

**TOWN OF WEDDINGTON
REGULAR PLANNING BOARD MEETING
WEDDINGTON TOWN HALL
1924 Weddington Road
Weddington, NC 28104
JULY 23, 2018 – 7:00 P.M.**

AGENDA

1. OPEN THE MEETING
2. DETERMINATION OF QUORUM/ADDITIONS OR DELETIONS TO THE AGENDA
3. APPROVAL OF MINUTES
 - A. June 25, 2018 Regular Planning Board Meeting Minutes
4. PUBLIC HEARING
 - A. Review and Consideration of Temporary Use Permit Application for Mud Maze Event to be held at Hunter Farm on August 25, 2018 from 8:00 am to 3:00 pm
5. NEW BUSINESS
 - A. Land Use Plan Annual Review
 - B. Discussion of Land Use Plan Timeline for Revisions
 - C. Discussion of Conservation Subdivision Changes
 - D. Review and Consideration of Erosion Control Ordinance
6. UPDATE FROM TOWN PLANNER AND REPORT FROM JULY TOWN COUNCIL MEETING
7. ADJOURNMENT

**TOWN OF WEDDINGTON
REGULAR PLANNING BOARD MEETING
WEDDINGTON TOWN HALL
JUNE 25, 2018 – 7:00 P.M.
Minutes
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1. OPEN THE MEETING

Chairman Dow opened the meeting at 6:58 p.m.

2. DETERMINATION OF QUORUM/ADDITIONS OR DELETIONS TO THE AGENDA

Quorum was determined with all Planning Board members in attendance: Chairman Rob Dow, Board members Walt Hogan, Brad Prillaman, Barbara Harrison, Jim Vivian, Steve Godfrey, and Gerry Hartman

Staff present: Town Administrator/Planner Lisa Thompson and Town Clerk Karen Dewey

Visitors: Bill Deter, Sean Paone from WT Dickson

Chairman Dow suggested switching Old Business and New Business on the agenda. The Planning Board unanimously agreed.

3. APPROVAL OF MINUTES

A. May 29, 2018 Regular Planning Board Meeting Minutes

Board member Hartman requested that his question of the applicant for the Woodford Chase Subdivision asking how he sees reasonable use of property be included in the minutes and corrected the spelling of roundabout.

<i>Motion:</i>	Board member Hartman made a motion to approve the May 29, 2018 Regular Planning Board minutes as amended.
<i>Second:</i>	Board member Harrison
<i>Vote:</i>	The motion passed with a unanimous vote.

**** 4. NEW BUSINESS**

**A. Review and Recommendation of a Modification of the Subdivision Ordinance
Section 46-76(g) Cul de Sac for Weddington Acres (formerly Graham Allen)
Subdivision**

Mr. Paone was present for the applicant. Ms. Thompson presented the staff report. Graham Allen is requesting a modification of the subdivision ordinance from Section 46-76(g), related to cul de sac length. The request is for a 1,026 foot long cul de sac due to the shape of the lot. Originally, Planning Board recommended approval for at 762 ft. long cul de sac and the Town Council approved the modification after they requested the applicant eliminate flag

lots. The applicant is re-applying to go back to original plan. The applicant has agreed to construct a right turn taper lane off of Weddington Matthews Road because of concerns raised in individual conversations with Town Council members. Also, the PRD was approved by Town Council. Staff recommends two conditions if the Planning Board forwards the modification with a favorable recommendation:

- The amendments to the construction plans shall be reviewed and approved by staff.
- The revised plat shall be reviewed by Planning Board and approved by Town Council.

Chairman Dow asked if the applicant is going back to their original plan. Mr. Paone responded that they are, with slight differences: there is more open space. The change from original plan of over 700 foot cul de sac to a modified original plan from 2016, a 1025 foot cul de sac.

Ms. Thompson stated that there have been internal conversations between Applicant and some Councilmembers. The Council didn't see a safety concern with the cul de sac length, however, they would be more in favor of this plan if there was a right turn taper lane from Weddington Matthews Road into the subdivision. The Applicant is willing to add a right turn taper lane and the concept has been reviewed and approved by DOT.

Board member Hogan asked why the applicant wanted to go back to the original plan.

Chairman Dow gave some background on the subdivision: when the applicant came in with the original plan, the interim planner lead them to believe there was no other alternative, the Planning Board approved it and sent to the Town Council. The Council had issue with the long cul de sac. After some interactions with the developer, other options became feasible. The Council sent the plans back to the Planning Board, who unanimously recommended approval to the Town Council. The Town Council voted unanimously to approve the plan. Chairman Dow stated that the Applicant has an approved preliminary plat that meets town ordinance. He asked what material facts in the findings have changed since the last to presentation. Ms. Thompson responded that there were no changes.

Mr. Paone stated that after looking at the cost estimates, the additional cul de sac length makes the lower section lots larger. The modification for cul de sac length will give flexibility to move the houses on the lots to avoid placing them against the power easement.

Board member Vivian stated that he liked the original approved plan. He believes that the cul de sac length is not worth going back and forth on.

Board member Prillaman asked if the objective is to go back to the original submitted plan. Mr. Paone responded that it is, with the exception of the larger lots and elimination of the flag lots and the addition of the right turn taper lane into the subdivision.

Chairman Dow stated that the applicant has an approved plan already. The Planning Board is being asked for a recommendation of a plan that has already been turned down.

Board member Hartman asked how many cul de sacs are 1000 feet or near that length. Chairman Dow responded that has been brought up a lot; there are a lot of them and about 90% were approved by the County prior to Weddington zoning. He stated that until about 7 or 8 years ago, the Town had a 900 foot limit, but wanted 600 foot and let developers ask for a modification. There is a safety issue at some point.

1. ***There are special circumstances or conditions affecting said property such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of his land.*** Applicant response: *The elongated nature of the existing property, the environmental conditions, and the Town of Weddington Subdivision requirements (40,000 sq ft lots, detention ponds, etc) make accessing the southern portion of the property challenging without the proposed +1,000 linear feet roadway.* The Planning Board agrees that there are not special circumstances that will deprive the applicant of the reasonable use of his land. The applicant is in possession of an approved plan that meets the ordinances.
2. ***The modification is necessary for the preservation and enjoyment of a substantial property right of the petitioner.*** Applicant response: *The requested modification will allow the applicant to develop the southern portion of the property while maintaining a majority of the natural wetland areas that are included within the property.* The Planning Board agrees that this modification is not necessary; there is already an approved plan.
3. ***The circumstances giving rise to the need for the modification are peculiar to the parcel and are not generally characteristic of other parcels in the jurisdiction of this ordinance.*** Applicant response: *The subject property has a unique shape in that it is elongated, which limits the ability to provide multiple roadway infrastructure in a cost effective manner. The topography and environmental conditions of the site also eliminate the options to provide roadway connectivity to adjacent properties.* The Planning Board agrees that the approved plan already takes this into consideration.
4. ***The granting of the modification will not be detrimental to the public health, safety and welfare or injurious to other property in the territory in which said property is situated.*** Applicant response: *The proposed modification will be constructed to provide proper emergency access to all subdivision lots. The development will meet all other Town of Weddington Subdivision requirements. The modification requested for this property should not affect other property in the area.* The Planning Board agrees that the longer the cul de sac, the more isolated the houses become and thus a higher safety risk.
5. ***The modification will not vary the provisions of the Town of Weddington Subdivision Ordinance applicable to the property.*** Applicant response: *The proposed subdivision will meet all other Town of Weddington guidelines other than any items previously approved by the Town of Weddington Planning Board, Staff, or Town Council.* The Planning Board agrees that in approving this modification, it would vary the already approved plan, with a variance.

The Planning Board responses to all findings of fact are in the negative.

Motion: Board member Hartman made a motion to forward the Subdivision Modification Application to Town Council with an unfavorable

recommendation as they are already in possession of a modification approval and there has been no significant material change in the findings of fact that led to the original determination.

Second: Board member Hogan

Vote: The motion passed with a unanimous vote.

Mr. Paone asked: if the applicant wants to increase the cul de sac by only 100 feet, is the problem the length or the fact that there is already an approved plan that the Planning Board has issue with.

Chairman Dow responded that in his opinion, it's both. He stated that if the Town Council has changed their minds about the cul de sac limits, then the proper thing would be to start discussion and work on the pros and cons of the process of changing the ordinance. There is a limit for the cul de sac length, and the longer it is stretched, the more it is going against the ordinance.

B. Review and Consideration of Minor Subdivision for Wesley Chapel Volunteer Fire Department for a Portion of Parcel Number 06177015

Ms. Thompson presented the staff report: Wesley Chapel Volunteer Fire Department is seeking a minor subdivision for the property located at the northeast corner of Rea and Reid Dairy Road. It is a total of 1.718 acres and is zoned R40-Conditional. The conditional site plan for a fire station was approved on June 11, 2018. 7:34. The proposed minor subdivision is in general conformity with the Town of Weddington Zoning and Subdivision Ordinances; therefore staff recommends approval with conditions listed:

1. Certificate of approval signature block needs to be amended to wording of section 46-40(c)(7) for the Planning Board chair to sign.
2. Add the name, address, and telephone number of the owner and developer in the signature block.
3. The use of the parcel and adjacent parcels shall be noted.
4. The zoning for the property needs to be amended to R-40 Conditional – WCVFD.
5. Add the township to the location data in the title block.

The Planning Board is the approving authority for a minor subdivision.

Chairman Dow commented that this application is not from the property owner. Ms. Thompson responded that she has a signed affidavit from the property owner. He asked if there are other factors to be considered in the approval of this subdivision. Ms. Thompson responded that just the subdivision checklist. He asked if the property has water and sewer. Ms. Thompson responded that the property does not have sewer. Chairman Dow asked if a soil test has been done. He asked if UCPW needs to sign off for a septic field. Ms. Thompson stated that it is part of the subdivision checklist, but usually just to see if the lot is large enough to build a home. If UCPW cannot sign off on the septic, then the fire department would share a utility easement with their neighbor.

Board member Vivian commented that the capacity for this building is significantly larger than for a single family home. Ms. Thompson stated that the septic is a different process than

for this approval of a division of a piece of property. The checklist requires a septic report, and that is typically to check if a lot is large enough to fit a single family home.

Chairman Dow stated that this use is more strenuous than for a single family home. He believes the Board should approve the subdivision subject to UCPW septic approval, just like all the other subdivisions. If the applicant doesn't get approval, they can come in with the easements. Ms. Thompson stated that the easement approval can be done administratively, so it would ok to move forward with approval tonight.

Chairman Dow believes that the Board should give this subject approval based on UCPW approval for the septic field.

Board member Hartman asked if the Board would want to subject the approval on the completion of the entire subdivision checklist. Ms. Thompson commented that the 5 conditions are what is left incomplete from the checklist.

Board member Harrison commented that the sewer line is about 1000 feet away. Ms. Thompson stated that she believes that connecting to the sewer line eventually is the goal.

Chairman Dow asked the Board if they were comfortable approving the subdivision with a 6th condition for sewer approval.

Motion: Board member Hartman made a motion to approve a minor subdivision for Wesley Chapel Volunteer Fire Department with the conditions listed and the additional condition that septic must be approved by Union County Public Works.

Second: Board member Prillaman

Vote: The motion passed with a unanimous vote.

C. Presentation of Town Survey Results

Ms. Thompson highlighted the survey results. There were 994 survey responses. Of those, there were 965 unique responses. There were 26 responses from duplicate IPs. Most of those were couples responding to the survey. There were 3 residents that acknowledged that they took it twice so they could add something to their response. Over all there was a 31% of household response rate. There were 62 subdivisions represented. 39 % of respondents have lived here 10 or more years. The responses were well represented by age and length of residency.

Pace of growth: 47% say it is too fast; 30% say fast. Over half of the respondents in total believe the pace of growth is fast.

The majority of residents say if there has to be new development, make it park or open space. 17% of respondents want no new development.

Preferred residential types: the majority of the written notes say to bring back the larger lots. Ms. Byers believes there may have been some confusion about the conservation subdivision and lot size question.

54% of the respondents support conservation districts and 46% do not.

In terms of nonresidential development: small or locally owned business is preferred; and traditional recreation and tourism.

66% of respondents would not like to see more business.

Preferred style of eatery: Towns can regulate types of uses more than actual brand. 30% said no eateries. 52% said sit-down or some sort of fine dining. Only 1% said fast food.

Current shopping locations: a lot of the respondents go into Charlotte, Wesley Chapel & Matthews.

Transportation concerns: the top concern is traffic. There are specific comments and discussion of specific roads available within the detail of the survey summary. Road conditions had a lot of comments.

Responses concerning walkability: 46% respondents said it is important; 38% said that it isn't important, and 16% don't care.

Existing parks and open space: 54% satisfied with existing parks and open space; 46% are not.

Preference of pathways: if the Town would put in paths, what kind would residents like: 44% greenway; multi use paths 29%; 22% none; 6% other. In the transportation section of the survey, there were requests for bike lanes.

When asked if a new park is a good town investment, 65% said yes.

Services: 49% say the current noise, lighting and sign ordinances are adequate, 14% responded that they are not adequate and 38% are not aware of what the ordinances are.

Police & Fire: adequate; large majority of respondents don't want to increase.

Other Services: respondents want more services, but 34% don't want to pay more for them.

There was a stated concern to recreate a sense of identity especially in light of fast growth from respondents.

The #1 reason to move here is schools. It's rural, larger lots, quality of life, proximity to Charlotte, and low taxes were also mentioned.

Analysis:

- Responses to various questions were similar across voting districts

- Younger respondents supported new parks and other modes of transportation
- Tenure (1-10 year) were more open to commercial spaces; access to public transportation and a new park
- RCD residents supported the conservation subdivisions more than people that lived in conventional subdivisions (70%).

Implications:

- Slow or stop growth in terms of residential or commercial.
- Reevaluate RCD density – ½ acre versus 12,000 sq ft seems to be a little more palatable
- County-Town cohesion-roads are not town responsibility.
- Public Education – frustrated with redistricting; need to understand that Town has no say but maybe consider a way that Town and County can work together
- Code Enforcement – Nuisances – there is a lot of confusion about code enforcement and what codes there are to actually be enforced. (i.e. sheds falling down, etc.); if there isn't code for certain nuisances, there isn't anything to be enforced.
- No Commercial growth.
- Invest in Parks & Green Spaces.

Chairman Dow commented that the respondents that live in a community with large open spaces want more parks.

Board member Hogan stated that he got the feeling that people didn't know the difference between the RCD and R40 subdivisions. He expressed the need for public education on the distinction.

Chairman Dow stated that there is a misconception that the Town has control or input in the schools or public roads. He asked Ms. Thompson if staff receives a lot of calls that the Town can't do anything about. She responded that about 50% of the complaints are those that are not covered by any ordinance or is out of the Town's control.

Board member Hogan stated that his takeaway from the results is that the Town is in good position to look down the road to plan. He believes the perception is that runaway growth is causing Weddington to disappear.

Chairman Dow stated that the Town cannot stop growth, but it can control what it looks like.

D. Discussion of Meeting with Randall Arendt

Ms. Thompson stated that after the survey, she noticed there are a lot of misconceptions with RCD subdivisions. She pulled tax values from GIS and discovered that the smaller lots had higher tax base. Mr. Arendt has presented a review of the zoning and subdivision ordinances regarding the conservation subdivisions (*hereby included for the record*). She asked that the Planning Board look at what they don't like and do like from the RCD subdivisions.

The meeting with Mr. Arendt is July 10th and will include a visit to The Enclave and Harlow's Crossing subdivisions and any others the Planning Board would like to visit.

Chairman Dow stated that Gardens on Providence one of the first RCD subdivisions and has some interesting features. He believes that is a good subdivision for viewshed buffer. Ms. Thompson stated that she likes Lake Forest Preserve because there are little pockets of open space between the houses. Hadley Park has open space that is unusable. The houses are all back to back.

Chairman Dow asked Ms. Thompson if there is anything she would like the Board to do to prepare for the meeting. She answered that the Board should gather topics they want Mr. Arendt to cover and choose subdivisions to visit. There will be a public presentation at 7pm on the 10th an internal meeting on the 11th.

Board member Hartman asked about active and passive open spaces. Mr. Paone responded that active open spaces have to meet certain criteria and passive open spaces generally include buffers and are inaccessible.

Board member Godfrey asked what influence Weddington has over the other municipalities that abut us. Chairman Dow responded that extra territorial jurisdiction can give zoning rights to areas surrounding the Town.

**** 5. OLD BUSINESS**
A. Discussion of Marginal Access Street

Chairman Dow commented that a lot of these problems come back to fundamental subdivision design. There is nothing in the Town's ordinance that says which way houses should face. The Town doesn't have anything that says "where possible, homes should face internal subdivision streets". He feels that is the source of a lot of problems. All lots should face internal streets where possible. There would be no issue with the Reese Gibson property. We can get a lot of information and input from Mr. Arendt.

Board member Harrison stated that her subdivision has CCRs that require houses to face internal roads. She asked if all subdivisions require that.

Chairman Dow stated that Weddington never had this problem until the economy took a dive. Property values were cut and track builders are coming in and figuring out how to get around the ordinances.

Ms. Thompson explained that there is language in the RCD ordinance that covers some of the concerns. She combined all the road standards from both and moved them into the general street standards section.

Chairman Dow stated that the Town needs to set standards and if an applicant has a special case, the modification needs to be applied for before sketch plan approval. Ms. Thompson stated that the town approved the change that requires the modification to be approved before sketch plan is approved.

Chairman Dow asked the Board if they had any questions regarding Marginal Access Streets to pose to Mr. Arendt.

Board member Hartman mentioned asking about passive and active open spaces.

Ms. Thompson mentioned asking about the RCD cul de sac limits.

Chairman Dow stated that he was strictly speaking about the marginal access street language.

Board member Hartman agreed that the core of the problem is that the Town doesn't have consistent standards. Board member Prillaman stated that after reading through Ms. Thompson's edits to the language, he sees that the Town has created an RCD functionality that doesn't necessarily follow the RCD recommendations. The Town has created a hybrid. Some issues wouldn't have happened because how the project would have been built. Once the meeting with Mr. Arendt happens, some of those issues would be resolved.

Chairman Dow asked the Board how they want to approach this issue.
Board member Harrison agreed to wait on this topic and get guidance from the meeting with Mr. Arendt.

Board member Hogan stated that he would be interested in getting the Board thoughts after meeting with Mr. Arendt.

The Planning Board agreed to read through the changes Ms. Thompson made in the Marginal Access Street language and wait until after the meeting with Mr. Arendt to tackle the Marginal Access Street issue.

6. UPDATE FROM TOWN PLANNER AND REPORT FROM JUNE TOWN COUNCIL MEETING

Ms. Thompson stated that the Town Council approved the Woodford Chase modification application for a longer cul de sac and the preliminary plat. The Town Council also approved the Wesley Chapel Volunteer Fire Department Conditional Rezoning and reviewed the survey results.

7. ADJOURNMENT

Motion: Board member Prillaman made a motion to adjourn the June 26, Regular Planning Board meeting at 8:30 p.m.
Second: Board member Hartman
Vote: The motion passed with a unanimous vote.

Adopted: _____

Karen Dewey, Town Clerk

DRAFT

TOWN OF WEDDINGTON

MEMORANDUM

TO: Chairman and Planning Board

FROM: Lisa Thompson, Town Administrator/Planner

DATE: July 23, 2018

SUBJECT: Temporary Use Permit – Mud Maze

Mr. James Sweitzer submitted an application for a Temporary Use Permit for a Mud Maze event to raise money for Project Alive. The proposed event will be at the Hunter Farm located at 13616 Providence Rd. on Saturday, August 25, 2018, from 8:00 am – 3:00 pm.

Application Information

Date of Application: July 2, 2018

Property Owner's Name: Nancy Anderson

Parcel ID#: 06150044

Property Location: 13624 Providence Road, Weddington (Hunter Farm)

Existing Zoning: R-CD

Existing Use: Agricultural

Property Size: 47.6580 Acres

Additional Information:

- Projected attendance is projected at 700 persons
- A copy of the Certificate of Liability Insurance is on file with the Town of Weddington
- Food vendors have approval from Union County Environmental Health
- A Union County Mass Gathering Permit has been applied for with Union County Environmental Health.
- Portable bathroom facilities will be used.
- The location for all proposed uses can be found on the Site Plan provided.
- The applicant has applied for two TUPs within the last 12 months.

In accordance with the provisions of *Article I, Section 58-13* of the *Weddington Zoning Ordinance*, the property owners and the owners of the parcels of land within 200 feet of the property involved in the Temporary Use Application have been sent notification of the public hearing.

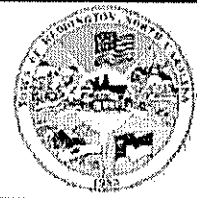
Before issuing any temporary use permit, the planning board shall make the following determinations:

- (i) That the proposed temporary use will not materially endanger the public health, welfare and safety;
- (ii) That the proposed temporary use will not have a substantial negative effect on adjoining properties;
- (iii) That the proposed temporary use is in harmony with the general purpose and intent of this chapter and preserves its spirit; and
- (iv) The proposed temporary use is held no more than four times per year at any particular location.

Staff has reviewed the application and submitted documents and finds the Temporary Use Permit Application to be in compliance with Weddington's Zoning Ordinance and therefore recommends approval.



Town of Weddington



Temporary Use Permit Application

Applicant Information

Permit Number: _____

Name: James Sweitzer
Mailing Address: 7710 Ponbrosa Pine Ln
City: Charlotte State: NC

Phone Number: 704-618-4125
Email: epicmudmaze@gmail.com
Zip: 28215

Property Owner Information (if different from applicant)

Name: Nancy Anderson (Hunter Farm)
Address: 13624 Providence Rd
City: Weddington State: NC Zip: 28104

Lot Number: _____
Subdivision: N/A
Parcel Number: 06150044

Describe the nature of the use requested:

We are hosting a Mud Maze Event to
raise money for Project Alive

Findings of Fact:

The proposed temporary use will not materially endanger the public, health, welfare and safety; and

- ☐ Yes
☒ No

The proposed temporary use will not have a substantial negative effect on adjoining properties; and

- ☐ Yes
☒ No

The proposed temporary use is in harmony with the general purpose and intent of the ordinance and preserves its spirit; and

- ☒ Yes
☐ No

The proposed temporary use is held no more than three times per year at any particular location.

- ☒ Yes
☐ No

On a separate page provide the following -

Narrative including:

- ☐ Nature of use
- ☐ Duration of use
- ☐ Hours of operation
- ☐ Lighting
- ☐ Temporary structures
- ☐ Signage
- ☐ Projected attendance
- ☐ Waste/trash disposal

Other Submittal Requirements (if applicable):

- ☐ A site plan showing parking and the layout of event area
- ☐ Proof of adequate insurance to cover the event
- ☐ Certification of review from Union County Sheriff's Department or NC Highway Patrol regarding traffic and crowd control
- ☐ Union County mass gathering permit required?
- ☐ Certification of review from Union County Health Department
- ☐ Department of Revenue weekend Temp. Sales and Use ID# for retail sales

[Signature]

Signature of Applicant

7-2-18

Date

Nancy S. Anderson

Signature of Property Owner (if different)

7/2/2018

Date

Permit Approved? Yes _____ No _____

If Yes, Permit is Valid from: _____ to _____

Zoning Administrator

Date

Nature of Use:

Hunter Farm will be the location of The EPIC mud MAZE Event, which will raise awareness and money for Project Alive. Project Alive is a 501(c)(3) dedicated to finding a cure for Hunter Syndrome.

Duration of Use:

The Event will be held on Saturday August 25th from 8AM to 3PM.

Hours of operation:

8AM to 3PM

Lighting:

N/A as Event will be outside.

Temporary Structures:

Pop up tents 10X10

Signage:

We will have a sign by the road side to advertise where the Event will be.

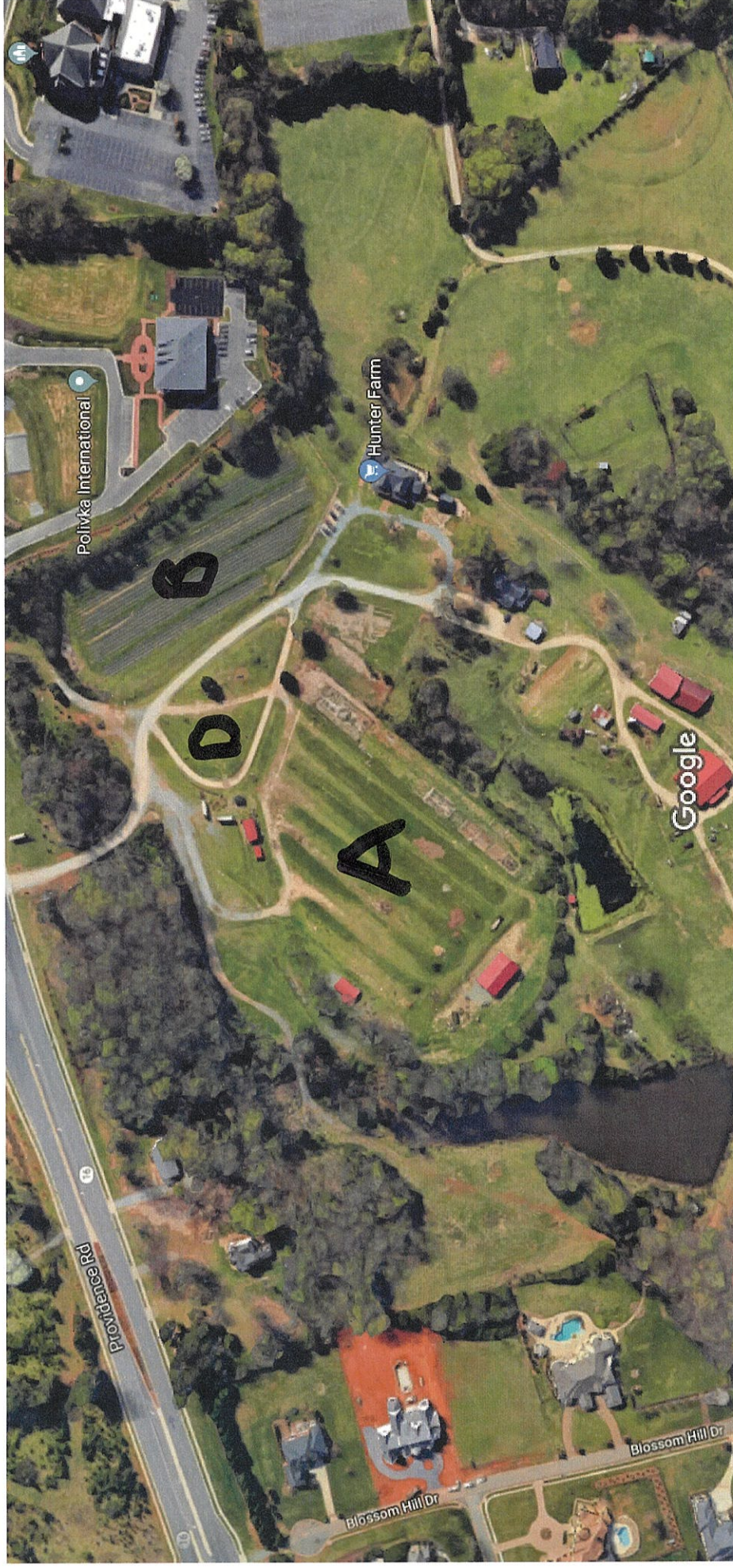
Projected Attendance:

700 volunteers, spectators & participants

Waste / Trash Disposal:

We have hosted plenty of Events in the past, so you can be assured we will take care of all trash disposal. There is a dumpster on site & plenty of trash cans will be available.

Google Maps



Imagery ©2018 Google, Map data ©2018 Google 200 ft

A = Parking
 B = Event Area
 C = Entrance/Exit
 D = Registration Area

2018 Land Use Plan Annual Review

The Town is to conduct an annual review every July to determine its progress in achieving the land use plan goals, objectives and strategies. During this review, the Town should evaluate development decisions (e.g., zoning changes, subdivisions, building permits and public works projects) that have been made by the Town and other jurisdictions, growth trends, and the progress made in accomplishing the strategies listed in this Plan element. The result of the annual review may be to recommend revisions to policies, the future land use map, or the implementation program.

Below is a list of items reviewed by the Planning Board over the past year and how they continue comply with the plan:

- Preliminary Plats/Construction plans: Canisteo Subdivision, Weddington Glen, Woodford Chase

Through this process natural resources are preserved and adjacent properties are protected. Restrictions were placed for grading and clearing, protecting floodplain and waterways, and erosion control. Drainage areas, soils and impervious surfaces were all factored in as part of the stormwater calculations to protect downstream properties from off-site run-off. The plan review considered the Town's roadway standards and included appropriate turn lane improvements and site distance regulations to help with congestion management. For Woodford Chase, the Town requested additional front setbacks and a tree save area for lots fronting Hwy 84.

Recommendations: design around useable open space, consider a mass grading ordinance, consider erosion control issues, analyze private access/easements (under review) and evaluate yield plans

- Final plats: Harlow's Crossing-Phase 1 Map 2, Atherton Subdivision-Phase 2 Map 4, Weddington Acres Subdivision
- Rezoning/CUP amendments: WCVFD – R60-R40, WCVFD – Conditional , Weddington United Methodist Church – Columbarium, All Saints – Amendment, Weddington Glen R40-RCD, Weddington Swim and Racquet Club Amendment

Visual effect from surrounding properties and roadways were protected with adding and maintaining buffers and site specific conditions were taken into account through the conditional zoning processes. The reviews ensured the plans were consistent with the Town's quality and aesthetic values.

- Entry monuments: Harlows Crossing

The Board took into consideration the electrical lines to plant the right trees in the right location and also examined the site triangles.

Recommendations: The board discussed needing to see the landscape plans for all thoroughfare buffers.

- Text amendments:

The Board only adopted two text amendments with regards to landscaping near the power lines and to clear up the process for modifications.

- Other

Town Survey – The town survey needs to be analyzed for future changes to the land use plan.

Recommendations: (besides the needed changes to RCD) – Adopt a Park and Greenway Master Plan for greenway development.

Visit with Randall Arendt – Several suggestions to process, buffers, site design, implementation, site walks was suggested by Mr. Arendt.

Recommendation: The Planning Board and Council shall use his report to make changes to the subdivision ordinance

Erosion Control Issues

Recommendation: Town erosion control ordinance

Planning Board training – great review of process, policy and duties

Recommendation: Annual training

The Town has a representative on the Charlotte Regional Transportation Planning Organization to stay informed and have input on road and thoroughfare plans.

Recommendation: List intersection and road improvement needed. Possibly consider having the Town traffic engineer to provide basic information to submit projects for funding.

The Town continues to maintain the medians on Providence Road to enhance rural look.

The Town currently contracts with an outside agency for a part-time code enforcement officer to investigate complaints about violations of the Town's ordinance.

Recommendation: Town to consider junk vehicle, abandoned vehicle and nuisance ordinance

The Town continues to work with engineering consultants to ensure that all storm water detention ponds meet the Town's requirements and are inspected annually.

Recommendation: Continue the construction inspector and consider town erosion control ordinance.

The Town utilizes the Traffic Impact Analysis Ordinance to minimize the impact of new construction on Town roads and infrastructure.

TOWN OF WEDDINGTON

MEMORANDUM

TO: Chairman and Planning Board

FROM: Lisa Thompson, Town Administrator/Planner

DATE: July 23, 2018

SUBJECT: Land Use Plan Amendments and Timeline

The introductory paragraph of the Land Use Plan requires the plan to be updated every five years. Given the results of the survey, staff does not foresee any major changes to the Land Use Plan. Reviewing the plan for updates, Chapter by Chapter, may be a good exercise for familiarity and to oversee the changes as it progresses.

Staff believes the Planning Board's role is to examine the details and discuss changes to each section every month. After Planning Board review, staff will provide the feedback and comments to Council each month via email so they can keep up with the changes.

The draft timeline below allows for the Planning Board to review Chapters 1-4 over the next few months. The last month the Board shall consider the Map and if needed, any changes for additional land use designations. We'll then bring it through the public hearing process as outlined in GS 160A-383.

Draft timeline

7/23 - Chapter I-Introduction
Chapter II-Community Vision

8/27- Chapter III-Goals & Policies

9/24- Chapter IV-Plan Administration & Implementation Strategies

10/22- Map Review and Final Recommendation

11/13 - Town Council - Call for a public hearing

12/10- Town Council - Adoption of Revised Land Use Plan & Map

Randall Arendt, FRTPI, ASLA (Hon.)
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Brunswick, Maine 04011
207-406-4242
rgarendt@comcast.net
www.greenerprospects.com
"Designing with Nature for People"

To: Lisa Thompson
Town Administrator / Planner
Weddington, NC

From: Randall Arendt

Date: June 26, 2018

Subject: Review and Recommendations Regarding Conservation Subdivision Regulations

Thank you for asking me to review the town's zoning and subdivision regulations regarding conservation subdivisions.

Below are my findings and recommendations, specifically addressing the concerns expressed in the community survey.

Density Concerns: It is important for residents to understand that conservation subdivisions do not permit a greater number of homes than would be built in conventional subdivisions, due to the Yield Plan requirement mentioned above. If they are concerned about the number of homes being built in town, the only way to lower that number (in any zoning district) would be to increase the minimum land requirements per dwelling (say from 40,000 SF to perhaps 60,000 SF, in the R-40 district). Although this kind of "downzoning" is legal, it is typically opposed strongly by landowners and developers, and this issue is beyond the scope of my review.

Home Price/Value Concerns: Because developers must buy the same amount of expensive land to build say 25 homes, regardless whether they are within conventional subdivisions or in conservation subdivisions, they cannot, financially, sell homes in conservation subdivisions for less than those in conventional subdivisions. Because conservation subdivisions are an option that developers can either select or not, they would not opt for this approach if it were less lucrative for them. In fact, experience shows that many homebuyers are willing to pay more for a home on a smaller lot in neighborhood with preserved open space than they are for the same home on a larger lot without open space. Developers of golf course subdivisions have known this for decades: open space boosts the value of the smaller lots because many people like to live next to preserved land. A recent review by Weddington town staff, of the value of homes built between 1996 and 2016, found that homes on the smaller RCD lots (typically 15-20,000 SF) were 49.2% *higher* in value than homes on lots ranging from one to two acres (\$605,779 for homes on the smaller lots with open space, versus \$406,066 for homes on lots on one- to two acres with no open space).

Spacing of Homes: The observation that homes in recent conservation subdivisions have "less curb appeal" than those in earlier conservation subdivisions or in conventional developments is probably an individual judgment call, based on personal preferences, which is understandable in a community where homes have traditionally been built on larger, wider lots. However, there is a fairly simple way to address concerns about homes being built too close together: homes in new conservation subdivisions in the

future can be required to have more space between them by increasing sideyard setbacks. Many developers would probably respond by modifying their house designs so their homes would be say 10-12 feet less wide and perhaps 15-20 feet deeper, providing the same total floorspace. In fact, there is a national trend in this direction anyway, with many house designs becoming slimmer and deeper (see photo examples in the Illustrated Appendix). Interestingly, there appears to be little push-back among homebuyers, who apparently like the stronger sense of community that these newer house designs seem to suggest. (Another approach, which I earnestly recommend against, would be to increase lot widths, which would increase street lengths and costs, and reduce the conservation land. It should be noted that developers do not pay for streets, as they pass the initial cost onto homebuyers, and ongoing maintenance costs onto the town.)

Appearance of the Open Space: The town's regulations require maintenance plans prepared by subdivisions applicants and approved by the town. Those regulations could be augmented by additional wording listing typical open space types (mown lawn, fields/meadows, pastures, woodlands, etc.) with typical maintenance schedules and suggested procedures where desirable. For example, grass not mown on a weekly basis during the growing season could be managed as a meadow with annual mowing in the late fall, after wildflower seed have been set. There is a particular natural beauty to well-managed meadows, and annual mowing would prevent them from being overrun by invasive species such as *rosa multiflora* or Japanese knotweed. (Again, please see photos in the Illustrated Appendix.) Woodlands could be managed so that trails are cleared and trimmed every spring and fall. Trees could be inspected annually and those found to be injured or weak, posing danger of falling onto streets, trails, or structures., would be required to be removed.

Permanent Protection of the Open Space: The town's regulations provide for perpetual conservation easements that permanently protect the open space from future subdivision or other development. Residents concerned about that land being built upon in the future can rest assured that this will not be the case. Such changes would have to have 100 percent approval of the homeowner association and unanimous approval by the town council, plus a zoning change.

Types of Open Space to be Preserved. Current regulations contain a section setting priorities (high, medium, and low) for various kinds of resource lands to be preserved. However, applicants are not required to address these three tiers until the "Preliminary" Plat stage, rather than at the critical Sketch Plan stage. Because of this, town officials and staff have limited scope to help shape the conservation lands proposed by developers. This function should therefore be advanced to the Sketch Plan stage.

Minimum Required Percentage of Open Space: The ordinance requires a minimum of 50 percent of gross tract acreage. This is not the approach recommended in my books and model ordinances, because it allows unusable land (wet, floodprone, or steep) to be included, which would be protected in any case due to its inherent constraints. The purpose of conservation subdivision design, as I invented the approach 25 years ago, was to protect land from development that would otherwise be cleared, graded, and divided into houselots. I have therefore recommended that 50 percent of all unconstrained land (not wet, floodprone, steep, or under powerlines) be preserved, in addition to all unbuildable constrained land. Following this approach would meet a major objection reported in the resident survey, that too much of the conservation land is unusable and of "low quality". From a landowner and developer perspective, it is important to note that the number of lots permitted would not change by increasing the open space percentage, as that is determined by a Yield Plan showing the number of homes possible with conventional one-acre lots.

Setbacks from Existing Public Roads: The regulations require that new buildings be set back at least 100 feet from existing public roadways. Although developers comply with this requirement, the results are often less attractive than they could be, if an innovative design approach were to be followed. Rather

than backing homes up toward existing roads and (in unwooded areas) buffering them with expensive earthen berms and heavy landscape screening -- which tend to be very suburban and nonrural in appearance -- I have long advocated for the practical and cost-effective “foreground meadow” design approach, combined with orienting homes toward the roadway instead of away from it. (Please see examples in the Illustrated Appendix.) Backing homes up to public roadways is very nontraditional, as the view from roads is typically of house fronts and not of patios, decks, swimming pools and sheds.

Earthen berms and heavy landscaping cost a great deal, and are usually provided to screen residential back yards from the street, as most homebuyers are looking for backyard privacy, among other things. (Unless the public road is a busy state highway generating considerable traffic noise, I have recommended that berms not be used, except as a final resort.)

Public Access to Open Space: The regulations provide for a voluntary option for developers to receive a modest density bonus in exchange for designating all or of the preserved open space for public access by part people living outside the subdivision. To require developers to open the conservation land for wider public use might be illegal, possibly constituting an unconstitutional “taking” of land by the town for public purposes without compensation. Some towns have worked cooperatively with developers to encourage them to allow wider public access, particularly when the trail system within the development connects with trails in adjacent subdivisions or public parklands. In this manner, for example, Westford MA has achieved a notable degree of success, as has London Grove Township in Chester County PA (both described in the 2015 edition of *Rural by Design*.) If the town were to map out potential conservation land on all undeveloped properties, and tie this map to the subdivision design and review process, it could help ensure that the open space in one conservation subdivision will ultimately link up with similarly protected land on adjacent parcels when they are ultimately developed.

Sketch Plans. The regulation contains an excellent section on mandatory Sketch Plans, and the only suggestion I have is that these plans be prepared as an overlay sheet and to the same scale as the ER/SA Plan so that the former can be overlain on top of the latter. This enables staff and board members to more easily identify which resources are proposed to be preserved and which are proposed to be developed.

Four-Step Design Approach. I regularly recommend that the four-step design approach, described and illustrated in several of my books, be included in regulations for conservation subdivisions. This practical approach, which begins with identifying both Primary and Secondary conservation areas as the first design step, is particularly useful to site designers who have not been trained in landscape architecture principles, such as civil engineers (who typically begin the design process with street alignments, as they have not been trained to conceptualize plans in terms of conservation objectives as the foremost consideration).

I believe that the most effective methodology for producing superior subdivision layouts is one that begins with the determination of open space as the first step. If this is done, and if the code requires that a significant proportion of the unconstrained land be designated as open space, it is nearly impossible to produce a truly inferior or simply conventional plan, where the open space consists merely of leftover bits and pieces of marginally useful land. The logical second step, after locating the open space areas, is to select house locations, with homes positioned to take maximum advantage of the open space in neighborhood squares, commons, greens, playing fields, greenways, farms, or woodland.

The third step involves “connecting the dots” by aligning the streets and trails to serve the new homes. Drawing in the lot lines, Step Four, is the least significant part of the process. One of the greatest weaknesses of most subdivision regulations is that the open space is not defined in this manner, and therefore tends to become a collection of whatever slivers or chunks of land are challenging to develop.

Site Inspections: On-site visits -- a critical component of the conservation subdivision design process, as detailed in several of my books -- is not yet part of the town's regulations. In my view, this is an essential step and it is strongly recommended that the town include it in its next update. The basic reason is that it is impossible to completely understand a site only by examining a two-dimensional paper document inside a meeting room. Planning Board members and staff should walk the property with the *ER/SA Plan*, to take the full measure of the proposed development site, and to help them determine which site features are most worthy of "designing around". (I also encourage officials to invite abutters to this advertised site meeting, where information will be collected and input solicited, but where no decisions will be taken. I have found that abutters greatly appreciate being included from the outset, and that they are usually much less inclined to fight a process which includes them from the very beginning, rather than being kept in the dark and held at arm's length until the Public Hearing stage, by which time all major design decisions have been made.) Without the benefit of experiencing the property in a three-dimensional manner at a very early stage in the process, it is extremely difficult for staff and officials to offer informed suggestions as to the preferred locations of conservation areas and development areas, and to evaluate the proposed layouts. In my view, such site walks should definitely become a standard operating procedure, and part of the job description for all Planning Board members (except those with physical disabilities). Once members participate in their first site walk, they typically appreciate its value and advantages.

Regarding timing, I suggest walking the site with the applicant even before the *Sketch Plan* is prepared, if possible, so that the applicant may receive critical input from staff, board members, and abutters before he/she prepares that conceptual layout. It is usually best to provide ideas to applicants as early as possible. The Public Involvement Meeting is another critical component, but if it is scheduled after most of the design work and engineering have been done, there is usually little scope for significant change.

Open Space Ownership Options. In addition to homeowner associations as designated holders of the open space, I recommend land trusts and public bodies (such as municipal parks departments and county conservation districts), as well as non-common private ownerships. In southeastern PA, I know of conservation subdivision open space having been sold to individuals who use it for specific purposes, such as wholesale nurseries, orchards, and equestrian facilities. Another non-common ownership is the "conservancy lot", typically at least 10 or more acres in size, which would support a principal dwelling, perhaps a barn or stable, and also an accessory dwelling unit (such as a caretaker's cottage, which could also be rented out as a granny flat). The uses allowed on non-common open space must be strictly limited and regulated, and they should be subject to the same kinds of permanent easements and Management Plans as any other kinds of open space. In Weddington this approach can be seen in the large lot in Stratford Hall, with its pastures. Non-common ownership not only relieves HOAs of acreage they would otherwise have to maintain, but also provides developers with an additional bonus for doing the right thing and opting for conservation design rather than the large land-hog lot approach which is contradictory to common open space goals contained in most Comprehensive Plans. However, I also recommend that no more than 10-15 percent of the minimum required open space be in noncommon ownership

Design Charrettes: I usually end my site walks with a very informal design session, where the significant natural and cultural features (from the *ER/SA Map*) are identified and "designed around", with house sites being positioned in proximity to these special features to add value to all homes. This is a lesser version of a procedure followed by the Town of Davidson for many years, when a period ranging from a half-day to several days was assigned to a very participatory and public design "charrette". I strongly believe in this concept, but also believe that the goals of this kind of exercise can often be accomplished in the course of a single afternoon.

Existing Resources and Site Analysis Plan. The regulations require applicants to locate trees with a caliper greater than 15 inches in diameter, a species-specific approach would provide better information.

Some trees, particularly softwood evergreens, grow quickly and attain that diameter relatively quickly, but many hardwoods become equally significant at lesser diameters. With respect to the diameter at which a tree becomes noteworthy, I recommend girths related to specific species, such as 4 inches for an Eastern redbud or flowering dogwood, 6 inches for a sassafras or water beech, 8 inches for a holly, 10 inches for a wild cherry, 12 inches for a white oak, 14 inches for a green or white ash or for a red oak, 16 inches for a tulip poplar, larch, or sweet gum, 18 inches for a sycamore, 20 inches for white pines, etc. Because understory trees are of different scale altogether compared with canopy trees, and because some species grown much faster than others (red oaks grow twice as quickly as white oaks), a “one-size-fits-all” approach makes little sense. Trees in unbuildable wetlands or floodplains would – of course -- not need to be documented, as no development would occur there.

On a related note, I have found that a short-cut to locating the largest trees on a property is to look at old aerial photos. Several years ago, I used Davidson’s set of 1937 aerials to locate the oldest trees on an entirely wooded tract. Back when the photo was taken, the property was mostly agricultural, with a small woodland, which is where the oldest trees were easily found.

Shade Tree Planting Along Streets. The best policy is to require native species trees such as traditionally grow in town, based on general observation or survey. These species are well adapted to the local climate and soil conditions. They also help to capture “the spirit of the place”. Among my favorite species is the Red maple, hardy in our winters, tolerant of both wet and dry conditions, and particularly beautiful (red in the Spring, and also red in the Autumn). In my view, canopy shade trees are one of the most important improvements any community can require of developers. They should be deciduous varieties of hardy species capable of attaining a mature height of at least 60 feet (not flowering ornamentals, which are more suited to courtyard situations and areas of lawn decoration), they should be planted with a minimum dbh of 2-1/2”, at intervals of about 35 feet on both sides of each street, in “tree-lawns” at least five feet wide located between the sidewalk and the curb or edge of pavement. Such standards will ensure that residential streets created in Weddington will be leafy and shady in future years. Maintenance requirements are also very important, with replacement assured within 18 months after planting, through a performance guarantee (such as a bond). I feel that shade trees are the single most important aspect of subdivision design, second only to open space preservation. Please see examples in the Illustrative Appendix.

Illustrated Appendix

Meadowland in Conservation Areas



Former farmland typically has great soil for creating meadows, as illustrated in these four photos (two above, and two below). Typically mown once annually (in late fall), they provide habitat for pollinators such as butterflies and honeybees, small mammals, and many bird species. On the below left the meadow also serves as a broad, shallow infiltration basin for stormwater,



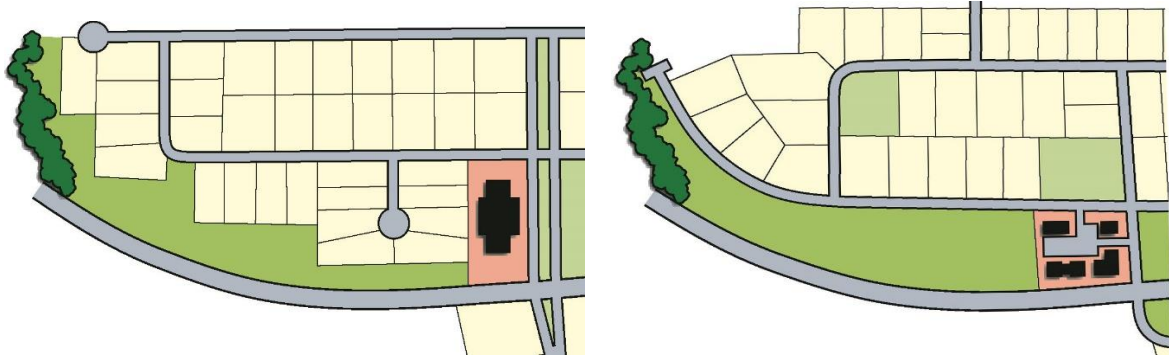
“Foreground Meadows” Buffering Existing Public Roads

The design approach, known as “foreground meadows” offers a vast improvement in the way subdivision homes are typically built on land bordering existing country roads. Because of safety hazards posed by multiple driveways entering such roadways, local regulations usually prohibit this “stripping” of the public road frontage. The typical response by developers is to build homes facing onto internal streets, with their rear elevations backing up to those country roads, creating an unsightly result sometimes referred to as *“the Fanny-First School of Design”*. Fortunately, this result can be easily avoided by following the practical and economic “foreground meadow” design approach illustrated below, on the right. Residents of those homes enjoy quieter lots, greater backyard privacy, and green views across the

enclosed conservation land from their front windows. This approach need not increase the developer's costs, as the length of new street construction can remain the same, as illustrated in this pair of drawings. This example is an apples-for-apples comparison, as the number, size, and width of lots, as well as the street length and the percentage of open space, are all equal in both cases. The better example on the right succeeds in protecting backyard privacy, while the more typical layout on the left exposes back yards to all who pass by on the road.



Foreground meadows buffer and frame the homes at Stratford Hall in Weddington (left) and at The Park at Wolf Branch Oaks in central Florida, both of which I designed for developers. The view from the public road is traditional, and expensive, suburban berms (an admission of design failure) were avoided.



In this second example, the advantages to homebuyers, the town, and the developer are demonstrated again. Although the example of the right contains four more lots than the one on the right, if all the lots in both layout were of the same size, the lot count would be equal. The example on the right preserves backyard privacy without the need for costly, heavily-landscaped berms.

Slimmer House Designs, Deeper than they are Wide (to increase distance between homes)



These four homes have been designed to be located on lots so that side yard separation can be greater than would be possible with wider homes. Typically a bit deeper than they are wide, they provide as much or more floorspace than their wider counterparts. The homes pictured above have two-car garages. The homes shown below have three-car garages. (The one on the bottom right is a Toll Bros. house in TX.)



Shade Tree Planting



These four photos show what a significant difference is made when developers are required to plant shade trees along new streets in conservation subdivisions, in unwooded parts of the development. Unless this is required, experience shows that the streetscapes remain relatively barren (except for flowers and shrubs) even decades later, as individual homeowners almost never join together to coordinate such tree planting.



The Four-Step Design Approach

The most effective methodology for producing conservation subdivision layouts responsive to the site, preserving value-adding features, and increasing project profitability, begins by determining the open space as the first step. If this is done, and if the regulations also require that a significant proportion of the unconstrained land be designated as open space, it is nearly impossible to produce a truly inferior or simply conventional plan, particularly if that open space is closely related to a *Town-wide Map of Potential Conservation Lands* contained in the town's *Comprehensive Plan*.

The logical second step, after locating the preservation areas, is to select house locations, with homes carefully positioned to maximize the potential value of that protected land by including designs for neighborhood squares, commons, greens, playing fields, greenways, farmland, or forest preserves.

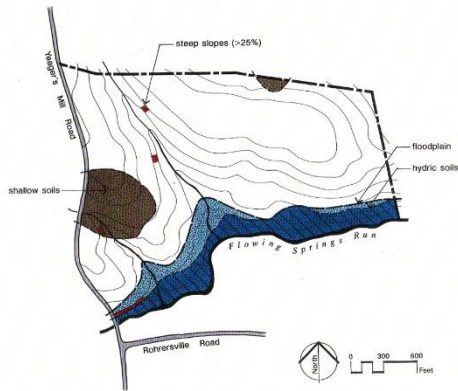
The third step involves “connecting the dots” by aligning the streets and trails to serve the new homes. Drawing in the lot lines, Step Four, is the final and least significant part of the process. This sequence is substantially different from the way that both conventional and many “cluster” subdivisions are designed, with streets and lot lines being decided first, and the open space (if any) ending up as being whatever is left over.



Site before Development



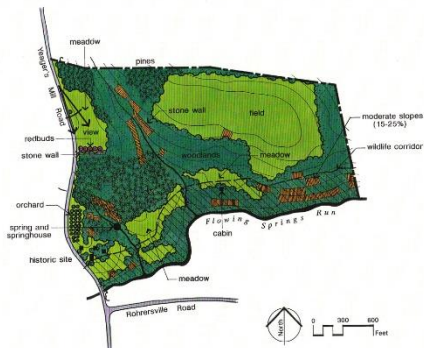
Yield Plan



Step One, Part One: Primary Conservation Areas



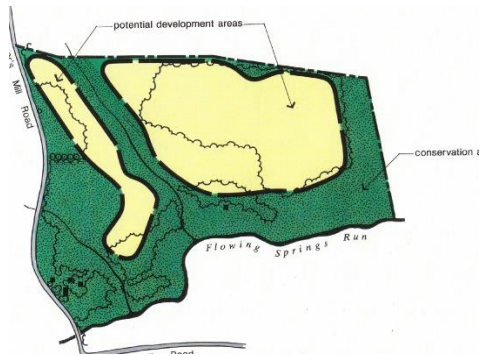
Site Walk: Primary Conservation Areas.



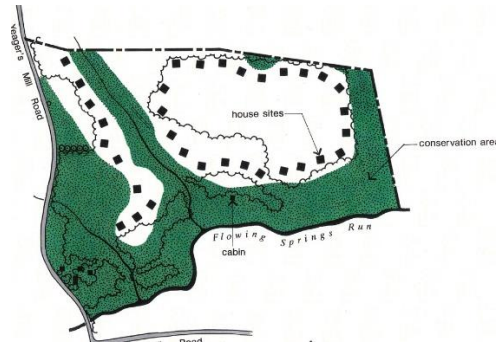
Step One, Part Two: Secondary Conservation Areas



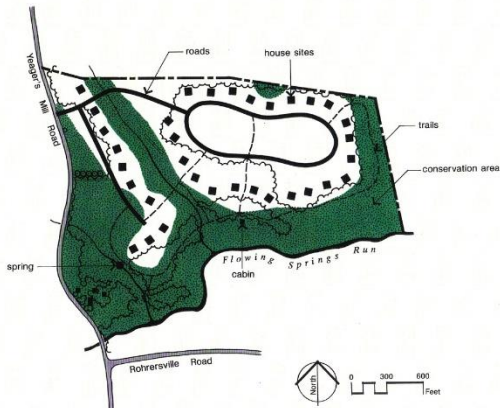
Site Walk: Secondary Conservation Areas



Potential Development Areas



Step Two: Siting House Locations



Step Three: Aligning Streets and Trails



Step Four: Drawing in the Lot Lines



Birdseye Perspective: Conventional Layout



Birdseye Perspective: Conservation Design



Birdseye Detail: Conventional Layout



Birdseye Detail: Conservation Design

A failure of most current “cluster” regulations is the lack of care taken in defining the required open space. Instead, applicants are allowed to gather together the bits of land that have proven difficult to develop and to label them as “open space”.

The other common failing of such provisions is that they often require deep perimeter buffers around the proposed development (as if it were a gravel pit, junkyard, or other highly undesirable use). This practice inadvertently leads to very poor layouts in which a substantial percentage of the total open space is consumed by such excessive separation (particularly needless when existing single-family homes are being “buffered” from new single-family homes!). As homes in conservation subdivisions have been proven to have higher value than homes in developments without open space, the need for such buffers to “protect” abutters is difficult to justify.

The combined influence of the expanded *Context Map*, the *Existing Resources/Site Analysis Map*, the Site Walk, the *Sketch Plan overlay* sheet, and the four-step design approach makes a significant difference in the way that sites are approached by developers, their engineers, and local officials, as well as in the quality of the resulting layout of conservation areas, houselots, and streets.

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To: Lisa Thompson
Town Administrator / Planner
Weddington, NC

From: Randall Arendt

Date: July 12, 2018

RE: Further Recommendations Regarding Conservation Subdivision Regulations

This memo is an addendum to my original memo dated 6.26.18 and recaps additional points made during my PowerPoint presentation on Tuesday evening and during office discussions the following morning.

By-Right Designation: Both conventional R40 and RCD should be 'By-Right', not involving additional special meetings, submissions, or applications, such as for rezoning -- which requires additional time and resources, a great discouragement to developers whom the town wants to encourage to submit RCD plans. Some communities have taken the further step of classifying conventional sprawl development, protecting little or no open space, as a Conditional Use (or even prohibiting it). The required conditional of approval would be a clear and convincing demonstration by the applicant that RCD is not feasible on the property, or that the conventional layout better and more fully implements key objectives of the town's Comprehensive Land Use Plan relating to the protection of rural character, farmland, forests, woodland habitat, viewsheds, etc.

Buffering: Deep perimeter buffers often have the perverse and unintended effect of gobbling up much of the required open space, and compressing the development into a tightly clustered knot in the center of the property. The regulations should require effective visual screening only on unwooded or lightly wooded sites where it has been shown to be infeasible to orient the fronts of homes to existing roads bounding the property, or where the subdivision abuts an incompatible use (not just another single-family residential development). Also, the town should not permit developers to edge their subdivisions with berms or visual screening on unwooded or lightly wooded sites unless it has been clearly demonstrated that orienting the fronts of homes to existing roads bounding the property is not feasible or practicable. (A consulting planner might demonstrate its feasibility and desirability, if the developer claims it is not doable.) When visual buffering is unavoidable and must be provided as a last resort to screen housebacks, the depth of the buffer strip can be as little as 25 feet if the screening will be visually dense and effective. Such buffering or screening is usually an admission of design failure, and an attempt to hide design deficiencies or mistakes, such as orienting residential backsides to existing roads. (Driving along once-rural roads in Carmel IN, one sees long berms extending thousands of feet on both sides of the roadways, creating a distinctly suburban and a very odd, almost eerie, atmosphere. A cautionary tale.)

Site Visit: Site Visits should become the norm for the town planner, all Planning Board members, and some Councilors. Also, the applicant, his site designer, engineer, the seller of the land, and immediate abutters. The applicant's engineer or site designer would conduct the group around the property, with Site Analysis Plans in hand, using GPS technology to locate positions along the way, and recording locations of features meriting potential conservation. Only by experiencing the property first hand, three-dimensionally, are all the parties involved able to understand the property's attributes, both positive and negative. Without that experience, they are not fully informed,

and cannot render fully-informed decisions. Site visits should be publicly noticed, official work sessions, at which no decisions are taken.

Conceptual Sketch Plan: I like to schedule a mini-charette of several hours following Site Visits, wherein the site designer sketches the proposed development, following the Four-Step Design process. People attending the site visit are strongly encouraged to participate in this collaborative process, in which many observations, comments, and suggestions are considered.

Sketch Plan Designers: Sketch Plans should be required to be prepared principally by a landscape architect or a physical planner, with input from an engineer. At the very least, Steps One and Two of the Four-Step Process (greenlining the open space, locating house sites) should be primarily the responsibility of the LA or physical planner.

The Four-Step Design Process: RCD applicants should be required to present drawings showing how they followed the four-step design process (to be illustrated in an appendix to the regulations) in which open space is identified first, virtually the same procedure that golf course developers follow (see memo of 6.26.18). In that way, the open space never becomes a mere afterthought, and really defines the whole design process, in which conservation is the central design principle, one that adds great value to new developments. The open space in each development should also be consistent with the town-wide map of potential conservation lands and greenways, so that it will eventually become part of an interconnected whole or network.

Determining the Design Approach: The town, which will inherit and live with the results of new developments for generations to come, should make the decision of whether a subdivision may be a conventional R40 or whether it shall be an RCD, based on the Yield Plan and the RCD sketch -- just like it allows certain uses in certain zones and prohibits them in others. Development is a privilege, not an absolute right, and can be regulated by ordinance provisions consistent with the town's Comprehensive Land Use Plan. That decision could be made by the Planning Board, upon a recommendation from the town planner, or by the Council upon a recommendation from the Planning Board and town planner.

Yield Plan Verification: The town should very closely examine, even scrutinize, Yield Plans, to ensure they do not contain lots that would in fact not be feasible to create. When in doubt, it could engage a consulting engineer for this purpose, to potentially rebut the arguments of the applicant's engineer.

Minimum Buildable Area: The current 5000 SF requirement for buildable area on an R40 lots (such as shown on Yield Plans) should be increased to 15,000 SF. I do not think it unreasonable to require that at least 37% of an R40 lot be usable, allowing 63% to be unbuildable. The current 5000 SF figure is not appropriate for Weddington and has in fact been recently abused by an applicant whose so-called 5000 SF areas consisted mostly of unbuildable stream buffer land, leaving only about 2000 SF of buildable area on those lots that he used to inflate his RCD density and create a densely packed knot of lots in the center of the property.

Maximum Unbuildable Land within Minimum Required Open Space: No more than say 20 percent of the minimum required open space should consist of unbuildable land, such as wetlands, floodplains, waterbodies, steep slopes over 25 percent, streams and their environmental buffers, and power line and gas line ROWs. This land would be preserved in any case, and the purpose of an RCD is to protect the land that would otherwise be graded and built upon. Active recreational facilities such as paved tennis courts, pools, etc. should be counted as open space, but parking areas should not be so included.

Working with the Terrain: Mass grading should be specifically discouraged, very strongly, by requiring site designers to lay out their projects with the existing contours as much as possible. The grading plans they submit will inform the town's consulting engineer how well the applicant has followed this provision. The result will be more naturalistic neighborhoods, more attractive and not looking so much like a manufactured product.

Location of Open Space: In addition to being located where the Site Analysis Plan and Site Walk findings suggest it should be, it is helpful to remember that open space situated along the outside edges of curving street, or at the ends of cul-de-sacs, forms highly visible terminal vistas.

Cul-de-Sac Design: Short cul-de-sacs, such as those less than say 500 feet, should be generally required to be designed as “closes”, in which the 130-foot diameter of the turning circle is extended back to its beginning so that a long central island can be created in the middle. This island, often 30-50 feet wide, can be planted with trees (such as red maple or sycamores), and could be designed to function as a rain garden for stormwater infiltration, by tilting the two one-way lanes looping around the close toward the central green. All cul-de-sacs and closes should have trail connections at their ends, leading into the open space.

Trails: Trails should be constructed at the same time as the streets, so they are in place before the first lots are sold. That way they will be provided properly and in a timely manner (unlike at Stratford Hall, where the eased area on the approved plan has been claimed by adjacent lot owners). Those trail heads should be marked with small signs.

Conservation Land Signage: Conserved land should be marked with signs informing people that the land is permanently protected by a perpetual conservation easement held by the town (and the Catawba Land Conservancy?). The ordinance requirements for a unanimous vote of the HOA to propose development on its open space is another excellent protection tool.

Street Trees: Shade trees should usually be planted between sidewalks and curbing. The last subdivision we visited on Wednesday morning provided a good example of this approach, where the trees will ultimately cast their welcome shade on both the streets and sidewalks.

Cul-de-Sac Length: The same maximum length should be required for RCDs and R40 subdivisions. I suggest about 850 feet, enough for 18 RCD lots and a dozen conventional lots.

Street Pavement Width: Streets that have parkland on one side can be several feet narrower, as there is no potential parking demand from the green side of the street. Also, RCD streets could be allowed, in general, to be two feet less wide than those currently required in R40 developments, and streets in those R40 development could be increased by two feet, to create a four-foot differential, encouraging developers to opt for RCD (unless the town follows an earlier recommendation about its determining whether RCD or R40 will be allowed).

Conservancy Lots and Non-Common Open Space: Lots that are more than say five acres in area could be allowed to count four acres toward the minimum open space requirements for the subdivision. This would be private noncommon open space, not accessible to other subdivision residents, and maintained by the owner of that large lot (reducing maintenance responsibilities for the HOA and boosting everyone’s property values a bit). This is an option I would not expect many developers to select, but it could provide flexibility and variety, particularly when a property has a special original house on it, as Stratford Hall had/has. Not more than say 20 percent of the total minimum required open space should be allowed to be created in such Conservancy Lots, so that residents would still have considerable common land to enjoy.

Stormwater Management: Because runoff from several RCD subdivisions have reportedly damaged neighboring properties downstream, the town might want to engage the services of a consulting engineer to check the stormwater calculations and detention basin provision in all proposed subdivisions. I also recommend investigating the two projects that have apparently caused downstream problems, to determine if the fault lies in weak and ineffective state regulations, or in poor design by the developer’s engineer, or both. Both DNR agency staff and the developer’s engineer could be called to a meeting in the town offices where they could be asked to look deeply into the situation and report back to the town on their findings. The town could enforce stormwater regulations if it adopted the state’s regulations, in case DNR does not follow up on enforcement. When the state drops the enforcement ball, it

effectively encourages developers to cut corners on this critical piece of infrastructure. Chapter ___ of the new *Rural by Design* is a primer on stormwater issues, and explains and illustrates the raingarden concept, which can reduce the size of the potentially huge basins that developers seem to favor.

**AN ORDINANCE TO AMEND SECTION XX-XXX.16
OF THE CODE OF ORDINANCES
OF THE TOWN OF WEDDINGTON**

O-2018-XX

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WEDDINGTON THAT SECTION XX-XXX.16 OF THE CODE OF ORDINANCES BE AMENDED AS FOLLOWS:

Section § xxx.16 - EROSION AND SEDIMENTATION CONTROL PLANS

- A. Persons conducting land-disturbing activity shall be responsible for preparing a plan for all land-disturbing activities subject to this chapter whenever the proposed activity is to be undertaken on a tract disturbing more than 12,000 square feet of land, excluding single-family residential development addressed in [§ xxx.05](#)
- B. Seven complete copies of the plan shall be filed with the Control Specialist through the office of the Town of Weddington Zoning Administrator at least 30 days prior to the commencement of the proposed activity. A fee, made payable to the Town of Weddington, shall be charged for each plan review. Such fee shall be in accordance with a fee schedule adopted by the Town of Weddington Town Council. No plan shall be considered complete unless accompanied by such fee and a performance bond in the form of a certified check, cash or irrevocable letter of credit, in an amount deemed sufficient by the Engineering Department to cover all costs of protection or other improvements required to establish protective cover on the site in conformity with this chapter. The performance bond shall remain effective until work has been completed, inspected and approved by the Zoning Administrator, Engineer or designee.
- C. The Erosion Control Specialist shall transmit a copy of the complete plan to the Union Soil and Water Conservation District (SWCD) for their review. The SWCD shall be given up to 20 days to make comment on the plan. Failure of the SWCD to submit its comments to the Erosion Control Specialist within such time period shall not delay final action on the proposed plan by the Erosion Control Specialist.
- D. The Erosion Control Specialist shall render a decision on a plan within 30 days of submittal. The Erosion Control Specialist shall condition approval of a draft plan upon the applicants' compliance with local, state and federal water quality laws, regulations, ordinances and rules. Such decision shall be approval, approval with modifications, approval with performance reservations, or disapproval. Failure to approve, approve with modifications or performance reservations, or disapprove a complete plan within 30 days of receipt shall be deemed approval.
- E. Any final decision made pertaining to the proposed plan shall be filed at the Town of Weddington with the Zoning Administrator (or as otherwise designated by the town) and sent to the applicant by first class mail.
- F. Denial of a plan or a revised plan must specifically state in writing the reasons for disapproval. The Erosion Control Specialist must approve, approve with modifications, or disapprove a revised plan within 15 days of receipt, or it is deemed to be approved.
- G. Plan approval shall expire three years following the date of approval, if no land-disturbing activity has been undertaken, or if no land-disturbing activity has occurred with three years. If, following commencement of a land-disturbing activity pursuant to an approved plan, the Erosion Control Specialist determines that the plan is inadequate to meet the requirements of this chapter, the Erosion Control Specialist may require any revision of the plan that is necessary to comply with this chapter.
- H. Persons conducting land-disturbing activities which are addressed by [§ xxx.16](#) shall have secured a plan certificate and letter of approval (in accordance with procedures described herein) before any land-disturbing activities commence. A copy of the approved plan and the certificate of plan approval shall be

maintained at the job site by the persons conducting the land-disturbing activity. After approving the plan, if the Erosion Control Specialist, either upon review of such plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the Specialist may require that a revised plan be submitted. Pending the preparation and approval of the revised plan, work shall cease or shall continue under conditions outlined by the Erosion Control Specialist.

- I. A plan may be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or their attorney-in-fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or non-compliance with the plan, the Act, this chapter, or rules or orders adopted or issued pursuant to this chapter. If the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity.
- J. The person submitting a plan to the Erosion Control Specialist is, prior to submission of the plan, solely and exclusively responsible for determining whether the proposed land-disturbing activities require any form of state or federal environmental certification or documentation. Any plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (G.S. § 113A-1 et seq.) shall be deemed incomplete until a complete environmental document is available for town review. The Erosion Control Specialist, upon discovery that an environmental certification or documentation is required but was not obtained, shall promptly notify the person submitting the plan that the 30-day time limit for review of the plan pursuant to [§ xxx.16\(D\)](#) of this chapter shall not begin until a complete environmental document or certificate is available for review by the Erosion Control Specialist. However, no term or condition in the chapter shall be interpreted to place the burden for determining the necessity for an environmental certificate or documentation upon the Erosion Control Specialist, and the person submitting the plan, as well as any other persons specified by law, rule or regulation, shall remain solely and exclusively responsible for such determination.
- K. The plan required by this section shall contain architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this chapter. Any erosion and sediment control measures and/or devices must be drawn to scale and contour when deemed applicable by the Erosion Control Specialist. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation shall be found in the Town of Weddington Engineering, Standards and Procedures Manual. The Erosion Control Specialist shall automatically disapprove a plan if it is determined that implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters.
- L. A plan may be disapproved upon a finding that an applicant, or a parent, subsidiary, or other affiliate of the applicant:
 - 1. Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the NCSCC or the town pursuant to the Act and has not complied with the notice within the time specified in the notice.
 - 2. Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act by the time the payment is due.
 - 3. Has been convicted of a misdemeanor pursuant to G.S. § 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act; or
 - 4. Has failed to substantially comply with applicable local, state or federal laws, regulations, rules or ordinances adopted pursuant to the Act. For purposes of this [§ xxx.16\(L\)](#), an applicant's record may be considered for only the two years prior to the application date.

- M. Applications for amendment of a plan in written and/or graphic form may be made at any time under the same format as the original application. Until such time as said amendment is approved by Erosion Control Specialist, land-disturbing activity shall not proceed except in accordance with the plan as originally approved.
- N. Any person engaged in land-disturbing activity who fails to file a plan in accordance with this chapter, or who conducts a land-disturbing activity except in accordance with provisions of an approved plan shall be deemed in violation of this chapter.

§ xxx.17 - TRANSFER OF PLANS

- A. The Town of Weddington may transfer a plan if all of the following conditions are met:
 - 1. The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and ownership.
 - 2. The local government finds all of the following:
 - a. The plan holder is one of the following:
 - 1. A natural person who is deceased.
 - 2. A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.
 - 3. A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.
 - 4. A person who has sold the property on which the permitted activity is occurring or will occur.
 - b. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
 - c. The successor-owner is the sole claimant of the right to engage in the permitted activity.
 - d. There will be no substantial change in the permitted activity.
- B. The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.
- C. The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.
- D. Notwithstanding changes to law made after the original issuance of the plan, the local government may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the local government from requiring a revised plan pursuant to [§ xxx.16\(G\)](#).
- E. Denials of transfer requests may be appealed pursuant to [§ xxx.22\(A\)](#)

§ xxx.18 - INSPECTIONS AND INVESTIGATIONS

- A. The Erosion Control Specialist will periodically inspect land-disturbing activities to ensure compliance with the Act, this chapter, or rules or orders adopted or issued pursuant to this chapter, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each plan. The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with [§ xxx.06\(C\)](#). The person who performs the inspection shall maintain and make available a record of the deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until

permanent ground cover has been established as required by the approved erosion and sedimentation control plan.

- B. No person shall willfully resist, delay, or obstruct the Erosion Control Specialist, while inspecting or attempting to inspect a land-disturbing activity under this section.
- C. If it is determined that a person engaged in the land-disturbing activity has failed to comply with the Act, this chapter, or rules, or orders adopted or issued pursuant to this chapter, or has failed to comply with an approved plan, a notice of violation shall be served upon that person. The notice shall be served by registered or certified mail or by any means authorized under G.S. 1A-1, Rule 4. The notice of violation shall specify a date by which, or a cure period within which, the person must comply with this chapter, and inform the person of the actions that need to be taken to comply with this chapter. The notice shall set forth the measures necessary to achieve compliance with the plan, specify a reasonable time period within which such measures shall be completed, and warn that failure to correct the violation within the time period stated is subject to a civil penalty and other enforcement actions. However, no time period for compliance need be given for failure to submit a plan for approval, for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties, or for the penalty that may be assessed pursuant to this chapter for the day the violation is assessed by the Erosion Control Specialist. Any person who fails to comply within the time specified in the notice is subject to additional civil and criminal penalties for a continuing violation as provided in this chapter. If the person engaged in the land-disturbing activity has not received a previous notice of violation under this section, the Erosion Control Specialist shall deliver the notice of violation in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program in the Department, referral to a cooperative extension program, or by the provision of written materials such as Department guidance documents. If the Erosion Control Specialist is unable to deliver the notice of violation in person within 15 days following discovery of the violation, the notice of violation may be served in the manner prescribed for service of process by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.
- D. The Erosion Control Specialist shall have the power to conduct such investigation as may be reasonably deemed necessary to carry out duties as prescribed in this chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity. No person shall refuse entry or access to the Erosion Control Specialist who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such representative while in the process of carrying out their official duties as provided in this chapter.
- E. The Erosion Control Specialist shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.
- F. On any tract on which five or more acres are disturbed, the person conducting land-disturbing activity will be responsible for self-inspection of erosion and sedimentation control facilities at least once every seven days or within 24 hours of a storm event of greater than 0.5 inches of rain per 24-hour period.

§ xxx.19 - PENALTIES; STOP WORK ORDERS

A. *Civil penalties.*

1. Any person who violates any of the provisions of the applicable state, federal or local laws, rules, regulations or ordinances, including this chapter, or rules or orders adopted or issued pursuant to applicable state, federal or local laws, rules, regulations or ordinances, including this chapter, or who initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty for a violation is \$5,000. A civil penalty may be assessed from the date of the violation. Each day of a continuing violation

shall constitute a separate violation. When the person has not been assessed any civil penalty under this subsection for any previous violation and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is \$25,000.

2. The Erosion Control Specialist shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty, the reason for assessing the penalty, the option available to that person to request a remission of the civil penalty under G.S. § 113A-64.2, the date of the deadline for that person to make the remission request regarding this particular penalty, and, when that person has not been assessed any civil penalty under this section for any previous violation, the date of the deadline for that person to abate continuing environmental damage resulting from the violation in order to be subject to the maximum cumulative total civil penalty under subdivision (1) of this subsection. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment within 30 days by filing a petition for a contested case under G.S. ch. 150B, [art. 3](#). If a violator does not pay a civil penalty assessed by the Town of Weddington within 30 days after it is due, the Erosion Control Specialist may institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the violation occurred or the violator's residence or principal place of business is located. A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.
 3. In determining the amount of the penalty, items which may be considered are the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by non-compliance, whether the violation was committed willfully and the prior record of the violator in complying with or failing to comply with this chapter.
 4. The clear proceeds of civil penalties collected by the town must be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. § 115C-457.2.
- B. *Criminal penalties.* Any person who knowingly or willfully violates any provision of this chapter, or rule, regulation or order adopted or issued pursuant to this chapter, or who knowingly or willfully initiates or continues a land-disturbing activity for which a plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a class 2 misdemeanor which may include a fine not to exceed \$5,000.
- C. *Stop work orders.*
1. The Erosion Control Specialist may issue a stop-work order if he finds that a land-disturbing activity is being conducted in violation of this section or of any rule adopted or order issued pursuant to this section, that the violation is knowing and willful, and that either:
 - a. Off-site sedimentation has eliminated or severely degraded a use in a lake or natural watercourse or that such degradation is imminent.
 - b. Off-site sedimentation has caused severe damage to adjacent land or that such damage is imminent.
 - c. The land-disturbing activity is being conducted without an approved plan.
 2. The stop-work order shall be in writing and shall state what work is to be stopped and what measures are required to abate the violation. The order shall include a statement of the findings made by the Town of Weddington pursuant to subsection (a) of this section, and shall list the conditions under which work that has been stopped by the order may be resumed. The delivery of equipment and materials which does not contribute to the violation may continue while the stop-work order is in effect. A copy of this section shall be attached to the order.

3. The stop-work order shall be served by the Sheriff of Union County or by some other person duly authorized by law to serve process as provided by G.S. 1A-1, Rule 4, and shall be served on the person at the site of the land-disturbing activity who is in operational control of the land-disturbing activity. The sheriff or other person duly authorized by law to serve process shall post a copy of the stop-work order in a conspicuous place at the site of the land-disturbing activity. The Town of Weddington shall also deliver a copy of the stop-work order to any person that the Town of Weddington has reason to believe may be responsible for the violation.
4. The directives of a stop-work order become effective upon service of the order. Thereafter, any person notified of the stop-work order who violates any of the directives set out in the order may be assessed a civil penalty as provided in [§ xxx.18\(A\)](#). A stop-work order issued pursuant to this section may be issued for a period not to exceed five days.
5. The Erosion Control Specialist shall designate an employee (which may be the Erosion Control Specialist) to monitor compliance with the stop-work order. The name of the employee so designated shall be included in the stop-work order. The employee so designated, or the Erosion Control Specialist, shall rescind the stop-work order if all the violations for which the stop-work order are issued are corrected, no other violations have occurred, and all measures necessary to abate the violations have been taken. The Erosion Control Specialist shall rescind a stop-work order that is issued in error.
6. The issuance of a stop-work order shall be a final agency decision subject to judicial review in the same manner as an order in a contested case pursuant to G.S. ch. 150B, [art. 4](#). The petition for judicial review shall be filed in the superior court of the county in which the land-disturbing activity is being conducted.
7. As used in this section, days are computed as provided in G.S. 1A-1, Rule 6.
8. The Attorney for the Town of Weddington shall file a cause of action to abate the violations which resulted in the issuance of a stop-work order within two business days of the service of the stop-work order. The cause of action shall include a motion for an ex parte temporary restraining order to abate the violation and to effect necessary remedial measures. The resident superior court judge, or any judge assigned to hear the motion for the temporary restraining order, shall hear and determine the motion within two days of the filing of the complaint. The clerk of superior court shall accept complaints filed pursuant to this section without the payment of filing fees. Filing fees shall be paid to the clerk of superior court within 30 days of the filing of the complaint.

§ xxx.20 - INJUNCTIVE RELIEF.

- A. Whenever the Erosion Control Specialist has reasonable cause to believe that any person is violating or threatening to violate this chapter or any term, condition, or provision of an approved plan, he/she may, either before or after the institution of any other action or proceeding authorized by this chapter, institute a civil action for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court in Union County.
- B. Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order of judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this chapter.

§ xxx.21 - RESTORATION OF AREAS AFFECTED BY FAILURE TO COMPLY

The Erosion Control Specialist may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity as required by [§ xxx.06\(C\)](#) to restore the waters and land affected by

the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this chapter.

§ xxx.22 - APPEALS

Procedures which constitute the appeals process, related to the following actions:

- A. *Plan approval with modifications or plan disapproval.* The appeal of an approval, approval with modifications or disapproval of a plan made by the Erosion Control Specialist with regard to this chapter shall be governed by the following provisions:
 1. The order of approval, disapproval, or modification of any proposed plan made by the Erosion Control Specialist shall entitle the person challenging such decision to a public hearing before the Town of Weddington Board of Adjustment if such person submits written demand for a hearing and completes the necessary forms and pays the required appeals fee within 15 days following the date the decision was filed at the Town of Weddington Town Hall or mailed to the applicant, whichever date is later. Such written request and completed forms shall be submitted to the Clerk of the Board of Adjustment or his designee. Forms shall be available at the Town of Weddington Town Hall, or as directed by the Erosion Control Specialist. A fee for such public hearing shall be in accordance with a fee schedule adopted by the Town of Weddington Town Council. No request shall be considered complete unless accompanied by such fee.
 2. Notice of the Board of Adjustment public hearing shall be sent by first class mail to the applicant at least ten days prior to the public hearing and to any person who has submitted written request to receive such notice at least ten days prior to the date of the public hearing. The hearing shall be held no later than 30 days after the date of receipt of said written request.
 3. A hearing shall be conducted by the Board of Adjustment. A concurring vote per the Board of Adjustment's officially adopted by-laws will be necessary to reverse any order, requirement, decision, or determination of any official charged with the enforcement of this chapter, or to decide in favor of an appellant any matter upon which is required to pass or to grant variance from the provisions of this chapter. The town shall keep minutes of the proceedings, showing the votes of each member upon each question and the attendance of each member at such hearings. The final disposition of the town shall be based on findings of fact.
 4. A party dissatisfied with the decision of the Board of Adjustment following the public hearing shall appeal such decision to the NCSCC pursuant to Title 15, Chapter 4B, Section .0018(d) of the North Carolina Administrative Code and as provided by G.S. § 113A-61(c).
- B. *Plan disapproval due to prior violation, unpaid penalties, or non-compliance.* In the event that a plan is disapproved pursuant to [§ xxx.16\(L\)](#) of this chapter, the Town of Weddington Control Specialist shall notify the Director of the Division of Land Resources of such disapproval, along with the reasons therefore, within ten days after the date of the decision. The Erosion Control Specialist shall advise the applicant and the Director of the Division of Land Resources in writing as to the specific reasons that the plan was disapproved. The applicant may appeal the Erosion Control Specialist's disapproval of the plan pursuant to [§ xxx.16\(L\)](#) of this chapter directly to the NCSCC.
- C. *Issuance of notice of violation, penalties, or order of restoration.* The appeal of issuance of notice of violation, assessment of civil penalty, or order of restoration made by the Town of Weddington with regard to this chapter shall be governed by the following provisions:
 1. The issuance of a notice of violation, assessment of a civil penalty, or an order of restoration by the Erosion Control Specialist shall entitle the person alleged to be in violation of the

chapter (petitioner) to appeal within 30 days by filing a petition for a contested case with the State Office of Administrative Hearings under [Article 3](#) of Chapter 150B.

**EROSION AND SEDIMENTATION
CONTROL ORDINANCE**



December 2016

**AN ORDINANCE TO AMEND TITLE
XV OF THE TOWN OF WAXHAW
CODE OF ORDINANCES**

BE IT ORDAINED by the Board of Commissioners of the Town of Waxhaw that Title XV of the Town of Waxhaw Code of Ordinances be amended to add Chapter 159, Erosion and Sedimentation Control, as follows:

Section 1. TITLE XV, LAND USAGE

ADD:

CHAPTER 159: EROSION AND SEDIMENTATION CONTROL

PREAMBLE

159.01 PURPOSE

159.02 JURISDICTION

159.03 DEFINITIONS

159.04 EXCLUSIONS

159.05 GENERAL REQUIREMENTS AND OBJECTIVES

159.06 MANDATORY STANDARDS FOR LAND DISTURBING ACTIVITIES

159.07 DESIGN AND PERFORMANCE STANDARDS

159.08 STORMWATER OUTLET PROTECTION

159.09 BORROW AND WASTE AREAS

159.10 ACCESS AND HAUL ROADS

159.11 OPERATIONS IN LAKES OR NATURAL WATERCOURSES

159.12 RESPONSIBILITY FOR MAINTENANCE

159.13 ADDITIONAL MEASURES

159.14 EXISTING UNCOVERED AREAS

159.15 PERMITS

159.16 EROSION AND SEDIMENTATION CONTROL PLANS

159.17 TRANSFERS OF PLANS

159.18 INSPECTIONS AND INVESTIGATIONS

159.19 PENALTIES

159.20 INJUNCTIVE RELIEF

159.21 RESTORATION OF AREAS AFFECTED BY FAILURE TO COMPLY

159.22 APPEALS

159.23 SEVERABILITY

159.24 EFFECTIVE DATE

PREAMBLE

The sedimentation of streams, lakes and other waters of this State constitute a major pollution problem. Sedimentation occurs from the erosion or depositing of soil and other materials into the waters, principally from construction sites and road maintenance. The continued development of this Town will result in an intensification of pollution through sedimentation unless timely and appropriate action is taken. Control of erosion and sedimentation is deemed vital to the public interest and necessary to the public health and welfare, and expenditures of funds for erosion and sedimentation control programs shall be deemed for a public purpose. It is the purpose of this Ordinance to provide for the creation, administration, and enforcement of a program and for the adoption of minimal mandatory standards which will permit development of this Town to continue with the least detrimental effects from pollution by sedimentation.

159.01 PURPOSE. This Ordinance is adopted for the purpose of:

- (1) Regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation; and
- (2) Establishing procedures through which these purposes can be fulfilled.

159.02 JURISDICTION.

This Ordinance is hereby adopted by the Board of Commissioners to apply to all areas within the corporate limits of the Town of Waxhaw.

The Commission shall have jurisdiction, to the exclusion of local governments, to adopt rules concerning land-disturbing activities that are:

- a. Conducted by the State.
- b. Conducted by the United States.
- c. Conducted by persons having the power of eminent domain other than a local government.
- d. Conducted by a local government.
- e. Funded in whole or in part by the State or the United States.
- f. Related to oil and gas exploration and development on the well pad site.

In addition, certain exclusions are set forth in Section 159.04.

Where a conflict exists between any limitation or requirement contained in this Ordinance and those in any other ordinance, regulation, or plan, the more restrictive limitation or requirement shall apply. Except as otherwise provided herein, this ordinance shall not repeal, abrogate, or revoke any other ordinance, regulation, or plan.

159.03 DEFINITIONS.

The words and phrases used in this Ordinance shall have the meaning assigned in this Section provided, unless the context clearly indicates otherwise. These definitions are derived from the North Carolina Sedimentation Control regulations, 15A NCAC § 4A.0105 and the Sedimentation Pollution Control Act of 1973, NCGS § 113A-52.

Accelerated Erosion – means any increase over the rate of natural erosion as a result of land disturbing activity.

Act – means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it, as amended from time to time.

Adequate Erosion Control Measure, Structure, or Device – means one which controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity, as such controls are specified in the Ordinance.

Affiliate – a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control of another person.

Being Conducted – means a land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.

Board of Commissioners – means the Town of Waxhaw Board of Commissioners.

Borrow – means fill material which is required for on-site construction and is obtained from other locations.

Buffer Zone – means the strip of land adjacent to a lake or natural watercourse.

Town of Waxhaw Erosion Control Inspector/ Erosion Control Inspector/ Inspector – includes the Town of Waxhaw Development Services Director, who is principally responsible for the administration of this Section, or his duly authorized designee. This term shall also include any persons, agents or other representatives of the town as authorized by the Development Services Director.

Completion of Construction or Development – means that no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

Commission/NCSCC – means the North Carolina Sedimentation Control Commission.

Department - means the North Carolina Department of Environmental Quality.

Development Services Department – means the Town of Waxhaw Development Services Department

Discharge Point – means that point at which runoff leaves a tract.

District/SWCD – means the Union Soil and Water Conservation District (also referred to as the “SWCD”) created pursuant to Chapter 139 of the North Carolina Statutes.

Energy Dissipater – means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity

flow.

Erosion – means the wearing a way of land surface by the action of wind, water, gravity, or any combination thereof.

Ground Cover – means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

Lake or Natural Watercourse – means any stream, river, brook, swamp, creek, run, branch, and any reservoir, lake or pond, natural or impounded, in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.

Land-Disturbing Activity – means any use of the land by any person in residential, industrial, educational, institutional, or commercial development, highways and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

Local Government – means any county, village, town, or city, or any combination of counties, villages, towns and cities acting through a joint program with the Town pursuant to the provisions of the Act.

NCSCC – means the North Carolina Sedimentation Control Commission.

Natural Erosion – means the wearing away of the earth's surface by water, wind or other natural agents under natural environmental conditions undisturbed by man.

Parent – an affiliate that directly or indirectly, through one or more intermediaries, controls another Person.

Person – means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

Person Conducting Land-Disturbing Activity – means any person who may be held responsible for a violation unless expressly provided otherwise by this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.

Person Responsible for the Violation – as used in this Ordinance and G.S. 113A-64 means:

- (1) The developer or other person who has or holds themselves out as having financial or operational control over the land-disturbing activity; and/or
- (2) The landowner or person in possession or control of the land who has directly or indirectly allowed the land-disturbing activity or has benefited from it or has failed to comply with any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.

Phase of Grading – means one of two types of grading, rough or fine.

Plan – means a complete Erosion and Sedimentation Control Plan.

Sediment – means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

Sedimentation – means the process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.

Siltation – means sediment resulting from accelerated erosion which is removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited in or is in suspension in water.

Storm Drainage Facilities – means the system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey storm water through and from a given drainage area.

Storm Water Runoff – means the direct runoff of water resulting from precipitation in any form.

Subsidiary – an Affiliate that is directly or indirectly, through one or more intermediaries, controlled by another person.

SWCD/ Union SWCD – means the Union Soil and Water Conservation District.

Ten-Year Storm – means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration which will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.

Town – means Town of Waxhaw.

Tract – means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

Twenty-five Year Storm – means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.

Two-Year Storm – means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 2 years, and of a duration which will produce the maximum peak rate of runoff, from the Watershed of interest under average antecedent wetness conditions.

Uncover(s)(ed)(ing) – means the removal of ground cover from, on, or above the soil surface.

Undertaken – means the initiating of an activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract.

Velocity(ies) – means the average speed of flow through the cross section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.

Waste – means surplus materials resulting from on-site construction and disposed of at locations either on or off site other than the initial source of the materials.

Watershed – means the region drained by or contributing water to a stream, lake or other body of water.

Working Days – means days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

159.04 EXCLUSIONS.

This Section shall not apply to the following land-disturbing activities:

- 1) Activities, including the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:
 - a. Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.
 - b. Dairy animals and dairy products.
 - c. Poultry and poultry products.
 - d. Livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
 - e. Bees and apiary products.
 - f. Fur producing animals.
 - g. Mulch, ornamental plants, and other horticultural products. For purposes of this section, "mulch" means substances composed primarily of plant remains or mixtures of such substances.
- (2) Activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the Department.
- (3) Activities for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
- (4) For the duration of an emergency, activities essential to protect human life, including activities specified in an executive order issued under G.S. 166A-19.30(a)(5).
- (5) Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.
- (6) Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2

159.05 GENERAL REQUIREMENTS AND OBJECTIVES.

(A) Plan Required. No Person shall initiate any land-disturbing activity which uncovers more than twelve thousand (12,000) square feet of land for commercial, industrial, or subdivision

development without having a plan approved by the Erosion Control Inspector. Land-disturbing activities resulting from single-family residential development on an individual lot which disturbs one (1) acre of land or less are excluded from plan submittal and approval, provided that erosion control devices are installed in accordance with the details for residential lot development found in the Town of Waxhaw Engineering, Standards and Procedures Manual. Single-family residential development exceeding one (1) acre of land disturbed will be required to submit for plan approval. Land-disturbing activities resulting from single-family residential development on multiple contiguous lots which disturb a total of one (1) acre of land or less may conduct such activity with a single approved plan encompassing all the lots or with separate approved ESC Installation and Maintenance Agreements for each lot.

(B) ESC Installation and Maintenance Agreement Required. No person shall initiate any Land-Disturbing Activity for the purpose of new single-family residential development on an individual lot to a maximum of one (1) acre, without having an ESC Installation and Maintenance Agreement approved by the Erosion Control Inspector.

(C) Protection of Property. Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.

(D) Basic Control Objectives. A plan may be disapproved pursuant to Section 159.16 of this Ordinance if the plan fails to address the following control objectives:

- (1) Identify Critical Areas – On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention.
- (2) Limit Time of Exposure – All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.
- (3) Limit Exposed Areas – All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.
- (4) Control Surface Water – Surface water runoff originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.
- (5) Control Sedimentation – All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.
- (6) Manage Storm Water Runoff – When the increase in the velocity of storm water runoff resulting from a land-disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans are to include measures to control the velocity to the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

159.06 MANDATORY STANDARDS FOR LAND DISTURBING ACTIVITIES.

No land-disturbing activity subject to the control of this Ordinance shall be undertaken except in accordance with the following mandatory standard:

(A) Buffer Zone.

- (1) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity.
- (2) Unless otherwise provided, the width of the buffer zone begins and is measured landward from the normal pool elevation of impounded structures (lakes) to the nearest edge of the disturbed area and/ or five feet from the edge of the top of the bank of streams or rivers to the nearest edge of the disturbed area. Natural or artificial means of confining visible siltation must be placed, constructed or installed outside the undisturbed buffer zone.
- (3) For any watercourse, where more than one stream buffer width is imposed by Town of Waxhaw Code of Ordinance or other local, state or federal law(s), rule(s), or regulation(s), the greater buffer width stipulated shall apply.

(B) Graded Slopes and Fills. The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 14 calendar days of completion of any phase of grading, be planted or otherwise be provided with ground cover, devices, or structures sufficient to restrain erosion.

(C) Ground Cover. Whenever more than one (1) acre of land is uncovered or new residential development on an individual lot is initiated, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Provisions for a ground cover sufficient to restrain erosion must be accomplished within 15 working days or 60 calendar days, whichever is shorter following completion of construction or development.

(D) Prior Plan Approval .No Person shall initiate any land-disturbing activity on a tract if more than one (1) acre of land is to be uncovered, excluding single- family residential development in accordance with Subsection 159.05(B), unless, thirty or more days prior to initiating the activity, a plan is filed with and approved by the Erosion Control Inspector. The Erosion Control Inspector shall forward to the North Carolina Director of the Division of Water Quality a copy of each plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de watering or lowering the water table of the tract.

(E) Zoning Permits. Any person requesting a grading permit in association with a land-disturbing activity on a tract which involves the uncovering of more than twelve thousand (12,000) square feet of land or new residential development on an individual lot, shall be required to have an approved Erosion and Sedimentation Control Plan or ESC Installation and Maintenance Agreement in accordance with this Ordinance.

159.07 DESIGN AND PERFORMANCE STANDARDS.

Erosion and sedimentation control measures, structures, and devices shall be so planned,

designed, and constructed as to provide protection from the calculated maximum peak rate of storm water runoff from the ten-year storm. Storm water runoff rates shall be calculated using the procedures in the USDA, Natural Resources Conservation Service's "National Engineering Field Manual for Conservation Practices," or other acceptable calculation procedures.

159.08 STORMWATER OUTLET PROTECTION.

(A) Persons shall conduct land-disturbing activity so that the post-construction velocity of the ten- year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:

- (1) The velocity established in Table 159.08-1 of this Section; or
- (2) The velocity of the ten-year storm runoff in the receiving watercourse prior to the land-disturbing activity.

(B) If the conditions of Section 159.08 (A) cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the "prior to land-disturbing activity" velocity by ten percent (10%).

(C) **Acceptable Management Measures.** Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The Town recognizes that the management of storm water runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives are to:

- (1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious.
- (2) Avoid increases in storm water runoff discharge velocities by using vegetated or roughened swales and waterways in lieu of closed drains and high velocity paved sections.
- (3) Provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities to the point of discharge. These may range from simple rip-rapped sections to complex structures.
- (4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining.

(D) **Exceptions.** This rule shall not apply where it can be demonstrated that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

(E) Maximum permissible velocity for storm water discharges shall be regulated in accordance with Table 159.08-1.

Table 159.08-1 Maximum Permissible Velocities

Material	Feet/ Second	Meters/ Second
Fine sand (noncolloidal)	2.5	0.8
Sandy loam (noncolloidal)	2.5	0.8
Silt loam (noncolloidal)	3.0	0.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

159.09 BORROW AND WASTE AREAS.

When the Person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials other than landfills regulated by the North Carolina Department of Environment and Natural Resources's Division of Solid Waste Management, shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the land-disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.

159.10 ACCESS AND HAUL ROADS.

Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.

159.11 OPERATIONS IN LAKES OR NATURAL WATERCOURSES.

Land-disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a lake, stream or other watercourse where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the lake, stream or other watercourse flow characteristics, except when justification acceptable to the Town for significant alteration to flow characteristic is provided.

159.12 RESPONSIBILITY FOR MAINTENANCE.

During the development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of this Ordinance or the Act, or any order adopted pursuant to this Ordinance or the Act. After site development, the landowner or person in possession of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

159.13 ADDITIONAL MEASURES.

Whenever the Erosion Control Inspector determines that significant sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the person conducting the land-disturbing activity will be required to and shall take additional protective action.

159.14 EXISTING UNCOVERED AREAS.

(A) All uncovered areas existing on the effective date of this Ordinance which resulted from land-disturbing activity which exceed one (1) acre of land, that are subject to continued accelerated erosion and are causing off-site damage from sedimentation, shall be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation.

(B) The Erosion Control Inspector will serve upon the landowner or other person in possession or control of that land a written notice of violation by registered or certified mail, return receipt requested, or other means reasonably calculated to give actual notice. The notice will set forth the measures needed to comply, and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the Erosion Control Inspector shall take into consideration the economic feasibility, technology, and quantity of work required, and shall set reasonable and attainable time limits of compliance.

(C) The Erosion Control Inspector reserves the right to require preparation and approval of a plan in any instance where extensive control measures are required.

159.15 PERMITS.

(A) No person shall undertake any land-disturbing activity subject to this Ordinance without having first obtained a Plan Certificate and Letter of Approval or ESC Installation and Maintenance Agreement Approval from the Erosion Control Inspector, except that no Plan Certificate and Letter of Approval or ESC Installation and Maintenance Agreement Approval shall be required for any Land-Disturbing Activity:

- (1) For the purpose of fighting fires; or
- (2) For the stock piling of raw or processed sand, stone, or gravel in material processing plants and storage yards, provided that sediment control measures have been utilized to protect against off-site damage; or
- (3) That does not disturb more than one (1) acre in surface area.
In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

(B) Although a Plan Certificate and Letter of Approval is not required for land-disturbing activity comprising less than one (1) acre for residential projects, such activity shall be subject to all other requirements of this Ordinance and any other applicable standards or ordinances adopted by the Town of Waxhaw.

(C) Submittals for erosion and sediment control plan approval and erosion control inspections shall be subject to any and all relevant fees as adopted by the Board of Commissioners and prescribed in the Town of Waxhaw Code of Ordinances. Fees shall accompany plan submittals, otherwise the submittal shall be determined incomplete and shall be returned to the applicant.

159.16 EROSION AND SEDIMENTATION CONTROL PLANS.

(A) Persons conducting land-disturbing activity shall be responsible for preparing a plan for all land-disturbing activities subject to this Ordinance whenever the proposed activity is to be undertaken on a tract disturbing more than one (1) acre of land, excluding single-family residential development addressed in Section 159.05 (B).

(B) Seven complete copies of the plan shall be filed with the Control Inspector in the office of the Town of Waxhaw Development Services Department at least 30 days prior to the commencement of the proposed activity. A fee, made payable to the Town of Waxhaw, shall be charged for each plan review. Such fee shall be in accordance with a fee schedule adopted by the Town of Waxhaw Board of Commissioners. No plan shall be considered complete unless accompanied by such fee and a performance bond in the form of a certified check, cash or irrevocable letter of credit, in an amount deemed sufficient by the Engineering Department to cover all costs of protection or other improvements required to establish protective cover on the site in conformity with this ordinance. The performance bond shall remain effective until work has been completed, inspected and approved by the Development Services Department.

(C) The Erosion Control Inspector shall transmit a copy of the complete plan to the Union Soil and Water Conservation District (SWCD) for their review. The SWCD shall be given up to twenty (20) days to make comment on the plan. Failure of the SWCD to submit its comments to the Erosion Control Inspector within such time period shall not delay final action on the proposed plan by the Erosion Control Inspector.

(D) The Erosion Control Inspector shall render a decision on a plan within thirty (30) days of submittal. The Erosion Control Inspector shall condition approval of a draft plan upon the applicants' compliance with local, state and federal water quality laws, regulations, ordinances and rules. Such decision shall be approval, approval with modifications, approval with performance reservations, or disapproval. Failure to approve, approve with modifications or performance reservations, or disapprove a complete plan within thirty (30) days of receipt shall be deemed approval.

(E) Any final decision made pertaining to the proposed plan shall be filed in the Town of Waxhaw Development Services Department (or as otherwise designated by the Town) and sent to the applicant by first class mail.

(F) Denial of a plan or a revised plan must specifically state in writing the reasons for disapproval. The Erosion Control Inspector must approve, approve with modifications, or disapprove a revised plan within fifteen (15) days of receipt, or it is deemed to be approved.

(G) Plan approval shall expire three (3) years following the date of approval, if no land-disturbing activity has been undertaken, or if no land-disturbing activity has occurred with three (3) years. If, following commencement of a land-disturbing activity pursuant to an approved plan, the Erosion Control Inspector determines that the plan is inadequate to meet the requirements of this ordinance, the Erosion Control Inspector may require any revision of the plan that is necessary to comply with this ordinance.

(H) Persons conducting land-disturbing activities which are addressed by Section 159.16 shall have secured a Plan Certificate and Letter of Approval (in accordance with procedures described herein) before any land-disturbing activities commence. A copy of the approved plan and the Certificate of Plan Approval shall be maintained at the job site by the

persons conducting the land-disturbing activity. After approving the plan, if the Erosion Control Inspector, either upon review of such plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the Inspector may require that a revised plan be submitted. Pending the preparation and approval of the revised plan, work shall cease or shall continue under conditions outlined by the Erosion Control Inspector.

(I) A plan may be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or their attorney-in-fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or non-compliance with the plan, the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance. If the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land disturbing activity.

(J) The person submitting a plan to the Erosion Control Inspector is, prior to submission of the plan, solely and exclusively responsible for determining whether the proposed land-disturbing activities require any form of state or federal environmental certification or documentation. Any plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (G.S. 113A-1, et seq.) shall be deemed incomplete until a complete environmental document is available for Town review. The Erosion Control Inspector, upon discovery that an environmental certification or documentation is required but was not obtained, shall promptly notify the person submitting the plan that the thirty (30) day time limit for review of the plan pursuant to Section 159.16 (D) of this Ordinance shall not begin until a complete environmental document or certificate is available for review by the Erosion Control Inspector. However, no term or condition in the Ordinance shall be interpreted to place the burden for determining the necessity for an environmental certificate or documentation upon the Erosion Control Inspector, and the person submitting the plan, as well as any other persons specified by law, rule or regulation, shall remain solely and exclusively responsible for such determination.

(K) The plan required by this section shall contain architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this Ordinance. Any erosion and sediment control measures and/or devices must be drawn to scale and contour when deemed applicable by the Erosion Control Inspector. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation shall be found in the Town of Waxhaw Engineering, Standards and Procedures Manual. The Erosion Control Inspector shall automatically disapprove a plan if it is determined that implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters.

(L) A plan may be disapproved upon a finding that an applicant, or a parent, subsidiary, or other affiliate of the applicant:

- (1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the NCSCC or the Town pursuant to the Act and has not complied with the notice within the time specified in the notice.

- (2) Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act by the time the payment is due.
- (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act; or
- (4) Has failed to substantially comply with applicable local, State or Federal laws, regulations, rules or ordinances adopted pursuant to the Act. For purposes of this subsection 159.16 (L), an applicant's record may be considered for only the two (2) years prior to the application date.

(M) Applications for amendment of a plan in written and/or graphic form may be made at any time under the same format as the original application. Until such time as said amendment is approved by Erosion Control Inspector, land-disturbing activity shall not proceed except in accordance with the plan as originally approved.

(N) Any person engaged in land-disturbing activity who fails to file a plan in accordance with this Ordinance, or who conducts a land-disturbing activity except in accordance with provisions of an approved plan shall be deemed in violation of this Ordinance.

159.17 TRANSFER OF PLANS.

(A) The Town of Waxhaw may transfer a plan if all of the following conditions are met:

- (1) The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and ownership.
- (2) The local government finds all of the following:
 - a. The plan holder is one of the following:
 - (i) A natural person who is deceased.
 - (ii) A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.
 - (iii) A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.
 - (iv) A person who has sold the property on which the permitted activity is occurring or will occur.
 - b. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
 - c. The successor-owner is the sole claimant of the right to engage in the permitted activity.
 - d. There will be no substantial change in the permitted activity.

(B) The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.

(C) The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.

(D) Notwithstanding changes to law made after the original issuance of the plan, the local government may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the local government from requiring a revised plan pursuant to Section 159.16(G).

(E) Denials of transfer requests may be appealed pursuant to Section 159.22(A)

159.18 INSPECTIONS AND INVESTIGATIONS.

(A) The Erosion Control Inspector will periodically inspect land-disturbing activities to ensure compliance with the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each plan. The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with 159.06 (C). The person who performs the inspection shall maintain and make available a record of the deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan.

(B) No person shall willfully resist, delay, or obstruct the Erosion Control Inspector, while inspecting or attempting to inspect a land-disturbing activity under this section.

(C) If it is determined that a person engaged in the land-disturbing activity has failed to comply with the Act, this Ordinance, or rules, or orders adopted or issued pursuant to this Ordinance, or has failed to comply with an approved plan, a notice of violation shall be served upon that person. The notice shall be served by registered or certified mail or by any means authorized under GS 1A-1, Rule 4. The Notice of Violation shall specify a date by which, or a cure period within which, the person must comply with this Ordinance, and inform the person of the actions that need to be taken to comply with this Ordinance. The Notice shall set forth the measures necessary to achieve compliance with the plan, specify a reasonable time period within which such measures shall be completed, and warn that failure to correct the violation within the time period stated is subject to a civil penalty and other enforcement actions. However, no time period for compliance need be given for failure to submit a plan for approval, for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties, or for the penalty that may be assessed pursuant to this Ordinance for the day the violation is assessed by the Erosion Control Inspector. Any person who fails to comply within the time specified in the Notice is subject to additional civil and criminal penalties for a continuing violation as provided in this Ordinance.

If the person engaged in the land-disturbing activity has not received a previous notice of violation under this section, the Erosion Control Inspector shall deliver the notice of violation in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program in the Department, referral to a cooperative extension program, or by the provision of written materials such as Department guidance documents. If the Erosion Control Inspector is unable to deliver the notice of violation in person within 15 days following discovery of the violation, the notice of violation may be served in the manner prescribed for service of process by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.

(D) The Erosion Control Inspector shall have the power to conduct such investigation as may be reasonably deemed necessary to carry out duties as prescribed in this ordinance, and for this

purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity. No person shall refuse entry or access to the Erosion Control Inspector who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such representative while in the process of carrying out their official duties as provided in this Ordinance.

(E) The Erosion Control Inspector shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

(F) On any tract on which five (5) or more acres are disturbed, the person conducting land-disturbing activity will be responsible for self-inspection of erosion and sedimentation control facilities at least once every seven (7) days or within 24 hours of a storm event of greater than 0.5 inches of rain per 24-hour period.

159.19 PENALTIES; STOP WORK ORDERS .

(A) Civil Penalties.

- (1) Any person who violates any of the provisions of the applicable State, Federal or local laws, rules, regulations or ordinances, including this Ordinance, or rules or orders adopted or issued pursuant to applicable State, Federal or local laws, rules, regulations or ordinances, including this Ordinance, or who initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty for a violation is five thousand dollars (\$5,000). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this subsection for any previous violation and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars (\$25,000).
- (2) The Erosion Control Inspector shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty, the reason for assessing the penalty, the option available to that person to request a remission of the civil penalty under G.S. 113A-64.2, the date of the deadline for that person to make the remission request regarding this particular penalty, and, when that person has not been assessed any civil penalty under this section for any previous violation, the date of the deadline for that person to abate continuing environmental damage resulting from the violation in order to be subject to the maximum cumulative total civil penalty under subdivision (1) of this subsection. The notice of assessment shall be served by any means authorized under G.S 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment within 30 days by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil penalty assessed by the Town of Waxhaw within 30 days after it is due, the Erosion Control Inspector may institute a civil action to recover the amount of the assessment. The civil action may be brought in the

superior court of any county where the violation occurred or the violator's residence or principal place of business is located. A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

- (3) In determining the amount of the penalty, items which may be considered are the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by non-compliance, whether the violation was committed willfully and the prior record of the violator in complying with or failing to comply with this Ordinance.
- (4) The clear proceeds of civil penalties collected by the Town must be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S 115C-457.2.

(B) **Criminal Penalties.** Any Person who knowingly or willfully violates any provision of this Ordinance, or rule, regulation or order adopted or issued pursuant to this Ordinance, or who knowingly or willfully initiates or continues a land-disturbing activity for which a plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000.00.

(C) **Stop Work Orders**

- (1) The Erosion Control Inspector may issue a stop-work order if he finds that a land-disturbing activity is being conducted in violation of this Section or of any rule adopted or order issued pursuant to this Section, that the violation is knowing and willful, and that either:
 - (a) Off-site sedimentation has eliminated or severely degraded a use in a lake or natural watercourse or that such degradation is imminent.
 - (b) Off-site sedimentation has caused severe damage to adjacent land or that such damage is imminent.
 - (c) The land-disturbing activity is being conducted without an approved plan.
- (2) The stop-work order shall be in writing and shall state what work is to be stopped and what measures are required to abate the violation. The order shall include a statement of the findings made by the Town of Waxhaw pursuant to subsection (a) of this section, and shall list the conditions under which work that has been stopped by the order may be resumed. The delivery of equipment and materials which does not contribute to the violation may continue while the stop-work order is in effect. A copy of this section shall be attached to the order.
- (3) The stop-work order shall be served by the sheriff of Union County or by some other person duly authorized by law to serve process as provided by G.S. 1A-1, Rule 4, and shall be served on the person at the site of the land-disturbing activity who is in operational control of the land-disturbing activity. The sheriff or other person duly authorized by law to serve process shall post a copy of the stop-work order in a conspicuous place at the site of the land-disturbing activity.

The Town of Waxhaw shall also deliver a copy of the stop-work order to any person that the Town of Waxhaw has reason to believe may be responsible for the violation.

- (4) The directives of a stop-work order become effective upon service of the order. Thereafter, any person notified of the stop-work order who violates any of the directives set out in the order may be assessed a civil penalty as provided in Section 159.18(A). A stop-work order issued pursuant to this section may be issued for a period not to exceed five days.
- (5) The Erosion Control Inspector shall designate an employee (which may be the Erosion Control Inspector) to monitor compliance with the stop-work order. The name of the employee so designated shall be included in the stop-work order. The employee so designated, or the Erosion Control Inspector, shall rescind the stop-work order if all the violations for which the stop-work order are issued are corrected, no other violations have occurred, and all measures necessary to abate the violations have been taken. The Erosion Control Inspector shall rescind a stop-work order that is issued in error.
- (6) The issuance of a stop-work order shall be a final agency decision subject to judicial review in the same manner as an order in a contested case pursuant to Article 4 of Chapter 150B of the General Statutes. The petition for judicial review shall be filed in the superior court of the county in which the land-disturbing activity is being conducted.
- (7) As used in this section, days are computed as provided in G.S. 1A-1, Rule 6.
- (8) The Attorney for the Town of Waxhaw shall file a cause of action to abate the violations which resulted in the issuance of a stop-work order within two business days of the service of the stop-work order. The cause of action shall include a motion for an ex parte temporary restraining order to abate the violation and to effect necessary remedial measures. The resident superior court judge, or any judge assigned to hear the motion for the temporary restraining order, shall hear and determine the motion within two days of the filing of the complaint. The clerk of superior court shall accept complaints filed pursuant to this section without the payment of filing fees. Filing fees shall be paid to the clerk of superior court within 30 days of the filing of the complaint.

159.20 INJUNCTIVE RELIEF.

(A) Whenever the Erosion Control Inspector has reasonable cause to believe that any person is violating or threatening to violate this Ordinance or any term, condition, or provision of an approved plan, he/ she may, either before or after the institution of any other action or proceeding authorized by this Ordinance, institute a civil action for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court in Union County.

(B) Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order of judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

159.21 RESTORATION OF AREAS AFFECTED BY FAILURE TO COMPLY.

The Erosion Control Inspector may require a person who engaged in a land- disturbing activity and failed to retain sediment generated by the activity as required by subsection 159.06 (C) to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this Ordinance.

159.22 APPEALS.

Procedures which constitute the appeals process, related to the following actions:

(A) Plan Approval With Modifications or Plan Disapproval. The appeal of an approval, approval with modifications or disapproval of a plan made by the Erosion Control Inspector with regard to this Ordinance shall be governed by the following provisions:

- (1) The order of approval, disapproval, or modification of any proposed Plan made by the Erosion Control Inspector shall entitle the Person challenging such decision to a public hearing before the Town of Waxhaw Board of Adjustment if such Person submits written demand for a hearing and completes the necessary forms and pays the required appeals fee within fifteen (15) days following the date the decision was filed in the Town of Waxhaw Development Services Department office or mailed to the applicant, whichever date is later. Such written request and completed forms shall be submitted to the Clerk of the Board of Adjustment or his designee. Forms shall be available at the Town of Waxhaw Town Hall, or as directed by the Erosion Control Inspector. A fee for such public hearing shall be in accordance with a fee schedule adopted by the Town of Waxhaw Board of Commissioners. No request shall be considered complete unless accompanied by such fee.
- (2) Notice of the Board of Adjustment public hearing shall be sent by first class mail to the applicant at least ten (10) days prior to the public hearing and to any person who has submitted written request to receive such notice at least ten (10) days prior to the date of the public hearing. The hearing shall be held no later than thirty (30) days after the date of receipt of said written request.
- (3) A hearing shall be conducted by the Board of Adjustment. A concurring vote per the Board of Adjustment's officially adopted by-laws will be necessary to reverse any order, requirement, decision, or determination of any official charged with the enforcement of this Ordinance, or to decide in favor of an appellant any matter upon which is required to pass or to grant variance from the provisions of this Ordinance. The Town shall keep minutes of the proceedings, showing the votes of each member upon each question and the attendance of each member at such hearings. The final disposition of the Town shall be based on findings of fact.
- (4) A party dissatisfied with the decision of the Board of Adjustment following the public hearing shall appeal such decision to the NCSCC pursuant to Title 15, Chapter 4B, Section .0018(d) of the North Carolina Administrative Code and as provided by NC GS 113A-61(c).

(B) Plan Disapproval Due To Prior Violation, Unpaid Penalties, or Non-compliance. In the event that a plan is disapproved pursuant to Subsection 159.16 (L) of this Ordinance, the Town of Waxhaw Control Inspector shall notify the Director of the Division of Land Resources of such disapproval, along with the reasons therefore, within ten (10) days after the date of the

decision. The Erosion Control Inspector shall advise the applicant and the Director of the Division of Land Resources in writing as to the specific reasons that the plan was disapproved. The applicant may appeal the Erosion Control Inspector's disapproval of the plan pursuant to Subsection 159.16 (L) of this Ordinance directly to the NCSCC.

(C) Issuance of Notice of Violation, Penalties, or Order of Restoration. The appeal of Issuance of Notice of Violation, Assessment of Civil Penalty, or Order of Restoration made by the Town of Waxhaw with regard to this Ordinance shall be governed by the following provisions:

- (1) The issuance of a notice of violation, assessment of a civil penalty, or an order of restoration by the Erosion Control Inspector shall entitle the person alleged to be in violation of the Ordinance (petitioner) to appeal within thirty days by filing a petition for a contested case with the State Office of Administrative Hearings under Article 3 of Chapter 150B.

159.23 SEVERABILITY. If any section or specific provision or standard of this ordinance is found by a court to be unconstitutional or invalid for any reason, the decision of the court shall not affect the validity of any other section, provision, or standard of these regulations, except the provision in question. The other portions of these regulations not affected by the decision of the court shall remain in full force and effect.

159.24 EFFECTIVE DATE. This ordinance shall become effective upon approval of the North Carolina Sedimentation Control Commission.

Attest:

Melody Shuler, Town Clerk

Stephen E. Maher, Mayor

**TOWN OF WEDDINGTON
REGULAR HISTORIC PRESERVATION COMMISSION MEETING
WEDDINGTON TOWN HALL
1924 WEDDINGTON ROAD
WEDDINGTON, NC
JULY 23, 2018**

AGENDA

1. OPEN THE MEETING
2. DETERMINATION OF QUORUM
3. APPROVAL OF MINUTES
 - A. April 23, 2018 Regular Historic Preservation Commission Meeting
4. OLD BUSINESS
 - A. Update on Eagle Scout Project
5. NEW BUSINESS
6. UPDATE FROM CHAIRPERSON
7. ADJOURNMENT

**TOWN OF WEDDINGTON
REGULAR HISTORIC PRESERVATION COMMISSION MEETING
WEDDINGTON TOWN HALL
APRIL 23, 2018
MINUTES
PAGE 1 OF 2**

1. OPEN THE MEETING

Chairperson Harrison opened the meeting at 8:05 pm

2. DETERMINATION OF QUORUM

Quorum was determined with Chairperson Harrison, Board members Rob Dow, Gerry Hartman, Brad Prillaman, Walt Hogan, and Steve Godfrey present.

Board member Jim Vivian was absent.

Staff Present: Town Administrator/Planner Lisa Thompson, Town Clerk Karen Dewey

Visitors: Bill Deter

3. APPROVAL OF MINUTES

A. January 22, 2018 Regular Historic Preservation Commission Meeting

Motion:	Board member Hartman made a motion to approve the January 22, 2018 Regular Historic Preservation Commission Meeting minutes as presented.
Second:	Board member Hogan
Vote:	The motion passed with a unanimous vote.

4. OLD BUSINESS

A. Update on Eagle Scout Project

Chairperson Harrison gave a brief update on the Eagle Scout project being completed by Gerry W. Hartman. She stated that the project was presented to the Council and they agreed to move the project to an area behind Town Hall that was agreeable to all. She also stated that Mr. Hartman was starting fundraising to complete the project.

5. NEW BUSINESS

No new business discussed.

6. UPDATE FROM CHAIRPERSON

No additional update.

7. ADJOURNMENT

Motion: Board member Dow made a motion to adjourn the April 23, 2018
Regular Historic Preservation Commission Meeting at 8:08 pm.
Second: Board member Hartman
Vote: The motion passed with a unanimous vote.

Adopted: _____

Barbara Harrison, Chairperson

Karen Dewey, Town Clerk