Town of Clayton
Regular Town Council Meeting Agenda
Monday, November 2, 2020 @ 6:00 PM

HE TOWN OF CLAYTON WILL FOLLOW GUIDELINES FROM THE CENTERS FOR DISEASE CONTROL AND THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES WITH REGARD TO SOCIAL DISTANCING.

BELOW PLEASE FIND CHANGES TO THE COUNCIL MEETING FORMAT:

ANY MEMBER OF THE PUBLIC THAT WISHES TO ADDRESS THE COUNCIL, MAY DO SO IN PERSON, HOWEVER YOU ARE ASKED TO CONTACT THE TOWN CLERK IN ADVANCE OF THE MEETING.

IF YOU DO NOT WISH TO ATTEND THE MEETING IN PERSON BUT DO WISH TO SHARE ANY PUBLIC COMMENT WITH THE COUNCIL, PLEASE FORWARD YOUR COMMENT(S) TO THE TOWN CLERK NO LATER THAN NOON THE DAY OF THE MEETING. PLEASE INCLUDE YOUR NAME AND ADDRESS. PUBLIC COMMENT(S) RECEIVED WILL BE READ INTO THE RECORD BY THE TOWN CLERK.
EMAIL: KMOFFETT@TOWNOFCLAYTONNC.ORG

THE MEETING MAY BE VIEWED LIVE VIA THE TOWN YOUTUBE CHANNEL:
HTTP://YOUTUBE.COM/C/TOWNOFCLAYTONNC1869

BELOW PLEASE FIND ADDITIONAL INFORMATION REGARDING PROCEDURES FOR IN-PERSON MEETINGS:

- **ALL persons attending must wear a mask.**
- **We will be following proper social distancing at all times.**
- **We will have a separate entrance door and separate exit door.**
- **Entrance will be main door on Horne Street.**
- **Exit will be rear door facing Horne Street in the council chambers.**
- **Any member of the public attending will be asked to wait in the lobby until item they wish to address is ready for discussion.**
- **Lobby will be set to encourage social distancing.**
- **Chairs will be at least 6' from each other.**
- **We will have TWO staff members attending the meeting(s) to ensure smooth transition with those attending the meeting.**
- **One person will serve as LOBBY staff and the other will serve as CHAMBER staff.**
- **The meeting will be shown on the monitor in the lobby. (YouTube)**
- **All council or board members will be socially distanced in the council chambers and wearing face masks.***
- **Staff will be socially distanced and seated within the council chambers. Face masks will be worn.***
- **Hand sanitizer will be available, both in the lobby and council chambers.**
- **Podium/microphone will be sanitized after each speaker.**

***Masks may be lowered when speaking.**

1. CALL TO ORDER

Pledge of Allegiance and Invocation

2. ADJUSTMENT OF THE AGENDA

3. CONSENT AGENDA

(Items on the consent agenda are considered routine in nature or have been thoroughly discussed at previous meetings. Any member of the Council may request to have an item removed from the consent agenda for further discussion.)

a. DRAFT MINUTES
- October 19, 2020 - Regular Session
- October 19, 2020 - Closed Session

October 19 2020 DRAFT Minutes

b. Warranty Acceptances
- Parkview, Phases 2B, 3, 5, & 7
- The Groves at Summerlyn, Phase 2

Parkview Phases 2B, 3, 5, & 7
The Groves at Summerlyn, Phase 2

POTENTIAL ACTION: Adoption of Consent Agenda as Presented

4. ADMINISTRATIVE ITEMS

5. INTRODUCTIONS AND SPECIAL PRESENTATIONS

a. Employee Certifications
Presenter: James Blalock, Utilities Maintenance Supervisor
- Dylan Carroll, Utility Maintenance Mechanic - Collections 3 Certification
- Donnie Baker, Utility Maintenance Mechanic - C-Distribution Certification

b. Government Finance Officers Association - Certificate for Excellence in Finance Reporting
Presenter: Jody McLeod, Mayor

6. PUBLIC HEARINGS

a. Code of Ordinance - Addition of Chapter 158 - Stormwater/Erosion
Presenters: Joshua Baird, Town Engineer & Susan Locklear, Stormwater Engineer
Cover
Public Notice
Neuse Nutrient Strategy
NPDES Ph II permit (2018-2023) Section F
Ordinance

POTENTIAL ACTION: Adoption of Ordinance #2020-11-01

7. OLD BUSINESS

a. Historic Clayton Street Blades
Presenters: Jennifer Gallimore, Economic Development Coordinator & J.David Millican, Downtown Development Advisory Board
Cover
Presentation

POTENTIAL ACTION: Direct Staff to Move Forward with Project

8. NEW BUSINESS

a. Legend Park Project
Presenter: Joshua Baird, Town Engineer
Cover

POTENTIAL ACTION: None - Informational Only

b. Recycle Program
Presenter: Blake Mills, Asst. Public Works Director
Cover
Contamination - What is NOT Recyclable
Recycling Analysis Nov 2, 2020
Recycling Report

9. STAFF REPORTS

a. Town Manager

b. Town Attorney

c. Town Clerk

d. Other Staff
- Horne Street Parking Lot Shutdown Update
Presenter: Joshua Baird, Town Engineer

10. OTHER BUSINESS

a. Informal Discussion & Public Comment

b. Council Comments

11. ADJOURNMENT

Town of Clayton
Regular Town Council Meeting Minutes
Monday, October 19, 2020 @ 6:00 PM
Council Chambers

COUNCIL PRESENT:
Mayor McLeod
Mayor Pro Tem Thompson
Council Member Grannis
Council Member Holder
Council Member Bunn
Council Member Everett

STAFF PRESENT:
JD Solomon, Interim Town Manager
Nancy Medlin, Deputy Town Manager
Rich Cappola, Deputy Town Manager
Katherine Ross, Town Attorney
Kimberly Moffett, Town Clerk
James Warren, WWTP Superintendent
Samantha Wullenwaber, Planning Director
Patrick Pierce, Economic Development Director
Scott Barnard, Parks & Recreation Director
Ann Game, Customer Service Director
Heidi Holland, Deputy Town Clerk

COUNCIL ABSENT:

1 CALL TO ORDER

Pledge of Allegiance and Invocation

a) Mayor McLeod called the meeting to order at 6:00 p.m. He led everyone in the Pledge of Allegiance as well as offering the Invocation.

2 ADJUSTMENT OF THE AGENDA

a) Mr. Solomon requested that Item 7a be removed, that a new item be added under New Business regarding Facility Opening Plan and also requested the addition of a Closed Session regarding Economic Development.

3 CONSENT AGENDA

(Items on the consent agenda are considered routine in nature or have been thoroughly discussed at previous meetings. Any member of the Council may request to have an item removed from the consent agenda for further discussion.)

a) DRAFT Minutes
- October 5, 2020 - Regular Session

b) Proclamation - Diaper Need Awareness Month

c) Resolution in Support of LAPP Application

d) Resolution Contract Execution Authority

ACTION: Adoption of Consent Agenda as Presented

Motion: Council Member Holder

Second: Council Member Grannis
Vote: Unanimous

4 ADMINISTRATIVE ITEMS

5 INTRODUCTIONS AND SPECIAL PRESENTATIONS

a) New Employee Introduction
Presenter: James Warren, Wastewater Treatment Plant Superintendent
- Mattie Frazier, Laboratory Technician

Mr. Warren was present and introduced Mattie Frazier. Ms. Frazier comes to the town from NC State and has a wealth of knowledge and experience. Ms. Frazier provided information regarding her recent research. She said she was excited to be part of the Town of Clayton. Council offered their welcome and appreciation.

6 PUBLIC HEARINGS

a) 2020-74-RZ - O'Neil Overlook - Rezoning
Presenter: Samantha Wullenwaber, Planning Director

Ms. Wullenwaber was present and shared details regarding the requested rezone. Applicant is requesting to rezone from R-E to R-8, approximately 15 acres, located south of O'Neil Street and north of Rollingwood Subdivision. She stated that majority of surrounding area is zoned R-8, and this would include Academy Pointe Subdivision. With reference to consistency and compatibility the zoning is not consistent with the Comp Plan 2040 or Future Land Use map. However, staff does support approval as the properties to the north and west of the site are classified a medium density, property to the south is already developed with single family residential and is currently zoned R-8 which corresponds with the medium density residential comprehensive plan. The Planning Board also recommended approval of the zoning.

Council Member Grannis confirmed that staff recommended approval based on other similar properties/densities a located in this area. He asked about buffer question raised at neighborhood meeting. Ms. Wullenwaber stated this was only for the rezoning and the subdivision application would come back before council in the future.

Ms. Beddingfield was present representing the applicant and stated they concurred with the recommendations of the planning staff. She stated she was happy to answer any questions regarding the rezoning. There were no questions for Ms. Beddingfield.

With no one else wishing to speak, the hearing was closed and turned over to council for their deliberation at 6:10 p.m.

ACTION: Adoption of Ordinance # 2020-10-05

Motion: Mayor Pro Tem Thompson
Second: Council Member Everett

Vote: Unanimous

7 OLD BUSINESS

a) RTZ Agreement Update
Presenter: JD Solomon, Interim Town Manager
REMOVED

b) Wastewater Reclamation Facility Update / Acceptance State Loan
Presenter: JD Solomon, Interim Town Manager

Mr. Solomon provided an update and stated an RFQ is scheduled to go out in October. He stated that the town had received notification from NC Department of Environmental Quality offering a State Revolving Loan in the amount of $12,000,000.00 for the construction of the Neuse River Water Reclamation Facility Plan Replacement Project. Part of the process in accepting this loan is formal adoption of a Resolution from Town Council.

ACTION: Adoption of Resolution #2020-41

Motion: Council Member Grannis
Second: Council Member Holder
Vote: Unanimous

8 NEW BUSINESS

a) Bench Donations
Presenters: Patrick Pierce, Economic Dev. Director and Scott Barnard, Park & Rec. Director

There was a presentation regarding recent requests for two memorial benches. One request was for a downtown bench and the other for a greenway bench. Current policy states these items come before council. Mr. Barnard suggested that a list of pre-selected locations be created for placement of memorial benches, trees and bicycle racks. Then when someone is interested in purchasing they could select from the current available locations. Mr. Barnard further stated that council could be provided with a quarterly update. There was consensus to move forward with creation of a list of pre-determined bench donation sites.

b) Facility Opening Plan
Presenter: Jeffra Patton, Safety Officer

Ms. Patton was present and shared details about plan to successfully open town facilities to the public. A team was created and a plan was created to mitigate any potential issues. She outlined the different type of class facilities and shared information on guidelines for each facility opening. Ms. Patton stated she felt the plan is an enhanced one and feels good about the plan and protection of both employees and the public that we serve. Mayor McLeod asked about the reservation system. Ms. Patton explained its best of to think of it as selling tickets, this will allow us to plan for the proper social distancing

based on room size and those attending any given meeting. Mayor McLeod stated it appeared to be a great plan. Council Member Grannis asked when this plan would be implemented. Mr. Solomon stated that would occur based on when council and/or governor felt we needed to move forward. Mayor McLeod stated he felt that we are very blessed to have transitioned so well and still be maintaining outstanding customer service. He did address the few citizens who want buildings to open, mostly for financial transactions. He added that he felt strongly that we need to stay on point and that we would open facilities in a timely fashion, but it would be done as safely as is possible.

9 STAFF REPORTS

a) Town Manager

Mr. Solomon offered his thanks to Jeffra Patton. She was been an outstanding support to the town during this COVID period.

He stated that sales tax revenue are up from the previous year. He stated expenses are in good standing. He stated we are about to double the amount of money passing through with wastewater and stated that all our financial guidelines are being looked into to ensure a smooth practice.

He stated information regarding Chapter 160D and Comprehensive Planning would be shared. He stated that Cathy Marraccini is assisting in getting out information to the development community.

b) Town Attorney

c) Town Clerk

d) Other Staff

- Street Blade Sign Update
  Presenter: Rich Cappola, Deputy Town Manager

- COVID/Utility Collection Update
  Presenter: Ann Game, Customer Service Director

- Harmony Playground Update
  Presenter: Scott Barnard, Parks & Recreation Director

- Downtown Crosswalks
  Presenter: Patrick Pierce, Economic Development Director

- Main Street Tree Removal
  Presenter: Patrick Pierce, Economic Development Director

Mr. Cappola provided a brief update regarding street blade signs. They will include about a 2" color coded section to include the type of street it is; private or state. Council Member Bunn asked about Historical Area Street Blades. Mr. Solomon stated Mr. Pierce is working to ensure folks are informed and made aware this is not a special district. This will be brought back to council in the near future. Hope is to roll these out in November to align with our 10th

anniversary of historic district. Additionally it is a requirement of NCDOT that all signs be replaced with reflective ones.

Ms. Game was presented and provided an update and stated we are seeing an increase in our cut off list, this doesn't mean that everyone is cut off. She discussed COVID payment plan, out of approximately 400, 25 customers paid in full. She stated we are seeing that approximately 60% on the payment plan are not honoring it and having to be placed on the disconnect list; however they are then paying their bill. Of those 400 customers on COVID payment plans, there are approximately 10that are no longer customers. We will continue all avenues to reach them to pay their balance and if required we will turn over to collection agency. She stated her staff are offering information and program referral to help folks with evictions and utility bills. Ms. Game stated we are seeing a large increase in non-profit assistance as well as an increase in anonymous donations. She stated she is feeling very positive and the staff is working very hard. Mr. Solomon offered his thanks to Ann and her entire staff; he stated they do an outstanding job.

The official Ribbon Cutting for the Harmony Playground will be Thursday, October 22, 2020 at 4:00 p.m. Council Member Grannis encouraged attendance from Council.

Mr. Pierce was present and shared information regarding the NCDOT NC State Research Study. He stated there are a total of 8 intersections and 19 crossings being studied in Clayton. He spoke about potential future improvements including installation of centerline signage at Main & Fayetteville. Ms. Beddingfield stated she was very happy with all these modifications and has been a long-time advocate. She states she has seen a definite change. Mayor stated he has received emails and other contact about how happy people are with the changes and also sees changes in driving patterns including seeing many folks slowing down.

Mr. Pierce reported on Main Street Tree removal which took place at 331-335 E. Main Street. He shared details about guidelines. He shared a photo of the tree in question which is in overhead lines. He also shared guidelines regarding tree replacement. He stated he did not feel there was a good fit for tree replacement at this location. He also added this building had recently been approved for a Façade grant. Recommendation to remove the tree and collect $250 fee in lieu for future tree replacement. Mayor Pro Tem Thompson confirmed it is our tree and that we were asking the building owner to pay fee in lieu for future tree replacement. Mayor Pro Tem Thompson wanted it on the record he is not in support of charging business owners for this and Council Member Bunn was in agreement. Mr. Solomon stated that it costs a few thousand dollars to take a tree down and fee in lieu would go for future tree replacement. Mr. Solomon stated he felt we needed to stay consistent with our current policy and need for green scape downtown. Council Member Bunn asked if we could put trees in planters versus putting them in sidewalks. Mr. Pierce stated he would research guidance regarding proper area/setback requirements. Mayor liked idea of planter but was concerned about door opening and space. Council Member Holder stated it was also a problem with car doors hitting trees.

10 OTHER BUSINESS

a) Informal Discussion & Public Comment

b) Council Comments

Mayor Pro Tem Thompson provided an update regarding his meeting with Dana Wooten from the Clayton Chamber of Commerce. He wanted to ensure we share our appreciation for all they have done.

Council Member Holder stated since COVID there is a huge problem with golf carts being driven by underage teenagers in the Glen Laurel Subdivision. He stated he has spoken with the Police Chief and we need to make some decisions how to handle this issue.

11 CLOSED SESSION

a) Closed Session Pursuant to NCGS 143-318.11(a)(4)

ACTION: Motion to Go Into Closed Session

Motion: Mayor Pro Tem Thompson
Second: Council Member Holder
Vote: Unanimous

12 ADJOURNMENT

a) Adjourn the Meeting

With there being nothing further, the meeting was adjourned at 7:59 p.m.

ACTION: Motion to Adjourn

Motion: Council Member Holder
Second: Council Member Grannis
Vote: Unanimous

Duly adopted this the 2nd day of November, 2020 while in regular session.

Jody L. McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk

TOWN OF CLAYTON
Engineering & Inspections
111 E. Second St., P.O. Box 879
Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

MEMORANDUM

To: Kimberly Moffett, Town Clerk

From: Chris Rowland, Construction Project Administrator

Copy: Donnie Adams, Adams & Hodge Engineering
Karen Durham, Engineering & Inspections Coordinator
David DeYoung, River Wild
Steve Blasko, Public Works Operations Manager

Date: October 20, 2020

Subject: Parkview, Phases 2B, 3, 5, & 7

Please place a warranty acceptance request for the subject public street and right of way sections along with all pertinent easements on the next available agenda. The final lift of asphalt has been installed and approved by the Engineering Department. The streets will be subject to a one-year warranty period. Following warranty expiration, a final inspection will be done with all deficient items corrected by the developer prior to final acceptance.

TOWN OF CLAYTON
Engineering & Inspections
111 E. Second St., P.O. Box 879
Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

MEMORANDUM

To: Kimberly Moffett, Town Clerk

From: Chris Rowland, Construction Project Administrator

Copy: David Stallings, Granite Land & Timber
Karen Durham, Engineering & Inspections Coordinator

Date: October 22, 2020

Subject: The Groves at Summerlyn, Phase 2

Please place a warranty acceptance request for the subject public, street sections and right-of-way on the next available agenda. Following acceptance, the sections will be subject to a one-year warranty period. Following expiration of the warranty, a final inspection will be done with all deficient items corrected by the developer prior to final acceptance.

Town Council Agenda Cover Sheet

Meeting Date
November 2, 2020

Agenda Location
New Business

Item Title
Stormwater Ordinance

Presenter
Joshua Baird – Town Engineer
Susan Locklear – Stormwater Engineer

Summary/Description
Section F of the Town's National Pollutant Discharge Elimination System (NPDES) permit requires the Town to implement and enforce a program to address stormwater runoff from new developments and redevelopment projects. Johnston County currently implements the Town's program, however, the County is not currently designated as a Phase 2 community; therefore the requirements of each entity is different. Prior to transitioning programs from the County to the Town, the Town needs to adopt a Stormwater Ordinance that addresses stormwater requirements for new development and re-development. The ordinance incorporates requirements from Neuse Nutrient Strategy Rules and NPDES requirements for Municipal Separate Storm Sewer System (MS4s). The ordinance is based on a model provided by the State and has been reviewed by the Town attorney. A public engagement session was held on Friday, October 23 for the community to learn and ask questions about the proposed ordinance. Staff proposes the ordinance to be adopted with an effective date of January 1, 2021. Staff will bring stormwater and erosion control fees to Council at the next Council meeting on November 16.

Requested Action
Approval

Funding Source (If Applicable):
N/A

Cost: **N/A** **Yes** ☐ **No** ☒

Additional Documents to be Included in Agenda Packet
Proposed Stormwater Ordinance
NPDES Permit – Section F: Post-construction Site Runoff Controls
Neuse Nutrient Strategy: Stormwater (15A NCAC 02B.0711)

Meeting Timeline
Click or tap here to enter text.

PUBLIC NOTICE

In accordance with NCGS 160A- 314.(a)(1), the Clayton Town Council will hold a public hearing on Monday, November 2, 2020, at 6:00 PM in the Council Chambers at the Clayton Center, 111 E Second Street, to consider the following amendment to the Code of Ordinances: Title XV: Land Usage is proposed to be amended by adopting Chapter 158 as the Stormwater Management Ordinance. Copies of the proposed amendment are available in the Engineering office and the Town Clerk's office for review by the public. The public is invited to attend.

Susan Locklear, Stormwater Engineer
919-553-5002

15A NCAC 02B .0711 NEUSE NUTRIENT STRATEGY: STORMWATER

The following is the stormwater management strategy for the Neuse River Basin:

(1) PURPOSE. The purpose of this Rule is to achieve and maintain the nitrogen loading reduction goal established for the Neuse River Estuary in Rule .0710 of this Section from an undeveloped condition on lands in the Neuse River Basin on which development occurs. Nothing in this Rule preempts the requirements of 15A NCAC 02B .0277 for projects subject to the Falls Reservoir Nutrient Strategy or prevents local governments from implementing requirements that are more restrictive than those set forth in this Rule.

(2) APPLICABILITY. The following local governments shall implement the stormwater management requirements of this Rule, except as noted in Sub-Item (3)(a) of this Rule where the Department shall implement them. Municipalities shall implement this Rule throughout their corporate limits and extraterritorial jurisdictions within the basin, while counties shall implement throughout their territorial jurisdictions within the basin. Counties named in this Item may implement this Rule within municipalities not named in this Item in accordance with G.S. 160A-360(d).

(a) Local governments designated under this Rule effective August 1998:

(i) Cary;
(ii) Durham;
(iii) Garner;
(iv) Goldsboro;
(v) Havelock;
(vi) Kinston;
(vii) New Bern;
(viii) Raleigh;
(ix) Smithfield;
(x) Wilson;
(xi) Durham County;
(xii) Johnston County;
(xiii) Orange County;
(xiv) Wake County; and
(xv) Wayne County.

(b) The following additional local governments as of the effective date of this readoption:

(i) Apex;
(ii) Clayton;
(iii) Fuquay Varina;
(iv) Greenville;
(v) Holly Springs;
(vi) Knightdale;
(vii) Morrisville;
(viii) Rolesville;
(viii) Wake Forest;
(ix) Wendell;
(x) Winterville;
(xi) Craven County;
(xii) Nash County;
(xiii) Pitt County; and
(xiv) Wilson County.

(3) LOCAL PROGRAM IMPLEMENTATION REQUIREMENTS. All local governments subject to this Rule shall implement stormwater management programs approved by the Commission following the timeframes set out in Item (6) of this Rule, or any subsequent modifications to those plans approved by the Director, according to the following requirements and the standards contained in Item (5) of this Rule:

(a) The requirement for local government approval of a stormwater plan for all proposed development projects not excluded under Item (4) of this Rule. To the extent permitted by federal law, including 33 USC 26, and where pursuant to G.S. 153A-454 and G.S. 160A-459 a local government program does not review a development project proposed

by a State or federal entity for the requirements of this Rule, the entity shall obtain Department review and approval.

(b) A plan to ensure maintenance of SCMs implemented to comply with this Rule for the life of the development;

(c) A plan to ensure enforcement and compliance with the provisions in Item (5) of this Rule for the life of the development;

(d) A public education program to inform citizens how to reduce nutrient pollution and to inform developers about the nutrient requirements set forth in Item (5) of this Rule;

(e) A mapping program that includes major components of the municipal separate storm sewer system, waters of the State, land use types, and location of sanitary sewers; and

(f) A program to identify and remove illegal discharges.

(4) DEVELOPMENT EXCLUDED. The following development activities shall not be subject to this Rule:

(a) Projects disturbing less than:

(i) one acre for single family and duplex residential property and recreational facilities; and

(ii) one-half acre for commercial, industrial, institutional, multifamily residential, or local government land uses with the following exception: Projects below one-half acre that would replace or expand existing structures on a parcel, resulting in a cumulative built-upon area for the parcel exceeding twenty-four percent, shall be subject to Item (5) of this Rule;

(b) Development of an individual single-family or duplex residential lot that:

(i) Is not part of a larger common plan of development or sale as defined in 15A NCAC 02H .1002; and

(ii) Does not result in greater than five percent built upon area on the lot;

(c) Projects subject to requirements of the Falls Nutrient Strategy New Development Stormwater rule, 15A NCAC 02B .0277;

(d) Existing development as defined in 15A NCAC 02H .1002;

(e) Redevelopment as defined in G.S. 143-214.7(a1)(2); and

(f) Activities subject to requirements of the Neuse Agriculture rule, 15A NCAC 02B .0712.

(5) DEVELOPMENT PROJECT REQUIREMENTS. A proposed development project not excluded under Item (4) of this Rule shall be approved by a subject local government for the purpose of this Rule when the applicable requirements of Item (3) of this Rule and the following criteria are met.

(a) The project, as defined in State stormwater rule 15A NCAC 02H .1002, shall meet either a nitrogen loading rate target of 3.6 pounds/acre/year or "runoff volume match" as defined in that Rule. Proposed development projects that would replace or expand existing structures and result in a net increase in built-upon area shall meet one of these options for the project less any existing built-upon area.

(b) Regarding stormwater treatment and other onsite post-construction elements, projects not subject to more stringent standards under one of the following State stormwater rules or a local ordinance shall meet 15A NCAC 02H .1003, which includes specifications for low- and high-density designs, vegetated setbacks, and stormwater outlets for all projects. Such projects shall use a high-density treatment threshold of twenty four percent or greater built-upon area and a storm depth of one inch for SCM design:

(i) Water Supply Watershed Protection rules, 15A NCAC 02B .0620 through .0624;

(ii) Coastal Counties stormwater rule 15A NCAC 02H .1019; or

(iii) Non-Coastal County HWQs and ORWs rule 15A NCAC 02H .1021.

(c) The following are exceptions to the onsite requirements of Sub-Item (b) of this Item:

(i) Proposed development projects may utilize an offsite SCM that is dedicated to treating an area encompassing the project, provided the SCM is designed to meet all applicable requirements identified in Sub-Item (b) of this Item; and

(ii) Proposed development undertaken by a local government solely as a public road expansion or public sidewalk project, or proposed development subject to the jurisdiction of the Surface Transportation Board, may meet the loading rate

target of this Item entirely through use of permanent nutrient offset credit pursuant to Rule .0703 of this Section.

(d) Where in satisfying the onsite requirements of Sub-Item (b) of this Item, a project does not meet the loading rate target of this Item, it may do so through use of permanent nutrient offset credit pursuant to Rule .0703 of this Section. Persons doing so shall provide proof of credit acquisition to the permitting authority prior to approval of the development plan.

(e) Untreated nutrient loading rates from the project area shall be determined through the use of the tool most recently approved by the Division to have met the following criteria, or through an alternative method that meets or exceeds the following criteria, as determined by the Division:

(i) Provides site-scale estimates of annual precipitation-driven total nitrogen load;

(ii) From all land cover types on a project site at build-out;

(iii) Based on land-cover-specific nitrogen and phosphorus loading coefficients and annual runoff volume; and

(iv) Is supported by the weight of evidence from available, current, and applicable research.

(f) Nutrient loading rate reductions resulting from the use of SCMs shall be determined through the use of the tool most recently approved by the Division to have met the following criteria, or through an alternative method that meets or exceeds the following criteria, as determined by the Division:

(i) Provides project site loading reduction estimates from the installation of Department of Energy, Mineral and Land Resources (DEMLR) approved SCMs;

(ii) Reductions apply to the portion of the project's runoff volume that is directed to the SCMs;

(iii) The method partitions the runoff volume processed by the SCM among hydrologic fates and assigns nutrient concentrations to each of those fates; and

(iv) The method is supported by the weight of evidence from available, current, and applicable research.

(g) Proposed development projects shall demonstrate compliance with the riparian buffer protection requirements set forth in 15A NCAC 02B .0233.

(6) RULE IMPLEMENTATION

(a) Within eight months of the effective date of this Rule, the Division shall submit a model local stormwater program embodying the elements in Items (3) through (5) of this Rule to the Commission for approval. The Division shall work with subject local governments in developing this model program.

(b) Local governments designated pursuant to Sub-Item (2)(a) of this Rule and additional local governments designated pursuant to Sub-Item (2)(b) of this Rule shall submit a local stormwater program for approval by the Commission within six months and 12 months, respectively, of the Commission's approval of the model local program. These local programs shall meet or exceed the requirements in Items (3) through (5) of this Rule.

(c) The Division shall provide recommendations to the Commission regarding proposed local programs. The Commission shall approve programs or require changes based on the standards set out in Items (3) through (5) of this Rule. Should the Commission require changes, the applicable local government shall have three months to submit revisions, and the Division shall provide follow-up recommendations to the Commission within two months after receiving revisions.

(d) Within six months after the Commission's approval of a local program, the local government shall complete adoption of and implement its local stormwater program.

(e) Local governments administering a stormwater program shall submit annual reports in electronic format to the Division documenting their progress regarding each implementation requirement in Item (3) of this Rule and net changes to nitrogen load by October 30th of each year. Annual reports shall also include as appendices all data utilized by nutrient calculation tools for each development stormwater plan approved in accordance with this Rule.

(f) Any significant modifications to a local program following its approval pursuant to the requirements of this Item shall be submitted to the Director for approval.

(7) COMPLIANCE. A local government's authority to approve development stormwater plans for compliance with this Rule pursuant to Item (5) of this Rule shall be contingent upon maintaining its own compliance with this Rule. A local government that fails to submit an acceptable local stormwater program within the timeframe established in this Rule, fails to implement an approved program, or fails to comply with annual reporting requirements shall be in violation of this Rule.

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-214.26; 143-215.1; 143-215.3(a)(1); 143-215.8B; 143B-282; S.L. 1995, c. 572;*
Eff. August 1, 1998;
Amended Eff. January 15, 2011 (this permanent rule replaces the temporary rule approved by the RRC on December 16, 2010);
Recodified from 15A NCAC 02B .0235 Eff. April 1, 2020;
Readopted Eff. April 1, 2020.

STATE of NORTH CAROLINA
DEPARTMENT of ENVIRONMENTAL QUALITY
DIVISION OF ENERGY, MINERAL, AND LAND RESOURCES

PERMIT NO. NCS000559

TO DISCHARGE STORMWATER UNDER THE

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the regulations promulgated and adopted by the North Carolina Environmental Management Commission, and the Federal Water Pollution Control Act, as amended,

Town of Clayton

is hereby authorized to discharge stormwater from their municipal separate storm sewer system located:

within the Town of Clayton's jurisdictional area
Johnston County

to receiving waters of the State, Big Arm Creek, Little Creek, Marks Creek, and Neuse River, within the Neuse River Basin in accordance with the discharge limitations, monitoring requirements, and other conditions set forth in Parts I, II, III, IV, V, VI, VII and VIII hereof.

This permit shall become effective February 1, 2018.

This permit and the authorization to discharge shall expire at midnight on January 31, 2023.

Signed this day January 23, 2018.

for William E. Toby Vinson, Jr., P.E., CPESC, CPM
Division of Energy, Mineral, and Land Resources
By the Authority of the Environmental Management Commission

SECTION F: POST-CONSTRUCTION SITE RUNOFF CONTROLS

1. Objectives for Post-Construction Site Runoff Controls

a. Implement and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the small MS4. The program shall ensure that controls are in place that would prevent or minimize water quality impacts.
b. Implement strategies which include a combination of structural Stormwater Control Measures (SCM) and/or non-structural SCMs appropriate for the community;
c. Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects; and
d. Ensure adequate long-term inspection and maintenance of SCMs.

2. BMPs for Post-Construction Site Runoff Controls

The permittee shall implement the following BMPs to meet the objectives of the Post-Construction Stormwater Management Program. To the extent there is any conflict between this permit and the post-construction ordinances adopted by the permittee as approved by the Division, the post-construction ordinances shall apply to permit compliance.

BMP	Measurable Goals
a. Adequate legal authorities	Maintain through ordinance, or other regulatory mechanism, adequate legal authorities designed to meet the objectives of the Post-Construction Site Runoff Controls Stormwater Management program. The permittee shall have the authority to review designs and proposals for new development and redevelopment to determine whether adequate stormwater control measures will be installed, implemented, and maintained The permittee shall have the authority to request information such as stormwater plans, inspection reports, monitoring results, and other information deemed necessary to evaluate compliance with the Post-Construction Stormwater Management Program. The permittee shall have the authority to enter private property for inspections at reasonable times any facilities, equipment, practices, or operations related to stormwater discharges to determine whether there is compliance the Post-Construction Stormwater Management Program.

BMP	Measurable Goals
b. Strategies which include Stormwater Control Measures (SCMs) appropriate for the MS4	Maintain strategies that include a combination of structural and/or non-structural SCMs implemented in concurrence with (a) above. Provide a mechanism to require long-term operation and maintenance of structural SCMs. Require annual inspection reports of permitted structural SCMs performed by a qualified professional. A qualified professional means an individual trained and/or certified in the design, operation, inspection and maintenance aspects of the BMPs being inspected, for example, someone trained and certified by NC State for BMP Inspection & Maintenance. Within 12 months of the effective date of this permit, the permittee shall evaluate, and revise as needed, SCM requirements, to be at least as stringent as the minimum requirements in 15A NCAC 02H .1000.
c. Plan reviews	The permittee shall conduct site plan reviews of all new development and redeveloped sites that disturb greater than or equal to one acre (including sites that disturb less than one acre that are part of a larger common plan of development or sale). The site plan review shall address how the project applicant meets the performance standards and how the project will ensure long-term maintenance
d. Inventory of projects with post-construction structural stormwater control measures	The permittee shall maintain an inventory of projects with post-construction structural stormwater control measures installed and implemented at new development and redeveloped sites, including both public and private sector sites located within the permittee's corporate limits that are covered by its post-construction ordinance requirements.
e. Deed Restrictions and Protective Covenants	The permittee shall provide mechanisms such as recorded deed restrictions and protective covenants that ensure development activities will maintain the project consistent with approved plans.
f. Provide a mechanism to require long-term inspection and maintenance of Stormwater Control Measures (SCMs).	The permittee shall implement or require an inspection and maintenance plan for the long-term operation of the SCMs required by the program. The inspection and maintenance plan shall require the owner of each SCM to perform and maintain a record of annual inspections of each SCM. Annual inspection of permitted structural SCMs shall be performed by a qualified professional.
g. Inspections	To ensure that all stormwater control measures are being maintained pursuant to its maintenance agreement, the permittee shall conduct and document inspections of each

BMP	Measurable Goals
	project site covered under performance standards, at least one time during the permit term. Before issuing a certificate of occupancy or temporary certificate of occupancy, the permittee shall conduct a post-construction inspection to verify that the permittee's performance standards have been met. The permittee shall document and maintain records of inspection findings and enforcement actions and make them available for review by the permitting authority.
h. Educational materials and training for developers	The permittee shall make available through paper or electronic means, ordinances, post-construction requirements, design standards checklist, and other materials appropriate for developers. New materials may be developed by the permittee, or the permittee may use materials adopted from other programs and adapted to the permittee's new development and redevelopment program.
i. Enforcement	The permittee shall track the issuance of notices of violation and enforcement actions. This mechanism shall include the ability to identify chronic violators for initiation of actions to reduce noncompliance.

3. Post-construction Stormwater Runoff Controls for New Development

a. To fulfill the post-construction minimum measure program requirement the permittee may use the Department's model ordinance, design its own post-construction practices that meet or exceed the rules found in 15A NCAC 02H .1000, or develop its own comprehensive watershed plan that is determined by the Department to meet the post-construction stormwater management measure required by 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition).

b. The permittee shall meet the requirements of the post-construction program for construction projects that are performed by, or under contract for, the permittee. To meet this requirement, the permittee may either develop the necessary requirements for post-construction controls that will pertain to their own projects, or develop procedures to ensure that the permittee meets these requirements by complying with another entity's Phase II Stormwater Management Programs for post-construction. If the permittee decides to rely on another program for compliance with these program areas for their own projects, they shall indicate in their Stormwater Management Plan that the permittee will fully comply with the requirements of the second party's post-construction programs.

c. Pursuant to 15A NCAC 02H .1017(9), to the extent allowable under State law, additional requirements shall apply to projects draining to sensitive receiving waters. For areas draining to Nutrient Sensitive Waters (NSW), where the Department has approved a locally implemented NSW Stormwater Management Program that addresses post-

construction runoff, the provisions of that program fulfills the MS4 post-construction requirement.

d. The design volume of SCMs shall account for the runoff at build out from all surfaces draining to the system. Drainage from off-site areas may be bypassed.

e. Pursuant to 15A NCAC 02H .1001(1)(c), to fulfill the post-construction minimum measure requirement for linear transportation projects, including undertaken by an entity other than North Carolina Department of Transportation (NCDOT), and are projects constructed to NCDOT standards that will be conveyed to the State upon completion, the permittee or regulated entity may use the Stormwater Best Management Practices Toolbox (Version 2, April 2014), including any subsequent amendments and editions, developed by the NCDOT. This NCDOT Stormwater BMP Toolbox is available at: https://connect.ncdot.gov/resources/hydro/Pages/Highway-Stormwater-Program.aspx

TOWN OF CLAYTON
Amendment to the Code of Ordinances: Addition of Chapter 158 – Stormwater Management

BEING HEREBY ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF CLAYTON, NORTH CAROLINA, to amend the Town of Clayton Code of Ordinances with the addition of Chapter 158; Stormwater Management as follows:

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ARTICLE 1: GENERAL PROVISIONS

158.100 - TITLE.

This ordinance shall be officially known as "The Stormwater Management Ordinance." It is referred to herein as "this ordinance."

158.101 – AUTHORITY.

The Town is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to:

1. Article 14, Section 5 of the Constitution of North Carolina; Town of Clayton Charter;
2. North Carolina General Statutes 143-214.7
3. and rules promulgated by the Environmental Management Commission thereunder; Session Law 2006-246; Chapter 160A, §§ 174, 185

158.102 - FINDINGS.

It is hereby determined that:

1. *Development* and *redevelopment* alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge;
2. These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment; and
3. These effects can be managed and minimized by applying proper design and well-planned controls to manage stormwater runoff from *development* sites.
4. Further, the Federal Water Pollution Control Act of 1972 ("Clean Water Act") and federal Phase II Stormwater Rules promulgated under it, as well as rules of the North Carolina Environmental Management Commission promulgated in response to federal Phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt minimum stormwater controls such as those included in this ordinance.

Therefore, the Town establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of stormwater runoff and discharge.[1]

[1] Adapted from Stormwater Center/EPA Model Ordinance.

158.103 – PURPOSE.

1. General

   The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-*development* stormwater runoff and nonpoint and point source pollution associated with new *development* and *redevelopment*. It has been determined that proper management of construction-related and post-*development* stormwater runoff will minimize damage to public and private property and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources.

2. Specific

   This ordinance seeks to meet its general purpose through the following specific objectives and means:

   A. Establishing decision-making processes for *development* that protect the integrity of watersheds and preserve the health of water resources;

   B. Requiring that new *development* and *redevelopment* maintain the pre-*development* hydrologic response in their post-*development* state as nearly as practicable for the applicable design storm to reduce flooding, streambank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;

   C. Establishing minimum post-*development* stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;

   D. Establishing design and review criteria for the construction, function, and use of *structural stormwater SCMs* that may be used to meet the minimum post-*development* stormwater management standards;

   E. Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of greenspace, riparian buffers and other conservation areas to the maximum extent practicable;

   F. Establishing provisions for the long-term responsibility for and maintenance of *structural and nonstructural stormwater SCMs* to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;

G. Establishing administrative procedures for the submission, review, approval and disapproval of *stormwater management plans*, for the inspection of approved projects, and to assure appropriate long-term maintenance.

H. Coordinating site design plans that include open space and natural areas with the UDO Chapter 56, Article 5: Natural Resource Protection.

I. Assigning responsibility and processes for approving the creation and maintenance of adequate drainage.

158.104 - APPLICABILITY AND JURISDICTION.

1. General

Beginning with and subsequent to its effective date, this ordinance shall be applicable to all *development* and *redevelopment*, including, but not limited to, site plan applications, subdivision applications, and grading applications, unless exempt pursuant to Subsection (3) of this Section, Exemptions.

2. Establishment of vested right. (G.S. 160A-385.1; G.S. 160D-108)

A. A vested right shall be deemed established with respect to any property upon the valid approval, or conditional approval, of a site specific development plan or a phased development plan, following notice and public hearing by the Town with jurisdiction over the property. Such vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site specific development plan or the phased development plan including any amendments thereto. The Town may approve a site specific development plan or a phased development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested right, although failure to abide by such terms and conditions will result in a forfeiture of vested rights. The Town shall not require a landowner to waive his vested rights as a condition of developmental approval. A site specific development plan or a phase development plan shall be deemed approved upon the effective date of the Town's action or ordinance relating thereto.

B. Duration and termination of vested right.

i. A right which has been vested as provided for in this section shall remain vested for a period of **two years.** This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the Town.

ii. The Town may provide that rights shall be vested for a period exceeding two years but **not exceeding five years** where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the Town.

3. Exemptions

A. Thresholds

i. Residential, single family or duplex, *development* and recreational facilities less than one acre in size, with no increase in number of lots, and is not part of a *larger common plan of development or sale,* and non-residential *development* less than one-half acre in size and no more than 24% impervious and is not part of a *larger common plan of development or sale* is exempt from the provisions of this ordinance.

ii. *Redevelopment* of residential structures that results in no net increase in *built-upon area* and provides equal or greater stormwater control than the previous development is exempt from the provisions of this ordinance.

iii. *Redevelopment* of non-residential structures on less than one-half acre that is not part of a *larger common plan of development or sale,* and that results in a cumulative *built-upon area of less than 24%* and provides equal or greater stormwater control than the previous development is exempt from the provisions of this ordinance.

iv. *Development* and *redevelopment* that disturb less than a stated area threshold are not exempt if such activities are part of a *larger common plan of development or sale* that exceeds the area threshold, even though multiple, separate or distinct activities take place at different times on different schedules.

B. General exemption

Activities that are exempt from permit requirements of Section 404 of the federal Clean Water Act as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this ordinance.

C. Existing impervious

Existing impervious surfaces established prior to November 1, 2008, as determined through aerial photography, permits, plans, etc. are exempt from the provisions of this ordinance; however, if the impervious area

limits are reduced after November 1, 2008 and the previously impervious area is reestablished as pervious for a period of 1 year or more, the impervious area is no longer exempt.

4. No Development or Redevelopment Until Compliance and Permit

   No *development* or *redevelopment* shall occur except in compliance with the provisions of this ordinance or unless exempted. No *development* for which a permit is required pursuant to this ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.

5. Map

   A. The provisions of this ordinance shall apply within the areas designated on the map titled "Stormwater Map of Town of Clayton, North Carolina", which is adopted simultaneously herewith. The Stormwater Map and all explanatory matter contained thereon accompanies and is hereby made a part of this ordinance.[2]

   B. The Stormwater Map shall be kept on file by the Stormwater Administrator and shall be updated to take into account changes in the land area covered by this ordinance and the geographic location of all *structural SCM*s permitted under this ordinance. In the event of a dispute, the applicability of this ordinance to a particular area of land or SCM shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances.

158.105 – INTERPRETATION.

1. Meaning and Intent

   All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the general and specific purposes set forth in Section 158.103, Purpose. If a different or more specific meaning is given for a term defined elsewhere in *Clayton, North Carolina Code of Ordinances*, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.

2. Text Controls in Event of Conflict

   In the event of a conflict or inconsistency between the text of this ordinance and any heading, caption, figure, illustration, table, or map, the text shall control.

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[2] Adapted from North Carolina Model Watershed Protection Ordinance.

3. Authority for Interpretation

The Stormwater Administrator has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the Stormwater Administrator, who shall respond in writing within 30 days. The Stormwater Administrator shall keep on file a record of all written interpretations of this ordinance.

4. References to Statutes, Regulations, and Documents

Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the *Design Manual*), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.

5. Computation of Time

The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the Town, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the Town. References to days are calendar days unless otherwise stated.

6. Delegation of Authority

Any act authorized by this Ordinance to be carried out by the Stormwater Administrator may be carried out by his or her designee.

7. Usage

A. Mandatory and Discretionary Terms

The words "shall," "must," and "will" are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words "may" and "should" are permissive in nature.

B. Conjunctions

Unless the context clearly indicates the contrary, conjunctions shall be interpreted as follows: The word "and" indicates that all connected items, conditions, provisions and events apply. The word "or" indicates that one or more of the connected items, conditions, provisions or events apply.

C. Tense, Plurals, and Gender

Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates

otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

8. Measurement and Computation

   Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.

158.106 – DEFINITIONS.

When used in this Ordinance, the following words and terms shall have the meaning set forth in this section, unless other provisions of this Ordinance specifically indicate otherwise.

1. **Built-upon area (BUA)**
   That portion of a *development* project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

2. **Common plan of development**
   A site where multiple separate and distinct development activities may be taking place at different times on different schedules but governed by a single development plan regardless of ownership of the parcels. Information that may be used to determine a "common plan of development" include plats, blueprints, marketing plans, contracts, building permits, public notices or hearings, zoning requests, and infrastructure development plans.

3. **Curb Outlet System**
   Curb and gutter with breaks or other outlets used to convey stormwater runoff to vegetated conveyances or other vegetated areas.

4. **Design volume**
   The amount of stormwater runoff that an SCM or series of SCMs is designed to treat.

5. **Department**
   The North Carolina Department of Environmental Quality.

6. **Design Manual**
   The stormwater design manual approved for use in Phase II jurisdictions by the *Department* for the proper implementation of the requirements of the federal Phase II stormwater program. All references herein to the *Design Manual* are to the latest published edition or revision.

5. **Development**
   Any land-disturbing activity that increases the amount of *built-upon area* or that otherwise decreases the infiltration of precipitation into the soil.

6. **Division**
   The Division means the Division of Energy, Mineral, and Land Resources.

7. **High Density**
   More than 24% BUA or more than two dwelling units per acre.

8. **Low Density**
   No more than 24% BUA or no more than two dwelling units per acre

9. **MDC**
   Minimum Design Criteria as set forth by the Department for stormwater control devices in the *Design Manual*

10. **Non-erosive velocity**
    The flow rate of water, usually measured in feet per second, that does not exceed the maximum permissible shear stress for the condition and type of soil and groundcover over which the water is flowing. Erosion occurs when the maximum permissible shear stress is exceeded.

11. **Non-structural SCM**
    Preserved open space, natural systems and existing landscape utilized to manage stormwater at its source.

12. **One-year, 24-hour storm**
    The maximum amount of rainfall during a 24 consecutive hour period expected, on average, to occur once a year. One-year, 24-hour storm depths are estimated by the National Oceanic and Atmospheric Administration (NOAA) Precipitation Frequency Data Server (PFDS), which is herein incorporated by reference, including subsequent amendments and editions, and may be accessed at no cost at http://hdsc.nws.noaa.gov/hdsc/pfds/.

13. **Owner**
    The legal or beneficial owner of land, including but not limited to a mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. "Owner" shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every person or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an owner, unless the secured lender is included within the meaning of "owner" under another description in this definition, such as a management entity.

14. **Peak attenuation volume**
    Stormwater runoff in excess of the design volume that is conveyed to an SCM where it is not treated in accordance with the applicable MDC, but is released by the SCM in a controlled manner to address potential downstream erosion and flooding impacts to meet federal, State, or local regulations beyond the requirements of this Section.

15. **Primary SCM**
A wet pond, stormwater wetland, infiltration system, sand filter, bio-retention cell, permeable pavement, green roof, rainwater harvesting, or an approved new stormwater technology that is designed, constructed and maintained in accordance with the MDC.

16. **Project**
The proposed development activity for which an applicant is seeking a stormwater permit from the Town in accordance with this Section. "Project" shall exclude any land adjacent to the area disturbed by the project that has been counted as pervious by any other development regulated under a federal, State, or local stormwater regulation. Owners and developers of large developments consisting of many linked projects may consider developing a master plan that illustrates how each project fits into the design of the large development.

17. **Redevelopment**
Any *development* on previously-developed land, other than a rebuilding activity that results in no net increase in *built-upon area* and provides equal or greater stormwater control than the previous *development*.

18. **Runoff treatment**
Means that the volume of stormwater runoff generated from all of the built-upon area of a project at build-out during a storm of one inch in depth that is treated in one or more primary SCMs or a combination of Primary and Secondary SCMs that provides equal or better treatment.

19. **Runoff volume match**
Means that the annual runoff volume after development shall not be more than ten percent higher than the annual runoff volume before development.

20. **SCM**
Stormwater Control Measure; also known as BMP or Best Management Practice;
Means a permanent structural device that is designed, constructed, and maintained
to remove pollutants from stormwater runoff by promoting settling or filtration; or
to mimic the natural hydrologic cycle by promoting infiltration, evapo-transpiration, post-filtration discharge, reuse of stormwater, or a combination thereof.

21. **Structural SCM**
A physical device designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-*development* hydrology on a developed site; or to achieve any combination of these goals. Structural SCMs includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. “Structural SCM” is synonymous with “structural practice,” “stormwater control facility,” “stormwater control practice,” “stormwater treatment practice,” “stormwater management practice,” “stormwater

control measures," "structural stormwater treatment systems," and similar terms used in this ordinance.

22. **Substantial progress**
For the purposes of determining whether sufficient progress has been made on an approved plan, one or more of the following construction activities toward the completion of a site or subdivision plan shall occur: obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than thirty (30) days; or installation and approval of on-site infrastructure; or obtaining a building permit for the construction and approval of a building foundation. "Substantial progress" for purposes of determining whether an approved plan is null and void is not necessarily the same as "substantial expenditures" used for determining vested rights pursuant to applicable law.

23. **Town**
Town of Clayton, NC

24. **Working Days**
Days exclusive of Saturday and Sunday and Federal and State holidays observed by the Town.

158.107 - DESIGN MANUAL.

1. Reference to Design Manual

A. The Stormwater Administrator shall use the policy, criteria, and information, including technical specifications and standards, in the *Design Manual* as the basis for decisions about stormwater permits and about the design, implementation and performance of *structural and non-structural stormwater SCMs*.

B. The *Design Manual* includes a list of acceptable stormwater treatment practices, including specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Phase II and other applicable stormwater laws.[3]

2. Relationship of Design Manual to Other Laws and Regulations

If the specifications or guidelines of the *Design Manual* are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the *Design Manual*.

[3] From Stormwater Center/EPA Model Ordinance.

3. Changes to Standards and Specifications

If the standards, specifications, guidelines, policies, criteria, or other information in the *Design Manual* are amended subsequent to the submittal of an application for approval pursuant to this ordinance but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this ordinance with regard to the application.

158.108 - RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE AGREEMENTS.

1. Conflict of Laws

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law. Where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control.

2. Private Agreements

This ordinance is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this ordinance are more restrictive or impose higher standards or requirements than such an easement, covenant, or other private agreement, the requirements of this ordinance shall govern. Nothing in this ordinance shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this ordinance. In no case shall the Town be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

158.109 – SEVERABILITY.

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

158.110 - EFFECTIVE DATE.

This Ordinance shall take effect on January 1, 2021.

ARTICLE 2: ADMINISTRATION AND PROCEDURES

158.200 - REVIEW AND DECISION-MAKING ENTITIES.

1. Stormwater Administrator

   A. Designation

      A Stormwater Administrator shall be designated by the Town to administer and enforce this ordinance.

   B. Powers and Duties

      In addition to the powers and duties that may be conferred by other provisions of the Town and other laws, the Stormwater Administrator shall have the following powers and duties under this ordinance:

      i. To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance.

      ii. To make determinations and render interpretations of this ordinance.

      iii. To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the Planning Board on applications for *development* or *redevelopment* approvals.

      iv. To enforce the provisions of this ordinance in accordance with its enforcement provisions.

      v. To maintain records, maps, forms and other official materials as relate to the adoption, amendment, enforcement, and administration of this ordinance.

      vi. To provide expertise and technical assistance to the Planning Board, upon request.

      vii. To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.

      viii. To take any other action necessary to administer the provisions of this ordinance.

158.201 - REVIEW PROCEDURES.

1. Permit Required

   A stormwater permit is required for all *development* and *redevelopment* unless exempt pursuant to this ordinance. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section.

2. Effect of Permit

   A. A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site, including *structural SCMs* and elements of site design for stormwater management other than *structural SCMs*.

   B. The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the *development* or *redevelopment* site consistent with the requirements of this ordinance, whether the approach consists of *structural SCMs* or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this ordinance.

3. Authority to File Applications

   All applications required pursuant to this Code shall be submitted to the Stormwater Administrator by the land *owner* or the land *owner's* duly authorized agent.

4. Establishment of Application Requirements, Schedule, and Fees

   A. Application Contents and Form

      The Stormwater Administrator shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time. At a minimum, the stormwater permit application shall describe in detail how post-*development* stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this ordinance.

   B. Submission Schedule

      The Stormwater Administrator shall establish a submission schedule for applications. The schedule shall establish deadlines by which complete applications must be submitted for the purpose of ensuring that there is adequate time to review applications and that the various stages in the review process are accommodated.

C. Permit Review Fees

The Town shall establish permit review fees as well as policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.

D. Administrative Manual

For applications required under this Code, the Stormwater Administrator shall compile the application requirements, submission schedule, fee schedule, a copy of this ordinance, and information on how and where to obtain the Design Manual in an Administrative Manual, which shall be made available to the public.

5. Submittal of Complete Application

A. Applications shall be submitted to the Stormwater Administrator pursuant to the application submittal schedule in the form established by the Stormwater Administrator, along with the appropriate fee established pursuant to this section.

B. An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this ordinance, along with the appropriate fee. If the Stormwater Administrator finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application. However, the submittal of an incomplete application shall not suffice to meet a deadline contained in the submission schedule established above.

6. Review

Within 20 working days after a complete application is submitted, the Stormwater Administrator shall review the application and determine whether the application complies with the standards of this ordinance.

A. Approval

If the Stormwater Administrator finds that the application complies with the standards of this ordinance, the Stormwater Administrator shall approve the application. The Stormwater Administrator may impose conditions of approval as needed to ensure compliance with this ordinance. The conditions shall be included as part of the approval.

B. Fails to Comply

If the Stormwater Administrator finds that the application fails to comply with the standards of this ordinance, the Stormwater Administrator shall notify the

applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.

C. Revision and Subsequent Review

i. A complete revised application shall be reviewed by the Stormwater Administrator within 15 working days after its re-submittal and shall be approved, approved with conditions or disapproved.

ii. If a revised application is not re-submitted within thirty (30) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee for a new submittal.

iii. One re-submittal of a revised application may be submitted without payment of an additional permit review fee. Any re-submittal after the first re-submittal shall be accompanied by a permit review fee additional fee, as established pursuant to this ordinance.

158.202 - APPLICATIONS FOR APPROVAL.

1. Concept Plan and Consultation Meeting

Before a stormwater management permit application is deemed complete, the Stormwater Administrator or developer may request a consultation on a concept plan for the post-construction stormwater management system to be utilized in the proposed *development* project. This consultation meeting should take place at the time of the preliminary plan of subdivision or other early step in the *development* process. The purpose of this meeting is to discuss the post-construction stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. Local watershed plans, *Natural Resource Protection*, and other relevant resource protection plans should be consulted in the discussion of the concept plan.

To accomplish this goal, the following information should be included in the concept plan, which should be submitted in advance of the meeting:

A. Existing Conditions / Proposed Site Plans

Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys; boundaries of existing predominant vegetation; proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.

B. Natural Resources Inventory

A written or graphic inventory of natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for *development* and stormwater management.

C. Stormwater Management System Concept Plan

A written or graphic concept plan of the proposed post-*development* stormwater management system including: preliminary selection and location of proposed structural stormwater controls; low-impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of any proposed stream channel modifications, such as bridge or culvert crossings.

2. Stormwater Management Permit Application

A. The stormwater management permit application shall detail how post-*development* stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this ordinance, including Section 3, Standards. All such plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor, soil scientist or landscape architect, and the engineer, surveyor, soil scientist or landscape architect shall perform services only in their area of competence, and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the *Design Manual*, and that the designs and plans ensure compliance with this ordinance.

B. The submittal shall include all of the information required in the submittal checklist established by the Stormwater Administrator. Incomplete submittals shall be treated pursuant to 158.201(5)(B).

3. As-Built Plans and Final Approval

A. Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall

submit actual "as built" plans for all stormwater management facilities or practices after final construction is completed.

B. The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed.

C. Storm pipe systems should be included with pipe sizes and inverts, as well as structure tops and inverts.

D. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance.

E. A final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities.

4. Other Permits

No certificate of compliance or occupancy shall be issued by the Town Inspections Division without final as-built plans and a final inspection and approval by the Stormwater Administrator, except where multiple units are served by the stormwater practice or facilities, in which case the Town Inspections Division may elect to withhold a percentage of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.

158.203 - APPROVALS.

1. Effect of Approval

Approval authorizes the applicant to go forward with only the specific plans and activities authorized in the permit. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.

2. Time Limit/Expiration

A. An approved plan shall become null and void if the applicant fails to make *substantial progress* on the site within one year after the date of approval. The Stormwater Administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

B. In granting an extension, the Stormwater Administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the applicant's vested rights.

158.204 - APPEALS.

1. Right of Appeal

   Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance made by the Stormwater Administrator, may file an appeal to the Planning Board within thirty (30) days.

2. Filing of Appeal and Procedures

   A. Appeals shall be taken within the specified time period by filing a notice of appeal and specifying the grounds for appeal on forms provided by the Town.

   B. The Stormwater Administrator shall transmit to the Planning Board all documents constituting the record on which the decision appealed from was taken.

   C. The hearing conducted by the Planning Board shall be conducted in the nature of a quasi-judicial proceeding with all findings of fact supported by competent, material evidence.

3. Review by Superior Court

   Every decision of the Planning Board shall be subject to Superior Court review by proceedings in the nature of certiorari. Petition for review by the Superior Court shall be filed with the Clerk of Superior Court within thirty (30) days after the latter of the following:

   A. The decision of the Planning Board is filed; or

   B. A written copy of the decision is delivered to every aggrieved party who has filed a written request for such copy with the Chair of the Planning Board at the time of its hearing of the case.

ARTICLE 3: STANDARDS

158.300 - GENERAL STANDARDS.

All *development* and *redevelopment* to which this ordinance applies shall comply with the standards of this section.

158.301 – DENSITY.

1. Calculation of project density

   The following requirements shall apply to the calculation of project density:

   A. Project density shall be calculated as the total built-upon area divided by the total project area;

   B. A project with existing development shall calculate project density as the difference of total built-upon area minus existing built-upon area divided by the difference of total project area minus existing built-upon area;

   C. Total project area shall exclude areas below the Normal High Water Line (NHWL); and

   D. On a case-by-case basis as determined by the Town during application review, projects may be considered to have both high and low density areas based on one or more of the following criteria:

      i. natural drainage area boundaries;
      ii. variations in land use throughout the project; and
      iii. construction phasing.

2. Design Requirements

   A. Low Density Projects

      Low density projects shall meet the following minimum design criteria:

      i. Dispersed Flow

         Projects shall be designed to maximize dispersed flow through vegetated areas and minimize channelization of flow;

      ii. Vegetated Conveyances

         Stormwater that cannot be released as dispersed flow shall be transported by vegetated conveyances. A minimal amount of non-

vegetated conveyances for erosion protection or piping for driveways or culverts under a road shall be allowed by the Town when it cannot be avoided. Vegetated conveyances shall meet the following requirements:

a. Side slopes shall be no steeper than 5:1 (horizontal to vertical) unless it is demonstrated to the Town that the soils and vegetation will remain stable in perpetuity based on engineering calculations and on-site soil investigation; and

b. The conveyance shall be designed so that it does not erode during the peak flow from the 10-year storm as demonstrated by engineering calculations.

iii. Curb Outlet Systems

Low density projects may use curb and gutter with outlets to convey stormwater to grassed swales or vegetated areas. Requirements for these curb outlet systems shall be as follows:

a. The curb outlets shall be designed such that the swale or vegetated area can carry the peak flow from the 10-year storm at a non-erosive velocity;

b. The longitudinal slope of the swale or vegetated area shall not exceed five percent, except where not practical due to physical constraints. In these cases, devices to slow the rate of runoff and encourage infiltration to reduce pollutant delivery shall be provided;

c. The swale's cross-section shall be trapezoidal with a minimum bottom width of two feet;

d. The side slopes of the swale or vegetated area shall be no steeper than 5:1 (horizontal to vertical);

e. The minimum length of the swale or vegetated area shall be 100 feet.

B. High density projects

High density projects shall meet the following minimum design criteria:

i. Treatment requirements

SCMs shall be designed, constructed, and maintained so that the project achieves either "runoff treatment" or "runoff volume match" as those terms are defined in 158.106 - Definitions.

ii. Off-site stormwater

Stormwater runoff from off-site areas and existing development shall not be required to be treated in the SCM. Runoff from off-site areas or existing development that is not bypassed shall be included in the sizing of on-site SCMs at its full built-out potential.

iii. Off-site SCM

a. A project that controls runoff through an off-site SCM shall be allowed on a case-by-case basis as determined by the Town if the off-site SCM meets the MDC for the specific device.

b. Legal documents are required for clarification of ownership and maintenance responsibilities.

c. Adequate access and maintenance easements are required to be recorded to a public right of way.

iv. Expansion or Replacement of existing development

When new built-upon area is added to existing development or existing development is replaced with new built-upon area, only the area of net increase shall be subject to this Section.

v. MDC for SCMS

SCMs shall meet the relevant MDC set forth in the *Design Manual*

158.302 IMPERVIOUS SURFACE REQUIREMENTS.

1. Setback requirement

A. All impervious surfaces, except for roads, paths, and water dependent structures, shall be located at least 30 feet landward of all perennial and intermittent surface waters.

B. A perennial or intermittent surface water shall be deemed present if the feature is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent complete version of the 1:24,000

scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using *Division*-approved methodology.

2. Development in Protected Area of Water Supply Watersheds

   See Chapter 159 – Water Supply Watershed Protection Ordinance.

158.303 - STRUCTURAL STORMWATER CONTROL REQUIREMENTS.

1. *Owners* of property subject to this ordinance and required to install structural stormwater control measures shall implement those measures in compliance with each of the following standards:

   A. The measures shall control and treat runoff from the first inch of rain.

   B. The design volume shall take into account the runoff at build out from all surfaces draining to the system.

   C. General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1050-1062, as explained in the *Design Manual*;

   D. Vegetated side slopes shall be no steeper than 3:1.

   E. The measure shall discharge the storage volume at a rate equal or less than the pre-development discharge rate for the 1-year, 24-hour storm;

   F. Overflow or bypass devices for inflow volumes in excess of the treatment volume or peak attenuation volume, if applicable, shall be included.

   G. Each point of discharge from the development must be evaluated for attenuation needs. The post development runoff rate for the 1-year, 2-year, 10-year and 25-year, 24-hour storm events must be equal or less than the pre- development rates for the equivalent storm events at each point of discharge.

   H. The approval of the stormwater permit shall require enforceable restrictions on property usage that runs with the land, including recorded deed restrictions and protective covenants, to ensure that future *development* and *redevelopment* maintains the site consistent with the approved project plans.

2. The project shall meet either a nitrogen loading rate target of 3.6 pounds/acre/year or "runoff volume match". Proposed development projects that would replace or expand existing structures and result in a net increase in built-upon area shall meet one of these options for the project less any existing built-upon area.

3. Proposed development undertaken by a local government solely as a public road expansion or public sidewalk project, or proposed development subject to the jurisdiction of the Surface Transportation Board, may meet the loading rate target of this Item entirely through use of permanent nutrient offset credit pursuant to 15A NCAC 02B .0703.

4. Where in satisfying the onsite requirements of 158.303(1), a project does not meet the loading rate target of this section, it may do so through use of permanent nutrient offset credit pursuant to 15A NCAC 02B .0703. Persons doing so shall provide proof of credit acquisition to the Town prior to issuance of the stormwater permit.

158.304 - STANDARDS FOR STORMWATER CONTROL MEASURES.

1. Evaluation According to Contents of Design Manual

   All stormwater control measures, also known as SCM's, required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the *Design Manual*. The Stormwater Administrator shall determine whether proposed SCMs will be adequate to meet the requirements of this ordinance.

2. Determination of Adequacy; Presumptions and Alternatives

   Stormwater treatment practices that are designed, constructed, and maintained in accordance with the criteria and specifications in the *Design Manual* will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the *Design Manual,* the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The Stormwater Administrator may require the applicant to provide the documentation, calculations, and examples necessary for the Stormwater Administrator to determine whether such an affirmative showing is made.

3. Separation from Seasonal High Water Table

   For SCMs that require a separation from the seasonal high-water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high-water table.[4]

[4] From SL 2006-246, § 9(k).

4. Required Storm Depth

   For high density projects designed to achieve runoff treatment, the required storm depth shall be one inch. Applicants shall have the option to design projects to achieve "runoff volume match" in lieu of "runoff treatment."

5. Stormwater Outlets

   Stormwater outlets shall be designed so that they do not cause erosion downslope of the discharge point during the peak flow from the 10-year storm event as shown by engineering calculations.

158.305 VARIATIONS FROM THIS SECTION.

The Town shall have the option to approve projects that do not comply with all of the provisions of this Section on a case-by-case basis as follows:

1. If the variation pertains to an SCM design that does not meet all of the MDC, then the applicant shall provide technical justification based on engineering calculations and the results of research studies showing that the proposed design provides equal or better stormwater control and equal or better protection of waters of the State than the requirements of this Section and that it shall function in perpetuity. The Town shall have the option to require compliance with the MDC in the event that the alternative SCM design fails;

2. If the variation pertains to other aspects of the project, then the applicant shall demonstrate that the project provides equal or better stormwater control and equal or better protection of waters of the State than the requirements of this Section;

158.306 – VARIANCES.

1. Any person may petition the Town for a variance granting permission to use the person's land in a manner otherwise prohibited by this ordinance. To qualify for a variance, the petitioner must show all of the following:

   A. Unnecessary hardships would result from strict application of this ordinance.

   B. The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.

   C. The hardships did not result from actions taken by the petitioner.

   D. The requested variance is consistent with the spirit, purpose, and intent of this ordinance; will secure public safety and welfare; and will preserve substantial justice.

2. The Town may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

3. Statutory exceptions

   Notwithstanding 158.306(1), exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirements shall be granted in any of the following instances:

   A. When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of SCMs.

   B. When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of SCMs.

   C. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

These statutory exceptions were included in SL 2006-246, § 11.

ARTICLE 4: MAINTENANCE

158.400 - GENERAL STANDARDS FOR MAINTENANCE.

1. Function of SCMs As Intended

   The *owner* of each *structural and non-structural SCM* installed pursuant to this ordinance shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the *structural SCM* was designed.

2. Annual Maintenance Inspection and Report

   A. The person responsible for maintenance of any *structural and non-structural SCM* installed pursuant to this ordinance shall submit to the Stormwater Administrator an inspection report from one of the following persons performing services only in their area of competence: a qualified registered North Carolina professional engineer, surveyor, landscape architect, soil scientist, aquatic biologist, or person certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance. The inspection report shall contain all of the following:

      i. The name and address of the land *owner*;

      ii. The recorded book and page number of the lot of each *structural and non-structural SCM*;

      iii. A statement that an inspection was made of all *structural and non-structural SCM*s;

      iv. The date the inspection was made;

      v. A statement that all inspected *structural and non-structural SCM*s are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and

      vi. The original signature and seal of the engineer, surveyor, or landscape architect.

   B. All inspection reports shall be on forms supplied by the Stormwater Administrator. An original inspection report shall be provided to the Stormwater Administrator beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

158.401 - OPERATION AND MAINTENANCE AGREEMENT.

1. In General

   A. Prior to the conveyance or transfer of any lot or building site to be served by a *structural SCM* pursuant to this ordinance, and prior to issuance of any permit for *development* or *redevelopment* requiring a *structural SCM* pursuant to this ordinance, the applicant or *owner* of the site must execute an operation and maintenance agreement that shall be binding on all subsequent *owner*s of the site, portions of the site, and lots or parcels served by the *structural SCM*. Until the transference of all property, sites, or lots served by the *structural SCM*, the original *owner* or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

   B. The operation and maintenance agreement shall require the *owner* or *owner*s to maintain, repair and, if necessary, reconstruct the *structural SCM*, and shall state the terms, conditions, and schedule of maintenance for the *structural SCM*. In addition, it shall grant to the Town a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the *structural SCM*; however, in no case shall the right of entry, of itself, confer an obligation of the Town to assume responsibility for the *structural SCM*.

   C. The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. A copy of the recorded maintenance agreement shall be given to the Stormwater Administrator within fourteen (14) days following its recordation.

2. Special Requirement for Homeowners' and Other Associations

   For all *structural SCM*s required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:

   A. Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.

   B. Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the *structural SCM*s. If *structural SCM*s are not performing adequately or as intended or are not properly maintained, the Town, in its sole discretion, may remedy the situation, and in such instances the Town shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and

reconstruction of the *structural SCM*s, provided that the Town shall first consent to the expenditure.

C. Developer contribution funds shall fund the escrow account. Prior to acceptance of the As-Built plans and release of performance security the developer shall pay into the escrow account an amount equal to twenty-five (25) per cent of the initial construction cost of the *structural SCM*s. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

D. Granting to the Town a right of entry to inspect, monitor, maintain, repair, and reconstruct *structural SCM*s.

E. Allowing the Town to recover from the association and its members any and all costs the Town expends to maintain or repair the *structural SCM*s or to correct any operational deficiencies. Failure to pay the Town all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. In case of a deficiency, the Town shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.

F. A statement that this agreement shall not obligate the Town to maintain or repair any *structural SCM*s, and the Town shall not be liable to any person for the condition or operation of *structural SCM*s.

G. A statement that this agreement shall not in any way diminish, limit, or restrict the right of the Town to enforce any of its ordinances as authorized by law.

H. A provision indemnifying and holding harmless the Town for any costs and injuries arising from or related to the structural SCM, unless the Town has agreed in writing to assume the maintenance responsibility for the SCM and has accepted dedication of any and all rights necessary to carry out that maintenance.

158.402 - INSPECTION PROGRAM.

1. Inspections and inspection programs by the Town may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in SCMs; and evaluating the condition of SCMs.

2. If the *owner* or occupant of any property refuses to permit such inspection, the Stormwater Administrator shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor. No person shall obstruct, hamper or interfere with the Stormwater Administrator while carrying out his or her official duties.

158.403 - PERFORMANCE SECURITY FOR INSTALLATION.

1. Required

   The Town requires the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the *structural SCM*s are installed by the permit holder as required by the approved stormwater management plan.

2. Amount

   The amount of an installation performance security shall be the total estimated construction cost of the SCMs approved under the permit, plus 25%.

3. Uses of Performance Security

   A. Forfeiture Provisions

      The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or *owner* in accordance with this ordinance, approvals issued pursuant to this ordinance, or an operation and maintenance agreement established pursuant to this ordinance.

   B. Default

      Upon default of the *owner* to construct, maintain, repair and, if necessary, reconstruct any *structural SCM* in accordance with the applicable permit or operation and maintenance agreement, the Stormwater Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the *owner* to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the Town shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.

4. Costs in Excess of Performance Security

   If the Town takes action upon such failure by the applicant or *owner*, the Town may collect from the applicant or *owner* the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.

5. Refund

   Within sixty days of the final approval, the installation performance security shall be refunded to the applicant or terminated, except any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance associated with the SCMs covered by the security. Any such landscaping shall be inspected one (1) year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

158.404 - NOTICE TO OWNERS.

1. Deed Recordation and Indications On Plat

   The applicable operations and maintenance agreement and conservation easement, pertaining to every *structural and non-structural SCM* shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance, whichever is applicable shall be recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

2. Signage

   Where appropriate in the determination of the Stormwater Administrator to assure compliance with this ordinance, *structural SCM*s shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.

158.405 - RECORDS OF INSTALLATION AND MAINTENANCE ACTIVITIES.

The *owner* of each *structural SCM* shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.

158.406- NUISANCE.

The *owner* of each stormwater SCM, whether *structural* or non-*structural SCM*, shall maintain it so as not to create or result in a nuisance condition.

158.407- MAINTENANCE EASEMENT.

1. Every *structural SCM* installed pursuant to this ordinance shall be made accessible for adequate maintenance and repair by a maintenance easement accessible to a public right of way. The easement shall be recorded and its terms shall specify who may make use of the easement and for what purposes.

2. Maintenance access easements shall not have lateral or incline slopes that exceed 3:1 (horizontal to vertical).

SECTION 5: ENFORCEMENT AND VIOLATIONS

158.500 – GENERAL.

1. Authority to Enforce

   The provisions of this ordinance shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of the Town. Whenever this section refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of the Town.

2. Violation Unlawful

   Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this ordinance, or the terms or conditions of any permit or other *development* or *redevelopment* approval or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance.

3. Each Day a Separate Offense

   Each day that a violation continues shall constitute a separate and distinct violation or offense.

4. Responsible Persons/Entities

   Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, SCM, practice, or condition in violation of this ordinance shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists; or an *owner*, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or *development* of the property on which the violation occurs.

   For the purposes of this article, responsible person(s) shall include but not be limited to:

   A. Person Maintaining Condition Resulting In or Constituting Violation

      An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.

B. Responsibility For Land or Use of Land

The *owner* of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, *development* or *redevelopment* of the property.

158.501 - REMEDIES AND PENALTIES.

The remedies and penalties provided for violations of this ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

1. Remedies

A. Withholding of Certificate of Occupancy

The Stormwater Administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

B. Disapproval of Subsequent Permits and Development Approvals

As long as a violation of this ordinance continues and remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the Town Planning Board may disapprove, any request for permit or *development* approval or authorization provided for by this ordinance or the zoning, subdivision, and/or building regulations, as appropriate, for the land on which the violation occurs.

C. Injunction, Abatements, etc.

The Stormwater Administrator, with the written authorization of the Town Manager, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this ordinance. Any person violating this ordinance shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.

D. Correction as Public Health Nuisance, Costs as Lien, etc.

If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by North Carolina G.S. § 160A-193, the Stormwater Administrator, with the written

authorization of the Town Manager, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

E. Stop Work Order

The Stormwater Administrator may issue a stop work order to the person(s) violating this ordinance. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.

2. Civil Penalties

Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the Stormwater Administrator. Civil penalties may be assessed up to the full amount of penalty allowed by law.

3. Criminal Penalties

Violation of this ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

158.502 – PROCEDURES.

1. Initiation/Complaint

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the Stormwater Administrator, who shall record the complaint. The complaint shall be investigated promptly by the Stormwater Administrator.

2. Inspection

The Stormwater Administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this ordinance.

3. Notice of Violation and Order to Correct

A. When the Stormwater Administrator finds that any building, structure, or land is in violation of this ordinance, the Stormwater Administrator shall notify, in writing, the property *owner* or other person violating this ordinance. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the

violation. If civil penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

B. The Stormwater Administrator may deliver the notice of violation and correction order personally, by the Town Police Department, by Town Code Enforcement Officer, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

C. If a violation is not corrected within a reasonable period of time, as provided in the notification, the Stormwater Administrator may take appropriate action under this ordinance to correct and abate the violation and to ensure compliance with this ordinance.

4. Extension of Time

A person who receives a notice of violation and correction order, or the *owner* of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 30 days. The Stormwater Administrator may grant 15-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this ordinance. The Stormwater Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

5. Enforcement After Time to Correct

After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, the Stormwater Administrator shall determine if the violation is corrected. If the violation is not corrected, the Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this ordinance.

6. Emergency Enforcement

If delay in correcting a violation would seriously threaten the effective enforcement of this ordinance or pose an immediate danger to the public health, safety, or welfare, then the Stormwater Administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Stormwater

Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

This Ordinance will take effect on January 1, 2021.

Duly adopted this the 2nd day of November, 2020 while in regular session.

_____

Jody McLeod
Mayor

ATTEST:

_____

Kimberly A. Moffett, CMC, NCCMC,
Town Clerk

Council Agenda Item Cover Sheet

Meeting Date
November 2, 2020

Agenda Location
New Business

Item Title
Historic District (HD) Signage Presentation

Presenters
Jenn Gallimore, Economic Development Specialist
J. David Millican, DDA Board Member & Design Committee Chair

Summary/Description
Inform Council on HD Signage Program research, justification, feedback, installation plan, costs, and timeline.
Approval to proceed with HD Signage Program

Requested Action: None – Informational
Funding Source (If Applicable):
Cost: $2,104.54
Additional Documents to be Included in Agenda Packet: Historic District Signage Proposal Presentation

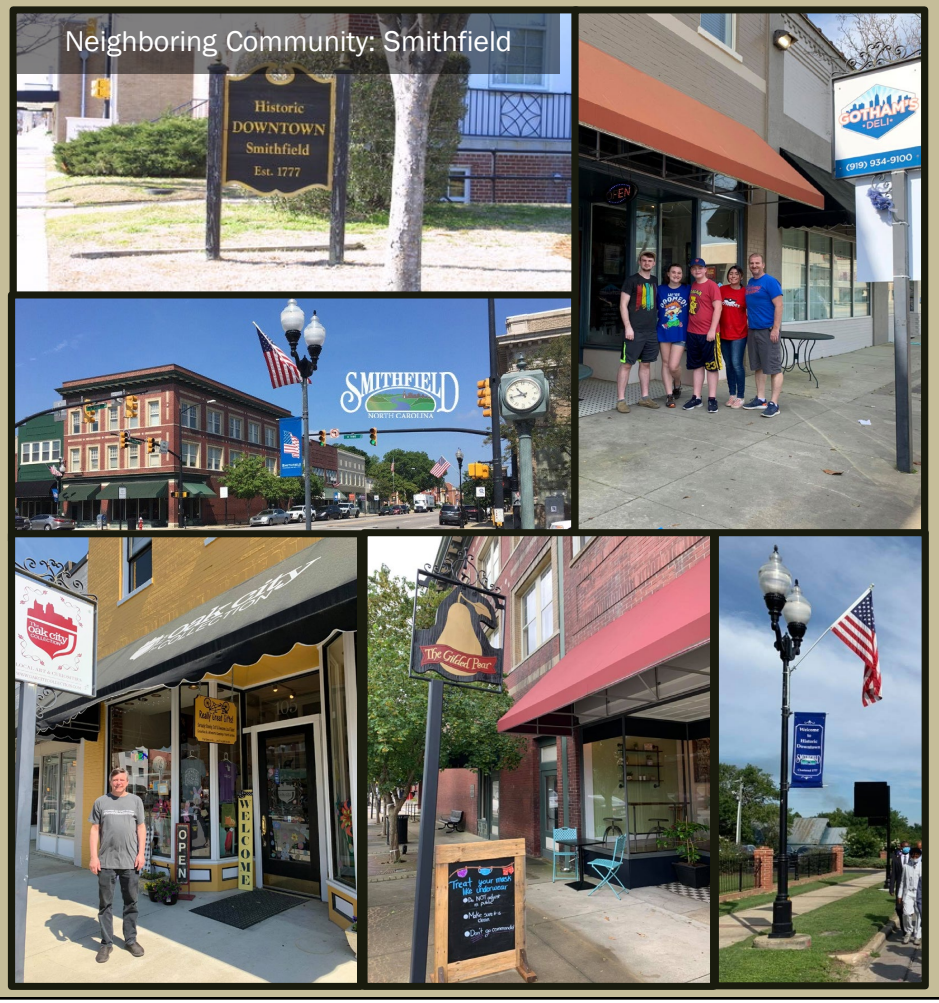
HISTORIC CLAYTON: CELEBRATING 10 YEARS

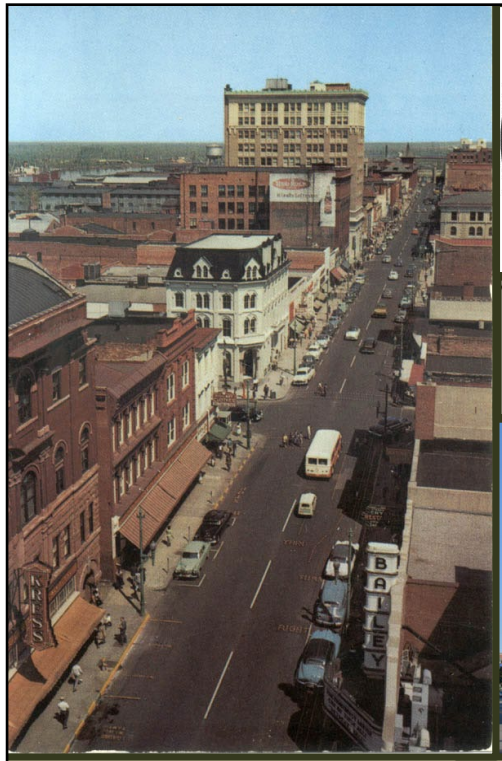
David Millican, DDA Board Member & DDA Design Committee Chair
Jenn Gallimore, Economic Development Specialist, Town of Clayton

Purpose of the Presentation

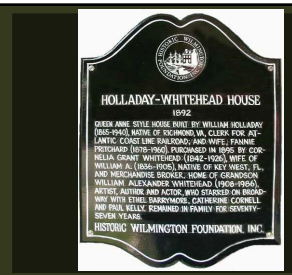
- Educate about Downtown Clayton's Nationally Registered Historic District
- Provide examples of how and where Historic Districts have been used to drive economic development and reinvestment
- Discuss specific ideas for Downtown Clayton
- Review what a historic designation means for local residents and businesses within the District
- Outline proposal for purchasing and installing signage in the District
- Request approval to proceed with project

Peer Communities





HISTORIC WILMINGTON FOUNDATION INC.



CITY OF WILMINGTON NORTH CAROLINA

GOLD STANDARD HISTORIC COMMUNITIES

North Carolina
State Historic Preservation Office
Department of Natural and Cultural Resources
Office of Archives and History

National Register vs. Local Historic Districts

- The **National Register of Historic Places & Landmarks** and **local historic district designations** are two very different programs that recognize and protect historic properties
- Some historic properties and districts may receive both types of designation in communities where local historic preservation commissions have been established according to North Carolina enabling legislation
- **No direct correlation** between National Register listing and local designation

National Register vs. Local Historic Districts

National Register (NR)

- Federal program administered by the National Park Service in partnership with state governments
- SHPO is responsible for conducting survey of properties, coordinating nominations of eligible properties, and conducting environmental review of projects that may affect properties listed or eligible for listing on the NR
- Listing is primarily an honor, meaning that a property has been researched and evaluated to be worthy of preservation for historical value
- Does not restrict private owner in any way unless owner seeks a federal benefit (i.e. tax credits and grants)
- Property changes are not subject to Certificate of Appropriateness (COA)

Locally Designated

- Established by local governments/governing boards
- Properties do not have to be on the National Register, but some municipalities use that as a boundary or landmark determining guide
- Type of zoning that applies to entire neighborhoods or other areas that include many historic properties
- Provides controls on the appearance of existing and proposed buildings through use of Historic District Guidelines and COAs
- Can help improve property values by stabilizing character through protecting properties from inappropriate/historically inaccurate changes

National Register vs. Local Historic Districts

- The Town of Clayton **DOES** have a **National Register (NR)** Historic District (established through state surveyance in 2010) but **DOES NOT** have an established **locally designated** historic district.

- Any Town regulations placed on property owners downtown that may also fall within the state NR Historic Boundary come from the Downtown Overlay District in the UDO, not any set of specific 'locally designated' historic district guidelines.

Historic Clayton Spinning Mill

Recent Clayton Spinning Mill

Clayton Spinning Mill

Redevelopment Plan

Historic Tax Credits 101 - Eligibility

- Available for qualifying rehabilitation of both contributing* **income producing** and **non-income producing** structures within the district
- **Federal** income tax credit for the rehabilitation of historic structures first appeared in 1976
  - Today, consists of a **20% credit** for the qualifying rehabilitation of **income-producing** historic properties
- State tax credits reviewed by **N.C. State Historic Preservation Office** (SHPO) represents almost **two billion dollars** of investment in NC historic properties
  - Activity from projects brought:
    - **Job creation**
    - Downtown and neighborhood revitalization
    - Improved community appearance
    - Greater community pride
    - **Incentivized growth and investment**

Historic Tax Credits 101 – Income Producing

- Owners and developers may potentially receive a 20% federal income tax credit and a 15-25% state income tax credit for certified rehabilitations of income-producing historic structures

Example for Income-Producing Properties

$1,000,000 Rehabilitation Expenses

20% Federal Tax Credit

x 15% Base Level State Tax Credit *

$350,000 Tax Credit Amount **

* The state tax credit is graduated according to project budget. For the first $10M in qualified rehabilitation expenditures, the credit is 15%. For the next $10M in qualified rehabilitation expenditures (i.e., up to $20M), the credit is 10%. There is no tax credit for qualified rehabilitation expenditures exceeding $20M.

** The following **bonus state tax credits** are potentially available to property owners and developers:

- **5% Development Tier Bonus** for projects in Tier 1 or 2 Counties with qualified rehabilitation expenditures up to $20M.
- **5% Targeted Investment Bonus** for manufacturing or agricultural properties at least 65% vacant for two years preceding eligibility certification, and with qualified rehabilitation expenditures up to $20M. Eligibility certification for this bonus credit is made by the State Historic Preservation Officer.

Historic Tax Credits 101 – Non-Income Producing

- Homeowners may receive a 15% state tax credit for qualified rehabilitation of owner-occupied residential properties

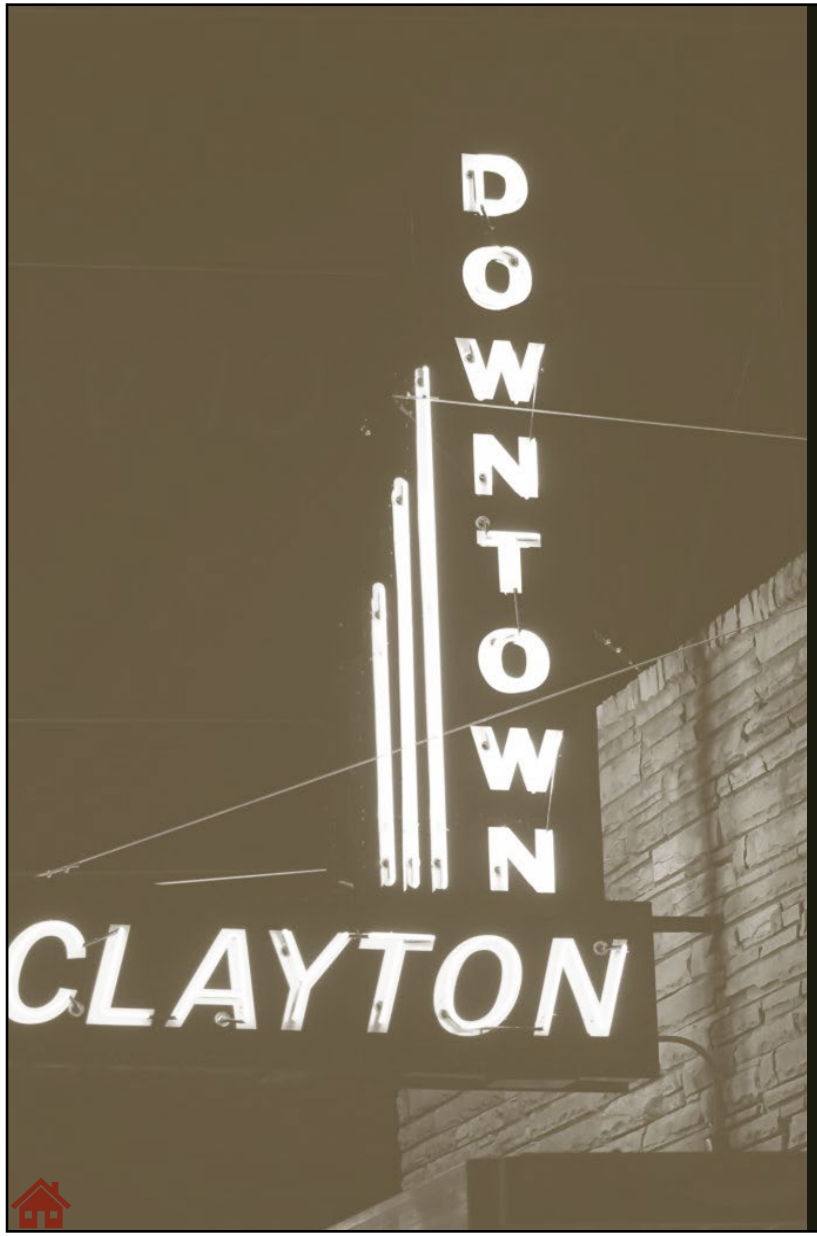
before

Example for
Owner-Occupied Residential Property

$100,000 Rehabilitation Expenses
x 15% State Tax Credit

$15,000 Tax Credit Amount

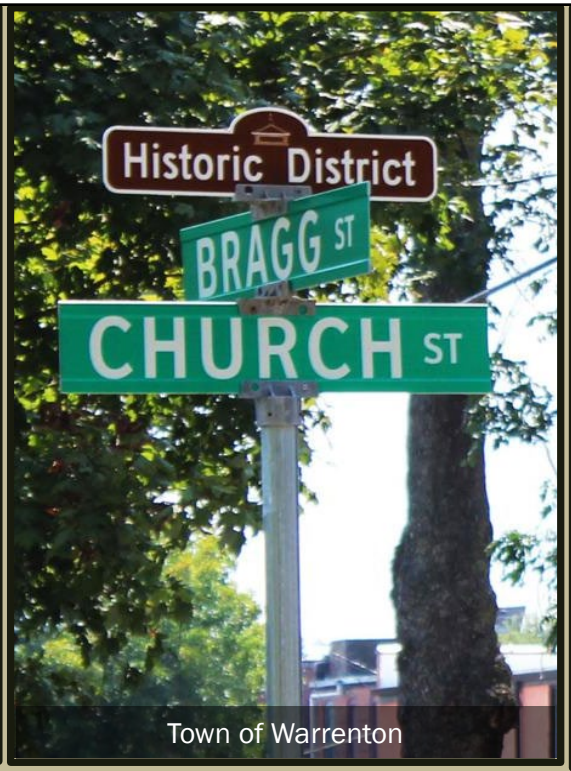
after



Opportunities for Downtown Clayton

- Walking **tours** and community **involvement**
- Pair with greenway extension **marketing**
- Business and residential **attraction** to historic district
- Increase in property **values**
- Potential **reinstating participation** in Main Street Program *if desired*
- Attract rehabilitation **investment** using incentives

Dilworth Charlotte Residential



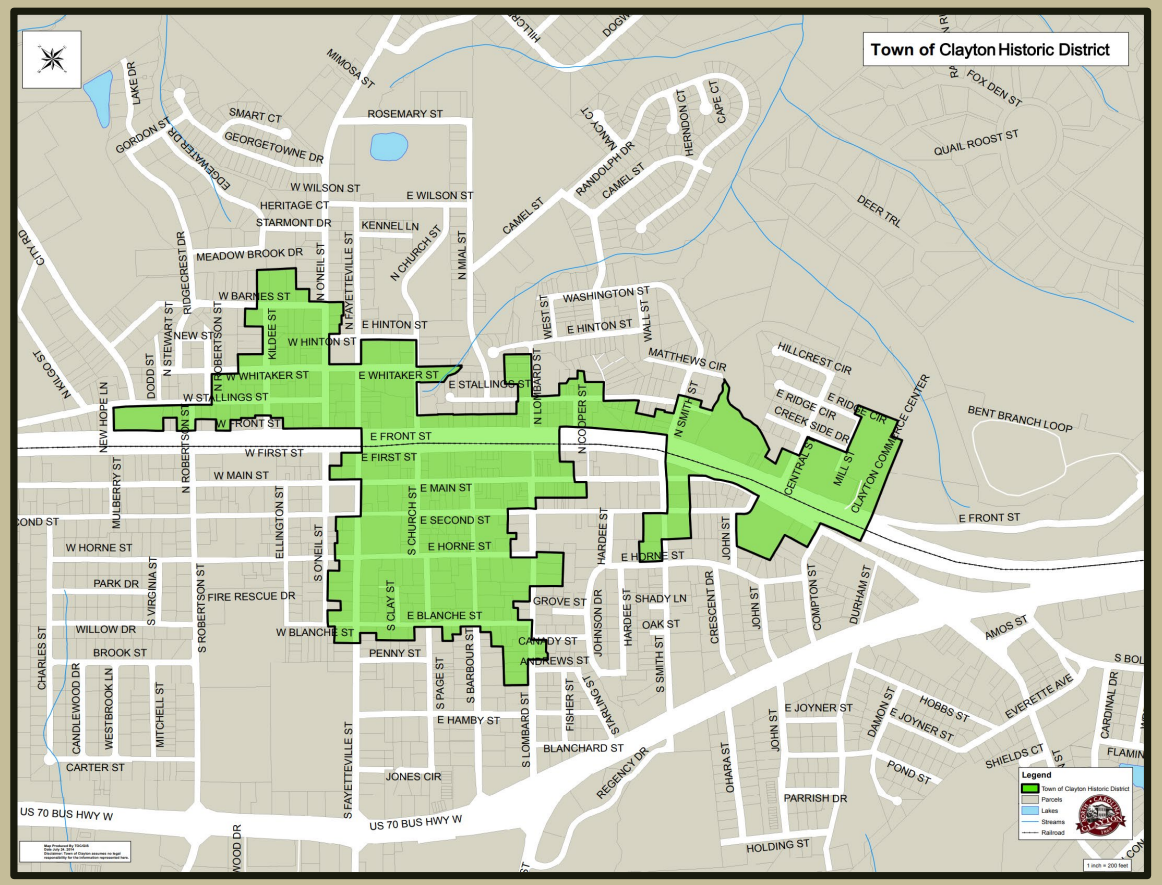
Town of Warrenton

Garden Home

Downtown St. Johns

PROGRAM SPECIFICS – SIGN DESIGN

Program Specifics – Historic Signage Boundary



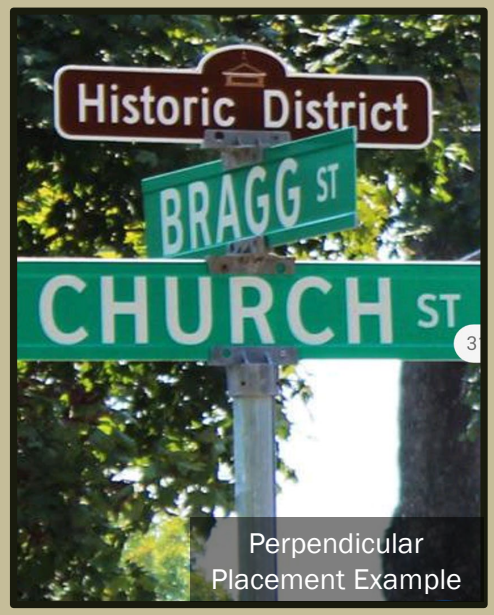
- Established in 2010
  - 3 years of research and preparation of nomination application
  - Assistance from SHPO
  - Listed on National Register of Historic Places by National Park Service
- Approx. 110 acres
- Includes portions of the downtown commercial district and residential neighborhoods north and south of the railroad
- Bounded by Mulberry Street, W Barnes Street, Mill Street, Lombard Street, and Blanche Street
- 294 contributing buildings and sites
- 109 non-contributing buildings

Nomination Application

https://www.townofclaytonnc.org/uploads/files/Downtown%20Clayton/2010NationalHistoricRegisterApplication.pdf

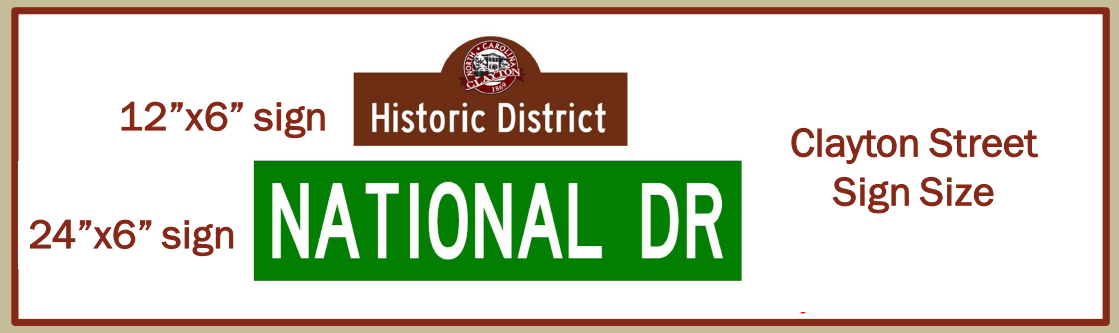
Program Specifics – Sign Design

- Toppers are more economical
- Screw onto existing green street signs
- Eliminates need to replace entire street signs and posts
- Design Approved by Downtown Development Advisory Board in August 2020



Program Specifics – Sign Design

- Mockup Design – Current Sign Company



- 75 toppers – allows for replacements requested by Public Services
- $21 per topper + $6.20 per installation bracket + freight = $2,104.54 Total

STREET	BLOCKS	SIGN QUANTITY Green Street Signs
Barbour S	100 - 300	4
Barnes	200 - 300	1
Blanche E	100 - 300	4
Central	200	0
Church N	10, 315	0
Church S	100 - 200	0
Fayetteville N	100 - 400	2
Fayetteville S	200 - 400	2
First	100	3
Front E	100 - 500	7
Front W	100 - 400	2
Horne E	100 - 300	3
Kildee	300 - 400	1
Lombard N	200 - 300	0
Lombard S	100 - 500	6
Main E	100 - 600	7
Main W	100	0
Mill	300	0
O'Neil N	300 - 500	3
Page S	300	0
Second E	100 - 500	5
Second W	100	0
Smith N	200 - 300	0
Smith S	200	1
Stallings E	200 - 400	3
Stallings W	200 - 500	7
Whitaker E	100 - 200	2
	TOTAL	63

Timeline for Installation

- Order signs and installation materials (14-21 business days)
  - *Extra signs ordered in case replacements are needed*
- 2-3 week installation time per Public Services
- Project complete by end of 2020

Community Stakeholders Feedback

"*Recognizing* the *boundaries* of our existing *historic district* is a great idea that we *fully support*."

"I think it is a great idea to *call attention to downtown* and help keep people *informed* so I am in *full support*"

"... people are seeking out *unique neighborhoods* as a contrast to the typical suburban landscape, and Clayton's *historic district* certainly fits the bill. *Preserving, celebrating, incentivizing,* and *encouraging investment/retention/redevelopment/infill* in the downtown is helping to meet that demand. *Promoting* and *supporting historic preservation* is an *important* way to ensure that *unique identity* remains *intact*."

"It is even more *important* to share the *history* and *heritage* of the town. It feels like a very *low-cost* way to achieve *high-profile recognition*..."

"The signs are an *inexpensive* way to show that our *downtown* has *significance* by raising *awareness* and *elevating its stature*. It's not just old, but a place that has *history* and *meaning*. Great bang for our buck!"

"I think this is fantastic and *support it 100%!* I believe the signs can help to *build pride* and *identity* and will tie in nicely with all of the other *combined efforts* of the Town to continue to *grow* the *downtown* area."

QUESTIONS?

THANK YOU!

Town Council Agenda Cover Sheet

Meeting Date
November 2, 2020

Agenda Location
New Business

Item Title
Legend Park – Landfill Remediation

Presenter
Joshua Baird – Town Engineer

Summary/Description
Provide status and update on Legend Park Landfill Remediation

Requested Action
Informational Only

Funding Source (If Applicable):
N/A

Cost: **N/A** **Yes** ☐ **No** ☒

Additional Documents to be Included in Agenda Packet

Meeting Timeline
Click or tap here to enter text.

Town Council Agenda Cover Sheet

Meeting Date
November 2, 2020

Agenda Location
New Business

Item Title
Recycling Report

Presenter
Blake Mills, Assistant Director of Public Services
Steve Blasko, Public Works Operations Manager
Justin Pulley, Grounds Maintenance Supervisor

Summary/Description

Recycling Commodity Loses

The Town is charged by All Star $4.48 per month per household to pick-up 90 gallon recycling bins weekly. The recyclables are taken to the Waste Management Material Recovery Facility (MRF) in Raleigh. Recyclables are a commodity and are sold on the open market which creates a revenue source to off-set the costs of recycling.

In the past the town would make money on each ton of recyclables delivered to the MRF. Starting in May of 2018, recyclable prices were down to levels that could not pay the recycling processing costs at the MRF which resulted in losses. In December of 2018, recycling processing costs were $20.90/ton which exceeded $14/ton for the first time. The Town of Clayton contract with All Star indicates that All Star pays the first $14 of recycling processing costs and the Town pays the amount over $14/ton. The Town paid recycling processing costs of $27,781 and $74,725, respectively in FY 19 and FY 20. The Town budgeted about $100,000 for recycling processing costs in FY 21 and based on the first quarter the cost is trending below budget (about $62,325 estimated for FY 21).

In the month of September recycling generated $41.42/ton in revenue, however, recycling processing fees at the MRF were $94.53/ton and therefore recycling lost $53.11/ton. The Town currently pays $37/ton to dispose of waste at the Johnston County Landfill, therefore, each ton of recyclables saves the Town $37.00/ton and therefore as long as recycling processing costs are less than $37/ton, recycling is saving the town money.

What Recyclables Make the Most Money?

The most profitable recyclables are as follows:

Aluminum cans - $637.50/ton
Cardboard - $72.99/ton
Mixed Paper – $55.25/ton
Steel Cans - $45.53/ton
Mixed Plastic - $37.03/ton
Glass – ($11.48)/ton

The recyclable processing costs are $94.53/ton and therefore, all the recyclables are losing money except for Aluminum cans. Glass is the biggest loser by far. We pay $94.53/ton to sort the glass and because it is glass we have to pay an additional $11.48/ton, for a total cost of $106.01/ton.

What is the True Cost of Recycling?

Currently, it costs the Town $39.11/ton or $62,325 per year to process recyclables at the MRF. However, this does not include collection costs. The collection costs are single stream which is the most efficient means to collect recyclables. In FY 21, the Town is estimated to spend $474,138 collecting recyclables curbside or $298/ton. Therefore, the Town is currently spending about $337/ton for recycling. If you compare that to Solid Waste the Town spends about $138/ton collecting and disposing of solid waste.

About 19% of the solid waste is recyclable materials and about 85% of Clayton residents put their bins out weekly with recyclables. It is estimated by All Star that 95% of residents in Clayton participate in recycling in some fashion over the course of the year.

Does Recycling Pay for Itself?

If you look strictly at recycling processing costs and collection costs recycling does not pay for itself today, because collection costs are just too high in comparison to current revenues generated by recyclables. The average Clayton resident generates recycling revenue of $0.14 weekly (not counting processing costs of $0.33). However, long-term recycling will pay for itself as we get closer to 40% recycling/60% Solid Waste with the ultimate goal to get to Zero Waste. When we reach these levels recycling tonnage will be greater than solid waste tonnage and the cost of processing each waste would shift dramatically in the opposite direction. In addition, each ton of recycling diverted from the landfill saves the Town $37/ton plus extends the life of the landfill. Also, recycling creates jobs, returns valuable resources to beneficial use, preserves natural resources and saves energy and water and reduces greenhouse gas emissions. Considering all the intangible benefits recycling does pay for itself, however, it is a long-term investment in the future.

What Can Be Done to Reduce Recycling Costs?

It is the State Law to recycle and recyclable materials are banned from the Johnston County Landfill, therefore, we cannot stop recycling. Recycling is here to stay. Currently, 88% of recycling costs are collections costs and only 12% are processing costs at the MRF, therefore, reducing collection costs will get the biggest return. The following are ways to reduce recycling costs:

1. Technological advances in collection, processing and manufacturing of recyclables.
2. Recycle as much as possible with the goal to move towards Zero Waste.
3. The Town currently collects recycling weekly, however, collecting recycling bi-weekly would result in substantial savings estimated to be in the range of $200,000 per year.
4. If the recycling cart is not full, do not put it out and this will at least save the contractor the cost of picking up the recycling cart which is $1.03 per house per week and the goods being recycled on average generate revenue of $0.14 per house.
5. Be very diligent about focusing on recyclables that generate the most revenue per ton such as aluminum cans.
6. Fourteen percent of the recyclable materials are contaminated and therefore cannot be recycled. If the Town could reduce contamination to zero, the maximum that could be saved is about $22,000 per year. Education programs have been shown to be effective in reducing contamination. Common contamination is bagged recyclables, which results in the whole bag of recyclables being thrown away.
7. Reduce the consumption of goods that come with packaging that creates waste such as boxes and shipping containers.
8. Reuse goods by buying used item instead of new.
9. We could eliminate glass from the recycling program because it is a big money loser, however, eliminating glass to zero would only result in a maximum savings of about $17,000 per year which is immaterial on a $500,000 plus recycling program. Also, studies have shown that stopping glass recycling results in confusing customer, sends the wrong message and is usually not successful. Citizens love recycling glass and the early recycling programs all started with glass. The benefits to recycling glass far outweighs the costs.

Requested Action
Informational Only

Funding Source (If Applicable):
N/A

Cost: **N/A** **Yes** ☐ **No** ☒

Additional Documents to be Included in Agenda Packet
Power Point Presentation
Recycling Analysis Spreadsheet
Contamination - What is NOT Recyclable

Meeting Timeline
November 2, 2020 Town Council Meeting

KNOW YOUR NO'S

Don't tangle or contaminate. Recycle right for our state!

No bagged recyclables
(keep them loose and free)

No tanglers
(cords, hoses, wires, etc. tangle in the machinery)

No small/shredded paper and packaging
(small things are hard to sort)

No cups, no lids, no straws
(can't be sorted by the machines)

No Styrofoam
(crumbles in the machinery)

No paper towels or napkins
(often soiled and too thin to recycle)

No household or car batteries
(contain hazardous materials)

No scrap metal
(harms the machinery)

No pumps or tubes
(made of multiple materials that can't be separated for recycling)

No plastic wraps, pillows or bags
(tangles in the machinery)

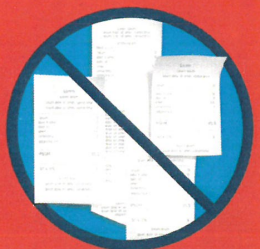
No textiles
(take to the thrift store)

No household glass, mirrors or ceramics
(can't be remanufactured)

No aerosol cans
(fire hazard)

No food waste
(contaminates the clean recyclables)

No hazardous or medical waste



No receipts
(can contain non-recyclable layers and chemicals)

The N.C. Division of Environmental Assistance and Customer Service (DEACS) is a non-regulatory division of N.C. DEQ offering technical and financial assistance to businesses, manufacturers, local governments, institutions, economic developers and citizens in environmental management. For questions, call 1-877-623-6748. www.recyclenc.org

Recycling Analysis

Recycling Profit/(Losses) for Month of September

Item	Weight Percentage Per Ton	Commodity Price/Ton	Contributing Revenue Per Ton	Yearly Amount	Weekly Amount Per House
UBC (used beverage can - Aluminum)	2%	$637.50	$12.75	$20,320	$0.04
Cardboard	27%	$72.99	$19.71	$31,408	$0.07
Mixed Paper	25%	$55.25	$13.81	$22,014	$0.05
Steel (drink cans, food containers)	3%	$45.53	$1.37	$2,177	$0.00
Mixed Plastic	10%	$37.03	$3.70	$5,902	$0.01
Glass	19%	($11.48)	($2.18)	($3,475)	($0.01)
Residue (Contamination)	14%	($55.25)	($7.74)	($12,328)	($0.03)
Total	100%		$41.42	$66,019	

Estimation of Recycling Profit/(Losses) for the Year)

			Contributing Revenue Per Ton	Yearly Amount	Weekly Amount Per House
Total Revenue			$41.42	$66,019	$0.14
Recycling Processing Costs			**$94.53**	$150,657	$0.33
Net Revenue			($53.11)	($84,638)	($0.18)
Portion of Loss Absorbed by All Star			$14.00	$22,312	$0.05
Portion of Loss Absorbed by Town			($39.11)	($62,325)	($0.14)

Town Cost of Recycling Program

	Unit Price	Weighted Average Customers	Total Costs	Tons	Cost Per Ton
Loss on Recycling Processing			$62,325	1,594	$39.11
Cost to Collect Curbside Recycling	$4.48	8,821	$474,138	1,594	$297.50
Total Town Recycling Costs			$536,463		$336.61
All Star Loss on Recycling Processing			$22,312	1,594	$14.00

Town Cost of Solid Waste Program

	Unit Price	Weighted Average Customers	Total Costs	Tons	Cost Per Ton
Cost to Collect Curbside Solid Waste	$6.65	8835	$705,272	6973	$101.14
Solid Waste Disposal Costs			$258,019	6973	$37.00
Total Cost of Solid Waste Collection & Disposal			$963,291		$138.14

Comparison of Solid Waste Costs Versus Recycling Costs

Recycling Cost Per Ton	$336.61
Solid Waste Costs per Ton	$138.14
Extra Costs to Recycle Per Ton	$198.47
Total Recycle Tons per Year	1,594
Short-term Extra Costs Per Year to Recycle	**$316,309**
Budget Impact Per Household per Month	$2.98

Check on Solid Waste Costs Versus Recycling Costs

Item	Tons	Current Program	If Recyclables Could be Disposed of at same cost per Ton as Solid Waste	Difference
Total Cost of Solid Waste Collection & Disposal	6973	$963,291	$1,183,444	($220,154)
Total Cost of Recycling	1,594	$536,463	$0	$536,463
Total	8567	$1,499,753	$1,183,444	**$316,309**
% of Recycling	18.60%			

Note: State Laws Require Recycling, therefore not recycling is not an option.