



Town of Waynesville, NC

Board of Aldermen – Regular Meeting

Town Hall, 9 South Main Street, Waynesville, NC 28786

Date: **August 9, 2016**

Time: **6:30 p.m.**

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(828) 452-2491 gowens@waynesvillenc.gov

A. CALL TO ORDER - Mayor Gavin Brown

1. Welcome/Calendar/Announcements
2. Adoption of Minutes

Motion: To approve the minutes of the July 7, 2016 special called meeting, the minutes of the July 20, 2016 special called meeting and the minutes of the July 26, 2016 regular meeting, as presented [or as corrected].

B. PUBLIC HEARINGS

3. Public Hearing to consider the withdrawal of a parcel from the Municipal Service District

Motion: To consider the adoption of the Resolution to withdraw a parcel, 180 Legion Drive, PIN 8615-25-5741, from the Town of Waynesville’s Municipal Service District per the request from the owner.
(per NCGS, the removal from MSD requires passage by majority vote at two separate meetings)

4. Public Hearing to consider the adoption of a Resolution Authorizing the Town of Waynesville to Enter into an Installment Purchase Contract not to exceed \$1,300,000.00 to finance the cost of the Public Works Building Improvements

Motion: To adopt the resolution authorizing the Town of Waynesville to Enter into an Installment Purchase Contract not to exceed \$1,300,000.00 to finance the cost of the Public Works Building Improvements, as presented.

C. NEW BUSINESS

5. Request approval to enter into contract with Alfred Benesch & Company for Recreation and Parks System-wide Master Plan Professional Services

Motion: To authorize Town Manager to execute contract with Alfred Benesch & Company for System-wide Master Plan/Site Specific Master Plan Proposal for Professional Services, as presented.

TOWN OF WAYNESVILLE – REGULAR SESSION AGENDA

August 9, 2016

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D. COMMUNICATIONS FROM STAFF

- 6. Manager's Report – Interim Town Manager Mike Morgan
- 7. Attorney's Report – Town Attorney Woody Griffin

E. COMMUNICATIONS FROM THE MAYOR AND BOARD

- 8. Recognition of Newly Hired Fire Fighters

F. CALL ON THE AUDIENCE

G. CLOSED SESSION

- 9. Closed session for the purpose of discussing personnel matters (Town Manager position) as permitted under NCGS § 143.318.11(a)(6)

H. ADJOURN



TOWN OF WAYNESVILLE

PO Box 100
16 South Main Street
Waynesville, NC 28786
Phone (828) 452-2491 • Fax (828) 456-2000
www.waynesvillenc.gov

CALENDAR August 9, 2016

2016	
Fri, Aug 5 5:00 – 9:00 PM Downtown	Art After Dark – Waynesville Gallery Association
Fri, Aug 5 6:30 – 9:00 PM Historic Courthouse	Mountain Street Dance – DWA
Sat, Aug 6 9:00 AM – 1:00 PM Courthouse Lawn	Sarge's Annual Downtown Dog Walk
Tue, Aug 9 10:00 AM Russ Avenue	Groundbreaking for Chick-fil-A - Mayor to speak
Tue, Aug 9 6:30 PM Board Room, Town Hall	Board of Aldermen Regular Meeting
Mon, Aug 22 5:30 PM Location Town Hall	Haywood COG – Maggie Valley Hosting
Tue, Aug 23 6:30 PM Board Room, Town Hall	Board of Aldermen Regular Meeting
Fri, Aug 26 5:00 – 10:00 PM Main Street	Main Street Mile benefiting Shriner's Children's Hospital
Wed, Aug 31 6:00 PM Waynesville Inn Resort & Spa	Haywood Healthcare Foundation 2016 Annual Gala
Fri, Sep 2 5:00 – 9:00 PM Downtown	Art After Dark – Waynesville Gallery Association
Fr-Sa, Sep 2-3	47 th Annual Smoky Mountain Folk Festival Lake Junaluska
Mon, Sep 5	Labor Day Holiday Town Offices Closed
Tue, Sep 13 6:30 PM Board Room, Town Hall	Board of Aldermen Regular Meeting
Sat, Sep 17 6:00 – 9:00 PM Downtown	Block Party - DWA

Mon, Sep 26 6:30 PM Location TBD	Southwestern Commission Board Meeting
Fri, Oct 7 5:00 – 9:00 PM Downtown	Art After Dark – Waynesville Gallery Association
Sat, Oct 8 10:00 AM – 5:00 PM Main Street, Downtown	33 rd Annual Church Street Art & Craft Show
Tue, Oct 11 6:30 PM Board Room, Town Hall	Board of Aldermen Regular Meeting
Sat, Oct 15 10:00 AM – 5:00 PM Main Street, Downtown	28 th Annual Apple Harvest Festival – Haywood Chamber of Commerce
Su-Tu, Oct 23-25	NCLM Annual Conference CityVision 2016 Raleigh, NC
Mon, Oct 24 5:30 PM Location TBD	Haywood COG – Waynesville Hosting
Tue, Oct 25 6:30 PM Board Room, Town Hall	Board of Aldermen Regular Meeting
Mon, Oct 31 5:00 PM – 7:00 PM Downtown Waynesville	Treats on the Street – DWA
Fri, Nov 4 5:00 – 9:00 PM Downtown	Art After Dark – Waynesville Gallery Association
Tue, Nov 8 6:30 AM – 7:30 PM All voting precincts	Election Day - General Election
Tue, Nov 8 6:30 PM Board Room, Town Hall	Board of Aldermen Regular Meeting
Fri, Nov 11	Veterans' Day Holiday Town Offices Closed
Th-Fr, Nov 24-25	Thanksgiving Holiday Town Offices Closed
Mon, Nov 28 6:30 PM Location TBD	Southwestern Commission Board Meeting
Fri, Dec 2 5:00 – 9:00 PM Downtown	Art After Dark – Waynesville Gallery Association
Fr-Mo, Dec 2-5	Holly Days Downtown – seasonal events downtown throughout the weekend
Mon, Dec 5 6:00 PM Main Street, Downtown	Waynesville Holiday Parade Line-up begins at 4:30 PM at Walnut and Main Parade begins at 6:00 PM

Sat, Dec 10 5:00 PM Fire Station #1	Waynesville Fire Department Annual Holiday Family Dinner (tent)
Sat, Dec 10 6:00 – 9:00 PM Main Street, Downtown	A Night Before Christmas / Bethlehem Market Place – DWA & First Baptist Church
Tue, Dec 13 6:30 PM Board Room, Town Hall	Board of Aldermen Regular Meeting
Fr-Tu, Dec 23, 26-27	Christmas Holiday Town Offices Closed
2017	
	New Year Holiday Town Offices Closed
	Martin Luther King Jr Holiday Town Offices Closed

Board and Commission Meetings – August/September 2016

ABC Board	ABC Office – 52 Dayco Drive	August 16 3 rd Tuesdays 10:00 AM
Board of Adjustment	Town Hall – 9 S. Main Street	Sept 6 1 st Tuesdays 5:30 PM
Downtown Waynesville Association	UCB Board Room – 165 North Main	August 25, 2016 4 th Thursdays 12 Noon
Firefighters Relief Fund Board	Fire Station 1 – 1022 N. Main Street	Meets as needed; <i>No meeting currently scheduled</i>
Historic Preservation Commission	Town Hall – 9 S. Main Street	Sept 7 1 st Wednesdays 2:00 PM
Planning Board	Town Hall – 9 S. Main Street	August 15 3 rd Mondays 5:30 PM
Public Art Commission	Town Hall – 9 S. Main Street	August 11 2 nd Thursdays 4:00 PM
Recreation & Parks Advisory Commission	Rec Center Office – 550 Vance Street	August 17 3 rd Wednesdays 5:30 PM
Waynesville Housing Authority	Waynesville Towers – 65 Church Street	Sept 7 1 st Wednesdays 5:30 PM

BOARD/STAFF SCHEDULE

Th – Sa, Aug 18-20, 2016	Deputy Clerk	NC Association of Municipal Clerks Summer Seminar Asheville, NC
Tue – Fri, Sept 13 - 16, 2016	Assistant Town Manager	Municipal and County Administration Course Chapel Hill, NC
Tue – Fri, Oct 11 – 14, 2016	Assistant Town Manager	Municipal and County Administration Course Chapel Hill, NC
Tue – Fri, Nov 15 – 18, 2016	Assistant Town Manager	Municipal and County Administration Course Chapel Hill, NC
Tue – Fri, Jan 10 – 13, 2017	Assistant Town Manager	Municipal and County Administration Course Chapel Hill, NC
Tue – Fri, Feb 14 – 17, 2017	Assistant Town Manager	Municipal and County Administration Course Chapel Hill, NC
Tue – Fri, March 14 – 17, 2017	Assistant Town Manager	Municipal and County Administration Course Chapel Hill, NC
Tue – Fri, April 25 – 28, 2017	Assistant Town Manager	Municipal and County Administration Course Chapel Hill, NC

MINUTES OF THE TOWN OF WAYNESVILLE BOARD OF ALDERMEN
SPECIAL CALLED MEETING
July 7, 2016

THE WAYNESVILLE BOARD OF ALDERMEN held a special called meeting on Tuesday, July 7, 2016 at 4:10 p.m. in the conference room of the Municipal Building located at 16 South Main Street, Waynesville, NC.

A. CALL TO ORDER

Mayor Gavin Brown called the meeting to order at 4:10 p.m. with the following members present:

Mayor Gavin Brown
Alderman Gary Caldwell
Alderman Jon Feichter
Alderman LeRoy Roberson
Alderman Julia Freeman

The following staff members were present:

Mike Morgan, Interim Town Manager

1. Welcome and Call to Order

Mayor Gavin Brown welcomed everyone to the meeting.

2. CLOSED SESSION

Alderman Caldwell made a motion, seconded by Alderman Feichter to enter into closed session for the purpose of discussing personnel matters (applicant for town manager position) as permitted under NCGS § 143.318.11 (a)(6). The motion carried unanimously.

The Board entered into closed session at 4:11 p.m.

The Board returned from closed session at 6:08 p.m.

3. ADJOURN

There being no further business to discuss, Alderman Freeman made a motion, seconded by Alderman Caldwell to adjourn the meeting at 6:10 p.m. The motion carried unanimously.

ATTEST

Gavin A. Brown, Mayor

Michael J. Morgan, Interim Town Manager

Amanda W. Owens, Town Clerk

MINUTES OF THE TOWN OF WAYNESVILLE BOARD OF ALDERMEN
SPECIAL CALLED MEETING
July 20, 2016

THE WAYNESVILLE BOARD OF ALDERMEN held a special called meeting on Tuesday, July 20, 2016 at 4:00 p.m. in the conference room of the Municipal Building located at 16 South Main Street, Waynesville, NC.

A. CALL TO ORDER

Mayor Gavin Brown called the meeting to order at 4:00 p.m. with the following members present:

Mayor Gavin Brown
Alderman Gary Caldwell
Alderman Jon Feichter
Alderman LeRoy Roberson
Alderman Julia Freeman

The following staff members were present:

Mike Morgan, Interim Town Manager

1. Welcome and Call to Order

Mayor Gavin Brown welcomed everyone to the meeting.

2. CLOSED SESSION

Alderman Caldwell made a motion, seconded by Alderman Feichter to enter into closed session for the purpose of discussing personnel matters (applicant for town manager position) as permitted under NCGS § 143.318.11 (a)(6). The motion carried unanimously.

The Board entered into closed session at 4:01 p.m.

The Board returned from closed session at 5:43 p.m.

3. ADJOURN

There being no further business to discuss, Alderman Freeman made a motion, seconded by Alderman Caldwell to adjourn the meeting at 5:45 p.m. The motion carried unanimously.

ATTEST

Gavin A. Brown, Mayor

Michael J. Morgan, Interim Town Manager

Amanda W. Owens, Town Clerk

MINUTES OF THE TOWN OF WAYNESVILLE BOARD OF ALDERMEN
REGULAR MEETING
July 26, 2016

THE WAYNESVILLE BOARD OF ALDERMEN held a regular meeting on Tuesday, July 26, 2016 at 6:30 p.m. in the board room of Town Hall, 9 South Main Street, Waynesville, NC.

A. CALL TO ORDER

Mayor Gavin Brown called the meeting to order at 6:30 p.m. with the following members present:

Mayor Gavin Brown
Alderman Gary Caldwell
Alderman Jon Feichter
Alderman Julia Freeman
Alderman LeRoy Roberson

The following staff members were present:

Mike Morgan, Interim Town Manager
Chase Wells, Acting Town Attorney
Amie Owens, Town Clerk

The following media representatives were present:

Mary Ann Enloe, the Mountaineer
Cory Vaillancourt, Smoky Mountain News

1. Welcome /Calendar/Announcements

Mayor Gavin Brown welcomed everyone to the meeting and noted the following calendar events including:

- Friday, July 29 – Southwestern Commission Annual Dinner at Wells Events Center
- Saturday, July 30 – Folkmoot International Day celebration downtown from 10:00 a.m. to 5:00 p.m.
- Sunday, July 31 – Closing ceremonies for Folkmoot at Lake Junaluska
- Monday, August 1 – Community-wide Dinner hosted at the Pigeon Community Center beginning at 5:30 p.m.
- Friday, August 5 - Soccer Match between the Waynesville Police Department and youth from the Pigeon Community Center – 10:00 a.m. at the PCC field

Mayor Brown added his thanks to the press for covering Dalton Carver's visit and role as Mayor for the Day. Dalton had fun and the staff enjoyed being able to share the day with him. Mayor Brown thanked the staff for their participation.

2. Adoption of Minutes

Alderman Caldwell made a motion, seconded by Alderman Freeman, to approve the minutes of the July 12, 2016 regular meeting, as presented. The motion carried unanimously.

B. CONTINUED BUSINESS

3. Tourism Development Authority Board – Town of Waynesville representative (1) vacancy to fill remainder of term ending December 31, 2017

Mayor Brown noted that at the previous meeting on Tuesday, July 12, 2016, Ragan McBride was listed as an appointee to the 1% Zip Code Subcommittee; the position that was to be filled was for the Tourism Development Authority Board. Mr. McBride's appointment would be to serve a remainder of a term that ends on December 31, 2017 as the Town of Waynesville's representative.

Due to the fact that Mr. McBride would be a member of the Haywood County Tourism Development Authority, his appointment must be confirmed by the Haywood County Board of County Commissioners.

Alderman Roberson made a motion, seconded by Alderman Caldwell to approve the appointment of Ragan McBride as the Town of Waynesville representative to the Tourism Development Authority Board, as presented. The motion carried unanimously.

C. CALLS FOR PUBLIC HEARING

4. Call for Public Hearing to consider the withdrawal of a parcel from the Municipal Service District

Mayor Brown noted that a request had been received to withdraw a parcel from the Municipal Service District. Under the new statutes that became effective in October 2015, there is a procedure that must be followed including the discussion of the matter at two meetings prior to a decision being reached. The first step in this process is to hold a public hearing to allow for input from citizens.

5. Call for Public Hearing to consider the adoption of a Resolution Authorizing the Town of Waynesville to Enter into an Installment Purchase Contract of Approximately \$1,300,000.00 to finance the cost of the Public Works Building Improvements

Interim Town Manager Mike Morgan noted that financing will be required for the cost of the Public Works Building Improvements. Requests for proposals have been sent out and should be returned by August 5. An analysis will be completed by August 8, with a resolution presented at the August 9 regular meeting. As part of the presentation, a public hearing is required to allow for input related to the financing agreement.

Mayor Brown noted that as these two public hearings were requested for the same date, that the motion should include both hearings.

Alderman Caldwell made a motion, seconded by Alderman Freeman to call for two public hearings to be held consecutively on Tuesday, August 9, 2016 at 6:30 p.m. or as closely thereafter as possible in the Town Hall Board Room located at 9 South Main Street, Waynesville, to consider a reduction in the Town of Waynesville's Municipal Services District and to consider adoption of a resolution authorizing the Town of Waynesville to enter into an installment purchase contract of approximately \$1,300,000.00 to finance the cost of the Public Works Building improvements. The motion carried unanimously.

D. NEW BUSINESS

5. Personnel Policy Revisions

Administrative Services Director/Town Clerk Amie Owens explained that there were several personnel policy revisions that were proposed in an effort to clarify existing policies. All policy revisions would be effective on August 1, 2016. Ms. Owens highlighted the revisions as follows:

a. Conditions of Employment Article IV – Section 4 – Employment of Relatives (Nepotism)
Removal of the relationship of First Cousin under “Immediate Family.” In order to properly reference immediate family in other areas of the personnel policy manual, this relationship is being eliminated as it is not an immediate family relationship.

b. Article IV – Section 12 – Minimum Age Requirement
This is a clarification that was needed in order to allow for the hiring of part-time and seasonal positions for summer camps and aquatics. Due diligence shows that the YMCA, Camp Association and American Red Cross support 16 year olds as life guards and junior counselors. Having the ability to hire 16 year olds for these part-time and seasonal positions will eliminate overtime for full-time lifeguards and provide a more stable pool of workers from which to draw.

c. Article VI – Sections 1 & 2 – Overtime Pay Provisions
The FLSA allows for averaging across a pay period (i.e. 80 hours in two weeks). The current policy states 40 hours in seven days which has lead to overtime being paid to individuals who in the entirety of the pay period did not work 80 hours. Departments were polled and have been utilizing this 80 hour rule before overtime was paid already. Elimination of comp time for all employees as this was effectively causing double the pay to be expended.

d. Article X – Section 4 & 16 – Vacation Leave Accumulation; Authorized Absences with Pay
Clarification of section 4 was needed since individuals were challenging the fact that they had previous work experience with a local government entity and felt they should accrue vacation at a higher rate. The clarification is that breaks in service must be less than six (6) months for accrual at a different rate.

Clarification of section 16 to outline the relationships where up to three days would be granted for bereavement time and the addition of one day of bereavement leave for other relationships to attend a funeral.

e. Change throughout from Human Resources Manager to Human Resources Office
As the position of Human Resources Manager was eliminated as part of the budget process for this FY and due to the fact that there may be other individuals assisting with supplying of information to

employees, the change from HR Manager to HR office is being made through out the personnel policy manual.

Alderman Feichter made a motion, seconded by Alderman Freeman to approve the revisions to Articles IV, VI and X and comprehensive change from Human Resources to Human Resources Office throughout the personnel policy manual, to be effective August 1, 2016, as presented. The motion carried unanimously.

Mayor Brown noted that Ms. Owens had been given a title change to Assistant Town Manager. Manager Morgan noted that in her current position she was already performing the duties of an Assistant Town Manager and that minimal update was required for the job description. Mayor Brown congratulated Ms. Owens on her new title.

7. Approval of Certificate of Resolution related to the Town of Waynesville Health Reimbursement Arrangement

Ms. Owens explained that the Town of Waynesville has a welfare benefit plan for its employees – commonly referred to as insurance (medical, dental, prescriptions, life insurance, etc.) and other benefits (sick leave, vacation, COBRA, etc.). The Town of Waynesville’s representatives Health Equity and Flores and Associates who administer the health reimbursement functions on the Town’s behalf require that the Board certify that they have been made aware of the Town’s responsibilities to comply with all IRS regulations related to such plan offerings. The proper filing of form 5500 is completed by our vendors as part of our service agreements and included in the Town audit documents. Ms. Owens added that all accounting and administrative procedures have been set up to ensure compliance not only with the IRS but with the HIPAA standards related to protected health information.

Alderman Roberson made a motion, seconded by Alderman Freeman to approve the Certificate of Resolution as required under the Internal Revenue Code and to instruct the Town Manager to execute the Amended and Restated Plan Document, as presented. The motion carried unanimously.

8. Intent to award contract for the Public Services Operations Center Renovation Project

Manager Morgan explained that proposals for the renovation of the Public Services Operations Center were advertised through formal bidding process via newspaper and electronic advertising. Per state statute, a minimum of three bids is required. Only two were received. The bids received remained sealed and the proposal was re-advertised for two additional weeks. Manager Morgan noted that after the second advertising period, three bidders responded - Clark and Leatherwood, H&M Constructors and Kearey Builders. Kearey was the lowest responsive responsible bidder from this process.

Manager Morgan indicated that the contract cannot be awarded without pre-audit certification stating that the Town has the funds in hand. In order for the contractor to hold the bids until the Local Government Commission (LGC) approves and until financing is secured, a resolution of intent is required. Manager Morgan noted that the contract amount was \$1,159,000.00. Mayor Brown added that any time a project is estimated to be over \$500,000 the formal bid process is required in order to ensure that the public knows that we are properly following the process and not awarding a contract without due diligence and equity.

Manager Morgan noted that the Town is scheduled to appear before the LGC in September with construction to begin shortly after. Construction is estimated to take 6 to 7 months. He added that eight (8) staff members would be relocating to the Municipal Building with three individuals remaining on site in a trailer so that inventory can still be monitored.

Alderman Feichter made a motion, seconded by Alderman Roberson to approve the Resolution of Intent to enter into an Agreement with Kearey Builders, Inc. in accordance with North Carolina General Statutes 143-129, contingent upon financing and approval by the Local Government Commission on September 13, 2016, as presented.

9. Award of Contract for Services to be provided in the Municipal Service District

Manager Morgan explained that the NC General Statutes related to Municipal Service Districts were revised in October 2015 making it necessary to develop a new agreement for service provision. He noted that in accordance with statutes, bids were advertised and solicited bids. The Downtown Waynesville Association (DWA) was the only bidder.

Manager Morgan added that the proposed agreement is a five (5) year contract with the following scope of services:

1) DWA shall continue to promote, encourage, and assist the revitalization and economic health and stability of the above mentioned municipal services district of Waynesville, including engaging in or assisting any "downtown revitalization project" as defined in Section 160A-536 of the North Carolina General Statutes.

2) DWA shall promote, encourage or assist any community development, urban development, planning, historic preservation or other similar public enterprise in or directly related to the municipal district.

3) DWA will provide and perform all services, facilities, functions and activities, within the reasonable bounds defined by its resources and budgetary considerations, necessary to the economic development of the municipal services district.

4) DWA will serve as the Town's agent to the North Carolina Main Street Program.

Manager Morgan continued noting that the DWA and Waynesville had received high recognition from NC Main Street Program. The contract termination date is June 30, 2021. Mayor Brown added that there was a provision allowing for termination by either party with a six month notification. He explained that the statute was designed to allow for competition to assist municipalities in gaining the best services for the taxes collected.

Buffy Phillips, Executive Director, Downtown Waynesville Association commented that the DWA had been successful for 30 years with a solid relationship between property owners and businesses and hopes this model will continue to be successful.

Alderman Feichter commented that citizens and visitors alike do not have to go far to see the benefits for MSD provided by the DWA. He added that people come from across the nation to enjoy the downtown area and some of the reasons are directly attributable to the DWA.

Ms. Phillips reported that less than 2% of the spaces are empty on Main Street, with individuals making inquiries daily for retail and living space.

Alderman Roberson commented that the impact of the Main Street affects the entire town, it is not unto itself, but it brings people in and makes them aware of the town.

Ms. Phillips added that families don't go to the mall to make memories; they go downtown, to the restaurants and galleries and return year after year for generations.

Alderman Roberson made a motion, seconded by Alderman Feichter to approve the award of the contract to the Downtown Waynesville Association for services to be provided in the Municipal Service District. The motion carried unanimously.

Manager Morgan noted that as the agreement had now been approved, the 2016-2017 Annual Agreement for North Carolina Main Street Designation could be executed.

Alderman Roberson made a motion, seconded by Alderman Feichter to instruct the Town Manager to execute the contract with the North Carolina Main Street Designation, as presented. The motion carried unanimously.

E. COMMUNICATIONS FROM STAFF

10. Manager's Report - Interim Town Manager Mike Morgan

Manager Morgan had no additional report.

11. Attorney's Report – Acting Town Attorney Chase Wells

Acting Town Attorney Chase Wells had nothing to report.

E. COMMUNICATION FROM THE MAYOR AND BOARD

F. CALL ON THE AUDIENCE

No one addressed the Board.

G. CLOSED SESSION

Alderman Caldwell made a motion, seconded by Alderman Feichter to enter into closed session for the purpose of discussion of personnel matters (applicants for the Town Manager position) as permitted under NCGS §143.318.11(a)(6). The motion carried unanimously.

The Board entered into closed session at 7:13 p.m.

The Board returned from closed session at 8:11 p.m.

There was nothing to report from the closed session.

H. ADJOURN

There being no further business to discuss, Alderman Caldwell made a motion, seconded by Alderman Feichter to adjourn the meeting at 8:13 p.m. The motion carried unanimously.

ATTEST

Gavin A. Brown, Mayor

Michael J. Morgan, Interim Town Manager

Amanda W. Owens, Town Clerk

TOWN OF WAYNESVILLE BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: August 9, 2016

SUBJECT: Public Hearing to consider a request to be voted on at two meetings of the Board of Aldermen, to remove 180 Legion Drive, PIN 8615-25-5741, from the Municipal Services District. Removal from the MSD requires passage by majority vote of the voting members present of the Board at two separate meetings.

AGENDA INFORMATION:

Agenda Location: Public Hearings
Item Number: 3-B
Department: Development Services
Contact: Byron Hickox, Land Use Administrator
Presenter: Byron Hickox, Land Use Administrator

BRIEF SUMMARY: The Town received a written request from property owner James Earley to remove his property from the MSD District. In his letter, Mr. Earley references new NC legislation (see attached) which was signed into law on June 1, 2016 which allows a property owner to request that their property be removed from the MSD. This request should “state with particularity the reasons why the tract or parcel is not in need of the services, facilities or functions of the proposed district.” The legislation goes on to say that, “if the city council finds that the tract or parcel is not in need of the services, facilities, or functions of the district to a demonstrably greater extent than the remainder of the city, the city council may, by ordinance, redefine the service district by removing therefrom the tract or parcel.”

MOTION FOR CONSIDERATION:

1. Motion to adopt the attached Resolution as presented (or as amended) to remove 180 Legion Drive from the Town of Waynesville’s Municipal Services District at the request of the owner.

FUNDING SOURCE/IMPACT: Removal of this lot will take effect at the end of this fiscal year in accordance with the new legislation, reducing MSD revenue by \$692.20 in FY 17-18. This funding would otherwise support the Downtown Waynesville Association.

ATTACHMENTS:

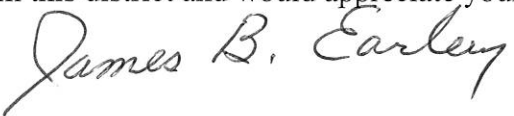
1. Letter of request and map
2. Copy of Legislation
3. Draft Resolution

MANAGER’S COMMENTS AND RECOMMENDATIONS: Staff has met with Mrs. Sharon Earley to discuss the reasoning behind the Earley’s request and incorporated it into the attached Resolution for your consideration. Should the use of this property change in the future so that it does benefit from the MSD, the Board may consider a new and separate action to amend the District boundaries once again.

July 11, 2016

To Whom It May Concern:

I, James Earley, the owner of 180 Legion Drive, Waynesville NC 28786, am requesting to be removed from the MSD District in reference to Session Law 206-8. I am not in need of the services, facilities or functions of the proposed district. Our services are compatible to any of the other properties that are not within the MSD services. I anxiously await removal from this district and would appreciate your reply as soon as possible.

Sincerely, 

James B. Earley
329 Hunt Estates Drive
Waynesville, NC 28786
828-452-1952

Parcel Report For 8615-25-5741

EARLEY, JAMES B
329 HUNT ESTATES DR
WAYNESVILLE, NC 28786

Account Information

PIN: 8615-25-5741
Legal Ref: 465/525

Add Ref:

Site Information

STORE, RETAIL
COMMERCIAL USE
180 LEGION DR

Heated Area: 0
Year Built: 0
Total Acreage: 0.62 AC
Township: TOWN OF WAYNESVILLE

Site Value Information

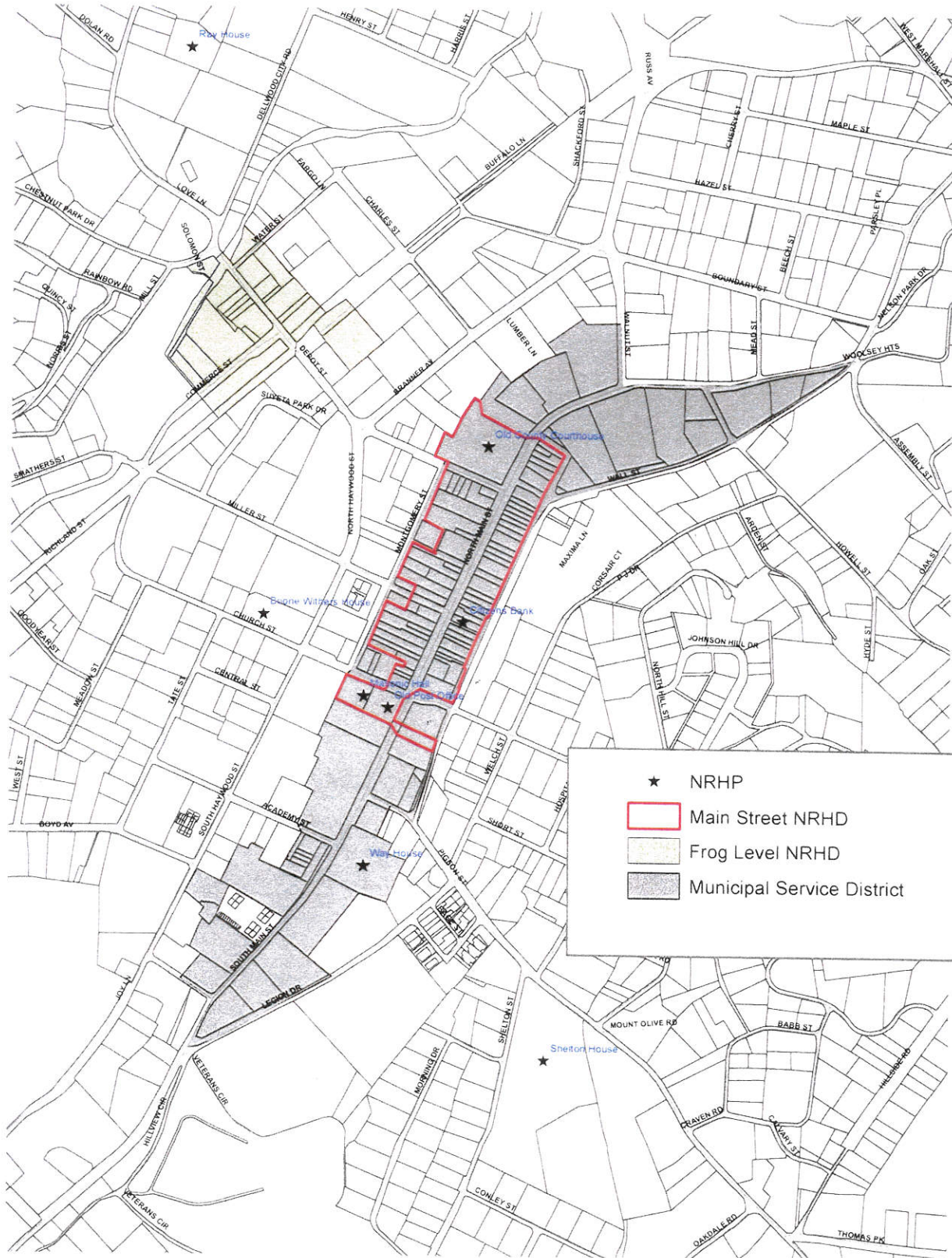
Land Value: \$135,000
Building Value: \$211,100
Market Value: \$346,100
Deferred Value: \$0
Assessed Value: \$346,100
Sale Price: \$35,000
Sale Date: 05/07/1998
Tax Bill 1: \$1,959.27
Tax Bill 2: \$1,873.44



1 inch = 50 feet
July 12, 2016

Disclaimer: The maps on this site are not surveys. They are prepared from the inventory of real property found within this jurisdiction and are compiled from recorded deeds, plats and other public records and data. Users of this site are hereby notified that the aforementioned public primary information source should be consulted for verification of any information contained on these maps. Haywood county and the website provider assume no legal responsibility for the information contained on these maps.

Downtown Waynesville Area



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SESSION LAW 2016-8
HOUSE BILL 1023*

AN ACT PROVIDING THAT (I) A MUNICIPAL SERVICE DISTRICT MAY BE DEFINED BY THE CITY COUNCIL UPON RECEIPT OF A PETITION FROM REAL PROPERTY OWNERS; (II) A CITY MAY EXCLUDE PROPERTY FROM A MUNICIPAL SERVICE DISTRICT PRIOR TO OR AFTER THE CREATION OF THE DISTRICT IF THE PROPERTY DOES NOT BENEFIT FROM THE SERVICES, FACILITIES, OR FUNCTIONS OF THE DISTRICT; (III) A MUNICIPAL SERVICE DISTRICT MAY BE DEFINED, EXTENDED, CONSOLIDATED, AND ABOLISHED ONLY BY ORDINANCE; AND (IV) A CONTRACT FOR SERVICES IN A MUNICIPAL SERVICE DISTRICT WITH A PRIVATE AGENCY SHALL INCLUDE A REQUIREMENT THAT THE AGENCY REPORT THE IDENTITY OF ANY SUBCONTRACTORS, AS RECOMMENDED BY THE LRC COMMITTEE ON MUNICIPAL SERVICE DISTRICTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-536 reads as rewritten:

"§ 160A-536. Purposes for which districts may be established.

...
(d) Contracts. – A city may provide services, facilities, functions, or promotional and developmental activities in a service district with its own forces, through a contract with another governmental agency, through a contract with a private agency, or by any combination thereof. Any contracts entered into pursuant to this subsection shall comply with all of the following criteria:

- (1) The contract shall specify the purposes for which city moneys are to be used for that service district.
- (2) The contract shall require an appropriate accounting for those moneys at the end of each fiscal year or other appropriate period. The appropriate accounting shall include the name, location, purpose, and amount paid to any person or persons with whom the private agency contracted to perform or complete any purpose for which the city moneys were used for that service district.

...."

SECTION 2. G.S. 160A-537 reads as rewritten:

"§ 160A-537. Definition of service districts.

(a) Standards. – The city council of any city may by ~~resolution~~ ordinance define a service district upon finding that a proposed district is in need of one or more of the services, facilities, or functions listed in G.S. 160A-536 to a demonstrably greater extent than the remainder of the city.

(a1) Petition to Define District. – The city council may also by ordinance define a service district if a petition submitted by a majority of the owners of real property in a defined area of the city establishes that the area is in need of one or more of the services, facilities, or functions listed in G.S. 160A-536 to a demonstrably greater extent than the remainder of the city. The petition shall contain the names, addresses, and signatures of the real property owners within the proposed district, describe the proposed district boundaries, and state in detail the services, facilities, or functions listed in G.S. 160A-536 which would serve as the basis for establishing the proposed district. The city council may establish a policy to hear all petitions submitted under this subsection at regular intervals, but no less than once per year.



(b) Report. – Before the public hearing required by subsection (c), the city council shall cause to be prepared a report containing:

- (1) A map of the proposed district, showing its proposed boundaries;
- (2) A statement showing that the proposed district meets the standards set out in subsection (a); and
- (3) A plan for providing in the district one or more of the services listed in G.S. 160A-536.

The report shall be available for public inspection in the office of the city clerk for at least four weeks before the date of the public hearing.

(c) Hearing and Notice. – The city council shall hold a public hearing before adopting any ~~resolution~~ ordinance defining a new service district under this section. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a map of the proposed district and a statement that the report required by subsection (b) is available for public inspection in the office of the city clerk. The notice shall be published at least once not less than one week before the date of the hearing. In addition, it shall be mailed at least four weeks before the date of the hearing by any class of U.S. mail which is fully prepaid to the owners as shown by the county tax records as of the preceding January 1 (and at the address shown thereon) of all property located within the proposed district. The person designated by the council to mail the notice shall certify to the council that the mailing has been completed and his certificate is conclusive in the absence of fraud.

(c1) Exclusion From District. – An owner of a tract or parcel of land located within the proposed district may, at the public hearing or no later than five days after the date of the public hearing required by subsection (c) of this section, submit a written request to the city council for the exclusion of the tract or parcel from the proposed district. The owner shall specify the tract or parcel, state with particularity the reasons why the tract or parcel is not in need of the services, facilities, or functions of the proposed district to a demonstrably greater extent than the remainder of the city, and provide any other additional information the owner deems relevant. If the city council finds that the tract or parcel is not in need of the services, facilities, or functions of the proposed district to a demonstrably greater extent than the remainder of the city, the city council may exclude the tract or parcel from the proposed district.

(d) Effective Date. – Except as otherwise provided in this subsection, the ~~resolution~~ ordinance defining a service district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the city council. If the governing body in the ~~resolution~~ ordinance states that general obligation bonds or special obligation bonds are anticipated to be authorized for the project, it may make the ~~resolution~~ ordinance effective immediately upon its adoption or as otherwise provided in the ~~resolution~~ ordinance. However, no ad valorem tax may be levied for a partial fiscal year.

(e) ~~In the case of a resolution defining a service district, which is adopted during the period beginning July 1, 1981, and ending July 31, 1981, and which district is for any purpose defined in G.S. 160A-536(1), the city council may make the resolution effective for the fiscal year beginning July 1, 1981. In any such case, the report under subsection (b) of this section need only have been available for public inspection for at least two weeks before the date of the public hearing, and the notice required by subsection (c) of this section need only have been mailed at least two weeks before the date of the hearing.~~

(f) Passage of Ordinance. – No ordinance defining a service district as provided for in this section shall be finally adopted until it has been passed at two meetings of the city council by majority vote of the voting members present, and no service district shall be defined except by ordinance.

SECTION 3. G.S. 160A-538 reads as rewritten:

"§ 160A-538. Extension of service districts.

(a) Standards. – The city council may by ~~resolution~~ ordinance annex territory to any service district upon finding that:

- (1) The area to be annexed is contiguous to the district, with at least one eighth of the area's aggregate external boundary coincident with the existing boundary of the district;
- (2) That the area to be annexed requires the services of the district.

(b) Annexation by Petition. – The city council may also by ~~resolution~~ ordinance extend by annexation the boundaries of any service district when one hundred percent (100%) of the

real property owners of the area to be annexed have petitioned the council for annexation to the service district.

(c) Report. – Before the public hearing required by subsection (d), the council shall cause to be prepared a report containing:

- (1) A map of the service district and the adjacent territory, showing the present and proposed boundaries of the district;
- (2) A statement showing that the area to be annexed meets the standards and requirements of subsections (a) or (b); and
- (3) A plan for extending services to the area to be annexed.

The report shall be available for public inspection in the office of the city clerk for at least two weeks before the date of the public hearing.

(d) Hearing and Notice. – The council shall hold a public hearing before adopting any ~~resolution-ordinance~~ extending the boundaries of a service district. Notice of the hearing shall state the date, hour and place of the hearing and its subject, and shall include a statement that the report required by subsection (c) is available for inspection in the office of the city clerk. The notice shall be published at least once not less than one week before the date of the hearing. In addition, the notice shall be mailed at least four weeks before the date of the hearing to the owners as shown by the county tax records as of the preceding January 1 of all property located within the area to be annexed. The notice may be mailed by any class of U.S. mail which is fully prepaid. The person designated by the council to mail the notice shall certify to the council that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(e) Effective Date. – The ~~resolution-ordinance~~ extending the boundaries of the district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the council.

(e1) Passage of Ordinance. – No ordinance annexing territory to a service district as provided for in this section shall be finally adopted until it has been passed at two meetings of the city council by majority vote of the voting members present, and no territory shall be annexed to a service district except by ordinance.

(f) Historic District Boundaries Extension. – A service district which at the time of its creation had the same boundaries as an historic district created under Part 3A of Article 19 of this Chapter may only have its boundaries extended to include territory which has been added to the historic district."

SECTION 4. G.S. 160A-538.1 reads as rewritten:

"§ 160A-538.1. Reduction of service districts.

(a) Reduction by City Council. – Upon finding that there is no longer a need to include within a particular service district any certain tract or parcel of land, the city council may by ~~resolution-ordinance~~ redefine a service district by removing therefrom any tract or parcel of land which it has determined need no longer be included in said district. The city council shall hold a public hearing before adopting a ~~resolution-an ordinance~~ removing any tract or parcel of land from a district. Notice of the hearing shall state the date, hour and place of the hearing, and its subject, and shall be published at least once not less than one week before the date of the hearing.

(a1) Request for Reduction by Owner. – A property owner may submit a written request to the city council to remove the owner's tract or parcel of land from a service district. The owner shall specify the tract or parcel, state with particularity the reasons why the tract or parcel is not in need of the services, facilities, or functions of the proposed district to a demonstrably greater extent than the remainder of the city, and provide any other additional information the owner deems relevant. Upon receipt of the request, the city council shall hold a public hearing as required by subsection (a) of this section. If the city council finds that the tract or parcel is not in need of the services, facilities, or functions of the district to a demonstrably greater extent than the remainder of the city, the city council may, by ordinance, redefine the service district by removing therefrom the tract or parcel.

(b) Effective Date. – The removal of any tract or parcel of land from any service district shall take effect at the end of a fiscal year following passage of the ~~resolution, ordinance,~~ as determined by the city council.

(b1) Passage of Ordinance. – No ordinance reducing a service district as provided for in this section shall be finally adopted until it has been passed at two meetings of the city council

by majority vote of the voting members present, and no service district shall be reduced except by ordinance.

(c) Historic District Boundaries Reduction. – A service district which at the time of its creation had the same boundaries as an historic district created under Part 3A of Article 19 of this Chapter may only have its boundaries reduced to exclude territory which has been removed from the historic district."

SECTION 5. G.S. 160A-539 reads as rewritten:

"§ 160A-539. Consolidation of service districts.

(a) The city council may by ~~resolution~~ordinance consolidate two or more service districts upon finding that:

- (1) The districts are contiguous or are in a continuous boundary; and
- (2) The services provided in each of the districts are substantially the same; or
- (3) If the services provided are lower for one of the districts, there is a need to increase those services for that district to the level of that enjoyed by the other districts.

(b) Report. – Before the public hearing required by subsection (c), the city council shall cause to be prepared a report containing:

- (1) A map of the districts to be consolidated;
- (2) A statement showing the proposed consolidation meets the standards of subsection (a); and
- (3) If necessary, a plan for increasing the services for one or more of the districts so that they are substantially the same throughout the consolidated district.

The report shall be available in the office of the city clerk for at least two weeks before the public hearing.

(c) Hearing and Notice. – The city council shall hold a public hearing before adopting any ~~resolution~~ordinance consolidating service districts. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a statement that the report required by subsection (b) is available for inspection in the office of the city clerk. The notice shall be published at least once not less than one week before the date of the hearing. In addition, the notice shall be mailed at least four weeks before the hearing to the owners as shown by the county tax records as of the preceding January 1 of all property located within the consolidated district. The notice may be mailed by any class of U.S. mail which is fully prepaid. The person designated by the council to mail the notice shall certify to the council that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(d) Effective Date. – The consolidation of service districts shall take effect at the beginning of a fiscal year commencing after passage of the ~~resolution~~ordinance of consolidation, as determined by the council.

(e) Passage of Ordinance. – No ordinance consolidating two or more service districts as provided for in subsection (a) of this section shall be finally adopted until it has been passed at two meetings of the city council by majority vote of the voting members present, and no service districts shall be consolidated except by ordinance."

SECTION 6. G.S. 160A-541 reads as rewritten:

"§ 160A-541. Abolition of service districts.

Upon finding that there is no longer a need for a particular service district, the city council may by ~~resolution~~ordinance abolish that district. The council shall hold a public hearing before adopting ~~a resolution~~an ordinance abolishing a district. Notice of the hearing shall state the date, hour and place of the hearing, and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any service district shall take effect at the end of a fiscal year following passage of the ~~resolution~~ordinance, as determined by the council."

SECTION 7. Section 1 of this act is effective when it becomes law and applies only to contracts entered into on or after the effective date of this act. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of May, 2016.

s/ Kathy Harrington
Presiding Officer of the Senate

s/ Paul Stam
Presiding Officer of the House of Representatives

s/ Pat McCrory
Governor

Approved 4:07 p.m. this 1st day of June, 2016

RESOLUTION TO AMEND THE MUNICIPAL SERVICE DISTRICT BOUNDARY

WHEREAS, The North Carolina General Assembly has amended Section 4, G.S. 160A-538.1 to allow municipal governing boards to reduce the boundary of service districts at the written request of the owner, who states the particularity the reasons why the tract or parcel is not in need of the services, facilities or functions of the District;

WHEREAS, The Town has received such a request from James Earley, property owner of 180 Legion Drive, PIN 8615-25-5741 indicating that he is not in need of the services, facilities or functions of the District on July 11, 2016; and

WHEREAS, The Municipal Services District provides a critical function to the economic development of the Town and supports local businesses through the enhanced infrastructure and activities of Main Street, which includes the Main Street Historic District which is listed on the National Register; and

WHEREAS, The Town Board of Aldermen would not otherwise amend the District boundaries except in compliance with State Statutes and in the rare case that the unique circumstances of a property demonstrate that it is not in need of the services, facilities, or functions of the district to a demonstrably greater extent than the remainder of the city;

NOW, THEREFORE, BE IT RESOLVED by the Board of Aldermen of the Town of Waynesville that:

1. The Board finds that 180 Legion Drive does not need the services, facilities or functions of the Main Street Municipal Services District because:
 - a. The property is separated from Main Street topographically causing the structure on the property to be accessed from, addressed on, and fronting Legion Drive;
 - b. The property is not included as part of the National Register District and does not contain a structure that is part of the Main Street architectural context, nor does it benefit from the historic and architectural character of the MSD;
 - c. The property does not benefit from the MSD enhancements to the Main Street sidewalk, landscaping and lighting infrastructure;
 - d. The property, does not benefit from the activities hosted by the Downtown Waynesville Association as such activities appeal to a tourism and recreational customer base, while the current business as an Electrical Services company does not; and
2. This property is particularly unable to benefit from its inclusion in the MSD and therefore appropriate to be removed in accordance with State Statutes; and
3. If in the future the use and form of the property changes to benefit from the MSD, the Board could re-evaluate the MSD District boundary.

This the _____ Day of _____, 2016.

And

This the _____ Day of _____, 2016.

TOWN OF WAYNESVILLE

Gavin A. Brown, Mayor

ATTEST:

Amanda W. Owens, Town Clerk

NORTH CAROLINA

HAYWOOD COUNTY

I hereby certify that the foregoing is a true and accurate copy of a resolution duly adopted by the Board of Aldermen of the Town of Waynesville, North Carolina, at a meeting held on _____ , and on _____ 2016 at 6:30 o'clock p.m. at the Town Hall in the Town of Waynesville.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official corporate seal of said Town to be affixed, this the _____ Day of _____, 2016.

Amanda W. Owens, Town Clerk

NORTH CAROLINA

HAYWOOD COUNTY

I, _____, a Notary Public, do hereby certify that Amanda W. Owens, Town Clerk, personally appeared before me this day and acknowledged the due execution of the foregoing certification, for the purposes therein expressed.

WITNESS my hand and notarial seal this _____ day of _____, 2016.

Notary Public

My Commission Expires: _____

TOWN OF WAYNESVILLE BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: August 9, 2016

SUBJECT: Public Hearing to consider the adoption of a Resolution to enter into an installment purchase contract not to exceed \$1,300,000.00

AGENDA INFORMATION:

Agenda Location: New Business
Item Number: 4-B
Department: Public Services/Administration/Finance
Contact: Mike Morgan, Interim Town Manager
Presenter: Mike Morgan, Interim Town Manager

BRIEF SUMMARY: As part of the undertaking of the project for construction to the Public Services building, financing is being requested. RFPs were sent out to 21 financial institutions with the submission deadline of August 5. Analysis of RFPs will be completed on August 8 with the recommended lender and the proposed rate and years from closing included in a final resolution to be reviewed by the Board of Aldermen at their August 9, 2016 meeting.

MOTION FOR CONSIDERATION: *To adopt the resolution authorizing the Town of Waynesville to Enter into an Installment Purchase Contract not to exceed \$1,300,000.00 to finance the cost of the Public Works Building Improvements, as presented.*

FUNDING SOURCE/IMPACT: Financing agreement to provide an amount not to exceed \$1,300,000.00

ATTACHMENTS: Draft Resolution Approving Financing Terms

MANAGER'S COMMENTS AND RECOMMENDATIONS:

Bank approval in August and Local Government Commission approval in September will allow for a loan closing date in mid-September.

Resolution Approving Financing Terms

Whereas, The Town of Waynesville ("Town") has previously determined to undertake a project for Construction of additions and renovations to the Public Works Facility, and the Town Manager has now presented a proposal for the financing of such Project.

BE IT THEREFORE RESOLVED, as follows:

1. The Town hereby determines to finance the Project through BANK in accordance with the proposal dated August 5, 2016. The amount financed shall not exceed \$1,300,000 the annual interest rate (in the absence of default or change in tax status) shall not exceed RATE% fixed, and the financing term shall not exceed NUMBER years from closing with semi-annual payments.

2. All financing contracts and all related documents for the closing of the financing (the "Financing Documents") shall be consistent with the foregoing terms. All officers and employees of the Town are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution. The Financing Documents shall include a Financing Agreement and Deed of Trust and an Escrow Agreement as BANK Bank may request according to their proposal dated August 5, 2016.

3. The Town Manager is hereby authorized and directed to execute and hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Town Manager is authorized to approve changes to any Financing Documents previously signed by Town officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Town Manager shall approve, with the Finance Officer's release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.

4. The Town shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The Town hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified tax exempt obligations" for the purpose of Internal Revenue Code Section 265(b)(3).

5. All prior actions of Town officers in furtherance of the purposes of this resolution are hereby ratified approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately subject to approval of the North Carolina Local Government Commission and the successful award of the construction contract for the Public Works Building Additions and Renovations Project.

Approved this the 9th day of August 2016.

Gavin A. Brown, Mayor

ATTEST:

Amanda W. Owens, Town Clerk

TOWN OF WAYNESVILLE BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: August 9, 2016

SUBJECT: Request approval to enter into contract with Alfred Benesch & Company for Recreation and Parks System-wide Master Plan Professional Services

AGENDA INFORMATION:

Agenda Location: New Business
Item Number: 5-C
Department: Recreation and Parks
Contact: Rhett Langston, Recreation and Parks Director
Presenter: Rhett Langston, Recreation and Parks Director

BRIEF SUMMARY: The Recreation Master Plan has been discussed for several years, due to budgetary constraints, the design and planning was removed from the budget in previous years. However, with the increase in attendance to various recreation facilities and requests for additional services from patrons and visitors, the master plan was included and approved in the FY 16-17 budget.

A Request for Qualifications was advertised beginning on June 22, 2016. Information was received from (6) vendors. A steering committee, comprised of the WPRD director, WPRD supervisors and Town of Waynesville Development Services Director reviewed qualifications/applications at two meetings and made their recommendation of Alfred Benesch & Company to the WPRD Advisory Commission. The commission met on July 13 and determined that Alfred Benesch & Company was the most qualified and requested a formal proposal to include rates and explanation of scope of services. The proposal was received on (August 2, 2016) and is being presented for approval by the Board of Aldermen and contract execution.

MOTIONS FOR CONSIDERATION: *To authorize Town Manager to execute contract with Alfred Benesch & Company for System-wide Master Plan/Site Specific Master Plan Proposal for Professional Services, as presented.*

FUNDING SOURCE/IMPACT: An amount of \$50,000 was approved as part of the FY 16-17 budget process; however, the proposal being brought forth is approximately \$55,000. The additional \$5,000 could be found in other budget line items within the Recreation and Parks department.

ATTACHMENTS:

Proposal/Agreement for System-wide Master Plan Professional Services

MANAGER'S COMMENTS AND RECOMMENDATIONS: Approve as presented. The vendor and proposal were reviewed and approved by the Recreation and Parks Advisory Commission.



Alfred Benesch & Company
2320 West Morehead Street
Charlotte, NC 28208
www.benesch.com
P 704-521-9880
F 704-521-8955

August 2, 2016

Mr. Rhett Langston, MSS
Parks and Recreation Director
Town of Waynesville
550 Vance Street
Waynesville, NC 28786

RE: Waynesville Systemwide Master Plan/Site Specific Master Plan
Proposal for Professional Services

Dear Rhett:

Thank you for inviting me to meet with you and Elizabeth last week. Our meeting was very productive; there were many good ideas discussed. Based on that meeting, I think I have a better idea of your vision for developing a plan to guide park improvements. I also have a better understanding of how we might assist the Town with the process.

Based on our meeting it appears you would like to engage in a planning process that will maximize points based on the Parks and Recreation Trust Fund (PARTF) scoring system. This proposal includes services related to looking at systemwide park and recreation needs and development of a Systemwide Parks and Recreation Master Plan for meeting those needs. Completing a Systemwide Plan could allow the Town seven additional points under the PARTF scoring system.

An important component of the Systemwide Plan will be conducting a Recreational Needs Survey (as defined by the PARTF application). Basing the recommendations of the Systemwide Plan on input from this survey could enhance your PARTF score by five additional points.

Once the Systemwide Plan is started and direction of the plan is apparent, we will begin work on a Site Specific Master Plan for the project that is identified as the priority project. Based on the conversations during our meeting, it appears the focus of park development may be Vance Street Park and Recreation Park. Development of a Site Specific Master Plan for these, or other park locations, could allow you another 10 points on the PARTF scoring system.

Together, the planning process that wraps a Systemwide Plan with a Recreational Needs Survey and includes a Site Specific Master Plan component could result in as many as 22 points in the PARTF scoring system. We have worked with several agencies (Elizabeth City, Nash County, Lumberton and Yadkin County) on similar planning approaches that ultimately led to successful PARTF Grant applications.

Based on this understanding of your park planning needs, we propose the following:

PROJECT APPROACH

Information Gathering/Committee Formation/Kick-Off Meeting

The process starts by Benesch assembling information relative to the Systemwide Plan. This information will include compiling GIS mapping information, and gathering information for an inventory of existing parks, greenways, schools, and other places of interest within the town limits. We will rely on available GIS information for all planning. No site survey work is included in this proposal for the planning process. This initial exchange of information will be greatly facilitated by holding a Kick-Off Meeting.

Master Plan Advisory Committee

To ensure this planning effort is responsive to community needs, we suggest that a Master Plan Advisory Committee (MPAC) be established. This committee will be comprised of leaders from throughout the community, town staff, elected officials, and others that have an interest in park and recreation development. This committee typically includes representation from the following departments and agencies:

- Town Manager's Office
- Parks and Recreation Staff
- Recreation and Park Advisory Commission
- Elected Officials
- Development Services Staff
- Public Services Staff
- Economic Development
- School Board
- Others as identified by Town staff (athletics, seniors, arts, etc.)

The size of the committee should be limited to eight to ten members. Final make up of this committee will be determined by Town staff. Town staff will be responsible for organizing the MPAC and coordinating all meetings.

The purpose of the committee will be to provide guidance in the planning process and to serve as liaison to the citizen groups they represent. This committee will attend assessment meetings, public workshops, review the progress of the planning effort, comment on data as it is developed, and review drafts of planning recommendations.

Kickoff Meeting

Once project data has been compiled, we will meet with Town staff and other stakeholders for a project orientation/kick-off meeting. The purpose of the meeting will be to accomplish the following tasks:

- Confirm project work plan.
- Confirm the project team has gathered all relevant information about the project.
- Discuss public meetings.
- Discuss PARTF Grant application.
- Review any current park sites being considered by the Town.
- Discuss the Town's vision for Town parks and the role they play in Waynesville.

SYSTEMWIDE PARKS AND RECREATION MASTER PLAN

Following the kick-off meeting, Benesch will assist the Town with preparing a Systemwide Parks and Recreation Master Plan. The following steps will be taken in developing the Plan:

I. Facilities Inventory

This inventory will include:

- Inventory of all publicly operated park and recreational facilities within the town. It will include all municipal parks, county parks and any state and federally operated facilities that currently serve town residents. Parks will be inventoried to provide information on the existing recreation facilities; including the number, size, and quality of existing facilities. All facilities will be rated based on their physical condition, code and safety compliance and proximity to the target population. Information on existing facilities will be provided by Town staff. Benesch will tour existing facilities with Town representatives. These park visits will be scheduled in conjunction with the first public workshop.
- Inventory of all school athletic facilities within the town limits. School facilities will be broken into two categories; those currently being used for public recreation and those used only for school activities. Information on existing facilities will be provided by the Town staff.
- Inventory of private recreation opportunities in the town's service area. Public recreation facilities should not compete with private providers, but should complement facilities offered by the private sector. Knowing what facilities are available through private venues is an important component of the inventory. Assistance from the Town staff will be required for this inventory.

Each of these parks and recreation facilities will be mapped to show geographical distribution within the community. Benesch will utilize GIS information readily available on the County's website for this mapping.

Demographics

As part of the inventory process, Benesch (working from data provided by the Town's Development Services or NC Office of Budget and Management) will analyze the current and projected population for Waynesville. This analysis will identify where people currently reside within the service area and where future growth is expected.

This analysis will focus on age, gender, and socio-economic factors that may affect demand for recreation facilities and programs.

II. Public Input

The next step in the comprehensive planning process is obtaining citizens' desires for park and recreation facilities and programs. The public input process is not a one-time event, but is an ongoing effort throughout the entire planning process. The public input process will include several means of collecting data. An important component of this part of the planning process will be recording the information gathered. All meetings and interviews will include sign-in sheets and written notes.

Public input will be obtained through:

Public Workshops

As part of this systemwide planning process, two public workshops will be held to encourage public input. These workshops are organized to gather information from the public to begin the plan and later the public will be invited to review draft recommendations.

Information Gathering Workshop (1)

The first public workshop will introduce the public to the planning process and share information gathered during the inventory. This meeting will be designed to gain input regarding the public's desire for public recreation and the demand for park facilities.

Benesch will assist the Town with this initial workshop by developing a workshop format and script and providing any exhibits needed for the meeting. We will facilitate the workshop and provide a summary of the input received.

Plan Review Workshop (1)

As the plan is being developed (typically as part of developing the Master Plan Recommendations), we will hold a second workshop to allow the public to voice their opinions on the proposed recommendations. This meeting will allow the public to comment on the importance of various recreation facilities and the need for parkland.

In addition to these two workshops, the public will be given an opportunity to review the final report when we present the Systemwide Master Plan to the Recreation and Parks Advisory Commission and the Board of Aldermen.

Public workshops will be advertised through public service announcements, listing on the Town's website, and other sources available to the Town. Town staff will be responsible for advertising and promoting the meetings and arranging the meeting space.

Recreational Needs Survey

The Town has a very good track record for reaching out to the community and asking for input on recreational programs and facilities. We will use this community survey structure to gather information specifically for the Systemwide Master Plan.

Working with Town staff, Benesch will develop a two or three page survey questionnaire designed to gather public input on current use of existing parks and facilities and the public's desire for new or expanded facilities. From this survey we will develop a Needs Assessment for both parks and recreation facilities.

The survey will be placed on the Town's website and department's Facebook page. It will also be sent out through the department's list of contacts and distributed at the Recreation Center and Armory. Town staff will be responsible for distributing the survey and recording results. Benesch will incorporate findings from the survey into the Community Needs Assessment.

Through this multi-media broadcast focus, we hope to receive 200 completed surveys.

III. Analysis of Standards and Trends

The next step in the systemwide planning process will be to establish standards of service for parks and recreational facilities. The initial phase of this step is a review of national, state, and community standards for park and recreational facilities used by other similar communities. This review will look at established standards for park acreage for the various park types, as well as standards for recreational facilities (number of baseball fields, playgrounds, picnic facilities, etc.).

This review of current standards with other town, state, and national standards will result in the recommendation of standards specifically for Waynesville. It is anticipated that some of these standards will match standards used by other departments, while others will be unique to Waynesville. The newly created standards will be based on the town's make-up, current facility offerings, new trends in parks and recreation demand, and desires expressed by the public.

Standards will be established with direction from the MPAC, input from the public meetings, and the community survey.

Input from the public meetings and survey will lead to the establishment of park and recreation standards specifically for Waynesville.

IV. Community Needs Assessment

In this step we use the standards for parks and recreational activities developed in the Analysis and Trends Phase to establish community park and recreation needs. By overlaying the Town's population with these park standards and comparing them with existing facilities, this study will establish a community-wide needs assessment. This assessment will determine where park development efforts should be focused. Based on this assessment, the plan will identify recreational activities that are needed by the citizens of Waynesville. It will identify the types and quantity of recreational facilities that will be needed to meet public demand for recreation. This analysis will identify existing needs and use projected population information to determine the needs for the next ten years.

Once the overall needs assessment has been developed, this study will evaluate current park and recreation operations to determine the most efficient development and delivery system to meet these needs. This portion of the Systemwide Master Plan study will look at all park and recreation providers (town, county, schools, and private sector) to determine how each of these entities can work together to provide citizens with park and recreation services.

A meeting with the MPAC will be held during this phase to discuss Public Input, Analysis of Standards, and the Needs Assessment.

V. Systemwide Master Plan Recommendations

With the needs assessment complete, the Systemwide planning process will establish recommendations for future development and operation of parks and recreation services throughout the community.

Systemwide Master Plan Recommendations will be focused to address the following issues:

- Recommendations for future development and operations of the department.
- Recommendations and strategies for service delivery, facility development, and project capital improvement program cost.
- Recommendations for recreation facilities, trails and parks.

VI. Plan of Action

With an understanding of recreational needs, the study will develop a Plan of Action that will provide the following:

Operations

- This study will not include detailed recommendations on organizational structure for the parks and recreation department, staffing determination, or cost of operations for the department, but will address overall operational issues associated with the department.
- Provide an operational overview of existing and proposed facilities to determine agency (state, county or local government) responsibilities.
- Provide recommendations on joint-use opportunities between the town, the county and the state, and the local school board.

Program Assessment

This study excludes a detailed analysis of recreation programs, but it will look at programs as they relate to facility needs. It will seek public input on the types of recreational activities that are desired and establish a list of needed facilities to meet that demand. With this understanding, this study will look at programs from a facility requirement standpoint.

Capital Improvement Project/Land Acquisition

- Develop a ten-year plan for parks and recreation facilities. Identify agency responsible for future parks and recreation facilities.
- Create a model for an integrated system of park facilities, including parks of various types; as well as trails, cultural facilities, and open space.
- Suggest strategic acquisition of property of adequate size and location to meet current and future needs. This aspect of the plan is not site specific. This study will generally identify areas throughout the town where facilities/public open space is needed. Where applicable, this study may make recommendations of known specific lands/facilities that may be available that meet certain park needs. This study does not include a search for actual park sites.
- Provide information on alternate means of developing and operating recreational facilities, such as tax programs, bond referendums, impact fees, dedication of land for use by developers, and enhancing joint-use of community school facilities.
- Prepare a prioritized schedule for capital construction and land acquisition for the next decade; developed in five-year increments.
- Prepare order of magnitude cost estimates for proposed recreational facilities.

VII. Final Documentation

The final systemwide planning document will be an 8 ½"x11" report with 11"x17" map foldouts, which will outline the planning approach, existing facility inventory and analysis phases, and will conclude with a summary and plan of action. This report will include appropriate maps, diagrams, and tables as required to convey plan intent. Eight (8) copies of a first draft report will be submitted to the MPAC for review. A meeting will be held to receive their input. The plan will be revised based on their comments.

Once approved by the MPAC, Benesch will provide ten (10) copies of the final master plan for the Recreation and Parks Advisory Commission review and approval. We have included one presentation of the master plan to the Commission.

With the approval of the Recreation and Parks Advisory Commission, we will provide five (5) copies of the final master plan to the Board of Aldermen for review and approval. We will be available to present the final document to the Board.

SITE SPECIFIC MASTER PLAN

Following the Community Needs Assessment and development of Systemwide Master Plan Recommendations (as part of the community-wide planning process), we anticipate one park site will emerge as the logical location for park development. This does not imply the Systemwide Plan will not make recommendations for park improvements throughout the community, but based on previous discussions, there will likely be one focal point for park development. As part of the planning process, Benesch will develop a Site Specific Master Plan for this park. Based on discussions in our scoping meeting of July 26, we believe Site Specific Master Plans will be developed for Vance Street Park and Recreation Parks. We anticipate including both parks in a combined Site Specific Master Plan process.

Site Analysis and Assessment

As per PARTF requirements for the Site Specific Master Plan, Benesch will conduct a Site Analysis and Assessment on this park site. This task will consist of gathering relevant planning, land use, environmental, and property value information about the site being considered for park development/expansion. Information we anticipate gathering includes:

- Zoning/land use
- Topography
- Soils
- Hydrology, flood plain
- Utilities
- Vehicular and Pedestrian Access
- Surrounding Land Use

Public Workshop No. 1

Following our site analysis we will conduct a public workshop to allow citizens to share their desires for park development. The public will be invited to a "Drop-In" workshop to view displays on the existing conditions of the site, consider recreation facilities/improvements that might be appropriate for this park and ultimately vote on the activities they would like to see developed. Through this process we will

gather information that will assist us as we develop a program for park renovation. This workshop will be held in conjunction with the public workshop to discuss the Systemwide Plan. Benesch will provide all displays for this public drop-in workshop and will facilitate sign-in, participant orientation, and be available to discuss the project informally with those in attendance. The Town will be responsible for advertising and promoting the workshop and making arrangements for meeting rooms and other meeting logistics.

Concept Development

Based on the findings from the systemwide plan, public input, and site analysis, Benesch will prepare a preliminary concept plan for park improvements. This illustrative plan will utilize the information gathered in the assessment phase and incorporate the park program established by the Town/MPAC as part of the systemwide planning process. We will propose site-specific design solutions for various project elements. Likewise, we will illustrate and describe the location of each project element and the inter-relationship of one project element to another. A cost estimate will be prepared for the design concept. We will submit the plan to the Town/MPAC for review, comment, and recommendations. The concept will be revised accordingly.

Public Workshop No. 2

Following the Town/MPAC's approval of the concept plan, we will facilitate a second public workshop.

The concept plan will be taken to the public using a format similar to the first public workshop to gauge the level of support and to reach consensus on the design and location of the proposed facilities. Assuming a positive meeting outcome, we will utilize the concept plan to develop the Site Specific Master Plan Document.

Site Specific Master Plan Document

Using the draft illustrative master plan as a basis of design, a final written report will be prepared. The final report and graphic illustrations will serve as an action plan, providing the Town with a work plan for implementing the various components of site development. In addition to the graphic portion of the master plan, the accompanying text will describe the planning process, identify project priorities, estimate construction cost, identify phasing strategies if needed, establish inter-agency responsibilities with regard to future development and maintenance, and set other tasks to be completed.

Copies of the Site Specific Master Plan Document will be submitted to the Town staff/MPAC for review and comment at the 75% completion stage. Upon staff approval of the draft copy, the document will be finalized. This master plan will meet PARTF grant requirements. Ten paper copies and one digital of the master plan will be provided to the Town.

Presentations

The development of the Site Specific Master Plan will ultimately be completed in conjunction with the Systemwide Plan. The Site Specific Master Plan will be presented to both the Recreation and Park Advisory Committee and the Board of Aldermen at the same time as the Systemwide Parks and Recreation Master Plan.

DESIGN FEES

Based on our current knowledge of work, as well as discussions with staff and council regarding the project, Benesch will work with the Town on a phased fixed fee for the services listed above as follows:

Information Gathering/Kick-Off Meeting	\$4,800
Systemwide Parks & Recreation Master Plan	\$30,100
Inventory	\$4,200
Public Workshops (2)	\$5,000
Recreational Needs Survey	\$1,800
Analysis of Standards/Trends	\$2,000
Community Needs Assessment	\$2,200
Master Plan Recommendations	\$3,600
Action Plan	\$4,800
Final Documentation/Presentations	\$6,500
Site Specific Master Plan	\$17,100
Site Assessment	\$3,800
Public Workshops #1	*
Concept Development	\$5,200
Public Workshop #2	\$2,500
Site Specific Master Plan	\$5,600
Final Presentation	*
Total Benesch Design Services	\$52,000

*Public Workshop #1 and Final Presentation for the Site Specific Master Plan will be held in conjunction with the Systemwide Parks and Recreation Master Plan.

Reimbursable Expense Allowance **\$2,500**

Reimbursable expenses are costs incurred for mail, printing, travel and postage. These will be billed to the Town on a direct cost as expended. The reimbursable allowance is in addition to the above basic Design fees.

Optional Telephone Survey **\$9,500**

Hourly Rates

The fees listed above are based on the following hourly rates:

Project Manager I	\$100.00
Project Manager II	\$124.00
Senior Project Manager	\$147.00
Project Principal	\$174.00
Landscape Architect I	\$84.00

Landscape Architect II	\$93.00
Landscape Designer I	\$56.00
Landscape Designer II	\$70.00
Senior Landscape Designer	\$100.00
Project Engineer I	\$87.00
Project Engineer II	\$103.00
Designer I	\$73.00
Designer II	\$81.00
Senior Designer	\$90.00
Administrative Assistant	\$56.00

These hourly rates will be utilized if additional services are required. No additional service will be undertaken without written authorization from the Town.

SCHEDULE

We have included a proposed schedule for completing the work described above. The schedule is intended for initial review and discussion and will be modified or confirmed during the project kick-off meeting.

Rhett, I have enjoyed discussing this project with you and Elizabeth and am very excited about the opportunity to work with you and the Town on the plans. Your, or the appropriate Town representative's, signature below will allow us to begin work on the project.

The attached standard General Conditions for Professional Services is incorporated into and made a part of this agreement.

Sincerely,



Derek Williams, PLA
Vice President

AGREEMENT AND AUTHORIZATION TO PROCEED WITH THE SCOPE OF WORK INDICATED ABOVE.

Town of Waynesville

Date

Proposed Schedule for Town of Waynesville Systemwide Master Plan & Site Specific Master Plan

Systemwide Master Plan & Site Specific Master Plan	2016												2017							
	Aug			Sept			Oct			Nov			Dec			Jan			Feb	
Execute Contract																				
Systemwide Master Plan																				
Information Gathering																				
Kick-Off Meeting																				
Inventory																				
Recreational Needs Survey																				
Public Workshops (2)																				
Analysis of Standards/Trends																				
Community Needs Assessment																				
Master Plan Recommendations																				
Action Plan																				
Final Documentation/Presentations																				
Site Specific Master Plan																				
Site Assessment																				
Public Workshops (2)																				
Concept Development																				
Final Master Plan Document																				
Final Presentations																				

GENERAL CONDITIONS

SECTION I - SERVICES BY CONSULTANT

1.1 General

CONSULTANT shall provide services under this AGREEMENT only upon request of the CLIENT, and only to the extent defined and required by the CLIENT. These services may include the use of outside services, outside testing laboratories, and special equipment. Attachments to this AGREEMENT are as identified on the signature page to this AGREEMENT or using serially numbered Work Authorizations, and with these GENERAL CONDITIONS, are all as attached hereto, and made a part of this AGREEMENT.

1.2 Scope of Services and Fees

The services to be performed by CONSULTANT and the associated fee are attached hereto and made a part of this AGREEMENT or using by serially numbered Work Authorizations, all as identified on the signature page to this AGREEMENT, and shall be performed by the CONSULTANT in accordance with the CLIENT's requirements. It is mutually understood that CONSULTANT'S fee is not a firm contractual amount except the total fee by the CONSULTANT shall not be exceeded unless authorized in writing by the CLIENT. The intent of the Scope of Services is to identify the services to be provided by CONSULTANT. However, it is specifically understood that by written notice to CONSULTANT, CLIENT can decrease or, with concurrence of CONSULTANT, increase the Scope of Services.

SECTION II - PAYMENTS TO CONSULTANT

2.1 Method of Payment

Payment for CONSULTANT'S personnel services and direct expenses shall be expressed in U. S. dollars, and based on the Method of Payment which is identified on the signature page to this AGREEMENT or serially numbered Work Authorizations, attached hereto, and made a part of this AGREEMENT.

2.2 Payment for Personnel Services

2.2.1 Payment

Payment for the services rendered by CONSULTANT's personnel shall be based on the hours of chargeable time and in accordance with CONSULTANT's Schedule of Unit Rates, which is identified on the signature page to this AGREEMENT and attached hereto, and made a part of this AGREEMENT.

2.2.2 Chargeable Time

Chargeable time for CONSULTANT's personnel is that portion of their time devoted to providing services requested by CLIENT. Chargeable time for field personnel located away from CONSULTANT's office for more than one week is a minimum of eight hours per day and five days per calendar week, except for federally declared legal holidays or during an employee's sick leave or vacation time. Travel time from CONSULTANT's office to an assigned work site, and return to CONSULTANT's office, is chargeable time; or if more economical for CLIENT, CONSULTANT shall lodge its personnel overnight near the work site in lieu of traveling back to CONSULTANT's office at the end of each work day.

2.2.3 Overtime Rates

The basis for payment to CONSULTANT for each hour worked in excess of forty (40) hours in any calendar week shall be the applicable hourly rate as specified in the Schedule of Unit Rates.

2.3 Payment for Direct Expenses

2.3.1 Payment

For Direct Expenses incurred by CONSULTANT, payment to CONSULTANT by the CLIENT shall be in accordance with CONSULTANT's Schedule of Unit Rates.

2.3.2 Direct Expenses

For the purposes of this AGREEMENT, Direct Expenses to be contracted and managed by CONSULTANT and payable by CLIENT to CONSULTANT shall include: Outside Services including the services and reimbursable expenses for firms other than CONSULTANT which are necessary for the work the CONSULTANT is directed to perform; Laboratory Tests and related reports necessary for the work the CONSULTANT is directed to perform, either by the CONSULTANT or by an outside service for the CONSULTANT; Special Equipment expenses including the costs of the CONSULTANT locating, acquiring, leasing, or renting any equipment or facilities not currently owned, leased, or rented by CONSULTANT at the time of the request for services which are necessary to enable CONSULTANT to provide the services requested; vehicles furnished by CONSULTANT for CONSULTANT's authorized travels and for CONSULTANT's field personnel; Per Diem expense or actual costs of maintaining CONSULTANT's field personnel on or near the Project site, for each day of field assignment away from CONSULTANT's office; and Other Direct Expenses associated with all services provided hereunder and identified in the Schedule of Unit Rates.

2.4 Payment Conditions

2.4.1 CONSULTANT shall submit monthly invoices for all personnel services and direct expenses under this AGREEMENT and a final invoice upon completion of services.

2.4.2 Invoices are due and payable upon receipt by CLIENT. Interest at a rate of 1.5% per month, or the maximum allowed by law, will be charged on all past due amounts starting thirty (30) days after date of invoice. Payments will first be credited to interest and then to principal.

2.4.3 In the event of a disputed or contested invoice, only that portion so contested will be withheld from payment and the CLIENT will pay the undisputed portion. No interest will accrue on any reasonably contested portion of the invoice until mutually resolved.

2.4.4 If CLIENT fails to make payment in full to CONSULTANT within sixty (60) days after the date of the undisputed invoice, CONSULTANT may, after giving seven (7) days' written notice to CLIENT, suspend services under this AGREEMENT until paid in full, including interest. CONSULTANT shall have no liability to CLIENT for delays or damages caused by such suspension of services. CLIENT agrees to pay all costs of collection, including reasonable attorney's fees, incurred by CONSULTANT as a result of CLIENT's failure to make payments in accordance with this AGREEMENT. No final plans, documents or reports will be released for any purpose until CONSULTANT has been paid in full.

2.4.5 The billing rates specified in the Schedule of Unit Rates for subsequent years shall be adjusted annually in accordance with CONSULTANT's costs of doing business, subject to CLIENT's review and concurrence.

SECTION III - Term of Agreement

3.1 Term

CONSULTANT's obligations to perform under this AGREEMENT shall extend from the date of execution until terminated by either party.

3.2 Abandonment of Work

CLIENT shall have the absolute right to abandon any work requested hereunder or to change the general scope of the work at any time, and such action on its part shall in no event be deemed a breach of contract.

3.3 Termination of AGREEMENT

3.3.1 Termination with Cause

The obligation to provide further services under this AGREEMENT may be terminated with cause by either party. In the event of such termination, either party will promptly notify and confirm the termination in writing to the other party. The termination will be effective seven (7) days after delivery of written notice thereof. In the event of termination by CONSULTANT caused by failure of the CLIENT to perform in accordance with the terms of this AGREEMENT, CLIENT shall pay for all services performed prior to the effective date of the termination, including all project termination expenses, collection fees and legal expenses. CONSULTANT shall prepare a progress report, including information as to all the services performed by CONSULTANT and the status of the services as of the date of the termination, and provide information and documents developed under the terms of this AGREEMENT to the CLIENT upon receipt of final payment. In the event of termination by the CLIENT caused by failure by CONSULTANT to perform in accordance with the terms of this AGREEMENT, CONSULTANT shall prepare a progress report, including information as to all the services performed by CONSULTANT and the status of the services as of the date of the termination and provide information and documents developed under the terms of this AGREEMENT to the CLIENT. Upon receipt of all other information and documents, CLIENT shall pay CONSULTANT for services performed prior to the effective date of the termination.

3.3.2 Termination without Cause

Either party may, at its sole discretion, terminate this AGREEMENT without cause at any time. In the event of such termination, the terminating party will promptly notify and confirm the termination in writing to the other party. The termination will be effective seven (7) days after delivery of written notice thereof. Upon termination, CONSULTANT shall prepare a progress report, including information as to all the services performed by CONSULTANT and the status of the services as of the date of the termination, and provide information and documents developed under the terms of this AGREEMENT to the CLIENT upon receipt of final payment.

3.4 Payment for Work Upon Abandonment or AGREEMENT Termination

If CLIENT abandons requested work or terminates this AGREEMENT, CONSULTANT shall be paid on the basis of work completed to the date of abandonment or effective date of termination. CONSULTANT shall perform no activities other than reasonable wrap-up activities after receipt of notice of abandonment or termination. Payment for the work shall be as established under Section II.

SECTION IV - General Considerations

4.1 Assignment and Responsibility for Personnel

4.1.1 The assignment of personnel and all phases of the undertaking of the services which CONSULTANT shall provide hereunder shall be subject to the oversight and general guidance of CLIENT.

4.1.2 While upon the premises of CLIENT or property under its control, all employees, agents, and subconsultants of CONSULTANT shall be subject to CLIENT's rules and regulations respecting its property and the conduct of its employees thereon.

4.1.3 However, it is understood and agreed that in the performance of the work and obligations hereunder, CONSULTANT shall be and remain an independent Consultant and that the employees, agents or subconsultants of CONSULTANT shall not be considered employees of or subject to the direction and control of CLIENT. CONSULTANT shall be responsible for the supervision and performance of all subconsultants which are to perform hereunder.

4.2 Insurance

4.2.1 CONSULTANT shall furnish CLIENT a certificate of insurance upon request showing amounts and types of insurance carried by CONSULTANT, which certificate shall contain a commitment by the Insurance Company that during the time any work is being performed by CONSULTANT under this AGREEMENT it will give CLIENT notice of cancellation or non-renewal of the insurance coverage shown on such certificates in accordance with policy provisions.

4.3 Successors and Assigns

4.3.1 CLIENT and CONSULTANT each binds itself and its partners, successors, executors, administrators, assigns, and legal representatives to the other party to this AGREEMENT and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all covenants, agreements, and obligations of this AGREEMENT.

4.3.2 Neither CONSULTANT nor CLIENT shall assign or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this AGREEMENT without the written consent of the other party, except as stated in paragraph 4.3.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this AGREEMENT. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent consultants, associates, and subconsultant's as it may deem appropriate to assist in the performance of services hereunder.

4.3.3 Nothing herein shall be construed to give any rights or benefits hereunder to any one other than CLIENT and CONSULTANT except as otherwise provided herein.

4.4 Compliance with Law

4.4.1 CONSULTANT shall comply with, and cause its subconsultants to comply with, applicable Federal, state, and local laws, orders, rules, and regulations relating to the performance of the services CONSULTANT is to perform under this AGREEMENT.

4.4.2 Neither the CONSULTANT nor the CONSULTANT's agents or employees shall discriminate against any employee or applicant for employment to be employed in the performance of this AGREEMENT with respect to hiring, tenure, terms, conditions, or privileges of employment, because of race, color, religion, sex, or national origin.

4.5 Ownership and Reuse of Documents

4.5.1 All drawings, specifications, test reports, and other materials and work products which have been prepared or furnished by CLIENT prior to this AGREEMENT shall remain CLIENT's property. CONSULTANT shall be permitted to rely on CLIENT furnished documents and CLIENT shall make available to CONSULTANT copies of these materials as necessary for the CONSULTANT to perform the services requested hereunder.

4.5.2 All drawings, specifications, test reports, and other materials and work products, including computer aided drawings, designs, and other data filed on electronic media which will be prepared or furnished by CONSULTANT (and CONSULTANT's independent professional associates and subconsultants) under this AGREEMENT, are instruments of service in respect to the Project and CONSULTANT shall retain an ownership and property interest therein whether or not the Project is completed. CLIENT may make and retain copies for information and reference in connection with the use and the occupancy of the Project by CLIENT and others; however, such documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Project or on any other project. Further, CONSULTANT makes no warranty as to the compatibility of computer data files with computer software and software releases other than that used by CONSULTANT in performing services herein, and to the condition or availability of the computer data after an acceptance period of thirty (30) days from delivery to CLIENT. Any reuse without written verification or adaptation by CONSULTANT for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to CONSULTANT or to CONSULTANT's independent professional associates or subconsultants, and CLIENT shall indemnify and hold harmless CONSULTANT and CONSULTANT's independent professional associates and subconsultants from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle CONSULTANT to further compensation at rates to be agreed upon by CLIENT and CONSULTANT.

4.6 Severability

If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

4.7 Location of Underground Utilities

It shall be the CLIENT's responsibility to locate and physically mark all underground utilities and structures which lie within the work area prior to the start of subsurface investigations. If the CLIENT elects not to assume this responsibility, CLIENT shall notify

CONSULTANT and shall compensate CONSULTANT for all costs associated with locating and physically marking said underground utilities and structures over and above the estimated project fee. CLIENT shall indemnify and hold CONSULTANT harmless from any damages and delays resulting from unmarked or improperly marked underground utilities and structures. For reasons of safety, CONSULTANT will not begin work until this has been accomplished.

4.8 Subsurface Investigations

In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics might vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect Project cost and/or execution. These conditions and cost/execution effects are not the responsibility of the CONSULTANT.

4.9 CONSULTANT's Personnel at Project Site

4.9.1 The presence or duties of the CONSULTANT personnel at a Project site, whether as onsite representatives or otherwise, do not make the CONSULTANT or its personnel in any way responsible for those duties that belong to the CLIENT and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the project documents and any health or safety precautions required by such construction work. The CONSULTANT and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor or other entity or any other persons at the site except CONSULTANT's own personnel.

4.9.2 The presence of CONSULTANT's personnel at a construction site is for the purpose of providing to CLIENT a greater degree of confidence that the completed work will conform generally to the project documents and that the integrity of the design concept as reflected in the project documents has been implemented and preserved by the contractor(s). CONSULTANT neither guarantees the performance of the contractor(s) nor assumes responsibility for contractor(s)' failure to perform their work in accordance with the project documents.

4.10 Opinions of Cost, Financial Considerations, and Schedules

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the Project, the CONSULTANT has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions. CONSULTANT's opinions of probable Total Project Costs and Construction Costs provided for herein as appropriate are made on the basis of CONSULTANT's experience and qualifications and represent CONSULTANT's judgments as an experienced and qualified professional consultant familiar with the construction industry. CONSULTANT makes no warranty that the CLIENT's actual Total Project

or Construction Costs, financial aspects, economic feasibility, or schedules will not vary from the CONSULTANT's opinions, analyses, projections, or estimates. If CLIENT wishes greater assurance as to any element of the Total Project or Construction cost, feasibility, or schedule, CLIENT will employ an independent cost estimator, contractor, or other appropriate advisor.

4.11 Disposition of Samples and Equipment

4.11.1 Disposition of Samples

No samples and/or materials will be kept by CONSULTANT longer than thirty (30) days after submission of the final report unless agreed otherwise.

4.11.2 Hazardous or Potentially Hazardous Samples and Materials

In the event that samples and/or materials contain or are suspected to contain substances or constituents hazardous or detrimental to health, safety, or the environment as defined by federal, state, or local statutes, regulations, or ordinances, CONSULTANT will, after completion of testing, return such samples and materials to CLIENT, or have the samples and materials disposed of in accordance with CLIENT's directions and all applicable laws. CLIENT agrees to pay all costs associated with the storage, transportation, and disposal of samples and materials. CLIENT recognizes and agrees that CONSULTANT at no time assumes title to said samples and materials, and shall have no responsibility as a handler, generator, operator, transporter, or disposer of said samples and materials.

4.11.3 Contaminated Equipment

All laboratory and field equipment contaminated in CONSULTANT's performance of services will be cleaned at CLIENT's expense. Contaminated consumables will be disposed of and replaced at CLIENT's expense. Equipment (including tools) which cannot be reasonably decontaminated shall become the property and responsibility of CLIENT. At CLIENT's expense, such equipment shall be delivered to CLIENT, or disposed of in the same manner specified in 4.11.2 above. CLIENT agrees to pay CONSULTANT the fair market value of any such equipment which cannot reasonably be decontaminated and is delivered to CLIENT pursuant to this AGREEMENT.

4.12 Discovery of Unanticipated Pollutant and Hazardous Substance Risks

4.12.1 If CONSULTANT, while performing the services, discovers pollutants and/or hazardous substances that pose unanticipated risks, it is hereby agreed that the scope of services, schedule, and the estimated cost of CONSULTANT's services will be reconsidered and that this AGREEMENT shall immediately become subject to renegotiation or termination.

4.12.2 In the event that the AGREEMENT is terminated because of the discovery of pollutants and/or hazardous substances posing unanticipated risks, it is agreed that CONSULTANT shall be paid for its total charges for labor performed and reimbursable charges incurred to the date of termination of this AGREEMENT, including, if necessary, any additional labor or reimbursable charges incurred in demobilizing.

4.12.3 CLIENT also agrees that the discovery of unanticipated pollutants and/or hazardous substances may make it necessary for CONSULTANT to take immediate measures to protect health and safety. CONSULTANT agrees to notify CLIENT as soon as practically possible should unanticipated pollutants and/or hazardous substances be suspected or encountered. CLIENT authorizes CONSULTANT to take measures that

in CONSULTANT's sole judgment are justified to preserve and protect the health and safety of CONSULTANT's personnel and the public. CLIENT agrees to compensate CONSULTANT for the additional cost of taking such additional precautionary measures to protect employees' and the public's health and safety. This section is not intended to impose upon CONSULTANT any duties or obligations other than those imposed by law.

SECTION V - Professional Responsibility

5.1 Performance of Services

Client acknowledges that the performance of professional services is not an exact science, and errors and omissions may occur that are within the industry standard of practice which states that CONSULTANT will strive to perform services under this AGREEMENT in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this AGREEMENT, or in any report, opinion, document, or otherwise.

5.2 Limitation of Liability

CLIENT and CONSULTANT agree to allocate certain of the risks so that, to the fullest extent permitted by law, CONSULTANT's total liability to CLIENT is limited to the available limit of CONSULTANT's insurance coverage or the total fee for Services rendered on this Project, whichever is less, this being the CLIENT's sole and exclusive remedy for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's fees) arising out of this AGREEMENT from any cause or causes. Such causes include, but are not limited to, CONSULTANT's negligence, errors, omissions, strict liability, breach of contract, or breach of warranty.

5.3 No Special or Consequential Damages

CLIENT and CONSULTANT agree that to the fullest extent permitted by law neither party shall be liable to the other for any special, indirect, or consequential damages whatsoever, whether caused by either party's negligence, errors, omissions, strict liability, breach of contract, breach of warranty, or other cause or causes.

5.4 Indemnification

To the fullest extent permitted by law, CLIENT agrees to defend, indemnify, and hold CONSULTANT, its officers, directors, employees, and, subconsultants harmless from and against any and all claims, damages, losses and expenses, defense costs including attorneys' fees, and court or arbitration costs and other liabilities arising out of or resulting from, wholly or in part, the performance of CONSULTANT's services hereunder; provided that CLIENT shall not indemnify CONSULTANT against liability for damages or expenses to the extent caused by the negligence of CONSULTANT, its officers, directors, employees, or subcontractors.

5.5 No Third Party Beneficiaries

CLIENT and CONSULTANT expressly agree that AGREEMENT does not confer upon any third party any rights as beneficiary to this AGREEMENT. CONSULTANT accepts no responsibility for damages, if any, suffered by any third party as the result of a third party's use of the work product, including reliance, decisions, or any other action taken based upon it.

CLIENT agrees that CONSULTANT's services and work products are for the exclusive present use of CLIENT.

CLIENT agrees that CONSULTANT's compliance with any request by CLIENT to address or otherwise release any portion of the work product to a third party shall not modify, rescind, waive, or otherwise alter provisions of this AGREEMENT nor does it create or confer any third party beneficiary rights on any third party.

SECTION VI - Miscellaneous Provisions

6.1 Notices

Any notice to either party herein shall be in writing and shall be served either personally or by registered or certified mail addressed to the signing party shown on the signature page.

6.2 Joint Preparation

For purposes of contract interpretation and for the purpose of resolving any ambiguity in this AGREEMENT, the parties agree that this Agreement was prepared jointly by them and/or their respective attorneys.

6.3 Headings

Headings used in this AGREEMENT are for the convenience of reference only and shall not affect the construction of this AGREEMENT

6.4 Dispute Resolution

If negotiation in good faith fails to resolve a dispute within thirty (30) days of written notice of the dispute by either party, then the parties agree that each dispute, claim or controversy arising from or related to this AGREEMENT or the relationships which result from this AGREEMENT shall be subject to mediation as a condition precedent to initiating legal or equitable actions by either party. Unless the parties agree otherwise, the mediation shall be in accordance with the Commercial Mediation Procedures of the American Arbitration Association then currently in effect. A request for mediation shall be filed in writing with the American Arbitration Association and the other party. No legal or equitable action may be instituted for a period of ninety (90) days from the filing of the request for mediation unless a longer period of time is provided by agreement of the parties. Cost of mediation shall be shared equally between the parties and shall be held in a location mutually agreed upon by the parties. The parties shall memorialize any agreement resulting from the mediation in a mediated settlement agreement, which agreement shall be enforceable as a settlement in any court having jurisdiction thereof.

Furthermore, in no circumstances shall a party to this AGREEMENT be joined by the other party to any other lawsuit, dispute or legal proceeding involving a party and any of the party's, consultants, subconsultants, lower tier subconsultants, other design professionals, construction managers, or other individuals or entities unless the parties agree to be joined in writing.

During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder.

6.5 Governing Law

This AGREEMENT is to be governed by the laws of the jurisdiction in which the project is located. For locations outside of the United States, this AGREEMENT shall be governed by the laws of the State of Illinois.

6.6 Entire Agreement

This AGREEMENT, along with those documents specified, attached, or hereby cited together, and serially numbered Work Authorizations if used, constitute the entire AGREEMENT between the parties hereto and no changes, modifications, extensions, terminations, or waivers of this agreement, or other documents, or any of the provisions herein, or therein contained, shall be valid unless made in writing and signed by duly authorized representatives of both parties.