercial and residential customers, there will have to be substantial changes to the manner in which all solid waste is collected. This may mean new equipment, new employees, different collection routes and perhaps changes in the days services are provided. It may also mean changes in rates and fees and the introduction of new fees. With the County forcing the towns and private haulers to transport wastes to the White Oak Landfill rather than Jones Cove Road, it is an excellent time to totally reassess how the Town delivers solid waste services.

Ms. Ballew said the Council of Government helps local governments in Western North Carolina Counties, including Transylvania, Buncombe and Haywood with planning, development and other issues. She began her presentation with some background on the study and presented economic analysis and baseline for the solid waste program.

Waynesville spends 1.45 million dollars on their entire solid waste program and half of this is commercial and residential solid waste which will be affected by the closure of the transfer station. A comparison was given of the cost effectiveness of Waynesville with other towns with some recommendations for areas of improvement. Waynesville manages 2,896 tons of commercial solid waste per year at a cost of \$137 per ton and 2,902 tons of residential solid waste at \$100 per ton. Waynesville serves 4,650 households with a current residential solid waste collection fee of \$6.50 per month. Commercial revenues include a current \$16.59 collection fee per month as well as dumpster lease fees.

Ms. Ballew said Waynesville's fees are low compared to other municipalities. Waynesville residents pay \$78 per year to Haywood County for landfill fees. Fees paid by Waynesville residents help to cover yard waste and recycling. Several options were outlined beginning after June 2012: 1) Waynesville could haul solid waste to White Oak and pay \$55 per ton tipping fee on commercial waste only; 2) Waynesville could haul solid waste to the transfer station in Buncombe County and 3) Waynesville could build its own Transfer Station on Town property to be operated by a private contractor. At the present time the Town pays a tipping fee only on disposal of commercial solid waste. The option of the Town building and operating their own transfer station may not be feasible because the tonnage collected by Waynesville alone is too low for this operation. Construction of the transfer station would cost 1.3 million dollars plus interest. If a transfer station is built, it would not be necessary to hire a new driver and purchase another loader. However, a \$55 per ton tipping fee would have to be paid to a private contractor to operate.

The recommended option is for Waynesville to haul solid waste to the White Oak Landfill. If this is done another rear loader will need to be purchased and one additional employee may be needed. This would be the most feasible option if the Town is not required to pay a residential tipping fee to Haywood County. Currently there is no tipping fee for residential solid waste and it has also been learned that Haywood County is willing to reimburse the Town for some of the hauling costs to the White Oak Landfill. It was also recommended that the Town enter into an

agreement with Haywood County regarding the tipping fees and hauling cost reimbursement. Another consideration is for the Town to haul the solid waste to the transfer station in Buncombe County.

Municipal solid waste disposal fees, according to the NC League of Municipalities (NCLM), average \$135/ton and Waynesville's fee is below the average at \$119/ton. Hauling to the White Oak Landfill will increase this fee to \$146/ton. Town staff can be commended on their efforts for improvements in efficiency. The Town currently staffs their trucks with the driver and one, and occasionally two other employees. The number of employees per truck can possibly be reduced and the tonnage per trip can be increased, reducing the number of trips to the landfill.

The recycling data by NCLM shows that Waynesville has a low participation in the recycling program. Higher rates of recycling will reduce the number of trips to the landfill and the tipping fees associated with it. Some suggestions were made to implement a roll out cart system, with an educational program to encourage recycling and increase the amount of recycling. A rear loader could be used rather than a flatbed truck to pick up recyclables which would hold more recycling and mean less trips to unload.

Ms. Ballew said the level of services offered by the Town is great. One of the most expensive services offered is the collection of yard waste because of the high labor and equipment costs. One recommendation is for the Town to issue bins to restrict the volume of yard waste, with charges assessed for volumes above the allowed amount. A backyard composting program is also recommended to help reduce the volume collected.

Manager Galloway said there are employees in the Streets/Sanitation Department that are cross trained in a variety of areas, including the cemetery and landfill, so once employees finish one job they move to another. There was some discussion about roll out bins, the cost to the Town and the possibility of requiring residents to purchase the bins. Ms. Ballew said Buncombe County purchased compost bins and offered them for sale to residents at the County's cost. More than 20,000 have been sold to residents over the years. Alderman Freeman asked if there were grant funds available for bins. Ms. Ballew said there were some available.

Public Works Director Fred Baker said the purpose of the study was to look at the issues associated with Haywood County closing the transfer station. Waynesville has known for years that the Town provided a "gold level of service" on yard waste. Beginning in June 2012 the Town will need to look at other ways to handle the services and may need to make some changes. Mr. Baker said he doesn't see any changes in leaf vacuuming, but does see some changes in tree debris collection.

Streets/Sanitation Superintendent Daryl Hannah said he has always known that Waynesville offers an exceptional level of services. He expressed appreciation to the work done on the study by Denese Ballew and Brian Taylor. Mr. Hannah added that town staff realizes that some changes will be necessary and will work to make these changes run smoothly for town residents.

It was the consensus of the Board for the Town to receive bids for the purchase of a new truck to haul solid waste to the White Oak Landfill. Manager Galloway said the Town recently

purchased a truck and the specifications should be the same for an additional truck. If bids are received the first week in April it may be possible to have the new truck delivered by July 1. It was also the consensus of the Board to ask Mayor Brown to discuss with Haywood County Commissioner Chairman Mark Swanger the possibility of an agreement with Haywood County. Appreciation was expressed to Public Works Director Fred Baker and Streets/Sanitation Superintendent Daryl Hannah for their work on this project. Manager Galloway added that town staff is investigating the possibility of applying for some grants on recycling carts.

Audit Proposal Fiscal Years 2012-2013, 2014 Audits

Ray, Bumgarner, Kingshill & Associates, PA, presented a proposal for a renewal of a new three year contract for auditing the town's financial records for fiscal years 2012, 2013 and 2014. The fee for each year is \$27,500, which is actually down from the \$28,000 fee for the fiscal year 2011 audit.

Manager Galloway said it has been his experience over the past 18 years that the Town receives an excellent product from Ray, Bumgarner, Kingshill & Associates. They have shown that they are thorough and accurate in their audit work and they are not afraid to point out any short comings that may exist in the Town's accounting or purchasing procedures. They have also been willing to look closely at the Town's operations and make suggestions on ways to improve. Town staff recommended that the Town Board approve the three year contract with Ray, Bumgarner, Kingshill & Associates, PA. Finance Director Eddie Caldwell added that it is nice to have someone local and if town staff has problems they are easily accessible by telephone.

Alderman Greeley moved, seconded by Alderman Freeman, to approve the contract proposal for Ray, Bumgarner, Kingshill & Associates, PA for auditing the town's financial records for fiscal years 2012, 2013 and 2014. The motion carried unanimously. (Cont. No. 1-12)

Resolution Building Reuse and Restoration Program North Carolina Rural Economic Development Center

Town staff was approached by the owners of the building which formerly housed the Strand Theater asking that the Town apply for a Building Reuse and Restoration Program Grant. This grant, if awarded, would provide funds to help with the cost of restoring this building to a productive use. The Town applied to the Rural Center for a similar grant to assist Haywood Vocational Opportunities with the restoration of the old Wellco Industrial building.

The firm, BrokenMedia, LLC, intends to continue their business of refurbishing bar code scanners for a worldwide market; however, they would like to restore the upper floor on the Main Street level as a multi-use facility with a 75 seat performance venue and meeting space, and allow technical, retail and warehouse space as well.

The grant application must be submitted to the North Carolina Rural Center by early March in order to be considered for this funding cycle. The Town has been working with the owners of the property in an attempt to make the rear of the property on Wall Street more user friendly. Town staff would like to extend sidewalk along the backs of the buildings on Wall Street and

would lose a few parking spaces on the opposite side of the street as the sidewalk is installed. This project would also help align the portion of Wall Street on the north side of East Street with the section of Wall Street on the south side of East Street. It is similar to what Town Staff had proposed to do for Mr. Richard Miller when he was seeking a Main Street Incentive Grant to renovate this same Strand Theater.

Ms. Lorraine Conard, co-owner of the building, attended the meeting to answer questions. Ms. Conard said their business is a bar code refurbishing business but they also needed warehouse space. When the Strand Theatre became available they decided to purchase the building. In working with the architect it was decided to preserve and refurbish one area for an 80 seat venue area, starting with a series of musical performers and other programs based upon the interests of the community. Former owners of the property, Joey Massie and Richard Miller, have both been very supportive and shared some of their ideas with them.

Assistant Town Manager Alison Melnikova said this grant is similar to a former grant applied for by Mr. Miller and a match is required. Those receiving a grant will be notified by June 2012. Public Works Director Fred Baker was able to adopt some of the plans for the Main Street application and this will count as the town's matching contribution toward the project. Town Manager Galloway and Public Works Director Baker have wanted to construct a sidewalk behind this building on Wall Street to offer safety for pedestrians. This addition of sidewalk would change the parking to create parallel parking and would line up this area of Wall Street to the area of Wall Street behind the Police Department.

Alderman Caldwell moved, seconded by Alderman Greeley, to adopt the resolution regarding the Building Reuse and Restoration Program with the North Carolina Rural Economic Development Center. The motion carried unanimously. (Res. No. 3-12)

Paul Benson – Flood Plain Prevention Ordinance Amendments

Planning Supervisor Paul Benson distributed copies of the Flood Plain Prevention Ordinance Amendments for the Board to review. This issue has been scheduled and advertised for a public hearing on Tuesday, March 13. Mr. Benson said this program began in 1981 with the maps adopted in 1983. It is almost impossible to pinpoint specific areas on the map from 1983. The new maps have more detail, but the same regulations. The twenty page ordinance is similar to what is in place now. The ordinance works by identifying the 100 year flood plain. Structures can be built within this area, but the building must be elevated. Nonresidential buildings can be built below the flood level, but it can be expensive to complete the necessary flood proofing of the building. Mr. Benson said the State does not have a summary of the changes, but in reviewing the document he does not see anything of sustenance except the new map, and the State requires that the most recent map be used. The flood plain area increased with the map, but this is outside of the Town's control. Alderman Greeley asked how this would affect insurance if your home is now included in the flood plain area on the revised map, but was not included before. Mr. Benson said individual homeowners may want to ask their insurance carrier about their policy. No action was necessary. The public hearing has been scheduled for March 13.

Manager Galloway said there has been an increase in building activity. Ingles received conditional zoning and they are now having some discussions about making some changes in their plans for expansion. The construction has begun on the new Belk, Pet Smart and Michael's in West Waynesville. There are other activities and interests on commercial development and it is hoped that results can be seen in the next couple of weeks. The ABC Store is once again looking at another building site. The sales tax is up slightly more than budgeted.

Special Meeting – Town Manager Selection Process

A special meeting of the Board of Aldermen is scheduled for Thursday, March 1 at 6:00 p.m. to continue in the Town Manager selection process.

Adjournment

With no further business it was the consensus of the Board to adjourn the meeting at 8:45 p.m. The motion carried unanimously.

Phyllis R. McClure
Town Clerk

Gavin A. Brown
Mayor

ITEM 2. PUBLIC HEARING
CONSIDERATION OF ADOPTION OF
REVISED FLOOD DAMAGE PREVENTION ORDINANCE

At the conclusion of your meeting of February 28, 2012, Planning Director Paul Benson distributed a copy of the proposed, revised Flood Damage Prevention Ordinance. He explained that new flood maps had been developed by the federal government and showed the revised maps at the meeting.

As Mr. Benson explained that the program began in 1981 and that the maps were adopted in 1983. The new maps have more detail, he pointed out, but the same regulations. Buildings may be constructed in the 100 year flood plain but must be elevated so that the floor level is above the projected flood level. Non-residential buildings may be constructed below the flood level, but the structure must be flood-proofed which is often quite expensive. The Planning Director noted that in reviewing the document, he did not detect any significant changes. The flood plain area did increase, but as he pointed out, this is not something the Town controls. He also suggested that homeowners consult with their insurance agents to secure answers to specific questions about flood insurance.

Mr. Benson will be on hand at the public hearing on Tuesday evening, and he will attempt to answer any questions which may arise from the public.

FLOOD DAMAGE PREVENTION ORDINANCE

Non-Coastal Regular Phase

ARTICLE 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.

SECTION A. STATUTORY AUTHORIZATION.

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

Therefore, the Town of Waynesville, North Carolina, does ordain as follows:

SECTION B. FINDINGS OF FACT.

- (1) The flood prone areas within the jurisdiction of the Town of Waynesville are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

SECTION C. STATEMENT OF PURPOSE.

It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

- (1) restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
- (2) require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- (3) control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- (4) control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- (5) prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

SECTION D. OBJECTIVES.

The objectives of this ordinance are to:

- (1) protect human life, safety, and health;
- (2) minimize expenditure of public money for costly flood control projects;
- (3) minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) minimize prolonged business losses and interruptions;
- (5) minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines,

streets, and bridges) that are located in flood prone areas;

- (6) help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- (7) ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

ARTICLE 2. DEFINITIONS.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

“Accessory Structure (Appurtenant Structure)” means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

“Addition (to an existing building)” means an extension or increase in the floor area or height of a building or structure.

“Appeal” means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance.

“Area of Special Flood Hazard” see “Special Flood Hazard Area (SFHA)”.

“Base Flood” means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

“Base Flood Elevation (BFE)” means a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a “Special Flood Hazard Area”, it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation, when combined with the “Freeboard”, establishes the “Regulatory Flood Protection Elevation”.

“Basement” means any area of the building having its floor subgrade (below ground level) on all sides.

“Building” see “Structure”.

“Chemical Storage Facility” means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

“Development” means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

“Disposal” means, as defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

“Elevated Building” means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

“Encroachment” means the advance or infringement of uses, fill, excavation, buildings, structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

“Existing Manufactured Home Park or Manufactured Home Subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the initial effective date of the floodplain management regulations adopted by the community.

“Flood” or “Flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland or tidal waters; and/or

(2) the unusual and rapid accumulation or runoff of surface waters from any source.

“Flood Boundary and Floodway Map (FBFM)” means an official map of a community, issued by the Federal Emergency Management Agency, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

“Flood Hazard Boundary Map (FHBM)” means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

“Flood Insurance” means the insurance coverage provided under the National Flood Insurance Program.

“Flood Insurance Rate Map (FIRM)” means an official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

“Flood Insurance Study (FIS)” means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

“Flood Prone Area” see “Floodplain”

“Flood Zone” means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

“Floodplain” means any land area susceptible to being inundated by water from any source.

“Floodplain Administrator” is the individual appointed to administer and enforce the floodplain management regulations.

“Floodplain Development Permit” means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

“Floodplain Management” means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

“Floodplain Management Regulations” means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. This term describes Federal, State or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

“Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

“Freeboard” means the height added to the Base Flood Elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge openings, and the hydrological effect of urbanization of the watershed. The Base Flood Elevation (BFE) plus the freeboard establishes the “Regulatory Flood Protection Elevation”.

“Functionally Dependent Facility” means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

“Hazardous Waste Management Facility” means, as defined in NCGS 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

“Highest Adjacent Grade (HAG)” means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

“Historic Structure” means any structure that is:

- (a) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- (b) certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) individually listed on a local inventory of historic landmarks in communities with a “Certified Local Government (CLG) Program”; or
- (d) certified as contributing to the historical significance of a historic district designated by a community with a “Certified Local Government (CLG) Program”.

Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

“Lowest Adjacent Grade (LAG)” means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

“Lowest Floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

“Manufactured Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

“Manufactured Home Park or Subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

“Market Value” means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

“Mean Sea Level” means, for purposes of this ordinance, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

“New Construction” means structures for which the “start of construction” commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

“Non-Encroachment Area” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

“Post-FIRM” means construction or other development for which the “start of construction” occurred on or after the effective date of the initial Flood Insurance Rate Map.

“Pre-FIRM” means construction or other development for which the “start of construction” occurred before the effective date of the initial Flood Insurance Rate Map.

“Principally Above Ground” means that at least 51% of the actual cash value of the structure is above ground.

“Public Safety” and/or “Nuisance” means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

“Recreational Vehicle (RV)” means a vehicle, which is:

- (a) built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) designed to be self-propelled or permanently towable by a light duty truck; and
- (d) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

“Reference Level” is the top of the lowest floor for structures within Special Flood Hazard Areas designated as Zone A1-A30, AE, A, A99 or AO.

“Regulatory Flood Protection Elevation” means the “Base Flood Elevation” plus the “Freeboard”. In “Special Flood Hazard Areas” where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus one (1) foot of freeboard. In “Special Flood Hazard Areas” where no BFE has been established, this elevation shall be at least two (2) feet above the highest adjacent grade.

“Remedy a Violation” means to bring the structure or other development into compliance with State and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

“Riverine” means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

“Salvage Yard” means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

“Solid Waste Disposal Facility” means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a)(35).

“Solid Waste Disposal Site” means, as defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

“Special Flood Hazard Area (SFHA)” means the land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year, as determined in Article 3, Section B of this ordinance.

“Start of Construction” includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

“Structure” means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

“Substantial Damage” means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of “substantial improvement.” Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of

each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

“Substantial Improvement” means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

- (a) any correction of existing violations of State or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (b) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

“Variance” is a grant of relief from the requirements of this ordinance.

“Violation” means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Articles 4 and 5 is presumed to be in violation until such time as that documentation is provided.

“Water Surface Elevation (WSE)” means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of riverine areas.

“Watercourse” means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

ARTICLE 3. GENERAL PROVISIONS.

SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES.

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction, including Extra-Territorial Jurisdictions (ETJs), of the Town of Waynesville and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.

SECTION B. BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS.

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Haywood County dated October 3, 2011, which are adopted by reference and declared to be a part of this ordinance.

The initial Flood Insurance Rate Maps are as follows for the jurisdictional areas at the initial date:

Haywood County Unincorporated Area, dated July 15, 1984

Town of Waynesville, dated November 10, 1981

SECTION C. ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT.

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with the provisions of Article 3, Section B of this ordinance.

SECTION D. COMPLIANCE.

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

SECTION E. ABROGATION AND GREATER RESTRICTIONS.

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

SECTION F. INTERPRETATION.

In the interpretation and application of this ordinance, all provisions shall be:

- (a) considered as minimum requirements;
- (b) liberally construed in favor of the governing body; and
- (c) deemed neither to limit nor repeal any other powers granted under State statutes.

SECTION G. WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Town of Waynesville or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

SECTION H. PENALTIES FOR VIOLATION.

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$50.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Waynesville from taking such other lawful action as is necessary to prevent or remedy any violation.

ARTICLE 4. ADMINISTRATION.

SECTION A. DESIGNATION OF FLOODPLAIN ADMINISTRATOR.

The Land Development Administrator, or his or her designee, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of this ordinance.

SECTION B. FLOODPLAIN DEVELOPMENT APPLICATION, PERMIT AND CERTIFICATION REQUIREMENTS.

- (1) **Application Requirements.** Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:
 - (a) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
 - (i) the nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
 - (ii) the boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Article 3, Section B, or a statement that the entire lot is within the Special Flood Hazard Area;
 - (iii) flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Article 3, Section B;

- (iv) the boundary of the floodway(s) or non-encroachment area(s) as determined in Article 3, Section B;
 - (v) the Base Flood Elevation (BFE) where provided as set forth in Article 3, Section B; Article 4, Section C; or Article 5, Section D;
 - (vi) the old and new location of any watercourse that will be altered or relocated as a result of proposed development; and
 - (vii) the certification of the plot plan by a registered land surveyor or professional engineer.
- (b) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
 - (i) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
 - (ii) Elevation in relation to mean sea level to which any non-residential structure in Zone AE, A or AO will be floodproofed; and
 - (iii) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.
 - (c) If floodproofing, a Floodproofing Certificate (FEMA Form 81-65) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.
 - (d) A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:
 - (i) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and
 - (ii) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with Article 5, Section B(4)(c) when solid foundation perimeter walls are used in Zones A, AO, AE, and A1-30.
 - (e) Usage details of any enclosed areas below the lowest floor.
 - (f) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
 - (g) Certification that all other Local, State and Federal permits required prior to floodplain development permit issuance have been received.
 - (h) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of Article 5, Section B, subsections (6) and (7) of this ordinance are met.
 - (i) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

(2) **Permit Requirements.** The Floodplain Development Permit shall include, but not be limited to:

- (a) A description of the development to be permitted under the floodplain development permit.

- (b) The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in Article 3, Section B.
- (c) The Regulatory Flood Protection Elevation required for the reference level and all attendant utilities.
- (d) The Regulatory Flood Protection Elevation required for the protection of all public utilities.
- (e) All certification submittal requirements with timelines.
- (f) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.
- (g) The flood openings requirements, if in Zones A, AO, AE or A1-30.

(3) **Certification Requirements.**

(a) Elevation Certificates

- (i) An Elevation Certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.
- (ii) An Elevation Certificate (FEMA Form 81-31) is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.
- (iii) A final as-built Elevation Certificate (FEMA Form 81-31) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

(b) Floodproofing Certificate

If non-residential floodproofing is used to meet the Regulatory Flood Protection Elevation requirements, a Floodproofing Certificate (FEMA Form 81-65), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

- (c) If a manufactured home is placed within Zone A, AO, AE, or A1-30 and the elevation of the chassis is more

than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of Article 5, Section B(3)(b).

- (d) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.
- (e) Certification Exemptions. The following structures, if located within Zone A, AO, AE or A1-30, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection:
 - (i) Recreational Vehicles meeting requirements of Article 5, Section B(6)(a);
 - (ii) Temporary Structures meeting requirements of Article 5, Section B(7); and
 - (iii) Accessory Structures less than 150 square feet meeting requirements of Article 5, Section B(8).

SECTION C. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.

The Floodplain Administrator shall perform, but not be limited to, the following duties:

- (1) Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied.
- (2) Review all proposed development within Special Flood Hazard Areas to assure that all necessary Local, State and Federal permits have been received.
- (3) Notify adjacent communities and the North Carolina Department of Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.
- (5) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Article 5, Section F are met.
- (6) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of Article 4, Section B(3).
- (7) Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of Article 4, Section B(3).
- (8) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of Article 4, Section B(3).
- (9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of Article 4, Section B(3) and Article 5, Section B(2).
- (10) Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.

- (11) When Base Flood Elevation (BFE) data has not been provided in accordance with the provisions of Article 3, Section B, obtain, review, and reasonably utilize any BFE data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Article 5, Section D(2)(b), in order to administer the provisions of this ordinance.
- (12) When Base Flood Elevation (BFE) data is provided but no floodway or non-encroachment area data has been provided in accordance with the provisions of Article 3, Section B, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.
- (13) When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a Special Flood Hazard Area is above the Base Flood Elevation (BFE), advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the LOMA issued by FEMA in the floodplain development permit file.
- (14) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
- (15) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
- (16) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- (17) Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.
- (18) Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
- (19) Follow through with corrective procedures of Article 4, Section D.
- (20) Review, provide input, and make recommendations for variance requests.
- (21) Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with the provisions of Article 3, Section B of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.
- (22) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).

SECTION D. CORRECTIVE PROCEDURES.

- (1) Violations to be Corrected: When the Floodplain Administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

- (2) Actions in Event of Failure to Take Corrective Action: If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
 - (a) that the building or property is in violation of the floodplain management regulations;
 - (b) that a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
 - (c) that following the hearing, the Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.
- (3) Order to Take Corrective Action: If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than one-hundred twenty (120) calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.
- (4) Appeal: Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the Floodplain Administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- (5) Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

SECTION E. VARIANCE PROCEDURES.

- (1) The Board of Adjustment as established by the Town of Waynesville, hereinafter referred to as the "appeal board", shall hear and decide requests for variances from the requirements of this ordinance.
- (2) Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.
- (3) Variances may be issued for:
 - (a) the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
 - (b) functionally dependent facilities if determined to meet the definition as stated in Article 2 of this ordinance, provided provisions of Article 4, Section E(9)(b), (c), and (e) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
 - (c) any other type of development, provided it meets the requirements of this Section.
- (4) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
 - (a) the danger that materials may be swept onto other lands to the injury of others;
 - (b) the danger to life and property due to flooding or erosion damage;
 - (c) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the

individual owner;

- (d) the importance of the services provided by the proposed facility to the community;
 - (e) the necessity to the facility of a waterfront location as defined under Article 2 of this ordinance as a functionally dependent facility, where applicable;
 - (f) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - (g) the compatibility of the proposed use with existing and anticipated development;
 - (h) the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (i) the safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (j) the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (k) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- (5) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (6) Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this ordinance.
- (7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
- (8) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
- (9) Conditions for Variances:
- (a) Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
 - (b) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
 - (c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (d) Variances shall only be issued prior to development permit approval.
 - (e) Variances shall only be issued upon:
 - (i) a showing of good and sufficient cause;
 - (ii) a determination that failure to grant the variance would result in exceptional hardship; and
 - (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

- (10) A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met.
- (a) The use serves a critical need in the community.
 - (b) No feasible location exists for the use outside the Special Flood Hazard Area.
 - (c) The reference level of any structure is elevated or floodproofed to at least the Regulatory Flood Protection Elevation.
 - (d) The use complies with all other applicable Federal, State and local laws.
 - (e) The Town of Waynesville has notified the Secretary of the North Carolina Department of Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance.

ARTICLE 5. PROVISIONS FOR FLOOD HAZARD REDUCTION.

SECTION A. GENERAL STANDARDS.

In all Special Flood Hazard Areas the following provisions are required:

- (1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
- (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding to the Regulatory Flood Protection Elevation. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.
- (7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (8) Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this ordinance, shall meet the requirements of "new construction" as contained in this ordinance.
- (9) Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.
- (10) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in Article 4, Section E(10). A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater

treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the Regulatory Flood Protection Elevation and certified in accordance with the provisions of Article 4, Section B(3).

- (11) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- (12) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (13) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (14) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (15) When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.
- (16) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest Base Flood Elevation (BFE) shall apply.

SECTION B. SPECIFIC STANDARDS.

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in Article 3, Section B, or Article 5, Section D, the following provisions, in addition to the provisions of Article 5, Section A, are required:

- (1) Residential Construction. New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Article 2 of this ordinance.
- (2) Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Article 2 of this ordinance. Structures located in A, AE, AO, and A1-30 Zones may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the Regulatory Flood Protection Elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance with Article 5, Section G(2). A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Article 4, Section B(3), along with the operational plan and the inspection and maintenance plan.
- (3) Manufactured Homes.
 - (a) New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the Regulatory Flood Protection Elevation, as defined in Article 2 of this ordinance.
 - (b) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.

- (c) All enclosures or skirting below the lowest floor shall meet the requirements of Article 5, Section B(4).
 - (d) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.
- (4) Elevated Buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:
- (a) shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;
 - (b) shall be constructed entirely of flood resistant materials; and
 - (c) shall include, in Zones A, AO, AE, and A1-30, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
 - (i) A minimum of two flood openings on different sides of each enclosed area subject to flooding;
 - (ii) The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
 - (iii) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
 - (iv) The bottom of all required flood openings shall be no higher than one (1) foot above the adjacent grade;
 - (v) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
 - (vi) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.
- (5) Additions/Improvements.
- (a) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - (i) not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
 - (ii) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
 - (b) Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.
 - (c) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - (i) not a substantial improvement, the addition and/or improvements only must comply with the standards

for new construction.

- (ii) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

(6) Recreational Vehicles. Recreational vehicles shall either:

- (a) be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or
- (b) meet all the requirements for new construction.

(7) Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:

- (a) a specified time period for which the temporary use will be permitted. Time specified may not exceed three (3) months, renewable up to one (1) year;
- (b) the name, address, and phone number of the individual responsible for the removal of the temporary structure;
- (c) the time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
- (d) a copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
- (e) designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.

(8) Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

- (a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
- (b) Accessory structures shall not be temperature-controlled;
- (c) Accessory structures shall be designed to have low flood damage potential;
- (d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
- (e) Accessory structures shall be firmly anchored in accordance with the provisions of Article 5, Section A(1);
- (f) All service facilities such as electrical shall be installed in accordance with the provisions of Article 5, Section A(4); and
- (g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of Article 5, Section B(4)(c).

An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Article 4, Section B(3).

SECTION C. RESERVED.

SECTION D. STANDARDS FOR FLOODPLAINS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS.

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Article 3, Section B, where no Base Flood Elevation (BFE) data has been provided by FEMA, the following provisions, in addition to the provisions of Article 5, Section A, shall apply:

- (1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) The BFE used in determining the Regulatory Flood Protection Elevation shall be determined based on the following criteria:
 - (a) When Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in Article 5, Sections A and B.
 - (b) When floodway or non-encroachment data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of Article 5, Sections B and F.
 - (c) All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference in accordance with Article 3, Section B and utilized in implementing this ordinance.
 - (d) When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in Article 2. All other applicable provisions of Article 5, Section B shall also apply.

SECTION E. STANDARDS FOR RIVERINE FLOODPLAINS WITH BASE FLOOD ELEVATIONS BUT WITHOUT ESTABLISHED FLOODWAYS OR NON-ENCROACHMENT AREAS.

Along rivers and streams where Base Flood Elevation (BFE) data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

- (1) Standards of Article 5, Sections A and B; and
- (2) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

SECTION F. FLOODWAYS AND NON-ENCROACHMENT AREAS.

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Article 3, Section B. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Article 5, Sections A and B, shall apply to all development within such areas:

- (1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:
 - (a) it is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit, or
 - (b) a Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment.
- (2) If Article 5, Section F(1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.
- (3) No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:
 - (a) the anchoring and the elevation standards of Article 5, Section B(3); and
 - (b) the no encroachment standard of Article 5, Section F(1).

SECTION G. STANDARDS FOR AREAS OF SHALLOW FLOODING (ZONE AO).

Located within the Special Flood Hazard Areas established in Article 3, Section B, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to Article 5, Sections A and B, all new construction and substantial improvements shall meet the following requirements:

- (1) The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of one (1) foot, or at least four (4) feet above the highest adjacent grade if no depth number is specified.
- (2) Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in Article 5, Section G(1) so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with Article 4, Section B(3) and Article 5, Section B(2).
- (3) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

ARTICLE 6. LEGAL STATUS PROVISIONS.

SECTION A. EFFECT ON RIGHTS AND LIABILITIES UNDER THE EXISTING FLOOD DAMAGE PREVENTION ORDINANCE.

This ordinance in part comes forward by re-enactment of some of the provisions of the Flood Damage Prevention Ordinance enacted November 10 1981 as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the Flood Damage Prevention Ordinance of the Town of Waynesville enacted on November 10 1981, as

amended, which are not reenacted herein are repealed.

The date of the initial Flood Damage Prevention Ordinance for Haywood County is July 15, 1984.

SECTION B. EFFECT UPON OUTSTANDING FLOODPLAIN DEVELOPMENT PERMITS.

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the Floodplain Administrator or his or her authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this ordinance.

SECTION C. SEVERABILITY.

If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

SECTION D. EFFECTIVE DATE.

This ordinance shall become effective upon adoption.

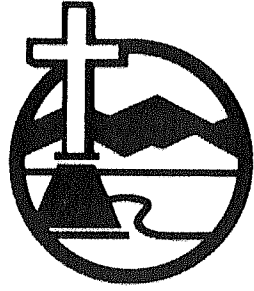
SECTION E. ADOPTION CERTIFICATION.

I hereby certify that this is a true and correct copy of the Flood Damage Prevention Ordinance as adopted by the Board of

Aldermen of the Town of Waynesville, North Carolina, on the _____ day of _____, 2012.

WITNESS my hand and the official seal of _____, this the _____ day of _____, 2012.

(Signature)



Lake Junaluska

Assembly Public Works

Lake Junaluska Assembly Public Works Preliminary Report on the Municipal Status of Lake Junaluska Fall 2011

By Andrew d'Adesky
Assisted by Buddy Young and the UNC School of Government

DISCLAIMER: The information expressed herein represents the opinions and analysis of the author based on his personal research and analysis. This draft document does not reflect the official view of LJA governing bodies, the Town of Waynesville, Haywood County or any other entity.

Executive Summary:

The purpose of this report is to provide an assessment of the options available to Lake Junaluska in regards to municipal status and the provision of services for the property owners of the Lake Junaluska community. All feasible options are discussed in relation to their potential advantages, disadvantages and the basic requirements necessary to proceed with these options. **This document is intended to be an informative, planning document and does not indicate that Lake Junaluska will take any specific action. This document is for planning ONLY.**

Background:

The community of Lake Junaluska is an unincorporated census-designated place with a population of approximately 2,700 as of the latest census data, with high seasonal fluctuation peaking in the summer months of July and August. The Conference and Retreat Center at Lake Junaluska, also historically known as the Lake Junaluska Assembly or the Southern Methodist Assembly, has been the center of the community and the catalyst for the construction of a community surrounding the Lake.

Despite being unincorporated, Lake Junaluska functions in a many ways similar to a municipality. This can be seen in the provision of certain services through Lake Junaluska Public Works, such as trash collection, water and sewer service, street maintenance, street lighting, and police protection (through contract). To pay for these services, Lake Junaluska Public Works levies an annual assessment commonly referred to as Service Charges, which are based on the property value established by the Haywood County Tax Assessor, similar to the fashion in which municipalities in North Carolina collect property tax. Monthly utility bills are primarily based on consumption. This method of collecting Service Charges to pay for services in the Lake Junaluska community was validated by the North Carolina Supreme Court in 2009, affirming a long-established practice. The monthly Assembly Public Works utility rates and policies were approved by and exempted from control of the North Carolina Utility Commission in 2011.

The idea to draft this report was born in light of recent legislative changes, court and regulatory decisions, as well as strategic planning efforts that are underway for the entire Lake Junaluska business model with consideration to serious measures to strengthen the community. When brainstorming over the challenges of the past, the efficacy of current practices and long-term infrastructure costs, it became clear that no plan in recent history has addressed these issues comprehensively. One possible remedy is through examining Lake Junaluska's municipal status.

It benefits Lake Junaluska to evaluate all options for providing services to the community in an efficient and effective manner, including a change to Lake Junaluska's municipal status. This document discusses four feasible options for service provision at Lake Junaluska and evaluates each in terms of advantages, disadvantages, and process required to move forward.

The most feasible options available to the Lake Junaluska Community are:

- 1. Incorporation (creating a formally recognized town or village)**
- 2. Annexation**
- 3. Transferring control of the water and sewer infrastructure**
- 4. Remaining unincorporated (no change in municipal status)**

This document does not intend to issue a judgment on which is the correct or best option. Actual costs comparisons are intentionally not discussed in this report because of the detail involved and uncertainties of the details that will require due diligence by the parties involved.

Assessment of Options

Option #1: Incorporation

Incorporation of Lake Junaluska into a municipality is one of the options available to the community. Incorporation is the process through which a previously unincorporated area becomes a village, town or city (in North Carolina, a municipality chooses the title of village, town or city, although most new communities have chosen town). A municipality collects a tax of a minimum of 5 cents per \$100 of property valuation (ad-valorem tax) and must provide a mechanism for enforcing building code, even if they contract this service out. Municipalities commonly provide services such as street maintenance, street lighting, solid waste pick-up, water and sewer services, police, and fire protection, but are not legally bound to do so.

Advantages

Communities often incorporate because they desire municipal services, such as police and fire, trash pick-up and/or street maintenance. However, in the Lake Junaluska community, the majority of municipal services are already provided by the Lake Junaluska Assembly Public Works Department or through contract with Waynesville.

A second advantage of incorporation is the town's ability to regulate citizens and property through ordinance-making power; this includes ordinances for zoning property, traffic laws, controlling pets, limiting commercial solicitation, and restricting the use of firearms. Additionally, incorporation protects a community from being annexed by an existing city or town as no municipality may annex territory that is within another municipality.

Incorporation also allows for an array of funding opportunities, both in terms of immediate additional revenues and the availability to qualify for various government funding sources. These funding opportunities include certain federal and state grants or loans that are not available to unincorporated communities, along with government purchasing pools that allow municipalities to combine their purchasing power. These additional sources of support greatly reduce the cost of purchasing equipment and maintaining infrastructure.

Examples of additional sources of funding include tax revenue on motor vehicles licensed in the area, local sales tax revenue shared by the county and Powell Bill funding, which can be used for street maintenance and repair or street lighting. Powell Bill funding for municipalities the size of Lake Junaluska range from \$30,000 to \$80,000 per year. The current estimated cost of a 10 year plan to repave Lake Junaluska's damaged roads, as stated in the Strategic Pavement Study, is approximately \$46,000 per year over 10 years. This additional source of municipal revenue alone would cover most, if not all of these costs, even by a conservative estimate. In addition to Powell Bill funding, the local sales and use tax shared by the county is approximately 2%, which would be significant additional revenue for a community the size of Lake Junaluska.

Compared with other unincorporated areas, the transition to a municipality would be relatively smooth because Lake Junaluska has already purchased public works equipment, has initial start-up capital, thanks to a consistent revenue stream brought in through the yearly Service Charge assessment, and has clearly defined boundaries and control over the necessary infrastructure, such as water and sewer.

It is important to note that incorporation **would not impact the restrictive covenants** of the Lake Junaluska community. These covenants remain enforced and the Lake Junaluska could continue to enforce covenant rules and assess service charges even after incorporation.

Another advantage for residents of Lake Junaluska is that they would be able to deduct their local property tax from their federal income tax. Currently, the service charge assessed by Lake Junaluska Public Works is a non-deductible expense but under the scenarios of incorporation or annexation, this expense would become deductible.

Incorporation would not prevent Lake Junaluska from merging with another municipality in the future. The process of merging of two municipalities is much more of an internal process than the annexation of an unincorporated area, and does not involve the NC General Assembly. A simple majority vote by the governing councils of both towns and a referendum passed by the majority of voters is enough to merge two municipalities, leaving this option open for the future. As a municipality, Lake Junaluska could still contract services out to Waynesville, if it so desired.

Disadvantages

Municipalities are held to different standards than private organizations in terms of the need for transparency and standardization. Accounting standards differ for municipalities, and they are required to report finances regularly in an accessible fashion. All information, including emails and meetings of the governing board, are subject to public records statutes, open meetings law, and Freedom of Information requests. A municipality is subject to governmental procurement and contracting requirements and conflict-of-interest prohibitions. These requirements are so significant that a town attorney must be contracted to help the town comply, which would be an additional cost for Lake Junaluska upon incorporation.

Even if Lake Junaluska contracted out some municipal services, there would be a higher tax rate upon incorporating, as compared to the current service charges. Significant costs would be required to be incurred for increased administrative support. For a municipality of a similar size and level of service provision as Lake Junaluska, there would probably need to be an administrative core consisting of at least a town manager, a town clerk, a finance officer, a police chief, a director of public works, a director of planning, and an administrative assistant.

This is the model followed by Lake Junaluska's neighbor, Maggie Valley, for example, which has 7 full-time administrative staff. Currently, Lake Junaluska only employs a Director of Public Works, a Police Chief, and an Office Manager, with some services provided by Lake Junaluska

Assembly for administrative services such as accounting and IT Services. The fee for these services in 2011 was \$21,000. This arrangement would be inappropriate for a municipality, as a municipality must completely control its own budgeting and finances.

Furthermore, a more distinct separation would need to be made between the community of Lake Junaluska and the Lake Junaluska Conference and Retreat Center. While Lake Junaluska Assembly Public Works currently enjoys a large measure of practical independence from the rest of the Conference Center, Public Works still serves under the umbrella of the Lake Junaluska Assembly, Inc. Board of Directors. The Director of Assembly Public Works is one of the senior staff reporting to the Executive Director of Lake Junaluska Assembly and within the jurisdiction of this hierarchy and the authority of the Lake Junaluska Board of Directors. This chain of command would need to be abolished and the Lake Junaluska Board of Directors and Executive Director of the Conference and Retreat Center would no longer hold any legal control over municipal services if Lake Junaluska were incorporated. They would remain, however, primary constituents for the municipality and they could remain in an advisory role to the community.

Upon incorporation, a governing council would need to be established, with members compensated at a rate ranging between \$500 and \$7,500 per member per year. While Lake Junaluska currently has an unpaid, volunteer body that functions in a similar fashion, the Junaluska Assembly Community Council (also referred to as JACC or the "Community Council"), it serves only in an advisory capacity at the pleasure of the LJA Board of Directors. The Community Council and the Board of Directors have no authority to issue legally-binding ordinances. The Board does have the authority to approve budgets and the Board may enforce the covenants in the deeds through the courts just as any other property owner may.

One significant disadvantage of incorporation would be the increase in the relative tax burden on residents of the Lake Junaluska Assembly. Currently, the Lake Junaluska Conference and Retreat Center, a non-profit entity, accounts for approximately 20% of the total service charge revenue collected by the Lake Junaluska Assembly Public Works. However, non-profit entities are exempt from paying property tax; if Lake Junaluska were incorporated, the Assembly would only pay taxes on the property that is held for development or classified as "For Profit" and not on the majority of the property which is listed as "Not For Profit".

When comparing incorporation with the option of merging with a neighboring municipality, this would limit Lake Junaluska's ability to improve its level of service provision in an efficient and effective manner. If Lake Junaluska incorporated, it would still remain a relatively small community with the same number of tax payers contributing to the system. If Lake Junaluska merged with Waynesville, Waynesville's base of tax payers would grow widely and the cost of services per-taxpayer would drop, an effect known as "economies-of-scale".

A comparative disadvantage of incorporation is that several elements would need to be built from the ground up, as Lake Junaluska lacks several key components of a municipality. For example, while the ability to enforce zoning and building codes is an advantage of

incorporation, Lake Junaluska currently does not have the authority to enforce any such codes. The new elected body, in conjunction with an expanded administration, would need to research and adopt codes while creating a mechanism for the enforcement of such codes. The enforcement of such codes and ordinances would also open the new municipality up to legal challenges, as properties that are non-compliant seek exemption. When comparing the burden of creating these policies and mechanisms for enforcement to the ease of integrating with the established and tested systems of the Town of Waynesville, it can be considered a comparative disadvantage to incorporate as opposed to merging with Waynesville.

This broader tax and fee base is extremely significant when one considers the investment necessary in Lake Junaluska's infrastructure. For example, the water and sewer system of Lake Junaluska will require a significant investment in the future. The total water and sewer budget comprises approximately 40% of the Public Works expenditures at \$500,000 per year; by comparison security is 23% of total expenditures, streets 15%, solid waste 12%, and administration 11%. Of the approximately \$500,000 for water and sewer approximately 75 % is pass through payments to Waynesville for the cost of water and sewer. Maintenance and improvements to the infrastructure over the years of 2009, 2010 and 2011 has depleted reserves of over \$100,000. To make the major improvements necessary to our system in the upcoming years will require major rate increases. The community will need to decide whether they would like to bear that burden alone, or as part of a larger group.

Incorporation might also face political pushback from the neighboring communities or county if they perceive the new municipality as reducing their share of the tax revenue. Neighboring communities may not desire more competition for future annexation of upscale neighborhoods that surround the Assembly. Incorporation requires a broad base of political consent, which could potentially fail to materialize. The topic of incorporation would most likely draw focused media scrutiny on the community.

The demographics of the Lake Junaluska community may provide a barrier to the establishment of an independent, year-round governing body. Given that the Lake Junaluska community has a significant population of transient, seasonal residents, there is a very small pool of potential members for a governing council. Many residents do not utilize their Lake Junaluska residence as their registered voting address, indicating that there might be difficulties running a local election.

The Process

The incorporation process is initiated through contacting the North Carolina Joint Legislative Commission on Municipal Incorporations (referred to as the "Joint Commission"). The Joint Commission was established by the North Carolina General Assembly to provide advice on whether or not a community should be incorporated. The Joint Commission issues a favorable or unfavorable recommendation to the General Assembly, which then votes on whether or not to incorporate the community. If the community is within 1 mile of a city with a population of

5,000 or more or within 3 miles of a city of 10,000 or more, the General Assembly requires a three-fifths supermajority of votes to pass the incorporation.

For the Joint Commission to review a proposed incorporation, it must receive, at least sixty days before the legislative session, a petition signed by at least 15% of the registered voters in the area proposing incorporation. The Joint Commission considers the proposed municipality's population, proximity to existing cities or towns, the degree of development within the proposed town, and whether it will be able to provide those services at a reasonable tax rate. After considering the factors, they issue a positive or negative recommendation; however, they cannot issue a positive recommendation unless the following requirements are met:

1. Each existing city or town close enough to the proposed town to require a three-fifths supermajority vote has expressly approved the incorporation.
2. The proposed town has a permanent population of at least 100 and a permanent or seasonal population density of at least 250 persons per square mile.
3. At least 40 percent of the area of the proposed town is in urban development.
4. The proposal submitted has a plan to levy a tax rate of at least 5 cents per \$100 valuation and, by the third year of incorporation, to provide at least four of the following eight municipal services, even if by contract. (Police protection, fire protection, solid waste collection or disposal, water distribution, street maintenance, street lighting, street construction, and zoning).
5. The proposed town will be able to provide the services requested in the petition by levying a reasonable tax rate.

Even if the Joint Commission does not make a positive recommendation, the General Assembly is still free to incorporate a community. Although not often, the General Assembly has incorporated communities with a negative recommendation.

Considering the requirements of a potential incorporation effort, the community already meets most of the standards required for a favorable recommendation. Lake Junaluska has a sufficient population and density, is adequately developed and already levies a reasonable rate to provide services, although this would need to be increased.

The only impediment to a favorable recommendation for Lake Junaluska would be the approval of the Town of Waynesville's governing body. Lake Junaluska is within 3 miles of Waynesville, which has a population of over 10,000 according to the latest census data. Lake Junaluska would be required to receive explicit approval from Waynesville for incorporation. One method to accomplish this would be to have the property owners at Lake Junaluska sign a petition to the Waynesville governing body requesting approval for incorporation.

Lake Junaluska enjoys a positive and collaborative relationship with the Town of Waynesville. In any effort to change Lake Junaluska's municipal status, Lake Junaluska would seek the opinions and advice of the Town of Waynesville. It should be noted that Waynesville is currently contracted to provide fire protection for Lake Junaluska in addition to supplying water and sewage treatment to Lake Junaluska through a water and sewer purchasing contract. This relationship is critical to Lake Junaluska moving forward.

Ultimately, the decision to approve incorporation is a political one. This choice will be significantly influenced by the two representatives of Lake Junaluska to the North Carolina General Assembly. In voting on municipal incorporation, if the two representatives agree, then the rest of the legislators in the General Assembly will generally vote in approval. Securing the approval of these representatives would be essential to any successful effort. However, to expect our representatives' support of our incorporation without Waynesville's support would be unrealistic due to the relative size of each community's voting base.

Option #2: Annexation by a neighboring municipality

Merging with a neighboring municipality is done by extension of the municipality's corporate limits. This is also referred to as "annexation". The extension of limits is a vital method for the provision of services in an effective manner. Laws tend to favor expansion of existing municipalities over the incorporation of new ones.

There are four methods by which a town or city may annex a nearby area:

1. Voluntary Annexation of Areas Contiguous to the Municipality
2. Voluntary Annexation of Areas Non-Contiguous to the Municipality
3. Extension of Corporate Limits by Municipal Initiative
4. Extension of Corporate Limits by Legislative Act

Most annexations are through one of the two voluntary procedures (Options 1 and 2), but nearly all of these annexations are of relatively small areas, usually only consisting of a very few properties. The largest amount of property is annexed under the municipally initiated process (Option 3).

Voluntary Annexation of Contiguous Areas

The procedure for the voluntary annexation of contiguous areas is relatively simple. The General Statutes permit a municipality to annex any area contiguous to its borders on receipt of a petition signed by all owners of property within the area. Once a petition is received and certified by the town clerk, the council holds a public hearing on whether or not the statutory requirements have been met, such as the signatures of all owners of property. If the council

determines that the requirements have been met, it may adopt an ordinance annexing the property. This method is especially suited to annexations of small areas with a very limited number of property owners.

There are two pivotal points to this process. The first is that the petition must contain the signature of all the owners, to include both partners in a married couple. If property changes hands before the ordinance is adopted, the new owner's signature must be obtained. Secondly, any property owner may choose to withdraw their signature before the ordinance is adopted and effectively halt the effort. This process is most often employed with one or two properties at a time or with sub-divisions before the lots are sold as it is difficult to secure all signatures once more parties are involved.

Voluntary Annexation of Non-Contiguous Areas

The procedure for the voluntary annexation of non-contiguous areas is almost identical to the voluntary process for contiguous areas. A petition for annexation is given to the town clerk; the council holds a public hearing and then adopts an ordinance annexing the area. The petition must be signed by all property owners and signatures may be withdrawn at any time prior to the ordinance's adoption. There are, however, four standards the property must meet:

1. The nearest point on the proposed satellite area must be no more than three miles from the city's primary limits
2. No point within the proposed satellite area may be closer to another city than to the annexing city.
3. The city must be able to provide the full range of city services to the satellite area.
4. The total satellite area may not exceed 10 percent of the area of the city within its primary limits. (More than seventy-five cities have obtained local legislation from the General Assembly waiving this standard.)

Extension of Corporate Limits by Municipal Initiative

North Carolina General Statute G.S. 160A-33 to 56 outlines this method of extension, which balances the interest in the expansion of municipal boundaries with property owners' concern with fair service provision. This statute allows a municipality to annex an area if they can provide services to the area on the same basis as it provides services within the municipality. For an area to be annexed by municipal initiative, it must meet the following conditions:

1. It must be contiguous to the existing city. Satellite annexations are not permitted under this procedure.
2. One-eighth of the external boundary of the area must coincide with the existing city boundary. This requirement attempts to avoid "balloon" expansions, where the municipality is only connected by a narrow string of land, such as a right-of-way.

3. The area may not be part of an existing, active city
4. The city must be able to provide “major” services to the area, defined as police protection, fire protection, street maintenance, solid waste collection, water distribution and sewer treatment. The city must extend police, fire, solid waste and street maintenance services immediately upon extension.

When a municipality proposes to extend its boundaries in this fashion, a report is prepared detailing the area to be included and its plan for financing and extending major services to the area. The municipality then notifies residents and property owners of the area before holding a public information meeting on the proposal, at which questions may be asked about the plan. If the statutory standards are met, the city can annex the area by ordinance. The municipality performing the annexation bears the cost of holding the public hearings and sending out the public notification to each property owner.

New legislation in the General Assembly gives the property owners the right to veto the annexation process if 60% of the property owners to be annexed, measured by the number of parcels, petition against the measure. The county board of elections is charged with overseeing the petition process and distributing petitions for denial. If 60% petition against annexation, the process is cancelled and annexation is banned for 36 months. It is therefore critical to have support of the community for this option. This new legislation also mandates that the municipality pay for the infrastructure to connect water and sewer service to any non-integrated properties within the area to be annexed.

Extension of Corporate Limits by Legislative Act

The North Carolina General Assembly may choose to enlarge the corporate limits of a municipality by local act. This approach is the original method for expansion and annexation and was the only method available before 1947. There are no limits on how the General Assembly executes an annexation, which is particularly helpful for areas that need to be annexed but cannot be annexed under any of the other procedures.

In practice, the General Assembly will never extend municipalities boundaries except at the specific request of the city or town involved. This method, while bearing no legal requirements, does require the political support of the representatives to the General Assembly. As with incorporation, lacking political support from these representatives would eliminate this option.

Of the four methods by which a town or city may annex a nearby area: the fourth option; Extension of Corporate Limits by Legislative Act is the most feasible. It is unrealistic to assume that ALL property owners would sign a petition in support as needed in the Voluntary Annexation of Contiguous or Non-Contiguous Areas. The third option discussed, Extension of Corporate Limits by Municipal Initiative, would require annexing areas that are not currently in Waynesville’s city limits or part of the Assembly.

Advantages

Merging the area of Lake Junaluska with the neighboring municipality of Waynesville would give the Assembly access to quality municipal services provided at a reasonable tax rate. Many of Lake Junaluska's current municipal services are by way of Waynesville. Although the Assembly maintains our own water distribution and sewage collection systems, our water processing and sewer treatment is provided by the Town of Waynesville as well as our fire protection. Merging would prove beneficial for Waynesville, as they would gain a broader tax base, while beneficial for Lake Junaluska as it provides direct access to Waynesville's vast municipal resources and their increased purchasing power. In this situation, both entities will have a net benefit.

Waynesville already has a well-established, successful, and relatively progressive governance structure. Registered voters in Lake Junaluska would be eligible to vote in council elections in Waynesville. The administrative structure of Waynesville is already established, with a city manager, assistant city manager, finance director, planning officers and utility department heads already in place. They have established a culture of efficient, effective, and professional administration that has not yet been created at Lake Junaluska.

Waynesville would be able to easily and efficiently assume the current responsibilities of Lake Junaluska Public Works. Much of the equipment used by LJA Public Works is through purchase from the Town of Waynesville and the Town also provides water and sewer service to LJA through a water purchasing contract. In terms of zoning and building codes, Waynesville uses a progressive, community centric zoning system that would be able to adapt to the specific needs of Lake Junaluska. In fact, the area adjacent to LJA along Dellwood road and the part of the Assembly on the south side of Highway 19 are already included within Waynesville zoning plan. The various community organizations could remain in existence as advisory to the Waynesville administration and governing council and could assist greatly as Waynesville adapts policies to fit Lake Junaluska's needs.

Waynesville is better resourced to address the needs of the Lake Junaluska community, such as replacing the water and sewer infrastructure, the capital equipment of Lake Junaluska and paving the roadways. They are eligible for state and federal loans and grants and have employees capable of procuring those funds. These opportunities could improve police protection, fire protection, water and sewer quality and the general quality of life, whereas Lake Junaluska is currently ineligible for such funds. Waynesville and Lake Junaluska could also deepen their partnership in terms of hosting events and celebrations, enhancing the recreational and extracurricular options for citizens.

As noted earlier in this report, annexation would not impact the restrictive covenants of the Lake Junaluska community. These types of covenants are common for subdivisions added to cities and the Lake Junaluska covenant has been verified in the Supreme Court as legitimate. The restriction on alcohol and the right to repurchase would remain in effect and the covenants

would remain enforced. The Lake Junaluska community would be responsible for enforcing covenant rules.

If Lake Junaluska so desired, they could potentially use the service charge as a mechanism to improve the community, much as it was originally intended. This would function in a similar fashion to which Waynesville collects funds from properties in its downtown historic district to enhance that specific district. Lake Junaluska would be able to spend more on beautification, because the service charge funding is now poured into municipal services. On top of Waynesville police protection, Lake Junaluska would likely desire to employ additional security, which could be funded through the service charge, fee for service, through direct conference center funding or a combination of these options; depending on the role of the additional security. However, the decision may also be made by the community to forego all service charges in the future.

Lake Junaluska would still retain its strong community identity and culture. Our boundaries are well established and the covenants have been validated. The adopted ordinances of Waynesville confirm the sentiment that restrictive covenants are to be protected, stating in Chapter 1.9 of the Land Development Standards that, "...regulations shall not be deemed to interfere with, abrogate, annul, or otherwise affect in any manner whatsoever any easement, covenants, or other agreements between parties." But it is important to note that Lake Junaluska will remain responsible for the enforcement of these covenant restrictions.

Another advantage for residents of Lake Junaluska is that they would be able to deduct the Waynesville property tax rate from their federal income tax. Currently, the service charge assessed by Lake Junaluska Public Works is a non-deductible expense but under the scenarios of incorporation or annexation, this expense would become deductible.

While the non-profit status of the Lake Junaluska Conference Center is a disadvantage for the incorporation option, this does not impact the annexation option. Under incorporation, the tax base of Lake Junaluska would actually shrink, rather than expand, because the new municipality would not be able to tax the non-profit Conference and Retreat Center. While Waynesville would not be able to tax the Conference Center either under annexation, they would still be expanding their tax base as they would be adding the residents of Lake Junaluska to the fold. This can be viewed as an advantage when compared with the option of incorporation.

Disadvantages

In the short term, property owners at Lake Junaluska would see a tax increase to match the current millage rate of Waynesville, which is higher than that of Lake Junaluska. While this comes with the increased quality of the Waynesville administration, it would still constitute an increase. It is also possible that water and sewer rates might increase marginally to pay for investment in Lake Junaluska's infrastructure, but by a smaller rate than if Lake Junaluska needed to bear these costs alone. Also it should be noted that Waynesville's current water and sewer rates are much lower than the Assembly's rates.

Once Lake Junaluska is included in the Waynesville community, it would be very difficult, if not impossible to regain independence in terms of providing municipal services. For example, while Lake Junaluska could still assess a service charge, they could not choose to reclaim control over solid waste disposal or street paving. It is nearly impossible to de-annex an area as this can only be done through legislation in the General Assembly and has rarely occurred historically.

The Waynesville governing council and town administration also does not answer directly to the Lake Junaluska Conference and Retreat Center or the Lake Junaluska Board of Directors in the same way that Lake Junaluska Assembly Public Works currently does. Any comments or decisions made by the Board or any Lake Junaluska body would be purely advisory to Waynesville. Just as in the incorporation model, the current relationship between the Conference Center and the community would be inappropriate and altered permanently.

The topic of annexation in general is politically sensitive and would most likely generate a great deal of media attention on both Waynesville and Lake Junaluska. There is currently a strong opposition to annexation by ordinance in the NC General Assembly, due to the political climate.

It is possible that Waynesville may not desire to take over the infrastructure. It is important to note that if Lake Junaluska is annexed by Waynesville, the town may not legally charge Lake Junaluska residents a higher utility rate than other Waynesville customers, even if the infrastructure of Lake Junaluska specifically needs improving. If they raise the rate, they must charge an increased rate to all utility customers across the board.

The Process

The annexation process differs based on which option is decided upon. However, despite the route, the first steps by Lake Junaluska would be to acquire public consent for this option and to bring it to the Board of Directors. The next step would be to approach Waynesville with the proposal. It would be beneficial, despite the process chosen, to acquire the approval of the General Assembly representatives for Lake Junaluska and Waynesville.

In the short term, only three of the options are viable for Lake Junaluska: voluntary annexation of a non-contiguous areas, annexation by act of legislation, or annexation by municipal initiative.

Under voluntary annexation, it would require all property owners (including the Conference and Retreat Center) to sign a petition to become annexed by Waynesville. This would require an intense amount of effort to incorporate the entire community as spouses must sign as well and any one objection could cause the process to restart. However, if the community were properly motivated, it might be possible to have a significant number of property owners' sign onto this plan and submit it to Waynesville. Waynesville would then verify this petition through a public hearing and formally extend its borders to include the properties at Lake Junaluska.

Under the legislative option, Lake Junaluska would team up with Waynesville and approach the representatives to convince them to pass an act of local legislation to extend Waynesville's corporate limits. While feasible, this requires diplomacy, the support of Waynesville and the general support of the Lake Junaluska community. It would be helpful if the majority of Lake Junaluska property owners, over 50%, signed a petition accepting this option.

It is possible for Waynesville to annex Lake Junaluska through a municipal ordinance passed by their governing board. Waynesville would need to annex a bridge of land between Lake Junaluska and Waynesville, in order to connect the two communities. Then Waynesville would need to develop a plan for providing services to Lake Junaluska, pay for public notification of each property owner, oversee a public hearing and allow a time for petition. If these statutes were met, then annexation is carried out as planned.

Option #3: Transferring control of water & sewer

Merging water and sewer systems is a fairly common occurrence in North Carolina and has risen in popularity in the past decades. Whether through formal merging agreements or through forming water and sewer authorities, these partnerships benefit all parties involved because large capital costs are shared and the overall costs are reduced.

Some of the most successful examples of this include the six municipalities merging into the Raleigh system, the consolidation of the Charlotte and Mecklenburg systems and the merger between Cary and Morrisville. In the case of Cary and Morrisville, the town of Cary took over the Morrisville system, providing water for customers in Morrisville and addressing line maintenance issues. In this specific case, customers in Morrisville paid a slightly higher rate than Cary customers for a short period to pay for updating the water infrastructure in Morrisville. But the rates have since balanced out for both Cary and Morrisville.

Lake Junaluska currently receives its water and sewer treatment services through contract with Waynesville. Given that Lake Junaluska only has the distribution and collection systems and does not possess the capacity to provide its own water processing and sewer treatment, this dependent relationship is likely to continue into the future. In fact, some of Lake Junaluska's equipment, such as our sewer pump, comes secondhand from Waynesville, linking the two communities even more closely than it seems. The Junaluska Sanitary District also receives its water and sewage treatment from Waynesville in the same manner as the Assembly and could be approached as an alternative authority.

Advantages

This is a largely administrative agreement that does not require consent from any outside elements, such as in the incorporation and annexation options. The negotiations would occur between the administration of Lake Junaluska and the administration of a neighboring water and sewer authority. It would take the shape of a legal contract or agreement stating the

duties of the authority to Lake Junaluska, the initial rate structure and any other pertinent specifics.

The water and sewer infrastructure is the costliest element of the Lake Junaluska community's current infrastructure. By allowing an authority to take control of this element, costs could be lowered for both Lake Junaluska and the authority. The authority receives the additional revenue from expansion, while Lake Junaluska benefits through additional experience, materials and capital that are available to a larger district.

Choosing to merge water and sewer infrastructure does not eliminate the possibility for either incorporation or annexation. It may, however, cause Waynesville to reassess its future with our community and seek to annex Lake Junaluska because of investment in infrastructure.

The two alternatives, Waynesville and the Junaluska Sanitary District have access to many Clean Water grants and other resources that are inaccessible to Lake Junaluska. They also have access to advantageous government loan programs for capital improvement, at rates unavailable to Lake Junaluska. This option might be preferable for Waynesville because they could assess a temporarily higher fee to Lake Junaluska specifically for the improvement of the water and sewer infrastructure, while they could not do this under an annexation option. This would allow Lake Junaluska Public Works to sell or transfer its current water and sewer equipment for a small, one-time cash gain.

Disadvantages

Lake Junaluska would lose control over improvements to its water and sewer system and lose control over any possible extensions of water lines. Residents would need to go through Waynesville, rather than Lake Junaluska, with requests relating to water and sewer. The Conference and Retreat Center would also need to consult with Waynesville if they desired to expand or require larger capacity to their facilities.

Neighboring authorities may not be interested in investing in Lake Junaluska's system in the first place or require such a high utility increase on Lake Junaluska customers that it would be undesirable for the community. While this option would generate less media scrutiny than the incorporation or annexation option, it could face opposition from elements within both communities.

This option ignores other issues facing Lake Junaluska, such as the inability to enforce ordinances, establish zoning codes or collect federal and state revenue. It would lighten the burden on LJA Public Works, but not remove the responsibility for service provision. LJA Public Works would need to continue levying a service charge assessment to pay for most municipal services, which would remain a non-income tax deductible expense.

The Process

To move forward with this particular option, the administration of Lake Junaluska would contact the administration of the neighboring authorities and gauge their interest for this measure. If there is interest in potentially moving forward with this measure, then a series of terms for the agreement with Lake Junaluska Assembly Public Works would be worked out. There would be a public hearing to notify the public and solicit comments on this option before the terms would be brought before the Board of Directors of Lake Junaluska for final approval.

Of all the options for change, this one is the most internal and administrative, requiring little outside assistance other than the opinions of a licensed attorney for drafting the agreement. While the community stakeholders should be educated and aware of this option, they would not need to take any particular actions, such as voting or petitioning, which are often required under the annexation and incorporation options.

Option #4: Remaining unincorporated (no change)

The operations of Lake Junaluska have remained generally the same since the creation of the Southern Assembly in 1913. The behavior of the municipal services at Lake Junaluska has also changed minimally, until the adjustments of the past fifteen years. Modern government regulations, such as those regarding the Lake Dam, have put increased pressure on the Lake Junaluska administration. In some cases, Lake Junaluska unintentionally violated government regulations. For example, Public Works received water from Waynesville for a significant period without an explicit water purchasing contract, and provided water to Lake Junaluska without approval of the Utility Commission. While this sort of behavior might have been common place in the 1920's, it is not appropriate or possible today.

Recently, Lake Junaluska Assembly Public Works (formally Residential Services) has undergone some changes that have given it a more professional behavior and brought the department closer to the style of a municipality. These include registration with the Utility Commission, validation of assessments by the North Carolina Supreme Court, establishing the Junaluska Assembly Community Council (with elected representatives, similar to a town council), and by looking at their equipment and infrastructure in a strategic manner; considerate of long term expenditures. However, even these steps place the Lake Junaluska community behind a true municipality.

The functioning of Lake Junaluska still is based around the popular "company town" model that flourished in the late 19th and early 20th century, where one company (in this case the Lake Junaluska Assembly Inc.) owns approximately 20% of the property value on the Assembly grounds and the LJA Board of Directors appoints, rather than elects, those in charge of the community. In an incorporated town, the town manager would be responsible to the governing council, the administration and his professional associations. The governing council, in turn, is responsible to the citizens of the community and at the mercy of the ballot.

In the Lake Junaluska format, the Director of Public Works answers to the Executive Director of Lake Junaluska Assembly, Inc. and the Board of Directors. Although the Board of Directors may be comprised of some resident constituents, it is not a body of elected representatives from the community.

Advantages

The current model of administration at Lake Junaluska has functioned for almost a century. It has managed to pull Lake Junaluska through some difficult periods and the service charge assessment has been validated in the North Carolina Supreme Court. While costs may rise for the community, this model could theoretically continue to function, even if functioning inefficiently and at a high cost to residents.

It could be possible to strengthen the Lake Junaluska Assembly Public Works department and steps could be taken to make the current advisory organizations stronger. For example, the Public Works department could become more independent of the conference center, with completely independent staff performing all budgeting, finance and administrative tasks currently performed by Business Office staff. While this would require a significant increase in the assessment rate in order to fund such a robust administration, it is theoretically feasible. Members of the Community Council could receive monetary compensation and have more direct oversight of the department, such as requiring their majority approval of the yearly budget. In this way, the Community Council would begin to become more like an official governing body, while still lacking ordinance making power. Any changes to the current Community Council structure would be totally at the discretion of the LJA Board of Directors.

Thus far, there have been no major situations in which the Conference and Retreat Center or Lake Junaluska Board of Directors has caused a conflict of interest that is opposed to the interests of the Lake Junaluska Community. The Lake Junaluska community, due to its generally collaborative Christian nature, has remained relatively peaceful as compared to other communities. The relationship between the Board of Directors and the community is also extremely positive, as this organizational body is much more representative of the community than the previous SEJAC governing body.

No major political opposition is anticipated if the current system remains in place, either from inside of Lake Junaluska or from the neighboring municipalities, such as Waynesville. This option avoids any media scrutiny on Lake Junaluska and potentially inflammatory divisions. Lake Junaluska residents through the current relationship between the Community Council and the Board of Directors maintain some control over issues pertaining to municipal services.

The Lake Junaluska Assembly Public Works department has taken major steps in the past 15 years and should be proud of the accomplishments that they have made thus far towards professionalism. The efforts of the last 5 years in particular have placed the Public Works department further on track for success than it has ever been before, particularly in regards to validating the service charge, separating out water and sewer funding, and in creating several

strategic plans that lay out priorities for the community going into the future. The reception of the community has been extremely positive to the changes made in the Public Works department.

Disadvantages

Maintaining the current structure ignores the potential benefits of the three other options. Remaining the same may be to Lake Junaluska's detriment over the long-term. The costs for maintaining equipment and infrastructure for Lake Junaluska are guaranteed to rise over time and the cost will be fall solely upon the property owners of Lake Junaluska, without assistance from the government grants, loans, additional revenue sources or a broader tax base. The most significant property owner, Lake Junaluska Assembly, Inc, would bear the largest portion of these costs, which will reduce their ability to operate profitably.

Without the ability to establish ordinances or codes, our police are not able to apply rules and regulations enforceable in the court system. Interest has been expressed on placing certain physical restrictions on new construction and creating standards for the maintenance and improvement of existing facilities. Currently, there is no possible mechanism by which to establish zoning codes for the Assembly, and thus no restrictions can be placed on new construction, improvements or maintenance. The only scenarios that would address this would be either annexation or incorporation.

This model leads to underinvestment in the community. Currently, the responsibilities of 6 senior administrators in a similar sized community fall upon the Director of Public Works and the Office Manager, with some assistance from the staff of the Business Office of the Conference Center. The administration has no access to most forms of state and federal funding and a weak ability to recruit professional, trained staff to accommodate the needs of the community.

Under the current structure, Lake Junaluska will find it difficult to recruit and retain individuals who are highly qualified for the position of Director of Public Works. While Lake Junaluska has recruited qualified individuals in the past, they do not serve the same length of tenure as the average town administrator. It would be risky to employ under-qualified individuals, as the complexities of the position leave open the possibility for serious mistakes, due to simple inexperience. When comparing with the option of annexation, one can see that the Town of Waynesville has had no trouble recruiting and retaining highly experienced employees

Even if structural changes made Public Works slightly more independent of the Conference Center, failure to change the municipal status through annexation or incorporation leaves the community heavily dependent on the future of Lake Junaluska Assembly, Inc. If the conference center were to fail, it may endanger the community. However, if Lake Junaluska incorporated or joined with Waynesville, the future of the community would be secured independent of the business operations of Lake Junaluska Assembly, Inc.

Public Works would need to continue levying a service charge to pay for services, which would remain a non- tax deductible expense. Compared to annexation or incorporation, this is a clear disadvantage because municipal property tax is deductible from an individual's income tax.

Conclusions and Recommendations

Any decision regarding the future of the Lake Junaluska community is very important and should be considered first and foremost with the question in mind, **"What is best for the community over the long term?"**

Whether incorporation, annexation, transferring control of water and sewer or remaining under the same system, these important decisions will require the input of the entire community. All of the options presented can be highly political and divisive, but no matter the choice, it is absolutely required that the community be in support of whichever option is chosen. Without this form of broad citizen support, any effort to change is likely to fail.

The primary step in deciding between these different possible options is to circulate these different scenarios to the community, through presentations at the Community Council, Board of Directors and other public meetings. Educating property owners with accurate, impartial information is critical to success. A summarization of this report should be given by Lake Junaluska publications, as well as access to the entirety of this document via the Internet.

Communication lines with Waynesville must be established early on. There is no way for Lake Junaluska to avoid the special relationship that it has with Waynesville. Therefore, the communication between the two must remain constant and clear throughout this process, from planning to any future implementation. Many options are available through a merger with Waynesville, and these options must be explored and determined before detailed plans can be presented for either community's approval. The governing board, administration and citizens of Waynesville should be given an opportunity to express their opinions on the matter of Lake Junaluska's municipal status, as their refusal to consider any one option would effectively eliminate that option from consideration.

With these steps in place, under the incorporation or annexation models, it would be important to have the support of the representatives to the North Carolina General Assembly. Under either model, incorporation or annexation is made much easier with the support of these representatives. Both processes are intrinsically political and failure to obtain this support would eliminate either incorporation or annexation as an option.

It is important to finish with the note that readers should carefully consider each option as viable, especially the options for change, such as annexation, incorporation or merging water and sewer systems. There is often bias against change and often individuals draw negative associations with the process of incorporation or annexation. These options should be considered impartially, as they may bear a great benefit for the Lake Junaluska community,

while allowing the Conference Center to continue accomplishing the goal that it set out on in 1913. It is crucial to understand that these four options are presented impartially to truly set a brighter future for the community as the first and foremost priority.

Appendixes

Acknowledgements

I'd like to acknowledge Buddy Young for providing constant oversight, assistance, and proof-reading the document. I'd also like to thank him for providing housing accommodations.

A special thanks goes to the faculty and staff at the University of North Carolina School of Government for providing the assistance and resources necessary to complete this research, in particular I would like to acknowledge Professor David Ammons, Kara Millonzi and Frayda Bluestein.

I'd also like to thank those at the Town of Waynesville who share information to allow a better understanding of the systems in place in that community.

Citations

I would like to cite the following published resources used for this study:

Incorporation of a North Carolina Town, David Lawrence and Kara Millonzi, Third Edition, 2007, Chapel Hill, NC, UNC School of Government.

Incorporation, Abolition and Annexation by David Lawrence, Article 2, 2007, Chapel Hill, NC, UNC School of Government.

Annexation Reform: A Summary of New Law, Coates Canons: NC Local Government Law Blog, July, 15, 2011, Chapel Hill, NC, <http://sogweb.sog.unc.edu/blogs/localgovt/?p=4494>