

Council Meeting Agenda

Tuesday, April 9, 2024, 6:00 PM City Hall 101 W. First Street Lowell. North Carolina 28098

#### 1: General

- 1A. Call To Order
- 1B. Invocation / Pledge of Allegiance
- 1C. Public Comments
- 1D. Adoption of Agenda for this Meeting

## 2: Approval of Minutes

- 2A. Approval of February 28, 2024 City Council Special Meeting Minutes (p. 3-11)
- 2B. Approval of Minutes 03-12-2024 (p. 12-22)

## 3: Special Presentation

## 4: Consent Agenda

- 4A. Finance Report (p. 23-24)
- 4B. Communications Report (p. 25-26)
- 4C. Planning Report (p. 27)
- 4D. Public Works Report (p. 28)
- 4E. Geographic Information System (GIS) Report (p. 29-31)
- 4F. Police Report (p. 32-33)
- 4G. Stormwater Department Report (p. 34)

#### 5: Unfinished Business

5A. Public Hearing - Text Amendment ZTA24-01 - Article 17, Sign Regulations (p. 35-43)

#### **6: New Business**

- 6A. Request for Public Hearing: Spencer Ridge Subdivision Development Agreement (p. 44-92)
- 6B. Request to Set Public Hearing Map Amendment (General, Rezoning) 603 Groves Street JPFJ LLC (p. 93-98)
- 6C. Consideration of Interlocal Agreement with Gaston County for Lowell Elementary Waterline Extension Project (p.
- 99-110)
- 6D. Resolution to Designate Chief Moore as the Official to Make Recommendations to the NC ABC Control Commission (p. 111-113)
- 6E. City of Lowell Façade Grant Application Review and Approval (p. 114-145)

6F. Resolutions for Approval of (1) the Inter Local Agreement with Gaston County for Enforcement Services of the Gaston County Soil Erosion & Sedimentation Control Ordinance; and (2) for the Inter Local Agreement with Gaston County for Enforcement Services of the Gaston County Stormwater Ordinance (p. 146-159)

## 7: Reports / Discussions

7A. City Manager Report

7B. City Attorney Report

7C. Mayor and City Council General Discussion

## 8: Adjournment

8A. Meeting Adjournment

Date Posted: April 5, 2024

## \*\* The following document is a draft of the minutes and the not the official approved minutes

## **Minutes for the Special Called City Council Meeting**

101 W. First Street, Lowell, North Carolina 28098 February 28, 2024, 3:56 PM - February 28, 2024, 5:12 PM

**Roll Call:** (The following members were in attendance)

- **DeWayne Chitwood**, Councilmember
- Phil Bonham, Councilmember
- Travis Smith, Councilmember
- Shane Robinson, Councilmember
- Scott Bates, Mayor Pro Tem
- Larry Simonds, Mayor

### 1. Call to Order

Mayor Simonds called the meeting to order at 4:00pm. City staff present were City Manager Scott Attaway, City Attorney John Russell, Police Chief Moore, Police Asst. Chief Harrison and City Clerk Cheryl Ramsey. A quorum was determined at the beginning of the meeting. The meeting was not teleconferenced on YouTube; however the agenda and meeting materials were made public on the city's website as well as in person. Members of the public were also in attendance.

## 2. New Business

# 2A. Per Councilmembers Smith and Bonham, To Discuss the Role of the Council in Requesting Information About Personnel Matters and other Department Requests- 4:00 PM

Councilmember Bonham discussed why the meeting was called by him and Councilmember Travis Smith. He said [primarily to the City Attorney] that there were concerns with how certain members of council addresses city staff and city positions and he wanted to know if there are any legal ramifications for doing so. He said there are also procedural matters on where council exists as it relates to personnel matters and the legal consequences regarding that. He said there were also some things that had been funded that are now being paused and he wanted an understanding of the repercussions for them, i.e. the K-9 program and the security checkpoint in the lobby. He said he wanted to navigate through all of this and get the attorney to explain what needs to be done in open session vs. closed sessions.

John Russell said that anything that relates to the form of government, how the council functions and the relationship between each other [councilmembers] is all open session. He said the meeting request listed a request to consult with the attorney regarding personnel matters. He said there is a closed session agenda item if anyone would like to make a motion to do so to discuss. Questions about risk or discussions about liabilities can be done in closed session under Section 3 of the Closed Session statute to consult with the attorneys. General policy, form of government, communications, relationships among council is all open session.

Councilmember Bonham asked Mr. Russell to explain our form of government and how we operate. Mr. Russell first reminded council that his role is strictly to provide legal advice. He said he does not want to get into policy as he would want council to handle that. He then said "the city is under a Council-Manager form of government, which in general means that communications on how to run a city, how to do the affairs of the city, the day-to-day operations, are done by the City Manager with some direction from council as to how you [council] want the city to operate using the policies that you are elected to do. So there is a bit of a gray area there because there is obviously some of what the city does is policy based and that's for you all to decide but generally the day-to-day is run by the City Manager through the department heads. When there are issues of how you want the city to function, how you want the City Manager to act. The general rule Council-Manager form of government is communications to the [City] Manager and instructions to him as to what information you all need to make decision on policy levels, in other words the information that is coming back to you all and then some direction to him in respect with specific policies you've adopted. That is a very high level definition and I hope I've answered any questions you had." Councilmember Bonham said 'I get it." Councilmember Chitwood said "it answered mine [questions]."

Councilmember Bonham then asked "under this form of government, what are the draws of council and mayor? I mean, you've kind of explained it there but what are our limitations. What can we do, what can't we do?" Mr. Russell said "the roles of council and mayor is defined in the rules and procedures. There is not like a handbook or statutory guidelines that says 'here is what everybody does', so there needs to be some consensus of council on 'how do we operate, how do we communicate together, how do we communicate to the manager' in a way that is functional and works. Then presumably get that communication back from the manager to each of you letting you know 'here's what I'm doing, this is how I'm attempting to implement the directives you're giving me to run the city, if that's wrong or if there's an issue let me know so I can do that better.' Some lines of communication there. As far as the roles, it's obvious that it is the role of

council to set policy, to make decisions on spending, where you want to set priorities, that's absolutely the role of the council to do. There is a little bit of a gray area, obviously as elected officials you want to be responsible to members of the community and the constituents who elected you. There is some appropriate and necessary [accountability to the public]." He continued, "you all can't control people contacting you, when you have your emails published on the website, people are going to see you out whether you want them to or not and that's certainly appropriate. So you all need to decide a reasonable agreement once you get that information, what do you do with it. How do you direct those people to the City Manager, do you take that upon yourself to discuss with the City Manager... All these things...there's not a specific set of criteria in your rules and procedures or in the state statutes that is going to cover each thing and that's why there has to be some communication amongst yourselves on how you're going to operate. Also some expectations from the City Manager both in terms of what he'll hear from you and what you need to hear from him with respect to whether it is spending issues, policy issues, personnel issues, citizen complaints, all those things fall into the realm of communications under the idea that you all hire the City Manager to run the city as you all vote to run it."

Councilmember Bonham asked "so there is a hierarchy. There is a council-mayor, then City Manager, and everything filters to the City Manager and down from there. We stop at the City Manager, correct?" Mr. Russell said that is one way to look at it. "If you put it a corporate setting, you are the Board of Directors, the City Manager is the CEO, with the qualification as I was trying to say, that as elected officials, it's absolutely appropriate and expected that you all will hear and need to communicate with the people that elected you....There is not a line that says your role stops at the City Manager." Councilmember Bonham asked "in a best practices scenario and I'm speaking to a taxpayer, my next course of action is to speak with the City Manager and let the City Manager handle it and not circumvent and go to a department, is that your interpretation?" Mr. Russell said that is generally how a council-manager form of government would function. He said in that scenario, you [council] would advise the taxpayer to contact the City Manager or council can contact the City Manager and ask him to contact the taxpayer but communicate back to council on the result. He said there will be exceptions to that but as a general practice that is how the School of Government and most commentators would interpret the Council-Manager form of government. Councilmember Chitwood asked "so you're saying it's not illegal or against the law to do that, if somebody had done that?" Mr. Russell said "correct, there's not any statute that says that they violated something. There is, in general, for you all to decide how to operate, work together to do that." Councilmember Bonham asked about best practices and what does council need to do to maintain the integrity of our form of government and if they need some guidelines

to follow." Councilmember Chitwood added "or is that something we have to make up as a council." Mr. Russell said "you're starting to get outside of what I think is a legal opinion and I don't think it's appropriate for me to tell you beyond 'here's the basics' and you all need to decide within these general confines of council-manager form of government and how you want to..." Councilmember Chitwood mentioned the Rules of Procedures was adopted when Councilmember Robinson last served on council. Councilmember Bonham asked what is it [policy] as it relates to speaking with staff during an open meeting and how they are addressed at the podium? He asked if there were legal ramifications for belittling them? Mr. Russell said he feels the latter question should be in closed session when legal questions arise. He said the other question and how to address staff falls under council asking itself what is the council-manager form of government and for you all to decide your best practice on if you have an issue with staff and when to take it to the City Manager. He elaborated further. Councilmember Bonham asked if it was best practice that if there was an issue about a city employee that that be discussed offline with the City Manager and not address the employee publicly in front of a City Council meeting. Mr. Russell said it is not up to him to tell council best practices and council has to decide that. He said "as it relates to the council-manager form of government that would be the common way to do it but beyond that again that is for you all to decide."

Mayor Simonds said 'he's listened to what he [Mr. Russell] has said and when you have them boys in the City Council chambers, and a question comes up, I don't see anything wrong with asking questions. I think the City Manager should take care of his employees and if they get out of line he should say 'listen, don't be insubordinate' and that's the way it should be. If you have a problem with that, he's the City Manager, I'm not." (Inaudible sentence). He went on to say if you have employees that get out of hand in public open meetings then that is for the City Manager to address not come to council and express their opinions. He discussed this further stating that things come up and if he has a question he's going to ask it and also allow the public to talk about it too. Councilmember Chitwood mentioned that he has mentioned to the Mayor in the past about sticking to the agenda and not having meetings for 3+ hours. He said we shouldn't talk about stuff unless it's on the agenda. He agreed disciplining someone should be behind closed doors. He then said "this meeting, today, was totally uncalled for and could have waited until Friday at the work session or March the 12th [council meeting]. This could've waited. As we've stated before, when Mr. Simonds called that meeting [Special meeting on January 3, 2024], and I agree that meeting shouldn't have been called for a special meeting, this one shouldn't have been called [either] because we are wasting tax payers money to get the attorney in here. It could've waited." Councilmember Smith asked "how would you expect us to have this in a City

Council meeting, where we are letting Larry talk for over 3 hours and doing an hour of business." Councilmember Chitwood said they've talked about that and how they would correct that. Mayor Pro Tem Bates said Councilmember Chitwood just addressed that and says they are all in agreement to stick to the agenda.

Councilmember Bonham said there were a couple reasons to have this discussion now. He said the attorney would not be at the next council meeting and based on the last meeting where the Mayor gave employees an undressing and he was not going to go through another meeting of that to address this. He said we are going to have an exodus coming and going to lose good people because of the results of this election. Given the reputation now, we are going to have a hard time filling those positions. He said "you can't recruit and retain if you've got city officials blowing you up at the podium, just trying to make a presentation, doing your job. Doesn't matter if you agree with the job or thinking if the position is working, that doesn't matter, you don't treat people the way that some people are treating these guys standing here just trying to do their job." Councilmember Chitwood said that he mentioned to Councilmember Bonham before that he couldn't hear what Mr. Simonds was saying because of the volume issues so he got aggravated listening to the meeting and cut it off. [Councilmember Chitwood was absent from the last meeting and there were technical issues during the council meeting. Please refer to the minutes]. Councilmember Bonham said it's not only that. He said "what button do you push, when again, this may be a closed session issue, but what are we setting ourselves up for? What is harassment and how many times can you call down here and do this and this and this before it gets out of hand. You can't just do that anymore, you can't get away with being a bully, so how are we exposing ourselves with this type of behavior and what are we going to see as a result of it." Mr. Russell said to answer that, regarding liability, would need to be in closed session.

Councilmember Smith asked how many applications there have been since the Parks and Rec employee resigned. Mr. Attaway said one in a little over 2 weeks. Councilmember Smith said he "feels that is a problem and people are not going to want to work for the city when they see how we have been acting and talking to our staff, just not a good look." Mayor Simonds asked what was stated to the Recreation Director. Councilmember Smith said he was speaking in general. Mayor Simonds said he's only "spoken with the Chief and the Zoning guy last meeting and the questions I asked were legitimate questions and I didn't think I did anything wrong. If you have ordinance that they were talking about doing, that ordinance should be upheld and if you don't have an ordinance for that, it shouldn't be allowed. That's just my opinion, and it's just my opinion. I don't know the law, ya'll do" Councilmember Bonham said to Mayor Simonds, "I think,

holding your opinion to yourself, in a public setting, given your position, is part of your responsibility. Secondly, when you sit there and tell a guy 'I don't even think we need this position" or "you need to do this or that" or calling up to City Hall four and five times a day saying 'I need, this, this, this, this, this, 'If you really wanted the answer to stuff, get your (inaudible) together, make your list, call the City Manager and say 'hey, I'd like to make an appointment with you on whatever date you have available and I want to cover these things' so he can prepare and you sit down and do your deal instead of grandstanding here and showboating doing all the stuff that you do. You're running off good employees, you're not going to be able to retain..." Mayor Simonds asked who he has run off. Councilmember Bonham said you have two right now. Mayor Simonds asked who? Councilmember Bonham said "Sue [Lowe] and Tori [Dellinger]." There was a debate on when Ms. Lowe left (before or after the election). Mayor Simonds said the only thing he said to Sue was that she was a tremendous employee. Mayor Pro Temp Bates said he could address Sue. He said "Sue actually left, not because of the mayor, but because of her and employees that we have here. Councilmember Bonham said that is a different story that he got." Councilmember Chitwood said "it's funny how she talked to him [Mayor Pro Tem Bates] and that's the story she gave him." Mayor Pro Temp Bates agreed and said this was not from a third party but directly from her explaining why she was leaving and it had nothing to do with the election or the mayor. Councilmember Bonham said that was a different explanation than she gave him.

Mayor Simonds said "it's a shame and disgrace to have a good employee that can't be replaced with an Accounting degree and was never (inaudible) for having an Accounting degree. I think it's sad. That's just life and lack of communication. That's what this whole deal is about. I speak my mind and didn't run for a popularity contest. I ran to get this town back to where it needed to be where people can afford to live here. People that pay their taxes and live here and that's who we need to respect. Not the people that come here (inaudible) with something on their mind. I don't have a personal vendetta against no one. I think Scott and I...have I ever demanded you to do anything or you would get fired or try to fire you? Absolutely not. We have discussions but have you ever felt like I was harassing you by asking you serious questions about what we do, about what needs to be done every day? I ask you if you can do this, you say yes (inaudible). I can't make you do anything and I have not tried to." Mr. Attaway asked if the Mayor wanted a response. Mayor Simonds said yes. Mr. Attaway said "there have been instances where there have been a lot of requests and some redundant requests that have already been emailed or delivered. You've asked about your inquiries and yes sometimes there are a lot of inquiries with new boards. I welcome the communication and the requests for information is fine as public records are public records and that's fine but I think more of communication would help all the council members. As

I've stated before, a number of times, I have an open door policy and some exercise that where I get an appointment request and we go over a project or some of the things...there was a lot that happened last year, last couple years, and bringing you all up to speed on where things are, I welcome those communications and meetings." Mayor Simonds said "as far as coming out and physically attacking you, I always thought we had a good rapport as far as talking (inaudible). I just tell you the things that I need. I just ask a question. I know you don't have the right to set policy but when we are talking about different things...my question is like in anything, why didn't we take bids. I know we're working on the Community Center now, but to my knowledge I didn't see no bids. I think we'd ask for bids. I know we are the council manager council form of government but we need to answer to the public. Why are we paying so much money for this or why don't we...it's just common sense and common sense practices."

Councilmember Bonham said "part of that too is we are working now and trying to find direction through the budget process on what you want to do with the Boys and Girls Club and how you want to attack this and at the same time, we've got someone grabbing the Fire Chief to a piece of dirt that the city is required...and talking to him about it and taking that over and building a new fire department. You have no idea what's going on there and the process of bringing that back, I think is extremely premature and taking things by just "oh, I want to do it." He continued "you talk about communication, there is no communication. It's 'I want to do this, this is what I want and I don't give a (expletive) on what anybody else says, I'm just going to push this thing through.' It takes a phone call, 'how does this work, what is the procedure of even trying to accomplish things, lay this out for me', and you're sitting out there looking at a piece of property saying 'we can do this." Mayor Simonds said that is the most outrageous biggest lie that has ever been told. He said "the Chief [Fire] contacted me about wanting to find a piece of property where they could build a new fire department and they needed a new fire truck and they were tying to put that together. I told him the only piece of property that the Town of Lowell owned was the property beside the Presbyterian Church. He came up and looked at it, yes, but I can't make a decision." Councilmember Bonham said no, you can't. Councilmember Chitwood said he "thinks we are getting off the subject and this can be put on the agenda if you all want to discuss this fire department or next months agenda. Mr. Attaway said that was to be the fire tax district discussion during the budget meeting. He said that is the first item on the agenda. Councilmember Chitwood asked Mr. Attaway if the deed had a restriction by the church saying that it was a City Hall/Police and that was it. Mr. Attaway said "yes, the contract signed with the church specified that it was to be a City Hall and or Police Complex built on the property. There was a concern from them, the City buys their property, then we sell it because we changed our mind, and back out, then

something else goes there that is not desirable to them. There is a parking agreement with them too so they can occupy some parking spaces." Councilmember Bonham said "so a phone call would have helped?" Mayor Simonds said that was good to know since we don't anything about anything you've bought. He mentioned other projects the previous council voted on but that they [current council] don't know anything.

With nothing else to discuss in open session, Councilmember Bonham made a motion to go into closed session to discuss the legal ramifications from staff harassment and potential liabilities for eliminating the security checkpoints and any financial obligations we may have on terminating the K-9 program. Mr. Russell said all of this would fall under consulting with the attorney under 143-318.11 Section 3. It was seconded by Councilmember Smith. The vote was carried with Councilmembers Bonham, Smith and Robinson voting yay and Mayor Pro Tem Bates and Councilmember Chitwood voting nay.

The item was motioned Convene into Closed Session by Phil Bonham and seconded by Travis Smith with a passing result 3-2-0-1 Opposed by Scott Bates, DeWayne Chitwood

## 3. Closed Session

## 3A. Closed Session to Discuss Personnel Matters Pursuant to NCGS 143-318.11(6)- 4:34 PM

There was a discussion of respect to employees and interfering with their jobs and whether staff should attend the upcoming budget retreat. There was also discussion regarding keeping the K-9 unit or not as the previous budget and council voted to have one. Lastly, the security checkpoints were discussed and the legal ramifications or liability if there was not one.

**3B. Closed Session to Consult with the City Attorney Pursuant to NCGS 143-318.11(3)**- 5:01 PM See notes above.

The item was motioned ReConvene into Regular Session by Travis Smith and seconded by Phil Bonham with a passing result 5-0-1-0 Abstained by Larry Simonds

## 4. Open Session

## 4A. Possible Action after Closed Session - 5:11 PM

No actions/motions took place.

The item was motioned To Accept by Travis Smith and seconded by Phil Bonham with a passing result 5-0-1-0 Abstained by Larry Simonds

Motion to adjourn

## 5. Adjourn

The meeting adjourned at 5:11pm

### \*\* The following document is a draft of the minutes and the not the official approved minutes \*\*

### **Minutes for the Regular City Council Meeting**

101 W. First Street, Lowell, North Carolina 28098 March 12, 2024, 6:01 PM - March 12, 2024, 7:21 PM

**Roll Call:** (The following members were in attendance)

- •
- Scott Bates, Mayor Pro Temp
- Phil Bonham, Councilmember
- **DeWayne Chitwood**, Councilmember
- Shane Robinson, Councilmember
- Travis Smith, Councilmember
- Larry Simonds, Mayor

#### 1. General

#### 1A. Call To Order- 6:01 PM

Mayor Larry Simonds called the meeting to order at 6:00pm. All Councilmembers were present. City staff present were City Manager Scott Attaway, City Attorney Jonathan Gonzalez (filling in for John Russell), Police Chief Moore, Police Asst. Chief Harrison, Planning Director Joe Gates, Public Works Director Thomas Shrewsbury, Finance Director Lisa Nolen, and City Clerk Cheryl Ramsey. A quorum was determined at the beginning of the meeting. The meeting was teleconferenced on YouTube for the public and the agenda and meeting materials were made public on the city's website as well as in person. Members of the public were also in attendance.

## 1B. Invocation / Pledge of Allegiance- 6:01 PM

The Invocation was led by Reverend William Calvert from Spencer Mountain Baptist Church. The Pledge of Allegiance was then led by Mayor Simonds.

Mayor Simonds wanted to honor the Irish with St. Patrick's Day coming up on Sunday with bagpipes played. Councilmember Chitwood said that in the Manager's report [weekly updates sent to council], it was noted that the city can be held liable for copyright infringement when playing music on YouTube. He said he talked to the Mayor about this issue before. He asked if there needed to be a motion to stop all music being played during the council meeting and that any honor or memorial to anyone would need to be part of the Invocation. Mayor Simonds says he thinks that is inappropriate right now because of the protocol of the meeting and said that could be brought up in his [Councilmember Chitwood] comments later. Councilmember Chitwood said we are not having the music tonight. Councilmember Smith asked the attorney if there needed to be a motion. Mr. Gonzalez said yes. Councilmember Chitwood made a motion that "from this day on that we have no music and if we need have a memorial that needs to be done in prayer or anything other than that needs to be done in prayer. This is for business only, so the motion is made for no music at any other meetings." It was seconded by Councilmember Smith. Under discussion, Mayor Simonds said "what we are doing tonight is mindboggling. When I was mayor before, we would have

people come in to sing a song and if that's the case, since you are worrying about someone suing the city, I want to see what you are speaking about." Councilmember Chitwood reminded Mayor Simonds that Mayor Pro Tem Bates showed him how to read the emails and that it was in the Manager's report that YouTube sent him notice of possible copyright infringement when playing music. Mayor Simonds said "to tell the city that you can't play Amazing Grace on the bagpipes in honor of St. Patrick's Day, along with all of our soldiers and emergency management people is atrocious." Councilmember Chitwood said that all can be done in prayer. Mayor Simonds said we took longer for this than the song would've taken. Councilmember Chitwood said because he keeps talking about it. Mayor Simonds said it still under discussion. Councilmember Chitwood agreed and said "point of order, please continue."

Mayor Simonds said "in his opinion, you can run God out anywhere you want to, but when something goes wrong, the first person you call on is the good Lord and I want to be ready when I leave here. I want to honor all the citizens and emergency management people." He continued stating "we've just been through some terrible things in the last few days [mentioning the names to two students that recently passed] and we have to look more forward than with something as trivial as this. The song could've already played." Councilmember Chitwood called a point of order again to move on [with the vote]. Mayor Simonds asked for the vote. The vote passed 4-1, with Councilmember Robinson voting nay.

Mayor Simonds asked the attorney what would happen if the song is played anyway? Mr. Gonzalez said he and John Russell talked about this recently and said Mr. Russell is still looking into legal implications. Mayor Simonds said that nothing is concrete and this is all alleged to have been brought before the City Manager as he has not seen anything stating the city is infringing. He said next month, he will just have someone come in to sing as has been done in the past. He said God needs to be honored wherever we are. Councilmember Chitwood said the motion was for no music, no singing. Mayor Simonds said if you don't like music, that's fine. Councilmember Chitwood said he "would prefer the Pastor or Preacher or whoever comes in, to do it in prayer. I would rather pray for them, than honor over music. I pray all day long, but as far as music, I don't see it happening anymore and that is the motion we made unless you are going to get someone to make the motion again." He then called for point of order again and stated that we are here for business. Mayor Simonds said he likes his meetings run like he wants it and he and Councilmember Chitwood had inaudible discussion. Councilmember Smith called a point of order again to move on. Councilmember Bonham said "this is not your meeting, but our meeting." Mayor Simonds said "as long as I'm mayor, I'm going to say the things that need to be said." Councilmember Chitwood said "that's fine and you have every right to say what you want to say, but you are not going to take 50 minutes like you did last month to talk about one subject." Mayor Simonds said he guesses we have to honor what the council wants but he had no words for this. He then thanked all for coming and his goal in life is to leave things in a better place than he found it and the only way to do that is not for him, but for God. He thanked Rev. Calvert for coming. Rev. Calvert then thanked council for allowing him to give the Invocation.

## 1C. Adoption of Agenda for this Meeting- 6:09 PM

The item was motioned To Approve by Travis Smith and seconded by Phil Bonham with a passing result 5-0-0-0

#### 1D. Public Comments- 6:09 PM

1. Ed Jackson (has property in Lowell but does not live in the city)- spoke of the changes in Lowell. He said he sat in on part of council's budget session a few weeks ago and commended council for working

together. He said he saw a sense of cooperation and heard good discussions, that they came to conclusions and moved onto the next item. He said they seemed to have learned from each other. He said we have a lot of good things coming to Lowell and have a good [City] Manager. He said things may be moving fast but we can't just stand still and go back to the 70's or 80's because things are not as they were. He said we need to make the things ahead better and encouraged council to keep working together. He pleaded with them not to just throw these things [future projects] away because it would take a while before the State and Federal governments would help us again in the future.

- 2. Tom Lesperance of 721 Overlook, Lowell, NC talked about his recent arrests that he believed were wrongful arrests and that he felt the Lowell Police Department is harassing him. He said he just wants answers to his questions and that the Chief, officers and City Manager have not been very helpful.
- 3. Darryl Tate of 307 Lynn St, Lowell, NC discussed the water problems he had in November 2023 and not getting any relief from the city. He then said he wanted council to look at the process for cutting off people for nonpayment by calling those with children and elderly people in the home to warn them. He then thinks deposits should be refunded after a year or so or pay a percentage to owners if they plan on keeping it. He then asked if the drainage would be cleared on S. Church St. Mr. Attaway said they will be connecting a new stormwater infrastructure. Mr. Tate asked if the city was going to do anything about the standing water there. Mr. Attaway was not sure of where Mr. Tate was referring to. Mr. Tate tried to explain where he was referring to and said that the city is working on a road that doesn't belong to them, that it was basically a driveway, the way he understood it. He asked Mr. Attaway if that was true. Mr. Attaway said the city is not working on a road. He said there is a contractor building a road that they will likely bring to this council. Mr. Tate said the contractor said they worked for Lowell. Mr. Attaway said that is incorrect, but that we have a construction inspector that works for Lowell through the engineering firm. Mayor Simonds said to Mr. Attaway "what you told me the other day was that NorthPoint left us money to repair stuff?" Mr. Attaway said "no, what I told you the other day was that NorthPoint had to pay plan review fees and construction inspections based off of our fee schedule. On the inspection side of that revenue that we received, it goes out for the inspections on the road that we pave. We're paying LaBella Engineering to be the project construction inspector." Mayor Simonds asked "how much money is that, how much money are they leaving to take care of these inspections?" Mr. Attaway said he does not have those figures in front of him. Mayor Simonds said that he recalled about two months ago, when he [Mr. Tate] appeared before us, the city was supposed to get together to talk about his issues. He asked Mr. Tate if he had been contacted? Mr. Tate said that Thomas [Shrewsbury] called him today and told him the city would not be cleaning his drain. Mayor Simonds suggested Mr. Tate call the City Manager. Mr. Tate was asking that this all be put on the agenda for next month. Councilmember Bonham asked if this all falls under the Stormwater policy and that this is something that would be taken care of by the Stormwater Department? Mr. Attaway said yes Stormwater and Streets departments. He said "we have a Stormwater Ordinance that prioritizes what gets fixed in a certain order and I can send that out to the council and refresh everyone on what that looks like following that adopted ordinance." Mayor Simonds said he "thinks it's wrong when a citizen comes up here and we instruct you to get together with them and it never takes place. That's been a while now." He then suggested Mr. Tate come in to speak with the Clerk to get items added to the agenda and to come talk to the City Manager to rectify his situation.

4. Candy Funderburk of 600 Rogosin Blvd, Lowell, NC - thanked Councilmember Chitwood for his motion earlier [copyright infringement] because they are here to do the business of the city. She said when she was on council before, they never had to use the point of order because they never had any issues with the previous mayor. She then said she is concerned about the three councilmembers that voted not to have the security checkpoint anymore. She said "even though it is not there now, anyone in the room with a license to carry, and I do but I leave it at home, brings one in and then gets mad...I recall a citizen in a meeting in December saying 'as long as you're doing your job, you have nothing to worry about it.' Well that's a threat. So that person, or anyone else in here could feel like you guys are not doing your job, could pull out their gun and that is the first line of defense." She then talked about the budget and the last council agreeing on getting the K-9 dog. She said she doesn't think we need it right this second but in the future and that you have to plan for the future. She said she thinks the contract has been signed and that it will be \$30,000 of taxpayers money that will go down the drain because you guys decided not to have a dog. Councilmember Chitwood suggested Mrs. Funderburk get with him later on where he could provide her with the true numbers of what will be done. He also mentioned that it will be on the agenda later today for discussion. Mrs. Funderburk then mentioned there have been rumors that council will be bringing the Fire department back and she doesn't know how that is going to work according to the statute. She said "our citizens pay a \$.49 cent tax rate now, the fire rate for the county is 8 and a 1/2 cents, so if you bring them back, how are you going to pay them? You can't cut taxes and pay them 8 and 1/2 cents because that would be 57 and 1/2 cents and then if you cut taxes 6 cents, that is still 51 and 1/2 cents but you're telling everybody in your campaign that you are going to cut taxes, but if you bring the Fire Department back, I don't understand and maybe you all can explain that to me if you know." Mayor Simonds was about to talk, Mrs. Funderburk said no that she'll talk to one of the councilmembers.

Councilmember Bonham said although he appreciated Councilmember Chitwood's comments [to Mrs. Funderburk], he doesn't think there needs to be continued reactions back and forth. He said the public can speak the way they want to speak but to remember this is a business meeting not a public forum.

- 5. Wayne Buchanan of 620 Geer St, Lowell, NC asked how many cops are in Lowell because they aren't in Lowell. He said he almost got run over by a motorcycle along Spencer Mountain. He said he's seen people run through lights and asked why are they not patrolling. Mayor Simonds said that we have 11 now and need more because with the infrastructure in this city, we should have more policemen and we will in the future and we just have to use our money the right way.
- 6. Thomas Lesperance (father of Tom Lesperance) stated he does not live in Lowell but said he spends a lot of money here. He made complaints against the Police Department practices and violating his son's 1st amendment rights by denying him the freedom of speech during his protest. He said his son just wanted some acknowledgement of what was done to him and could have been done different, even if no wrongdoing on the part of the Police were found. He said everyone had the opportunity to fix this and no one seemed to want to do it, so now he will go to a higher power.
- 7. Darryl Tate was allowed to speak again- Mr. Tate asked about the old chemical plant the city recently purchased where they are cleaning up. He said he would like the council to consider making a permanent sign stating that it's a waste site to notify people. He said he doesn't know if there is a way to know if people are 100% protected and people should know this especially when they find different carcinogens

every day and it would help protect the children. Mayor Simonds agreed and asked if there were no trespassing signs out there now or hazardous waste signs. Mr. Attaway said there are in fact no trespassing signs posted.

Councilmember Bonham said we've done all the testing and there has been no evidence of anything there. He said "if you want to sit there and say this is a great thing that we've done, we've reclaimed this property. It's a brownfield agreement and we can explain what a brownfield is but anything less than that, just puts fear in people's eyes. There is nothing there to suggest that there are any issues. This is asinine, to just create chaos out of nowhere. What evidence do you have that suggests that anything is there on site, after all these tests, that says we have a problem?" Mayor Simonds said "you know we have a problem there. It's going to take a long time to ever clean this mess up." Councilmember Bonham asked where was the evidence? Mayor Simonds continued and said we've already spent \$2 million there and we have to cover this stuff. He asked Councilmember Bonham if we had insurance if citizens go over there and die or get sick or hurt? Councilmember Bonham said "we don't have it open to the public right now". Mayor Simonds said a child could go through the fence and you have to have some kind of warning out there to protect the people. He asked the City Manager "is the city is not liable if someone were to go over there and get sick, step in a hole and drown or die, are we not liable?" Councilmember Bonham said "so all the fencing and keep out signs is not good enough, we need to have armed guards around the fence 24/7, shoot on sight to keep anyone out of there, I mean come on! Let's move on." Mayor Simonds said "I agree we should move on but we need to take care of our citizens and they are building houses right beside there. Mr. Gonzalez what's the rule on..." Councilmember Bonham interrupted and said "point of order". Mr. Gonzalez asked if Councilmember Bonham was making a motion. Councilmember Bonham said yes, point of order, seconded by Councilmember Smith. Mayor Simonds continued to ask Mr. Gonzalez about insurance to protect the citizens. He said he'd follow the point of order but it was a good question. Councilmember Bonham said "the point of order right now was to follow the agenda item and to keep the you from going off-base, that's what we are trying to do. There is a motion and a second." Mayor Simonds said to let's just move on.

#### 2. Approval of Minutes

Motioned to approve by Travis Smith, seconded by Scott Bates with a passing result of 5-0-0-0

2A. Approval of Minutes 02-13-2024- 6:36 PM

### 3. Special Presentation

## 4. Consent Agenda

The item was motioned To Approve by Travis Smith and seconded by Phil Bonham with a passing result 5-0-0-0

- 4A. Planning Report 6:36 PM
- 4B. Finance Report- 6:36 PM
- 4C. Parks & Recreation Report 6:36 PM
- **4D. Stormwater Report** 6:36 PM

4E. Geographic Information System (GIS) Report- 6:36 PM

**4F. Communications Report**- 6:36 PM

**4G. Police Report**- 6:36 PM

4H. Public Works Report- 6:36 PM

#### **5. Unfinished Business**

### **5A.** Consideration of Black Mountain Software- 6:37 PM

Presented by Scott Attaway. He said this was discussed in the budget retreat as an opportunity from the NC League of Municipalities' (NCLM) Municipal Accounting services where they are utilizing some of their American Recovery Plan Act grant funds to be able to help out some of the smaller municipalities, mostly populations of 10,000 and under. He said they are going to pay for all of the software turnover from an existing financial fund, utility billing software and payroll program. In year four, would be when the City of Lowell begins to pay for the software support. The city will not have to pay for any of the implementation and it is approximately \$157,000 that NCLM are paying out of a grant for us to get this new software package. He said, as was mentioned in the budget retreat, this software does a lot more than the city currently have now and is beneficial for the city. Councilmember Chitwood asked if year four means year 2029 and not still not implemented until 2026. Mr. Attaway said correct, it is not implemented until 2026. Councilmember Smith said "I think to Shane's [Councilmember Robinson] point in the budget retreat, regardless of the numbers, they're going to continue to add up with who we have now versus this company and it seems like this company seems to be a lot better for our city staff to get their job done." Councilmember Robinson asked if this will start right away or 2026. Mr. Attaway said 2026. He added that they will have some of the work up, where the League will come with their cyber team and go through security aspects of it to make sure our equipment justifies the new software. The go live is 2026. Mayor Simonds said so we'll suffer until 2026. Mr. Attaway said yes, the city was one of the later municipalities to sign up and would have to wait in line for availability to install. He said we would need to adopt this and get it to the League by the end of March. He said the motion would be to approve the resolution and associated memorandums.

The item was motioned To Approve by DeWayne Chitwood and seconded by Phil Bonham with a passing result 5-0-0-0

To approve Black Mountain Software resolution and associated agreements

## 5B. Consideration to Set Time of March 19, 2024 and April 16, 2024 City Council Work Sessions- 6:43 PM

Councilmember Chitwood said he sent an email out to everyone stating that it seems like it is easier to do the meetings on Fridays. Councilmember Bonham said Friday's were better for him. Mr. Attaway is not available next Friday and the holiday is the following Friday. He offered this coming Friday but Councilmember Bonham stated he will be out of town. Mayor Simonds asked if the meeting can be cancelled since there is nothing pressing and just go to April. There was some discussion on the times and dates for the retreat. It was decided that April 16, 2024 from 1-5pm would be best for all.

The item was motioned To Amend by DeWayne Chitwood and seconded by Travis Smith with a passing result 5-0-0-0

To skip the March 19th and to keep the April 16the meeting from 1to 5pm, here at City Hall Council Chambers.

## 5C. Proposed Code of Ordinances Amendment: Chapter 76- Traffic Schedules and Chapter 72- Traffic Regulations- 6:47 PM

Presented by Tyler Cobb, Planner. He is proposing an amendment to Chapter 76 Traffic Schedules and Chapter 72.060 Traffic Regulations of the Code of Ordinances. This would amend weight restrictions at a portion of Cobb Street between Kenworthy Ave and S. Church St. He said the goal is to restrict heavy traffic using Cobb St and keep commercial through traffic to Exit 22. Councilmember Chitwood asked if this was basically saying no large tractor trailer trucks would be going down Cobb St? Mr. Cobb said yes and directed them to their packets showing the maps. Mayor Simonds asked about the access road when you turn off Church St and cross over Cobb St and the new street they are doing. Mr. Attaway said that is Aberdeen Extension and that the new road would be truck traffic going both ways. Mayor Simonds said that's kind of narrow but said it was good that the city is doing this [proposed amendments] on Cobb St.

The item was motioned To Amend by Phil Bonham and seconded by Scott Bates with a passing result 5-0-0-0

To amend Chapter 76: Traffic Schedules, Schedule XII: Weight Restrictions & Chapter 72, Section 72.060: Miscellaneous Driving Rules

#### 6. New Business

## **6A.** Resolution #03-2024 - Authorizing the Adoption of the Updated CDBG-I Compliance Plans-6:50 PM

Presented by Scott Attaway. Mr. Attaway stated this is an update for compliance that the Department of NC Commerce has given us to maintain compliance with CDBG grants to adopt this resolution. He said we will get these from time to time to update policies. He mentioned the specific compliance changes. There were no questions.

The item was motioned To Approve by Travis Smith and seconded by Phil Bonham with a passing result 5-0-0-0

### 6B. Request to Set Public Hearing - LDO Text Amendment - Article 17 Sign Regulations- 6:52 PM

Presented by Scott Attaway. The Planning Department has asked the Planning Board to review the sign regulations that council recommended because they kept getting Master Sign applications to variate the dimensions, etc. of the sign ordinance. Mr. Cobb discussed the specifics (see packet). He asked council to set a public hearing on Tuesday, April 9, 2024, for this matter.

Mayor Simonds asked if they have to apply for a permit and get a sign, they can't just put up a sign but apply, correct? Mr. Cobb said that was correct. Councilmember Smith said it would just keep less of the things we need to deal with in house. Mr. Cobb said that was correct.

After the motion, at 6:56pm Councilmember Bonham asked Mayor Simonds for a quick break. Council resumed at 6:57pm.

The item was motioned To Set by DeWayne Chitwood and seconded by Scott Bates with a passing result 5-0-0-0

To set the public hearing for Tuesday, April 9, 2024

## 6C. Update to Interlocal Agreement for Enforcement Services of Gaston County Soil and Erosion and Sediment Control Ordinance- 6:58 PM

Presented by Scott Attaway. Mr. Attaway said we have some unanswered questions regarding this agenda item, 6C and the next agenda item, 6D, to the County and would like to move this to the April council session and to table them until then.

## **6D.** Update to Interlocal Agreement for Enforcement Services of the Gaston County **Stormwater Ordinance**- 6:58 PM

See agenda item 6C.

#### **6E. Discussion of Lowell Police K-9 Program**- 6:59 PM

Presented by Councilmember Chitwood. Mr. Chitwood said the reason why he is going "to vote to suspend this program until further notice is that with this Police Department having only 11 officers and tow to three of them stay in the office with eight on patrol with some at night, working by themselves. If that K-9 position happens to go out and they can go to mutual aid, Ranlo, or a place that does not have a K-9, then that leaves this city unprotected... When this department grows to a certain amount, at least 15 or 16 [employees], where you can make that position instead of a patrol officer just moving to K-9, you have a position for just strictly K-9 that does K-9 duties and maybe even have two K-9, one for each shift. As of right now, as Mrs. Funderburk stated earlier, up to \$30,000, well that's not true. I spoke with the K-9 handler in Tennessee and according to her it's only \$1000 deposit that was supposed to have been sent and never got sent. That was supposed to have been sent upon receipt of the invoice. We all got a copy of it, dated July 13, 2023. As far as up fitting the vehicle, there is no reason to spend \$35-37,000 for brand new vehicles. There's money there but since the K-9 is not going to be here, and as I said, as of right now, this department is not big enough." He then made a motion to suspend the K-9 program until further notice, seconded by Mayor Pro Tem Bates.

Councilmember Bonham asked, to get a better understanding of what Councilmember Chitwood stated, "if someone were to call for a K-9 and we were here and available and we had one on duty at that time, we are forced to go out of territory vs. staying in territory and protect our own people?" Councilmember Chitwood said "what's to say that they are not going to go and help out? I get it, I've been there." Councilmember Bonham said "I understand, you work here and you can't go but when you have an opportunity to lend a hand, that's what you do, and if you don't have it, you don't do it. I'm certainly not questioning your background or yours Mr. Bates. I'm trying to better understand if you think 15,16 is the number to have one, then maybe tow [K-9 units], we're right around the corner from that." Councilmember Chitwood said "that's why I put suspended until further notice. I could have said suspended period." Councilmember Bonham said "as one who has had to use the K-9 in the past, I was very grateful when K-9 showed up and did his/her job. I'm not sure I agree with you on this, I am sure that you and Mr. Bates have more knowledge in this than I do and for that I respect that and we'll do what we have to do." Mayor Simonds said the Sheriffs department and County has K-9 and so do other municipalities. Councilmember Chitwood said the Sherriff's office, the County, City of Gastonia, Belmont, Ranlo have one and they are all close to us. Mayor Simonds asked if we have spent the money on up fitting the cruiser/SUV?. Councilmember Chitwood and Scott Attaway said yes. Mayor Simonds asked Councilmember Chitwood what do you do in that situation? Councilmember Chitwood said you can sale the cage or hold it down in

the basement somewhere or turn that patrol car back into something that is used to take people to jail. There was further discussion of selling the vehicle, availability of the current vehicle. Councilmember Smith asked if that vehicle can still be used for patrolling even if it is not used for a prisoner. Mr. Attaway said it would need to be re-out fitted. Councilmember Chitwood and Councilmember Smith said re-out fitting makes more sense. Mayor Pro Tem Bates said re-out fitting may be way cheaper than trying to sell it and purchase a new vehicle. There was a brief discussion on this scenario.

Councilmember Smith said he might not agree with this motion but that Councilmember Chitwood and Mayor Pro Tem Bates have more experience in this than he does and respects their opinion and what you think is best. Councilmember Bonham said "here is one thing I want to caution us on, we are doing this, we can rely on Ranlo and Cramerton, we can rely on Gaston County for this, then it comes to something else and we need to have it here, well where do you draw the line? I don't want to get off subject but you go on down the road saying I don't want to pull from this resource here on this, but I want it here in my town on that, how do you make that distinction. That has nothing to do with the K-9 that we are speaking on, but just my theology." Mayor Pro Tem Bates said "I kind of want to touch on what you're saying, I think in the future, I don't think Mr. Chitwood is wanting to just do away with it but once this department grows and gets bigger. I think, me personally with my experience, I think it would be more feasible for the department to grow and to start out with two K-9's where you'd have one on each rotation that's available. Starting out with just one, that's what you're going to run into. We're depending on that one on this shift but when the K-9 is at home on their days off, you don't have it on this other shift. So we're still depending on other cities." Councilmember Bonham said that makes perfect sense. There was a discussion of the K-9 program that was had before in 2009 but that was paid for by the officer, not the city and when he left, he took the dog as well. Mayor Simonds discussed about the problems we have, infrastructure, and have the money to take care of what we need to do. We don't have sidewalks and no markings on certain streets. He said lets build Lowell up the right way and stop the spending. There was no further discussion.

The vote passed with Mayor Pro Tem Bates, and Councilmembers Robinson and Chitwood voting yay to suspend the program, and Councilmembers Smith and Bonham voting nay.

### To suspend the K-9 Program

#### **6F. Discussion of Vacant Positions**- 7:10 PM

Presented by Scott Attaway. Mr. Attaway said there is a conditional offer for a new Parks and Recreation/Events Director position. He also wanted to talk to council about the Public Works Director position that has been advertised. He said the personnel policy does not allow him the latitude to over hire, where you have a new candidate come on board while the current Director is still a city employee for a couple weeks so they [new hire] have that institutional knowledge before the current person leaves the organization. He thinks it would be very beneficial for whoever comes on to that role as Public Works Director, assuming that happens before our current employee leaves, that he would have the ability to do that. He said it would be paid for with the salary lag from the department that is already there. He said it wouldn't be a budget amendment required to do it and he is thinking two weeks of an over hire would help out tremendously for that position.

Mayor Simonds said his "recommendation to you as City Manager and to the board, is that we have people out here that's been working for years in these positions and things like that and they need to be encompassed in to look at them as well as seeking outside. We have to honor the folks that have been

working here and at least look at them. I think as a council, we should look at applications as well because when you hire a Public Works Director or Recreation Director, that's an enormous amount of money and we need to look at it the way you would want to be treated yourself. Just like when you came on board, they didn't advertise the position, they just voted to bring you in. Anytime you advertise a public position, it should be advertised and for all existing employees in that field to have an opportunity as well. It's called Equal Opportunity Employer, which we should be." Councilmember Bonham said "I think, quite frankly, that is way out of the scope of City Council. The City Manager is in charge of hiring and recruiting and doing those things. Any departmental person can apply for any open position. If they meet the qualifications, then they can be considered for the position. I think we absolutely should have somebody in here for the two week overlap to understand, get to know the people, the processes, etc. It just makes for a smoother transition and we're just talking about two weeks. The judgement of not doing that is worse than two weeks of overlap, monetarily. But to sit there and hold out like you did many years ago when you hired Green as the City Manager raising hell because he was from Clover and not from Lowell. If you don't have anyone qualified applying for the job, within the job, then you still have to move forward. That is not to discount anybody and it's not saying it's not open for interview for anybody, but we're going to hire the most qualified person for the job in the best interest of the city and it has nothing to do with this council. That's what we hired this guy to do [pointing at Mr. Attaway]."

Mr. Attaway requested a formality of a motion if the board considers the over hiring of the Public Works Director because essentially what it's doing is there is one Public Works Director position and you are temporarily allowing two Public Works Directors for the two week period. Councilmember Smith said he totally agreed as it is just training for the new Director. Councilmember Bonham made a motion to over hire for a Public Works Director for two weeks, seconded by Councilmember Smith. The vote was unanimously in favor.

The item was motioned To Approve by Phil Bonham and seconded by Travis Smith with a passing result 5-0-0-0

To over hire for a Public Works Director for two weeks

## 7. Reports / Discussions

#### **7A. City Manager Report**- 7:14 PM

- 1. Council and the Mayor were copied on an email to NC House Rep John Torbett and Senator Overcash numerous direct funding requests that have been discussed in the budget retreats and various projects for the City of Lowell. He received a call from NC US House Representative Jeff Jackson letting us know that the direct funding that we requested for the Lynn St pump station replacement has been secured in the amount of \$800,000 in federal funding. He said we are also going to be working with the current CDBG-I grant balance to see if Lowell can add this to the expenses of that grant and hopefully use that together with the federal funding we anticipate receiving.
- 2. Widening Betterment Agreement meeting is April 12
- 3. Mayor/Manager meeting in Cramerton on March 19 at 12:15 at Cramerton Town Hall. He said he has attended a few of these and thinks it is incredibly useful to see how municipalities can work together and learn from each other.
- 4. Two Rivers Board meeting is on March 27th. They will be discussing the 7 1/2 percent water/sewer increase that Two Rivers is going to levy out to all the wholesale customers and their citizens and the City

of Gastonia as well. He will get more information out to council after that meeting.

- 5. Rogosin Blvd speed bump/traffic control Addresses have been compiled for a mail list and they are making a call list for a meeting. Will coordinate a date for the meeting and will put up signs in that neighborhood on both sides of the street to notify residents. This is to see what traffic calming measures the residents feel are necessary in that area.
- 6. Security Access to City Hall and the Police department has been finalized as of today. This was through a League of Municipalities Safety Grant.
- 7. Citizens Academy is going well. The last one was GIS, Stormwater, and Communications in one night. Next up is the Planning Department session.
- 8. Claim on a sewer back up at a local church and we are working with the League of Municipalities with that .
- 9. CDBG-NR thanks to Cheryl Ramsey and the representative with WithersRavenel, the city had a clean audit when the NC Department of Commerce came recently for their audit review. He will pass along any documentation received regarding the audit results.
- 10. CDBG-NR updates on the last stretch of the 4 homes and the Community Center is finished. We are just making sure all the small things are done but the contractor is done with it.

## 7B. City Attorney Report-

None at this time. Mayor Simonds thanked Mr. Gonzalez for filling in for Mr. Russell.

## 7C. Mayor and City Council General Discussion - 7:19 PM

Mayor Simonds stated that a child was lost at Holbrook recently, Kamarion, and their funeral was this past Saturday. He said the school principal, Mr. Ross, has applied for some bracelets for the school. Once they come in Councilmember Smith will give them a plaque and he will provide the money for the kids to have pizza. This won't be announced until they get the bracelets in and he will let council know. He said we also lost another child, Saturday, who was 18 years old. He said we have to be there for the citizens. He thanked Councilmember Smith for going with him to the funeral Saturday representing Lowell.

No one else spoke this evening.

#### 8. Adjournment

## **8A. Meeting Adjournment**- 7:21 PM

Mayor Pro Tem Bates made a motion to adjourn, seconded by Councilmember Chitwood. The vote was unanimously approved. The meeting adjourned at 7:21pm.





## **Regular City Council Meeting Memorandum**

Prepared By: Scott Attaway

#### **Finance Report**

Meeting	Agenda Group
Tuesday, April 9, 2024, 6:00 PM	Consent Agenda Item: 4A
Reference File	Presented By

To: Scott Attaway, City Manager From: Lisa Nolen, Finance Director

Date: 4-2-2024 Re: Finance Update

#### **Utility Billing:**

- Assist utility billing department daily with posting payments, reconciling, completing deposit, answering phone, and other needed tasks due to vacancy in the department.
- · Answer questions from utility billing staff.
- Assist with training of Accounts Payable/Payroll clerk to provide additional assistance for utility billing department due to vacancy.

#### Finance:

- · Issue purchase orders for staff.
- Process and pay bills via check and online.
- Ensure all transactions are entered correctly and reconcile bank accounts.
- Complete tasks as needed for the agenda related to Council meetings.
- · Complete reporting requirements for SCIF grant and update spreadsheet for all SCIF related transactions.
- Complete needed documentation and tasks for other grants.
- Train Accounts Payable/Payroll clerk on duties to assist Finance Director.
- Assist other staff as needed.
- Other duties as needed.

#### Other:

- · Attend Department Head meetings.
- · Attend meetings with City Manager.
- · Attend Leadership Gaston classes.
- · Attend other meetings as needed.

#### **Attachments**

02-29-2024 Dashboard.pdf

## City of Lowell, North Carolina FY 2024 Revenue Dashboard 2/29/2024

Туре	Budget	YTD thru 02/29/2024	Budget Remaining	Percent Remaining	Percent of FY24 Remaining
Funds					
General Fund	5,007,973.98	4,638,047.89	369,926.09	7%	33%
Water/Sewer Fund	1,755,709.24	1,429,832.59	325,876.65	19%	33%
Stormwater Fund	423,774.44	261,666.92	162,107.52	38%	33%
Total	7,187,457.66	6,329,547.40	857,910.26	12%	33%

Notes: None

City of Lowell, North Carolina FY 2024 Expense Dashboard 2/29/2024

		YTD thru	Budget	Percent	Percent of FY24
Department	Budget	02/29/2024	Remaining	Remaining	Remaining
		Genera	I Fund		
Administration	2,652,310.85	1,164,624.52	1,487,686.33	56%	33%
Public Safety	1,327,415.47	783,838.51	543,576.96	41%	33%
Public Works-Streets	318,185.88	168,831.17	149,354.71	47%	33%
Sanitation	345,633.72	200,213.12	145,420.60	42%	33%
Parks & Rec	257,188.22	142,541.04	114,647.18	45%	33%
Powell Bill	100,000.04	16,918.30	83,081.74	83%	33%
Total	5,000,734.18	2,476,966.66	2,523,767.52	50%	33%
		Water/Sev	wor Fund		
Water/Sewer	1.380.721.44	884.260.23	496.461.21	36%	33%
	, ,	,	, -		
Wastewater Treatment	374,987.80	224,136.26	150,851.54	40%	33%
Total	1,755,709.24	1,108,396.49	647,312.75	37%	33%
		Stormwa	ter Fund		
Stormwater	423,774.44	228,379.28	195,395.16	46%	33%
Total	423,774.44	228,379.28	195,395.16	46%	33%

Notes: None



## **Regular City Council Meeting Memorandum**

Prepared By: Scott Attaway

#### **Communications Report**

Meeting	Agenda Group
Tuesday, April 9, 2024, 6:00 PM	Consent Agenda Item: 4B
Reference File	Presented By

To: Scott Attaway, City Manager

From: Cristy Cummings, Communications Director

Date: 4-1-2024

**Re: March Communications Report** 

- · City website updates
  - · Updated Quick Links on the Homepage
  - · Added documents as requested by Department Heads
  - · Completed a new ARPA update page on the website with descriptions and photos of projects
- · Creation of social media content for Facebook and Instagram
  - · Event promotions
  - Holiday/office closing posts
  - · Other posts to keep residents in-the-know
- CodeRed
  - · Updated CodeRed contacts
  - Sent out City alerts (phone, email, text)
    - Easter Egg Hunt
    - · Easter Senior Lunch
    - · Good Friday office closing
    - · Lowell PD's Community Watch meeting
- General
  - Set up agenda link and ran test meetings for Planning Board meeting, Stormwater Commission meeting, and regular City Council meeting.
  - Reformatted Advocacy Agenda report from a 2-page plain text Word document into an 11-page colorful and attractive document
  - Ran agenda link for Planning Board and Stormwater Commission meetings
  - · Monitored video and audio during regular City Council meeting and Special City Council meeting
  - · Coordinated Easter Senior Lunch
    - · Finalized registrations
    - · Ordered food
    - · Purchased prizes
    - · Purchased all supplies
    - Volunteer coordination

- Set-up of tables and chairs/tablecloths
- Day of coordination
- Completed deposit and created a spreadsheet for Finance
- Attended meetings with:
  - Staff Department head meeting
  - Budget Engagement and AI meeting with staff
  - Communications Workshop with Centralina
  - Council meeting
  - Created and presented Communications presentation to Citizen's Academy



## **Regular City Council Meeting Memorandum**

Prepared By: Scott Attaway

#### **Planning Report**

Meeting	Agenda Group
Tuesday, April 9, 2024, 6:00 PM	Consent Agenda Item: 4C
Reference File	Presented By

To: Scott Attaway, City Manager

From: Tyler Cobb, Planner

Date: 4-4-2024

Re: Monthly Department Update

Code Enforcement:

Multiple nuisance violation letters issued.

1 Minimum Housing Case

**Enforcement Action:** 

Contracted nuisance case with Public Works

#### Zoning:

Processed (6) zoning permits in March.

Permit count (29) for calendar year 2024 to-date.

Meeting regarding Spencer Ridge development agreement.

Meeting regarding Spencer Ridge water/sewer line alinements.

Reviewed two recombination plats.

Reviewed Façade grants

## Planning:

Attended Lowell Planning and Zoning meeting, 3/5/2024.

Attended Lowell City Council Meeting, 3/12/2024.

Attended Lowell Community Committee meeting 3/25/2023.

Attended EDC meeting in Dallas

#### Other:

Attended monthly department head meeting.

Attended Polimorphic Monthly update meeting.

Attended Budget Meeting.

Presented at Citizen Academy

Attended Interlocal Agreement Meeting.

Gaston County GCamp

Attended Advocacy Agenda Meeting



## **Regular City Council Meeting Memorandum**

Prepared By: Scott Attaway

#### **Public Works Report**

Meeting	Agenda Group
Tuesday, April 9, 2024, 6:00 PM	Consent Agenda Item: 4D
Reference File	Presented By

To: Scott Attaway, City Manager

From: Thomas Shrewsbury, Public Works

Date: 4-3-2024

**Re: Public Works Report** 

- Street Department employees continued working to keep catch basin boxes and grates clean. Crews used hydro-vac equipment to clean and remove debris from culverts, pipes, and boxes.
- City crews worked on spring cleaning in parks and city-owned properties. Staff treated all parks with fire ant control and chemicals to help control weeds.

Mulch and pine needles were put out at McCord and Harold Rankin parks.

In McCord Park, the irrigation system was gone through repairing any leaks that were found

• Water Department staff repaired the following leaks:

2-inch line break on Hunter Paige Ct.

Repair tapping saddle at 3004 Tolbert Court

6-inch line break on Catawba Run Rd.

2-inch line break on Dogwood Street

1-inch line break on N. Church St.

2-inch line break on Lowell Ave.

- Water Dept crews worked to replace several broken or damaged water meter boxes that had been discovered while performing the Lead and Copper Inventory.
- City crews worked to replace water meters in the system that have not been converted to radio read. Meters had not been converted due to connection issues or repairs that were needed. City staff made the necessary repairs or changes to allow approximately a dozen meters to be switched out. More water meters are planned for conversion in the coming weeks.
- Staff continued work on the lead water line identification and inventory. Crews worked to complete numerous more inspections and will continue to consistently work towards completion of the state-mandated service line inventory.
- Staff worked on preparing a pavement condition study for all Lowell streets. This will be the start of prioritizing resurfacing/paving lists going forward. Streets are being judged based on rideability, alligatoring, potholes, open cuts, and utility indentions.





## **Regular City Council Meeting Memorandum**

Prepared By: Scott Attaway

#### Geographic Information System (GIS) Report

Meeting	Agenda Group
Tuesday, April 9, 2024, 6:00 PM	Consent Agenda Item: 4E
Reference File	Presented By

To: Scott Attaway, City Manager From: Todd Stroupe, GIS Analyst

Date: 4-3-2024

Re: Geographic Information System (GIS) Report

#### GIS and Mapping

- Provided Harold Rankin Storm GIS data to WithersRavenal per their request
- Developed City's minor storm utility and storm drainage improvements projects interactive web map
- Provided Lowell trail GIS Data to Carolina Thread Trail per their request
- Replied to citizen's inquiry about Interstate 85 Widening Gaston County
- · Worked with Public Works Director to complete a pavement condition survey of Lowell maintained roads.
- Generated Choice USA Beverage INC rezoning case map
- · Worked with Stormwater Administrator to map Holbrook Middle School's storm system
- Continue to work on lead service line inventory
- · Continue to work on Phase 2 of MS4/stormwater infrastructure mapping

## Other Tasks and Assignments

- Updated Survey123 online form for 2<sup>nd</sup> Annual Lowell BBQ team sign-ups
- Created Lowell Branded PowerPoint presentation template
- · Created community center bathroom remodel project scope document

#### Meetings and Events

- Attended GCLMPO TCC Meeting
- Participated in Harold Rankin PARTF site visit with WithersRavenal
- · Participated in Aberdeen Blvd Extension site visit with Labella and others
- Attended internal FY 25 budget meeting
- · Attended internal SWMP progress meeting
- Attended interlocal agreement meeting with Gaston County Soil and Erosion
- · Assisted with Easter Senior Lunch
- · Participated in former Boy's and Girl's Club site visit with CRS

## **Edgemont Cemetery Mapping Project**

- Kicked off the mapping project in October 2023
- 1,552 graves were collected as of April 3, 2024
- Currently working through the final round of information collection.
- Currently finalizing public-facing interactive web map that will allow users to click on a grave for names, birth and death dates, pictures of headstones, etc.

Edgemont Cemetery Mapping Progress (4/3/24) HEMLOCK LIN **6** Legend Graves Cemetery Boundary 50 100 Feet





## **Regular City Council Meeting Memorandum**

Prepared By: Scott Attaway

#### **Police Report**

Meeting	Agenda Group
Tuesday, April 9, 2024, 6:00 PM	Consent Agenda Item: 4F
Reference File	Presented By

To: Scott Attaway, City Manager

From: Jeff Harrison, Assistant Chief of Police

Date: 4-3-2024

**Re: March Police Report** 

March call log numbers were like months past and close to what we have experienced for past years for March. Special checks took a large jump, a result of a police staff meeting called by Assistant Chief Harrison. Traffic stops counts returned close to an expected amount after one of our active traffic enforcers returned from leave. The New World changeover is still affecting our ability to calculate accurate citation numbers.

Chief Moore attended an ongoing event at Gaston Early College. The event had him interacting and providing feedback to students who were working on several community service projects. Topics the students had been working on include Lithium in Gaston, clear-cutting forest for housing, and food gardens for low income. Chief Moore provided information for a group of students that was studying the effect after school programs might have deterring juvenile crime.

A code enforcement issue was identified at 501 S. Church St. This house has caused many problems for police and code enforcement for many years. Problems like high grass, junk motor vehicles, minimum housing, and vagrancy are the most common. The most recent call for service was for a homeless subject that had taken up residence there. He had lit a fire in a barrel inside the abandoned home. Chief Moore contacted Mr. Cobb requesting COL code enforcement to get involved.

With Jon Fulbright's recent resignation, one sergeant position is vacant. Police administration consulted with city leadership and decided a full promotional process would be utilized to assist Chief Moore with his decision on promotion of an officer. The process will consist of officers submitting a letter of consideration for promotion (due on 04-01-2024), a written test of the LPD policy manual (scheduled for 04-10-2024), and a day where interview panel members will conduct both a formal interview and a scenario-based interview (date TBD). Panel members will be constructed of officers ranked sergeant or higher from surrounding agencies, a local community member, and leadership from a surrounding municipality. Panel members will score the candidates on a prescribed scale. All the results will be assembled and presented to Chief Moore for his selection.

New World should be running, and the fully operational records management system utilized by the second week in April. The Metro-E connection hosted by Spectrum was not fully functional after installation. City of Gastonia IT worked diligently with Spectrum to help them identify and resolve the issue that was causing problems. The circuit has been tested and the network is live in the police building. The staff is currently testing firewall rules to make sure we can access all needed websites and investigating tools, so the conversion goes as smooth as possible.

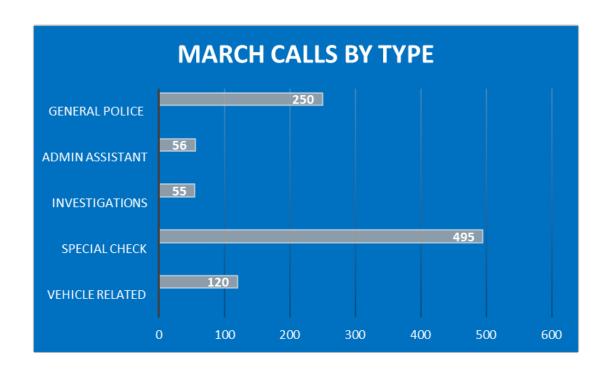
Assistant Chief Harrison called a department staff meeting on March 20<sup>th</sup>. The administration staff wanted to discuss a recent dip in staff morale that had been brought to our attention. We also discussed the upcoming sergeant's promotion process and a couple corrective issues were presented. The patrol staff was brought up to speed for the current budget year and where some budget constraints may be experienced while we finish out the fiscal year. The information was received well by the officers, and they appreciated learning where and how budget funds are distributed.

## **Yearly calls for March**

2022-750

2023-798

2024-976



## **Regular City Council Meeting Memorandum**

Prepared By: Scott Attaway

#### **Stormwater Department Report**

Meeting	Agenda Group
Tuesday, April 9, 2024, 6:00 PM	Consent Agenda Item: 4G
Reference File	Presented By

To: Scott Attaway, City Manager

From: Jamie Watkins, Stormwater Administrator

Date: October 4-3-2024

**Re: Monthly Department Update** 

- Presented a department overview to members of the Citizen Academy
- Participated in a two-day multi-agency Conservation Field Day event held at Gaston County
- · Investigated and closed out a stormwater complaint
- · Attended monthly department head meeting
- Negotiated edits to the proposed updated inter local agreements with Gaston County for Soil & Erosion Control enforcement, and Stormwater plan review services.
- · Attended budget meeting
- Met with GIS Specialist Todd Stroupe to go over "to-do-list" of tasks to be completed in the next three months as Permit Year Three comes to an end.
- Updated permit audit and outreach tracking spreadsheets
- · Attended Women in Government luncheon at the Centralina COG





## **Regular City Council Meeting Memorandum**

Prepared By: Joe Gates

#### Public Hearing - Text Amendment ZTA24-01 - Article 17, Sign Regulations

Meeting	Agenda Group
Tuesday, April 9, 2024, 6:00 PM	Unfinished Business Item: 5A
Reference File	Presented By

To: Scott Attaway, City Manager

From: Tyler Cobb, Planner

Date: April 9, 2024

Re: FILE ZTA24-01: Amending multiple sections of Article 17 - Sign Regulations, of the Lowell Development Ordinance to allow for more sign area on wall signs, increased eligibility for Master Sign Plan and modifying

Section 17.13 Nonconforming Signs

The Planning Board during their regularly scheduled meeting on March 5th, 2024, reviewed this request. The Planning Board voted unanimously to recommend **APPROVAL** of the proposed text amendments.

STAFF REPORT: On February 6th, 2024, staff expressed a directive from the City Council to revise the Sign Regulations in the Lowell Development Ordinance, Article 17. After some discussion, the Planning Board made the following recommendations for staff to implement in their material in the next meeting (March 5th, 2024). The following areas were selected as topics that could be amended to address the desired outcome of the City Council. The attached amendments achieve the goals stated by council and accomplish the following:

- Allow for more wall sign area for larger properties and buildings located in our commercial & industrial districts.
- Modify language for nonconforming signs to allow them to be replaced without meeting new/current standards.
- Increases the amount of properties that are eligible to use the "Master Sign Plan" process.

STAFF RECOMMENDATION: Staff and planning board recommend the approval of the proposed text amendment.

## **Attachments**

March 24 CC Meeting Material - Sign Regualtions.pdf Statements of Consistency.pdf

01-2024 Amending the LDO - Article 17 Sign Regulations.pdf

## 17.7 Requirements for Permanent Signs Requiring an Approval of a Zoning Permit

- 17.7-1 Permanent *sign* requirements. The following tables and text provide the design and dimensional requirements for permanent *signs* that require a permit. Requirements include copy area, number, type of illumination, and letter height for both attached and freestanding *signs*. Setback and height requirements are established for freestanding *signs* and detailed design requirements are provided for monument and pole *signs*.
  - (A.) Only one general attached *sign* (blade, V-type, or flat) is allowed per street or parking frontage. *RESERVED*

		Sign Copy				
Sign	Туре	Area Allowance I	Sign	Minimum  Letter  Size	Maximum Number	Other Requirements
		(sq. ft.) Permanent	Attached <i>Sig</i>		al	
Blade* (or Projecting)	J.CREW	32**	Ambient External Internal		One per street or parking frontage per occupancy	Only one sign (blade, V-type or flat sign) allowed per occupancy per street or parking frontage
V-type*	OSTERIA PANEVINO					g
Flat* (or Wall)	Home Town Café catering			6"		

<sup>\*</sup>May encroach into adjoining street right-of-way in the Main Street (MS) and Mixed Use (MU) Districts pursuant to an encroachment agreement subject to the provisions of Sections 17.5(G) and 17.7-1(I) of this Article.

<sup>\*\*</sup>For buildings located in the Mixed-Use District (MU-2), Interstate Highway 85 Commercial District (C-85), US Highway 74 Commercial District (C-74) or the Industrial District (IND), allowed sign area shall be calculated at 10% of the eligible wall area, not to exceed 100 square feet.

# 17.10 Master Sign Plan

- 17.10-2 <u>Application.</u> Master *sign* plans may be submitted for the following types of developments:
  - (A.) Traditional Neighborhood Development (TNDO) projects, in accordance with the provisions of Article 8 of this Ordinance.
  - (B.) Commercial, institutional, industrial, or mixed-use developments containing three two (2) or more acres in area.

# 17.13 Nonconforming Signs

(C.) A permanent *sign* which does not comply with one or more of the requirements of this Article shall be grandfathered (deemed a vested right) until such *sign* is removed, physically altered beyond maintenance (as defined), relocated, damaged or destroyed, after which it shall be brought into compliance with all requirements of this Article. Such signs may replaced or modified if such installation or modification does not increase the existing nonconformity, as determined by the *Planning, Zoning & Subdivision Administrator*. Nonconforming temporary *signs* shall not be grandfathered and shall be brought into compliance with all requirements of this Article within ten (10) days from the date of notification by the *Planning, Zoning & Subdivision Administrator* or duly authorized code enforcement agent of the City.

Statements of Consistency and Reasonableness. Prior to adopting or rejecting any amendment, the City Council shall approve a statement in accordance with G.S. 160D-605(a) describing whether or not the proposed amendment is consistent with the "City of Lowell Comprehensive Land Use Plan", adopted April 13, 2021 including subsequent amendments adopted by the City Council of the City of Lowell and other applicable adopted plans. When either adopting or rejecting a zoning map amendment the Lowell City Council shall approve a statement analyzing the reasonableness of the proposed amendment in accordance with G.S. 160D-605(b). The statement of reasonableness may consider, among other factors: (1.) The size, physical conditions, and other attributes of the area proposed to be rezoned; (2.) The benefits and detriments to the landowners, the neighbors, and the surrounding community; (3.) The relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (4.) Why the action taken is in the public interest; and (5.) Any changed conditions warranting the amendment. Such statements may be combined into a single statement per G.S. 160D-605(c) and incorporated into ordinances amending either the text of an ordinance established

Lowell Development Ordinance - Article 5 - Page 7 under the authority of G.S. 160D or, the Official Zoning Map established under the authority of G.S. 160D-105(a) reflecting the division of territorial jurisdiction established under authority of G.S. 160D-703.



# **ORDINANCE NO. 1-2024**

# AN ORDINANCE TO AMEND THE LOWELL DEVELOPMENT ORDINANCE OF THE CITY OF LOWELL

WHEREAS, on May 11, 2021, the Lowell City Council adopted the Lowell Development Ordinance, also known as the LDO, to promote the health, safety, and general welfare off the residents of the City of Lowell by regulating the use of buildings and land development, planned developments, manufactured housing, development of subdivisions, signs, off-street parking and loading, planting yards, watershed protection, flood damage protection, and/or undertaking other consistent action as provided in the Ordinance; and,

WHEREAS, Article 5 of the LDO allows the Lowell City Council to amend, supplement, modify, or repeal any provision of the Ordinance or to amend the Zoning Map pursuant to the procedures established by N.C. Gen Stat, §160D-601 through §160D-605 and upon finding of compliance with the City of Lowell Comprehensive Land Use Plan; and,

WHEREAS, on March 5, 2024, the Lowell Planning and Zoning Board voted in unanimous consent to recommend a text amendment to the Lowell Development Ordinance Section 17.7-1 Requirements For Permanent Signs Requiring Approval Of A Zoning Permit, Table 17.1 - Permanent Signs, Section 17.10-12 Master Sign Plan-Application And Section 17.13 Nonconforming Signs

WHEREAS, the Lowell City Council, after conducting a public hearing which was duly advertised as provided by the foregoing status, has found these amendments to be in the public interest, in furtherance of the general purpose and objectives of the LDO, and in compliance with the City of Lowell Comprehensive Land Use Plan; and

NOW, THEREFORE, BE IT ORDAINED by the City Council Lowell, North Carolina that:

- <u>Section 1</u>. Amend Section 17.7-1: Requirements for Permanent Signs Requiring Approval of a Zoning Permit:
  - 17.7 Requirements for Permanent *Signs* Requiring an Approval of a Zoning Permit (A) <u>Permanent sign</u> requirements.
  - (A.) Only one general attached *sign* (blade, V-type, or flat) is allowed per street or parking frontage. *RESERVED*



Amend Table 17.1: Permanent Signs

		Sign Copy				
			•	1inimum		
		Area	Sign			
Sign '	Type		J	Letter	Maximum	Other
0.8	.,,,,	Allowance	Illumination		Number	Requirements
		Automanioc	ittarriiriatiori	Size		
		(og ft)		3126		
		(sq. ft.)	A.I. I. I.O.			
		Permanent	Attached Sig	ns – Gene	eral	
			Ambient		One per street	Only one sign
DIl - * / - "		32**	External		or parking	<del>(blade, V-type or flat</del>
Blade* (or Projecting)	J.CREW		Internal		frontage per	<del>sign) allowed</del>
1 Tojecting)					occupancy	<del>per occupancy per</del>
	W. CO.					<del>street or parking</del> <del>frontage</del>
V-type*	OSTERIA PANEVINO					iiuiitage
Flat* (or Wall)	Home Town Café catering			6"		



\*May encroach into adjoining street right-of-way in the Main Street (MS) and Mixed Use (MU) Districts pursuant to an encroachment agreement subject to the provisions of Sections 17.5(G) and 17.7-1(I) of this Article.

\*\*For buildings located in the Mixed-Use District (MU-2), Interstate Highway 85 Commercial District (C-85), US Highway 74 Commercial District (C-74) or the Industrial District (IND), allowed sign area shall be calculated at 10% of the eligible wall area, not to exceed 100 square feet.

Amend Section 17.10-12: Master Sign Plan, Application

# 17.10 Master Sign Plan

- 17.10-2 <u>Application.</u> Master sign plans may be submitted for the following types of developments:
  - (A.) Commercial, institutional, industrial, or mixed-use developments containing three two (2) or more acres in area.

# Amend Section 17.13: Nonconforming Signs

(A.) A permanent *sign* which does not comply with one or more of the requirements of this Article shall be grandfathered (deemed a vested right) *until such sign* is removed, physically altered beyond maintenance (as defined), relocated, damaged or destroyed, after which it shall be brought into compliance with all requirements of this Article. Such signs may replaced or modified if such installation or modification does not increase the existing nonconformity, as determined by the *Planning, Zoning & Subdivision Administrator*. Nonconforming temporary *signs* shall not be grandfathered and shall be brought into compliance with all requirements of this Article within ten (10) days from the date of notification by the *Planning, Zoning & Subdivision Administrator* or duly authorized code enforcement agent of the City.



Section 2.	All ordinances of portions	of ordinances in conflict h	erewith are hereby repealed.	
Section 3.	of competent jurisdiction,	such declaration shall not	invalid or constitutional by any affect the validity of the ordinan cifically declared to be invali	ice as
Section 4.	This ordinance shall take e	ffect and be in force from	the date of this adoption.	
PASSED AND	APPROVED this	day of	, 2024.	
ATTEST:				
Cheryl Ramsey	y, City Clerk			
Larry Simonds	, Mayor			





# **Regular City Council Meeting Memorandum**

Prepared By: Scott Attaway

### Request for Public Hearing: Spencer Ridge Subdivision Development Agreement

Meeting	Agenda Group
Tuesday, April 9, 2024, 6:00 PM	New Business Item: 6A
Reference File	Presented By

To: Scott Attaway, City Manager

From: Tyler Cobb, Planner

Date: 4-9-2024

Re: Request to Set Public Hearing for Spencer Ridge Subdivision Development Agreement

### STAFF REPORT

Spencer Ridge Development Agreement
Planning Board Meeting 4/2/2024

### Overview:

As part of our ongoing efforts to promote responsible growth and development within our community, we have been in negotiations with **LENNAR CAROLINAS**, **LLC** regarding a proposed project within our jurisdiction. This project has reached a critical stage where a formal development agreement is necessary to outline the terms, conditions, and responsibilities of both the developer and the city.

# **Purpose:**

The purpose of this development agreement is to establish a clear framework for the project, ensuring that it aligns with our community's values, goals, and regulatory requirements. By formalizing our expectations and commitments, we can effectively manage the development process and mitigate any potential risks or conflicts that may arise.

## **Key Components:**

- 1. **Project Description:** The agreement will define the scope and nature of the proposed development, including the type of structures, their intended use, and any associated amenities or infrastructure.
- 2. **Timeline:** A detailed timeline for the project will be outlined, specifying milestones, deadlines, and key deliverables to ensure timely completion and adherence to established schedules.
- 3. **Responsibilities:** Clear description of responsibilities between the developer and the city will be established, covering areas such as construction, maintenance, compliance with regulations, and provision of necessary services.
- 4. **Compliance and Enforcement:** Provisions for monitoring, compliance, and enforcement mechanisms will be included to uphold the terms of the agreement and address any deviations or non-compliance issues.

### **Next Steps:**

Carefully review the draft development agreement provided alongside this memorandum. Your input, feedback, and insights are invaluable as we work towards finalizing a mutually beneficial arrangement.

Please request the Lowell City Council to set a public hearing on May 14, 2024 at 6:00 p.m.

# **Attachments**

Spencer Ridge - Development Agreement v5.pdf

Version 2.0 202022-08-30 - Spencer Mountain - Rezoning Plan.pdf

Development Agreement Guide.pdf

# Drawn by and mail to:

St. Amand & Efird PLLC (JSE) Lincoln at Belle Grove 3315 Springbank Lane, Suite 308 Charlotte, North Carolina 28226

# STATE OF NORTH CAROLINA COUNTY OF GASTON

# DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement"), is made and entered into this day of \_\_\_\_, 202\_\_\_4 (the "Effective Date"), by and among LENNAR CAROLINAS, LLC, a Delaware limited liability company ("Lennar" or "Developer"), the COUNTY OF GASTON, a North Carolina County, a body politic and corporate (hereinafter sometimes also referred to as "Gaston County" or the "County") and THE CITY OF LOWELL, a municipal corporation, created, organized and existing under and by virtue of the laws of the State of North Carolina (the "City"). Developer, the County and the City may be collectively referred to herein as "Parties."

# **AUTHORITY**

The North Carolina General Statutes ("N.C.G.S.") §160D-1001 through §160D-1012, as it exists on the Effective Date of this Agreement (the "Development Agreement Act"), enables cities and towns to enter into binding development agreements with entities intending to develop real property under certain conditions set forth in the Development Agreement Act.

- N.C.G.S. §160D-1001(a)(l) provides that "Development projects often occur in multiple phases over several years, requiring a long-term commitment of both public and private resources."
- N.C.G.S. §160D-1001(a)(3) provides that "Because of their scale and duration, such projects often require careful coordination of public capital facilities planning, financing, and construction schedules and phasing of the private development."
- N.C.G.S. §160D-1001 (a)(4) provides that "Such projects involve substantial commitments of private capital, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of development."

N.C.G.S. §160D-1001 (a)(6) provides that "To better structure and manage development approvals for such developments and ensure their proper integration into local capital facilities programs, local governments need flexibility to negotiate such developments."

In view of the foregoing, N.C.G.S. §160D-1001 through §160D-1012 expressly authorize local governments and agencies to enter into development agreements with developers pursuant to the procedures and requirements of N.C.G.S. §160D-1001 through 1012.

In addition to the authority under the N.C.G.S, Sections 7.15-1 through 7.15-4 the Lowell Development Ordinance as adopted on May 11, 2021 (the "LDO") authorize and require the City to enter into development agreement for any development project (i) that will be classified as Traditional Neighborhood Development Overlay (TNDO) District, Main Street (MS) District, and Mixed Use (MU-1 and MU-2) District or (ii) Major Subdivisions in any district where new street infrastructure will be developed.

Section 7.15-2 of the LDO sets forth the contents of any development agreement entered into the by the City, in addition to any requirements under the N.C.G.S., including the time period for completion, the description of the property subject to the development agreement, all terms and conditions for development that differ from the LDO, and the delivery date of public facilities.

The City on April 13, 2021 adopted its comprehensive land use plan (the "CUP") to promote orderly growth within the City.

In addition to the CUP, on August 10, 2021 and later amended on March 14, 2023, the City adopted its policy for managing utility allocations and extensions to establish sound policy for the management of water and sewer capacity (the "Utility Allocation Policy"), the terms of which are attached hereto and incorporated herein as Exhibit B.

In addition to any force of law conferred upon this Agreement by North Carolina law related to local governments, the terms of this Agreement are also contractual in nature, are a result of good and valuable consideration and mutual covenants, and may be enforced as contractual terms.

# WITNESETH:

WHEREAS, Developer has entered into a purchase and sale agreement to acquire from Belmont Land and Investment Company, LLC, a North Carolina limited liability company ("BLIC") that certain real property located in Gaston County, North Carolina as more particularly described on Exhibit A attached hereto (the "Property"). Following Developer's acquisition of the Property, Developer intends to develop the Property into a single-family residential community (the "Intended Development"), subject to Developer's receipt of all required permits and approvals from applicable governmental authorities (collectively, the "Approvals").

WHEREAS, Developer intends to develop the Intended Development in phases (each a "Phase" and collectively the "Phases") according to the phase schedule attached hereto as Exhibit В.

- WHEREAS, in connection with the Approvals, Developer has agreed to plan, engineer and construct an amenity center to serve the Intended Development (hereinafter, the "Amenity Center").
- WHEREAS, in connection with the Approvals, Developer has agreed to plan, engineer and construct a landscape buffer around the Intended Development as required by the LDO (hereinafter, the "Landscape Buffers").
- WHEREAS, in connection with the Approvals, Developer has agreed to plan, engineer and construct stormwater control measures within the Intended Development as required by the LDO (hereinafter, the "SCMs").
- WHEREAS, in connection with the Approvals for Phase 4 (the "Phase 4 Approvals"), Developer has agreed to plan, engineer and construct a waterline to serve Phase 4 (hereinafter, the "Phase 4 Waterline").
- WHEREAS, the Phase 4 Waterline requires an easement from the adjacent property owner, Gaston County (herein the "County") for the development and installation of the same.
- WHEREAS, the Phase 4 Waterline requires the County grant Developer an easement for to allow for the extension of an existing waterline (the "Existing County Waterline") through Gaston County PID # 148012, commonly known as "George Poston Park."
- WHEREAS, the County has agreed to grant Developer County Easement (as defined herein) as necessary for Developer to extend the Existing County Waterline.
- WHEREAS, in connection with the Approvals, Developer has agreed to plan, engineer and construct an easement for access to the Carolina Thread Trail (the "Trail") within the Intended Development (hereinafter, the "Trail Easement").
- NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, it is mutually agreed as follows:
- Term. The term of this Agreement shall commence on the later of (i) the date on 1. which this Agreement is executed by the City and Developer or (ii) Developer's acquisition of the Property (the "Commencement Date"), and shall terminate on the date which is ( ) years thereafter (the "Term"). Notwithstanding such termination date, provided that the Developer is not in default of this Agreement, Developer has pursued the Intended Development, and the Intended Development has not been completed, at the conclusion of five years from the Commencement Date the termination date of this Agreement shall automatically be extended for one (1) additional five (5) year term. At the conclusion of the initial five (5) year extension of the Term, provided that the Developer is not in default of this Agreement, Developer has pursued development of the Property, and the Intended Development has not been completed, the termination date of this Agreement shall automatically be extended for a second and final additional five (5) year term.
- Construction of the Amenity Center. Following Developer's acquisition of the Property and in connection with the development thereof, Developer shall complete the Amenity Center which shall include: (i) a pool and clubhouse and (ii) any required environment permits to

complete the project (collectively, the "<u>Amenity Center Improvements</u>"). The construction of the Amenity Center Improvements shall occur in accordance with the plansapproved in accordance with the Rezoning Plan (the "<u>Amenity Plans</u>") as prepared by Developer's project engineer ("<u>Project Engineer</u>"). Developer shall in good faith, subject to the terms of this Agreement, pursue the substantial completion of the Amenity Center Improvements prior to that date which is the later of (i) the date on which the two hundred fiftieth (250<sup>th</sup>) certificate of occupancy ("<u>CO</u>") is issued for the Intended Development or (ii) the date on which the first CO is issued for Phase 4(the "<u>Amenity Completion Deadline</u>"). The substantial completion of the Amenity Center Improvements shall be evidenced by Developer's delivery to City of the certification of substantial completion from the Project Engineer, certifying that the same are substantially complete in accordance with the Amenity Plans.

- Installation of Landscape Buffers. Following Developer's acquisition of the 3. Property and in connection with the development thereof, Developer shall install Landscape Buffers around the Property which shall include: (i) code required plantings and (ii) any required environmental permits to complete the same (collectively, the "Landscape Buffer Improvements") (iii) any related rezoning conditions. The installation of the Landscape Buffer Improvements shall occur in accordance with the plans approved in accordance with the Rezoning Plan, (the "Buffer Plans") as prepared by the Project Engineer and approved/stamped by City Staff. Developer shall in good faith, subject to the terms of this Agreement, complete the Landscape Buffer Improvements prior to that date on which the final CO is issued for the respective Phase in which the Landscape Buffer Improvements are located (the "Buffer Completion Deadline"). The completion of the Landscape Buffer Improvements shall be evidenced by Developer's delivery to City of the certification of completion from the Project Engineer, certifying that the same are complete in accordance with the Buffer Plans. Following completion of the Landscape Buffer Improvements, Developer shall be permitted in accordance with the rezoning conditions and the Lowell Development Ordinance ("LDO") (see open space requirements and Article 2) without consent of the City to convey its rights and obligations for the maintenance of the Landscape Buffer Improvements to a property owners association established for the ownership, maintenance, and upkeep of common area facilities located on the Property (the "Property Owners Association"). Upon such conveyance or designation, all duties and obligations of Developer hereunder shall transfer to the Property Owners Association and Developer shall be released from the rights, duties and obligations assigned immediately upon such assignment.
- 4. <u>Construction of Stormwater Control Measures</u>. Following Developer's acquisition of the Property and in connection with the development thereof, Developer shall install SCMs around the Property which shall include: (i) those stormwater control measures as designed and approved on the construction drawings for each Phase of the Intended Development (ii) any required environment permits to complete the same (collectively, the "<u>SCM Improvements</u>"). The installation of the SCM Improvements shall occur in accordance with the plans approved in accordance with the City, County and NCDEQ Requirements (the "<u>SCM Plans</u>") as prepared by the Project Engineer. Developer shall in good faith, subject to the terms of this Agreement, pursue the substantial completion of the SCM Improvements prior to that date on which is the later of (i) twelve (12) months following the issuance of the final CO for the respective Phase in which the SCM Improvements are located or (ii) twelve (12) months following the issuance of the final CO for the respective drainage area in which the SCM Improvements are located (the "<u>SCM Completion Deadline</u>"). The substantial completion of the SCM Improvements shall be

evidenced by Developer's delivery to City of the certification of substantial completion from the Project Engineer, certifying that the same are substantially complete in accordance with the SCM Plans. Following completion of the city/plan approved SCM Improvements, Developer shall be permitted, in compliance with in compliance with the LDO and without consent of the City to convey its rights and obligations for the maintenance of the SCM Improvements to a Property Owners Association. Upon such conveyance or designation, all duties and obligations of Developer hereunder shall transfer to the Property Owners Association and Developer shall be released from the rights, duties and obligations assigned immediately upon such assignment.

- 5. The Developer agrees to use good faith efforts to procure all offsite easements from the owners of Gaston County Parcel IDs# 136566, 136565, 136563, 136562, 136561, 136560, 136558, 136557 and 136559 as necessary for the installation of the utilities, including waterline extension through "George Poston Park" and force main along Lowell Spencer Mountain Road to serve the Intended Development (collectively, the "Offsite Easements"). In the event that Developer successfully acquires all Offsite Easements, Developer shall notify the City and County in writing of the same (each an "Easement Acquisition Notice"). In the event that the Developer is unable to obtain any of the Offsite Easements within forty-five (45) days following recording of this Agreement (the "Offsite Easement Deadline") in the Office of the Gaston County Register of Deeds, the Developer shall notify the City and County in writing of the same (each an "Offsite **Easement Notice").**
- 6. Construction of Waterline; Phase 4 Waterline; Extension of Utilities. Following Developer's acquisition of the Property and in connection with the development of Phase 1, Developer shall complete the following improvements: installation of approximately 6500 linear feet of 12" waterline. In connection with the development of Phase 4, Developer shall complete the following improvements: (i) installation of utilities in accordance with either Section 6(a), 6(b) or 6(c), as applicable and (iii) any other encroachment or third party agreements as necessary along with any required environment permits to complete the Phase 4 Waterline (collectively, the "Waterline Improvements"). The construction of the Waterline Improvements shall occur in accordance with the plans h approved in accordance with the City, County and NCDEQ Requirements (the "Waterline Plans") as the Project Engineer. Developer shall in good faith, subject to the terms of this Agreement, pursue the substantial completion of the Waterline Improvements, including acquisition of the County Easement, prior to that date on which the first (1st) CO is issued for Phase 4 (the "Waterline Completion Deadline"). The substantial completion of the Waterline Improvements shall be evidenced by Developer's delivery to Town of the certification of substantial completion from the Project Engineer, certifying that the same are substantially complete in accordance with the Plans.
  - In the event that Developer acquires all the Offsite Easements prior to the Offsite Easement Deadline, as evidenced by Developer's delivery of the Easement Acquisition Notice, then within one (1) month of receipt of the Easement Acquisition Notice, the County shall grant and convey to Developer an easement over and upon the property of the County, including George Poston Park, as necessary for the construction of utilities, including without limitation, waterline and force main, as well as to tie into Existing County Waterline, together with all necessary temporary construction and grading easements to complete the utility work, as more particularly shown and depicted on that drawing entitled "" attached hereto as Exhibit "D" and incorporated herein by reference (collectively, "County Easement Option A").

- b. In the event that Developer is unable to acquire all the Offsite Easements prior to the Offsite Easement Deadline, as evidenced by Developer's delivery of the Offsite Easement Notice, then within one (1) month of receipt of the Offsite Easement Notice, the County shall grant and convey to Developer an easement over and upon the property of the County, including George Poston Park, as necessary for the construction of utilities, including without limitation, multiple waterlines and force main, as well as to tie into Existing County Waterline, together with all necessary temporary construction and grading easements to complete the utility work, as more particularly shown and depicted on that drawing entitled " attached hereto as **Exhibit "E"** and incorporated herein by reference (collectively, "**County Easement Option B**").
- c. In the event that Developer acquires all the Offsite Easements prior to the Offsite Easement Deadline, and acquires record title to Gaston Parcel #136558, as evidenced by Developer's delivery of the Easement Acquisition Notice and recording of a deed vesting title in Developer for Gaston Parcel #136558, then within one (1) month of receipt of the Developer's written notice it has acquired Gaston Parcel #136558 and delivery of the Offsite Easement Notice, the County shall grant and convey to Developer a temporary construction easement and sight triangle easement over and upon the property of the County, including George Poston Park, as necessary for the construction of a right-of-way connection from the Intended Development to Lowell Spencer Mountain Road, as more particularly shown and depicted on that drawing entitled "" attached hereto as Exhibit "F" and incorporated herein by reference (collectively, "County Easement Option C")
- 7. Grant of Trail Easement. Following Developer's acquisition of the Property and in connection with the development thereof, Developer shall design and plan a location for access to the Trail, including having the Trail Easement surveyed or platted (the "Trail Survey"). Developer shall deliver a copy of the Trail Survey to the City for City's written approval and consent to the location, and City shall approve the location of the Trail Easement within ten (10) days of receipt of the Trail Survey, which approval shall not be unreasonably withheld. The Parties shall enter into a written easement for the Trail Easement in the location as approved on the Trail Survey. The Parties agree that the Trail Easement shall be granted prior to that date on which the fiftieth (50th) CO is issued for the applicable Phase in which the Trail Easement is located (the "Easement Grant Deadline"). The completion of the Trail Easement shall be evidenced by Developer's recording of an easement agreement in the Office of the Register of Deeds for Gaston County in favor of the City for access to the Trail.
- Review ("PCAR"), Full Capacity Assurance Review ("FCAR") and all applicable fees paid in association with the granting of the utility allocation with the required deadline stated in the City of Lowell Utility Allocation and Reservation Policy, as those procedures are described and detailed in the Utility Allocation Process, potable water will be supplied to the Property by the City upon request of the Developer and subject to the provisions of this Section 7. Developer will construct or cause to be constructed at Developer's cost all necessary water service infrastructure to, from, and within the Property per City specifications which will be maintained by City or the provider. The Developer shall be responsible for maintaining all related internal water infrastructure until offered to, and accepted by, the City for public ownership and maintenance. To the extent easements are required to connect the improvements within the Property to the City's existing improvements, the Developer will be responsible for providing such easements. Upon final

or X plan whicl

inspection and acceptance by the City, the Developer shall provide a twelve (12) month warranty period for all water infrastructure constructed to serve the Intended Development.

9. Provision of Sewage Treatment and Disposal by City. Subject to the PCAR and FCAR, as those procedures are described and detailed in the Utility Allocation Process, sewage treatment and disposal will be supplied to the Property by the City upon request of the Developer and subject to the provisions of this Section 8. Developer will construct or cause to be constructed at Developer's cost all necessary sewer service infrastructure to, from, and within the Property per City specifications which will be maintained by it or the provider. The Developer shall be responsible for maintaining all related internal sewer infrastructure until offered to, and accepted by, the City for public ownership and maintenance. To the extent easements are required to connect the improvements within the Property to the City's existing improvements, the Developer will be responsible for providing such easements. Upon final inspection and acceptance by the City, the Developer shall provide a twelve (12) month warranty period for all sewer infrastructure constructed to serve the Intended Development.

The City covenants that it has, will have, will construct or will acquire sufficient additional capacity so as to meet all reasonably foreseeable needs of current and projected future customers of the sewage system.

- System Development Fees/. Within forty-five (45) days following FCAR approval Developer shall pay all "System Development Fees" imposed by the City at the time of this Agreement, or following the date of this Agreement, provided such fees are applied consistently and in the same manner to all similarly-situated property within the City limits.. In particular, the Developer agrees that it shall not seek any exemptions for any portions of the Property from any current development impact fees (so long as such development impact fees are applied consistently and in the same manner to all similarly-situated property within the City limits) for any reason.
- 11. The delivery date of such public facilities as may be provided by Sections 7 and 8 above shall be conditioned on the successful performance by the Developer in implementing the proposed development and compliance with all terms of this Agreement.
- 12. Sidewalks. As a public benefit, Developer shall install a sidewalk, as required by the LDO, along Lowell Spencer Mountain Road in accordance with the approved site plan. In the event that the Sidewalks are required to be installed within the margin of or within the North Carolina Department of Transportation maintained portion of Lowell Spencer Mountain Road, the City agrees to accept the Sidewalks for maintenance.
- Terms and Conditions that differ from the provisions of the LDO, provide however, that any plans or construction drawings once approved by the City shall be deemed to have met all applicable requirements. [We need a paragraph incorporating any additional terms set out in the conditional zoning approval.]
  - a. Only the uses appearing in Table 8.1 of the Lowell Development Ordinance (LDO) shall be allowed in the "Single Family Residential 4 District Conditional Zoning" (SFR-4/CZ) created herein.

- b. Minimum lot widths shall not be less than sixty linear feet (60') in width as measured at the minimum required setback line per LDO Art./Sect. 8.4-2. This condition exceeds the minimum requirement of the LDO art. Sect. 8.4-2.
- c. All applicable standards and specifications of the LDO shall be met.
- d. Stormwater conditions for design and post construction stormwater containment on this project:
  - i. 200 Feet or 100-year Floodplain (whichever is greater) buffer on surface waters.
  - ii. For all projects with >10% BAU, Stormwater Control Measures (SCMs) capable of treating the greater of 1.5" or the difference in stormwater runoff from pre-development and post-development conditions for the 1-yr, 24-hour storm.
  - iii. SCMs capable of limiting peak flow from the site at each point of discharge to the predevelopment conditions for the 1- and 10-yr, 24hr storm events.
  - iv. A total phosphorus (TP) removal rate of at least 70% for all SCM(s) used.
  - v. SCMs capable of conveying the 25-yr design storm.
  - vi. SCM Operation and Maintenance Agreements and Plans should be clearly explained to the responsible party.
  - vii. Developer shall use commercially reasonable efforts to minimize BUA and runoff through site design and Low Impact Development (LID) measures such as downspout disconnection.
- e. Stormwater conditions for active construction:
  - i. The use of high hazard and/or double row silt fencing along surface water bodies.
  - ii. Retention basins capable of conveying the 25-year storm with an outfall sized to maximize drawdown time.
  - iii. Installation of temporary seeding and slope drains within 7 days after grading.
  - iv. Installation of natural fiber matting on slopes greater than 10'.
  - v. Third party sediment and erosion control monitoring of the site.
  - vi. Implementation of devices on the two main tributaries running through the property before they enter the South Fork River to numerically

- monitor turbidity during construction and provide alerts to regulators and site operators when turbidity levels exceed action levels.
- vii. Additional measures such as polyacrylamides, proposed by the designers and owners, as needed.
- f. The general schematic development plan sheet RZ.01 appearing below establishes general layout and connectivity patterns.
- 14. <u>Cooperation</u>. The City agrees to cooperate with Developer in connection with the construction of the Improvements, including without limitation, including executing, within three (3) business days after Developer's written request therefor, any and all documents, easements, encroachment agreements, instruments and plats, which are required to be executed by the City.
- 15. <u>Costs and Bond</u>. Developer shall be solely responsible for the expenses to construct the Improvements. As guaranty and security for performance of its obligations under this Agreement, Developer shall deposit with the City a bond or letter of credit covering the estimated cost of the Improvements ("<u>Bond</u>"). This Bond shall be posted with the City within five (5) business days of the date on which the first plat of the Intended Development is recorded. The Bond may be used to pay for completion of the Improvements as the sole and exclusive remedy of the City in the event of default by Developer under this Agreement. The Bond shall auto-renew yearly.
- 16. <u>Engineers, Contractors and Consultants</u>. The parties acknowledge that Developer shall have the right to engage, consult and otherwise use engineers, contractors and consultants, including but not limited to the Project Engineer, without the consent or release of the City, in order to complete the Improvements.
- 17. <u>Development Standards</u>. Except as expressly provided in this Agreement, City acknowledges and agrees that Developer's completion of the Improvements in accordance with the Plans, shall be subject to all faults and defects and without any expressed, implied or statutory warranties or representations of any kind, and Developer hereby disclaims any such representations and warranties.
- 18. <u>Notices</u>. All notices required or desired to be given under this Agreement shall be in writing and either (a) hand-delivered, (b) sent by certified mail, return receipt requested, (c) sent via FedEx or similar overnight service, or (d) sent via electronic mail, so long as notice is also provided through either method (a), (b) or (c) as herein described. All notices shall be addressed to the party being noticed, and shall be deemed to have been given (i) when delivered, if by hand delivery, (ii) three (3) business days after deposit in a U.S. Post Office or official letter box, if sent by certified mail, (iii) one (1) business day after timely deposited in a FedEx or similar overnight service depository, or (iv) upon transmission by sender if sent via electronic mail. All notices shall be delivered or sent prepaid for the specified service by the party giving notice, and shall be addressed as follows:

CITY:	City of Lowell

COUNTY:	County of Gaston

LENNAR: LENNAR CAROLINAS, LLC

6701 Carmel Road, Suite 425

Charlotte, NC 28226 Attn: Mark Henninger

E-Mail: <u>mark.henninger@lennar.com</u>

Copy To: LENNAR CORPORATION

700 NW 107th Avenue - 4th Floor

Miami, Florida 33172 Attn: General Counsel

E-Mail: mark.sustana@lennar.com

Copy To: ST. AMAND & EFIRD, PLLC

3315 Springbank Lane, Suite 308

Charlotte, NC 28226

Telephone No.: (704) 837-2670

Attn: Scott Efird

E-Mail: sefird@stamand-efird.com

- 19. Other Approvals. To the extent that any county or other local government, state or federal approvals are required in connection with the Improvements, City and County shall use reasonable efforts to assist Developer in obtaining such approvals.
- 20. <u>Inspection, Default and Remedies</u>. During the Term of this Agreement the City shall have the right to enter the premises in order to conduct reasonable inspections, including inspections necessary to confirm or assure Developer's compliance with the terms of this Agreement. In addition to any other remedies provided herein, the City shall have the right to withhold permit or other approvals in the event of material noncompliance with the terms of this Agreement. City shall take no action with respect to a default by Developer until the non-defaulting party has given written notice to the defaulting party and the defaulting party has failed to cure the default within thirty (30) days after receipt of such notice (the "Cure Period").
- 21. Relationship of the Parties. This Agreement creates a contractual relationship between the parties. This Agreement shall not be interpreted or construed to create the relationship of master/servant, principal/agent, association, partnership, joint venture, or any other relationship where one party may be held responsible for acts of the other party. This Agreement does not impose any partnership obligation or liability upon either party. Further, this Agreement is not intended to create, nor does it create, a relationship whereby the conduct of Developer constitutes

"state action" for any purposes. The Parties agree and acknowledge that pursuant to N.C. Gen. Stat. § 160D-1006(c), the City will be responsible for the overall administration of the Agreement.

- 22. Acquisition Contingency. The Parties hereby acknowledge, affirm and understand that as of the Effective Date of this Agreement, Developer has not yet acquired the Property and is not the record owner thereof. As a result, the Parties hereby agree, covenant, and acknowledge that the obligations of the Parties hereunder shall be expressly conditioned upon Developer's acquisition of the Property and taking record title thereto. In the event that the purchase and sale agreement is terminated and Developer does not acquire the Property, then Developer shall deliver written notice to the County the City and upon delivery thereof, this Agreement shall automatically terminate and the Parties shall be released from any obligations hereunder and any Bond paid shall be promptly returned to Developer.
- 23. Official Act. This Agreement constitutes an official act of the County and the City and has been adopted following procedures required by applicable law.
- 24. <u>Enforceability</u>. The unenforceability or invalidity of any particular provision of this Agreement, in whole or in part, shall not affect the enforceability and validity of the remainder of this Agreement.
- 25. <u>Entire Agreement</u>. This Agreement, together with other writings signed by the parties expressly stated to be supplementary hereto and together with any instruments to be executed and delivered pursuant to this Agreement, constitutes the entire agreement between the parties and supersedes all prior understandings and writing, and may be changed only by a writing signed by the parties hereto.
- 26. <u>Applicable Laws</u>. This Agreement shall be governed and construed under the laws of the State of North Carolina.
- 27. <u>Binding Effect</u>. This Agreement shall run with title to the Property and shall be binding on all persons having any right, title or interest therein. ESTABLISH TIME PERIOD FOR COMPLETION AND CONSTRUCTION PER 7.15-2 (A)
- 28. <u>Estoppel</u>. Each party agrees, from time to time, within thirty (30) days after request of another party, to deliver to the requesting party or such party's designee, an estoppel certificate stating that this Agreement is in full force and effect, the unexpired term of this Agreement, and whether or not, to such party's knowledge, there are any existing defaults or matters which, with the passage of time, would become defaults under this Agreement. It is understood and agreed that the party's obligations to furnish such estoppel certificates in a timely fashion is a material inducement for execution of this Agreement.
- 29. <u>Assignment</u>. Notwithstanding the forgoing, the Parties agree that Developer, or any subsequent developer, shall be entitled to assign and delegate the rights and duties of the Developer under this Agreement (the "<u>Developer Rights</u>") to a subsequent purchaser of all or any portion of the Property. Such assignment shall be evidenced by a recorded assignment and assumption of development rights (the "<u>Assignment of Developer Rights</u>"), executed by the Parties and the subsequent purchaser, and shall be effective as the date of recording in the Office of the Register of Deeds for Gaston County. The Parties acknowledge and agree that any such assignment or transfer by the developer of the Developer Rights shall be non-recourse as to the assigning

developer. From and after the effective date of the Assignment of Developer Rights, the assigning developer shall be released from all responsibility or liability under this Agreement.

- 30. <u>Waiver</u>. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act.
- 31. <u>Severability</u>. If any term, covenant or condition of this Easement Agreement or the application thereof to any person or circumstance shall, to any extent, be illegal, invalid or unenforceable, the remainder of this Easement Agreement shall not be affected thereby and shall be valid and enforceable to the full extent permitted by law.
- 32. <u>Force Majeure</u>. In the event that the performance by either party of any of its obligations hereunder is delayed by natural disaster, adverse weather, acts of God, terrorist activity, war, labor dispute, pandemic, epidemic, governmental delay or other matter beyond the control of such party, without such party's fault or negligence, ("<u>Force Majeure</u>") then the deadline for completion of such obligation shall be extended by a like number of days.
- 33. <u>Execution of Agreement</u>. This Agreement may be executed in multiple parts as originals or by facsimile or scanned copies of executed originals and may further be executed by counterpart signature pages.
- 30. Recordation. Pursuant to NCGS §160D- 1011 and Section 7.15-3(F) of the LDO, this Agreement shall be recorded by the Developer with the Gaston County Register of Deeds within 14 days of the date of execution by the Developer, the City and the County.

**IN WITNESS WHEREOF**, Developer has caused this Agreement to be duly executed and sealed pursuant to proper authority as of the day and year first above written.

LENNAR CAROLINAS, LLC, a Delaware limited liability company	
By:	
By:Name: Mark Henninger	
Title: Vice President	
STATE OF NORTH CAROLINA	
COUNTY OF	
acknowledging to me that he or she voluntaril	on personally appeared before me this day, each y signed the foregoing document for the purpose stated lenninger as Vice President of Lennar Carolinas, LLC.
Date:	OCC : 1 C: 4 CN 4 D 11:
	Official Signature of Notary Public
	Notary printed or typed name
[OFFICIAL SEAL]	My commission expires:

**IN WITNESS WHEREOF**, the City caused this Agreement to be duly executed and sealed pursuant to proper authority as of the day and year first above written.

CITY OF LOWELL, NORTH CAROLINA	ATTEST
BY:	BY:
Name:	Name:
Title:	Title:
STATE OF NORTH CAROLINA COUNTY OF	
I, a Notary Public of such Courand personally	nty and State, certify that  y appeared before me this day, each acknowledging to me  and  of the City of Lowell, duly given and as the act of the City of Lowell, North
Carolina, the foregoing documen	duly given and as the act of the City of Lowell, North t was signed in the City's name by such with its corporate seal and attested by such
Date:	Official Signature of Notary Public
	Notary printed or typed name
[OFFICIAL SEAL/STAMP]	My commission expires:

**IN WITNESS WHEREOF**, the County caused this Agreement to be duly executed and sealed pursuant to proper authority as of the day and year first above written.

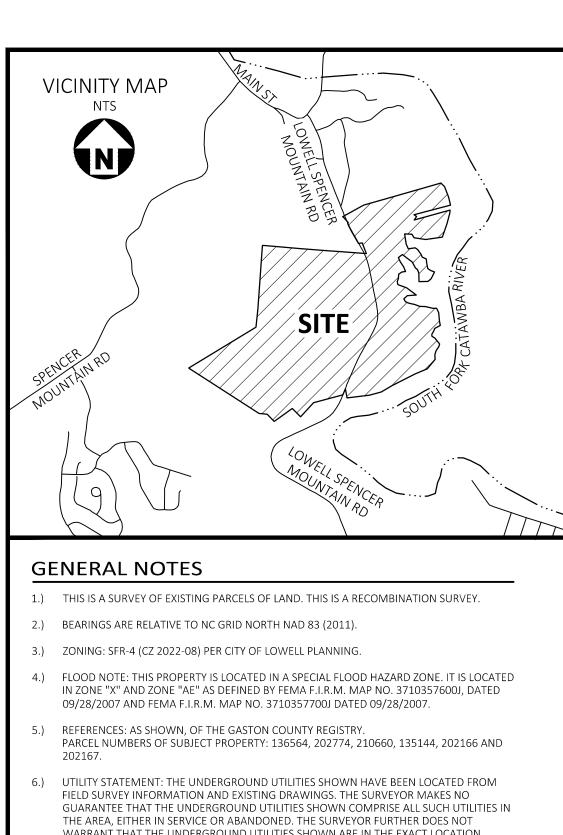
# **COUNTY OF GASTON**

BY:	(SEAL)	
PRINT NAME:		
Title:		
STATE OF	)	
COUNTY OF	)	
I, the undersigned Notary Pub certify that, the		County, do hereby
certify that, the	of the Gaston County	Board of Commissioners, who
is personally known to me, or who was who executed the foregoing instrumen of the foregoing instrument.	s proved to me on the basis of satisf	actory evidence to be the person
WITNESS my hand and offici	al seal this day of	, 2023.
(affix notarial stamp below)		
(-3)	Notary Public	
	Print Name	
	My Commission Fynires	

# **EXHIBIT A**

# **PROPERTY**

BEING ALL OF "	TRACT 1" as s	shown on that	plat entitled "S	SPENCER MOUN?	ΓAIN
RECOMBINATION	PLAT" prepared	ty The John R.	McAdams Comp	pany, Inc., dated _	,
2023 and recorded _	, 2023 in Bo	ok, Page	, in the Office	e of the Register of I	Deeds
for Gaston County, N	North Carolina.				



# OWNER CERTIFICATION

LEGEND

80d nail

**─** Calculated corner △ Point of localization

I (WE) HEREBY CERTIFY THAT I AM (WE ARE) THE OWNER(S) OF THE PROPERTY SHOWN AND DESCRIBED HEREON, THAT I (WE) HEREBY ADOPT THIS PLAN WITH MY (OUR) FREE CONSENT AS OF

PROPERTY OWNER SIGNATURE

SHEET 2

PARCEL NO. 202774

PARCEL NO. 136564

SHEET 6

NEW TRACT 1

· · · · · Abandoned line

● Found property corner <del>x x x x x</del> Fence line

PROPERTY OWNER NAME (TYPED OR PRINTED)

PROPERTY OWNER NAME (TYPED OR PRINTED)

PROPERTY OWNER SIGNATURE

WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH HE DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED

# PURPOSE OF PLAT

THE PURPOSE OF THIS PLAT IS TO RECOMBINE PARCELS 202774, 136564, 202166, 202167, 135144, 210660 INTO FOUR TRACTS; TRACT 1 BEING ALL OF PARCELS 136564 AND 210660 AND PORTIONS OF PARCELS 202774, 202166, AND 135144; TRACT 2 BEING ALL OF PARCEL 202167, A PORTION OF PARCEL 202774, AND THE REMAINING PORTIONS OF PARCELS 202166 AND 135144; TRACT 3 BEING A PORTION OF PARCEL 202774; TRACT 4 BEING A PORTION OF PARCEL 202774.

TRACT 1 CONTAINS A TOTAL AREA OF 9,348,485 SQ. FT. (214.612 ACRES) INCLUDING AREA WITHIN THE RIGHT OF WAY OF LOWELL SPENCER MOUNTAIN ROAD.

TRACT 2 CONTAINS A TOTAL AREA OF 2,244,132 SQ. FT. (51.518 ACRES).

TRACT 3 CONTAINS A TOTAL AREA OF 287,942 SQ. FT. (6.610 ACRES)

TRACT 4 CONTAINS A TOTAL AREA OF 949,873 SQ. FT. (21.806 ACRES)

NO NEW RIGHTS OF WAY ARE DEDICATED BY THIS PLAT. NO EXISTING RIGHTS OF WAY ARE CHANGED BY THIS PLAT.

# ZONING ADMINISTRATOR CERTIFICATION

THIS PLAT MEETS THE REQUIREMENTS OF THE CITY OF LOWELL DEVELOPMENT ORDINANCE AS OF

\_\_ DAY OF \_ \_\_\_\_ AND IS HEREBY APPROVED CONDITIONED UPON THE PLAT BEING REGISTERED IN THE OFFICE OF THE GASTON COUNTY REGISTER OF DEEDS WITHIN SIXTY (60) DAYS OF SUCH APPROVAL AND RECEIPT OF RECORD ACCOMPANIED BY A PLAT PRESENTED TO THE CITY OF LOWELL PLANNING SERVICES DEPARTMENT.

PLANNING, ZONING & SUBDIVISION ADMINISTRATOR

# CERTIFICATE OF REVIEW OFFICER

STATE OF NORTH CAROLINA

COUNTY OF GASTON

, REVIEW OFFICER OF GASTON COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL THE STATUTORY REQUIREMENTS FOR RECORDING AS OF

GASTON COUNTY REVIEW OFFICER

# PARCEL TABLE

PARCEL NO.	OWNER	DEED REFERENCE	AREA
202774	BELMONT LAND AND INVESTMENT COMPANY	DB 466, PG 144	8,231,699 SQ. FT. (188.974 ACRES)
136564	BELMONT LAND AND INVESTMENT COMPANY	DB 3253, PG 175	3,417,484 SQ. FT. (78.455 ACRES)
202166	BELMONT LAND AND INVESTMENT COMPANY	DB 3397, PG 130	611,261 SQ. FT. (14.033 ACRES)
202167	BELMONT LAND AND INVESTMENT COMPANY	DB 3397, PG 130	324,132 SQ. FT. (7.441 ACRES)
135144	BELMONT LAND AND INVESTMENT COMPANY	DB 3397, PG 134	174,305 SQ. FT. (4.001 ACRES)
210660	BELMONT LAND AND INVESTMENT COMPANY	DB 4214, PG 2394	71,552 SQ. FT. (1.643 ACRES)
			TOTAL AREA: 12,830,433 SQ. FT. (294.546 ACRES)

I HEREBY CERTIFY THAT THIS PLAT IS OF THE FOLLOWING TYPE: G.S. 47-30 (f)(11)(d). THIS SURVEY IS OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT-ORDERED SURVEY, OR OTHER EXCEPTION TO THE DEFINITION OF SUBDIVISION.

PROFESSIONAL LAND SURVEYOR

KEVIN S. BAUCOM, PLS L-4275

I, KEVIN S. BAUCOM, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION FROM DEED DESCRIPTION RECORDED IN BOOK AND PAGE SHOWN; THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AND DRAWN FROM INFORMATION FOUND IN BOOK AND PAGE SHOWN; THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000+; AND THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, LICENSE NUMBER, AND SEAL THIS

, A.D. 2023.



I, KEVIN S. BAUCOM, PLS, CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION AND THE FOLLOWING INFORMATION WAS USED TO PERFORM THE SURVEY: (1)CLASS OF SURVEY: CLASS A (2)POSITIONAL ACCURACY: < 0.100' (3)TYPE OF GPS FIELD PROCEDURE: VRS (4)DATE OF SURVEY: 09/16/2021 (5)DATUM/EPOCH: NAD 83(2011) (6) PUBLISHED/FIXED-CONTROL USED: GAST (7)GEOID MODEL: GEOID12A (8)COMBINED GRID FACTOR(S): 0.999835694

(9)UNITS: METERS CONVERTED TO US SURVEY FEET

# NEW TRACT AREA TABLE

SHEET 4

TRACT NO.	AREA
1	9,570,846 SQ. FT. (219.72 ACRES)
2	2,021,771 SQ. FT. (46.41 ACRES)
3	287,942 SQ. FT. (6.61 ACRES)
4	949,873 SQ. FT. (21.81 ACRES)
	TOTAL AREA: 12,830,432 SQ. FT. (294.546 ACRES)

1	9,570,846 SQ. FT. (219.72 ACRES)
2	2,021,771 SQ. FT. (46.41 ACRES)
3	287,942 SQ. FT. (6.61 ACRES)
4	949,873 SQ. FT. (21.81 ACRES)
<b>.</b>	TOTAL AREA: 12,830,432 SQ. FT. (294.546 ACRE



The John R. McAdams Company, Inc.

2100 South Tryon Street Suite 400 Charlotte, NC 28203 phone 704. 527. 0800 fax 919. 361. 2269

www.mcadamsco.com

license number: C-0293

# **OWNER**

SHEET INDEX

210660

**SHEET** 

SHEET 5

PARCEL NO. 20216

PARCEL NO. 13514

**PARCEL NO. 202774** 

NEW TRACT

PARCEL NO. 202774

NEW TRACT 4

**PARCEL NO. 202774** 

PARCEL NO. 202167

NEW TRACT 2

\_\_\_\_\_

1 inch = 300 ft.

BELMONT LAND AND INVESTMENT COMPANY PO BOX 1939 McADENVILLE, NC 28101-1939

PRELIMINARY

NOT FOR RECORDATION, CONVEYANCES OR SALES

**REVISIONS** 

# **PLAN INFORMATION**

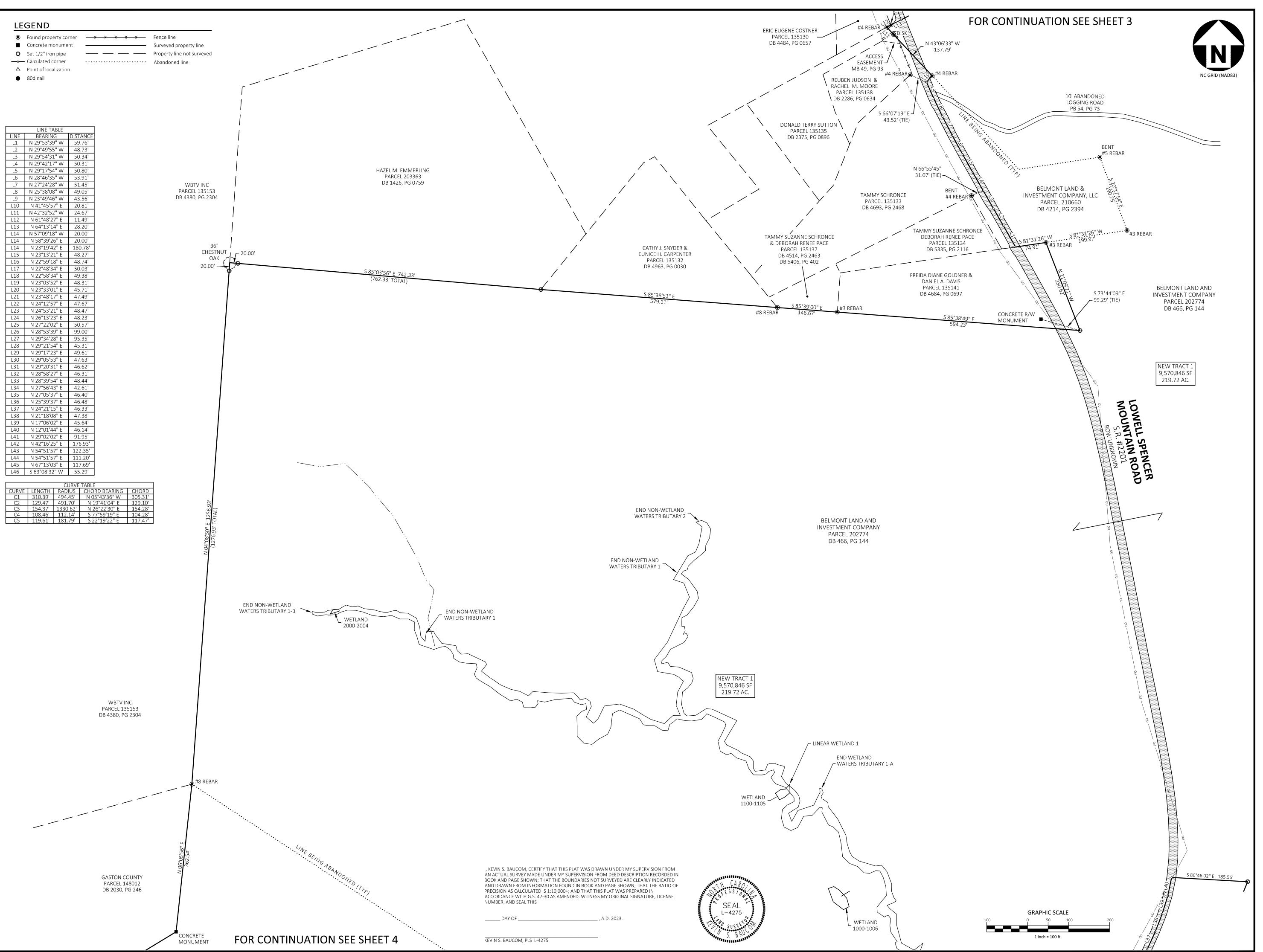
PROJECT NO. PLT21001 FILENAME PLT21001-F1 CHECKED BY KSB BEH/JPM/PAS/jc

DRAWN BY 1" = 300'

11.13.2023

SHEET

**RECOMBINATION** 





McAdams

The John R. McAdams Company, Inc.

2100 South Tryon Street

Suite 400

Charlotte, NC 28203 phone 704. 527. 0800 fax 919. 361. 2269 license number: C-0293

www.mcadamsco.com

# OWNER

BELMONT LAND AND INVESTMENT COMPANY PO BOX 1939 McADENVILLE, NC 28101-1939

RECOMBINATION PLAT
LOWELL SPENCER MOUNTAIN ROAL
LOWELL, COUNTY OF GASTON, NORTH CAROLINA 2805

PRELIMINARY

NOT FOR RECORDATION,

CONVEYANCES OR SALES

# REVISIONS

NO. DATE

# PLAN INFORMATION

PROJECT NO. PLT21001

FILENAME PLT21001-F1

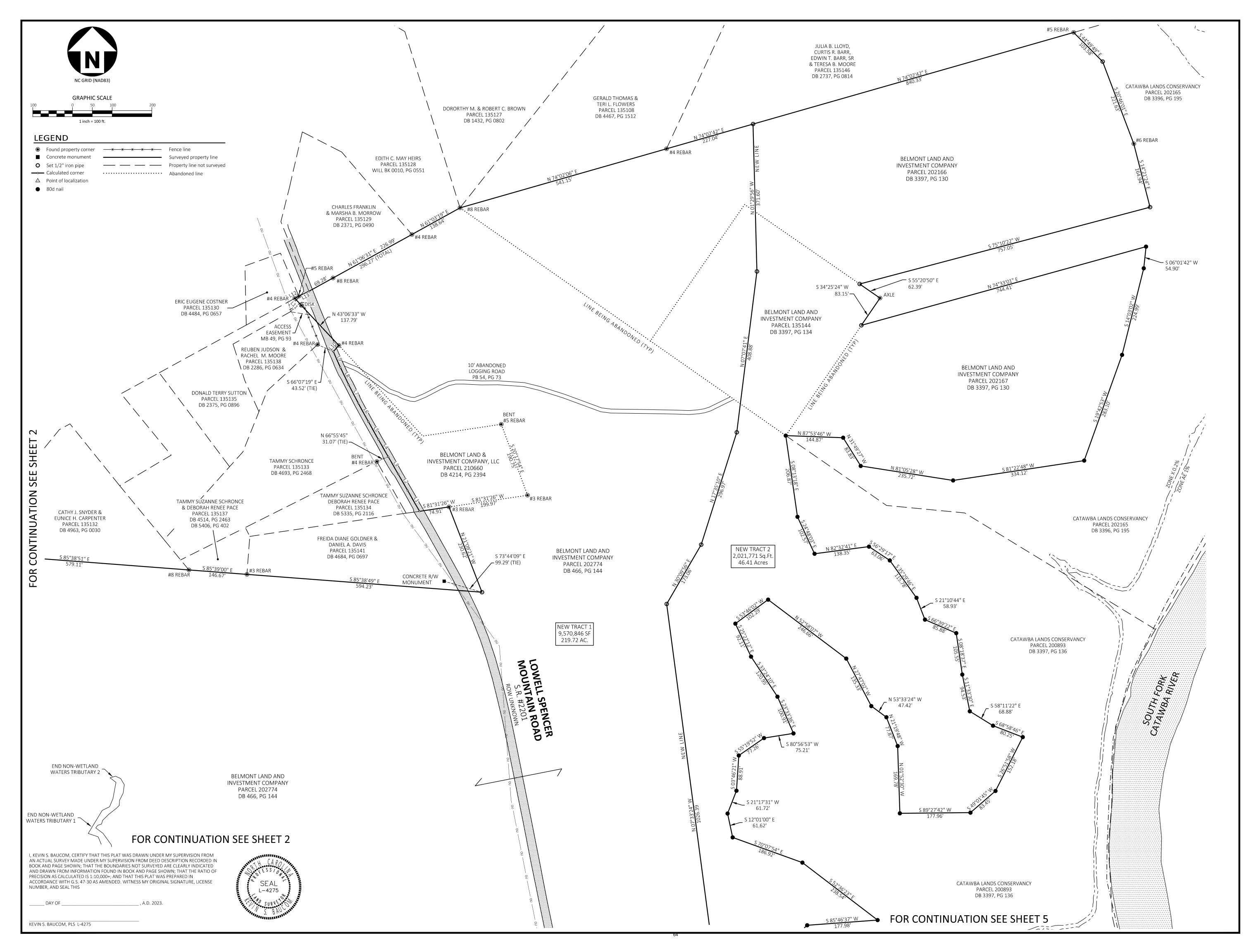
CHECKED BY BEH

DRAWN BY BEH/JPM/PAS/jc

SCALE 1" = 100'
DATE 11.13.2023

SHEET

# RECOMBINATION





The John R. McAdams Company, Inc. 2100 South Tryon Street Suite 400 Charlotte, NC 28203

> phone 704. 527. 0800 fax 919. 361. 2269 license number: C-0293

www.mcadamsco.com

# OWNER

BELMONT LAND AND INVESTMENT COMPANY PO BOX 1939 McADENVILLE, NC 28101-1939

# RECOMBINATION PLAT OWELL SPENCER MOUNTAIN ROAL OWELL, COUNTY OF GASTON, NORTH CAROLINA 2805

PRELIMINARY

NOT FOR RECORDATION,

CONVEYANCES OR SALES

# **REVISIONS**

NO. DATE

# **PLAN INFORMATION**

PROJECT NO. PLT21001

FILENAME PLT21001-F1

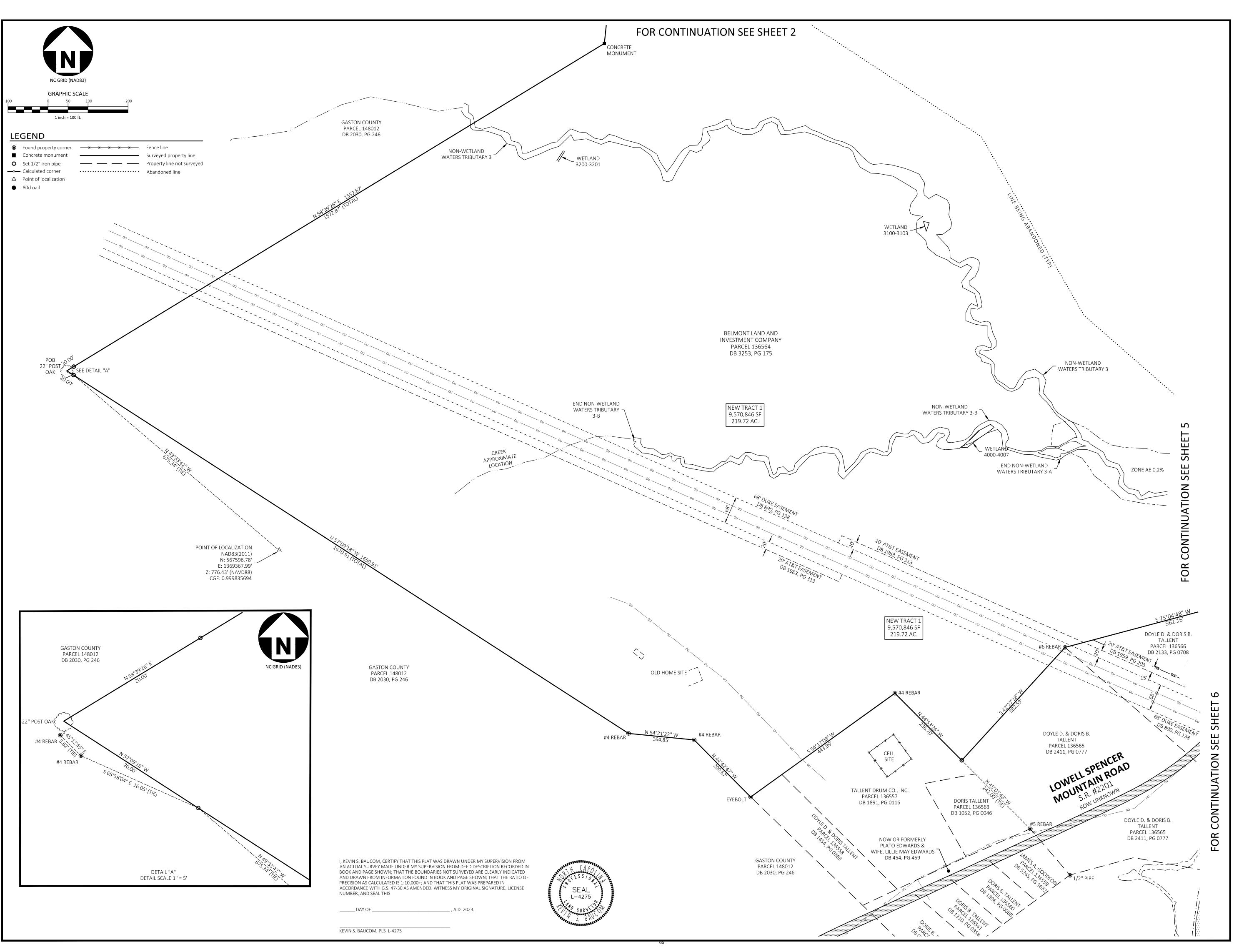
CHECKED BY BEH

DRAWN BY BEH/JPM/PAS/jc

SCALE 1" = 100'
DATE 11.13.2023

SHEET

# RECOMBINATION PLAT





MCADAMS
The John R. McAdams Company, Inc.
2100 South Tryon Street

Suite 400 Charlotte, NC 28203 phone 704. 527. 0800 fax 919. 361. 2269 license number: C-0293

www.mcadamsco.com

# OWNER

BELMONT LAND AND INVESTMENT COMPANY PO BOX 1939 McADENVILLE, NC 28101-1939

# RECOMBINATION PLAT OWELL SPENCER MOUNTAIN ROA OWELL, COUNTY OF GASTON, NORTH CAROLINA 2809

# PRELIMINARY

NOT FOR RECORDATION, CONVEYANCES OR SALES

# REVISIONS

NO DATE

# PLAN INFORMATION

PROJECT NO. PLT21001

FILENAME PLT21001-F1

CHECKED BY BEH

DRAWN BY BEH/JPM/PAS/jc

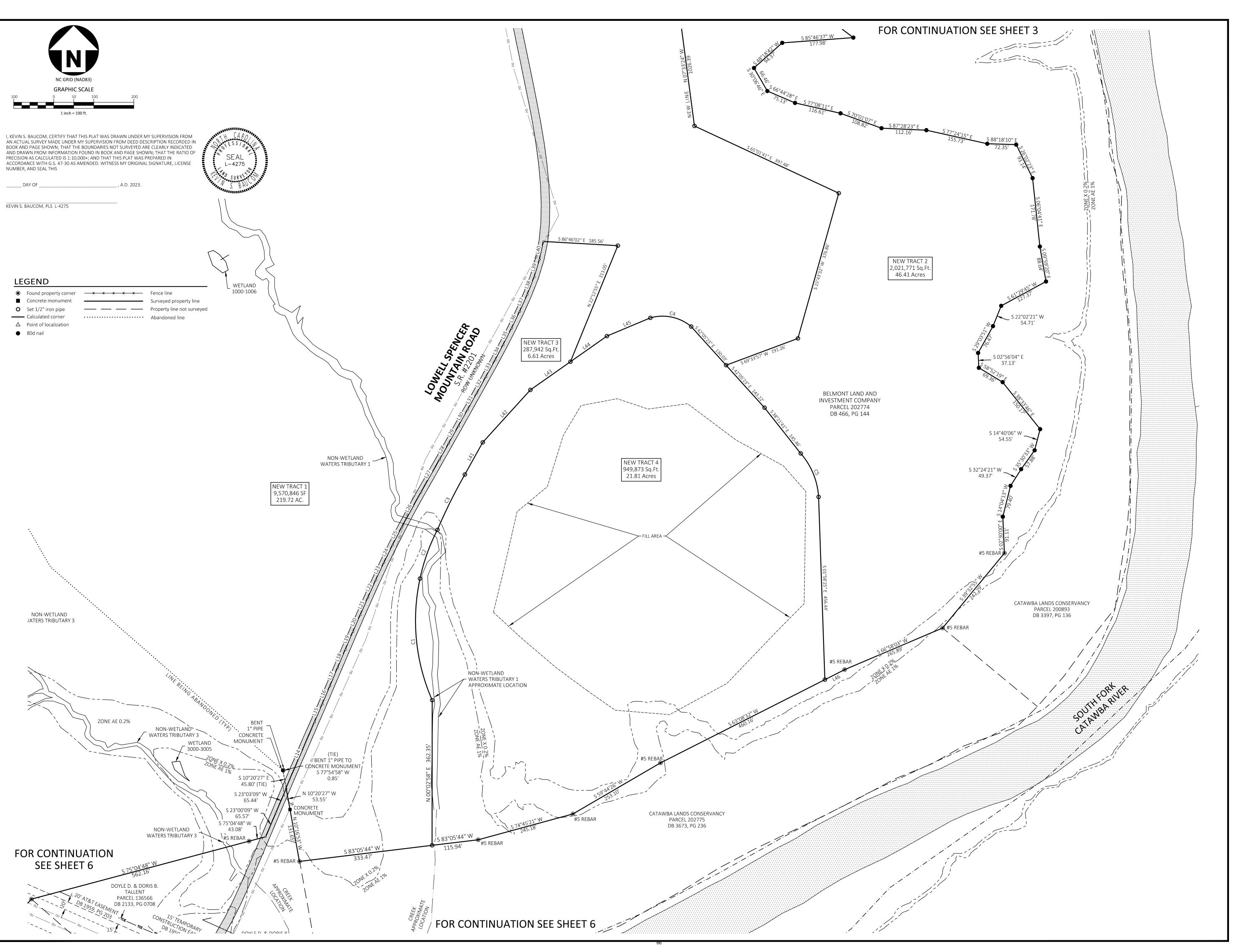
DRAWN BY BEH/JPM/PA

SCALE 1" = 100'

DATE 11.13.2023

SHEET

# RECOMBINATION





# McAdams

The John R. McAdams Company, Inc. 2100 South Tryon Street Suite 400 Charlotte, NC 28203 phone 704. 527. 0800

> fax 919. 361. 2269 license number: C-0293

> www.mcadamsco.com

**OWNER** 

BELMONT LAND AND INVESTMENT COMPANY PO BOX 1939 McADENVILLE, NC 28101-1939

RECOMBINATION PLAT
OWELL SPENCER MOUNTAIN ROAL
OWELL, COUNTY OF GASTON, NORTH CAROLINA 2805

PRELIMINARY

NOT FOR RECORDATION, CONVEYANCES OR SALES

**REVISIONS** 

NO. DATE

PLAN INFORMATION

PROJECT NO. PLT21001

FILENAME PLT21001-F1

CHECKED BY BEH

DRAWN BY BEH/IPM/PAS/

 DRAWN BY
 BEH/JPM/PAS/jc

 SCALE
 1" = 100'

 DATE
 11.13.2023

SHEET

RECOMBINATION PLAT



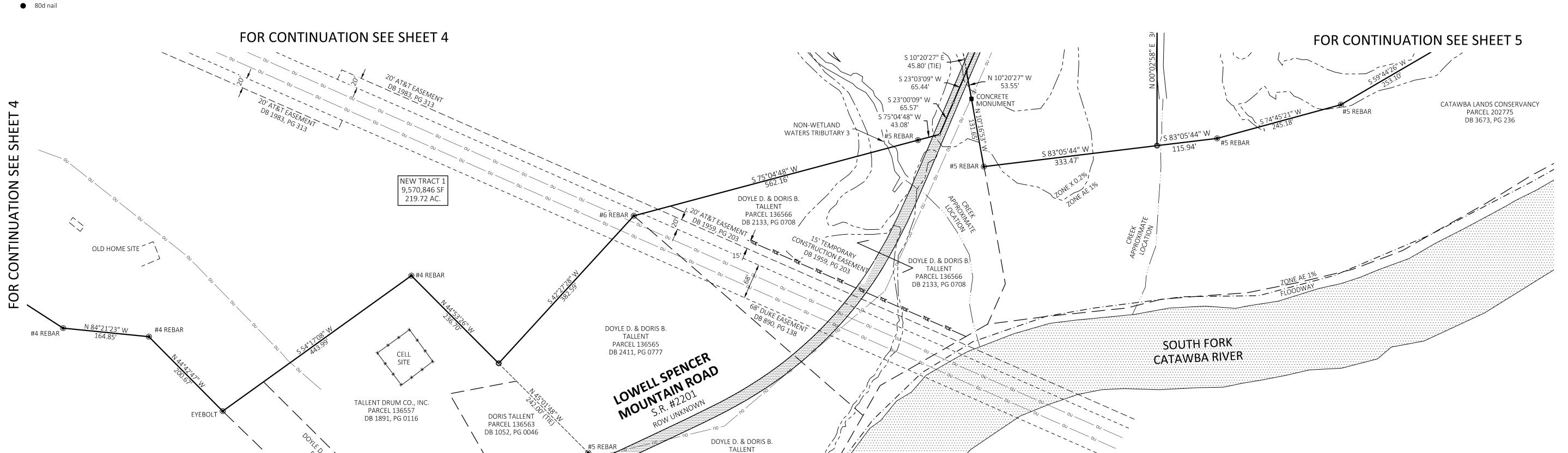
# LEGEND

● Found property corner
 ■ Concrete monument
 ■ Surveyed property l

O Set 1/2" iron pipe — — — Property lin

Calculated corner — Abandoned

△ Point of localization



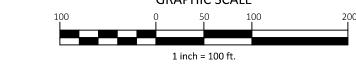
PARCEL 136565 DB 2411, PG 0777

I, KEVIN S. BAUCOM, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION FROM DEED DESCRIPTION RECORDED IN BOOK AND PAGE SHOWN; THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AND DRAWN FROM INFORMATION FOUND IN BOOK AND PAGE SHOWN; THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000+; AND THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, LICENSE NUMBER, AND SEAL THIS

KEVIN S. BAUCOM, PLS L-4275



GASTON COUNTY PARCEL 148012 DB 2030, PG 246 NOW OR FORMERLY
PLATO EDWARDS &
WIFE, LILLIE MAY EDWARDS
DB 454, PG 459





The John R. McAdams Company, Inc. 2100 South Tryon Street Suite 400 Charlotte, NC 28203 phone 704. 527. 0800

> fax 919. 361. 2269 license number: C-0293

> www.mcadamsco.com

# **OWNER**

BELMONT LAND AND INVESTMENT COMPANY PO BOX 1939 McADENVILLE, NC 28101-1939

# RECOMBINATION PLAT WELL SPENCER MOUNTAIN ROA WELL, COUNTY OF GASTON, NORTH CAROLINA 2805

PRELIMINARY

NOT FOR RECORDATION,

CONVEYANCES OR SALES

# **REVISIONS**

NO. DATE

# **PLAN INFORMATION**

PROJECT NO. PLT21001

FILENAME PLT21001-F1

CHECKED BY BEH

DRAWN BY BEH/JPM/PAS/

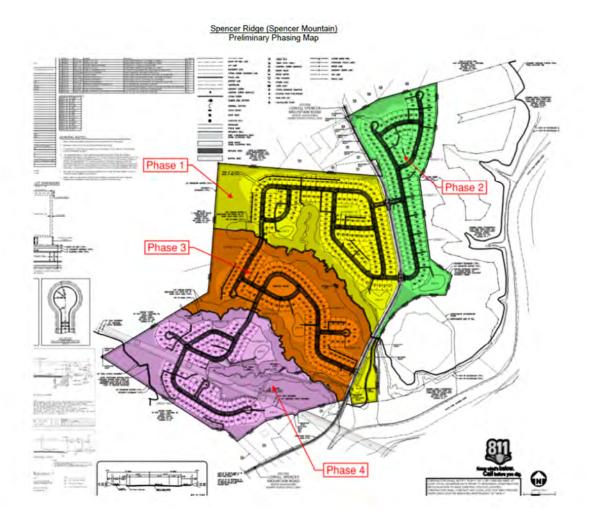
DRAWN BY BEH/JPM/PAS/jc SCALE 1" = 100' DATE 11.13.2023

SHEET

# RECOMBINATION

# **EXHIBIT B**

# PHASE SCHEDULE



# EXHIBIT C UTILITY ALLOCATION PROCESS

# City of Lowell Policy for Managing Utility Allocations & Extensions

<u>PURPOSE</u>: A Policy to Establish the Provision of Water Distribution and Sewer Collection Services to Serve the Corporate Limits of the City of Lowell and Incorporate by Extension Additional Areas Outside the Corporate Limits Which May be Advantageous for Annexation into the City of Lowell, North Carolina.

**WHEREAS**, the City of Lowell, incorporated 1879, for the purpose of establishing essential municipal services for both current and future citizens;

**WHEREAS**, the City of Lowell City Council declares the extension of potable water and sewer collection services into areas of need and areas of future growth to be a major priority; and

**WHEREAS**, the City of Lowell City Council desires to establish a sound policy for the management of both water and sewer capacity to promote orderly growth in accordance with the <u>City of Lowell Comprehensive Land Use Plan</u>.

# **SCOPE/COVERAGE:**

# Section 1 - Policy for Evaluating and Reserving Utility Allocations

# I. General Principles

- A. The City of Lowell has allocated substantial capital for investment in the infrastructure necessary to support a growing, prosperous, and healthy community. Water supply and wastewater treatment capacity are among the most important elements of this infrastructure.
- B. Increasing the City's property tax base and/or revenue sources by the expansion and improvement of residential, commercial, industrial, and/or civic land uses and fostering a higher quality of life for its residents are the paramount factors by which utility allocation decisions are based.
- C. Consistent with the intent of this policy and other public statements and policies made by the City Council, the following hierarchy shall apply to the evaluation of utility allocation requests:
  - 1. Location: Priority for utility extension will be given to applicants whose subject extension is to service an area that is within the corporate limits or otherwise incorporated into the City of Lowell.
  - 2. Industrial projects and other major employers.

# City of Lowell Policy for Managing Utility Allocations & Extensions

- 3. Commercial development projects with a mixed-use element.
- 4. Non-profit or civic uses which contribute to or attract significant economic development to the City.
- 5. Additional phases attached to residential projects with a proven record of quality product and economic success.
- 6. Residential projects that include tangible, high quality community amenities.
- 7. Residential projects that include diverse products and opportunities.
- 8. Residential projects, not otherwise described above.

# II. Reservation Process

- A. Preliminary Capacity Assurance Review (PCAR): The owner of any project requiring utility service within the City of Lowell shall submit a written application for an allocation. The application shall be in letter form, addressed to the City, and shall include detailed information on the amount of capacity necessary to serve the project, the nature of the project, project schedule in relation to consumption of utility capacity, and other supporting information demonstrating how the project serves the needs and interest of the City of Lowell. A Preliminary Capacity Assurance Review (PCAR), application shall be submitted prior to, or concurrently, with the preliminary plat submittal for subdivisions; or concurrently with, or prior to, submittal of construction drawings for all other developments. This preliminary application submittal does not require a fully engineered site plan and can be submitted with a conceptual plan of the development site that includes a preliminary estimate of flows. The PCAR (also known as a Willingness to Serve) is intended to identify and address any potential capacity issues early in the development process. Existing Water and Sewer maps from the Public Works department may be made available to the applicant for the creation of a concept plan attachment to the application. Approval of the PCAR does NOT reserve capacity within the wastewater system.
- B. Full Capacity Assurance Review (FCAR): After approval of the PCAR, the owner of the project shall submit a completed FCAR application with fully engineered site utility plans for review. After a complete submittal is received, the City shall perform an engineering analysis of the existing public wastewater system and water system to verify sufficient capacity in the system to accommodate the proposed development. The existing system shall be evaluated from the new customer's proposed point of connection through the existing local gravity sewer, the trunk sewer, any pump stations, and to the wastewater treatment facilities. All costs associated with this engineering, evaluation and analysis shall be the

# City of Lowell Policy for Managing Utility Allocations & Extensions

responsibility of the developer. After sufficient capacity is confirmed by the City, the FCAR application may be approved.

Approval of the FCAR application and utility allocation reserves capacity for the development in the public wastewater system for twenty-four (24) months from the date of approval.

- C. The Planning Board shall review and make recommendation to the City Council for consideration and approval of all Willingness to Serve notifications (PCAR) and allocations (FCAR), which require or may require a daily flow allocation of five thousand gallons (5,000 gpd) or more; any application that requests allocation for any project outside the incorporated jurisdiction of the City; and, any allocation made for a land use category from capacity otherwise set aside for a different land use type.
  - 1. Residential Subdivision Development, Mixed-use Planned
    Developments, Commercial and/or Industrial Developments, and
    Special Use Permits. The City Council shall with deliberation
    incorporate the evaluation of utility allocation requests into the
    decision-making process associated with each of the aforementioned
    review processes established within the City's development standards
    and specifications. The criteria contained herein for evaluation of
    utility allocation requests shall be included as elements within the
    review process for the accompanying land use application with regard
    to conformity with City of Lowell' policies and ordinances, planning
    practices, and consistency with the adopted City of Lowell
    Comprehensive Land Use Plan or later version.
- D. The City Public Works Engineer shall review for approval all incorporated area applications for utility Willingness to Serve notifications (PCAR) and capacity (FCAR), which require a daily flow allocation of less than five thousand gallons (5,000 gpd) for allocations.
  - 1. The City Public Works Engineer shall consider the goals articulated by this and related City policies when reviewing applications for utility allocations. If an application is denied, the City Public Works Engineer shall state in writing the reasons for denial of the request.
  - 2. <u>Appeals process.</u> Any applicant whose application for utility service is denied by the City Public Works Engineer and who believes that such denial is inconsistent with the goals and priorities stated by this and related City policies may appeal the denial for review by the City

# City of Lowell Policy for Managing Utility Allocations & Extensions

Council for final decision at the next regularly scheduled City Council meeting.

- E. Utility allocations granted under this policy shall require the requestor to post the tap fees, system development fees, meter set fees, and any other fees deemed applicable by the Public Works Director within forty-five (45) days of the date the allocation/Full Capacity Assurance Review (FCAR) is granted. Failure to pay the applicable fees within this period may result in revocation of the allocation.
  - 1. All utility allocations approved by the City shall be effective for a period of twenty-four (24) months. Projects possessing an allocation must start construction within the time shown on the project schedule prepared and submitted by the developer or customer.
  - 2. Upon request by the applicant and at the discretion of the City Manager, an allocation may be extended for a twelve (12) month period.
  - 4. At the final expiration date for an unused allocation the City shall rescind the allocation and retain sixty percent (60%) of the applicable fees paid to the City.
  - 5. Authority of the distribution of utility allocations in association with the City's utility services is held exclusively by the City of Lowell. Utility allocations shall not be redistributed to a third party.
  - 6. Relinquishment of allocated utilities shall be in accordance with Subsection II.E of this policy.
- F. An allocation holder may relinquish capacity back to the City subject to the following policies for reimbursement of fees paid:
  - 1. If a project is unsuccessful in obtaining any required City or County permit or approval or any State permit or approval, and the allocation holder relinquishes capacity back to the City within ninety (90) days of the date the allocation is granted, the full amount paid on applicable fees shall be reimbursed without penalty or other withholding by the City.
  - 2. If a project is successful in obtaining all required City, County and State approvals and agrees to relinquish the total capacity allocation

# City of Lowell Policy for Managing Utility Allocations & Extensions

granted back to the City within ninety (90) days following receipt of final permit approval from the City, then the total amount of the applicable fees paid to the City shall be returned without penalty or other withholding by the City.

- 3. If a project is unsuccessful in obtaining any required City or County permit or approval or any State permit or approval and holds an allocation for ninety (90) or more days, but relinquishes back to the City the full amount of allocation within fewer than six (6) months beyond the scheduled date for start of construction, then twenty percent (20%) of the total applicable fees shall be retained by the City and the remaining amount shall be returned to the applicant.
- 4. If a project is successful in obtaining all required City, County and State approvals and holds an allocation for ninety (90) or more days following receipt of final permit approval from the City, but relinquishes back to the City the full amount of allocation within fewer than six (6) months beyond the scheduled date for start of construction, then twenty percent (20%) of the total applicable fees shall be retained by the City and the remaining amount shall be returned to the applicant.
- 5. If a project is or is not successful in obtaining all required City, County and State approvals and the allocation holder agrees to relinquish the total capacity allocation granted back to the City after six (6) months beyond the scheduled date for start of construction, but within twelve (12) months beyond the scheduled date for start of construction, then thirty percent (30%) of the total applicable fees shall be retained by the City and the remaining amount shall be returned to the applicant.
- 6. If a project is or is not successful in obtaining all required City, County and State approvals and the allocation holder agrees to relinquish the total capacity allocation granted back to the City after twelve (12) months beyond the scheduled date for start of construction, but within eighteen (18) months beyond the scheduled date for start of construction, then forty percent (40%) of the total applicable fees shall be retained by the City and the remaining amount shall be returned to the applicant.
- 7. If a project is or is not successful in obtaining all required City, County and State approvals and the allocation holder agrees to relinquish the total capacity allocation granted back to the City after eighteen (18) months beyond the scheduled date for start of construction, but within

# City of Lowell Policy for Managing Utility Allocations & Extensions

twenty-four (24) months beyond the scheduled date for start of construction, then fifty percent (50%) of the total applicable fees shall be retained by the City and the remaining amount shall be returned to the applicant.

- 8. If a project is or is not successful in obtaining all required City, County and State approvals and has not demonstrated significant construction advancement in the proposed project within twenty-four (24) months beyond the scheduled date for start of construction, then the City shall rescind the allocation and retain sixty percent (60%) of the applicable fees paid to the City and the remaining amount shall be returned to the applicant.
- F. Granting of a utility allocation does not imply or confer approval of any other applications or reviews as may be required by City Ordinance or policy and does not imply or create any vested right per G.S 160D-108.
- G. If the City of Lowell approves an allocation for utility capacity for a project and a permit for such project is ultimately denied by the North Carolina Department of Environmental Quality, its successors or other responsible regulatory agency, then the City of Lowell shall bear no liability for any costs incurred by the applicant, nor bear further responsibility in the matter. In such cases, applicable utility access fees, if previously collected, shall be returned as provided in Section 1 Subsection II.E.

# City of Lowell Policy for Managing Utility Allocations & Extensions

#### III. Capacity Accounting

- A. Due to weather related factors, the regulatory environment, and the dynamic nature of both water resources and wastewater flow and treatment, accounting of available utility capacity is, by its very nature, inexact. The City of Lowell shall seek to track the amount of capacity that may be available for allocation; however, such reports do not constitute a policy statement, commitment or guarantee on the amount of capacity available for allocation.
  - 1. The City Public Works Engineer shall prepare and incorporate as part of the program established hereunder a schedule of utility capacity available and a list of allocations granted.
  - 2. The City Public Works Engineer shall make at least annual reports to the City Council regarding the status of utility capacities available and allocations granted.

#### Section 2 - Utility Extension Policy

#### I. General Principles

- A. The City of Lowell has allocated substantial capital for investment in the infrastructure necessary to support a growing, prosperous, and healthy community. Water supply and wastewater treatment capacity are among the most important elements of this infrastructure.
- B. Increasing the City's property tax base and/or revenue by the expansion and improvement of residential, commercial and industrial, and/or civic land uses and fostering a higher quality of life for its residents are the paramount factors by which utility allocation decisions are based.
- C. Consistent with the intent of this policy and other public statements and policies made by the City Council, the following hierarchy shall apply to the evaluation of utility extension requests:
  - 1. Location: The priority for utility extension will be given to applicants whose subject extension is to service an area that is within the corporate limits or otherwise incorporated into the City of Lowell.
  - 2. Industrial projects and other major employers.
  - 3. Commercial development projects with a mixed-use element.
  - 4. Non-profit or civic uses which contribute to or attract significant economic development to the City.

# City of Lowell Policy for Managing Utility Allocations & Extensions

- 5. Additional phases attached to residential projects with a proven record of quality product and economic success.
- 6. Residential projects that include tangible, high quality community amenities.
- 7. Residential projects that include diverse products and opportunities.
- 8. Residential projects, not otherwise described above.
- D. The planning and extension of water and sewer systems of the City of Lowell shall be accomplished in accordance with the following general principles:
  - 1. Extensions shall be made to promote the orderly growth of the community. The minimum distance for any extension of a water main or sanitary sewer main shall be determined by City Council. In general, the minimum distance for extensions shall be one platted block or, in the case of water mains, from main line valve to main line valve; and in the case of sanitary sewer extensions, from manhole to manhole.
  - 2. The size of water mains and sanitary sewer mains to be installed, and the other required system facilities shall be determined by the City Council in accordance with the recognized standards and accepted engineering practices and design, and in accordance with applicable system plans adopted by the City Council.
  - 3. The City shall be responsible for the maintenance, operation, control and ownership of all water and sewer facilities.
  - 4. Developers of subdivisions shall be responsible for the full cost of installing utilities within their own subdivisions, and for the full cost of any mains or outfalls required to connect said subdivisions to the water or sewer systems of the City existing at the time. This provision shall apply to all subdivisions whether within or outside of the corporate limits.

#### II. Application for Extension and Approval of Extension Application

A. Any property owner or owners desiring water or sanitary sewer service shall apply in writing to the City Council requesting the extension of water or sanitary sewer service or both. No request for the extension of services shall be considered unless submitted in writing in accordance with this Chapter and applicable provisions of the City of Lowell Development Ordinance.

# City of Lowell Policy for Managing Utility Allocations & Extensions

- B. The applicant shall be required to submit as part of the application, and prior to approval, such information, plans, specifications, or other data as may be required to adequately determine if the requirements of this Chapter and applicable provisions of the City of Lowell Development Ordinance are to be met.
- C. Prior to final approval by the City, the applicant shall furnish to the City all necessary information, reports, plans and specifications as well as appropriate fees payable to the City and documentation of all required permits from other units of government and their agencies.
- D. When application is made for a water or sewer extension or both to serve an area or development that is planned as part of a larger development project or subdivision, all of which is not to be developed at the time application is made, the owner or owners shall submit plans in sufficient detail in order to determine the size and type facilities which will be necessary to serve the entire development or subdivision when completed.
- E. No extension to the water or sanitary sewer system of the City shall be made, and no application approved, except in accordance with the requirements of this Section and the consistent with the adopted *City of Lowell Comprehensive Land Use Plan* or later version.

#### III. Financing Extensions within the Corporate Limits

#### A. Extensions to Existing Lots, Parcels or Developed Property.

1. When application is received requesting the extension of water or sanitary sewer service or both to serve property, within the corporate limits, which is developed or where streets have been previously dedicated and accepted by the City, and where the area is not part of a new subdivision, the City Public Works Engineer or other person designated by the City Council shall estimate the cost of the project and present the application for the extension, the estimated cost and other required information to the City Council for consideration. If the application is approved by the City Council, and subject to the availability of funds, the City will install or have installed by contract under its supervision, the extensions which have been approved, and the extensions shall be financed in accordance with this Section.

# City of Lowell Policy for Managing Utility Allocations & Extensions

- 2. Upon receipt of a petition to extend a water and/or sewer main, the City Council has the following five options for response:
  - a. Install the extension at the City's expense.
  - b. Approve and allow the petitioner to install the extension at petitioner's expense.
  - c. Install the extension at the petitioner's expense.
  - d. Install and jointly finance the extension in cooperation with the petitioner.
  - e. Deny the request.
- 3. The criteria under which an option will be chosen are generally defined herein; however, the City Council may act according to any aforementioned option, which it feels is in the best interest of the City.
- 4. When the City determines that it is advisable to install larger size lines or facilities than are necessary to serve the benefited property, the difference in the cost of the larger size facilities over the cost of the facilities required to serve the benefited property the extensions shall be paid by the City and excluded from the total cost to be shared by the property owner(s) and the City as provided herein.
- B. Extension by the City Council's Initiative. Nothing in this Chapter shall prevent the City Council from extending water or sanitary sewer mains or both within the corporate limits on their own initiative without receipt of an application from property owners and to assess the cost of such extensions in accordance with Subsection III.A above, when, in the opinion of the City Council, the general public interest requires such extensions of service.

#### IV. Financing Extensions to Subdivisions and Properties Outside of the Corporate Limits

The financing of extensions of water or sanitary sewer service or both to properties located outside of the corporate limits or to subdivisions for which the extension of service has not been approved as of the date of adoption of this Ordinance shall be performed in accordance with the provisions of this Article and other applicable City Ordinances including but not limited to the City of Lowell Development Ordinance.

A. All applications for water and sewer extensions to serve properties located outside of the corporate limits or to serve subdivisions, for which an application for extension has not been approved as of the date of this Ordinance, shall be made in the same manner and under the same requirements as provided for in Subsection III.A and Subsection III.B.

# City of Lowell Policy for Managing Utility Allocations & Extensions

- B. If an application is approved by the City Council, the owner or owners shall be required to pay 100% of the total cost of all extensions. However, the City may participate to the extent agreed upon by the City Council in the cost of larger size mains that are in excess of the size mains required to serve the project. No reimbursement by the City shall be made upon annexation and all water and sewer lines connected to the City system and located outside of the corporate limits shall become the property of the City at the time those facilities are connected.
- C. All applicants requesting utility services shall, at the request of the City, file a petition for annexation to the City. Failure to file a petition for voluntary annexation or satellite annexation on notice from the City may result in immediate termination of water service upon finding by the City Council of a breach of the agreement for the provision of water service.

#### V. Specifications; Ownership

Any water mains or sanitary sewer mains, lift stations, pumping stations, tanks, controls, telemetry, easements and/or other appurtenances extended under the provisions of this Chapter shall be installed and constructed in accordance with the approved plans, specifications and other requirements of the City. All facilities installed under the provisions of this Chapter, whether within or outside the corporate limits, shall become the sole property of the City and under its jurisdiction and control for any and all purposes whatsoever at the time those facilities are connected to the City system. The property owner or owners shall grant to the City such utility easement as the City may require. In addition, a deed to the City for water or sewer facilities installed which are located outside the corporate limits, the cost of which is borne by the applicant or property owners, shall be executed prior to the time any extensions provided for in this Chapter are connected to the City system.

ADOPTED on this the 15 th day of August 2023

Sandy Railey, Mayor

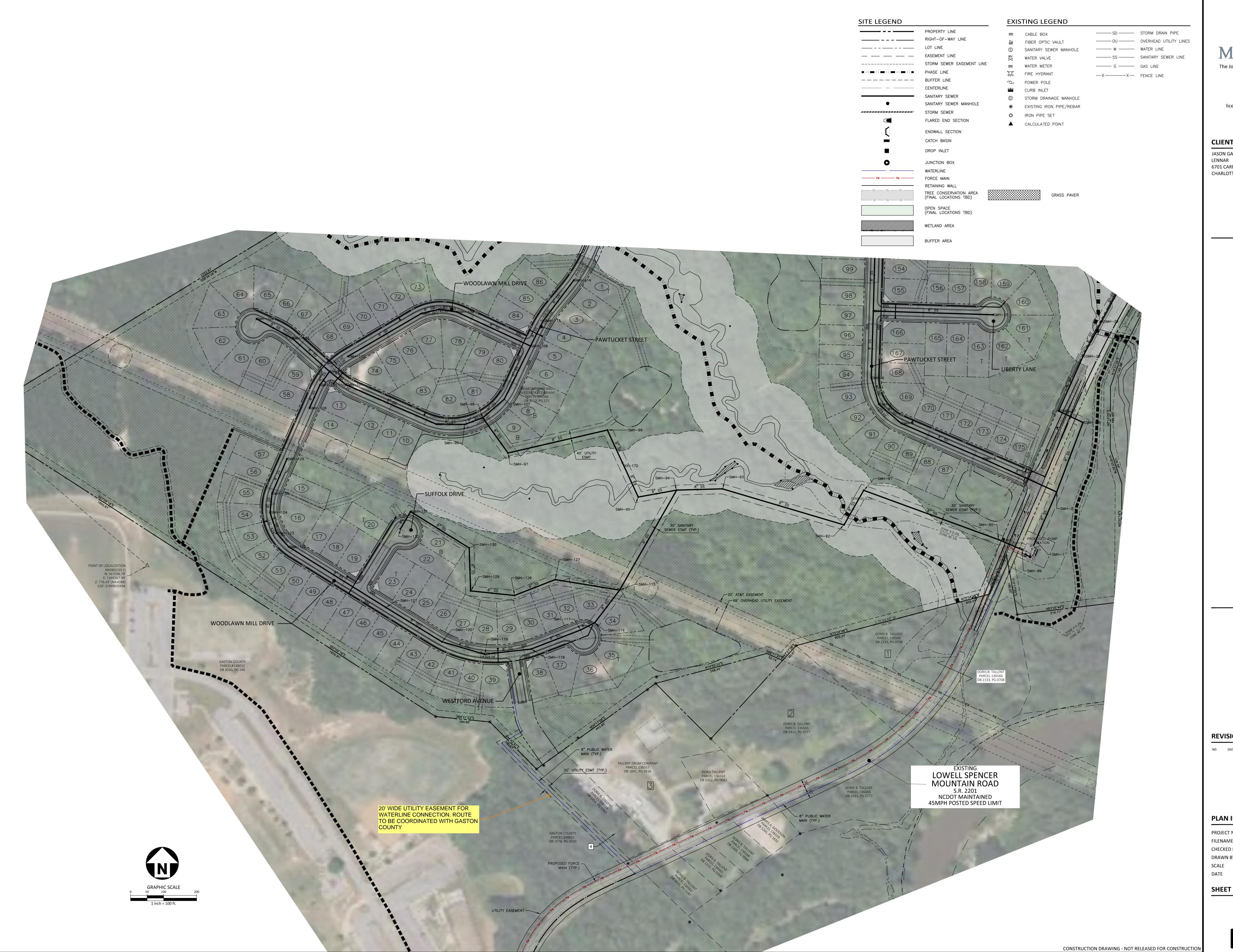
Cheryl Ramsey, City Clerk

\*Original version adopted on August 10, 2021\*

\*Revision\* Adopted March 14, 2023

\*Revision\* Adopted August 15, 2023

# EXHIBIT D COUNTY EASEMENT OPTION A





The John R. McAdams Company, Inc. 2100 South Tryon Street Suite 400 Charlotte, NC 28203

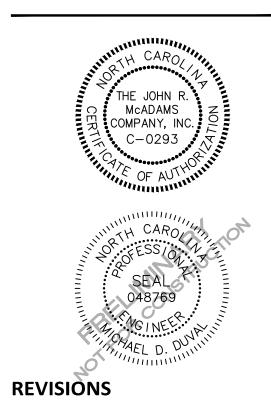
> phone 704. 527. 0800 fax 919. 361. 2269 license number: C-0293, C-187

www.mcadamsco.com

**CLIENT** 

JASON GALLOWAY

LENNAR 6701 CARMEL ROAD SUITE 245 CHARLOTTE, NC 28226



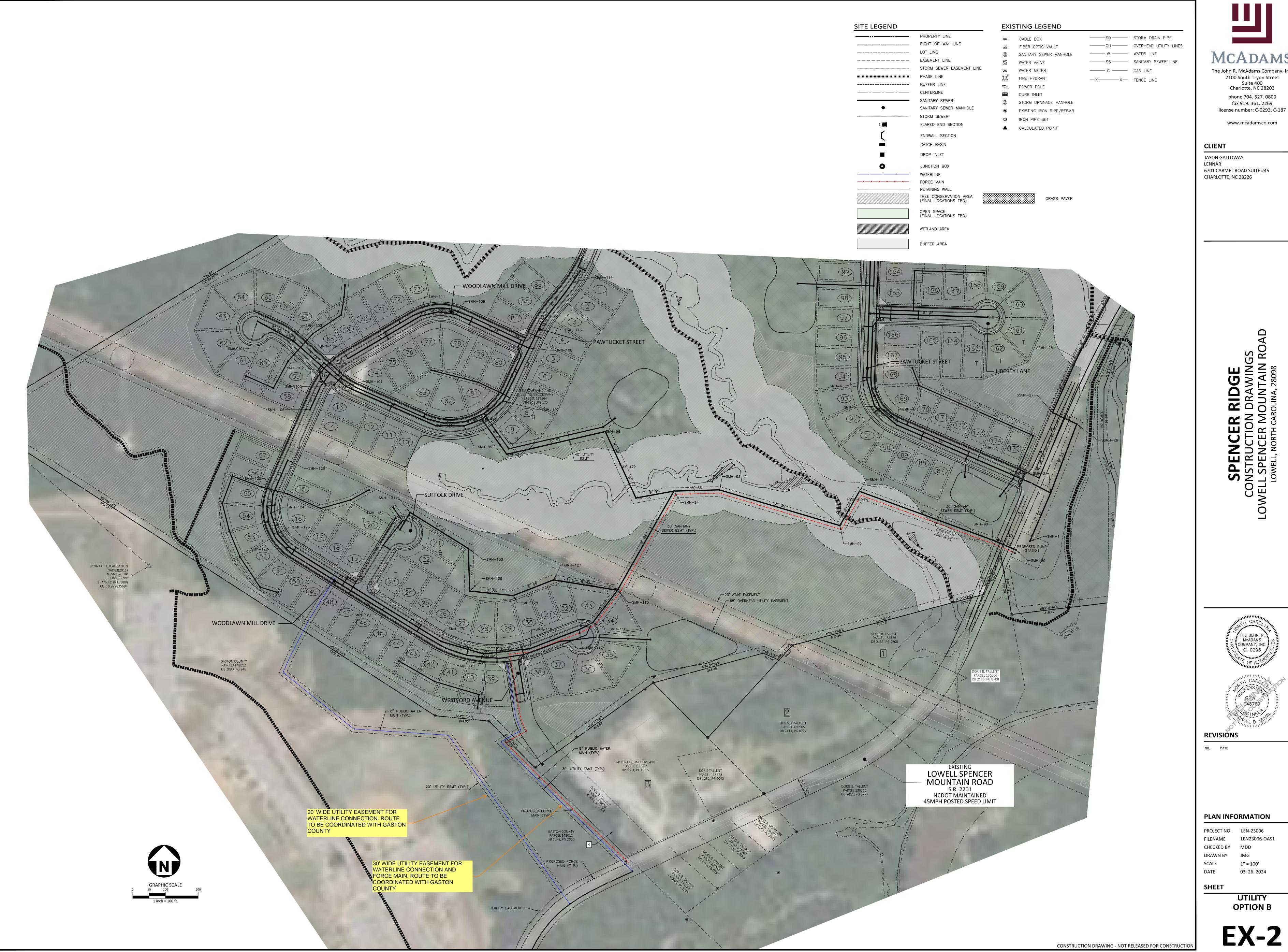
**PLAN INFORMATION** 

PROJECT NO. LEN-23006 FILENAME LEN23006-OAS2

CHECKED BY MDD DRAWN BY JMG

UTILITY **OPTION A** 

# EXHIBIT E COUNTY EASEMENT OPTION B





The John R. McAdams Company, Inc. 2100 South Tryon Street Suite 400 Charlotte, NC 28203

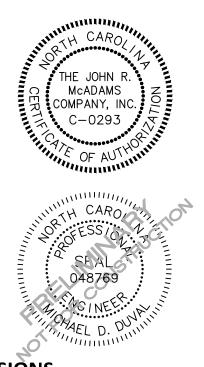
www.mcadamsco.com

phone 704. 527. 0800

fax 919. 361. 2269

JASON GALLOWAY 6701 CARMEL ROAD SUITE 245

CHARLOTTE, NC 28226

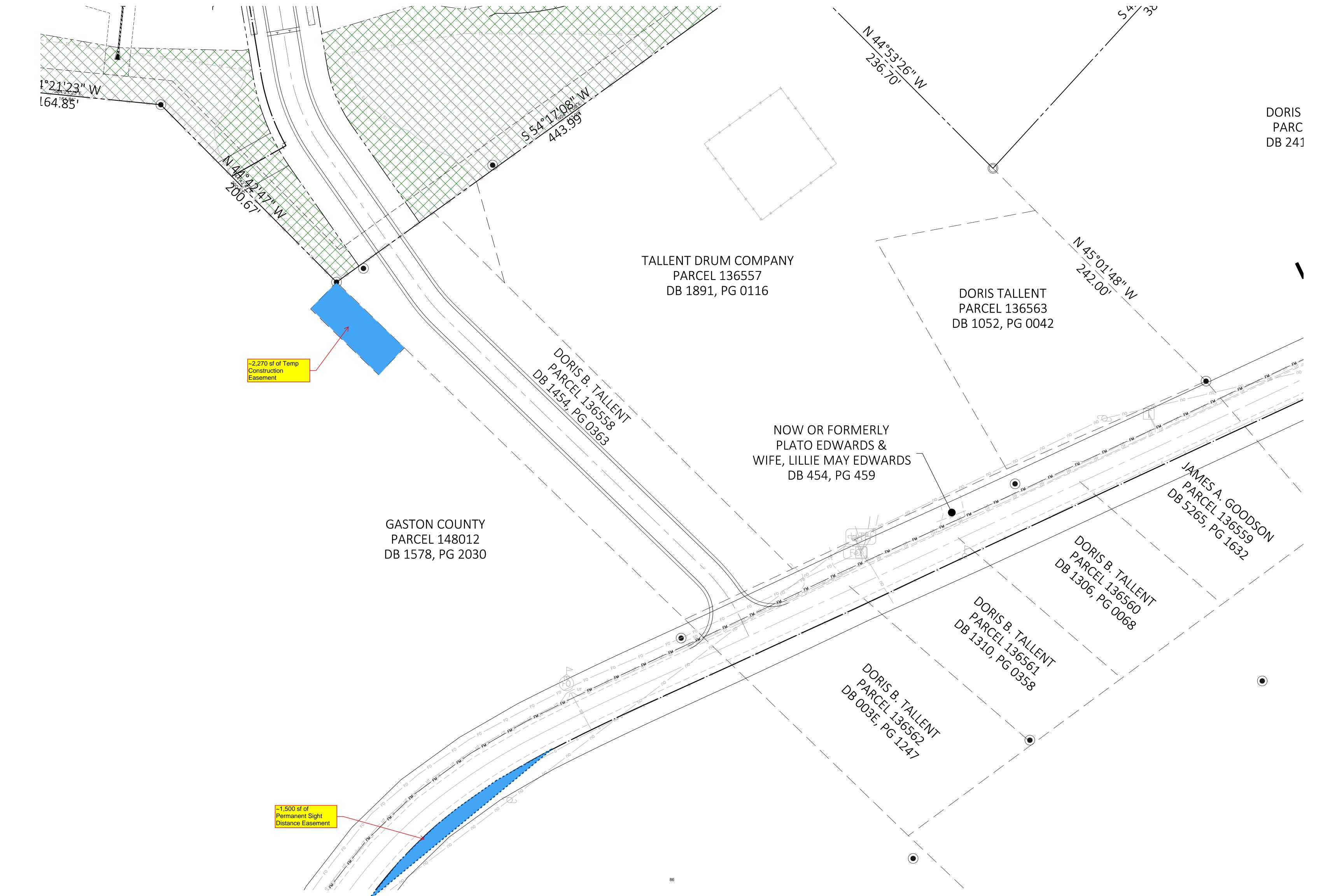


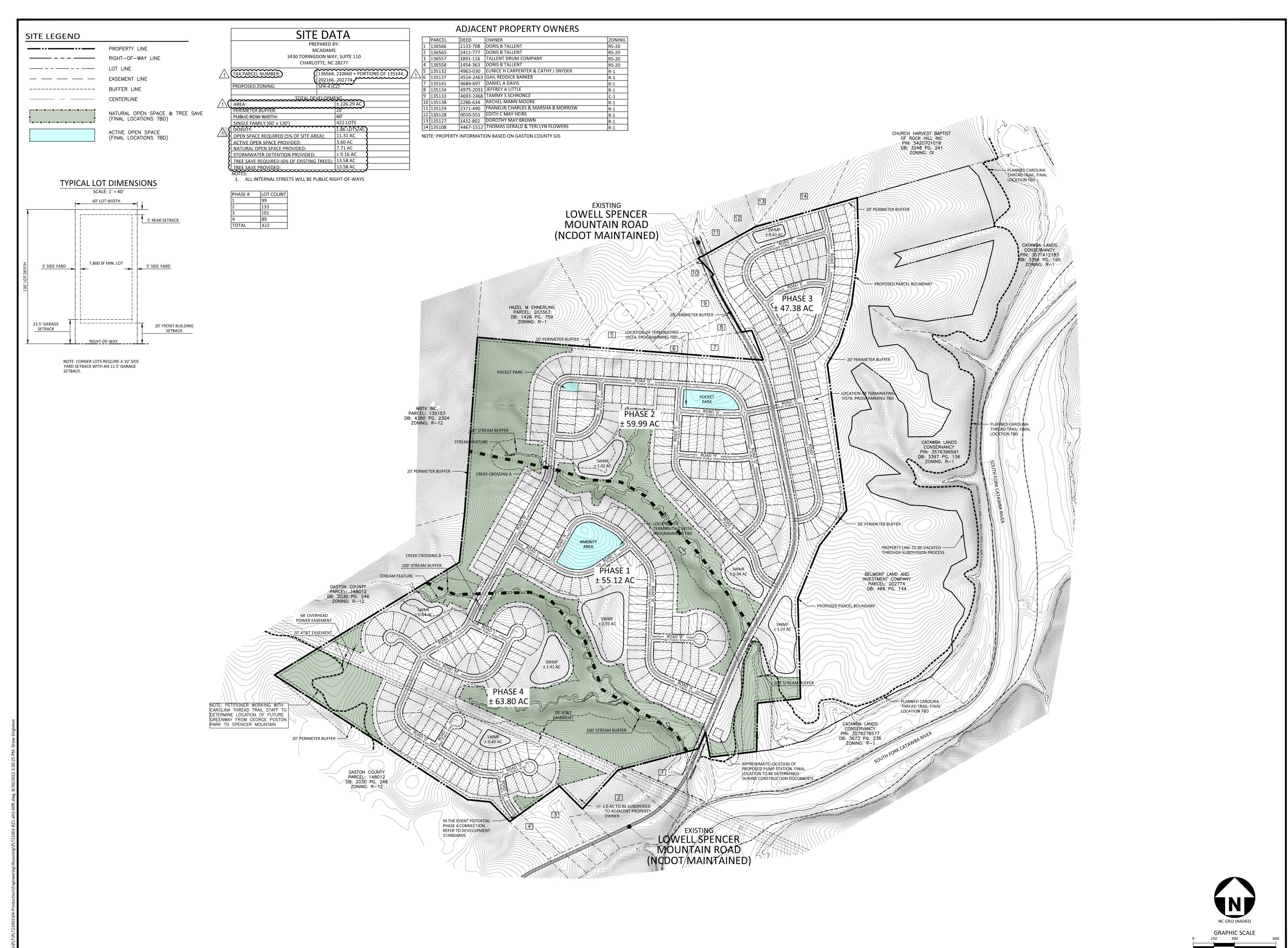
PLAN INFORMATION PROJECT NO. LEN-23006 FILENAME LEN23006-OAS1 CHECKED BY MDD DRAWN BY JMG 1" = 100'

UTILITY **OPTION B** 

03. 26. 2024

# EXHIBIT F COUNTY EASEMENT OPTION C







# McAdams

The John R. McAdams Company, Inc. 3430 Toringdon Way Suite 110 Charlotte, NC 28277

> phone 704. 527. 0800 fax 919. 361. 2269

www.mcadamsco.com

license number: C-0293, C-187

#### CLIENT

PULTE HOMES 11121 CARMEL COMMONS BLVD. SUITE 450 CHARLOTTE, NC 28226



ICER MOUNTAIN
NGLE FAMILY

SP

# **REVISIONS**

NO. DATE

1 07. 12. 2022 REVS PER SELLER COORDINATION 2 08. 30. 2022 PER CITY COMMENTS

# PLAN INFORMATION

PROJECT NO. PLT21001

FILENAME PLT21001-RZ1

CHECKED BY EM

DRAWN BY JDS

SCALE 1" = 300'

SHEET

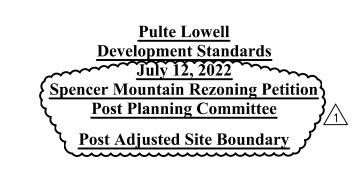
DATE

PRELIMINARY DRAWING - NOT RELEASED FOR CONSTRUCTION

**REZONING PLAN** 

12.10.2021

**RZ.01** 



#### **Site Development Data:**

**—Acreage**: ± 226.29 acres

**\-Tax Parcel** #: 136564 and 210660 \

{--Tax Parcel #: 135144, 202166, and 202774 NOTE WHICH ARE "A PORTION OF"

- -Existing Zoning: SFR-3 and SFR-2
- -- Proposed Zoning: SFR-4(CZ)
- -- Existing Uses: Vacant

**--Proposed Uses:** Up to 422 single-family detached dwelling units as allowed by right and under prescribed conditions in the SFR-4 zoning district as further described in Section 2 below.

#### **General Provisions:**

- a. Site Location. These Development Standards form a part of the Rezoning Plan associated with the Rezoning Petition filed by Pulte ("Petitioner") to accommodate the development of up to four hundred and twenty-two (422) single-family detached dwelling units as generally depicted on the Rezoning Plan. The proposed development will be on an approximately 226.29 acre site located on Spencer Mountain Road (the "Site").
- **b. Zoning Districts/Ordinance**. Development of the Site will be governed by the Rezoning Plan as well as the applicable provisions of the Lowell Land Development Code (the "Ordinance"). Unless the Rezoning Plan establishes more stringent standards, the regulations established under the Ordinance for the SFR-4 zoning classification shall govern.
- c. Graphics and Alterations. The schematic depictions lots, sidewalks, structures and buildings, building elevations, driveways, streets and other development matters and site elements (collectively the "Development/Site Elements") set forth on the Rezoning Plan should be reviewed in conjunction with the provisions of these Development Standards. The layout, locations, sizes and formulations of the A viii. Additional measures such as polyacrylamides, proposed by the designers and owners. Development/Site Elements depicted on the Rezoning Plan are graphic representations of the \(\frac{1}{2}\right\) Development/Site elements proposed. Changes to the Rezoning Plan not anticipated by the Rezoning Plan will be reviewed and approved as allowed by Section 5.4-3(F) of the Ordinance.

Since the project has not undergone the design development and construction phases, it is intended that this Rezoning Plan provide for flexibility in allowing some alterations or modifications from the graphic representations of the Development/Site Elements. Therefore, there may be instances where minor modifications will be allowed per the Ordinance. These instances would include changes to graphics if they are minor and don't materially change the overall design intent depicted on the Rezoning Plan.

The Planning Director will determine if such minor modifications are allowed and if it is determined that the alteration does not meet the criteria described above, the Petitioner shall then follow the Ordinance; in each instance, however, subject to the Petitioner's appeal rights set forth in the Ordinance.

#### Permitted Uses & Development Areas:

a. The Site may be developed with up to four hundred twenty-two (422) single-family detached dwelling units to the west side of the ultimate drainage line. The ultimate drainage line location will be determined as part of the overall grading plan during the land development process.

## **Transportation and Connectivity:**

- a. A Transportation Impact Analysis shall be provided if required by Ordinance. Any required improvements to Lowell Spencer Mountain Road shall be as required by NCDOT
- **b.** In the event a direct connection is provided from Phase 4 to Lowell Spencer Mountain Road, Creek Crossing B may be eliminated.
- c. The Petitioner shall improve Lowell Spencer Mountain Road to the Rural Cross Section per the most recently adopted version of the North Carolina Complete Streets Planning and Design Guidelines subject to the recommendations of the Traffic Impact Analysis and NCDOT approval.

# **Architectural Standards:**

- a. The building materials used on the principal buildings constructed on Site will be a combination of portions of the following: brick, stone, precast stone, precast concrete, synthetic stone, cementitious fiber board, cementitious fiber shake, stucco, decorative block and/or wood.
- **b.** Vinyl or Aluminum shall not be used as a primary siding material however it may be used on windows, soffits, fascia and/or similar roof overhang elements, handrails/railings, and/or other miscellaneous trim elements.
- **c.** The proposed roofing materials will be architectural shingles, slate, tile and/or metal.
- **d.** All residential units shall include the following garage door treatments:
- i. wall sconce lighting on at least one side of the garage door or one large wall sconce above the garage door,
- ii. windows and/or a vent detail above the garage door,
- iv. a minimum of two siding materials on the façade, and
- vi. windows

# **Environmental Features and Open Space:**

- a. The Site shall comply with the minimum Stormwater and Water Quality requirements as set forth in the Land Development Ordinance and municipal code.
- b. The location of the proposed stormwater areas are conceptual in nature and the exact size and location of these areas are subject to change depending upon final layout, product allocation, and/or other site plan elements. The overall layout and unit count may be altered as a result of final stormwater locations.
- c. The Petitioner shall implement the following design and post construction stormwater containment measures subject to the provisions set forth herein and subject to approval by Gaston County:
- i. 200 or 100-year floodplain (whichever is greater) buffer on surface waters.
- ii. A maximum built upon area (BUA) under 10% in the Protected Watershed.
- iii. In areas where the BUA is greater than 10%, Stormwater Control Measures (SCMs) capable of

treating the greater 1.5" or the difference in stormwater runoff from pre-development and post development conditions for the one-year, twenty-four-hour storm.

- iv. SCMs capable of limiting peak flow from the site at each point of discharge to the predevelopment conditions for the 1 and 10 years, twenty-four-hour storm events
- v. A total phosphorus (TP) removal rate of at least 70% for all SCM(s) used.
- vi. SCMs capable of conveying the 25-year design storm.
- vii. SCM Operation and Maintenance Agreements and Plans should be clearly explained to the responsible party.
- viii. To the greatest extent possible, BUA and runoff should be minimized through site design and Low Impact Development (LID) measures such as downspout disconnection, permeable pavements, green roofs, planter boxes, etc.
- **d.** The Petitioner shall implement the following active construction measures subject to the provisions set forth herein and subject to approval by Gaston County:
- The use of high hazard or double row silt fencing along surface water bodies.
- ii. Stop valves and additional filtration at the outlet discharges.
- iii. Retention basins capable of conveying the 25-year storm with an outfall sized to maximize drawdown time.
- iv. Installation of temporary seeding and slope drains within 7 days after grading.
- Installation of natural fiber matting on slopes greater than 10'.
- vi. Third party sediment and erosion control monitoring of the site.
- vii. Implementation of devices downstream to numerically monitor turbidity during construction and provide alerts to regulators and site operators when turbidity levels exceed action levels.
- Bathymetic survey and core samples of any downstream coves before and after construction to document off-site sedimentation.
- **e.** The developer shall adhere to the LDO and only plant native plant materials on the Site.
- **f.** A minimum of two (2) ten (10) foot wide access easements shall be provided as follows:
- One shall be located between lots on Road I or Road J.
- One shall be located along Spencer Lowell Mountain Road.

The exact location of the access easements shall be determined during the permitting process. It is understood the easements may be used to provide access to future amenities to be provided by others.

g. The Petitioner shall provide a minimum twenty (20) foot buffer behind the lots west of the drainage divide line. Such buffers shall be maintained by the homeowner's association. Land disturbance is permitted within the buffer during development of the site.

### Miscellaneous Provisions

a. The Petitioner shall provide a minimum of three license plate readers to be operated for a minimum of five years unless otherwise agreed to by the City Manager. The license plate readers shall be installed at the primary entrance for each phase prior to the last certificate of occupancy for the respective phase.

# 7. Amendments to the Rezoning Plan:

a. Future amendments to the Rezoning Plan (which includes these Development Standards) may be applied for by the then Owner or Owners of the applicable portion of the Site affected by such amendment in accordance with the provisions of the Ordinance.

# **Binding Effect of the Rezoning Application:**

a. If this Rezoning Petition is approved, all conditions applicable to the development of the Site imposed under the Rezoning Plan will, unless amended in the manner provided under the Ordinance, be binding upon and insure to the benefit of the Petitioner and subsequent owners of the Site and their respective heirs, devisees, personal representatives, successors in interest or assigns.



# The John R. McAdams Company, Inc.

3430 Toringdon Way Suite 110 Charlotte, NC 28277

phone 704. 527. 0800 fax 919. 361. 2269 license number: C-0293, C-187

www.mcadamsco.com

# **CLIENT**

**PULTE HOMES** 11121 CARMEL COMMONS BLVD. SUITE 450 CHARLOTTE, NC 28226



# SP

# **REVISIONS**

NO. DATE

1 07. 12. 2022 REVS PER SELLER COORDINATION 2 08. 30. 2022 PER CITY COMMENTS

# **PLAN INFORMATION**

PROJECT NO. PLT21001 FILENAME PLT21001-RZ1 CHECKED BY

DRAWN BY **SCALE** DATE 12.10.2021

PRELIMINARY DRAWING - NOT RELEASED FOR CONSTRUCTION

**SHEET** 

# **REZONING NOTES**

#### WHAT IS A DEVELOPMENT AGREEMENT?

An agreement between the City of Lowell and a developer pursuant to Article 10 of G.S. 160D for a large-scale development with a lengthy build-out period and having a public-private partnership component involving mutual financial interests.

#### 7.15-1 Development Agreements: Authorization and Applicability

- (A.) The North Carolina General Statutes authorize the use of Development Agreements for the development of land in accordance with the criteria and procedures established in sections G.S. 160D-1001 through G.S. 160D-1012.
- (B.) In addition to any Development Agreement proposed for an eligible project, a Development Agreement, established pursuant to Sub-section 7.15-3 of this Ordinance, shall be required as part of all applications for the following:
  - (1.) Traditional Neighborhood Development Overlay (TNDO) District, Main Street (MS) District, and Mixed Use (MU-1 and MU-2) District and apply to all new development projects within the TNDO, MS, MU-1, and MU-2 Districts.
  - (2.) Major Subdivisions in any district where new street infrastructure will be developed.

#### 7.15-2 Content of Development Agreement

- (A.) The development agreement shall establish the period of time for completion of the development and construction of the project subject to the agreement.
- (B.) The development agreement shall establish the property to which the agreement shall apply by metes and bounds description attached to the agreement as "Exhibit A".
- (C.) The development agreement shall cite all terms and conditions applicable to the development of the land subject to the agreement including standards and/or specifications that differ from the provisions of this Ordinance.
- (D.) The development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development.

#### 7.15-3 Procedures for Entering into Development Agreements

(A.) The development agreement shall be drafted in a format as directed by the Planning, Zoning & Subdivision Administrator. The development agreement <u>shall then be presented to the Planning Board for a formal recommendation at a regularly scheduled meeting</u>. Said meeting shall be held prior to notification for a legislative hearing by the City Council.

- (B.) The development agreement and the Planning Board recommendation shall be published for public inspection and notification shall be made in accordance with the provisions of G.S. 160D-601.
- (C.) The notice for the legislative hearing must specify the location of the property subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained.
- (D.) The development agreement <u>shall be presented</u> at a legislative hearing allowing an opportunity for the public to comment on the proposed development agreement. The information presented at the legislative hearing shall be considered by the City Council in formulating its decision on the approval of an ordinance authorizing approval of said agreement.
- (E.) Upon finding that said agreement is in the best interest of the City of Lowell, the City Council may by adoption of an ordinance adopting the development agreement and authorizing it's execution by the Mayor, approve such agreement to be administered in full force and effect by the Planning, Zoning & Subdivision Administrator.
- (F.) The development agreement shall be recorded in the office of the Register of Deeds of the county in which the subject property is located within fourteen (14) days of execution and prior to the issuance of any development permits authorizing development activities to commence.

#### 7.15-4 Administration of Development Agreements and Termination for Material Breach

- (A.) The development agreement shall run with the land obligating the parties to the agreement to any and all stipulations therein and may only be amended in accordance with the laws of North Carolina governing such agreements as stipulated in section 7.15-1 herein.
- (B.) The Planning, Zoning & Subdivision Administrator shall conduct a periodic review at least every 12 months, at which time the developer is required to demonstrate good faith compliance with the terms of the development agreement. If, as a result of a periodic review, the Planning, Zoning & Subdivision Administrator finds and determines that the developer has committed a material breach of the terms or conditions of the agreement, the Planning, Zoning & Subdivision Administrator shall serve notice in writing, within a reasonable time after the periodic review, upon the developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the developer a reasonable time in which to cure the material breach.
- (C.) If the developer fails to cure the material breach within the time given, then the City of Lowell may unilaterally terminate or modify the development agreement. In accordance with G.S. D 160 appealed to the Board of Adjustment in the manner provided by G.S. 160D-405.
- (D.) A development agreement adopted pursuant to this Section shall not exempt the property owner or developer from compliance with the State Building Code or State or local housing codes that are not part of this Ordinance.

#### Phase 1: Project Evaluation

#### **Concept Plan/Application Submitted**

#### **Facilitated City Technical Review of Proposed Development**

**Considerations:** Submitted site plans, application, comprehensive land use plan, small area plans, LDO, engineering data, public works data, fire/police/safety data, school enrollment data, any other data that staff feels is necessary to evaluate the project.

**Who Is Involved:** Staff led technical review may include city planning staff, city engineer, city manager, police chief, fire marshal office representative, public works department, legal counsel, any other person(s) staff sees as necessary for review of the project.

**Outcome:** Written comments/information provided to applicant to start discussion of development agreement.

#### Phase 2: Staff Agreement Negotiations\*

#### **Staff Level Negotiations with Applicant**

Begin negotiation of an agreement for long-term trade-offs and benefits of a development with Staff.

**Considerations:** Comments/Considerations from Phase 1, developers' comments/response to phase 1 requests, discussion of requested items/improvements

**Who Is Involved:** Planning Staff, City Engineer, City Manager, Applicant, Legal Counsel and Land Use Consultant as necessary

**Outcome:** Draft Development Agreement

\*May require multiple meetings

#### Phase 3: Planning Board Review

#### **Planning Board Level Negotiations with Applicant**

Presentation of Draft Agreement to the Planning Board

**Considerations:** Draft Development Agreement

Who Is Involved: Planning Staff, City Engineer, City Manager, Applicant, Legal Counsel and Land

Use Consultant as necessary

Outcome: Draft Development Agreement Recommendation

#### Phase 4: City Council Sets Public Hearing (First Reading)

Presentation of Draft Agreement to entire Council. The council receives draft agreement and may have comments. If the Council decides to move forward, they will set the public hearing date to hear the Develop Agreement in a legislative hearing.

**Who Is Involved:** Entire City Council, Applicant, Planning Staff, City Manager, Legal Counsel and Land Use Consultant as necessary.

**Outcome:** Set public hearing date to vote on final draft of the proposed development agreement.

#### Phase 5: Public Hearing

#### **Public Hearing/Council Decision**

Presentation of Draft Agreement to entire Council. Council receives draft agreement and may negotiate directly with the applicant. Required public hearing held and negotiated agreement adopted by City Council.

Who Is Involved: City Council, Applicant, Planning Staff, City Manager, Legal Counsel

Outcome: Council Decision/Finalized Agreement

Additional Resources:

**Article 7 Permits and Procedures** 



#### **Regular City Council Meeting Memorandum**

Prepared By: Joe Gates

#### Request to Set Public Hearing - Map Amendment (General, Rezoning) - 603 Groves Street - JPFJ LLC

Meeting	Agenda Group
Tuesday, April 9, 2024, 6:00 PM	New Business Item: 6B
Reference File	Presented By

To: Scott Attaway, City Manager

From: Tyler Cobb, Planner

Date: April 9, 2024

Re: File #ZMA24-01, General Rezoning Request, 603 Groves Street, Lowell, NC - Parcel 302742

# STAFF REPORT Rezoning File # ZMA24-01 Planning Board Meeting 4/2/2024

OWNER(S): JPFJ LLC APPLICANT: JPFJ LLC

PROPOSED ZONING ACTION: CHANGE TO INDUSTRIAL (IND) ZONING CLASSIFICATION

LOCATION: (ADDRESS AND PID) 603 Groves St. Lowell, NC, Parcel 302742

TOTAL TRACT SIZE: 18.79 AREA TO BE REZONED: 5.03

#### **EVALUATION:**

The applicant has submitted a rezoning request to have the property rezoned from (MU-2) Mixed Use to (IND) Industrial . Industrial zoning is being requested to facilitate an expansion of the existing business.

#### Site Description and Background

The subject property includes one tax parcel, currently located in Lowell's jurisdiction, zoned MU-2 (Mixed Use). A rezoning application has been filed by the applicant. The current site has two zoning districts. The front of the property is zoned IND. The back of the property is currently zone MU-2. The overall site of the property is 18.79 acres, the applicant is asking for a rezoning of 5.03 acres.

#### Proposed Zoning Conditions (if applicable)

N/A.

#### Adjoining Properties and Land Use Trends

Adjoining properties are a combination SFR-3 (Single Family Residential), MU-2 (Mixed Use) and VSR (Vehicle Service and Repair).

#### Available Public Facilities

Public utilities (water & sewer) are existing on the site.

#### Consistency with Adopted Plans

The Future Land Use Map in the 2040 Land Use Plan indicates Employment/Manufacturing uses for the subject property

#### **Conclusion**

The request includes an rezoning and assignment of zoning from MU-2 to IND to facilitate an expansion of the existing business. . Based on the 2040 Land Use Plan, the submitted site plan, and proposed conditions, staff recommend approval of the request as presented.

<u>Statement of consistency and reasonableness (motion to approve)</u>: The proposed zoning is consistent with the City of Lowell 2040 Comprehensive Land Use Plan and will result in the development of a IND. The Planning and Zoning Board considers an affirmative vote to be reasonable and in the public's interest.

**Statement of inconsistency** (motion to deny): The Planning and Zoning Board considers an affirmative vote to not be reasonable and not to be in the public interest.

#### **Attachments**

Town of Lowell\_20240328\_100850.pdf

Rezoning\_ChoiceUSABeverageINC\_2024March28.pdf

#### **APPLICATION FOR REZONING**

60

TO:	THE CITY OF LOWELL	APPLICATION	N#: ZMA24-01 103-11-2021
		DATE FILED: FEE PAID:	YES, \$ 11260.
The undersigned does (do) hereby respectfully make application and request to the City of Lowell to amend the Zoning Ordinance and/or change the Zoning Map of the City of Lowell as hereinafter requested and in support of this application the following facts are shown:			
1)	It is requested that the real property hereinafte	r described be rea	zoned from:
	Mixed Use (MU-2) to ]	Industrial (IND)	
2)	The real property sought to be rezoned is own JPFJ, LLC as evidenced in Deed Book 5112, Page 25 Office. There are no restrictions or covenants which would prohibit the property from being of this application.	, Gaston County of record appear	Register of Deeds ing in the chain of title
3)	The address of the real property sought to be r NC 28098 (portion of real property with this a description by metes and bounds of said realty	ddress) and / or a	a further legal
4)	The real property sought to be rezoned is loca  I-85  (street)	en Groves Street	side ofandand
	Ford Drive	further identific, Parcel(s) 30274	ed in Gaston County 42 (portion of)
5)	The following are all the adjoining property of sides, front and rear, which shall include property sought to be rezoned. The names and address	erties across the s	street from the proper-

by the most recent tax listing as recorded in the Gaston County Tax Office. (Use additional pages if necessary.)

	NAME	ADDRESS
	Lowell Townhome Land LLC	2649 Breckonridge Centre Drive
		Monroe, NC 28110
	Magnolia Place Townhomes HOA Inc.	5001 A Roseboro Ct.,
		Lowell, NC 28098
	Town of Lowell	101 W 1st Street
		Lowell, NC 28098
	Dow E. Beatty	700 Bowden Drive
	•	Lowell, NC 28098
	Cami Anne Maxwell	702 Bowden Drive
	and Ryan Bruce Maxwell	Lowell, NC 28098-1747
6) 7)	The applicant understands that a letter statir Hearing for the rezoning of said property sh in Paragraph 5 at least ten (10) days prior to If the applicant is not the legal owner of the owners names and addresses shall be listed the most recent tax listing as recorded in the tional pages if necessary.)	property sought to be rezoned, the legal below. Owners shall be determined by Gaston County Tax Office. (Use addi-
	NAME	ADDRESS
	N/A	
8)	A map or drawing identifying the real proper attached properties with their designated zon this application.	
	plicant(s) Name: <u>JPFJ, LLC</u> dress: 603 Groves Street, Lowell, NC 28098	
	ephone: 704-823-1651	
ı Çi	opiiono. 101-023-1001	
Αn	plicant's Signature:	/// Simple state of the second controller
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City of Lowell 101 West First Street Lowell, NC 28098

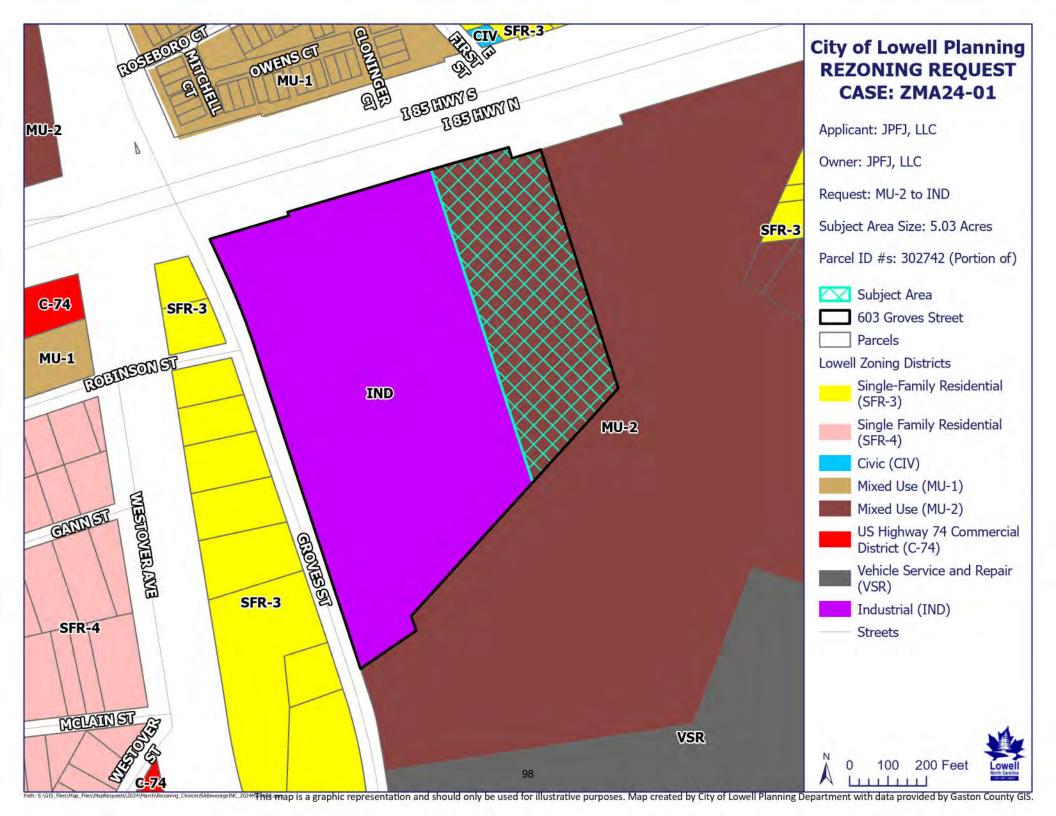
Telephone: 704-824-3518

#### LEGAL DESCRIPTION

BEGINNING at a concrete monument in the southern margin of Interstate Highway 85, said point of Beginning being the northeastern corner of that property conveyed to JPFJ, LLC, by deed recorded in Book 3077, Page 283, Gaston County Registry, said point of Beginning being also situate the following three (3) courses and distances along the southern margin of Interstate Highway 85 from its intersection with the northeastern terminus of Groves Street: (1) North 73-35-09 East 212.52 feet to a point; (2) North 19-31-14 West 10.08 feet to a point; (3) North 73-30-16 East 385.83 feet to a concrete monument, control corner and the POINT OF BEGINNING; thence from said Point of Beginning along the southern margin of Interstate Highway 85 the following three courses and distances: (1) North 73-54-45 East 210.45 feet to an existing iron pin; (2) South 16-36-00 East 30.04 feet to an existing iron pin; (3) North 72-48-08 East, crossing an existing iron pin at 56.28 feet, a total distance of 78.28 feet to an existing iron pin; thence a new line South 18-10-34 East 653.41 feet to an iron pin set within the Duke Power Transmission Line right-of-way; thence South 42-06-58 West 331.30 feet to a concrete monument, control corner; thence with the easterly line of property conveyed to JPFJ, LLC, in Book 3077, Page 283, North 18-10-34 West 856.63 feet to the point and place of Beginning.

The foregoing description is taken from plat of survey entitled "Recombination Plat Smith Property" made by Tanner and McConnaughey, Registered Surveyors, dated February 19, 2020, last revised March 20, 2020, which plat of survey is recorded in Plat Book 90, Page 113 of the Gaston County Registry.

Being the same property conveyed to JPFJ, LLC, by deed recorded in Book 5112, Page 25, Gaston County Registry.







#### **Regular City Council Meeting Memorandum**

Prepared By: Scott Attaway

#### Consideration of Interlocal Agreement with Gaston County for Lowell Elementary Waterline Extension Project

Meeting	Agenda Group
Tuesday, April 9, 2024, 6:00 PM	New Business Item: 6C
Reference File	Presented By

To: Lowell Mayor and City Council From: Scott Attaway, City Manager

Date: 4-5-2024

Re: Consideration of Interlocal Agreement with Gaston County for Lowell Elementary Waterline Extension

**Project** 

Please see the attached interlocal agreement for the County to fund an extension of Lowell's water system for the purpose of supplying clean and reliable water flow to Lowell Elementary. This agreement shall supersede any other agreement between Gaston County and the City of Lowell pertaining to the Lowell Elementary Waterline Project.

Staff recommends approval of this agreement.

#### **Attachments**

Interlocal Water Agreement Lowell Elementary Waterline\_4\_5\_24.pdf
Program Income Memo.pdf

#### **NORTH CAROLINA**

#### **GASTON COUNTY**

#### INTERLOCAL AGREEMENT FOR CONSTRUCTION OF

#### WATER INFRASTRUCTURE

This Agreement, made and entered into this the \_\_\_\_\_ day of \_\_\_\_\_\_, 2024 by and between Gaston County, a body politic and corporate, and a political subdivision of the State of North Carolina (hereinafter referred to as the "County") and the City of Lowell, a North Carolina municipal corporation (hereinafter referred to as the "City").

#### WITNESSETH:

WHEREAS, Lowell Elementary School receives water service from Town of McAdenville, North Carolina; and,

WHEREAS, Lowell Elementary School water service line is corroding, causing water quality and water pressure to be compromised; and,

WHEREAS, City cannot monitor the water from Town of McAdenville or make repairs if there is a problem; and,

WHEREAS, the City through its Utilities Department (hereinafter "Utilities") has available water system capacity to support Lowell Elementary School's critical water need; and,

WHEREAS, pursuant to N.C.G.S. §§ 153A-164 and 160A-461, units of local government are authorized to enter into interlocal agreements for any undertaking; and,

WHEREAS, the City and County desire to jointly extend City water infrastructure to serve Lowell Elementary School (hereinafter referred to as the "Project"); and,

WHEREAS, the County has been awarded Coronavirus State and Local Fiscal Recovery Funds established in S.L. 2021-180 as part of the American Rescue Plan Act (hereinafter referred to as the "Grant") to provide funding to cover a portion of the costs of the Project as set forth herein; and,

WHEREAS, the County has agreed to provide gap funds as available to cover the remainder of the costs of the Project as set forth herein or alter or cancel the Project if sufficient funding is not available; and,

WHEREAS, the County has agreed to construct or let for construction the Project pursuant to all applicable State, Federal, and local rules and regulations; and,

WHEREAS, the project must be completed during the Grant's period of performance; and,

WHEREAS, the period of performance is defined as the total time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods; and,

WHEREAS, per the Grant Award Terms and Conditions, the period of performance for this Grant ends on December 31, 2026. As set forth in Treasury's implementing regulations, Recipients using award funds must obligate eligible costs prior to December 31, 2024; and,

WHEREAS, upon Project completion and acceptance, City will assume operation and maintenance of the Project from County through an operating agreement and comply with US Treasury Terms and Conditions of Program Income requirements through the end of the period of performance; and,

WHEREAS, upon the end of the period of performance of the Grant, the County will transfer ownership of Project to City as a part of its municipal water system. City is responsible for meeting all Federal, State, and Local requirements for operating and maintaining Project.

WHEREAS, the City of Lowell and the Town of McAdenville will determine if there are any implications for a change in use of the property currently operating as Lowell Elementary. The County will have no interest in agreements between The City of Lowell and the Town of McAdenville that are independent from the scope of the Project. The City of Lowell will not form any agreements that contradict the requirements of this interlocal agreement.

NOW, THEREFORE, in consideration of the terms, conditions, and covenants contained herein, it is agreed between the parties hereto as follows:

- 1. PURPOSE: The purpose of this Agreement is to set forth the terms and conditions under which County will construct, and City will operate and maintain the water infrastructure described herein. The above recitals are hereby incorporated into this agreement between the parties.
- 2. PROJECT DESCRIPTION: The scope of work includes construction of approximately 420 LF of 8-inch waterline and related appurtenances to serve Lowell Elementary School. This new infrastructure will run along Saxony Drive, from the City's water main between Riverview Dr and Beaunitt Rd to Lowell Elementary School.
- 3. PLANS AND SPECIFICATIONS: The infrastructure shall be engineered, designed, and constructed in accordance with the specifications of the City. City shall have the right to review and inspect all engineering, design, and construction to ensure all work meets City specifications. City shall not be obligated to accept or maintain the Project if any material portion thereof fails to meet City specifications as determined by the City. The engineering and surveying work is to be completed by the County or such other licensed service provider as County shall select, at no cost to the City. Upon completion of the Project, County shall provide to City a set of as-built drawings in accordance with City Policy.
- 4. CONSTRUCTION OF THE PROJECT: The County agrees to construct or let a contract for the construction of the Project in accordance with all applicable federal, state, and local laws, regulations, and ordinances. County agrees to contract with a professional Construction Engineer and Inspections Firm, and County shall require and conduct all commercially standard inspections and testing (and such others as may be necessary), during construction. City agrees to coordinate independent inspections of the waterline construction. Upon project completion, the City shall operate and maintain the waterline infrastructure as part of the City water system.

5. PROJECT COSTS: The cost of the Project is to be funded by the County using the secured Grant funds and local funds to cover any remaining costs. Costs unilaterally incurred by the City shall not be included in Project costs, shall be paid by the City and shall not be a liability of the County (e.g., City inspections, consultant costs, etc.).

The referenced Grant and local funds shall be applied to the costs of construction of the Project. In the event the referenced Grant and local funds are not secured, and suitable replacement funding is not secured, the Project shall not proceed, and this Agreement shall terminate. In the event there are not sufficient Grant and local funds to cover the bid on the contract for the construction, and the parties are unable to agree on a mutually satisfactory arrangement to cover the costs, the Project shall not proceed, and this Agreement shall terminate.

In anticipation of the extension of the water system and in preparation for the construction of the Project, the County has procured Armstrong Glen PC (hereinafter referred to as "Engineer") to provide professional services for the Project.

The County shall act as lead agency and project manager for the construction of the Project and in the administration of all Grant and local match funds.

All Grant funding shall be administered by the County in accordance with the rules, laws, regulations, terms, and directives of the administering agencies that are applicable to or govern the Grant set forth above.

#### 6. PROGRAM INCOME OBLIGATIONS:

DEFINITION: Program Income refers to gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in § 200.307(f). Program income includes but is not limited to income from fees for services charged to new customers, or increased user fees for current customers due specifically to the Project. Program income also includes the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, and principal and interest on loans made with Federal award funds. Program income does not include special assessments, tax revenues, system development fees, availability fees, regulatory fees, contractual charges for infrastructure, charges to other local governments to reserve capacity, and penalty charges.

The City shall provide the County with an estimate of Program Income that they expect to generate during the period of performance, based on the total potential customer connections and expected project completion date. This estimate must be provided in order for the County to obligate these expected funds prior to 12/31/2024. The City understands that the estimated and obligated program income does not determine the amount of funds available for use during the period of performance and instead, determines the maximum amount of funds available for reconciliation and use during the period of performance. The City understands that any program income received beyond the amount obligated prior to 12/31/2024, will be paid to the Treasury.

REPORTING AND DOCUMENTATION: The County and City shall maintain accurate records of all program income generated, including the source, amount, dates of receipt, and use of funds. The City will report program income to the County, with supporting documentation, on a monthly basis.

USE OF PROGRAM INCOME: The City shall establish appropriate accounting procedures to track and retain program income in a special revenue fund separate from other operating revenue. The County will work to reconcile and appropriate program income on a quarterly basis. Provided that appropriate documentation has been submitted by the City, reconciliation will then require approval from the County's Commission. Once approval is received, the County will notify the City of the amount of program income that is authorized for use from its special revenue fund. All unreconciled program income must remain in the special revenue fund until authorization for use has been granted. Any unreconciled program income remaining after the period of performance will be paid to the Treasury. There is no further obligation to track and report program income after the period of performance.

COMPLIANCE AND AUDITING: The County and the City shall comply with all program income requirements imposed by the granting agency, including reporting, recordkeeping, and use of funds. Failure to comply with program income requirements may result in penalties or the need for repayment of funds to the granting agency. Any current regulations or updates from Treasury after the effective date of this Agreement, shall supersede any conflicting provisions found herein.

RETENTION AND ACCESS OF RECORDS: Records shall be maintained for a period of five (5) years following the end of the grant's period of performance. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) in order to conduct audits or other investigations. The City shall make available to the County, all reports and documentation related to program income to ensure compliance with the Federal Award.

#### 7. PROPERTY MANAGEMENT:

Any purchase of equipment or real property with grant funds must be consistent with the Uniform Guidance at 2 CFR Part 200, Subpart D. Equipment and real property acquired under this program must be used for the originally authorized purpose. Consistent with 2 CFR 200.311 and 2 CFR 200.313, any equipment or real property acquired using SLFRF funds shall vest in the non-Federal entity. Any acquisition and maintenance of equipment or real property must also be in compliance with relevant laws and regulations.

8. OPERATION, MAINTENANCE AND EXTENSIONS: Upon project completion, City shall operate and maintain the same as part of its municipal system per the terms that will be agreed to in the operating agreement that the Parties shall negotiate and execute prior to project completion. Upon the end of the period of performance, all rights, title, and interest in Project, including, but not limited to, utility infrastructure, easements, and rights of way, shall be transferred to City and City shall operate and maintain the same as part of its municipal system from that point forward.

WARRANTY: The City shall be covered by any warranties provided by manufacturers or suppliers of components or materials, as well as workmanship as outlined in the construction contract. In the event of defects or deficiencies discovered during the warranty period, the City shall promptly notify the County in writing of such defects or deficiencies.

City shall not deny connection to the Project by a potential customer requesting service so long as City has sufficient water capacity to support new customers in the Project area and the customer otherwise complies with City requirements, including the requirement to petition for voluntary

- annexation in exchange for receiving City services. No service tap or connections shall be made to Project except under the supervision and inspection of the City and upon payment by the property owner to the City of required water connection charges and availability fees of the City and County. By execution of this Agreement, City acknowledges its continuing obligation to provide services to the specified Project area upon customer compliance with all City requirements.
- 9. RIGHTS OF WAY: County shall be responsible for the acquisition and creation of all easements, rights of way, and encroachment agreements and permits necessary for the construction of the Project. The costs of such acquisition shall be paid out of the Project funds provided by the County as set forth above. The City agrees to provide easements and/or rights of way across any City owned property, to the extent necessary for building the Project. Conveyances of easements and rights of way shall be in a form acceptable to the County and the costs for preparation, surveying, recording and related costs shall be paid by the County.
- 10. LEAD AGENCY: The County shall serve as the lead agency for the Project and shall commence and complete the Project within a reasonable time after the execution of this Agreement, subject to securing the necessary funds. The schedule for the Project shall be established by the County. Project dates shall be specified in the construction contract entered into between the County and the contractor(s) engaged to construct the Project. Completion of the Project in accordance with the contract schedule is contingent upon weather and/or other factors that might necessitate a delay in the construction schedule provided for in said construction contract.
- 11. ACCESS: City shall have the right to inspect and copy documents, materials, papers, and other related items at any point in the Project, with proper notification to County. Further, City shall have access, at all times, to the construction site for the purpose of construction observation. City shall have the right to notify County of any construction that does not meet City specifications or the engineering and design of the Project. Upon receipt of such notification County shall take every step necessary to ensure the construction of the Project meets City specifications.
- 12. INSURANCE AND INDEMNITY: During construction, County shall provide the public liability insurance coverage and, to the extent permitted by North Carolina law, indemnify the City against any and all damages to persons or property that may be incurred through injury or accident by reason of the County's negligent construction Project.
  - After project acceptance and execution of the operating agreement, and during the period of performance of the Grant which shall end 12/31/2026, City shall maintain and operate the system, provide the public liability insurance coverage and, to the extent permitted by North Carolina law, indemnify the County against any and all damages that may be incurred through injury or accident by reason of the City's negligent operation of Project. City shall name County as an additional insured.
- 13. SERVICE CHARGES: County shall install a water connection to Lowell Elementary School which shall be an eligible project cost. Upon completion and acceptance of the Project, the City shall thereafter have the sole and exclusive right to charge and collect for water service furnished to any consumer;

- and the County shall have no right or interest therein with the exception of managing the Program Income requirements set forth.
- 14. SERVICE PROVIDERS: City shall be the exclusive provider of water services within the water service area of this project.
- 15. NO JOINT AGENCY ESTABLISHED: No joint agency is to be established as a result of the execution of this Interlocal Agreement, and each party shall manage its own personnel, respectively, as necessary for the execution of this undertaking.
- 16. DUPLICATE ORIGINALS: This Agreement shall be executed by the parties hereto in duplicate originals, each of which when executed shall constitute one and the same Agreement.
- 17. INVALID TERMS: Should any one or more of the provisions contained in this Agreement be held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby, and this Agreement shall otherwise remain in full force and effect. If any such provision is held to be invalid or unenforceable, then upon the request of either party, the City, and the County shall attempt in good faith to negotiate and agree upon a replacement provision.
- 18. COUNTERPARTS: This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original.
- 19. NOTICES: Any notices required or permitted in this Agreement, including address changes, shall be made in writing and shall be made either by mailing registered or certified mail, return receipt requested, and postage prepaid, to the other party at the address shown herein for that party or at such different address for that party, notice of which has been properly given hereunder, or by personally delivering such notice to an officer or other party. The notice, if mailed as provided for herein, shall be deemed given on the day of receipt or refusal to accept receipt, and if personally delivered, on the date of delivery. The addresses are as follows:

TO THE COUNTY: TO THE CITY OF LOWELL:

Infrastructure and Asset Manager Scott Attaway, City Manager

P.O. Box 1578 101 W. First Street

Gastonia, NC 28053 Lowell, NC 28098

- 20. ENTIRE AGREEMENT: This instrument contains the entire Agreement between the parties, and no statement, oral or written, made by either party or agent of either party that is not contained in this Agreement shall be valid or binding. This contract may not be enlarged, modified, or altered, except in writing signed by the parties and endorsed hereon.
- 21. AMENDMENT OR TERMINATION: This Agreement may be amended or terminated only by an instrument in writing executed by all parties hereto.

- 22. REMEDIES IN THE EVENT OF DEFAULT: In the event of Default by a party to this Agreement, the other party may exercise all legal and equitable remedies to which it is entitled.
- 23. WAIVER: No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Agreement shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party waiving the rights.
- 24. BINDING NATURE AND ASSIGNMENT: This Agreement shall bind the parties and their successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other party. Any assignment attempted without the written consent of the other party shall be void.
- 25. GOVERNING LAW AND JURISDICTION: North Carolina law shall govern the interpretation and enforcement of this Agreement, and any other matters relating to this Agreement (all without regard to North Carolina conflicts of law principles). All legal actions or other proceeding relating to this Agreement shall be brought in a court sitting in Gaston County, North Carolina. By execution of this Agreement, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections that they may have with respect to venue in any court sitting in Gaston County, North Carolina.
- 26. DISPUTE RESOLUTION: In addition to and prior to litigation, the parties shall endeavor to settle disputes first by negotiation between the parties, and, if negotiation is unsuccessful, then by non-binding mediation. Demand for mediation shall be filed in writing with the other party to this Agreement. A demand for mediation shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statute of repose or limitations.
- 27. TITLES OF SECTIONS: The section headings inserted herein are for convenience only and are not intended to be used as an aid to interpretation and are not binding on the parties.
- 28. NO DOCTRINE OF CONSTRUCTION AGAINST THE DRAFTER: All parties acknowledge and stipulate that this Agreement is the product of mutual negotiation and bargaining and that it has been drafted and reviewed by Counsel for all parties. As such, the doctrine of construction against the drafter shall have no application to this Agreement.
- 29. FORCE MAJEURE: Neither party to this Agreement shall be liable for any claims or damages if such claims or damages result or arise out of a failure or delay that is due to any act beyond the control of the party.

IN WITNESS WHEREOF, the undersigned municipal corporations and governmental entities have caused this Agreement to be executed on their behalf by their duly authorized representatives, having hereunto affixed their signatures and seals, the day and year first above written.

#### **CITY OF LOWELL**

Ву:	(sea	l)	
City Manager			
ATTEST:	АРІ	PROVED AS TO FORM:	
	_		
City Clerk	City	/ Attorney	
STATE OF NORTH CAROLINA COUNTY OF GASTON			
certify that that he/she is the Clerk of the City of Lo	personally appo pwell and that by au- strument was signed	the aforesaid County and State, do hereke eared before me this day and acknowled thority duly given and as the act of the I in its name by its <b>City Manager</b> , sealed	lged
WITNESS my hand and Notarial Seal, thi	is the day of _	, 2024.	
My Commission Expires:		Notary Public	

#### **GASTON COUNTY**

Ву:	(seal)
County Manger or Designee	
ATTEST:	APPROVED AS TO FORM:
Clerk to the Board	County Attorney
This document has been pre-audite Control Act	ed in the manner required by the Local government Budget and Fiscal
Finance Director/Deputy financ	
STATE OF NORTH CAROLINA COUNTY OF GASTON	
that he/she is <b>the (Deputy) County</b> given as the act of the municipal codesignated party, sealed with its co	, a Notary Public of the aforesaid County and State, do hereby personally appeared before me this day and acknowledged Manager/Assistant County Manager and that by authority duly rporation, the foregoing instrument was signed in its name by the reporate seal and attested by him/her as its (Deputy) County Clerk.  II, this the day of, 2024.
M. Constitution E. d.	Notary Public
My Commission Expires:	

# Memo

**GASTON COUNTY** 

**To:** City of Lowell – Scott Attaway

**From:** Gaston County – Asia Stone

**Date:** 11/08/2023

**Re:** Lowell Elementary Waterline - Program Income Requirements

This memo is to serve as an explanation of requirements of Treasury and Coronavirus State and Local Fiscal Recovery Funds as it relates to program income.

Federal regulations applicable to the use of funds, as outlined in the grant award terms and conditions, include Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury.

2 CFR 200.1 defines program income as: *gross income* earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in § 200.307(f). (See the definition of *period of performance* in this section.) Program income includes but is not limited to income from fees for services performed, the use or rental or real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See also § 200.407. See also 35 U.S.C. 200–212 "Disposition of Rights in Educational Awards" applies to inventions made under Federal awards.

Funding from the Coronavirus State and Local Fiscal Recovery Funds are also subject to the requirements specified in the U.S. Department of Treasury's Final Rule, which was released on January 6, 2022. Treasury has published a variety of documents that offer additional guidance and further explain the terms and conditions of the CSLFRF award. These documents are listed on Treasury's CSLFRF webpage. Such documents include the Overview of the Final Rule and Final Rule FAQs.

13.11 of the 2022 Final Rule FAQs: Per 2 CFR 200.307, Treasury specifies here that recipients may add program income to the Federal award. Any program income generated from SLFRF funds must be used for the purposes and under the conditions of the Federal award.

The Treasury's Compliance and Reporting Guidance for SLFRF funds directs recipients to calculate, document, and record the organization's program income. Additional controls include written policies that explicitly identify appropriate allocation methods, accounting standards and principles, compliance monitoring checks for program income calculations, and records.





# **Regular City Council Meeting Memorandum**

Prepared By: Scott Attaway

# Resolution to Designate Chief Moore as the Official to Make Recommendations to the NC ABC Control Commission

Meeting	Agenda Group
Tuesday, April 9, 2024, 6:00 PM	New Business Item: 6D
Reference File	Presented By

To: Scott Attaway From: Chief Moore Date: 3-22-2024

Re: Designated Official to notify ABC Commission

This is to allow the Chief of Police to have the ability to notify the NC Alcoholic Beverage Control Commission recommendations of the City of Lowell regarding the suitability of persons and locations for ABC permits within the city jurisdiction. The Chief will be the designated official for signing the Local Government Opinion for Alcohol Beverage Permits.

#### **Attachments**

RS04-2024 Resolution to Designate Police Chief to Make Recommendations to the NC Acoholic Beverage Control Commission.pdf



# NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL COMMISSION

(919) 779-0700

Location: 400 E. Tryon Road Raleigh, NC 27610

Mail: 4307 Mail Service Center Raleigh, NC 27699-4307

## **RESOLUTION #04-2024**

RESOLUTION OF THE CITY OFI REGARDING THE DESIGNATION OF A TO THE NORTH CAROLINA ALCOHOLABC PERMIT APPLICATIONS.	AN OFFICIAL T	O MAKE RECOM	MENDATIONS
WHEREAS G.S.18B-904(f) authorizes a g position, to make recommendations concerpermits; and	ning the suitabil	ity of persons or loca	ations for ABC
WHEREAS the City ofLOWELI notify the NC ABC Commission of its desi	, Co Ignation as requi	unty ofGASTON_ red by G.S.18B-904	(f); wishes to
BE IT THEREFORE RESOLVED that	CARL MOO	RE , CHIEF C	OF POLICE , e or Position)
is hereby designated to notify the North Carecommendations of the City ofLOWE the suitability of persons and locations for	ELL, Cour	ty of <u>GASTON</u>	
BE IT FURTHER RESOLVED THAT rof GASTON, should be mailed at the following address:			
Mailing address:102 E FIRST Office location:	`ST		
City: _LOWELL         , NC           Zip Code: _28098         Phone #:	704-824-8540		
This the9th day ofApril	_, <u>2024</u> .		
	(Mayor/Chair	man)	



Sworn to and subscribed before me this the _9th_	day ofApril, <u>2024</u>
(Clerk)	_
Adopted this 9 <sup>th</sup> day of <u>April, 2024.</u>	
	$\checkmark$
	Larry Simonds, Mayor
ATTEST:	
✓	
Cheryl Ramsey, City Clerk	





# **Regular City Council Meeting Memorandum**

Prepared By: Scott Attaway

#### City of Lowell Façade Grant Application Review and Approval

Meeting	Agenda Group
Tuesday, April 9, 2024, 6:00 PM	New Business Item: 6E
Reference File	Presented By

To: Scott Attaway, City Manager

From: Tyler Cobb, Planner

Date: April 9, 2024

Re: Review and approval of grant funding for eligible façade grant applications as recommended by the

**Lowell Community Committee.** 

#### Staff Report

I am pleased to announce the applicants of the Facade Grant Awards for the 2024 cycle that have submitted a full and complete application. After careful review and consideration of all applications, the LCC has identified and selected the following projects for funding:

MEM Investments: The updating of the paint will be compatible with the neighboring properties and updated colors.

Grant Amount: \$2,500

Vera Floyd Beauty Salon: New front door will be purchased and installed

Grant Amount: \$1,170

Back of the Moon: Improving and painting the trim/moldings to match the connecting building

Grant Amount: \$2,406.03

York Properties: The cleaning of the exterior of the buildings and property.

Grant Amount: \$585

Grant totals would be \$6,661.03 total leaving a balance of \$3,338.97 in FY24 with no remaining grant cycles left in the fiscal year.

#### **Attachments**

FG2024 - 4322 Wilkinson Blvd Shops.pdf

FG2024 - Beauty Shop.pdf

FG2024 - Back of the Moon.pdf

FG2024 York Properties.pdf

# **City of Lowell**

# Façade Grant Application

Please fill out this application completely and legibly, and return to City of Lowell no later than

# First Cycle Deadline - Sept 30th, 2023

# Second Cycle Deadline (If available) - February 28th, 2024

Property Information	Business Name  WEW TAW  Physical Address  4 322 WIKIN	estheuts, UP son Blud	Telephone 104913-3717 Email wike omikegibson-net
Business Category	M Retail  ✓ Restaurant	5trip Center 3 writes	
	Other	3 W145	
How long	1991		
has your	1991		·
business			
been			
established at			
this location?			
Is the	ı la		
property on	No		
the HIstoric			
District			,
Registry?			

Applicant Information	Full Name MEM Investments Cel	Telephone 704 913 3717
Information	Mailing Address 2228 Windson Woods Dr Gastquee NC 28054	704 Blok . 4009
	Email Whe Quike absoninet	Federal Tax ID Number 56.2273516
	earl waltersognal, con	-

Owner	Full Name MEM Investments up	Telephone 704 913 - 3717
Information (if other than	Gasting DC 28034	704 Blok 4009
applicant)	Emailike @ mikegilson. net cevi walters egmail. com	Federal Tax ID Number 56-2273516

Please describe façade improvements you plan to implement with the façade grant award. Proposed Façade Improvements (please specify).

Update color & Repairt metal facule and block extensive of entire building Changing Color on Facade with enhance the signing for our tenants

Scope of Proposed Project (include a summary of the building's current condition, areas to be improved and how, as well as any proposed materials or colors)

Facade color outdoiled & faded

Required Documentation (these items must be submitted with the signed Application)

Photos, plans, or sketches of proposed improvements.

Quotes, fee proposal, and any other documentation that supports the proposed budget. Owner's permission, if necessary.

I agree to comply with the guidelines and standards of the City of Lowell Façade Grant Program and I understand that this is a voluntary program, under which the City has the right to approve or deny any project or proposal or portions thereof.

Applicant Signature:

Date: \_\_*&* 

Owner Signature: (if other than applicant)

Submit the completed Application by the deadlines listed at the top of the application, with all required documentation attached:

by email to jgates@lowellnc.com or ccummings@lowellnc.com

- by mail to Lowell Community Committee % Joe Gates, City of Lowell, Street, Lowell NC 28098
- or in person to Lowell City Hall, 101 West First Street, Lowell, NC 28098

# DDM Paint

L217 Marcela Dr. Gastonia, NC 28054

Phone: 980-285-0410

ddmpaint@hotmail.com

Estimate # 2523
PO#
Date 2/16/2024

	PROPERTY	
Name		
Address	4322 Wilkinson Blvd	
City		
City Phone		
Fax		

UNIT#	WORK PERFORMANCE		1	TOTAL
	Pressure Washing, 2 coats on the blocks back, ,Roll 2 coats on metal		\$	6,500.00
				·
		Labor Only Total	4	6,500.0



# Branch Construction Group LLC Brandon Beckham • +17043493300 Belmont, North Carolina, 28012

Bill To Mike Gibson mike.gibson.bwh4@statefarm.com

# Estimate ES-10008

苗 Date Created: Feb 27, 2024

## Estimate for 4322 Wilkinson Blvd

Sent

#### Items

1	ltem	Qty	Unit	Material	Labor	Cost	Total
1	Exterior painting			\$1,300.00	\$5,200.00	\$6,500.00	\$6,500.00
				Hide Breakd	own 🔨		
				Subtotal			\$6,500.00
				Тах			\$0.00
				Total			\$6,500.00
				Amount Paid	I		\$0.00
				Balance	and the state of the	en e	\$6,500.00

	Full Name	Telephone  784-9964
Information	Wern Carter Stayed  Mailing Address	Fax
(if other than	109 Month Main Stylowell MC.	Federal Tax ID Number
applicant)	Vera-e-Sloyd and niskut Coope	238 - 88 - 7553

Please describe façade improvements you plan to implement with the façade grant award. Proposed Façade Improvements (please specify).

Front Door of business - Need to be Replaced With New Door.

Clean Canopy

Scope of Proposed Project (include a summary of the building's current condition, areas to be improved and how, as well as any proposed materials or colors)

Rain water Cornes in at bottom of Door Lock does not wark Properly, Door Loes NOT Close and The way at Top.

Canopy needs Milden Cleaned Off

Required Documentation (these items must be submitted with the signed Application)

Photos, plans, or sketches of proposed improvements.

Quotes, fee proposal, and any other documentation that supports the proposed budget.

Owner's permission, if necessary.

I agree to comply with the guidelines and standards of the City of Lowell Façade Grant Program and I understand that this is a voluntary program, under which the City has the right to approve or deny any project or proposal or portions thereof.

Applicant Signature: The Theory

Date: Feb. 27-24

Owner Signature: (if other than applicant)

\_ Date: 2/27/24

Submit the completed Application by the deadlines listed at the top of the application, with all required documentation attached:

by email to <u>igates@lowellnc.com</u> or <u>ccummings@lowellnc.com</u>

- by mail to Lowell Community Committee % Joe Gates, City of Lowell, Street, Lowell NC 28098
- or in person to Lowell City Hall, 101 West First Street, Lowell, NC 28098

Thomas Siding, Windows & Sunrooms
327 Paradise Circle, Belmont, NC 28012 Phone: 704-867-4686 / 704-867-8149

e PVC / 36 x 80 with handicap seal.
ı full upon completion of the above.
The manufacturer of the products installed provides certain warranty ive you the warranty protection information and forms supplied by the ss warranties and no warranties of merchantability or fitness for a no event shall Thomas Siding & Windows be liable for special, incidental
Signed

# Woods Home Improvement 980 444 1277

Beauty Shop C/O Vera Floyd 108 N Main St Lowell, NC 28098

Entrance door installation with	i lock	and dead	DOIT.
---------------------------------	--------	----------	-------

Total: \$2340.00

Name:	 	
Signature:		 
Date:		



# Pope's Professional Cleaning Services P.O.Box 1253 Mt. Holly, N.C. 28120 (704) 606-0990

PROPOSAL SUBMITTED TO:	JOB NAME COM	JOB#	
108 North Main Street Low	JOB LOCATION JOB LOCATION DATE	n main street la	sell N
PHONE # FAX #		ARCHITECT	
## hereby submit specifications and estimates for:	an Canopy		
	ı		
		\$ 100,00	
			110111111111111111111111111111111111111
Be propose hereby to furnish material and labor – complete in a			
\$ One hundred dollars with payments to be made as follows:			Dollars
Any alteration or deviation from above specifications involving extra costs will be executed only upon written order, and will become an extra charge	Respectfully submitted —		
over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control.	Note — this proposal may	be withdrawn by us if not accepted within	days.
Acc	eptance of Proposal		
The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.	Signature		
Date of Acceptance	Signature		

# City of Lowell

# Façade Grant Application

Please fill out this application <u>completely</u> and <u>legibly</u>, and return to City of Lowell no later than

# First Cycle Deadline - Sept 30th, 2023

# Second Cycle Deadline (If available) - February 28th, 2024

Property Information		Telephone 704, 879, 9392	
	Physical Address 105 E 1957, Lwell, N	C back of the min 3 egmil,	.Crr
Business	Retail	<i>y</i> , ,	
Category	☐ Restaurant☐ Other		
How long			
has your			
business	Tyeara		
been	' /		
established at this location?			
Is the			
property on			
the HIstoric	MOS.		
District	Mo		
Registry?			
Applicant 3	Full Name	Telephone 404, 677, 2379	
T. C   L	Jennife, B. Halley Mailing Address	Fax Fax	
	8772 Woder Ford Dy Starley NC		
	Email 16 holley cyahu com	Federal Tax ID Number	

Information (if other than applicant)  Mailing Address  LZY Andres Weld, Destruct Federal Tax ID Number  Federal Tax ID Number	Owner	Full Name Goveln Hibane OBane Properties	Telephone 704 677. 7379
applicant) Email Federal Tax ID Number	[ ]	Mailing Address	Fax
	applicant)		Federal Tax ID Number
16 hattey e yahor. cm 257-30-9634		ibhathey e yahur.cm	257-30-9634

Please describe façade improvements you plan to implement with the façade grant award. Proposed Façade Improvements (please specify).

- Re-paint fint tilles ety of building

- Install + paint crown molding on front it building to marter left vide

of building fresh routal Facia on top of building

Scope of Proposed Project (include a summary of the building's current condition, areas to be improved and how, as well as any proposed materials or colors)

- Front Hop of building needs painting, along with undness tome

repairs needed as well.

Will use Sherwin Willers DTM paint for metal paneling texterns

white Super paint for the trime (faneling)

Required Documentation (these items must be submitted with the signed Application)

Photos, plans, or sketches of proposed improvements. Quotes, fee proposal, and any other documentation that supports the proposed budget. Owner's permission, if necessary.

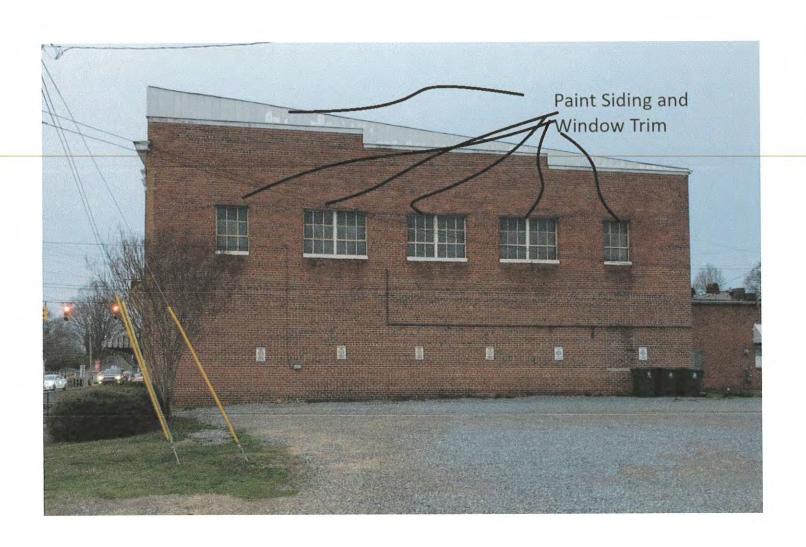
I agree to comply with the guidelines and standards of the City of Lowell Façade Grant Program and I understand that this is a voluntary program, under which the City has the right to approve or deny any project or proposal or portions thereof.

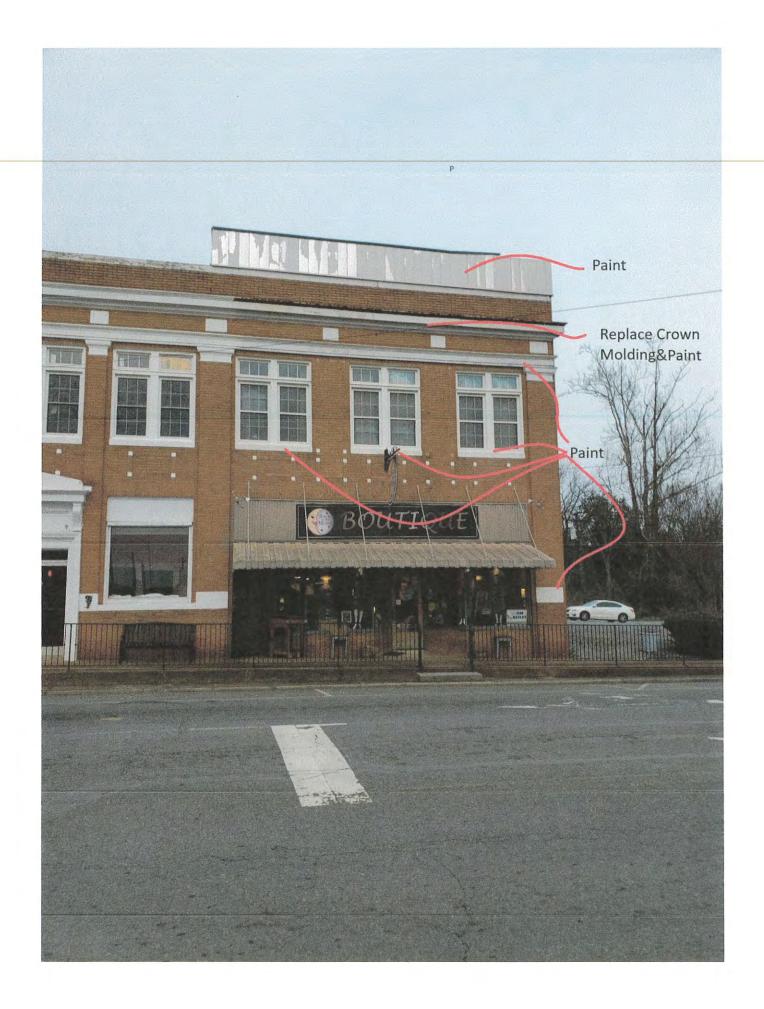
Applicant Signature:

Owner Signature: (if other than applicant)

Submit the completed Application by the deadlines listed at the top of the application, with all required documentation attached:

- by email to jgates@lowellnc.com or ccummings@lowellnc.com
- by mail to Lowell Community Committee % Joe Gates, City of Lowell, Street, Lowell NC
- or in person to Lowell City Hall, 101 West First Street, Lowell, NC 28098







## **PROPOSAL**

TO: Mitch & Jennifer Hatley

Hatley, Mitch & Jennifer 8172 Waterford Dr. Stanley, NC 28164 Project:

Date:

2024-Boutique Building Repairs

Address:

105 East 1st Street Lowell, NC 28098

1/30/2024

We propose to furnish all materials, equipment, and labor, subject to any exclusions listed below, required to complete the following:

## 1. PAINTING & REPAIRS

Description of Services:

Re-paint white areas on front and right side of building.

Install and paint one (1) piece of crown molding on the front of the building to match the left side of building. This includes caulk/putty as needed to prepare crown molding for paint.

Prepare and paint metal facia on the front and right side of the top of the building.

Paint to include Sherwin Williams DTM paint for metal paneling and exterior white Super

Paint.

Rental cost for a fifty (50') foot bucket lift for two (2) days.

Plastic will be used to prevent paint splatter on wall that's not being painted.

(Property owner to select Sherwin Williams DTM paint color for metal paneling)

Quote does NOT include painting the gray awning or trim around the store entrance.

#### 2. FINAL WALKTHROUGH

Description of Services:

At the conclusion of the project, Citadel Craftsman owner and/or project supervisor will conduct a final walkthrough with the homeowner.

Subtotal:

\$6,400.00

\*0% Tax:

\$0.00

TOTAL:

\$6,400.00

## **Terms and Conditions**

This Contract is made by and between these parties: Phillip Horton dba Citadel Craftsman, LLC, referred to as the "Remodeler", and **Mitch Hatley** who will be referred to as the "Owner(s)."

Remodeler's legal address: 7691 Ivey Meadow Ln., Stanley, NC 28164

Remodeler's Telephone: 704.608.1040 E-mail: admin@citadelcraftsman.com

Remodeler is a NC Licensed General Contractor: NC License #82972

Owner(s)' Address:

105 East 1st Street. Lowell, NC 28098

Owner(s)' Telephone:

704-641-9607

Mitch Hatley is possessed of certain improved real estate, described as a personal residence located at the following address:

105 East 1st Street, Lowell, NC 28098

This property will be referred to as the "Premises" in this document.

"BUYER'S RIGHT TO CANCEL – If this agreement was solicited by telephone, electronic means, or at a residence, and you do not want the goods or services, you, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See attached notice of cancellation form for an explanation of this right."

## 1, SCOPE OF THE WORK

The Remodeler and/or his sub-contractor(s) agree(s) to execute the **Boutique Building Repairs** scope of work, as stated in the above proposal, at the Premises.

#### 2. COMPENSATION

The Owner shall pay to the Remodeler a total fixed sum of \$6,400.00 for the described repairs in accordance with the following provisions:

#### FINAL PAYMENT

Final payment of \$6,400.00 plus any additional amounts due for unpaid change orders, unforeseen site condition expenses, etc. shall be due and payable at substantial completion of the project and after the final walk-thru by the Owner (s) and the Remodeler.

#### INTEREST

Any payment due to the Remodeler in whole or in part that remains unpaid for more than ten days past the payment due date, shall incur interest on the unpaid balance at the rate of 18% per annum until paid.

#### 3. COMMENCE AND TIME OF COMPLETION

The project start date will be determined upon receipt of the signed contract and deposit. All work shall be substantially complete within **One (1)** week(s) of the start date. If reasons beyond the

Citadel Craftsman, LLC · 7685 Ivey Meadow Ln · Stanley, NC 28164

Remodeler's control cause an unavoidable delay in the progress of the work, the date of substantial completion date shall be extended for a period of 1 1/2 days for each day of unavoidable delay.

#### 4. ADDITIONAL WORK - CHANGE ORDERS

Any change to the work or materials specified in this Contract may be made only by a written change order that is signed by both the Owner and the Remodeler. All change orders shall be dated, shall reflect the new or additional work and materials, and any change in the Contract price. Change Orders amounts are due upon signing and before materials are ordered and change order work is begun.

#### 5. ACCESS

The Owner shall grant free access to the premises for the Remodeler and his workers at all reasonable times, and shall supply such keys as are necessary for their admittance.

#### 6. SIGNAGE

The Remodeler shall have the right to place and maintain, until final completion, a single identifying sign upon the premises in a location of public view. The location, size, height, composition, and authorization of the sign shall be subject to any and all applicable governmental laws and regulations, and any applicable private restrictive covenants.

## 7.INSURANCE

During the course of this Contract:

- (a) The Owner shall maintain and be responsible for the cost of premises liability (fire and casualty) insurance.
- (b) The Remodeler shall maintain and be responsible for the cost of his company's general liability and/or builder's risk insurance, and as applicable, workers' compensation insurance, and unemployment insurance, with coverage in accordance with the requirements of state law.

#### 8. CLEAN UP and SALVAGE

During the performance of the work, the Remodeler shall maintain the work site in a reasonably orderly condition. Unless otherwise stipulated by the Owner(s) in writing, the Remodeler shall have the right of salvage of any fixtures or materials that are removed in order to complete the work as specified. Upon completion, the Remodeler, workers and sub-Remodelers, shall remove from the premises, both from the structure and its surrounding property, all building materials not incorporated into the work, and all equipment of the Remodeler, his workers, or any sub-Remodelers.

Upon completion, the Remodeler shall leave the premises structure in "broom-clean" condition.

#### 9. MECHANICS LIENS

The Remodeler shall promptly pay all workers, sub-contractors, and material suppliers that furnish any labor, materials or equipment for the work performed on the premises. If requested, the Remodeler shall obtain and deliver to the Owner(s) in appropriate form lien waivers, or releases from all such sub-contractors or material suppliers.

#### 10, REMODELER'S LIMITED WARRANTY

The Remodeler warrants that within one (1) year from the date of substantial completion, the Remodeler will repair or replace, at his option, any non-excluded defective condition involving building materials or workmanship. A defective condition shall be determined and defined by the standards of construction set out in "Residential Construction Performance Guidelines", - a publication of the National Association of Home Builders, current at the time of final inspection or substantial completion as applicable. The Owner agrees to accept reasonable matches in any repair or replacement in the event the specified or originally used item or material is no longer available.

No warranty is extended by the Remadeler for any Owner(s) or third party supplied materials, fixtures ar workmanship.

No Warranty is extended for damage resulting from fires, floods, storms, accidents, or acts of God; from a malfunction of equipment or lines of the telephone, gas, electric, or water companies; from alterations, misuse, or abuse of the covered items by any person; from the Owner(s)' failure to perform reasonable maintenance, or failure to observe any proper operating instructions.

No warranty is extended for any appliance, piece of equipment, or other item that is a consumer product for the purposes of the Magnuson-Moss Warranty Act, 15 United States Code §2301 et seq., installed or included in the Owner(s)'s property. Consumer products, for the purposes of the Magnuson Moss Act, are those provided by the manufacturer. The Remodeler hereby assigns (to the extent that they are assignable) and conveys to the Owner(s), all warranties provided on any appliance or manufactured items that have been installed on the Premises.

#### 11, ATTORNEYS FEES

Unless otherwise provided for in the terms of this Contract, all reasonable attorneys' fees and legal expenses incurred by one party, that arise out of the breach of this Contract by the other party, or that arise by a failure in the other party's obligations, shall be paid by the party who has breached or who has otherwise failed to perform.

#### 12. JURISDICTION

The provisions of this Contract shall be interpreted in accordance with the laws of the state of North Carolina.

#### 13. SEVERABILITY

Should any clause or provision of this Contract be ruled invalid or unenforceable in any court of competent jurisdiction, the remainder of the Contract shall nevertheless survive and be in full force and effect.

#### **14. ENTIRE AGREEMENT**

This Contract, together with exhibits and any supplements specifically referenced in this Contract, constitutes the entire agreement between Remodeler and the Owner(s) with respect to all matters contained in this Contract, superseding all prior oral or written representations and agreements. No waiver, modification or change of any of the terms of this Agreement shall be valid unless in writing and signed by all parties hereto.

Contractor:	David Parker	1/30/2024
	Citadel Craftsman, LLC	Date
	PROPOSAL: The above prices, speed. You are authorized to do to	scope, specifications and conditions are satisfactor the work specified.
Client:		
	Hatley, Mitch & Jennifer	Date



CertaPro Painters of Charlotte and Matthews, NC 624 Matthews Mint-Hill Rd Suite 104 Matthews, NC 28105 704-341-4668

Certapro comichariotte-Malares

COMMERCIAL EXTERIOR Job #: JOB-1390-1193 Date 02/27/2024

> SHERWIN WILLIAMS

We proudly feature Sherwin-Williams paints and stairs

#### JOB SITE

#### **Lowell Building Trim**

105 1st St Lowell, NC 28098(704) 677-2329

jbhatley@yahoo.com

PREPARED BY

#### Tim Duty

Commercial Sales Associate

**5** 704-213-1079

tduty@certapro.com



#### CLIENT

#### **Lowell Building**

105 1st St Lowell, NC 28098 **\** (704) 677-2329

jbhatley@yahoo.com

#### **CLIENT CONTACTS**

Jennifer Hatley

M: 7046772329

E: jbhatley@yahoo.com

#### PRICING:

Base Price:	\$0.00
Clean, Prepare & Paint - Misc. Exterior Trim items	\$4,812.06
Subtotal:	\$4,812.06
Total:	\$4,812.06
Balance	\$4,812.06

## **GENERAL SCOPE OF WORK**

#### PROJECT:

Client wishes to refresh the white trim on the front and right sides of this establishment. There is peeling present, some surface rust as well as a 30' section that is missing crown molding. New molding will be installed by CertaPro. All items will remain the same color and sheen. This project is scheduled for standard day work and is priced accordingly. A 40' boom lift will be used for this project and parking spaces will need to be emptied to allow for ease of lift movement. This project will take approximately 3 business days to complete.

#### SCOPE:(CertaPro will perform the following)

\*\*Prepare & Paint these items\*\*

- · Metal Paneling along the roof line
- · Crown molding
- Window Frames
- · Right side windows
- Soffit
- Transition boards

#### PREPARATION: (Specific to this project)

- · Pressure wash/hand clean all surfaces to be painted
- · Scuff sand all surfaces to be painted
- · Scrape/Sand all peeling areas (a profile may remain)

- · Wire wheel/wire brush rusting areas
- · Install new crown molding where currently missing
- · Mask/Cover all fixtures, hardware, concrete, etc.

#### PAINT: (Two Top coats will be applied)

- · Sherwin Williams Pro Industrial Enamel Alkyd Gloss (lintels)
- Sherwin Williams Pro Industrial DTM Acrylic Gloss (metal partition)
- · Sherwin Williams Duration Exterior Acrylic Gloss (wood substrates)

#### LOGISTICS:

- · Client will need to notify tenants of the project and its duration
- · Client will need to clear parking areas for lift usage
- · Client will need to provide colors within 1 week of project approval date

#### **INCLUDES AND EXCLUDES**

#### INCLUDES:

- Lintels
- Siding
- · Trim
- Window Frames
- Windows

#### **EXCLUDES:**

· Any Surface not specified in the proposal

#### SURFACE PREPARATION

- · Caulk failed areas where previously caulked on surfaces we are painting
- · Pressure Wash or Hand Clean surfaces to remove dirt and or mildew
- · Prime Bare or New Work
- · Scrape and or wire wheel clean rusted areas
- · Scrape loose and or peeling paint to sound surface
- Scuff Sand and or degloss where necessary to promote adhesion

## Types of Preparation if specified by type from project general scope above:

Unless noted above, then Typical level of preparation to specified substrates would be applied to the project quoted.

## TYPICAL STANDARD LEVEL OF PREP

Unless stated otherwise in pictures and/or text in this proposal, this project is priced to include our standard level of prep. This includes the following:

- Wash or wipe down surfaces being painted.
- Scrape and sand loose and peeling paint. Please Note\*\* Scraping and sanding will not result in a smooth finish. There will be ups and downs where paint was removed.
- Scrape rusted areas to remove surface rust, spot prime rusted areas.
- Spot priming bare surfaces in areas being painted. We do not spot prime areas being stained.
- Window glazing. as needed, if we are painting windows.
- Puttying, caulking, and wood filling as needed.
- Masonry Patching where needed. Please Note\*\* Masonry patching will not mimic the current texture of the masonry surface.

This level of prep DOES NOT include (Unless specified otherwise in this proposal) the following:

- Wood replacement
- Fixing imperfections that require feather sanding and Epoxy patching application.
- Full re-caulking if caulk is not failing or missing.
- Re-sculpting trim and siding where damaged.
- Stripping existing surface coating.

**High Level** of prep will include the level of Typical standard but to include additional preparations to smooth profile of edges on surfaces where peeling. This does not include coating removal of substrates. Smoothing profile is either mechanically or by hand as necessary.

Marginal level of prep is only to include cleaning surfaces to be painted and specifically detailing what items are to be repaired, smoothed or scraped to achieve desired project goal.

#### SET-UP

#### **CUSTOMER TO:**

Keep vehicles away from project work areas , Move any plants or décor items away from work areas , To be available at start of project, periodic updates and inspections when needed. , Trim back foliage from surfaces to be painted

#### **CERTAPRO WILL COVER & PROTECT**

Bushes and or Flower beds , Driveway or Walkways , Light Fixtures or Security systems , Surfaces not to be painted or stained

#### **CLEAN UP**

Daily: Ladders are taken down and stored in a designated area along with all other tools and supplies. All debris will be cleaned up removed from the property or deposited in the appropriate trash receptacle according to the customer's preference.

Upon Completion: All tools, supplies & equipment will be removed from the property.

#### PROPOSAL AND COLOR SPECIFICATIONS

Surface/Item	Product	Paint / Primer Coats	Color
Included Details			
Clean, Prepare & Paint - Misc. Exterior Trim items			
Lintels	Pro Industrial Enamel-Alkyd/Oil-Gloss	2/0	
Metal Siding	Pro Industrial DTM-100% Acrylic-Semi- Gloss	2/0	
Wood Substrates	Duration-Acrylic Latex-Gloss	2/0	

# **ADDENDUM - ALL PICTURES**





#### NOTES

Thank you for allowing CertaPro the opportunity to provide you with a Proposal for your Project. We will communicate with you on a periodic basis to update you on the progress of the project. Our goal from start to finish is to provide you with an "Excellent Painting Experience."

This Proposal is for an Exterior Painting Project. During your project you will be assigned a Job Site Supervisor (JSS). The JSS is on site to paint, run the painting crew and to be available to address any of your concerns throughout the project.

The number of paint coats are noted on the proposal, if additional coats are necessary, there will be an additional charge.

At the end of the project we will clean up and perform a final walk through with you. At this time if you have any concerns or touch ups needed, please alert the Job Site Supervisor to handle these concerns.

CertaPro complies with all local, state and federal laws; including but not limited to the EPA Lead-Safe program. If you suspect lead please notify us immediately.

WARRANTY ON ALL WORK: We warranty all our work for 2 years against blistering and peeling. This is not just a "handshake" warranty. This is a legal document.

#### CertaPro Painters would be honored to be awarded your painting project!

This offer is valid for 60 days.

#### **ADDITIONAL NOTES**

#### PICKING YOUR COLORS

To pick your colors, please go to the nearest Sherwin Williams or nearest paint store. We will need the color name, color number that you would like us to use. Color choices should be given to CertaPro no later than 5 days before your projects start date to avoid delays.

#### **ROTTING WOOD**

If rotted wood is identified during the painting project, you will be notified. CertaPro will provide a cost estimate for repairs prior to starting repairs. It is not always possible to identify rotting wood during the estimating process.

#### 3rd COAT OF PAINT:

There are certain paint colors (especially bold deep colors) that require more than two (2) coats of paint to achieve proper hiding. At the time of the estimate CertaPro Painters does not know what customer's final color choice will be, therefore, should customer select one of these hard to cover colors CertaPro Painters reserves the right to amend the proposal for the additional labor and materials.

## PAYMENT METHODS AND TERMS:

We accept checks and credit cards. The credit cards will require a 3% processing fee.

If paying with check please provide check made out to CertaPro Painters and give to the Job Site Supervisor assigned to your project. If paying by credit card please contact our office at 704-766-2780.. EZPay is for Single family residents only, not available on Commercial or Multi-Family buildings.

Commercial projects will require a deposit on projects of 50k or more and progress payments TBD. Payment is due in full upon completion of the project.

Customer can cancel project within 3 days of signing without penalty. If cancellation occurs after 3 days, then 10% of price of main scope of work will be due from client.

#### **SIGNATURES**

CertaPro Painters Authorized Signature	Date	Authorized Client Signature	Date
		Authorized Client Representative N	ame & Title
		Client	

#### PROPERTY PHOTO AND VIDEO RELEASE

By checking this box, I consent to CertaPro Painters®, its employees, franchisees, representatives, agents, and affiliates (collectively "CertaPro"), taking photographs and video of the property identified in this Proposal (the "Content"). I irrevocably authorize CertaPro to use, copyright, and publish the Content in any media format and agree to release CertaPro from any liability associated with its use of the Content. I represent and warrant that I have the legal capacity to agree to such release, either on my own behalf or on behalf of the property's owner. I acknowledge CertaPro is not responsible for any unauthorized third-party uses of the Content and waive any rights that I, or the property's owner, may have in connection with the Content.

Customer Initials Date

#### PAYMENT DETAILS

Payment is due: In full upon job completion

#### THE CERTAINTY PLEDGE®

#### Schedule & Routine

- · Some customers may be present during this project.
- Monday Friday (8am-5pm)

#### Site

- · No
- · No
- Yes
- Yes

#### PAYMENT METHODS AND TERMS:

We accept checks e-checks and credit cards. The credit cards will require a 3% processing fee.

Commercial projects will require a deposit on projects of 50k or more and progress payments TBD. Payment is due in full upon completion of the project. If client requires additional insurance of high risk or specific bond, additional cost would apply. Customer can cancel project within 3 days of signing without penalty. If cancellation occurs after 3 days, then 10% of price of main scope of work will be due from client.

Payment terms unless written or agreed upon will be net 30 days. Upon completion of project invoice will be submitted for payment. Failure to pay within 30 days of dated invoice will be subject to 3% late fee per month. Subsequent invoice payments not received over 60 days are subject to collections cost and attorney fees.

#### COMMERCIAL DEFINITIONS AND CONDITIONS OF THIS CONTRACT

RELATIONSHIP — The individual giving you this proposal is an independent contractor licensed by CertaPro Painters® to use its systems and trademarks to operate a painting franchise. The work will be completed by the independent franchised contractor. Please make any check payable to the franchise shown on the front of this proposal.

COLORS — Colors may be chosen by the client prior to commencement of work. If, after the job starts, a color change is required, the independent Contractor will have to charge for time and material expenses incurred on the original color.

UNFORESEEN CONDITIONS — Should conditions arise which could not be determined by visual inspection prior to starting work, the client must pay an agreed upon extra for the completion of such work.

PROPOSAL — This proposal is valid for 60 days after it was written. In addition, the Independent Franchised Contractor should be informed of your desire to have the work done and receive a signed copy of the proposal before work is to be started.

#### ATTENTION CLIENT:

YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE BELOW NOTICE OF CANCELLATION FOR AN EXPLANATION OF THIS RIGHT. (SATURDAY IS A LEGAL BUSINESS DAY IN CONNECTICUT.) THIS SALE IS SUBJECT TO THE PROVISIONS OF THE HOME SOLICITATION SALES ACT AND THE HOME IMPROVEMENT ACT. THIS INSTRUMENT IS NOT NEGOTIABLE.

#### NOTICE OF CANCELLATION

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE. IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN TEN BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED. IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY, IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER RECARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK. IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN TWENTY DAYS OF THE DATE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBJUGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREED TO RETURN THE GOODS AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT. TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO:

#### **LIMITED TWO YEAR WARRANTY**

Subject to the limitation set forth below, for a period of 24 months from the date of completion of the work described on the front of this contract, the independent Franchise Owner named on the front of this contract (the "Contractor") will repair peeling, bilatering or chipping paint resulting from defective workmanship.

#### THIS LIMITED WARRANTY DOES NOT COVER:

· Any work where the Contractor did not supply the paint or other materials.

Name of Seller Certa Pro Painters of Charlotte and Matthews, NC

- · Any work which was not performed by the Contractor.
- Varnished surfaces.
- · Surfaces made of, or containing, galvanized metal.
- · The cost of paint required to perform the repairs.
- Repairs to horizontal surfaces or any surface that, by virtue of its design permits moisture to collect. Surfaces include, but are not limited to, decks, railings, stairs, porches, roofs and wood gutters.
- Exact paint match as environmental conditions will affect the color and finish of all paints over time.
- . Any repairs which are necessitated as a result of a defect in the paint regardless of whether the paint was supplied by the Contractor or the customer.
- · Bleeding caused by knots, rust or cedar.
- · Cracks in drywall, plaster or wood.
- · Peeling, blistering or chipping where they are caused by:
  - mill-glazing from smooth cedar
  - ordinary wear and tear.
  - abnormal use or misuse.
  - · peeling of layers of paint existing prior to the work performed by the Contractor.
  - structural defects.
  - · settling or movement.
  - moisture content of the substrate.
  - abrasion, mechanical demage, abrasive cleaning, abuse or demage resulting from use of chemicals or cleaning agents or exposure to harmful solids, liquids or gases.
  - damage or defects caused in whole or in part by reason of fire, explosion, flood, acts of God, extreme weather conditions, misuse, alteration, abuse, vandalism, negligence, or any other similar causes beyond the control of the Contractor.

Repairs under this limited warranty will be performed only on the specific areas where peeling, bilistering or chipping has occurred and only to the level of surface preparation described in the preparation section of the Contract.

#### FOR THIS WARRANTY TO BE VALID, YOU MUST:

Pay the full contract price.

- · Retain a copy of the original contract.
- · Retain a copy of your cancelled check or other evidence of payment in full.
- · Pay for all materials used to perform the repairs.
- . Make the property accessible to the Contractor, or his employees, to perform the repairs.

THIS LIMITED WARRANTY IS THE ONLY EXPRESS WARRANTY MADE BY THE CONTRACTOR AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. THIS WARRANTY COVERS ONLY THOSE SERVICES PROVIDED BY THE CONTRACTOR TO THE ORIGINAL PURCHASER NAMED ON THE FRONT OF THIS CONTRACT. IN NO EVENT SHALL THE CONTRACTOR BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES IN EXCESS OF THE ORIGINAL CONTRACT PRICE. THIS WARRANTY MAY NOT BE ALTERED OR EXTENDED FOR ANY PURPOSE UNLESS DONE SO IN WRITING IN A DOCUMENT EXECUTED BY ALL PARTIES TO THIS CONTRACT.

This warranty gives you specific legal rights. Some jurisdictions do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you. Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you.

For warranty service, you should contact your Confractor to schedule an inspection of your property by calling CertaPro Painters® at 800.462.3782.

From:

notify@proudcity.com

Sent:

Thursday, February 8, 2024 11:31 AM

To:

Joe Gates

Subject:

New submission from Facade Grant Application

## **Property Information**

#### **Business Name**

York Properties LLC

#### Phone

704 824-5626

#### **Email**

yorkpropertyllc@gmail.com

## **Business Address**

2311 Providence Road Charlotte, North Carolina 28211 United States Map It



# **Business Category**

- Retail
- Office

# How long has your business been established at this location?

2006

# Is the property on the Historic District Registry?

No

# **Applicant Information**

# Name

Robert York

# Phone

7048245626

# Mailing Address

2311 Providence Road Charlotte, North Carolina 28211 United States Map It

## **Email**

yorkpropertyllc@gmail.com

#### Federal Tax ID Number

311772021

#### **Project Description**

Please describe façade improvements you plan to implement with the façade grant award. (please specify).

#1 Pressure wash the exterior of the building #2 Repaint parking lot spaces

This form will only allow one attachment, can you provide an email and I'll send the required documentation? Thanks

Scope of Proposed Project (include a summary of the building's current condition, areas to be improved and how, as well as any proposed materials or colors)

**ESTIMATE** Clear-View Inc. Bobby Bishop P.O. Box 271 Belmont, NC 28012 bbishop@clear-viewnc.com (704)747-8284

http://www.clear-viewnc.com

York Properties LLC

Bill to

Robert York

York Properties LLC 117 West First Street Lowell, NC 28098 Estimate details Estimate no.: 8663

Estimate date: 02/01/2024

# Date Product or service SKU Qty Rate Amount

1. PW Services 1 \$1,170.00 \$1,170.00

Project:

York Properties LLC 117 West First Street Lowell, NC 28098 Estimate Date: 2/1/2024

Pressure Washing - Type: Commercial Stucco (900 PSI Lite Wash) Square Footage: 4,500 SqFt

Average Cost Per Square Foot - PW: .26 Per SqFt

Surface Condition: Average

Water Source: Customer (Clear-View Inc - Supply 250 Gallons)

Equipment: Hotsy Hotwater Pressure Washer

Total Project Cost: \$1,170.00

Note to customer

Thank You for the Opportunity to Bid this Work!!

This quote may be withdrawn if not accepted within 30 days.

Material pricing can only be guaranteed for 30 days from date listed on this quote. We will advise of price increases in materials prior to any work being scheduled.

Late Fee(s): 5% Late Fee - Will be added if payment has not been

made by invoice due date. Total \$1,170.0

Required Documentation (these items must be submitted with the signed Application)

Estimate-2-PW-1.pdf

## Consent

I agree to comply with the guidelines and standards of the City of Lowell Façade Grant Program and I understand that this is a voluntary program, under which the City has the right to approve or deny any project or proposal or portions thereof. I hereby certify that I am the owner or authorized agent and will comply with all applicable laws regulating the work being proposed. I understand it is my responsibility to inform the City of Lowell of any changes that are made to the work that is outlined in this application.

#### Date

02/08/2024

# J and E Detail LLC

137 Forest Dellinger Rd Bessemer City, NC 28016 US jkellydodson@hotmail.com



# **Estimate**

**ADDRESS** 

Robert York York Property LLC 117 W First ST Lowell, NC 28098 SHIP TO

Robert York York Property LLC 117 W First ST Lowell, NC 28098 **ESTIMATE #** 1295 **DATE** 02/01/2024

DATE ACTIVITY	DESCRIPTION	QTY	RATE	TNUOMA
Pressure Wash	Clean 4X Fabric awnings	1	300.00	300.00
Soft-Wash	Clean all exterior surfaces of building. Soft washing is a process that uses Sodium Hypochlorite (Industrial Bleach) as well as low pressure to clean surfaces. This is much gentler on surfaces and prevents damage.	1	872.00	872.00
TERMS  1. Payment is due at completion of job.  2. Job can be completed in one day.	SUBTOTAL TAX TOTAL	· · · · · · · · · · · · · · · · · · ·	\$1	1,172.00 0.00 <b>,172.00</b>

Accepted By

Accepted Date







#### **Regular City Council Meeting Memorandum**

Prepared By: Scott Attaway

Resolutions for Approval of (1) the Inter Local Agreement with Gaston County for Enforcement Services of the Gaston County Soil Erosion & Sedimentation Control Ordinance; and (2) for the Inter Local Agreement with Gaston County for Enforcement Services of the Gaston County Stormwater Ordinance

Meeting	Agenda Group
Tuesday, April 9, 2024, 6:00 PM	New Business Item: 6F
Reference File	Presented By

To: Scott Attaway, City Manager

From: Jamie Watkins, Stormwater Administrator

Date: 4-3-2024

Re: Resolutions for Approval of (1) the Inter Local Agreement with Gaston County for Enforcement Services of the Gaston County Soil Erosion & Sedimentation Control Ordinance; and (2) for the Inter Local Agreement with Gaston County for Enforcement Services of the Gaston County Stormwater Ordinance

Staff is requesting approval of the updated Inter Local Agreement with Gaston County for Enforcement Services of the Gaston County Soil Erosion & Sedimentation Control Ordinance.

Through this agreement, Minimum Measure #4 of the City of Lowell's National Pollutant Discharge Elimination System, (NPDES), Municipal Separate Storm Sewer System (MS4) Permit NCS000444 will be fulfilled.

Staff is also requesting approval of the updated Inter Local Agreement with Gaston County for Enforcement Services of the Gaston County Stormwater Ordinance. Through this agreement, Minimum Measure #5 of the City of Lowell's National Pollutant Discharge Elimination System, (NPDES), Municipal Separate Storm Sewer System (MS4) Permit NCS000444 will be fulfilled.

#### RECOMMENDATION

It is therefore recommended that:

- (1) the updated Inter Local Agreement with Gaston County for Enforcement Services of the Gaston County Soil Erosion & Sedimentation Control Ordinance be approved.
- (2) the updated Inter Local Agreement with Gaston County for Enforcement Services of the Gaston County Stormwater Ordinance be approved.

#### **Attachments**

SEC Interlocal to be SIGNED.pdf

RS 05-2024 To Adopt Interlocal Agreement for Soil and Erosion Control.pdf

SW Interlocal to be SIGNED.pdf

RS 06-2024 To Approve the Interlocal Agreement with Gaston County for Enforcement Services of the Gaston County Stormwater Ordinance.pdf

#### NORTH CAROLINA GASTON COUNTY

# INTERLOCAL AGREEMENT FOR ENFORCEMENT SERVICES OF THE GASTON COUNTY SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE

This agreement made and entered into on the \_\_\_\_ day of \_\_\_\_, 2024 by and between **GASTON COUNTY**, a corporate and political body and a subdivision of the State of North Carolina, hereinafter referred to as "County", and the City of Lowell, a municipal corporation having a charter granted by the State of North Carolina, hereinafter referred to as "Municipality".

#### **WITNESSETH:**

WHEREAS, Article 20 of Chapter 160A of the North Carolina General Statutes authorizes the contractual exercise by one unit of local government for one or more other units of any administrative or governmental power, function, public enterprise, right, privilege, or immunity of local government; and,

WHEREAS, Article 6 of Chapter 153A of the North Carolina General Statues authorizes the governing board of any City to permit any ordinance adopted by a County to be applicable within the City; and,

**WHEREAS**, the Municipality has requested that the County provide enforcement services within the corporate boundaries of the Municipality for the Gaston County Soil Erosion and Sedimentation Control Ordinance; and,

WHEREAS, pursuant to N.C. Gen Stat. Chapter 160A, Article 20 upon official request of the governing body of any municipality within the County, the Gaston County Board of Commissioners may by agreement exercise enforcement powers within said municipality and upon such direction may do so until such time as the Municipal governing body officially withdraws its request; and,

**WHEREAS**, the Gaston County Board of Commissioners upon approval of a resolution, and with written notice, may withdraw the offering of the service to the Municipality.

**WHEREAS**, the City of Lowell, NC, City Council, upon approval of a resolution, and with written notice, may withdraw the offering of the services from the County.

**NOW, THEREFORE**, it is agreed by the parties hereto that the County through the Gaston County Department of Natural Resources will provide enforcement services for Gaston County Soil Erosion and Sedimentation Control Ordinance in the corporate limits of the Municipality on the terms and conditions set forth below:

1. <u>Purpose.</u> The purpose of this Agreement is to set forth the terms and conditions for the Municipality to contract with the County for enforcement services for Gaston County Soil Erosion and Sedimentation Control Ordinance inside its corporate limits and to confer to the County the necessary geographical and subject matter jurisdiction to carry out the intent of this Agreement.

1.	<b>2.</b> Term. The term of this Agreement is for one year, from	, 2024 through
	, 2025. This Agreement shall automatically renew each y	ear thereafter, on
	the anniversary of adoption, for successive one (1) year terms unless termin	nated as provided
	herein.	_

#### 3. Responsibilities.

#### **A. Municipality.** The Municipality agrees to:

- (1) allow the County to retain any fees or fines collected in accordance with the Gaston County Fees Schedule, and in accordance with the law;
- (2) perform a preliminary submittal review before allowing plans to be submitted to County. Preliminary review will be to ensure items of concern to the Municipality or otherwise regulated by Municipal Ordinance (example: Driveway, tree save, etc.) are addressed prior to issuance of permit.
- (3) any erosion control measures that are added as part of conditions from a Conditional Rezoning, that are outside of the scope of the adopted Gaston County Soil Erosion and Sediment Control Ordinance will be the sole responsibility of the Municipality to enforce and maintain.
- (4) defend all claims against it and its employees for incidents related to the enforcement activities to be conducted pursuant to this Agreement that occur prior to the date of this Agreement and indemnify and hold the County harmless from any judgments against it and said employees. The County agrees to defend all claims against the Municipality arising out of like incidents that occur from and after the date of this Agreement, and further agrees to indemnify and hold the Municipality harmless from any judgments against the Municipality resulting therefrom, unless the claims or liability arise solely from the actions of the Municipality;

### **B.** <u>County.</u> The County through the County Department of Natural Resources agrees to:

- (1) review plans submitted pursuant to the Gaston County Soil Erosion and Sediment Control Ordinance for compliance therewith and issue permits for those plans found to be in compliance.
- (2) ensure that all construction activities disturbing one acre or more and are subject to the scope of the Gaston County Soil Erosion and Sediment Control Ordinance, obtain an NCDEQ required NCG01 Permit for the construction activity. During scheduled erosion control inspections, monitor project site for NCG01 Permit compliance and report reoccurring non-compliance issues to NCDEQ and Municipality.
- (3) provide adequate enforcement staff to be able to effectively enforce the Gaston County Soil Erosion and Sedimentation Control Ordinance within the Municipality's corporate limits; this includes responding to citizen and municipal

- complaints within a 48-hour window of time from the receipt of the complaint;
- (4) seek civil and criminal enforcement of the law when necessary in the County's discretion.
- 4. Geographic and Subject Matter Jurisdiction. To the fullest extent permitted by the laws of the State of North Carolina and the United States, the Municipality hereby grants to the County the authority to perform the herein described services and, to that extent, to enforce the County Stormwater Management Ordinance as it now exists, or may be amended from time to time, and the County accepts the authority herein granted and agrees fully and faithfully to perform the duties and responsibilities implied by the acceptance of this grant subject to the terms and conditions of this agreement.
- **5.** <u>Amendment.</u> This Agreement may only be amended in writing upon the signature of both parties. No oral agreements or resolutions shall have any effect.
- **6.** Entire Agreement. This Agreement is the only agreement between the parties and contains all the terms agreed upon and replaces any previous agreements regarding the subject matter. This Agreement has no effect upon enforcement of codes or ordinances not specifically mentioned. If any part of this Agreement is held invalid such decision shall not render the document invalid.

#### 7. Governing Law & Forum:

This Agreement shall be deemed to have been made in the State of North Carolina, and its validity, construction and effect shall be governed by the laws of the State of North Carolina. The parties hereto agree that any action brought by either party to enforce the terms of this Agreement shall be filed in the Superior Court of Gaston County, State of North Carolina.

Dispute Resolution. In addition to and prior to litigation, the parties shall endeavor to settle disputes first by negotiation between the parties, and, if negotiation is unsuccessful, then by non-binding mediation. Demand for mediation shall be filed in writing with the other party to this Agreement. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of repose or limitations. Each party hereto submits to the exclusive jurisdiction in the state and federal courts having jurisdiction in Gaston County, North Carolina and irrevocably waives any defenses to such venue including any defense based upon the principles of forum non conveniens.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed in duplicate for themselves for their duly authorized officers of the day and year first above written.

### **GASTON COUNTY**

By:	
•	County Manager
ATTEST:	
Clerk to the Board	
APPROVED AS TO FORM:	
County Attorney	
	(NAME OF MUNICIPALITY)
	By:
	Mayor Larry Simonds
ATTEST:	
Clerk Cheryl Ramsey	File: Intloc A gree Soil Fros & Sed Cont Ord my



# RESOLUTION APPROVING THE INTERLOCAL AGREEMENT WITH GASTON COUNTY FOR ENFORCEMENT SERVICES OF THE GASTON COUNTY SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE

#### **RESOLUTION 05-2024**

WHEREAS, Article 20 of Chapter 160A of the North Carolina General Statutes authorizes the contractual exercise by one unit of local government for one or more other units of any administrative or governmental power, function, public enterprise, right, privilege, or immunity of local government; and,

**WHEREAS,** Article 6 of Chapter 153A of the North Carolina General Statues authorizes the governing board of any City to permit any ordinance adopted by a County to be applicable within the City; and,

**WHEREAS,** the City of Lowell has requested that Gaston County provide enforcement services within the corporate boundaries of the City of Lowell for the Gaston County Soil Erosion and Sedimentation Control Ordinance; and,

WHEREAS, pursuant to N.C. Gen Stat. Chapter 160A, Article 20 upon official request of the governing body of any municipality within the County, the Gaston County Board of Commissioners may by agreement exercise enforcement powers within said municipality and upon such direction may do so until such time as the Municipal governing body officially withdraws its request; and,

**WHEREAS,** the Gaston County Board of Commissioners, upon approval of a resolution, and with written notice, may withdraw the offering of the service to City of Lowell

**WHEREAS,** the City of Lowell, City Council upon approval of a resolution, and with written notice, may withdraw the offering of the service from Gaston County

#### NOW, THEREFORE, BE IT RESOLVED BY THE <u>CITY COUNCIL</u> OF THE <u>CITY OF LOWELL:</u>

That it is agreed by the parties hereto that the County, through the Gaston County Department of Natural Resources, will provide enforcement services of the Gaston County Soil Erosion and Sedimentation Control Ordinance, within the corporate limits of the City of Lowell, on the terms and conditions set forth below:

Adopted this the	, day of	at <b>City of Lowell,</b> North Carolina.
		Larry Simonds, Mayor
Cheryl Ramsey, City Clerk		

#### NORTH CAROLINA GASTON COUNTY

## INTERLOCAL AGREEMENT FOR ENFORCEMENT SERVICES OF THE GASTON COUNTY STORMWATER ORDINANCE

OF THE GASTON COUNTY STORMWATER ORDINANCE
This agreement made and entered into on the day of, 2024 by and between
GASTON COUNTY, a corporate and political body and a subdivision of the State of North Carolina,
hereinafter referred to as "County", and the City of Lowell, a municipal corporation having a charter granted
by the State of North Carolina, hereinafter referred to as "Municipality".
WITNESSETH:
WHEREAS, Article 20 of Chapter 160A of the North Carolina General Statures authorizes the
contractual exercise by one unit of local government for one or more other units of any administrative or
governmental power, function, public enterprise, right, privilege, or immunity of local government; and

**WHEREAS**, Article 6 of Chapter 153A of the North Carolina General Statues authorizes the governing board of any City to permit any ordinance adopted by a County to be applicable within the City; and,

**WHEREAS**, the Municipality has requested that the County provide plan review and permitting within the corporate boundaries of the Municipality for the post-construction portion of the Gaston County Stormwater Ordinance; and

WHEREAS, pursuant to N.C. General Stature Chapter 160A, Article 20, upon official request of the governing body of any municipality within the County, the Gaston County Board of Commissioners may through agreement exercise enforcement powers within said municipality and upon such direction may do so until such time as the Municipal governing body officially withdraws its request; and

WHEREAS, the Gaston County Board of Commissioners, upon approval of a resolution, and with written notice, may withdraw the offering of the services to the Municipality.

**WHEREAS**, the City of Lowell, NC, City Council, upon approval of a resolution, and with written notice, may withdraw the offering of the services from the County.

**NOW THEREFORE**, it is agreed by the parties hereto that the County through the Gaston County Department of Natural Resources will provide plan review and permitting for post-construction stormwater portion of the Gaston County Stormwater Ordinance in the corporate limits of the Municipality on the terms and conditions set forth below:

1.	Purpose.	The	purpose	of	this	Agreement	is	to	set	forth	the	terms	and	conditions	for	the
	Municipali	ity to	contract	with	the 6	County for p	lan	rev	iew	, perm	nittin	g, and	enfor	cement ser	vices	s for
	the Gaston	(Cou	nty Storn	nwat	ter O	rdinance in	side	its	cor	porate	lim	its and	l to c	onfer to the	Cou	unty
	the necessa	ary ge	ographic	al ar	ıd su	bject matter	juri	isdi	ctio	n to ca	rry (	out the	inten	t of this Ag	reem	ent.

2.	Term.	The term	of this	Agreement	is one	year from_		_, 2024	through
		, 2025.	This Agr	eement shall	automat	ically renew	each year	thereafter,	on the
	anniversary	of adoption	, for succe	essive one (1)	year terr	ns unless teri	minated as p	provided he	erein.

#### 3. Responsibilities.

#### A. Municipality. The Municipality agrees to:

- (1) allow the County to retain any plan review and Permitting fees for Post-Construction Stormwater per the County Fees Schedule;
- (2) defend all claims against it and its employees for incidents that occur prior to the date of this Agreement and indemnify and hold the County harmless from any judgements against it and said employees. The County agrees to defend all claims against the Municipality arising out of like incidents that occur from and after the date of this Agreement and further agrees to indemnify and hold the Municipality harmless from any judgements against the Municipality resulting therefrom, unless the claims or liability arise solely from the actions of the Municipality.
- (3) withhold applicable permits and approvals, including but not limited to zoning permits and final plat approvals, until notified of compliance with the Stormwater Ordinance;
- (4) obtain performance surety bonds on all proposed Stormwater Control Measures. These bonds shall be held until all final documentation for completed Stormwater Control Measures have been received by the County;
- (5) any Stormwater Control measures that are added as part of conditions from a conditional rezoning, that are outside of the scope of the adopted Gaston County Stormwater Ordinance will be the sole responsibility of the municipality to enforce;
- (6) administer the Municipality's Stormwater Management Program including programs addressing the Six Minimum Measures of the Municipality's NPDES MS4 Permit;
  - a) Public Involvement and Participation,
  - b) Public Education and Outreach,
  - c) Construction Site Runoff: County is responsible for plan review, permitting, inspection, and enforcement of Soil Erosion & Sedimentation Control Ordinance on all land disturbance activities (minor / major subdivisions and single lot permits) via the respective Soil Erosion & Sedimentation Control Ordinance Interlocal Agreement.
  - d) Post-Construction Site Runoff: County is responsible for only the responsibilities listed below in Part 3.B of this Interlocal Agreement. The Municipality is responsible for all remaining NPDES MS4 Permit Post-Construction Runoff requirements.
  - e) Illicit Discharge Detection and Elimination,
  - f) Good Housekeeping Pollution Prevention
  - g) any applicable Total Maximum Daily Load (TMDLs) requirements
- B. **County.** The County, through the Gaston County Department of Natural Resources, agrees to:
  - (1) review plans submitted pursuant to the Gaston County Stormwater Ordinance for compliance therewith and issue permits for those plans found to be in compliance;
    - a. coordinate with Municipality on final review of plan submittals to verify acceptance of proposed proprietary Stormwater Control Measure(s) by Municipality.

- (2) inspect construction sites, and monitor Stormwater Control Measure(s) to completion of construction, to determine compliance with approved and permitted stormwater management plans;
- (3) notify Municipality of any violations of the Stormwater Ordinance during, and to the completion of, the construction process and the final design engineer certification;
- (4) collect all final Stormwater Control Measure(s) documentation; As part of this process, Gaston County will coordinate with Municipality for the release of any bonds for such infrastructure;
- (5) convey all final Stormwater Control Measure(s) documentation as outlined in the Gaston County Stormwater Control Measure Close Out Report to Municipality for record keeping and the Municipality's continuing enforcement of the post-construction portion of the Stormwater Management Ordinance per the Municipality's NPDES MS4 Permit;
- (6) Seek Civil and Criminal enforcement of the law in the mutual discretion of the County and the Municipality.
- 4. Geographic and Subject Matter Jurisdiction. To the fullest extent permitted by the laws of the State of North Carolina and the United States, the Municipality hereby grants to the County the authority to perform the herein described services and, to that extent, to enforce the County Stormwater Management Ordinance as it now exists, or may be amended from time to time, and the County accepts the authority herein granted and agrees fully and faithfully to perform the duties and responsibilities implied by the acceptance of this grant subject to the terms and conditions of this agreement.
- **5. Amendment**. This Agreement may only be amended in writing upon the signature of both parties. No oral agreements or resolutions shall have any effect.
- **6. Entire Agreement**. This Agreement is the only agreement between the parties, contains all the terms agreed upon, and replaces any previous agreements regarding the subject matter. This Agreement has no effect upon enforcement of codes or ordinances not specifically mentioned. If any part of this Agreement is held invalid, such decision shall not render the document invalid.

#### 7. Governing Law & Forum:

This Agreement shall be deemed to have been made in the State of North Carolina, and its validity, construction and effect shall be governed by the laws of the State of North Carolina. The parties hereto agree that any action brought by either party to enforce the terms of this Agreement shall be filed in the Superior Court of Gaston County, State of North Carolina.

Dispute Resolution. In addition to and prior to litigation, the parties shall endeavor to settle disputes first by negotiation between the parties, and, if negotiation is unsuccessful, then by non-binding mediation. Demand for mediation shall be filed in writing with the other party to this Agreement. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question

would be barred by the applicable statute of repose or limitations. Each party hereto submits to the exclusive jurisdiction in the state and federal courts having jurisdiction in Gaston County, North Carolina and irrevocably waives any defenses to such venue including any defense based upon the principles of forum non conveniens.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed in duplicate for themselves for their duly authorized officers of the day and year first above written.

**GASTON COUNTY** 

By:	
	County Manager
ATTEST:	
Clerk to the Board	
APPROVED AS TO FO	RM:
County Attorney	
	(NAME OF MUNICIPALITY)
	By: Mayor Larry Simonds
ATTEST:	Mayor Darry Officials
Clerk Cheryl Ramsey	File: IntlocAgreeSoilEros&SedContOrd.mw



## RESOLUTION APPROVING THE INTERLOCAL AGREEMENT WITH GASTON COUNTY FOR ENFORCEMENT SERVICES OF THE GASTON COUNTY STORMWATER ORDINANCE

#### **RESOLUTION 06-2024**

WHEREAS, Article 20 of Chapter 160A of the North Carolina General Statutes authorizes the contractual exercise by one unit of local government for one or more other units of any administrative or governmental power, function, public enterprise, right, privilege, or immunity of local government; and,

**WHEREAS,** Article 6 of Chapter 153A of the North Carolina General Statues authorizes the governing board of any City to permit any ordinance adopted by a County to be applicable within the City; and,

**WHEREAS,** the City of Lowell has requested that Gaston County provide plan review and permitting within the corporate boundaries of the Municipality for the post-construction portion of the Gaston County Stormwater Ordinance; and

WHEREAS, pursuant to N.C. Gen Stat. Chapter 160A, Article 20 upon official request of the governing body of any municipality within the County, the Gaston County Board of Commissioners may by agreement exercise enforcement powers within said municipality and upon such direction may do so until such time as the Municipal governing body officially withdraws its request; and,

**WHEREAS,** the Gaston County Board of Commissioners, upon approval of a resolution, and with written notice, may withdraw the offering of the service to City of Lowell

**WHEREAS,** the City of Lowell, City Council upon approval of a resolution, and with written notice, may withdraw the offering of the service from Gaston County

#### NOW, THEREFORE, BE IT RESOLVED BY THE <u>CITY COUNCIL</u> OF THE <u>CITY OF LOWELL:</u>

That it is agreed by the parties hereto that the County, through the Gaston County Department of Natural Resources, will provide plan review and permitting for the post-construction stormwater portion of the Gaston County Stormwater Ordinance, within the corporate limits of the City of Lowell, on the terms and conditions set forth below:

Adopted this the,	day of	at <b>City of Lowell,</b> North Carolina.
		Larry Simonds, Mayor
Cheryl Ramsey, City Clerk		