

TOWN OF WEAVERVILLE

AGENDA

**Town Hall Council Chambers
30 South Main Street
Weaverville, NC 28787**

**September 17, 2018
Special-Called Meeting at 6:45pm
Regular Meeting at 7:00 pm**

	Pg#	Presenter
1. Special-Called Meeting	2	Public Works & WR-Martin
Public information and input meeting on Weaverville’s intent to apply to USDA, Rural Development, for financial assistance for the anticipated construction of a new 12-inch water line on Clarks Chapel Road and Ollie Weaver Road to improve the water distribution system reliability and operation.		
<hr style="border: 5px solid gray;"/>		
1. Call to Order		Mayor Root
2. Approval/Adjustments to the Agenda		Mayor Root
3. Approval of Minutes		Mayor Root
A. August 20, 2018 Town Council Regular Meeting Minutes	5	
4. Special Recognitions		Mayor Root
5. General Public Comments		Mayor Root
6. Consent Agenda		
A. Monthly Tax Report	10	Town Manager
B. Tax Releases.....	12	
C. Code Amendments – Zoning - Nonconformities, Conditional Zoning Districts, Political Signage - Set Public Hearing for October 15, 2018 at 6:30pm	13	
D. Amendment to Conditional Zoning District for Northridge Townhouses – Initial Consideration and Set Public Hearing for October 15, 2018 at 6:30 pm	26	
7. Town Manager’s Report		Town Manager
8. Discussion & Action Items		
A. Sale of Old Bus Garage.....	27	Town Attorney
B. Code Amendments – Nuisances	46	Town Attorney
C. Quarterly Reports – Public Works and Water	63	Public Works
9. Closed Session		Mayor Root
A. NCGS §143-318.11(a)(3) – To consult with an attorney employed or retained by the public body		
B. NCGS §143-318.11(a)(6) – To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee.		
10. Adjournment		Mayor Root

**TOWN OF WEAVERVILLE
TOWN COUNCIL SPECIAL CALLED MEETING**

DATE OF MEETING: September 17, 2018 at 6:45 pm

SUBJECT: Public Information and Input on Seeking USDA-RD Financing for Waterline Extension Project

PRESENTER: Public Works Director / WR-Martin

ATTACHMENT: Waterline Extension Project Maps

DESCRIPTION:

The Town proposes to construct a new 12-inch main waterline on Clarks Chapel Road and Ollie Weaver Road to improve the Town’s water distribution system reliability and operations. The estimated project cost is anticipated to be \$2,970,600, and the Town is seeking financing for 100% of the project cost. The project would be considered a Water & Environmental Quality application under USDA Rural Development and would be funded through their Water & Sewer Infrastructure Program.

This Rural Development fund offers loans of up to 40 years in length depending on project size and final review, and the current market rate (3.875% for the third quarter in 2018, but subject to change in the fourth quarter) is fixed for the life of the loan. A 40-year term is much longer in length than conventional financing, which reduces the dollar amount of each debt service payment and lessens the financial impact on the Town’s budget from year to year.

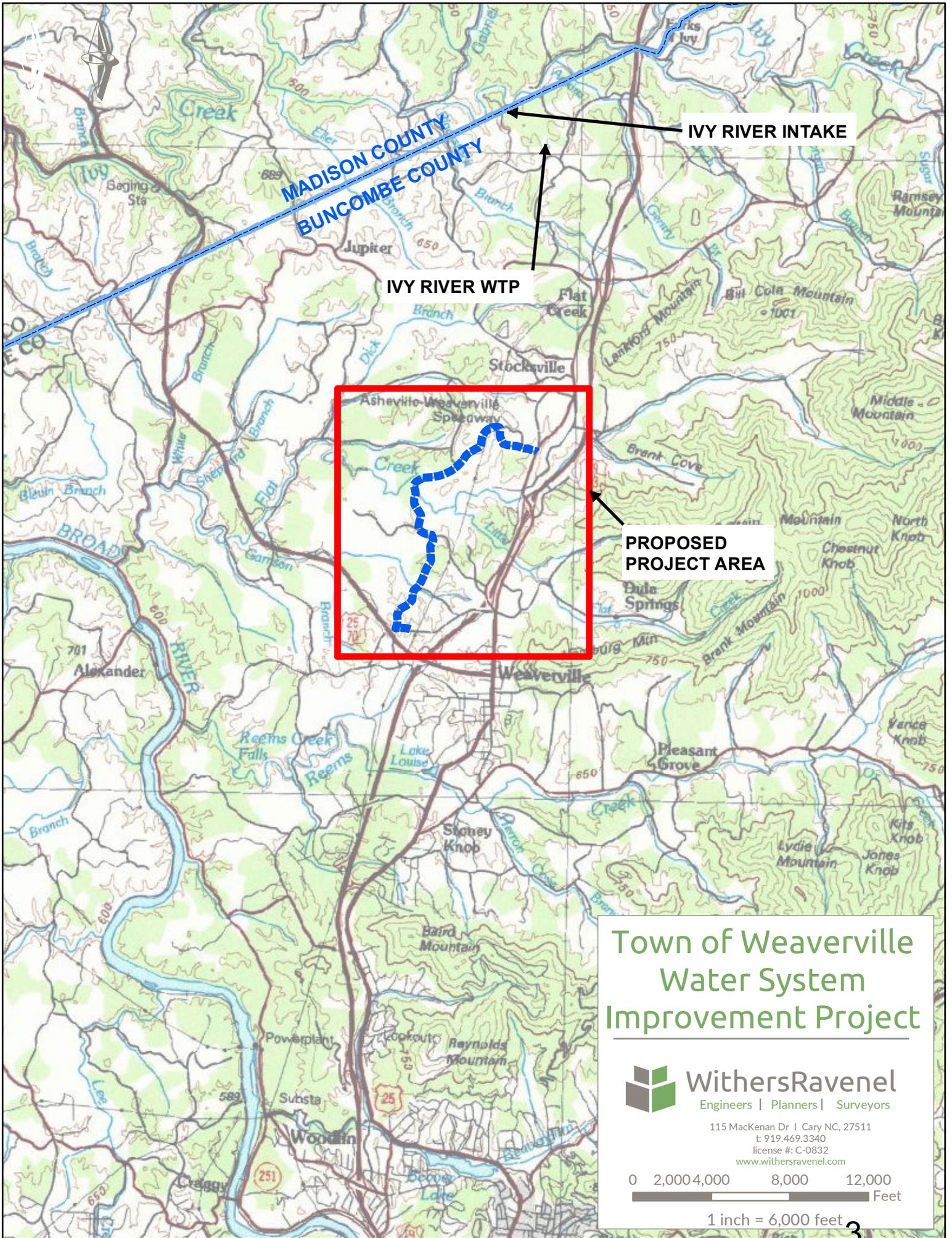
In August Town Council authorized staff to pursue Rural Development funding for this needed water line extension project and provided authorization to the Town Manager to proceed with an application.

This project and financing was included in the Town’s Capital Improvement Plan beginning with year 2021. Loan payments to USDA are tied to the Town’s water enterprise fund.

The item on tonight’s agenda follows a required Notice of Intent to Apply for Federal Assistance and Public Input Meeting that was published in the Weaverville Tribune on September 13, 2018, in accordance with federal law. Tonight’s public meeting is intended to share information about the project and receive comments and feedback from the public.

COUNCIL ACTION REQUESTED:

No formal action by Town Council is requested tonight.



MADISON COUNTY
BUNCOMBE COUNTY

IVY RIVER INTAKE

IVY RIVER WTP

PROPOSED
PROJECT AREA

Town of Weaverville Water System Improvement Project

WithersRavenel
Engineers | Planners | Surveyors

115 MacKean Dr | Cary NC, 27511
t: 919.469.3340
license #: C-0832
www.withersravenel.com

0 2,000 4,000 8,000 12,000 Feet

1 inch = 6,000 feet

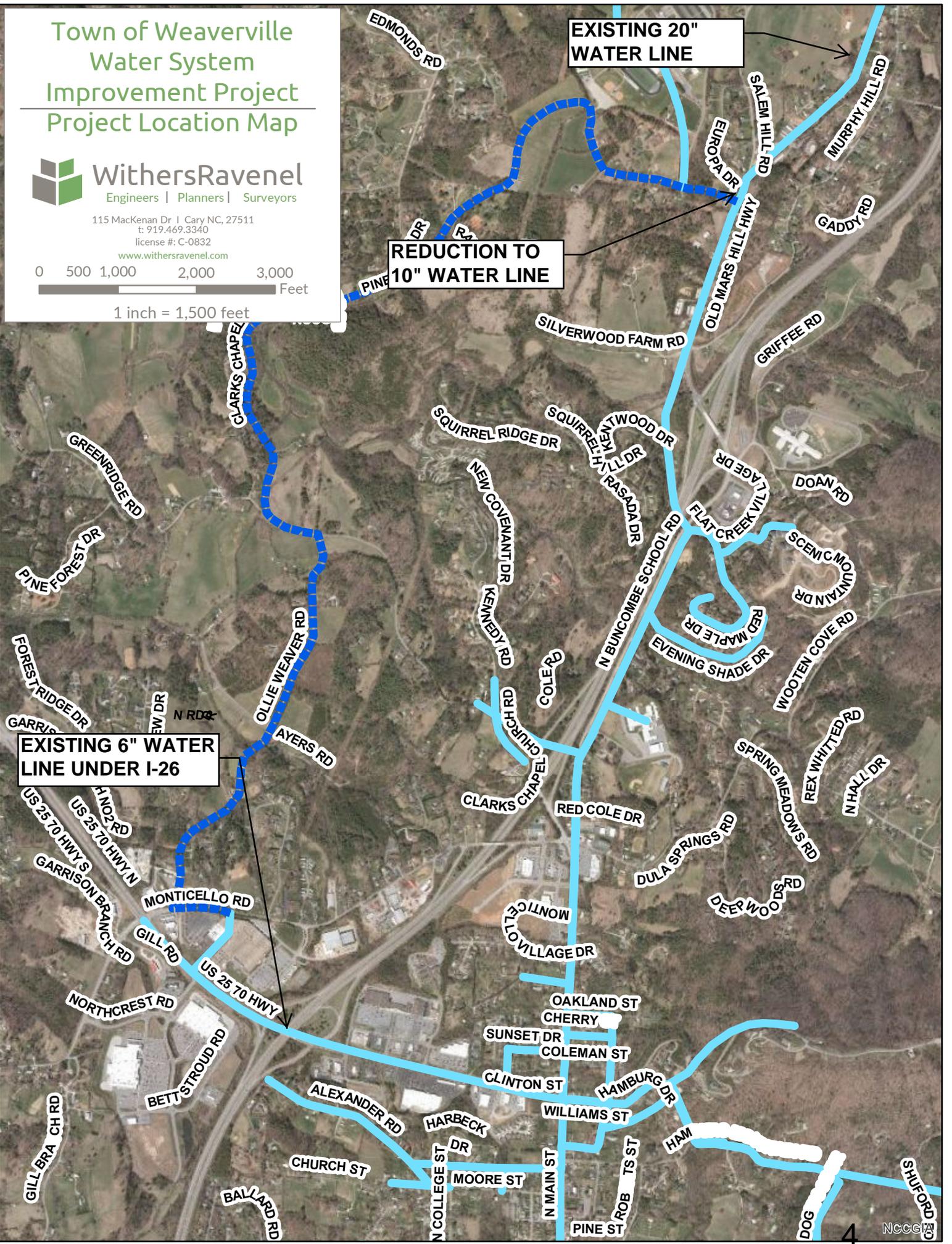
Town of Weaverville Water System Improvement Project Project Location Map



115 MacKean Dr | Cary NC, 27511
t: 919.469.3340
license #: C-0832
www.withersravenel.com



1 inch = 1,500 feet



**REDUCTION TO
10" WATER LINE**

**EXISTING 20"
WATER LINE**

**EXISTING 6" WATER
LINE UNDER I-26**



MINUTES

**TOWN OF WEAVERVILLE
STATE OF NORTH CAROLINA**

**TOWN COUNCIL REGULAR MEETING
MONDAY, AUGUST 20, 2018**

The Town Council for the Town of Weaverville met for its regular monthly meeting on Monday, August 20, 2018, at 7:00 p.m. in Council Chambers within Weaverville Town Hall at 30 South Main Street, Weaverville, North Carolina.

Council Members present were: Mayor Al Root, Councilwoman Dottie Sherrill, Councilman Doug Jackson, Councilman Jeffrey McKenna, Councilman Andrew Nagle and Councilman Patrick Fitzsimmons.

Staff present was: Town Manager Selena Coffey, Town Attorney Jennifer Jackson, Town Clerk Derek Huninghake, Police Chief Alan Wyatt, Fire Chief Ted Williams, Town Planner James Eller, Finance Officer Tonya Dozier, Public Works Director Dale Pennell and Water Treatment Plant Supervisor Trent Duncan.

1. Call to Order

Mayor Root called the meeting to order at 7:00 p.m.

2. Approval/Adjustments to the Agenda

Town Attorney Jennifer Jackson mentioned that item A under Closed Session (To consult with an attorney employed or retained by the public body in order to preserve attorney-client privilege) could be omitted.

Councilwoman Sherrill made a motion to approve the agenda with the aforementioned revisions. Councilman Fitzsimmons seconded and all voted in favor of the motion.

3. Approval of Minutes

Councilwoman Sherrill made the motion to approve the minutes from July 16, 2018 Town Council Regular Meeting and July 24, 2018 Special Called Meeting as presented. Councilman McKenna seconded the motion and all voted in favor on the approval of the minutes.

4. Consent Agenda

Councilman Jackson moved for the approval of the consent agenda. Councilwoman Sherrill seconded the motion and all voted unanimously to approve all action requested in the consent agenda.

A. FY 2017-2018 Tax Collector's Settlement – *Approval of the Resolution Approving the Tax Collector's Settlement for Fiscal Year 2017-2018*

B. Tax Release – *Approved Tax Release of \$164,501 in valuation from Kenneth Lovelace property identified as PIN 9732-70-0078 for 2010, so \$896.51 can be released from the 2010 levy.*

C. Budget Amendment: Re-Appropriations from FY 2018-2019 Budget – *Approval of Budget Amendment*

D. Road Closure Ordinance: North Buncombe Homecoming Parade & Art in Autumn – *Approval of Road Closure Ordinance for North Buncombe Homecoming Parade on Sept. 28, 2018 and Art in Autumn on Sept. 15, 2018.*

E. Board Appointments: Planning and Zoning Board, Board of Adjustment & ABC Board – *Appointed Sylvia Valois as regular member of the Board of Adjustment and reappointed Cynthia Wright of the Board of Adjustment to serve three-year terms beginning in September 2018. Appointed Gene Knoefel as alternate member on Board of Adjustment for an unexpired term beginning September 2018 and expiring September 2019.*

Reappointed Gary Burge and Catherine Cordell and Appointed Steve Warren as regular members of the Planning and Zoning Board to serve two-year terms beginning in September 2018. Reappointed John Chase to serve as alternate member on the Planning and Zoning Board to serve a two-year term beginning September 2018. Reappointed Roney Hilliard to the ABC Board to serve a three year term beginning in September 2018 and that Rob Chason be designated as the ABC Board Chairmen.

F. Waterline Acceptance/Authorization for Stall Level Approval – Bulls Bay, LLC – Central Avenue Subdivision – *Approval of Waterline Extension into Town’s Water System subject to Staff level and set the improvement defects guaranty amount of \$1500.00*

G. Re-Subdivision of Lot 55 of Reems Creek Village – Preliminary/ Final Plat Approval – *Approval of Preliminary/Final Plat of the Re-Subdivision of Lot 55 of Reems Creek Village*

H. Appointment to the French Broad River Metropolitan Planning Organization & Transportation Advisory Committee – *Appointed Councilman McKenna as the Town of Weaverville representative on the French Broad River Metropolitan Planning Organization and Transportation Advisory Committee with his term beginning immediately.*

5. General Public Comment – Doug Theroux signed up to speak about the Hawthorne at Garrison Branch action item, and Mayor Root exercised his discretion to have Mr. Theroux speak when Council got to that specific item.

6. Town Manager’s Report

Town Manager Selena Coffey presented her Manager’s Report to Council that included the Town has received an upset bid on the former Bus Garage at 13 Central Avenue in the amount of \$367,550. This has been published and any future upset bids must be received by August 27,2018; Due to legislative changes, the elections early voting period this year opens on Wednesday, October 17, instead of October 18 but will run through November 3; An update on ServLine shows that only 65 customers have opted out of the program and 100 customers have opted in to the optional line protection program; and the Town has reviewed the Greenways Memorandum of Understanding (MOU) and is waiting for further comments from Buncombe County but hopes to have the final MOU to Council by Septembers meeting.

7. Discussion and Action Items

A. Appointment of Tax Collector and Order for Collection for FY 2018-2019

Town Manager Selena Coffey informed Town Council that the current tax collector Debbie Bruce will be retiring on October 1, 2018 and asked them to appoint Derek Huninghake as the Town’s Tax Collector and Debbie Bruce as Deputy Tax Collector until the effective date of her retirement. She also mentioned that after appointing the Tax Collector, Town Council must approve the bond to be issued for the tax collector and adopt the Order of Collection for FY 2018-2019.

Councilman Jackson made a motion to appoint Derek Huninghake as the Town’s Tax Collector and that Debbie Bruce be appointed as Deputy Tax Collector until her retirement, that the bond amount be set at \$250,000 for the Tax Collector and Deputy Tax Collector through June 30, 2019, and that the Resolution Adopting the Order of Collection for FY 2018-2019 be adopted. Councilman Fitzsimmons seconded the motion. The motion passed by a unanimous vote of Council.

Town Attorney Jennifer Jackson administered the Oath of Office to Derek Huninghake

B. Waterline Extension and Allocation Request – Hawthorne at Garrison Branch

Planning and Zoning Board Chairman Doug Theroux commented that he didn’t have any issues with this project, but would first like to see the actual acreage the developer owns, since GIS doesn’t reflect the 25 acres needed for this project and if the Town can have the annexation procedure completed before the water is provided.

Public Works Director Dale Pennell informed Town Council that before them was a water commitment request for the project known as Hawthorne at Garrison Branch, formerly known as Northpoint Commons. The water

allocation request is for 66,000 GPD with peak demand of 234 gallons per minute. Public Works Director Pennell's recommendation is that we can serve this development with approximately 1,000 linear feet of water main constructed to reach the property and with 2-inch residential meters serving each residential unit at each building by branching off a waterline that is a minimum of 6-inches in diameter within the proposed development.

Town Attorney Jennifer Jackson addressed Council about the legalities of this process and mentioned that in front of them tonight was a request for water allocation. Before any development can get out of the ground, they will need to know that they have access to water because these multi-family residential units can't be easily served by wells. In order to evaluate this project, Council will usually get a preliminary conceptual idea showing what is going to be on the property. She noted that this is not a development review or approval, so if Council decides to approve the allocation it doesn't mean the development project has been approved. Councils practice has been to require these projects to annex into the Town as condition of water commitment approval and have developmental approvals go through the Town, not the County.

Marvin Mercer, Mercer Design Group, commented that the number of units decreased due to the architects' configurations not allowing for 240 units with a mixture of 2, 3, and 4 bedroom units, therefore the water allocation request is lower. He also noted that the GIS system was wrong because the developer had the property surveyed by Holmes & Associates after last meeting and it showed that they were over the 25 acres. They can give Town Council a copy of the survey if they would like. Mr. Mercer mentioned that they have listened to all the Town Departments input and implemented them into the plan.

Town Council discussed concerns with the project being constructed under the county standards, instead of the Towns standards and wondered why the number of units was lowered, but is now back up to 234.

Phil Payonk, Hawthorne Residential Partners, commented that considering the length of time on this approval process, his partners would look to build to county standards and then annex into the Town after the project has been completed. They are getting close to the end of the due diligence phase and wouldn't really have time to go through another long process like annexation. As for the number of units, Mr. Payonk doesn't remember lowering the number of units past 234, but with acquiring more land and reducing the overall density, they have incurred more costs that need to be accounted for. He stated that the real issue is they would have to go buy the property from the owner for \$1.6 million and then come back around to Council and see if they can get full approval.

Mayor Root commented that as for the delay issue, Mr. Payonk and Mr. Mercer have been contacting the Town throughout this process, so he believes they have been trying to get before the Town. However, Mayor Root noted the main issue is the Conditional Zoning District process, since it would give the Town the control of the process instead of ceding control to the county.

Town Attorney Jennifer Jackson confirmed that since this is a high density residential project, when the developers get annexed in, they will ask to be in the R-12 zoning district. Unfortunately, the R-12 zoning district doesn't give any rights or stated standards, so they don't have any assurance that they can build if they meet all the standards.

Councilman Nagle commented that the water allocation will be approved, if it is annexed into the Town and constructed under our conditions.

Tom McClellan, Attorney, mentioned that his clients have agreed to two things, a voluntary annexation and building the development in accordance with the plans submitted to the Town. The main problem is procedurally, since they can't ask for annexation or their zoning until the property is acquired. This puts his clients in a financial predicament because what if they buy the project for \$1.6 million and can't build the development to their standards.

Councilman Fitzsimmons made a motion to approve a water allocation of 66,000 gallons per day with a peak demand of 234 gallons per minute for domestic and fire protection services, to serve the Hawthorne at Garrison Branch project based on the conditions that the developer will 1.) Seek voluntary annexation into the Town of Weaverville, 2.) Provide proof of land size at 25 plus acres, 3.) Build development under confines of Town standards, and 4.) Will look substantially similar in design standards as the other Hawthorne buildings. Councilman Nagle seconded the motion.

1. Recess

Mayor Root recessed the meeting at 8:16 pm.

2. Reconvene/ Call to Order

Mayor Root called the meeting back to order at 8:27 pm.

Town Manager Selena Coffey mentioned that Council is only considering the water commitment tonight. The project will go in front of the Planning and Zoning Board when the petition for the voluntary annexation is received.

Mayor Root called for a vote on the motion. The motion failed with a 1-4 vote. Councilman Fitzsimmons was the only affirmative vote.

Councilman Nagle made a motion to approve a water allocation of 66,000 gallons per day with a peak demand of 234 gallons per minute for domestic and fire protection services, to serve the Hawthorne at Garrison Branch project which is proposed as a 234-unit residential apartment project with a pool and community buildings and the extension of the Town's water system to include construction and installation of a 12-inch water main extension from the existing 12-inch water main at or near the intersection of Monticello Road and Ollie Weaver Road to the property, and a minimum of a 6-inch water main through the property from Ollie Weaver Road to Garrison Branch Road intersection, and with such approval being conditioned upon: voluntary annexation into the Town's municipal limits and development reviews and approvals by the Town upon annexation. Councilman Fitzsimmons seconded the motion. Motion passed with a 5-0 vote.

C. Water System Capital Improvement Project

Town Manager Selena Coffey mentioned that before Town Council was a Resolution on Intent to Apply and Selection of Authorized Personnel and the Reimbursement Resolution. Once approved, both these resolutions will go towards the waterline extension project. She also noted that the Town publicized a Request for Qualification for Engineering Services for the USDA-Funded Water System Improvement Project as approved by Council at the July meeting and two proposals were received. Town Manager Coffey has reviewed them both and believes that Withers-Ravenel's qualifications are best aligned with the Town's objectives and recommends that Council award the project to them.

Town Manager Coffey and Jessica Lane, WR-Martin discussed with Council that the Federal government changed the USDA application deadline to August 17, 2018, which was last week so the Town wasn't able to get their application in on time. However, since the Federal Government usually accepts applications on a first-come, first-serve basis, the plan is to go ahead with the USDA application in the new allocated budget starting in October 2018.

Councilman Nagle made a motion to adopt the attached reimbursement resolution and resolution of intent to apply for USDA funding and, based on the Town Manager's recommendation, select and award the professional engineering services contract to WithersRavenel for Phase I waterline extension improvements and application for USDA financing. Councilman Jackson seconded the motion. The motion passed with a 5-0 vote from Council.

D. Fire Department Quarterly Report

Fire Chief Ted Williams presented the Weaverville Fire Departments Quarterly Report for May 2018 – July 2018. Chief Williams noted that there were no structural fires this quarter, however, EMS calls and motor vehicle accidents increased, and they installed 31 car seats and conducted 54 commercial business inspections.

E. Police Department Quarterly Report

Police Chief Alan Wyatt presented the Weaverville Police Departments Quarterly Report for May 2018 – July 2018. Chief Wyatt noted that there were 50 vehicle crashes this quarter with 13 individuals injured, one armed robbery in July, and felony and drug charges are staying around the same amount as last quarter.

F. Closed Session

Councilman Jackson made the motion to enter closed session as per N.C. Gen. Stat. § 143-318.11(a)(6) to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee. Councilwoman Sherrill seconded the motion and by a unanimous vote Council entered into closed session.

[CLOSED SESSION]

Councilman Jackson made the motion to exit closed session. Councilman Nagle seconded and all voted unanimously to exit closed session and re-enter open session.

G. Adjournment

Councilman Jackson made the motion to adjourn; Councilman Nagle seconded and all voted to adjourn the Council's meeting at 9.15 p.m.

DEREK K. HUNINGHAKE, Town Clerk

**TOWN OF WEAVERVILLE
TOWN COUNCIL AGENDA ITEM**

MEETING DATE: September 17, 2018
SUBJECT: Monthly Tax Report
PRESENTER: Tax Collector
ATTACHMENTS: Monthly Tax Report

DESCRIPTION/SUMMARY OF REQUEST:

The Town Tax Collector provides the following monthly tax report as of September 13, 2018. This report is provided for information only.

No action is requested or required.

**Town of Weaverville
MONTHLY TAX REPORT
FY 2018-19**

AS OF 9/13/2018

Real Property:	750,820,030	
Real Property Discoveries:	-	
Total Real Property:	-	750,820,030
Personal:	54,787,228	
Personal Discoveries:	-	
Total Personal:	-	54,787,228
Public Utilities:	4,952,725	
Exemption:	(10,656,570)	
Releases:		
Total Tax Value		799,903,413

Tax Levy @.38 cents per \$100

Real Property:		2,853,116
Personal Property:		208,191
Public Utilities:	18,820	
Less Under \$5 Adjustment	-	
Total Public Utilities:	-	18,820
Exemption:		(40,495)
Releases:		-
Total Levy (Total Billed)		3,039,633

Total Current Year Collections	186,551
% Collected	6.14%

Total Left to be Collected: **2,853,082**

Prior Years Paid -

**TOWN OF WEAVERVILLE
TOWN COUNCIL AGENDA ITEM**

MEETING DATE: September 17, 2018
SUBJECT: Tax Releases
PRESENTER: Tax Collector
ATTACHMENTS: None

DESCRIPTION/SUMMARY OF REQUEST:

Town Council is asked to approve two tax releases from the 2018 tax bills, both due to property being outside of the Town's jurisdiction:

The first one is for personal property owned by David Crain at 86 Alexander Road. The requested release is for \$1,755 in value and \$6.67 from the 2018 tax levy.

The second request is for business personal property owned by Play Station at 450 Weaverville Road. The requested release is for \$47,250 in value and \$179.55 from the 2018 tax levy.

TOWN COUNCIL ACTION:

Town Council is requested to approved the above-described releases. This action could be in the form of the following motion:

I move to approve (1) the release of the personal property of David Crain at 86 Alexander Road valued at \$1,755, so that \$6.67 can be released from the 2018 levy, and (2) the release of business personal property owned by Play Station at 450 Weaverville Road valued at \$47,250, so that \$179.55 can be released from the 2018 levy.

**TOWN OF WEAVERVILLE
TOWN COUNCIL AGENDA ITEM**

Date of Meeting: Monday, September 17, 2018

Subject: Code Amendments – Zoning – Nonconformities, Conditional Zoning Districts, Political Signage – Setting a Date for a Public Hearing

Presenter: Planning Director

Attachments: Proposed Amendments

Description:

On Monday, May 21, 2018 Town Council initially considered three proposed amendments to the zoning ordinance proposed by staff related to conditional zoning districts, nonconformities and political signage and referred same to the Planning and Zoning Board for review and comment. The following is a summary of the rationale for each requested amendment:

Conditional Zoning Districts: The Planning and Zoning Board has recognized a need for a zoning district which would ease the transition from commercially zoned to residentially zoned properties and instructed staff to begin researching such language. Staff believes that this objective may be accomplished through conditional zoning rather than the creation of a new zoning district. The proposed amendments firm up existing language regarding conditional zoning districts and the approval and post-approval procedures and opens up the availability of a conditional zoning district for any use on any parcel subject to Town Council approval.

Nonconformities: In response to two appeals heard by the Zoning Board of Adjustment on administrative decisions related to nonconformities, staff and the Planning and Zoning Board have been working on a full review and revision of the zoning ordinance provisions related to nonconformities in order to erase current ambiguities and provide firmer ground for administrative decisions (which are appealable to the ZBA) regarding legal uses that are made nonconforming by zoning text or map amendments.

Political Signage: The Town's ordinance related to the placement of political signage is in need of revision in order to become compliant with state statute.

Then Planning and Zoning Board has worked hard to draft and review these proposed legislative changes and to develop its consistency statements and recommendations regarding the same.

Action Requested:

Prior to Town Council taking action on this proposed amendments a public hearing must be held. Staff asks that Town Council consider the following motion:

I move that Town Council schedule a public hearing on the proposed amendments to the Town's Code of Ordinance concerning zoning nonconformities, conditional zoning districts and political signage for October 15, 2018, at 6:30 pm in Council Chambers at Town Hall located at 30 South Main Street, Weaverville, NC.

PROPOSED CODE AMENDMENTS – ZONING – NONCONFORMITIES

DELETE THE FOLLOWING DEFINITIONS FROM SECTION 36-5:

~~*Nonconforming-occupied lot.* A lot which contained a structure on the effective date of this chapter or at the time the lot was brought into the town's jurisdiction but which does not meet the minimum requirements for width, area, front, side, or rear yard, height and/or open space for the zoning district in which it is located.~~

~~*Nonconforming open uses of land.* An open use on a lot when the only structures are incidental and accessory to the principal open use which was in existence prior to the effective date of this chapter or at the time the lot was brought into the town's jurisdiction and which would not be permitted by this chapter in the zoning district in which it is located. Uses such as storage yards, used car lots, auto wrecking yards, and golf driving ranges are examples of open uses.~~

~~*Nonconforming structure.* Any structure which does not conform with the requirements of the zoning district in which it is located, either at the effective date of the ordinance from which this chapter derives or as a result of subsequent amendments to this chapter.~~

~~*Nonconforming use of structure.* A use of a structure which existed prior to the effective date of this chapter, or at the time the lot on which the structure is sited was brought into the town's jurisdiction, and which would not be permitted in the zoning district in which it is located.~~

~~*Nonconforming vacant lot.* A lot which does not meet the dimensional requirements for the zoning district in which it is located, but which was recorded prior to the effective date of this chapter or prior to the time the lot was brought into the town's jurisdiction. This definition shall not be interpreted to include lots recorded prior to the adoption of this chapter which were in violation of any prior subdivision regulation of the town.~~

[NOTE – Definition of *Nonconforming sign* was retained in Section 36-5]

ADD THE FOLLOWING DEFINITIONS TO SECTION 36-5:

Dimensional and/or numerical development requirements or standards include, but are not limited to, those requirements or standards associated with density, lot size, lot width, lot depth, setbacks, height, structure size standards, open space, number of parking spaces, or separation requirements between particular uses or zoning districts.

Impact means the effect of one land use upon another as measured by such factors which include, but are not limited to, the following: traffic, noise, site activity, hours of operation, lighting, vibration, dust, smoke, odor emissions.

Lawful nonconformity means any nonconformity involving a dimensional or numerical requirement or use of property that affects a structure erected or a lot created in conformity with the then-applicable development requirements of the town (or for which a vested right has been established), but subsequently made nonconforming by action of the town through a zoning map or zoning ordinance text amendment.

Nonconforming lot is a lot that was lawfully created prior to the effective date of the applicable sections of town code, or subsequent amendment thereto, but does not conform to the minimum lot size, lot depth or minimum lot width requirements established for the zoning district in which it is located.

Nonconforming structure means any building or structure with a nonconformity involving an applicable dimensional or numerical development requirement.

Nonconforming use means any lawful nonconformity involving the use of the property. This may include, but is not limited to, nonconformities associated with a use not permitted in the zoning district in which it is located, a use which cannot meet the newly enacted standards established in the zoning district for such use, or a use inconsistent with Town zoning but existing upon annexation into the Town.

Renovation means the repairing or remodeling of a structure in which the exterior walls, foundation and roof are maintained structurally intact.

**DELETE SECTIONS 36-19, 36-20 and 36-21 AND
REPLACE WITH A NEW ARTICLE AS FOLLOWS:**

ARTICLE XVI - NONCONFORMITIES

Sec. 36-530. – Purpose and application

- (a) Purpose. It is recognized that, over time, lawful nonconformities may develop as a result of amendments to the zoning map or zoning ordinance text which change the application of town development regulations to particular properties. Nonconformities can also arise when properties on which vested rights have been established are annexed into the municipal boundaries of the town. It is important that such properties, while nonconforming, be adequately maintained and permitted to continue, but not expanded or enlarged in any fashion that increases the extent of nonconformity. Where possible, such nonconformities should be made, wholly or incrementally, conforming.
- (b) Application. The provisions of this article apply only to lawful nonconformities. Nonconformities other than lawful nonconformities shall be considered violations of the town's code.
- (c) Applicability to variances, conditional zoning districts and special use permit. Where a variance, conditional zoning district, or special use permit has been granted for a use or dimensional requirement which does not otherwise conform to the requirements of this chapter, that feature/condition shall be deemed conforming so long as the property remains in compliance with their respective approved site plans. Likewise, when properties on which vested rights have been established are annexed into the municipal boundaries of the town, any use or dimensional requirement which does not otherwise conform to the requirements of this chapter shall be deemed conforming so long as they remain in compliance with the approved site specific development plan.

Sec. 36-531. - Nonconforming Lots.

- (a) A nonconforming lot may be used as a building site subject to the compliance with applicable use regulations and limitations, and minimum dimensional or numerical development requirements for the zoning district in which the lot is located including, but not limited to, setback and yards, height, open space, buffers, screening, and parking.
- (b) If compliance with the applicable minimum dimensional or numerical development requirements is not possible, the nonconforming lot may be used as a building site subject to the following:
 - (1) Where the lot area and lot width are not more than 20 percent below the minimum standards specified, and all other dimensional requirements are otherwise complied with, the zoning administrator is authorized to issue a zoning permit;
 - (2) Where the lot area and lot width are more than 20 percent below the minimum standards specified in this chapter or other dimensional requirements cannot be met, the board of adjustment is authorized to consider requests for variances of such dimensional and numerical requirements as shall conform as closely as possible to the required dimensions.
- (c) If a lot is nonconforming in that it does not have street access as described in Section 36-12, a building can be constructed on such lot if the applicant can provide evidence of a recorded legal access to a publicly maintained street or roadway which will support actual vehicular access to the lot.

Sec. 36-532. - Nonconforming Structures.

- (a) A nonconforming structure devoted to a use permitted in the zoning district in which it is located may continue only in accordance with the provisions of this article. A nonconformity must have been legal when it was established in order to receive nonconforming protection. A structure which is a violation of the zoning ordinance when it was established shall not ripen into a legitimate nonconformity.
- (b) Normal repair and maintenance may be performed to allow the continuation of nonconforming structures so long as no expansion of the nonconformity occurs as a result of such work.
- (c) Section 36-533 shall apply to all changes of use within a nonconforming structure, except that a nonconforming structure with a compatible use may not under any circumstances change its use to a nonconforming use.
- (d) Except as provided in this article, a nonconforming structure may be renovated, expanded, or enlarged, without bringing the nonconforming structure into conformity with these regulations, only if the applicable nonconformity is not increased and no new nonconformities are created. The following shall also apply:
 - (1) Increases in nonconformities related to building height are not allowed;
 - (2) Increases in the square footage of a nonconforming structure within the setbacks of the zoning district in which the structure is located are not allowed. In considering whether an

increase in square footage has been made or is proposed the zoning administrator is to take into consideration both horizontal expansion (i.e. increasing the building footprint within the setback) and vertical expansion (i.e. adding a second story to the portion of a structure within the setback).

- (e) Residential structures made nonconforming by a text amendment or map amendment which rezones the property to a zoning district which does not permit residential uses may be renovated, expanded, or enlarged so long as the dimensional and numerical development standards for the R-1 zoning district can be met. See Section 36-533(c) for nonconforming residential uses.
- (f) A nonconforming structure cannot be moved unless it thereafter conforms to the standards of the zoning district in which it is located. If such a move is not possible but a relocation of the nonconforming structure is desired, then such relocation is permissible as long as the applicable nonconformity is lessened and no new nonconformities are created.
- (g) In the interest of public safety and health, structural alterations or remodeling of nonconforming structures which are required by any public law, and so ordered by a public officer in authority, shall be permitted.
- (h) Where a nonconforming structure is destroyed or damaged by fire, flood, wind, or other disaster, the structure may be repaired or restored to its original dimensions and conditions as long as a zoning permit for the repair or restoration is issued within 180 days of the date of the damage. Upon request, the board of adjustment is authorized to extend this period up to an additional 180 days if the applicant can present competent, substantial and material evidence showing good cause for such extension. Good cause could include, but is not limited to, delays related to estate administration, casualty insurance issues, or litigation concerning the property.

Sec. 36-533. - Nonconforming Uses.

- (a) Nonconforming uses of land or structures, and nonconforming structures that contain nonconforming uses may continue only in accordance with the provisions of this article. A nonconformity must have been legal when it was established in order to receive nonconforming protection. A use which is a violation of the zoning ordinance when it was established shall not ripen into a lawful nonconformity.
- (b) Except as provided herein, no nonconforming use can be extended, expanded, enlarged, or moved if such change results in an increase in the extent or intensity of the nonconforming use as it existed at the time the lawful nonconformity was created.
- (c) Residential uses made nonconforming by a text amendment or a map amendment which rezones the property to a zoning district which does not permit residential uses cannot be expanded to increase the number of residences or family units from those existing at the time the lawful nonconformity was created. See Section 36-532(e) concerning nonconforming residential structures.

(d) Replacement of nonconforming uses.

(1) A nonconforming use of a structure may be replaced by another nonconforming use if it falls within the use definition as the original nonconforming use. Such lawful replacement of use may be permitted by the zoning administrator.

(2) A nonconforming use of a structure may be replaced by another nonconforming use if it is no less compatible with the surrounding properties and district than the nonconforming use which it replaces. Such requests must be submitted to the board of adjustment which is authorized to grant such a request if the applicant can present competent, substantial and material evidence that the proposed use is as compatible or more compatible with the surrounding properties and district than the original nonconforming use. Factors for the board's consideration include, but are not limited to, traffic, noise, site activity, hours of operation, lighting, vibration, dust, smoke, odor emissions, and any other factors that the board finds relevant to compare or differentiate between the existing use(s) and the proposed replacement use(s). The board of adjustment may establish conditions to ensure that the compatibility factors are maintained as approved.

(e) No use may be established if it renders a conforming use as nonconforming.

(f) Once a nonconforming use is changed to a conforming use, that nonconforming use cannot be lawfully reestablished.

(g) Where a nonconforming use is visibly discontinued for 180 consecutive days, regardless of any intent or efforts to resume the use, then the use shall not be reestablished or resumed, and any subsequent use of the land or structure must conform to the requirements of town code.

(h) Where a structure in which a nonconforming use is located is destroyed or damaged by fire, flood, wind, or other disaster, the structure may be repaired or restored to its original dimensions or substantially similar dimensions if the nonconformity is not increased, and as long as a zoning permit for the repair or restoration is issued within 180 days of the date of the damage and the nonconforming use can resume. Upon request, the board of adjustment is authorized to extend this period up to an additional 180 days if the applicant can present competent, substantial and material evidence showing good cause for such extension. Good cause could include, but is not limited to, delays related to estate administration, casualty insurance issues, or litigation concerning the property.

(i) Signage for a lawful nonconforming use shall be limited to one wall mounted or attached sign which shall not exceed 10% of the total surface area on which the sign is located. Said signage may be illuminated but must be shielded in a fashion to prevent light trespass and to brighten only the surface of the sign.

Sec. 36-534. – Nonconforming signs.

(a) All nonconforming signs shall be removed, changed, or altered to conform with the provisions of this chapter within 5 years after the same became nonconforming, except that signs having a valid

permit issued pursuant to the provisions of the North Carolina Outdoor Advertising Control Act shall be exempt from the provisions of the 5 year amortization provision above set forth.

- (b) Failure to remove, change, or alter a nonconforming sign within the amortization period set forth above shall result in the removal of said sign by the town at the expense of the owner of said sign.
- (c) If the owner of a nonconforming sign which has been removed by the town fails to pay for the costs of removal within 30 days of the billing date for such action, a lien shall be placed against the property and the town clerk shall certify the same to the town tax collector for collection in the same manner as ad valorem property taxes are collected. The amount certified by the town clerk to the town tax collector for collection shall include the actual cost of removal of said sign.

Sec. 36-535. - Replacement of manufactured homes.

Dimensional or use nonconformities associated with manufactured homes shall be addressed in the following manner:

- (a) Replacement of a manufactured home with another manufactured home in a lawfully established nonconforming manufactured home park. Replacement shall be permitted without regard to dimensional nonconformity provided that the replacement manufactured home is no older and no smaller in footprint than the existing manufactured home, the replaced home is placed in the same location as the original home, and such replacement occurs within 30 days of the removal of the original manufactured home. In all other situations, replacement shall be prohibited.
- (b) Replacement of a nonconforming manufactured home on an individual lot with another manufactured home. Replacement shall be permitted provided that new dimensional nonconformities are not created, the replacement manufactured home is no older and no smaller in footprint than the existing manufactured home, the replaced home is placed in the same location as the original home or a different location as long as no new nonconformities are created, and such replacement occurs within 30 days of the removal of the original manufactured home. In all other situations, replacement shall be prohibited.

PROPOSED CODE AMENDMENT – ZONING – CONDITIONAL ZONING DISTRICTS

Sec. 36-5. – Definitions.

Conditional Zoning District (CZD). A zoning district in which the development and use of the property included in the district is subject to predetermined ordinance standards and the rules, regulations, and conditions imposed as part of the legislative decision creating the district and applying it to the particular property.

Sec. 36-84. - Conditional zoning district.

- (a) *Intent.* It is expected that, in most cases, a general district will appropriately regulate site-specific impact of permitted use and structures on surrounding areas, however conditional zoning districts provide for those situations where a particular use, properly planned, may be appropriate for a particular site, but where the underlying general district has insufficient standards to mitigate the site-specific impact on surrounding area.
- (b) *Use permitted.* Any ~~The uses which~~ may be considered for a conditional zoning district which shall established on an individual basis, at the request of the property owner, according to the procedures of this section ~~36-83(d). Zoning of a conditional zoning district is not intended for the securing of early or speculative reclassification of property. It is expected that, in most cases, a general district will appropriately regulate site-specific impact of permitted use and structures on surrounding areas.~~
- (c) *Conditions.* In establishing a conditional zoning district Town Council may place conditions on the property which set individualized standards to the site and a site plan and supporting documents illustrating said conditions and standards may be included in the ordinance establishing the district. These conditions which may be established by Town Council shall only be those which are necessary for ordinance and plan compliance and shall only address the impacts reasonable expected to be generated by the project. Said conditions may be proposed by Town Council or the applicant and must be mutually approved by Town Council and the applicant.
- (e) ~~*Definition of conditional zoning district.* For purpose of this section, a "conditional zoning district" shall be defined as a zoning district in which the development and use of the property included in the district is subject to predetermined ordinance standards and the rules, regulations, and conditions imposed as part of the legislative decision creating the district and applying it to the particular property. / If the property use is ever proposed to be changed from the original approved plan, then the new proposed use and plan must be resubmitted for approved by the town council.~~
- (d) *Petition of request.* Property may be rezoned to a conditional zoning district only in response to and consistent with a petition of the owners, or agents of the owners of all of the property to be included in the district and shall be accompanied by an official petition, a statement analyzing the reasonableness of the proposed rezoning request by the petitioner, the established fee, and documentation as required by the following:
 - (1) A petition for a conditional zoning district must include a site plan and supporting information that specifies the actual use or uses intended for the property and any rules, regulations, and conditions that, in addition to all predetermined ordinance requirements, will govern the development and use of the property;
 - (2) A boundary survey and vicinity map showing the property's total acreage, current zoning classification(s), general location in relation to major streets, date and north arrow;
 - (3) Existing topography on the site and within 300 feet of the boundary of the site, and the general nature of the proposed topography contours shown at a maximum of five feet;
 - (4) All existing easements, reservations, rights-of-way, and any other valid restrictions on the use of the land;

- (5) The number and general location of all proposed structures;
 - (6) The proposed use of all land and structures, including the number of residential units or the total square footage of any nonresidential development;
 - (7) All yards, buffers, screening, and landscaping ~~and sidewalks~~ required ~~by the town code within the underlying zoning district~~;
 - (8) All existing and proposed points of access to public streets and the locations of proposed new streets;
 - (9) Delineation of areas within the floodplain;
 - (10) Proposed number and location of the signs;
 - (11) Proposed phasing, if any, and the approximate completion time for the project;
 - ~~(12) The location of existing and proposed storm drainage patterns and facilities intended to serve the development;~~
 - (12) Traffic, parking, and circulation plans, showing the proposed location and arrangement of parking spaces and ingress and egress to adjacent streets, existing and proposed;
 - ~~(14) A list of adjoining properties including county tax parcel numbers and the name and address of each owner, provided in digital form;~~
 - ~~(15) The location of significant trees on the petitioned property;~~
 - (13) ~~The scale of buildings relative to adjoining properties, including sight lines~~ Photographs of buildings on properties within 200 feet of the subject property establishing the scale of the buildings within the proposed project with those surrounding;
 - (14) Information on the height of all proposed structures;
 - (15) Exterior features of all of the proposed development including but not limited to construction and finishing materials;
 - (16) Any supporting text and all documents presented shall constitute part of the petition.
- (e) *Time limits.* ~~Time limits for the completion of the projects infrastructure and completion of construction shall be established on an individual basis by Town Council based upon the type and scope of development. Extensions to established time frames shall be subject to the approval of Town Council. A time limit of 240 calendar days for securing applicable permits in order to construct the project and 365 calendar days thereafter for completion of the project; provided, however, the town council may approve up to an additional 365 calendar days for completion of the project, for good cause shown. In the event that the project involves more than three acres and/or more than 15,000 thousand square feet, the time period for securing applicable permits for the project shall be 365 calendar days and the time period for completion of the project shall be 730 calendar days thereafter; provided, however, the town council may approve up to an additional 180 calendar days for completion of the project, for good cause shown. Conditional zoning district projects that have approved detailed plans and have secured applicable permits for start of construction as of May 1, 2009, but on which there has not been a start of construction, will have an additional 12 months to be added to the construction time limits in this subsection from the date of approval of the detailed plans for the completion of the project.~~
- (f) *Minor Modifications.* ~~Minor modifications to a project shall be submitted to the zoning administrator for review. No building permit for the proposed development or any part thereof shall be issued until the zoning administrator has determined that the pertinent detailed plans are in accordance with the application and general plans as approved by the town council. Minor modifications that can be approved by staff are limited to minor adjustments to the location of, modifications that do not affect the property lines, do not affect the final plat and which are in substantial compliance with the approved plans. Any modification that affects the site plan is not to be considered a minor modification. All other modifications must be accomplished as an amendment to the conditional zoning district which can only be approved by Town Council after review and recommendation of the~~

Planning and Zoning Board and a public hearing held by Town Council, but in such circumstance a public involvement meeting is not required. An extension of any time frame stated within an ordinance designating a conditional zoning district must be approved by Town Council but shall otherwise not be considered a modification. Except as herein provided, any modification of the text of the conditional zoning district ordinance shall not be considered a modification eligible to be approved by staff.

- (g) *Future variance request.* Property zoned CZD will not be able to apply for a variance on the approved project.
- (h) *Maintaining the zoning district.* A CZD is a rezoning which represents both a text and map amendment and as such is maintained after the sale of the property. If the property owner wishes to change the approved CZD plan, all property owners within the original CZD must apply for a rezoning or a modification to the CZD as per Sec. 36-84(o).
- (i) *Guarantee of conditions.* At the discretion of the town council, the council may require the property owner to guarantee the performance or completion of conditions included in the approved conditional zoning plan. Such guarantee may be in the form of:
 - (1) A surety performance bond made by a surety bonding company licensed and authorized to do business in the state;
 - (2) A bond of the developer with an assignment to the town of a certificate of deposit as security for the bond;
 - (3) A bond of the developer secured by an official bank check drawn in favor of the town and deposited with the town clerk;
 - (4) Cash or an irrevocable letter of credit; or
 - (5) A bank escrow account whereby the developer deposits cash, a note, a bond or some other instrument readily convertible into cash for a specific face value, with a federally insured financial institution in an account payable to the town.

The amount of the guarantee shall be determined by the town council.

- (j) *District approval.* If a petition for a conditional zoning district is approved, the development and use of the property shall be governed by the ~~predetermined ordinance requirements applicable to such district category ordinance establishing the conditional zoning district~~, the approved site plan for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district. Each conditional zoning district will be given a special number, distinguishing such conditional zoning district from another zoning district.
- (k) *Planning and zoning review.* Following an initial review by town council as set forth in Sec. 36-358 all conditional zoning requests shall be submitted to the town planning and zoning board to determine if approvals of such plans are made in consideration of identified relevant adopted land-use plans for the area including, but not limited to, comprehensive plans, strategic plans, district plans, area plans, neighborhood plans, corridor plans, and other land-use policy documents. A statement analyzing the reasonableness of the proposed rezoning shall be prepared by the town planning and zoning board for each petition for a rezoning to a conditional zoning district and submitted to the town council for final action on the request. Due to the scope and complexities which may be presented by a conditional zoning district request, the planning and zoning board shall have up to 180 days from first consideration to submit its statement of reasonableness and recommendation to town council. If the planning and zoning board fails to submit such statement and/or recommendation within 180 days then the request shall be forwarded to town council with a record of the planning and zoning board's comments and town council is eligible to consider the request and take final action thereon.
- (l) *Public involvement.* Before a public hearing may be held by the town council on a petition for a conditional zoning the petitioner must file in the office of the town clerk a written report of at least one community meeting held by the petitioner. The report shall include, among other things, a listing of those persons and organizations contacted about the meeting and the manner and date of contact, the date, time, and location of the meeting, a roster of the persons in attendance at the meeting, a

summary of issues discussed at the meeting, and a description of any changes to the rezoning petition made by the petitioner as a result of the meeting. In the event the petitioner has not held at least one meeting pursuant to this subsection, the petitioner shall file a report documenting efforts that were made to arrange such a meeting and stating the reasons such a meeting was not held. The adequacy of a meeting held or report filed pursuant to this subsection shall be considered by the town council but shall not be subject to judicial review.

Notice of such a public hearing shall be given to all the property owners within 200 feet of the property boundaries and in accordance with the provisions of G.S. 160A-364.

- (m) *Judicial review.* Conditional zoning district decisions under this section are a legislative process and not subject to judicial review.
- (n) *Approval procedures for initial CZD.* Except as specifically modified by this section, the procedures to be followed by the town council in reviewing, granting, or denying any petition for conditional zoning shall be the same as those established for general use district zoning petitions under G.S. Ch. 160A, Art. 19. Each ordinance adopted by town council which establishes a conditional zoning district within the Town of Weaverville is hereby incorporated into this chapter as a separate and unique zoning district and shall be reflected on the town's zoning map. Copies of such ordinances shall be kept on file with the town clerk and may be reviewed upon request.

(o) *Approval procedures for modifications of a CZD. [to be added]*

(p) *Final plat approval process.* All water, sewer, stormwater infrastructure, and all street, sidewalk, and similar improvements must be installed and verified as complete by the appropriate authority prior to final plat review. Once the required infrastructure is complete, the final plat will be reviewed by staff and the planning and zoning board for compliance with the relevant portions of the ordinance approving the conditional zoning district for the project. After its review the planning and zoning board shall submit a recommendation to town council. Town council must consider the planning and zoning board's findings and recommendation and shall approve the final plat and authorize the recordation of same, upon finding that the required infrastructure is complete and compliant.

(q) *Noncompliance.* In the event of noncompliance by a property owner or any subsequent resale or lease of a property for use other than that stipulated in the original CZD approval, the property owner would be in violation of the town zoning ordinance.

(r) *Appeal of zoning administrator decisions concerning CZDs.* Any determination made by the zoning administrator regarding the project and/or this conditional zoning district is appealable to the Zoning Board of Adjustment. Such appeal shall be made in accordance with the procedure set forth in Town Code Section 36-328(3). In addition, Staff is required to notify the Mayor and Town Council of any appeals related to this project and/or this conditional zoning district proceeding before the Zoning Board of Adjustment so that Town Council has the opportunity to participate as a party to the appeal should it wish to do so.

PROPOSED CODE AMENDMENTS – ZONING – POLITICAL SIGNS

Sec. 36-201. - Temporary signs.

Temporary signs shall be allowable in all zoning districts.

- (1) Signs used prior to and during construction to identify the name of contractor(s) and/or developer(s) shall be considered temporary signs, and shall meet the following requirements:
 - a. Each contractor shall have no more than one sign per location which shall be removed upon completion of the project.
 - b. Construction signs shall not be placed on trees, rocks, or other natural objects.
 - c. Construction signs shall be either attached to the building or affixed to a secure temporary post.
 - d. Construction signs shall be no greater than 32 square feet per side of the sign up to a maximum of 64 square feet of aggregate surface area for the entire sign.
- (2) ~~Political signs are subject to N.C.G.S. 136-32 (b)-(e). Political signs shall be considered temporary signs, and shall meet the following requirements:~~
 - ~~a. No political sign shall be placed in any town or state public right-of-way which includes utility poles and/or street medians.~~
 - ~~b. All such signs shall be removed within two days after the election day.~~
- (3) Real estate signs (signs offering property for sale, lease or development) shall be considered temporary signs, and shall meet the following requirements:
 - a. Real estate signs in residential zoning districts shall not exceed six square feet in surface area per side of sign up to a maximum of 12 square feet of aggregate surface area for the entire sign.
 - b. Real estate signs in all other areas shall not exceed 16 square feet in surface area per side of sign up to a maximum of 32 square feet of aggregate surface area for the entire sign.
 - c. Real estate signs shall be erected only on the property which is being offered for sale, rent, lease and development.
 - d. Real estate signs shall conform to all other applicable provisions of the ordinance not inconsistent with this section.
 - e. Real estate signs shall be removed with seven days after the sale or lease of the property is closed.
 - f. Real estate directional signs (sign indicating the direction to a property being offered for sale) must be located on private property, with written permission of the property owner, at the nearest intersection of the major thoroughfare or collector street to the street upon which the property which is being offered for sale, rent, lease or development is located.
- (4) Any other temporary sign must be approved by the zoning administrator, and shall be of a size and height which is consistent with signs permitted in the neighborhood in which it will be located. Concerning the length of time a temporary sign may be displayed, the applicant must choose between the following options within a calendar year: (a) up to four 15-day periods, (b) up to two 30-day periods; or (c) one 60-day period. In no event may a temporary sign be displayed for more than 60 days within any given calendar year.

§ 136-32. Regulation of signs.

(a) **Commercial Signs.** – No unauthorized person shall erect or maintain upon any highway any warning or direction sign, marker, signal or light or imitation of any official sign, marker, signal or light erected under the provisions of G.S. 136-30, except in cases of emergency. No person shall erect or maintain upon any highway any traffic or highway sign or signal bearing thereon any commercial or political advertising, except as provided in subsections (b) through (e) of this section: Provided, nothing in this section shall be construed to prohibit the erection or maintenance of signs, markers, or signals bearing thereon the name of an organization authorized to erect the same by the Department of Transportation or by any local authority referred to in G.S. 136-31. Any person who shall violate any of the provisions of this section shall be guilty of a Class 1 misdemeanor. The Department of Transportation may remove any signs erected without authority or allowed to remain beyond the deadline established in subsection (b) of this section.

(b) **Compliant Political Signs Permitted.** – During the period beginning on the 30th day before the beginning date of "one-stop" early voting under G.S. 163A-1300 and ending on the 10th day after the primary or election day, persons may place political signs in the right-of-way of the State highway system as provided in this section. Signs must be placed in compliance with subsection (d) of this section and must be removed by the end of the period prescribed in this subsection.

(c) **Definition.** – For purposes of this section, "political sign" means any sign that advocates for political action. The term does not include a commercial sign.

(d) **Sign Placement.** – The permittee must obtain the permission of any property owner of a residence, business, or religious institution fronting the right-of-way where a sign would be erected. Signs must be placed in accordance with the following:

- (1) No sign shall be permitted in the right-of-way of a fully controlled access highway.
- (2) No sign shall be closer than three feet from the edge of the pavement of the road.
- (3) No sign shall obscure motorist visibility at an intersection.
- (4) No sign shall be higher than 42 inches above the edge of the pavement of the road.
- (5) No sign shall be larger than 864 square inches.
- (6) No sign shall obscure or replace another sign.

(e) **Penalties for Unlawful Removal of Signs.** – It is a Class 3 misdemeanor for a person to steal, deface, vandalize, or unlawfully remove a political sign that is lawfully placed under this section.

(f) **Application Within Municipalities.** – Pursuant to Article 8 of Chapter 160A of the General Statutes, a city may by ordinance prohibit or regulate the placement of political signs on rights-of-way of streets located within the corporate limits of a municipality and maintained by the municipality. In the absence of an ordinance prohibiting or regulating the placement of political signs on the rights-of-way of streets located within a municipality and maintained by the municipality, the provisions of subsections (b) through (e) of this section shall apply. (1921, c. 2, s. 9(b); C.S., s. 3846(r); 1927, c. 148, ss. 56, 58; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1991 (Reg. Sess., 1992), c. 1030, s. 39; 1993, c. 539, s. 981; 1994, Ex. Sess., c. 24, s. 14(c); 2011-408, s. 1; 2017-6, s. 3.)

TOWN OF WEAVERVILLE

TOWN COUNCIL AGENDA ITEM

Date of Meeting: Monday, September 17, 2018

Subject: Amendment to CZD for Northridge Townhouses –
Initial Consideration and Setting a Date for a Public Hearing

Presenter: Planning Director

Attachments: None

Description:

Within the Ordinance establishing the project commonly known as Northridge Commons Townhouses as a conditional zoning district which was adopted on June 18, 2018, staff imposed an October 1, 2018, deadline for the applicant to acquire the property. The ordinance provides in part:

That this ordinance is effective immediately upon transfer of the Property from HFW Endeavors, LLC, to Northridge Commons Investors, LLC. The applicant is required to provide the Zoning Administrator with a copy of a recorded deed showing such transfer as soon as practicable after recordation. If such a transfer has not occurred by October 1, 2018, then this ordinance shall be automatically repealed.

The applicant is experiencing some difficulty with meeting the ownership transfer deadline. Prior to the transfer taking place it is necessary to remove one of the parcels from the conditions, covenants and restrictions of Northridge Commons and, due to its complex corporate structure, Lowe’s has been very slow to take action in this regard, resulting in unexpected delays that are beyond the applicant’s control.

A text amendment to remove the October 1, 2018, deadline and make the ordinance effective upon the recordation of the transfer of ownership to Northridge Commons Investors, LLC is requested. This change must go through the Planning and Zoning Board for review and recommendation and a public hearing must be held prior to Town Council taking action.

Action Requested:

Staff asks that Town Council consider the following motion:

I move (1) that the Town Council forward to the Planning and Zoning Board for review and recommendation the proposed amendment to the Northridge Commons CZD Ordinance which removes the ownership transfer deadline of October 1, 2018, and makes the effective date of the ordinance coincide with the recordation of the transfer of ownership to Northridge Commons Investors, LLC, and (2) that Town Council set a public hearing on the proposed amendment for October 15, 2018, at 6:30 pm in Council Chambers at Town Hall located at 30 South Main Street, Weaverville, NC.

**TOWN OF WEAVERVILLE
TOWN COUNCIL AGENDA ITEM**

DATE OF MEETING: September 17, 2018

SUBJECT: Sale of Old Bus Garage

PRESENTER: Town Attorney

ATTACHMENT: 13 Central Avenue - Property Card and Tax Map Agreement for Purchase and Sale of Real Property with Attachments

DESCRIPTION:

Town Council recently directed the Town Clerk to advertise an offer received on the Town property known as the old bus garage. The property card and tax map of the property are attached.

On July 16, 2018, the Town Clerk was directed to advertised the offer receive and seek higher qualifying offers. The Town Clerk is in receipt of the attached Agreement for Purchase and Sale of Real Property. The Agreement proposes a \$367,550 purchase price by Lexington Glassworks and represents the last and highest qualifying offer that the Town received during the upset bid periods that were advertised pursuant to NCGS 160A-269.

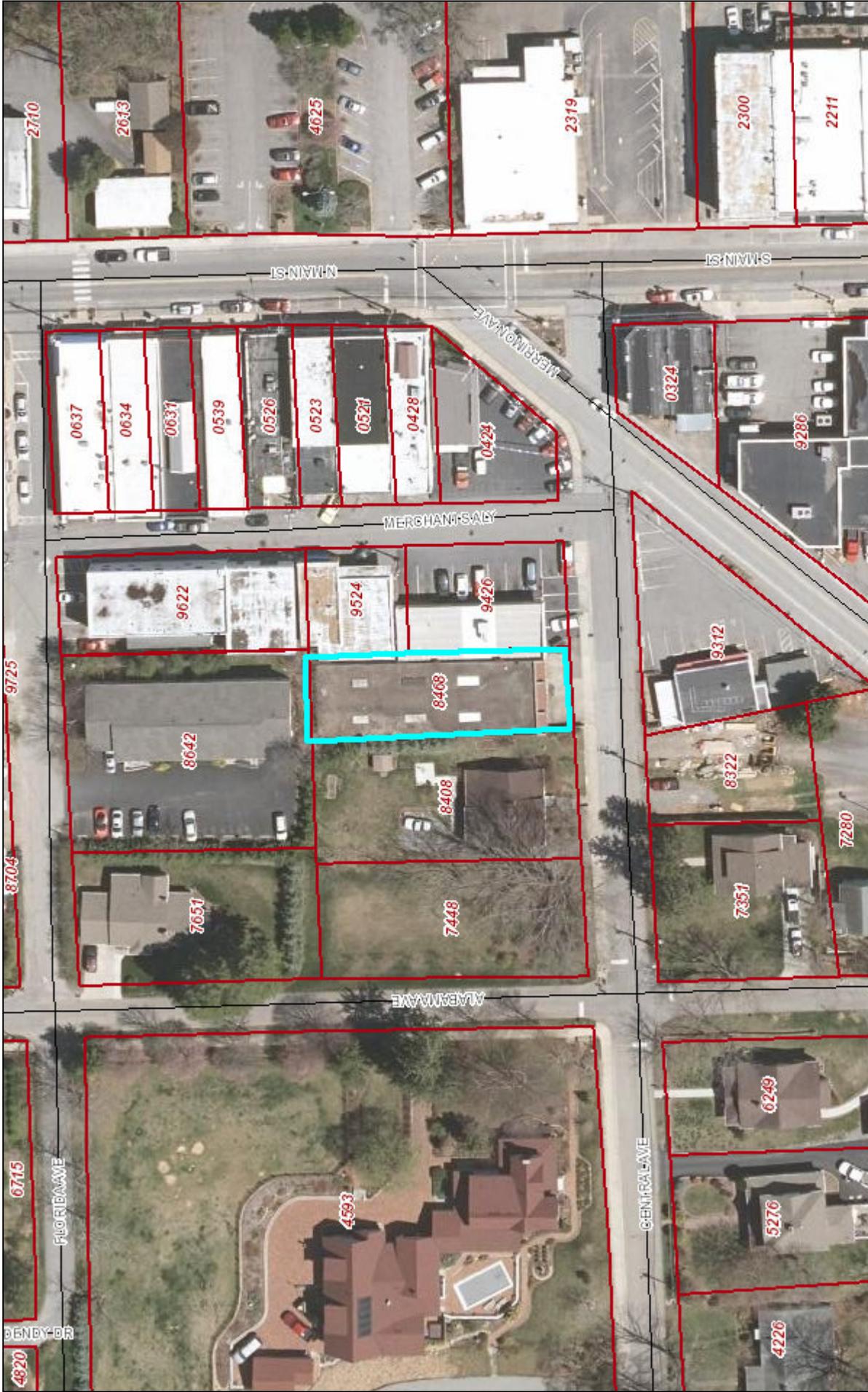
Should Town Council wish to accept this offer and sell the property located at 13 Central Avenue to Lexington Glassworks pursuant to the attached Agreement, such action is appropriate at tonight's meeting. Under North Carolina law Town Council also has the right to reject any and all offers.

The Town Attorney will be at tonight's meeting to discuss this offer and the disposition process.

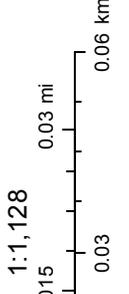
COUNCIL ACTION REQUESTED:

Discussion and action concerning the attached Agreement.

Buncombe County



June 11, 2018





COUNTY OF BUNCOMBE, NORTH CAROLINA

Web Property Record Card
9742-27-8468-00000

[<< Back to Parcel Details](#)

Date Printed: 6/11/2018

Owner Information		Parcel Information	Total Property Value: 69,400
Owners:	TOWN OF WEAVERVILLE	Status:	Active
Address:	PO BOX 338 WEAVERVILLE NC 28787-0338	Deed Date:	2/2/1972
Property Location:	13 CENTRAL AVE	Deed Book/Page:	1054 / 0316
Taxing Districts		Plat Book/Page:	0154 / 0099
County:	Buncombe County	Legal Reference:	CONVERTED DEED DATA
City:	WEAVERVILLE	Location:	13 CENTRAL AVE
Fire:		Class:	GVMT OFFICES
School:		Neighborhood:	WEAVERVILLE
		Subdivision:	OLD HOTEL PROP
		Sub Lot:	PT 13
		Conservation/Easement:	N
		Flood:	N

Ownership History

No Owner History

Assessment History

Year	Acres	Land	Bldgs	Other Impr	Assessed	Desc	Exemptions	Deferred	Taxable
2018	0.19	69,400	0	0	69,400	EXM	69,400	0	0
2017	0.19	69,400	0	0	69,400	EXM	69,400	0	0
2016	0.19	66,500	0	0	66,500	EXM	66,500	0	0
2015	0.19	66,500	0	0	66,500	EXM	66,500	0	0
2014	0.19	66,500	0	0	66,500	EXM	66,500	0	0
2013	0.19	66,500	0	0	66,500	EXM	66,500	0	0
2012	0.19	209,600	0	0	209,600	EXM	209,600	0	0
2011	0.19	209,600	0	0	209,600	EXM	209,600	0	0
2010	0.19	209,600	0	0	209,600	EXM	209,600	0	0
2009	0.19	209,600	0	0	209,600	EXM	209,600	0	0
2008	0.19	209,600	0	0	209,600	EXM	209,600	0	0
2007	0.19	209,600	0	0	209,600	EXM	209,600	0	0
2006	0.19	209,600	0	0	209,600	EXM	209,600	0	0
2005	0.19	161,200	0	0	161,200	EXM	161,200	0	0
2004	0.19	161,200	0	0	161,200	EXM	161,200	0	0
2003	0.19	161,200	0	0	161,200	EXM	161,200	0	0
2002	0.19	161,200	0	0	161,200	EXM	161,200	0	0
2001	0.19	10,100	0	0	10,100	EXM	10,100	0	0

Land Data

Value: 0

§ 160A-269. Negotiated offer, advertisement, and upset bids.

A city may receive, solicit, or negotiate an offer to purchase property and advertise it for upset bids. When an offer is made and the council proposes to accept it, the council shall require the offeror to deposit five percent (5%) of his bid with the city clerk, and shall publish a notice of the offer. The notice shall contain a general description of the property, the amount and terms of the offer, and a notice that within 10 days any person may raise the bid by not less than ten percent (10%) of the first one thousand dollars (\$1,000) and five percent (5%) of the remainder. When a bid is raised, the bidder shall deposit with the city clerk five percent (5%) of the increased bid, and the clerk shall readvertise the offer at the increased bid. This procedure shall be repeated until no further qualifying upset bids are received, at which time the council may accept the offer and sell the property to the highest bidder. The council may at any time reject any and all offers. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 25.)



AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

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

_____ Lexington Glassworks _____,
 a(n) _____ ("Buyer"), and
 (individual or State of formation and type of entity)
 _____ Town of Weaverville _____,
 a(n) _____ ("Seller").
 (individual or State of formation and type of entity)

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

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

(a) **"Property":** (Address) 13 Central Ave
Weaverville, NC 28787

Plat Reference: Lot(s) _____, Block or Section _____, as shown on Plat Book or Slide
 _____ at Page(s) _____, _____ County, consisting of _____ acres.

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

(For information purposes: (i) the tax parcel number of the Property is: _____; and, (ii) some or all of the Property, consisting of approximately _____ acres, is described in Deed Book _____, Page No. _____, _____ County.)

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

\$ 367,550 (b) **"Purchase Price"** shall mean the sum of Three hundred & Sixty Seven thousand and five hundred & fifty Dollars,
 payable on the following terms:

\$ 18,377.50 (i) **"Earnest Money"** shall mean Bid Deposit Eighteen thousand & three hundred & seventy seven Dollars fifty
 or terms as follows: _____

Upon this Agreement becoming a contract in accordance with Section 14, the Earnest Money shall be promptly deposited in escrow with _____ Clerk, Town of Weaverville (name of person/entity with whom deposited- "Escrow Agent"), to be applied as part payment of the Purchase Price of the Property at Closing, or disbursed as agreed upon under the provisions of Section 10 herein.

Ref. to Town Note : 160A-269



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

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

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

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

\$ _____ (ii) **Proceeds of a new loan** in the amount of _____ Dollars for a term of _____ years, with an amortization period not to exceed _____ years, at an interest rate not to exceed _____ % per annum with mortgage loan discount points not to exceed _____ % of the loan amount, or such other terms as may be set forth on Exhibit B. Buyer shall pay all costs associated with any such loan.

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

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

\$ 349,172.50 (v) **Cash, balance of Purchase Price**, at Closing in the amount of _____ Dollars.

(c) "**Closing**" shall mean the date of completion of the process detailed in Section 11 of this Agreement. Closing shall occur on or before September 30, 2018 or October 30, 2018

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

(e) "**Examination Period**" shall mean the period beginning on the first day after the Contract Date and extending through 5:00pm (based upon time at the locale of the Property) on 30 days Examination Period

TIME IS OF THE ESSENCE AS TO THE EXAMINATION PERIOD.

Buyer Initials [Signature] Seller Initials _____

(f) **"Broker(s)"** shall mean:
 _____ Weaverville Realty (Dixie Whitman Inc.) _____ ("Listing Agency"),
 _____ Cynthia A. Ward _____ ("Listing Agent" - License # 223555)
 Acting as: Seller's Agent; Dual Agent
 and _____ Weaverville Realty (Dixie Whitman Inc.) _____ ("Selling Agency"),
 _____ ("Selling Agent" - License # 223555)
 Acting as: Buyer's Agent; Seller's (Sub) Agent; Dual Agent

(g) **"Seller's Notice Address"** shall be as follows:

 e-mail address: _____ fax number: _____
 except as same may be changed pursuant to Section 12.

(h) **"Buyer's Notice Address"** shall be as follows:

 e-mail address: _____ fax number: _____
 except as same may be changed pursuant to Section 12.

(i) If this block is marked, additional terms of this Agreement are set forth on **Exhibit B** attached hereto and incorporated herein by reference. (Note: Under North Carolina law, real estate agents are not permitted to draft conditions or contingencies to this Agreement.)

(j) If this block is marked, additional terms of this Agreement are set forth on the Additional Provisions Addendum (Form 581-T) attached hereto and incorporated herein by reference.

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

Section 3. Proration of Expenses and Payment of Costs: Seller and Buyer agree that all property taxes (on a calendar year basis), leases, rents, mortgage payments and utilities or any other assumed liabilities as detailed on attached **Exhibit B**, if any, shall be prorated as of the date of Closing. Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Agreement, excise tax (revenue stamps), any deferred or rollback taxes, and other conveyance fees or taxes required by law, and the following:

Buyer shall pay recording costs, costs of any title search, title insurance, survey, the cost of any inspections or investigations undertaken by Buyer under this Agreement and the following:

Each party shall pay its own attorney's fees.

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

Buyer Initials  Seller Initials _____

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

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

(a) **New Loan:** The Buyer must be able to obtain the loan, if any, referenced in Section 1(b)(ii). Notwithstanding, after _____, Seller may request in writing from Buyer a copy of the commitment letter. If Buyer fails to provide Seller a copy of the commitment letter within five (5) days of receipt of Seller's request, then Seller may terminate this Agreement by written notice to Buyer at any time thereafter, provided Seller has not then received a copy of the commitment letter, and Buyer shall receive a return of Earnest Money.

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

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

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

(e) **Inspections:** Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting, examining, conducting timber cruises, and surveying the Property; provided, however, that Buyer shall not conduct any invasive testing of any nature without the prior express written approval of Seller as to each specific invasive test intended to be conducted by Buyer. Buyer shall conduct all such on-site inspections, examinations, testing, timber cruises and surveying of the Property in a good and workmanlike manner, at Buyer's expense, shall repair any damage to the Property caused by Buyer's entry and on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Seller's or any tenant's use and enjoyment of the Property. In that respect, Buyer shall make reasonable efforts to undertake on-site inspections outside of the hours Seller's or any tenant's business is open to the public. Buyer shall provide Seller or any tenant (as applicable) reasonable advance notice of and Buyer shall cause its agents or representatives and third party service providers (e.g. inspectors, surveyors, etc.) to give reasonable advance notice of any entry onto the Property. Buyer shall be obligated to observe and comply with any terms of any tenant lease which conditions access to such tenant's space at the

Buyer Initials  Seller Initials _____

Property. Upon Seller's request, Buyer shall provide to Seller evidence of general liability insurance. Buyer shall also have a right to review and inspect all contracts or other agreements affecting or related directly to the Property and shall be entitled to review such books and records of Seller that relate directly to the operation and maintenance of the Property, provided, however, that Buyer shall not disclose any information regarding this Property (or any tenant therein) unless required by law and the same shall be regarded as confidential, to any person, except to its attorneys, accountants, lenders and other professional advisors, in which case Buyer shall obtain their agreement to maintain such confidentiality. Buyer assumes all responsibility for the acts of itself, its agents or representatives in exercising its rights under this Section 6(e) and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Except as provided in Section 6(c) above, Buyer shall have from the Contract Date through the end of the Examination Period to perform the above inspections, examinations and testing. **IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO SELLER THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, THEN THIS AGREEMENT SHALL TERMINATE, AND BUYER SHALL RECEIVE A RETURN OF THE EARNEST MONEY.**

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

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

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

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

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

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

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

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

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

Buyer Initials Seller Initials

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

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

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

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

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

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

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

Buyer Initials Seller Initials

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

Section 15. Adverse Information and Compliance with Laws:

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

None

Note: For purposes of this Agreement, a "confirmed" special assessment is defined as an assessment that has been approved by a governmental agency or an owners' association for the purpose(s) stated, whether or not it is fully payable at time of closing. A "pending" special assessment is defined as an assessment that is under formal consideration by a governing body. Seller shall pay all owners' association assessments and all governmental assessments confirmed as of the date of Closing, if any, and Buyer shall take title subject to all pending assessments disclosed by Seller herein, if any.

Seller represents that the regular owners' association dues, if any, are \$ _____ per _____.

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

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

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

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

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

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

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

Buyer Initials *CSA* Seller Initials _____

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

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

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

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

BUYER:

Individual

[Signature]
Date: 8/9/18

Date: _____

Business Entity

Lexington Glassworks
(Name of Entity)
By: G.K. Design
Name: Arthur Garfield
Title: Owner
Date: 8/7/18

SELLER:

Individual

Date: _____

Date: _____

Business Entity

Town of Weaverville
(Name of Entity)
By: _____
Name: Selena D. Coffey, MPA, ICMA-CM
Title: Town Manager
Date: _____

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

(Name of Escrow Agent)

Date: _____

By: _____

Exhibit A

§ 160A-269. Negotiated offer, advertisement, and upset bids.

A city may receive, solicit, or negotiate an offer to purchase property and advertise it for upset bids. When an offer is made and the council proposes to accept it, the council shall require the offeror to deposit five percent (5%) of his bid with the city clerk, and shall publish a notice of the offer. The notice shall contain a general description of the property, the amount and terms of the offer, and a notice that within 10 days any person may raise the bid by not less than ten percent (10%) of the first one thousand dollars (\$1,000) and five percent (5%) of the remainder. When a bid is raised, the bidder shall deposit with the city clerk five percent (5%) of the increased bid, and the clerk shall readvertise the offer at the increased bid. This procedure shall be repeated until no further qualifying upset bids are received, at which time the council may accept the offer and sell the property to the highest bidder. The council may at any time reject any and all offers. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 25.)

Exhibit B

NOTICE OF OFFER TO PURCHASE TOWN PROPERTY AND UPSET BID PERIOD PURSUANT TO NCGS 160A-269

The Town of Weaverville has received and proposes to accept a \$350,000 cash offer for the sale of property owned by the Town of Weaverville in Buncombe County, North Carolina, and more particularly described as follows:

Street Address: 13 Central Avenue, Weaverville, NC, 28787

Parcel Identification Number: 9742-27-8468

Deed Reference: Book 1054 at Page 316

Conditions: To be sold "as is"

Persons wishing to upset the offer that has been received must submit their offer in a sealed envelope marked "upset bid" to the Weaverville Town Clerk at 30 South Main Street, Weaverville, NC, 28787, by 5 pm on August 13, 2018. At that time the Town Clerk will open the bids, if any, and the highest qualifying bid will become the new offer. If there is more than one bid in the highest amount, the first such bid received will become the new offer.

A qualifying higher bid is one that raises the existing offer to an amount not less than \$367,550.00. A qualifying higher bid must be accompanied by a bid deposit in the amount of 5% of the bid and must be submitted in cash, cashier's check or certified check payable to the Town of Weaverville. The Town will return the deposit on any bid not accepted, and the deposit on an offer subject to upset if a qualifying higher bid is received. The Town will return the deposit of the final high bidder at closing.

The Weaverville Town Council must approve the final high offer before the sale is closed, which it intends to do within 30 days after the final upset bid period has passed. The Town reserves the right to withdraw the property from sale at any time before the final high bid is accepted and the right to reject, at any time, all bids.

Further information may be obtained at during normal business hours at Weaverville Town Hall, 30 South Main Street, Weaverville, NC, 28787, or by phone at 828-645-7116.

Derek Huninghake
Weaverville Town Clerk

Posting Date: July 25, 2018
Publication Date: August 2, 2018



Owners Billy and Geoff each bring a decades worth of glassblowing experience and arts management to Lexington Glassworks. Billy and Geoff are internationally recognized Alfred University graduates and have traveled extensively to study with some of the best glass artists and technicians in the world.

As the former head studio technician at the prestigious Pittsburgh Glass Center, Billy honed his skills in glass studio operations. Geoff developed his acute sense of design and innovation through his years spent managing a nationally regarded glass blowing studio. Billy and Geoff carefully designed and hand-crafted each piece in the gallery, showcasing their combined commitment to high-quality glass art.





CRAFTED BY HAND

Lexington Glassworks, located in the heart of Asheville, North Carolina, was born out of the desire to create timeless pieces. Each piece is skillfully crafted using centuries-old techniques and high-quality material with the singular goal of creating

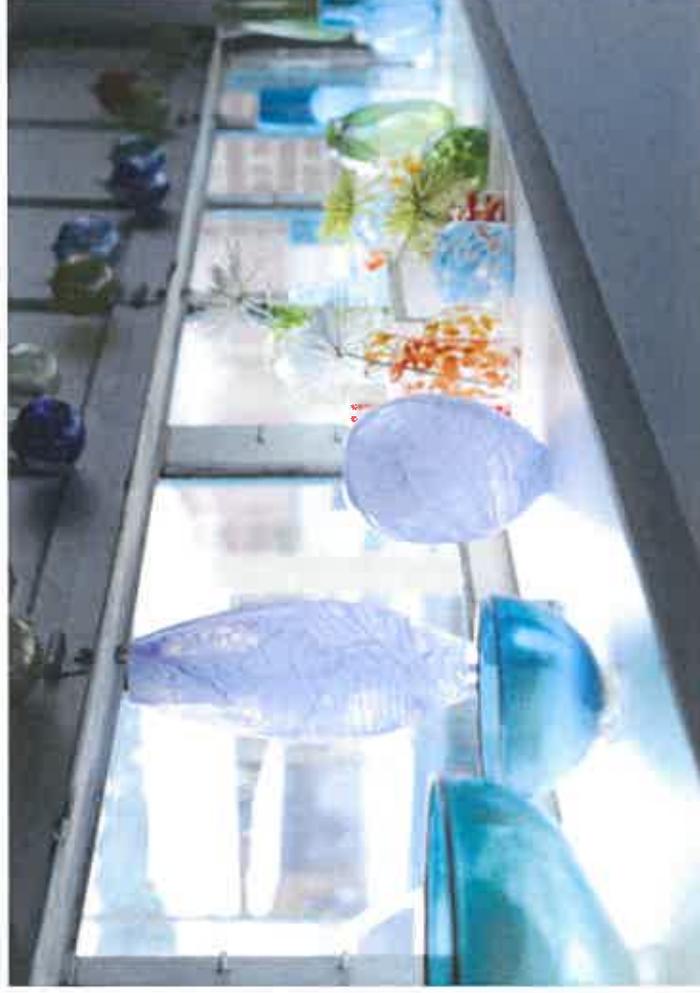
WE ARE MAKERS

Driven by a mutual desire to do what we love and armed with a strong vision, we set out to open Lexington Glassworks. Like most great ideas, Lexington Glassworks began to take shape over beers with friends. Both looking for the next adventure and at the end of our inadvertently parallel road trips across America, we landed in Asheville. Trusting our gut and already enamored



with the area from previous visits to the Penland School of Crafts we knew we wanted to be in the mountains of Western North Carolina. Together we worked to design, build and create a studio and gallery that would reflect our passion for glassblowing, vision for unique design, and desire to share all of this with you.





OPEN DOOR CULTURE

Proud to be a part of one of the South's best destinations, we are committed to and passionate about the glass community in Asheville. At Lexington Glassworks, we pride ourselves on our open door culture. By inviting you to watch the artists at work, as they create their perfect accent piece for your home, office, or bar, we hope to finish, we hope to grow with the artist making the glass and the process from start to finish, we hope to invite you to watch the artists at work, as they create their perfect accent piece for your home, office

ART AND BEER

Our studio is unique in that we invite people to sit, enjoy a beer, and watch the art of glassblowing. We pride ourselves on our open door culture and the bar really is an extension of that principle. Throughout the year you can enjoy a small selection of rotating Asheville craft beers on tap. We host a variety of collaborative events, most notably a monthly Glassworks Concert Series. It's important to us to encourage and foster a relationship with makers and artists of different creative mediums, whether that is craft brewers, local musicians, or



artists. The Lexington Glassworks encompass the best of Asheville — art, community, and beer.

Join our mailing list to stay in touch about upcoming events.



WHO WE ARE



**TOWN OF WEAVERVILLE
TOWN COUNCIL AGENDA ITEM**

MEETING DATE: September 17, 2018
SUBJECT: Code Amendments - Nuisances
PRESENTER: Town Attorney
ATTACHMENTS: Proposed Code Amendments

DESCRIPTION/SUMMARY OF REQUEST:

Staff has been working on a comprehensive revision of the Town's ordinances regarding nuisances. Those proposed amendments are included with tonight's agenda. With Town Council's previous direction in mind, these regulations have been drafted to focus directly on public health and safety issues.

TOWN COUNCIL ACTION REQUESTED:

Due to the length and complexities of these regulations staff would like some direction from the Mayor and Town Council on a review process that best meets the needs of Town Council.

PROPOSED AMENDMENTS – NUISANCES

REPEAL CURRENT CHAPTER 9 AND REPLACE WITH THE FOLLOWING:

CHAPTER 9 - NUISANCES ARTICLE I - GENERAL PROVISIONS

Sec. 9-100. – Title.

This Chapter 9 of the Town’s Code of Ordinances may be referred to as the Town’s nuisance ordinance or public nuisance ordinance.

Sec. 9-101. – Administration.

The town’s law enforcement officers, code enforcement officer, and the town manager, or his or her designee, shall be responsible for the administration and enforcement of this chapter. The board of adjustment shall be the appeals board for all decisions made under this chapter unless otherwise provided.

Sec. 9-102. – Concurrent jurisdiction.

Nothing in this chapter shall be construed to limit the legal authority or powers of county health officials or officers of the town police department or fire department in enforcing other laws or health regulations, or in otherwise carrying out their duties.

Sec. 9-103. – Violators and chronic violators, defined.

For the purposes of this chapter, *violation* means the person creating the violation, the person operating any motor vehicle, machinery or equipment causing the violation, the violator’s employer, and/or the company, partnership, corporation or other person or entity which owns, possesses or controls the motor vehicle, machinery or equipment utilized by the violator.

A *chronic violator* is a person who owns property whereupon, in the previous calendar year, the town gave notice of violation at least three times under any provision of the town’s public nuisance ordinance.

Sec. 9-104. – Investigation of conditions.

The person(s) having administrative responsibilities under each article within this chapter, upon notice from any person of the existence of any of the conditions described in such article, shall, within a reasonable period of time, make or cause to be made such investigation as may be necessary to determine whether, in fact, such conditions constitute a violation of this chapter.

Sec.9-105. – Enforcement and penalties; penalty not exclusive.

Section 1-6 shall apply to all violations under this chapter. The imposition of a penalty under section 1-6 of this Code for violations of this chapter shall not prevent the revocation or suspension of any license, franchise, or permit issued or granted under the provisions of this Code.

Any condition designated as a nuisance in violation of this chapter may be summarily abated by the town directly or through a private contractor and such summary abatement shall be in addition to the civil and criminal penalties and other remedies as provided under section 1-6 of this Code.

Any town employee charged with enforcement and collection of abatement costs or civil penalties may, in consultation with the town manager and town attorney, reduce the penalties or costs assessed, based upon criteria set forth in department guidelines.

Sec. 9-106. – Administrative fee for town abatement.

An administrative fee in the amount of \$100 shall be assessed for all violations under this chapter that result in abatement action having to be taken by or on behalf of the town. Such administrative fee is considered restorative and is intended to provide compensation to the town for costs associated with the town's code enforcement program, including the cost to monitor, control, prosecute, cure and/or correct the violation. As such, the amount declared herein is presumed to provide sufficient restoration to the town for its costs.

Sec. 9-107. – Cost of abatement declared a lien.

The expense of any enforcement action taken by the town for violations of this chapter shall be paid by the person in violation of this article. If the expense is not paid, it shall be a lien on the land or the premises where the nuisance occurred and shall have the same priority and be collected as unpaid ad valorem taxes.

Upon completion of such removal and abatement, a statement shall be delivered to the town tax collector showing the exact cost of the abatement of the unlawful condition plus the administrative fee of \$100 as set out in Section 9-106 to cover the cost of notice and costs of collection as a civil penalty. The town tax collector shall thereupon mail to the owner of the subject property a bill covering the costs, if with reasonable diligence the name and address of such owner can be ascertained, and the amount of the bill shall become a lien on the property, and if not paid within 30 days shall be collected as in the manner provided for the collection of delinquent taxes.

Any town employee charged with enforcement and collection of abatement costs or civil penalties may, in consultation with the town manager and town attorney, reduce the penalties or costs assessed, based upon criteria set forth in department guidelines.

Sec. 9-108. – Severability.

Should any section or provision of this chapter be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of this ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Sec. 9-109. – Conflicts with other provisions of town code.

In the event of a conflict between a provision of this chapter and any other section of the Town’s Code of Ordinance, the more stringent provision shall apply.

ARTICLE II - PUBLIC HEALTH NUISANCES

Sec. 9-200. – Authority and jurisdiction

The Town of Weaverville hereby finds that it is necessary to define, prohibit, regulate and summarily abate acts, omissions, or conditions that are dangerous or prejudicial to the public health or public safety within the Town of Weaverville. The regulations contained within this article are adopted pursuant to the authority granted under NCGS § 160A-193 and § 160A-174.

Sec. 9-201. – Nuisances prohibited; enumeration not exclusive

The following enumerated and described conditions are hereby found, deemed, and declared to constitute a detriment, danger, and hazard to the public health and public safety and the same are found, deemed and declared to be public health nuisances wherever the same may exist and are hereby unlawful; however, this enumeration shall not be deemed or construed to be exclusive, limiting, or restrictive.

- (1) Any condition which constitutes a breeding ground or harbor for rats, mosquitoes, harmful insects, snakes, or other pests, or has the potential for becoming a breeding ground or harbor for such pests.
- (2) Hides, dried or green, provided the same may be kept when thoroughly cured and odorless.
- (3) Any concentration of combustible items including but not limited to mattresses, boxes, paper, automobile tires and tubes, garbage, trash, refuse, brush, old clothes and rags.
- (4) A collection place, storage, or accumulation of old, worn out, broken, or discarded machinery, vehicle parts, junk, tires, tire rims and tubes, metal products, old clothes, rags, furniture, stoves, refrigerators, appliances, cans and containers, household goods, mattresses, boxes, paper, plumbing or electrical fixtures, glass products, brush, limbs, fencing materials, wood products (not including firewood).
- (5) Any collection of garbage, litter, food waste, human waste, animal waste, or any other rotten or putrescible matter of any kind.
- (6) Any condition which blocks, hinders, or obstructs in any way the natural flow of streams, branches, creeks, surface waters, ditches, or drains, to the extent that the premises is not free from standing water.
- (7) Any improper or inadequate drainage on private property which causes flooding or interferes with the use of or endangers in any way the streets, sidewalks, parks, or other town-owned property of any kind; provided, the notices required and powers conferred by this article by and on the code enforcement officer in abating the nuisances defined by this subsection shall be given and exercised by the director of public works.
- (8) Structures, remains of structures, or lots with a condition that is detrimental, dangerous, or hazardous to the public safety, health, or welfare. For purposes of the enforcement of this section, this shall be a condition which consists of one or more of the following:

- i. Glass, metal, or other sharp objects in accessible areas;
- ii. Holes, sinkholes, excavations, wells, or embankments without sufficient enclosure or covering to prevent persons from injury;
- iii. Surviving foundations, walls, or roofs that may collapse or that create heights of 3 feet or more in areas where they may be scaled;
- iv. Any substance which is hazardous or harmful to humans or pets;
- v. Any open or accessible utility lines such as natural gas, water, sewer, or electrical;
- vi. Structures or remains of structures open to the elements, which are a danger to children, tend to attract vagrants or persons intent on criminal activities or other activities that would constitute a public nuisance;
- vii. Structures ordered closed by a code compliance officer or other quasi-judicial authority which are reopened without cause or justification;
- viii. Structures, properties, or conditions posing a fire danger;
- ix. Structures, properties, or conditions likely to become a breeding place or habitat for rats, snakes or other pests.

Any owner of property who is in non-compliance with this subsection may enclose the portions of their property in violation with a secure fence of 5 feet in height in order to prevent the entry of humans until such time as the property is repaired to Code standards or completely demolish and is no longer in a detrimental, dangerous or hazardous state. Such enclosed shall be deemed in compliance with this subsection provided the enclosed nuisance condition does not and will not reach beyond the perimeter of the property.

- (9) Any indoor furniture, indoor appliances, or metal products of any kind or nature openly kept which are broken or inoperable or have jagged edges of metal or glass, or areas of confinement.
- (10) Any use of carports, open porches, decks, open garages and other open outdoor areas that are visible from the street that increases the likelihood of fire, may conceal dangerous conditions, or may be a breeding place or habitat for rats, snakes, or other pests, including, but not limited to, storage or collection of boxes, appliances, furniture (not including outdoor furniture), motor vehicle parts (including seats), tools, equipment, junk, garbage, old worn out broken or discarded machinery and equipment, cans, containers, household goods;
- (11) Any accumulation of mud or debris on a public street related to a construction, timbering, or other similar land use project; violator will be given 24 hours to clean or clear the street, however, if it is found by the town that the situation is causing a clear and present danger or hazard to traffic or the general public, such cleaning or clearing may be required to take place as soon after notification as practicable.
- (12) Any growth or overgrowth of grass, weeds, or other vegetation that is greater than 12 inches on the average, except as provided below:
 - (a) Natural landscape areas or wooded lots. This requirement shall not apply to lots that have never been cleared in anticipation of development, lots that have been landscaped or replanted to appear as natural, lots covered with trees, undeveloped areas. Natural landscape areas and wooded lots shall be maintained and shall not harbor, create, nor allow to exist any condition defined as a nuisance or determined by the code enforcement officer to be a condition which poses a health hazard for the general welfare of the public. Natural landscape vegetation shall not overhang into the public street right-of-way.

- (b) Ravines, creek banks, steep slopes. This requirement shall not apply to those properties, or those portions of properties, consisting of land features such as ravines, creek banks or steep slopes where maintenance would be unsafe and/or the chance of erosion would increase if the vegetation were decreased.
- (c) Lots exceeding one acre in size. This requirement shall not apply to any lot exceeding one acre in size, or any combined parcels under common ownership that exceed one acre in size, except that such lot(s) must comply with the requirements of this subsection to a depth of 10 feet from the public street or sidewalk and the vegetation on such lots must be cut at least twice a year.
- (d) Hay production. This requirement shall not apply to any property that is cultivating hay for use or sale as an agricultural commodity.
- (e) Ornamental grasses. Ornamental grasses chosen for features like color and form, including but not limited to switch grass, pampas grass, and bamboo, shall not be treated as nuisance vegetation under this section.
- (f) Any and all grass or weeds growing in any public sidewalk or public street and any hedges or plantings bordering thereon not properly trimmed;
- (g) Any accumulation of dead weeds, grass, brush, or undergrowth;
- (h) Any and all trees or bushes that are dead, diseased, or not properly trimmed, and which present a clear and present danger or hazard to town streets and sidewalks and the pedestrian and motoring public.
- (i) Any object or vegetative growth within the sight distance at or near street rights-of-way as the same constitutes a hazard to the town and the health and safety of motorists and pedestrians.
- (j) Any growth of noxious vegetation, including poison sumac (Rhus vernix), poison ivy (Rhus radicans), or poison oak (Rhus toxicodendron), in a location likely to be accessible to the general public.
- (k) Any other condition specifically prohibited in this article, or any other condition specifically declared to be a nuisance or a danger to the public health and/or public safety of inhabitants of the town and a public nuisance by the town council.

Sec. 9-202. – Open areas defined

Open areas are defined as those areas of property or a portion thereof that is open, including building openings of residential dwelling units that are open to the exterior, such as attached carports or porches, and any other exterior portions of properties ordinarily exposed to public view.

Sec. 9-203. – Notice to abate.

If any person shall violate the provisions of this article, it shall be the duty of the town to give notice to the owner or to any person in possession of the subject property, as provided in section 9-205, directing that all unlawful conditions existing on the property be abated within 10 days from the date of such notice, except as provided in section 9-204 below.

The notice of abatement shall contain the following:

- a. A statement that conditions exists on the property which constitute a public health nuisance;
- b. The condition existing;

- c. The location of such condition;
- d. A statement ordering the owner and the occupant or person in possession of the premises to abate the nuisance, and that, unless the condition is abated within 10 days (or such other reasonable period of time for abatement) from the mailing of the notice as specified in section 9-205, the conditions constituting a nuisance will be abated by the town and the cost of abatement shall constitute a lien against the premises;
- e. A statement indicated how and with whom an appeal from the notice of abatement can be filed.

Sec. 9-204. – Emergency abatement by town.

If, in the opinion of the code enforcement officer, the unlawful condition is such that it is of imminent danger or peril to the public, then any authorized representative of the town may, without notice, proceed to abate the same, and the cost thereof shall be charged against the property as is provided in this article.

The code enforcement officer or a law enforcement officer may enter upon the premises for the purpose of abating the nuisance and may summarily remove, abate, or remedy any condition in the town limits that is a prohibited nuisance under this article.

Sec. 9-205. – Service of notice to abate.

The owner and/or occupant of subject property shall be notified of violation of this article by personal delivery of said notice or by posting in a conspicuous place on the premises affected and by regular and registered or certified mail, return receipt requested. If such registered or certified notice is refused or is returned unclaimed, but the regular mail is not returned by the post office within 10 days after the mailing, the service shall be deemed sufficient. The person mailing such order by regular mail shall certify that fact and the date thereof and such certificate shall be deemed conclusive in the absence of fraud. If the name of the owner cannot be ascertained, then the notice shall be served on any person in possession of the subject property.

Any such notice may be served by any authorized representative of the town manager, the code enforcement officer or by any law enforcement officer of the town.

The town may notify a chronic violator of the town's public nuisance ordinance that, if the violator's property is found to be in violation of the ordinance, the town shall, without further notice in the calendar year in which notice is given, take action to remedy the violation, and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The notice shall be sent by registered or certified mail.

Sec. 9-206. – Defect in notice not to affect lien.

Any defect in the method of giving notice required by this section, or in the form thereof, or the giving of such notice to an improper person, shall not prevent the town, in any case where the work of abating an unlawful condition upon any property is caused by the town, from collecting the cost thereof from the owner, nor shall it affect the validity of the lien on the property for such cost.

Sec. 9-207. – Appeal notice.

Within the time frame stated in the notice to abate, the owner or occupant of the property where the nuisance exists may appeal the findings of the town manager, his or her designee, or the code enforcement officer to the Weaverville Board of Adjustment by giving written notice of appeal to such officer signing the notice to abate. An appeal stays the abatement of the nuisances until a final determination by the board of adjustment. In the event no appeal is taken, the town may proceed to abate the nuisance.

Sec. 9-208. – Appeal hearing; determination by the board of adjustment.

In the event an appeal is filed as provided in this article, the board of adjustment, after hearing all interested persons and reviewing the findings of the town manager, his or her designee or the code enforcement officer, may affirm or reverse the finding that a nuisance exists in the town. If the board of adjustment shall determine that the findings are correct and proper, it shall adopt an order specifically declaring the condition existing on the property to be a danger and hazard to the health and safety of the inhabitants of the town and a public health nuisance and direct the town to cause such conditions to be abated.

Sec. 9-209. – Abatement by town where owner fails to abate.

Upon the failure of the owner or person in possession of any premises to abate an unlawful condition existing thereupon within the time prescribed, it shall be the duty of an authorized town representative to cause the removal and abatement of such unlawful condition therefrom. The town manager, code enforcement officer, law enforcement officer, or authorized town representative are hereby given full power and authority to enter upon the premises upon which a nuisance is found to exist under the provisions of this article for the purpose of abating the nuisance and may summarily remove, abate, or remedy any condition in the town limits that is a prohibited nuisance under this article.

Sec. 9-210. – Cost of abatement declared a lien.

The expense of any enforcement action taken by the town for violations of this article shall be paid by the person in violation of this article. If the expense is not paid, it shall be a lien on the land or the premises where the nuisance occurred and shall have the same priority and be collected as unpaid ad valorem taxes.

Upon completion of such removal and abatement, a statement shall be delivered to the town tax collector showing the exact cost of the abatement of the unlawful condition plus the administrative fee of \$100 as set out in Section 9-106 to cover the cost of notice and costs of collection as a civil penalty. The town tax collector shall thereupon mail to the owner of the subject property a bill covering the costs, if with reasonable diligence the name and address of such owner can be ascertained, and the amount of the bill shall become a lien on the property, and if not paid within 30 days shall be collected as in the manner provided for the collection of delinquent taxes.

ARTICLE III - ABANDONED AND JUNKED MOTOR VEHICLES

Sec. 9-300. – Authority and jurisdiction.

The Town of Weaverville hereby finds that regulation of abandoned and junked motor vehicles is necessary and desirable to protect the health and safety of the residents of the Town of Weaverville. The regulations contained within this article are adopted pursuant to the authority granted under NCGS § 160A-303.

Sec. 9-301. – Administration.

The chief of police and code enforcement officer, and their designees, shall be responsible for the administration and enforcement of this article.

The chief of police, or his or her designee, is authorized to designate a motor vehicle as an abandoned motor vehicle as defined in this article, and shall be responsible for administering the removal and disposition of vehicles determined to be abandoned on the public streets and highways within the town and on property owned or operated by the town. The chief of police shall further be responsible for administering the removal and disposition of vehicles designated as abandoned and/or junked motor vehicles from private property.

The town may contract with private tow companies to remove, store, and dispose of abandoned motor vehicles and junked motor vehicles in compliance with this article and applicable North Carolina law.

Sec. 9-302. – Administrative search and inspection warrants.

The authorized officials, upon notice from any person of the existence of any of the conditions described in this article, shall make or cause to be made such investigation as may be necessary to determine whether, in fact, such conditions constitute a violation of this article.

The authorized officials are authorized to secure an administrative search and inspection warrant, as provided by NCGS 15-27.2, in order to conduct any necessary inspection of the premises on which an abandoned motor vehicle or junked motor vehicle may be located and to obtain evidence to determine whether there is any violation of any provisions of this article.

Sec. 9-303. – Immunity.

In accordance with NCGS 160A-303(f), no person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of any abandoned, lost, or stolen motor vehicle for disposing of the vehicle as provided in this article.

Sec. 9-304. – Definitions.

Abandoned motor vehicle means any motor vehicle:

- (1) left upon a street or highway in violation of the law or ordinance regulating or prohibiting parking; or

- (2) left on property owned or operated by the Town for longer than 24 hours; or
- (3) left in any Town owned or operated parking lot for longer than 7 days; or
- (4) left on any street or highway for longer than 7 days or is determined by law enforcement to be a hazard to the motoring public; or
- (5) left on private property without the consent of the owner, occupant, or lessee thereof for longer than 2 hours.

Authorized officials are the chief of police and the code enforcement officer, and their respective designees.

Junked motor vehicle means a vehicle that does not display a current license plate and one of the following conditions is present:

- (1) is partially dismantled or wrecked; or
- (2) cannot be self-propelled or moved in the manner in which it was originally intended to move; or
- (3) is more than 5 years old and appears to be worth less than \$500.

Motor vehicle is defined to include all machines designed or intended to travel over land or water by self-propulsion or which attached to any self-propelled vehicle. Use of the term vehicle and trailer in this article shall mean motor vehicle. For purposes of this article an electric personal assistive mobility device as defined in NCGS § 20-4.01(7b) is not a motor vehicle.

Sec. 9-305. – Exemptions.

This article does not apply to any motor vehicle in an enclosed building or any motor vehicle on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise, or to any motor vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the town.

Sec. 9-306. – Abandoned motor vehicles unlawful.

It shall be unlawful for the registered owner or person entitled to the possession of the vehicle to allow any abandoned motor vehicle to remain on any public street, public property, or private property in violation of this article.

It shall be unlawful for the registered owner or person entitled to the possession of an abandoned motor vehicle, or for the owner, lessee, or occupant of the real property upon which an abandoned motor vehicle is located to leave or allow the motor vehicle to remain on the property after the motor vehicle has been ordered removed.

Sec. 9-307. – Removal of abandoned motor vehicles from public streets and public property.

Any abandoned motor vehicle on the public streets or public property may be removed by or under the direction of a law enforcement officer or a code enforcement officer. Notice of each removal shall be given to the owner of the vehicle as promptly as possible in accordance with the pre-tow and post-tow notice provisions as stated in this article.

Sec. 9-308. – Removal of abandoned motor vehicles from private property.

Any abandoned motor vehicle on private property may be removed by or under the direction of a law enforcement officer or a code enforcement officer upon the written request of the owner, lessee, or occupant of the premises.

It shall be unlawful for the registered owner or person entitled to the possession of an abandoned motor vehicle, or for the owner, lessee, or occupant of the real property upon which an abandoned motor vehicle is located to leave or allow a motor vehicle to remain on the property after the motor vehicle has been ordered removed.

Sec. 9-309. – Removal and disposition at the request of the owner.

A law enforcement officer or code enforcement officer may, with the consent of the owner of a motor vehicle, remove and dispose of any motor vehicle as a junked motor vehicle regardless of the value, condition, or age of such motor vehicle and without compliance with the notice, hearing, or sale procedures in this article.

Sec. 9-310. – Pre-tow notice; exception.

Except as provided herein, any junked or abandoned motor vehicle in violation of this article may be removed by towing only after a warning notice is provided. Such notice shall be affixed to the windshield or some other conspicuous place on the vehicle. That notice shall state that the motor vehicle will be removed on a specified date, no sooner than 7 days after the notice is affixed to the motor vehicle, unless the motor vehicle is brought into compliance by the owner or legal possessor prior to that time. The notice shall state the procedure the owner must follow to request a probable cause hearing before the towing.

Prior notice need not be given to remove an abandoned or junked motor vehicle if a law enforcement officer determines that there is a special need for prompt action to eliminate obstructions to the flow of traffic or immediate removal is necessary to maintain and protect the public safety and welfare. Circumstances justifying the removal of such vehicles without prior notice include, but are not limited to, the following:

- (1) For vehicles left on the public streets and highways, town council determines that immediate removal of such vehicles may be warranted when they are:
 - (i) obstructing traffic;
 - (ii) left on the street or highway in violation of a law or ordinance prohibiting parking;
 - (iii) parked in a “no stopping” or “no standing” zone;
 - (iv) parked in a loading zone.

- (2) For vehicles left on town-owned property or on private property, such vehicles may be removed without giving prior notice only in those circumstances where the chief of police or code enforcement officer make written findings that there is a special need for prompt action to protect and maintain the public health, safety, and welfare, including, but not limited to, the following circumstances:

- (i) Vehicles blocking or obstructing ingress or egress to businesses or residences;
- (ii) Vehicles parked in such a location or manner as to pose a traffic hazard;
- (iii) Vehicles that represent an imminent threat to life or property.

Sec. 9-311. – Post-towing procedures; post-tow notice.

- (a) Post-towing procedures shall be consistent with Article 7A of Chapter 20 of the North Carolina General Statutes.
- (b) Whenever a vehicle with a valid registration plate or registration number is towed, the authorizing person shall notify the last known registered owner of the following:
 - (i) The description of the vehicle;
 - (ii) The place from which the vehicle may be released;
 - (iii) The violation with which the owner is charged;
 - (iv) The procedure the owner must follow to have the vehicle returned to him or her;
 - (v) The procedure the owner must follow to request a probable cause hearing on the towing.

If the vehicle has a North Carolina registration plate or registration, notice shall be given to the owner within 24 hours; if the vehicle is not registered in North Carolina, notice shall be given to the owner within 72 hours. This notice shall, if feasible, be given by telephone. Whether or not the owner is reachable by telephone, notice shall be mailed to his or her last known address unless he or she, or their agent, waives this notice in writing.

- (c) Whenever a vehicle with neither a valid registration plate nor registration is towed as provided herein, the authorizing person shall make reasonable efforts, including checking the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him or her of the information listed in subsection (a) above. Reasonable efforts shall be presumed if the requirements of the pre-tow notice have been followed.

Sec. 9-312. – Hearing; probable cause hearing.

- (a) The owner or any other person entitled to claim possession of a motor vehicle towed pursuant to this article may request a hearing either before towing or after towing of the motor vehicle. The only issue at the hearing is whether or not the town can demonstrate probable cause to tow the motor vehicle. The town manager, or his or her designee, shall serve as the hearing officer. A request for hearing shall be filed with the code enforcement officer, and he or she shall set the hearing within 3 days of the date of the hearing request. The owner or any other person entitled to claim possession of the vehicle shall be notified of the time and place of the hearing, the specific grounds for the classification of the vehicle as an abandoned motor vehicle or junked motor vehicle, and the reason for removal of the vehicle.
- (b) The owner, the person who towed the vehicle, the person who authorized the towing, and any other interested parties may present evidence at the hearing. The person authorizing the towing

and the person who towed the vehicle may submit an affidavit in lieu of appearing personally, but the affidavit does not preclude that person from also testifying.

- (c) If the hearing is pre-tow and the hearing officer finds that the town has probable cause, the motor vehicle will be removed and the cost for removal will become a lien on the motor vehicle. If the hearing officer finds that probable cause does not exist, the town will not tow the vehicle and no costs will be charged.
- (d) If the hearing is post-tow and the hearing officer finds that the town had probable cause, the lien for cost of removal shall remain. If the hearing officer finds that probable cause did not exist, the lien shall be extinguished.
- (e) The hearing officer shall prepare a written report within 5 days of the hearing stating his or her conclusions concerning whether the vehicle was in violation of this article and the reasons and evidence upon which the conclusion was based. The owner or any other person entitled to claim possession of the vehicle shall be notified of this decision by regular mail.
- (f) Any aggrieved party may appeal the hearing officer's decision to the town's board of adjustment by filing an appeal in writing within 15 days after the date of the report of the hearing officer, but not thereafter.

Sec. 9-313. – Obtaining possession of a towed vehicle; payment of towing fees.

- (a) At any stage in a proceeding under this article, including before the probable cause hearing, the owner or other person entitled to possession may obtain possession of a vehicle that has been towed in accordance with this article by:
 - (1) Paying the towing fee and costs incident to such fee; or
 - (2) Posting a bond for double the amount of the towing fee.
- (b) The person who tows a vehicle under this article is responsible for collecting towing fees from the owner of that vehicle before that owner can obtain possession of the vehicle. In addition, prior to obtaining possession of the towed vehicle, the owner must pay to the town an administrative fee of \$100 as set out in section 9-106.

Sec. 9-314. – Liens on towed vehicles; sale of towed vehicles.

Liens for nonpayment of charges and fees related to the towing of vehicles under this article, and the sale of such vehicles in enforcement of those liens, shall be handled in accordance with Article 1 of Chapter 44A of the North Carolina, by the person towing vehicles under this article.

ARTICLE IV - NOISE

Sec. 9-400. – Authority and jurisdiction.

The Town of Weaverville hereby finds that it is necessary to define, prohibit, regulate and summarily abate acts, omissions, or conditions that are dangerous or prejudicial to the public health or public safety within the Town of Weaverville. The regulations contained within this article are adopted pursuant to the authority granted under NCGS § 160A-193 and § 160A-174.

Sec. 9-401. – Unlawful noise.

It shall be unlawful to emit, or to cause or permit to be made, any unreasonably loud, annoying, frightening, loud and disturbing, or unnecessary noise. Specifically, it shall be unlawful to emit noise of such character, intensity, or duration as to be detrimental to the life or health of reasonable persons of ordinary sensibilities. Factors to consider in determining whether a violation exists include, but are not limited to:

- (a) The volume of the noise;
- (b) The intensity of the noise;
- (c) Whether the nature of the noise is usual or unusual;
- (d) Whether the origin of the noise is natural or unnatural;
- (e) The volume and intensity of the background noise, if any;
- (f) The proximity of the noise to residential sleeping facilities;
- (g) The nature and zoning of the area within which the noise emanates;
- (h) The density of the inhabitation of the area within which the noise emanates;
- (i) The time of the day or night the noise occurs;
- (j) The duration of the noise; and
- (k) Whether the noise is recurrent, intermittent, or constant.

Sec. 9-402. – Presumption in prosecution for noise violation.

The complaints of 2 or more persons, at least one of whom resides in a different home from the other complaining person or persons, or the complaint of one or more persons, when combined with the complaint of a duly authorized investigating person, shall be prima facie evidence that such sound is a loud and annoying, frightening, loud and disturbing, unreasonably loud or unnecessary noise.

OPTIONAL PROVISIONS FOR ARTICLE III

Sec. 9-. – Junked motor vehicles that are declared health or safety hazards are unlawful.

It shall be unlawful for the registered owner or person entitled to the possession of the vehicle to allow any junked motor vehicle that is declared by town council to be a health or safety hazard to remain on any public street, public property or private property. In determining whether there is a health, safety, or fire hazard, town council may take into consideration that the motor vehicle is found to be:

- (i) A breeding ground or harbor for mosquitoes, other insects, rats, snakes or other pests; or
- (ii) A point of collection of pools or ponds of water; or
- (iii) A point of concentration of quantities of gasoline, oil, or other flammable or explosive material; or
- (iv) One which has areas of confinement which cannot be operated from the inside, such as trunks, hoods, etc.; or
- (v) So situated or located that there is a danger of it falling or turning over; or
- (vi) One which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrescible matter of any kind; or
- (vii) One which has parts which are jagged or contain sharp edges of metal or glass; or
- (viii) A condition or circumstance which exposes the general public to safety, health, or fire hazards.

It shall be unlawful for the registered owner or person entitled to the possession of a junked motor vehicle that is declared by town council to be a health or safety hazard, or for the owner, lessee, or occupant of the real property upon which that junked motor vehicle is located to leave or allow the motor vehicle to remain on the property after the motor vehicle has been ordered removed.

Sec. 9-. – Removal of junked motor vehicles from private property.

A junked motor vehicle on private property may be removed by or under the direction of a law enforcement officer or a code enforcement officer without the written request or consent of the owner, lessee, or occupant of the premises when town council has declared in writing the vehicle to be a health or safety hazard and ordered its removal.

OPTIONAL PROVISIONS FOR ARTICLE IV

Sec. 9-. – Prohibited noises; enumeration not exclusive.

Except when specifically allowed as a part of a special event permitted under Town Code, in addition to any other violations of this chapter, the following acts are specifically declared to be unreasonably loud and annoying, frightening, loud and disturbing, or unnecessary noise, the emission of which shall be unlawful. The following enumeration shall not be deemed to be exclusive:

- (a) The sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle while not in motion, except as a danger signal, or if in motion, only as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended; the creation by means of any such signal device of any unreasonably loud or harsh sound; and the sounding of such device for an unnecessary and unreasonable period of time.
- (b) The use of any gong or siren upon any vehicle other than police, fire, ambulance or other emergency vehicles.
- (c) Amplified sound or musical instruments played in such a manner or with such volume during the nighttime hours as to annoy or disturb the quiet, comfort or repose of any person or persons in any dwelling, hotel, motel or other type of residence.
- (d) The use of any automobile, motorcycle or other vehicle so out of repair, so loaded or in such manner as to create loud or unnecessary grating, grinding, rattling or other noise.
- (e) The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as warning of danger.
- (f) The discharge into the open air of the exhaust of any stationary internal combustion engine or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
- (g) The excavation of land, erection, demolition, alteration or repair of any building or other structure in a residential district other than between the hours of 7:00 a.m. and 9:00 p.m., except by permission of the code enforcement officer when, in the opinion of the code enforcement officer, such work will not create objectionable noise; upon complaint in writing of the occupant of property near the location of the work, the code enforcement shall immediately revoke the permission and the work outside of allowable hours shall be immediately discontinued. The code enforcement officer may permit emergency work in the preservation of public health or safety at any time.
- (h) The creation of any excessive noise on any street adjacent to any school, institution of learning or court, while the same are in session, or within one hundred fifty (150) feet of any hospital or other residential healthcare facility, which unreasonably interferes with the work of such institution or which disturbs or unduly annoys patients in the hospital.
- (i) The creation of loud and excessive noise in connection with loading or unloading any vehicles or the opening and destruction of bales, boxes, crates and containers.
- (j) The shouting and crying of peddlers, barkers, hawkers or vendors which disturbs the quiet and peace of the neighborhood.
- (k) The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale or display of merchandise.
- (l) The conducting, operating or maintaining of any garage or filling station, or the repair, rebuilding or testing of any motor vehicle in any residential district, so as to cause loud or offensive noises to be emitted therefrom during the nighttime hours of 9:00 pm to 7:00 am.

- (m) The firing or discharging of firearms in the streets or elsewhere for the purpose of making noise or disturbance.
- (n) The creation of excessive noise by the operation of an airplane over the town by stunting, diving or otherwise operating an airplane for the purpose of advertising or otherwise.
- (o) No person shall own, keep, harbor, or have in his or her possession, any dog, bird, or other animal which, by frequent or habitual crying, howling, yelping, barking, squawking, meowing, or otherwise, causes loud noises which disturbs the quiet, comfort or repose of any person.
- (p) The operation on public property or on public vehicular areas of any sound amplifier which is part of, or connected to, any radio, stereo receiver, compact disc player, cassette tape player, or other similar device when operated in such a manner as to be plainly audible at a distance of fifty (50) feet from the building, structure, or vehicle in which it is located, is prohibited and is a violation of this section.

Sec. 9-. – Sounds impacting residential life.

It shall be unlawful to carry on the following activities in any residentially zoned area of the town during the nighttime hours of 9:00 pm to 7:00 am:

- (a) Operation of refuse collection machinery;
- (b) Operation of construction machinery;
- (c) Operation of garage machinery;
- (d) Operation of lawn mowers and other domestic tools used outside.

This section shall not apply to emergency operations designed to protect the public health and safety.

Sec. 9-. – Burden of persuasion regarding exceptions.

In any enforcement proceeding concerning violations of this article, if an exception stated in this article would limit an obligation, limit a liability or eliminate either an obligation or a liability, the person who would benefit from the application of the exception shall have the burden of persuasion that the exception applies and that the terms of the exception have been met.

**TOWN OF WEAVERVILLE
TOWN COUNCIL AGENDA ITEM**

Date of Meeting: September 17, 2018

Subject: Departmental Quarterly Report

Presenter: Dale Pennell, Public Works Director

Attachments: Quarterly Report

Description: Attached please find the quarterly report from the Public Works Department.

Action Requested: No action requested.

TOWN OF WEAVERVILLE PUBLIC WORKS ACTIVITY SHEET

JUNE - AUGUST 2018

WATER MAINTENANCE DIVISION:

	June, 2018	July, 2018	August, 2018	3 month average
Water Leaks Repaired	2	0	6	3
New Water Taps	10	6	15	10
Total Active Water Meters	2,734	2,749	2,760	2,748
Water Quality Complaints	2	1	0	1
Meter Re-Read Service Calls	37	48	45	43
General Service Calls	59	94	100	84
Water Door Tags Delivered	29	8	20	19
Water Line Locate Utility Service Calls (811)	145	165	151	154
Water Meter Change Outs to Radio Read	50	4	19	24
Reservoir-Pump Station Site Checks	147	147	147	147

- Water Line Construction Inspections:
- 1. Water Pointe
 - 2. Central Ave
 - 3. Maple Trace II
 - 4. Wheeler Road
 - 1. Maple Trace II
 - 2. Wheeler Road
 - 3. NBMS

WATER PRODUCTION DIVISION:

(Gallons per month)

	June, 2018	July, 2018	August, 2018	3 month average
1A. Raw water pumped from river to Water Treatment Plant	20,673,000	20,515,000	20,107,000	20,431,667
1B. Raw water used at the WTP	2,172,000	2,115,000	2,305,000	2,197,333
1C. Finished water Produced at WTP	18,501,000	18,400,000	17,802,000	18,234,333
2. Water Purchased from Asheville	0	0	0	0
A. TOTAL WATER PRODUCTION (1.C. + 2)	18,501,000	18,400,000	17,802,000	18,234,333
B. TOTAL METERED FOR BILLING	14,173,100	13,375,600	13,464,200	13,670,967
C. Metered, Non-Metered & Non-Billed Use by Town	1,294,000	1,388,540	2,440,872	1,707,804
D. Total Accounted For Water (B+C)	15,467,100	14,764,140	15,905,072	15,378,771
E. TOTAL UNACCOUNTED (A-D)	3,033,900	3,635,860	1,896,928	2,855,563
F. MONTHLY UNACCOUNTED WATER (E/Ax100)	16.4%	19.8%	10.7%	15.7%

**RUNNING ANNUAL AVERAGE
FOR "UNACCOUNTED FOR" WATER:**

(Gallons per year)

	June, 2018	July, 2018	August, 2018	3 month average
Finished Water Pumped to System	202,055,336	203,103,336	202,471,336	202,543,336
Unaccounted for Water	28,601,004	30,312,334	30,125,762	29,679,700
12 month average Unaccounted Water	14.2%	14.9%	14.9%	14.7%

WATER CAPACITY VS PRODUCTION:

(Gallons per day)

	June, 2018	July, 2018	August, 2018	3 month average
Water Plant Design Capacity	1,500,000	1,500,000	1,500,000	1,500,000
Net Sellable Production Capacity (80%)	1,300,000	1,300,000	1,300,000	1,300,000
Average Daily Production	616,700	613,333	593,400	607,811
Total Water Production (A above) / 30 days in month	41.1%	40.9%	39.6%	40.5%
AVERAGE USE RELATIVE TO DESIGN CAPACITY				
Current Water Commitments for future development	423,896	423,896	483,296	443,696
MONTHLY USAGE & FUTURE USAGE VS 1,500,00 GPD	69.4%	69.1%	71.8%	70.1%

STREET MAINTENANCE DIVISION:

	June, 2018	July, 2018	August, 2018	3 month average
Street/Sidewalk/Drainage /Sign Repairs Completed	3	0	6	3
Roads paved	Orchard Place	na	na	

PARKS, RECREATION, & FACILITY MAINTENANCE DIVISION:

	June, 2018	July, 2018	August, 2018	3 month average
P&R Projects/Repairs Completed	3	0	5	3

SANITATION DIVISION:

June, 2018 July, 2018 August, 2018 3 month average

Residential Collection Points	1897	1897	1914	1903
Monthly Residential Collections (4/month)	7588	7588	7656	7611
Business Pick Ups	72	72	72	72
Business Pick Ups (4/month)	288	288	288	288
Residential Set-Outs	82	82	82	82
Residential Set-Outs (4/month)	328	328	328	328
TOTAL points picked up per month	8204	8204	8272	8227
Total Tons to Landfill	106.59	133.04	114.93	118.19
Average Pounds Per Collection Point (per week)	26.0	32.4	27.8	28.7
Cubic Yards - Yard Debris	36	350	54	147
Cubic Yards - Brush Chipped	264	220	352	279
Cubic Yards - Leaf Collection	0	0	0	0

MISC

1. MSD has stopped our WTP's sludge disposal to their plant as of 09/01/2018 (effective 12-31-2018). Alternatives are being studied.
2. Recycling of light bulbs is not being done by the town; Lowes & Home Depot only accept CFL bulbs for recycling, not florescent.
3. We have recently begun encouraging residents to purchase the "Toter" garbage cans and 35 have been sold this quarter.

TOWN OF WEAVERVILLE - PUBLIC WORKS DEPARTMENT - WATER COMMITMENTS

Prepared by: Dale Pennell, Public Works Director

REVISED 09/11/2018

Water Line Status	Project with current commitment	Address	Description	Number of Units	Gallons per Connection	Projected Demand (GPD)
Design (outside town)	Doan Road Duplexes	near N Windy Ridge School	7 - 2 family duplexes	14	400	5,600
Construction	Sernus Creekside LLC	Creekside Village, Ph 4	84 3br. Residential Units	84	250	21,000
Construction (outside town)	Drew Norwood Windsor Aughty	Maple Trace Subdivision	145 Residential Lots	145	250	36,250
Construction	Sernus Creekside LLC	Creekside Village, Ph 5	38 3 Br. Residential Units	38	250	9,500
Construction (outside town)	Buckner (Wheeler) Project	Wheeler Road & Reems Creek	Residential Units	72	250	18,000
Construction	Water Pointe	Lakeshore & Quarry	Residential Units	21	250	5,250
Construction	New Homes at North Main	Lily Farm Road	Residential Units	46	250	11,500
Construction	Greenwood Park Phase 1 & 2	Reems Creek Village	19 Residential Lots	19	250	4,750
Permitting	828 North (aka Blue Ridge Crossing)	Garrison Branch Road	174 Unit Apartment Project	174	229	39,846
Permitting	Fairfield Inn	off of Weaver Blvd	104 Rooms	104	125	13,000
Permitting (outside town)	Amblers Chase Subdivision	Reems Creek Road	22 homes	22	400	8,800
Construction	Central Avenue Subdivision	44 Central Ave	7 homes	7	400	2,800
Permitting	Weaverville Townhomes	Monticello and Northcrest Dr	53 units	53	400	21,200
Pending	Hawthorne at Garrison Branch	Ollie Weaver Rd.	234 units (1, 2 and 3 bedrooms)	234	avg. 282	66,000
			Subtotal Current Projects			263,496
on-going	Existing but not active meter sets					
on-going	Projected inside-town vacant land development		164 open meter sets	164	250	41,000
on-going	Projected Outside-town-limit residential units			397	400	158,800
				50	400	20,000
			Subtotal On-going Projections			219,800
			Total Outstanding Commitments			483,296
COMPLETED	North Asheville Baptist Church	90 Griffiee Road	Church	1	3000	3,000
COMPLETED	ASPCA	Murphy Hill Road	Animal Rescue Center	1	7000	7,000
COMPLETED	Sonic	Northridge Commons Parkway	Restaurant	1	880	880
COMPLETED	Hardees	61 Weaverville Blvd.	Restaurant	1		0
COMPLETED	Monticello Apartments	145 Monticello Road	168 Unit Apartment Building	168	250	42,000
COMPLETED	Drew Norwood Windsor Aughty	Lakeside Meadows	25 Residential	25	250	6,250
COMPLETED	10-20 Garrison Road	Garrison Road	7 businesses	7	400	2,800
CANCELLED	Monticello Commons Apartments	Monticello Commons	96 - 1 Bed Room Units 132 - 2 Bed Room Units 36 - 3 Bed Room Units	264	281	74,184
EXPIRED	Pleasant Grove MHP	Pleasant Grove Rd	12 - 2 bedroom units 2 - 3 bedroom units	12 2	250 400	3,000 800

* Projections do not include any future flow to the Town of Mars Hill (200,000 GPD in current agreement and 400,000 in future)