



TOWN OF MOUNT GILEAD BOARD OF COMMISSIONERS MEETING MINUTES

110 West Allenton Street, Mount Gilead, North Carolina, 27306
April 6, 2021

The Mount Gilead Board of Commissioners met Tuesday, April 6, 2021 at 7:00 p.m. at Mount Gilead Fire Department, 106 East Allenton Street, Mount Gilead, North Carolina for the regular monthly business meeting. Present for the meeting were Mayor Chip Miller, Mayor Pro Tem Tim McAuley, Commissioners Paula Covington, Mary Lucas and Vera Richardson, Public Works Director Daniel Medley, Police Lieutenant Austen Morton, Fire Chief Keith Byrd, and Town Clerk Amy Roberts. Absent: Police Chief Pat Preslar.

CALL TO ORDER – Mayor Miller called the meeting to order at 7:04 p.m.
MOMENT OF SILENCE
PLEDGE OF ALLEGIANCE

ITEM I. ADOPTION OF AGENDA

Mayor Pro Tem McAuley made a motion to adopt the agenda as is. Commissioner Richardson seconded the motion. Motion carried unanimously.

ITEM II. APPROVAL OF MINUTES

- A. March 2, 2021 Regular Meeting Minutes – Commissioner Covington made a motion to approve the March 2, 2021 meeting minutes as is. Commissioner Lucas seconded the motion. Motion carried unanimously.
- B. March 12 & 13 Budget Retreat Minutes – Commissioner Richardson made a motion to approve the March 12&13 Budget Retreat Minutes. Commissioner Covington seconded the motion. Motion carried unanimously.

ITEM III. PUBLIC COMMENT

Mr. Curtis Speakman, 200 East Allenton St. – Mr. Speakman stated that there is a pipe that runs through his property and runs from the Gilead Assisted Living and up under the Fire Department. It has had a drainage problem for years and he feels like it needs to be repaired. He has fixed the issue many times over the years, but he would like to see the Town's maintenance crew fix it for good. He said he was coming before the Board to let them know he was going to clean out the pipe one more time unless the Board had another option. He also wanted to remind the Town that he owns the Garage behind the old Vintage building that has recently been bought by a new owner. He works in his garage late at night from Spring to Fall. He has air compressors running, lots of loud tools and cars running. He also wanted to remind the Board of the ordinance that states there is no parking on Main Street after 11 p.m. and he needs to be sure no one blocks his garage doors with a vehicle.

Mr. Pete Herron – Montgomery County Sherriff's Office – Mr. Herron introduced himself to the Board and the citizens as an upcoming candidate for Sheriff of Montgomery County. He is currently the Sergeant Major of the Montgomery County

Sheriff's Office as well as the Basic Law Enforcement instructor at Montgomery Community College. He has served our country through military, law enforcement as well as a retired NC Wildlife officer. He thanked the Board for letting him introduce himself to everyone.

Mr. George Knight – Julius Chambers Ave., Mt. Gilead – Mr. Knight spoke to the Board concerning the upkeep of a road that has been neglected that in his opinion is almost impassable currently. The name of the private drive is Dockery Lane and it is just outside of the city limits. The area surrounding the drive is inside the city limits and he thinks at one time the Town kept up this road. He asked that the Town look into this situation if possible. He also addressed the need of repairs and upkeep within the Town. He said he sees lots of areas that need some attention within the Town. He thinks Mt. Gilead is a beautiful place and he wants us to keep it attractive.

ITEM IV. PROCLAMATIONS/PRESENTATIONS

A. LKC Engineering – Main Street Stormwater Project

Mr. Rob McIntyre of LKC Engineering presented the Board with an updated map and drawing of the Main Street/West Ingram Street Stormwater project. He showed the Board some new discoveries they have found while testing and inspecting this area. They plan to also fix an area a little further down West Ingram Street that is a meeting point of several pipes. When there is a lot of rain, these pipes are having a hard time handling the water flow and it is causing a backflow of water and flooding in that area. They plan to re-route the pipe to create a better flow and release of storm water into the runoff ditch. By doing this, it should also help with the overflow of water in the area of Church Alley and the Antique Mall. He also presented the Board with updated costs to complete the whole project with the new plans. The current projected estimate of the project is \$314,000 which is an increase from \$218,000 originally. He asked for the Board's approval to move forward with the project and start getting bids to complete the work. The consensus by the Board was to move forward. Mayor Pro Tem McAuley stated that the liability was too great not to continue with this project. Mr. McIntyre claimed they should be at the point to start receiving bids within the next two weeks.

ITEM V. OLD BUSINESS

A. Sewer Use Ordinance Proposed Amendments

Town Manager Hiram Marziano asked for an approval of the second reading of the amended Sewer Use Ordinance. First reading was at the March 2 regular meeting. Commissioner Covington made a motion to adopt the proposed Sewer Use Ordinance amendments as read. Commissioner Richardson seconded the motion. The proposed amendments were unanimously adopted.

B. Speakman Code Enforcement Abatement Decision

Town Manager Hiram Marziano asked for an official motion and vote to grant an extension to the code enforcement issue at the Speakman property until June 1. The Board had agreed to this extension at the March 2 meeting but Marziano stated that since the agenda item started with a vote, the extension needed an official vote as well. Commissioner Lucas made a motion to grant the extension. Commissioner Richardson seconded the motion. Extension was unanimously granted until June 1.

C. Stanback Park Sidewalk Extension Contract

Town Manager Hiram Marziano presented a design services contract from WithersRavenel for the sidewalk extension project for Stanback Park along E.

Allenton St. NCDOT has released the funds to move forward with this project. Mayor Pro Tem McAuley made a motion to approve the contract. Commissioner Covington seconded the motion. Contract was unanimously approved.

ITEM VI. NEW BUSINESS

A. Budget Amendment BA21-0406-01 Police Equipment Grant

The Police Department has received notification that an Equipment Grant originally budgeted for the upcoming budget year FYE22 has been approved and they have been given the approval to purchase equipment now. The Budget amendment would allocate these grant funds in this current year's budget FYE21. Commissioner Covington made a motion to approve BA21-0406-01. Commissioner Richardson seconded the motion. BA21-0406-01 was unanimously approved.

B. Summer Park Activities Decision

Town Manager Hiram Marziano asked for a consensus as to whether to offer the annual Park Program this year as well as open the pool. Town Clerk Amy Roberts stated that we are going to need to advertise quickly to hire a Park Program and Summer Recreation Director as well as get lifeguards hired and certified. She also stated that the pool needs to be opened up and inspected by Public Works for issues and any possible repairs since it takes a while to get the pool ready for inspection. Summer School will be held this year through the end of June so Marziano and Roberts both suggested opening the pool only for the month of July and the first two weeks of August. This will hopefully also give COVID case numbers a chance to decrease some and time for more people to get vaccinated. Public Works Director Daniel Medley spoke and said that they would have to start work in May in order to get the pool ready and inspected. Commissioner Richardson made a motion to begin work in May to get the pool ready, open the pool from July 1 through August 15 and hold Park Program from July 5 through August 13. Commissioner Covington seconded the motion. Motion carried unanimously.

C. Public Hearing Request-Zoning and Development Ordinance 160D Updates

Commissioner Richardson made a motion to set the public hearing for the proposed zoning and development text amendments for May 4th. Commissioner Covington seconded the motion. Motion carried unanimously.

D. Mt. Gilead 2021 Audit Contract

JB Watson and Co. presented the proposed 2021 Audit Contract for approval. Pricing per hour and the annual audit fixed fees will remain the same year for the upcoming FYE22 year. Mayor Pro Tem McAuley made a motion to approve the 2021 Audit contract as is. Commissioner Lucas seconded the motion. The 2021 Audit Contract from JB Watson and Co. was unanimously approved.

ITEM VII. STAFF REPORTS

Staff reports were given by Town Manager Hiram Marziano, Public Works Director Daniel Medley and Police Lieutenant Austen Morton and were attached to the Board packets.

ITEM VIII. COMMISSIONER REPORTS

Commissioner Covington wanted to let everyone know that Snow Hill Methodist and Snow Hill Baptist Churches will be hosting a Covid vaccine site on April 21 from 2-5 p.m. They will be offering the Johnson and Johnson vaccine, and everyone is eligible over the age of 18.

Mayor Pro Tem McAuley announced that Highland Community Center will also host a Covid vaccine site on Friday April 16 from 5-7 p.m.

ITEM IX. BUDGET WORKSHOP

A. FYE22 Budget Workshop

A budget workshop was held as a follow up to the Budget Retreat held on March 12 and 13. The Board had requested Public Works to search for better comparative pricing for some items originally requested for the upcoming budget.

Public Works Director, Daniel Medley presented the Board with a spreadsheet showing the items requested for revision.

Ford F250 Pick Up Heavy Duty Supercab – Originally priced at an estimated \$53,000. New pricing was \$41,397. The Board approved this new pricing.

Generator Maintenance Agreement – Original price was estimated around \$15,000 for this annual contract. Medley was able to find a different company offering the same service for \$7,175. The Board approved this new pricing.

Sharon Cemetery paving – Medley was able to find a different paving company to quote pricing on paving the entrances to Sharon Cemetery. The original pricing from CK Earnhardt was estimated at \$38,000. Joe McManus Asphalt Services quoted a price of \$25,100 to pave both entrances and the circle drive around the flagpole. The Board approved this new pricing.

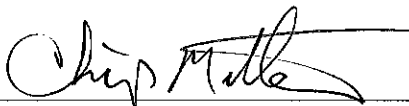
The Board also approved the project to repair the sidewalk on East Allenton Street. Pricing was between \$13,370 - \$16,000. The highest quote was a local company. The Board asked Medley to see if he could get the local company to come down on the pricing as the Board agreed they would rather keep the business local. The Board also agreed to allow Medley to move forward with getting a bid for re-sealing an area of Watkins Street that is in desperate need of repair. Medley agreed to get pricing for the resealing project. To completely pave this area of Watkins Street is an estimated \$19,950.

East Allenton Sewer Project – The Board had originally approved in the FYE21 budget a price of \$62,000 to repair the sewer main underneath East Allenton Street. NCDOT has updated this project to repair some items in a different way that will be a huge cost savings to this project. New pricing for this project is \$30,000.

The Board requested to hold another special Budget Workshop on April 21 at 6 p.m. to receive updates on the proposed projects and further discuss the budget.

ITEM X. ADJOURNMENT

With no more Board business, Mayor Pro Tem McAuley made a motion to adjourn the meeting. Commissioner Richardson seconded the motion. Motion carried. Meeting was adjourned at 9:44 p.m.



Joseph M. "Chip" Miller, Jr., Mayor



Amy C. Roberts, CMC, Town Clerk



TOWN OF MOUNT GILEAD BOARD OF COMMISSIONERS AGENDA

110 West Allenton Street, Mount Gilead, North Carolina, 27306

April 6, 2021

The Mount Gilead Board of Commissioners will meet Tuesday, April 6, 2021 at 7:00 p.m. at Mount Gilead Fire Department, 106 East Allenton Street, Mount Gilead, North Carolina for the regular monthly business meeting.

CALL TO ORDER

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

ITEM I. ADOPTION OF AGENDA

ITEM II. APPROVAL OF MINUTES

A. March 2, 2021 Regular Meeting Minutes

B. March 12 & 13 Budget Retreat Minutes

ITEM III. PUBLIC COMMENT

ITEM IV: PROCLAMATIONS/PRESENTATIONS

A. LKC Engineering – Main Street Stormwater Project (Presentation)

ITEM V. OLD BUSINESS

A. Sewer Use Ordinance Proposed Amendments (Action)

B. Speakman Code Enforcement Abatement Decision (Action)

C. Stanback Park Sidewalk Extension Contract (Action)

ITEM VI. NEW BUSINESS

A. Budget Amendment BA21-0406-01 Police Equipment Grant (Action)

B. Summer Park Activities Decision (Action)

C. Public Hearing Request-Zoning and
Development Ordinance 160D Updates (Action)

D. Mt. Gilead 2021 Audit Contract (Action)

ITEM VII. STAFF REPORTS

ITEM VIII. COMMISSIONER REPORTS

ITEM IX. BUDGET WORKSHOP

A. FYE22 Budget Workshop (Discussion)

ITEM X. ADJOURNMENT

Agenda Packet

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TOWN OF MOUNT GILEAD BOARD OF COMMISSIONERS MEETING MINUTES

110 West Allenton Street, Mount Gilead, North Carolina, 27306
March 2, 2021

The Mount Gilead Board of Commissioners met Tuesday, March 2, 2021 at 7:00 p.m. at Mount Gilead Fire Department, 106 East Allenton Street, Mount Gilead, North Carolina for the regular monthly business meeting. Present were Mayor Pro Tem Tim McAuley, Commissioners Paula Covington, Mary Lucas and Vera Richardson, Police Chief Pat Preslar, Fire Chief Keith Byrd, Public Works Director Daniel Medley and Town Clerk Amy Roberts.

Absent: Mayor Chip Miller

CALL TO ORDER

Mayor Pro Tem McAuley called the meeting to order at 7:01 pm with an introduction, a moment of silence and the Pledge of Allegiance.

ITEM I. ADOPTION OF AGENDA

Commissioner Richardson made a motion to adopt the agenda as read. Commissioner Lucas seconded the motion. Agenda was unanimously adopted.

ITEM II. APPROVAL OF MINUTES

A. February 2, 2021 Regular Meeting Minutes – Commissioner Lucas made a motion to adopt the February 2, 2021 regular meeting minutes as read. Commissioner Covington seconded the motion. Minutes were unanimously adopted.

ITEM III. PUBLIC COMMENT

None

ITEM IV. OLD BUSINESS

A. Ordinance to amend Chapter 91: Animals; for the purpose of establishing a Leash Law and updating Animal Cruelty Regulations

Town Manager Hiram Marziano presented a finalized and updated amendment to Chapter 91 of the Town Ordinances which establishes a leash law, updates animal cruelty regulations and gives Law enforcement and/or County Animal Control authority to restrain “at large” animals within the Town of Mount Gilead. Marziano stated that if the Board chooses to adopt the policy, he would still like to have time to educate the citizens and the public before this policy takes effect. He recommended approving this ordinance with an effective date of May 1, 2021. Commissioner Richardson made a motion to adopt this amendment to the Chapter 91 Town Ordinance- Animals with an effective date of May 1, 2021. Commissioner Covington seconded the motion. Motion carried unanimously.

B. Street Lighting Policy

Town Manager Hiram Marziano presented the final proposed Town of Mount Gilead Street Lighting Policy for the Board's review. The Board was presented with this policy during the prior month's meeting and requested to review it further before making a decision. With no questions or concerns about this policy, Mayor Pro Tem McAuley asked for a motion from the Board. Commissioner Covington made a motion to adopt the proposed Street Lighting Policy as written. Commissioner Richardson seconded the motion. The Town of Mount Gilead Street Light Policy was unanimously adopted.

ITEM VI. NEW BUSINESS

A. Resolution Opposing House Bill 35 Regarding Electronic Notice

Town Manager Hiram Marziano presented a Resolution to the Board asking that we as a Town oppose House Bill 35 which gives local governments authority to only advertise via electronically or through their website. Marziano stated that the elderly demographics in our area should obligate us to continue advertising in the local newspaper because of lack of access to internet and a large population of elderly residents in our community. Commissioner Lucas made a motion to adopt the resolution opposing House Bill 35. Commissioner Richardson seconded the motion. Motion carried unanimously and the resolution was adopted.

B. Budget Amendment BA21-0302-01

Town Manager Marziano presented budget amendment BA21-0302-01 for review. These budget items were erroneously not carried over from the Interim Budget that was passed in June 2020 to the full current budget that was passed in September 2020.

The first item on the Budget amendment was to add \$52,463.48 to the Parks and Recreation building and grounds budget to cover the paving of the park that was approved in the 19-20 budget. The work carried over and was paid for in the 20-21 budget but was not allocated in the 20-21 budget.

The second item was to add a budget line item of \$46,246.60 to show revenue allocated to the Town of Mount Gilead from Montgomery County which was part of the federal CARES act funding and the Federal COVID-19 relief care package to each state. This was an allocation that was received after the approval of the interim budget and therefore not set up.

C. Sewer Use Ordinance Proposed Amendments

Town Manager Marziano presented an updated Sewer Use Ordinance for the Board's review. He explained that because of the depth and amount of pages to this Ordinance amendment it would require two readings before final approval. Mayor Pro Tem McAuley suggested they take action at the April meeting which will give the Board time to thoroughly read through the proposed Ordinance. The Board unanimously agreed to take action at the April meeting.

D. COVID-19 Emergency Paid Sick Leave (EPSL) Policy -Extended

Town Clerk Amy Roberts presented the Board with an updated EPSL policy. The current policy that was approved in April of 2020 expired on December 31, 2020. Since December 31, 2020, employees that have had to miss work or quarantine due to the COVID-19 pandemic have had to use their own accrued sick or vacation leave. Extending the current EPSL would allow any employees going forward to utilize this leave rather than use their own personal leave. It would also be backdated to January 1, 2020 to help employees recoup lost time that should have been covered under the

EPSL policy. No other changes were made to the policy. Commissioner Richardson made a motion to approve the extended Emergency Paid Sick Leave Policy until December 31, 2021. Commissioner Covington seconded the motion. Motion carried unanimously.

- ITEM VII. STAFF REPORTS – Monthly staff reports were given by Public Works Director Daniel Medley, Police Chief Pat Preslar and a written report from Code Enforcement Officer Brandon Emory and were included in the Board packets.
- In addition to the monthly reports, Daniel Medley asked the Board for a recommendation on how to move forward with the personalized banner pole program. Currently, there is no set policy about these banners. Per the original verbal agreement in 2019 that the former Town Manager made with the Mt. Gilead Community Foundation, the Town of Mount Gilead would pay for hardware to place the banners on poles and the Foundation would pay for the banners. Citizens paid \$100 each for the banners to be placed on poles throughout town in honor of or in memory of someone of their choosing. Medley explained that this has become a very costly project because of having to constantly replace broken hardware for these banners. His question for the Board is - how long do we continue to do this? Do we replace the flags when they get torn or tethered at the Town's cost? There are many unanswered questions that need clarification for future reference.
- The Board asked the Town Manager and/or Daniel to further investigate and speak with the Mount Gilead Community Foundation about the past agreement and how to proceed moving forward. Marziano said he would contact the Foundation and report back at the April meeting.
- Town Manager Marziano updated the Board on the Speakman property behind the Fire Department on East Allenton Street that is currently non-compliant and under review with Code Enforcement. Marziano spoke with Speakman's lawyer and was avid that the Speakman's are eager to become compliant. The Speakmans had originally been given until March 1, 2021 to become compliant to avoid the next steps in code enforcement through the Town. Commissioner Lucas spoke to the Board and stated that she had been in touch with the Speakman family. She stated that every family member had recently been sick with the COVID virus and that Mr. Speakman had recently had knee replacement surgery and has not been able to do any of the required work that it would take to get the property in compliance. The family asked Commissioner Lucas to request that the Board consider granting them an extension until June 1 to become compliant. The Board was in agreement with this recommendation and granted the extension for the Speakman property until June 1, 2021.

- ITEM VIII. COMMISSIONER REPORTS
- Commissioner Covington asked about replacing or updating the slate at the Town of Mount Gilead entrance signs.
- Commissioner Covington asked the Public Works Director about the fence that separates the property between a private residence and the Stanback Pool parking lot on East Allenton Street. The fence has fallen over, and she asked if the Town is responsible for this or the property owner. Medley explained that it is private property and that it may be a code enforcement issue. Medley will follow up and investigate this further.

ITEM IX. ADJOURNMENT

With no more Board business Commissioner Covington made a motion to adjourn the meeting. Commissioner Richardson seconded the motion. Meeting was adjourned at 8:20 p.m.



TOWN OF MOUNT GILEAD BOARD OF COMMISSIONERS BUDGET RETREAT MINUTES

110 West Allenton Street, Mount Gilead, North Carolina, 27306
March 12 -13, 2021

The Mount Gilead Board of Commissioners held their annual budget retreat workshop on Friday and Saturday, March 12 and 13 at the Mount Gilead Fire Station, 106 East Allenton St., Mt. Gilead, NC. Present for the meeting on Friday were: Mayor Pro Tem Tim McAuley, Commissioners Paula Covington, Mary Lucas and Vera Richardson, Town Manager Hiram Marziano, Town Clerk Amy Roberts, Police Lieutenant Austen Morton, Fire Chief Keith Byrd, WWTP Manager Donna Mills and Public Works Director Daniel Medley.

Present for the meeting on Saturday were: Mayor Pro Tem Tim McAuley, Commissioners Paula Covington, Mary Lucas and Vera Richardson, Town Manager Hiram Marziano and Town Clerk Amy Roberts.

Absent Friday and Saturday were Mayor Chip Miller and Police Chief Pat Preslar.

ITEM I. INTRODUCTION & BLESSING OF THE MEAL – 5:30 P.M.
CALL TO ORDER FRIDAY, MARCH 12 – 6:00 P.M.
MOMENT OF SILENCE
PLEDGE OF ALLEGIANCE

ITEM II. ADOPTION OF THE AGENDA
Commissioner Richardson made a motion to adopt the agenda. Commissioner Lucas seconded the motion. Agenda was unanimously adopted.

ITEM III. OVERVIEW OF BUDGET PROCESS
Town Manager Hiram Marziano presented his first draft of the FYE 21-22 annual budget and explained staff expectations, Board expectations and Goal settings for the upcoming year.

ITEM IV. DEPARTMENT PRESENTATIONS
Department heads were given the task of going through their current department budgets and researching costs and savings for the upcoming year. They were also asked to present all department wants and needs in the upcoming year along with the benefits and estimated costs of the items requested. Presentations were given by Police Lieutenant Austen Morton (presenting for the police chief in his absence), Fire Chief Keith Byrd, Public Works Director Daniel Medley and WWTP Manager Donna Mills.

ITEM V. BOARD Q&A AND DISCUSSION

Board Members discussed and asked questions about each department presentation.

ITEM VI. ADJOURNMENT

With all department budgets presented, Commissioner Richardson made a motion to adjourn with a second from Commissioner Covington. Meeting was unanimously adjourned at 9:45 p.m.

ITEM VII. CALL TO ORDER AND BREAKFAST DISCUSSION
SATURDAY, MARCH 13 – 9 a.m. - Breakfast

The Board enjoyed breakfast before calling the meeting to order at 9:35 a.m. The Board had detailed discussions about department requests and asked for more research and cost estimates before approving some of these requests.

Discussions that were agreed upon were a minimum of a 2% Merit with a maximum of 3% for all departments except the Police Department. No COLA increase in FYE 21-22. No new police cars, no side by side for Public Works, no lawn mower or truck for WWTP. The Board agreed to increase Reserve Officer pay to \$14 per hour, paint the outside of the Fire Department, Pay per call of \$10 for in-town fire calls, trainings and meetings and an increase in the Fire Escrow Fund to \$35,000 annually.

Town Manager Hiram Marziano agreed to make any changes and requests from the Board and have an updated budget to review and discuss at the April 6 Board meeting.

ITEM VIII. ADJOURNMENT

With no more Board business, Commissioner Lucas made a motion to adjourn the meeting with a second from Commissioner Covington. Meeting was adjourned at 2:15 p.m.

Joseph M. “Chip” Miller, Jr., Mayor

Amy C. Roberts, NCCMC, Town Clerk



TOWN OF MOUNT GILEAD

110 West Allenton Street, Mount Gilead, North Carolina, 27306

AGENDA ITEM

To: Mayor and Commissioners
From: Hiram J. Marziano, II, Town Manager
Re: LKC Engineering – Main Street Stormwater Project

Summary

Mr. Rob McIntyre, PE, with LKC Engineering, PLLC will be present to give a brief presentation and overview of the proposed Main Street Stormwater Improvement Project. He will cover project elements, design and answer Board questions.



TOWN OF MOUNT GILEAD

110 West Allenton Street, Mount Gilead, North Carolina, 27306

AGENDA ITEM

To: Mayor and Commissioners
From: Hiram J. Marziano, II, Town Manager
Re: Amendments to the Town of Mount Gilead Sewer Use Ordinance (SUO)

Summary

Last year, the Town began looking at updates to the Town of Mount Gilead Sewer Use Ordinance (SUO). To that end, Colin McGrath with Poyner Spruill, LLP has been working on the needed revisions to ensure the SUO is compliant with the latest legislations and judicial reviews. Included is the revised version of the SUO.

The Board received this for their March meeting where the first reading occurred. We discussed an overview of the changes and how this is a much needed update to the SUO to, for lack of a better term, modernize the regulations and actions contained in the ordinance.

Recommendation

Staff recommends a motion to approve the Town of Mount Gilead Sewer Use Ordinance as amended.



TOWN OF MOUNT GILEAD

110 West Allenton Street, Mount Gilead, North Carolina, 27306

AGENDA ITEM

To: Mayor and Commissioners
From: Hiram J. Marziano, II, Town Manager
Re: Speakman Property Code Enforcement Action/Abatement Decision

Summary

Information is from Alliance Code Enforcement Report for our previous regular meeting:

On February 22, 2021, I conducted a thorough re-inspection of the property. I documented my findings photographically and relayed them to Town Staff and also directly to Adam Campbell, Attorney for the Speakman family.

My findings are as follows: I found numerous violations still present. There is still open storage of numerous automotive parts and I identified 9 vehicles that fit the criteria of junk vehicle. Several of those cars are classic autos and it was discussed that those could remain assuming a fitted car cover was placed on them. Additionally, the tires need to keep air in them, so the vehicle does not fall into the Nuisance category. At this point, numerous tires are completely flat, and no fitted covers have been placed, only tarpaulins.

Upon relaying this information, the Attorney advised he would immediately contact his client and ensured me that they have every intent to bring the property into compliance. He also advised they plan to erect a permitted privacy fence as soon as possible, but are restricted in doing so presently due to a lack of funds. I reminded the Attorney of the March 1, 2021, deadline. He advised his clients have faced unprecedented medical and financial burden during the past year. I relayed to him that while I understand and am empathetic toward their situation, it does not alter the previously allotted timeframe for abatement.

The property has made significant progress, but does remain in violation. Assuming the property will remain in violation post March 1, 2021, the following options can determine the next step:

- 1) Immediately make the determination to move forward with abatement actions, bill the property owner and if unpaid, place a lien against the property for the cost.
- 2) Give an extension to the property owner and allow them additional time to comply.
- 3) Provide no extension, rather decide to vote on abatement action at the April meeting and immediately move forward up an approved vote. This will provide additional time for compliance, but also show the property owner that there is no more time, and that the Town will immediately abate in April. (Recommended)

Discussion

Staff agreed with the recommended action above and the Board did as well. There was also some discussion from Commissioner Lucas about her visit to the property owners regarding the case and she relayed that the property owner requested an extension until June 1st. I had a conversation with the

property owner's attorney who verbally indicated that the property could come into compliance by our April meeting.

We have some options to consider towards the abatement of the property violations, including the extension presented by Commissioner Lucas.

Recommendations

Staff recommends the Board decide on an abatement procedure for the remaining violations.



TOWN OF MOUNT GILEAD

110 West Allenton Street, Mount Gilead, North Carolina, 27306

AGENDA ITEM

To: Mayor and Commissioners
 From: Hiram J. Marziano, II, Town Manager
 Re: Stanback Park Sidewalk Extension (EB-5899) Professional Services Contract

Summary

In December 2018, the Town entered into an agreement with NCDOT to use their Locally Administered Project (LAP) federal monies (80/20 match) to develop a sidewalk extension project along Highway 731 (East Allenton Street) abutting Stanback Park. The scope of the project would extend the existing sidewalk down along the park to Park Avenue. The funding table below is taken from the agreement with NCDOT:

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match \$	Non-Federal Match Rate
Transportation Alternatives Program	\$108,000	80 %	\$27,000	20 %
Total Estimated Cost			\$135,000	

Mr. Zell presented the draft agreement for WithersRavenel to the Board in November 2020 for engineering and design services for the project. That draft was approved and deemed reasonable by NCDOT and the Town has been given the greenlight to move forward.

Presented here is the agreement with WithersRavenel for professional services which needs the Board to approve so that we may execute this and begin the project.

Recommendations

Staff recommends the Board approve the Stanback Park Sidewalk Extension (EB-5899) Professional Services Contract with WithersRavenel and instruct staff to execute said contract.

STANBACK PARK SIDEWALK EXTENSION (EB-5899)
Town of Mount Gilead, NC
Proposal for Professional Services

A. PROJECT DESCRIPTION

The project (PROJECT) will consist of the design to provide construction plans for approximately 680 feet of concrete sidewalk along the north side of NC 731 in the Town of Mount Gilead in Montgomery County. The proposed sidewalk will begin at the park entrance adjacent to the pool building and continue east approximate 680 feet to the west side of Park Avenue. The construction plans will be provided to the Town for submittal through the NCDOT EBS portal for review and approval. The project will include grading, sidewalk, erosion control and environmental documentation, and may include one retaining wall. It appears that the project is contained within the limits of Stanback Park, so no impacts are anticipated to adjacent private property. Environmental impacts are anticipated to be minimal; therefore, permits should not be required.

WithersRavenel (ENGINEER) will provide consulting services for the Town of Mount Gilead (TOWN) for the design of the PROJECT in accordance with federal funding requirements. Our subconsultant (Geotechnologies, Inc.) will provide geotechnical services.

B. SCOPE OF SERVICES

Task 1- *Project Management*

WithersRavenel will provide the following as part of this task:

- ▶ Coordinate and attend Kick-off Meeting in Mount Gilead for the PROJECT (assumed 1 ENGINEER representative will attend). All project team roles will be explained; lines of communication will be established; the scope of services will be reviewed and refined if necessary; and the project schedule will be updated in accordance with the completion dates established in the funding agreement. An assurance will be obtained that everyone involved in the project has a clear understanding of the desired outcomes, necessary deliverables, and the milestone dates. NCDOT will be invited to participate in this meeting. In addition, a process will be established for coordination with all stakeholders impacted by the design of the project.
- ▶ Coordinate and communicate with TOWN's project team and regulatory agencies throughout the course of the project (assumed 1 hour per month on average);
- ▶ Coordinate submittals to the TOWN and NCDOT;
- ▶ During design, participate in coordination meetings and review meetings in Mount Gilead (up to 2 meetings) with the TOWN (assumed 1 ENGINEER representative will attend);
- ▶ Monthly Coordination Calls throughout the project duration (estimated at 0.5 hour each);
- ▶ Manage internal project processes, communication and resources.

One ENGINEER representative will attend any meetings unless noted otherwise.

Task 2- *Survey Services - Topographic Survey and Base Mapping*

WithersRavenel will provide the following as part of this task:

- ▶ Perform detailed topographic survey and prepare base mapping with verification of existing rights of way in accordance with NCDOT standards. The survey corridor along NC 731 is 5-ft outside of the southern curb line and generally 15-ft outside of the northern curb line. The survey will begin 100' west of the park entrance at the pool clubhouse and continues east along NC 731 to 100' east of Park Ave. All features within this corridor will be located including all above ground utilities, structures, curb and gutter, edge of pavement, driveways, storm drainage pipes & inverts, signs, mail

boxes, etc. The topographic survey will include trees 8" or more in diameter, property corners and wetland flags. Base mapping will include all data from field surveys.

- ▶ All available right of way monumentation within the project limits will be field-located. Properties will be referenced using GIS information, along with any monumentation located in the field. Existing right-of-way will be established using the combination of monumentation and GIS information.
- ▶ Locate sub-surface utilities in accordance with Level B SUE designations along the project corridor based on observation of visible and obvious surface features and information received from utility owners.

Task 3- *Preliminary Engineering*

WithersRavenel will provide the following as part of this task:

Task 3A – *Preliminary Design*

Based on the information obtained from the survey, the preliminary sidewalk alignment will be determined. Information supporting the recommended location will be presented to TOWN staff and NCDOT for review and comment. A preliminary opinion of probable cost will be developed, and historic and natural resource data will be quantified for environmental analysis of the project corridor (including wetland and stream delineations and threatened and endangered species assessment), all of which will factor into the selection of the preferred alignment. The preferred alignment will be one that minimizes impacts to sensitive areas; minimizes grading and utility adjustments; provides remedial measures for undesirable soils; and provides a reasonable total project cost.

- ▶ **Geotechnical Services:**
 - ▶ Perform three soil borings along the sidewalk alignment and one at the location of the proposed retaining wall. The borings will be completed with hand tools (a hand auger and DCP) and will be relatively shallow to evaluate the near-surface soils for sidewalk support and retaining wall design.
 - ▶ A report will be prepared that presents the results of the field investigation as well as recommendations for construction of the sidewalk and retaining wall.
- ▶ **Preliminary Plans:** Preliminary Plans will be prepared in accordance with NCDOT standards. This includes one (1) revision to the plans based on comments received from review and regulatory agencies. Plans will be 22" x 34", provided in MicroStation format with electronic signatures and will include the following:
 - ▶ Cover sheet;
 - ▶ Typical sections;
 - ▶ Plan View including preliminary horizontal alignment; and
 - ▶ Cross sections at 50' interval.
- ▶ **Utility Coordination:**
 - ▶ Identify utilities located within the project area.
 - ▶ Coordinate with utility owners to advise them of the project.
 - ▶ Coordinate with the design team to ensure that the utility issues are addressed during design.
 - ▶ Distribute Preliminary Plans to utility owners for review and comment.
- ▶ **Deliverables/Submittals:**

- ▶ TOWN:
 - 1 electronic copy (pdf format) for initial and 1 revised submittal
 - 1 electronic copy (pdf format) of opinion of probable cost
 - 1 electronic copy (pdf format) of the geotechnical report
- ▶ NCDOT:
 - 1 electronic copy (pdf format) of plans (to be submitted by TOWN)
- ▶ Utility Owners:
 - 1 electronic copy (pdf format) to each utility owner

Task 3B – Environmental Document and Services

- ▶ Wetland Services:
 - ▶ Wetland and Stream Delineation: Perform wetland and stream delineation within the project area. Wetlands will be delineated using criteria set forth in the 1987 US Army Corps of Engineers (USACE) Wetlands Delineation Manual and 2012 Eastern Mountains and Piedmont Regional Supplement (Version 2.0). Streams will be assessed using criteria set forth in the NC Division of Water Quality Identification Methods for the Origins of Intermittent and Perennial Streams (2005). All jurisdictional wetlands and stream origins in the field will be delineated using sequentially numbered Wetland Delineation flagging. Wetland flags and stream start point flags will be located using a Trimble GeoXH mapping grade GPS unit. The GPS data will be used to prepare a Preliminary Wetland Exhibit, which will be used for preliminary planning purposes. A copy of the Preliminary Wetland Location Exhibit will also be provided to the surveyor to facilitate location of the wetland flags in the field.
 - ▶ A letter report will be prepared documenting the results of the investigation. The results of the investigation will be summarized in the environmental document.
- ▶ Threatened and Endangered Species:
 - ▶ A Threatened and Endangered Species survey will be completed for the proposed improvements site and immediately adjacent areas consisting of a literature search and on-site habitat assessment to determine the likelihood of the presence or absence of protected species within the subject parcels. The results of the survey will be summarized in the environmental document. The survey will be conducted as follows:
 - ▶ Protected species data from the NC Department of Environmental Quality and US Fish and Wildlife Service will be reviewed to determine if any federally listed species are known to occur within the project vicinity.
 - ▶ Habitat data (vegetation and soils description) will be gathered for the subject property. Within habitats considered suitable for the occurrence of a particular federally threatened or endangered species, a cursory pedestrian survey will be performed to determine the likelihood of occurrence of the protected plant or animal.
 - ▶ For those federally protected species that potentially occur in the area (i.e. suitable habitat is present on site) and may not be readily detectable during the time of the survey (i.e. flowering plants), a statement will be provided concerning the likelihood of the species occurrence based on available data and habitat observations.
 - ▶ A report of findings will be prepared and will include recommendations of further surveys for identified habitat, if necessary.
- ▶ Environmental Screening: A Transaction Screen Assessment will be performed to identify evidence of any past or present hazardous material sites that may impact the project. The screening includes site reconnaissance, regulatory records review, historic review, findings and recommendations. The results of the screening will be summarized in the environmental document.

- ▶ NEPA Environmental Document: Compliance with NEPA will be required for the project due to the federal funding. This project will require a Type I and II Ground Disturbing Categorical Exclusion Action Classification Form. Preparation of the document will include the following:
 - ▶ Cultural Resources Review: Submit the appropriate project information to the State Historic Preservation Office (SHPO) for review and comment.
 - ▶ Incorporate the findings from the natural resources report, the response from SHPO, and the hazardous material screening into the document.
 - ▶ Complete the CE document and submit to the TOWN and NCDOT.
 - ▶ Revise the CE document as necessary based on TOWN and NCDOT comments and submit the final CE to the TOWN and NCDOT for approval.

Task 4- *Right-Of-Way Plans*

Upon approval of the Preliminary Plans by the TOWN and NCDOT, WithersRavenel will prepare Right-of-Way Plans for review and comment. This includes one (1) revision to the plans based on comments received from review and regulatory agencies. The following are part of this task:

- ▶ The design will be advanced in accordance with TOWN, NCDOT and NCDEQ standards and requirements to produce Right of Way Plans that will include the following:
 - ▶ Cover sheet;
 - ▶ Typical sections;
 - ▶ Construction details;
 - ▶ Plan Views including final horizontal alignment with retaining wall envelopes;
 - ▶ Cross sections at 50' interval.
- ▶ Retaining Wall Envelopes: Proposed location for up to one hundred (100) linear feet of retaining wall at a maximum height of 4' as required to minimize impacts to the adjacent properties.
- ▶ Utility Coordination and Location:
 - ▶ Review design based on existing and proposed utility locations provided by utility owners, and determine where subsurface utility locates are needed to avoid conflicts. This task does not include utility design or relocation plans.
 - ▶ Perform Level A SUE - Test Holes (up to 2) as needed to determine information such as size, depth, and material on critical utilities. In addition, all test hole locations will be conventionally surveyed to obtain accurate Northing, Easting, and Pipe Elevation.
 - ▶ Distribute Right of Way Plans to utility owners for review and comment.
- ▶ Update opinion of probable cost.
- ▶ Update project schedule.
- ▶ Deliverables/Submittals:
 - ▶ TOWN :
 - 1 electronic copy (pdf format) for initial and 1 revised submittal
 - 1 electronic copy (pdf format) of opinion of probable cost
 - 1 electronic copy (pdf format) of Draft and Final CE document
 - ▶ NCDOT:
 - 1 electronic copy (pdf format) of plans for initial and 1 revised submittal (to be submitted by TOWN)
 - 1 electronic copy of Draft and Final CE document (to be submitted by TOWN)
 - ▶ Utility Owners:
 - 1 electronic copy (pdf format) to each utility owner

Task 5- *Final Construction Documents*

Once TOWN staff and NCDOT have approved the Right-of-Way Plans, ENGINEER will prepare the Final Construction Plans based on the work completed in Task 4. This includes two (2) revisions to the plans based on comments received from review and regulatory agencies. The following are part of this task:

- ▶ Final Construction Plans: The design will be advanced and finalized in accordance with NCDOT standards to produce Final Construction Plans that will include the following:
 - ▶ Cover sheet;
 - ▶ General notes and standard drawings;
 - ▶ Typical sections;
 - ▶ Construction details;
 - ▶ Plan Views (grading and drainage);
 - ▶ Retaining wall envelopes;
 - ▶ Erosion control plans;
 - ▶ Cross sections at 50' interval.

- ▶ Construction Specifications and Documents: Special provisions will be provided for any items not on the NCDOT Special provisions list.

- ▶ Utility Coordination: Based upon updated information provided by utility owners, identify and coordinate any remaining utility issues with the design team, the TOWN and the utility owners. Prioritize based on impact on the construction schedule, and coordinate with utility owners accordingly to eliminate potential delays during construction. This task does not include utility design or relocation plans.

- ▶ Final opinion of probable cost.

- ▶ Final update to project schedule.

- ▶ Deliverables/Submittals:
 - ▶ TOWN :
 - 1 electronic copy (pdf format) of plans and project manual for initial and 2 revised submittals
 - 1 electronic copy of final opinion of probable cost
 - ▶ NCDOT:
 - 1 electronic copy of plans (pdf and dgn format), and special provisions (to be submitted by TOWN)
 - 1 electronic copy (pdf and csv format) of final opinion of probable cost (to be submitted by TOWN)

Task 6- *Bidding Services*

ENGINEER will perform public bid phase activities including the following:

- ▶ Prepare bid advertisement (to be posted by Town of Mount Gilead and NCDOT);
- ▶ Furnish construction documents to bidders via an electronic bidding service;
- ▶ Answer contractor questions during bidding (assumed 2 hours);
- ▶ Prepare and issue addendum (assumed 1);
- ▶ Evaluate bids and prepare bid tabulation;
- ▶ Prepare award recommendation to Town of Mount Gilead;
- ▶ Participate in pre-construction conference.

The above services apply to only one (1) bidding cycle. These services do not include additional bid cycles due to insufficient, incomplete, and non-compliant bids or due to rejection of bids by the TOWN.

C. EXCLUSIONS

The proposal does not include the following:

- ▶ Town directed revisions to design beyond what is noted above and after approvals;
- ▶ Stormwater services other than listed above;
- ▶ Property or Deed research;
- ▶ Boundary survey or certification;
- ▶ Drainage Studies;
- ▶ Entitlement services;
- ▶ Easement or right-of-way acquisition services;
- ▶ Platting;
- ▶ Adjacent property owner discussions/negotiations;
- ▶ Permitting;
- ▶ Specialty or detailed hardscape design;
- ▶ Floodplain Development Permit;
- ▶ Irrigation plan;
- ▶ Lighting plan;
- ▶ Earthwork site balance;
- ▶ Traffic impact studies;
- ▶ Utility design or relocation plans;
- ▶ Assistance or attendance at pre-bid meeting;
- ▶ Assistance with bid opening;
- ▶ Construction administration services;
- ▶ Construction management services;
- ▶ Shop drawing reviews;
- ▶ Construction staking and record drawing surveys;
- ▶ Legal Descriptions
- ▶ Erosion control/SCM monitoring/inspections;
- ▶ Erosion control/SCM reporting during infrastructure construction.

Note that this list is not all inclusive and the Scope of Services defines the services provided by WithersRavenel for this proposal.

D. ADDITIONAL SERVICES

Additional requested progress meetings or excluded tasks that are not included in the above listed Scope of Services are considered Additional Services. Should WithersRavenel be requested to assist with the other services, the services will be billed as Additional Services at the hourly rates in effect at the time of service.

E. TOWN'S RESPONSIBILITIES

The following items will be provided by the TOWN, and WithersRavenel will rely upon the accuracy and completeness of this information:

- ▶ Preferred communications for TOWN;
- ▶ Provide representative for communications and decisions;
- ▶ Approval of the preferred alignment before construction drawings are commenced;
- ▶ Assist the ENGINEER by placing at his disposal all available information pertinent to the PROJECT, including previous inspection data and reports, maps, old drawings, maintenance records and any other data relative to design and construction of the PROJECT;
- ▶ Examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by the ENGINEER and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER;
- ▶ Give prompt written notice to the ENGINEER whenever the TOWN observes or otherwise becomes aware of any defect in the PROJECT;
- ▶ Acquisition of R/W or easements;
- ▶ All permit fees;
- ▶ Any legal representation requiring an attorney at law.

F. EXPENSES

Expenses for items such as prints, copies, mileage and any fees paid shall be reimbursable as provided for in this agreement.

G. COMPENSATION FOR SERVICES

WithersRavenel, Inc. proposes to provide the services outlined in Section B on a lump sum basis plus reimbursable expenses as shown below.

Task Number	Task(s)	Fee
Task 1	Project Management & Administration	\$5,703.27
Task 2	Survey Services	\$7,007.48
Task 3A	Preliminary Design	\$4,329.74
Task 3B	Environmental Document & Services	\$4,041.38
Task 4	Right of Way Plans	\$6,821.27
Task 5	Final Construction Documents	\$9,421.41
Task 6	Bid Phase Services	\$1,749.47
	Lump Sum Total	\$39,074.02
EXPEN	Estimated Expenses	\$1,762.92
	OVERALL TOTAL	\$40,836.94

The Client agrees to make prompt monthly payments in response to the monthly statements. Interest shall be charged at the rate of 1.5 percent per month on all balances due over 90 days from date of invoice.

H. TIMELINE FOR SERVICES

WR will begin work as expeditiously as possible upon receipt of executed contract. The services outlined in Section B are estimated to be completed in 12 months including NCDOT reviews and approvals.

I. ACCEPTANCE

Receipt of an executed copy of this agreement will serve as the written agreement between WithersRavenel and the Town of Mount Gilead for the basic services outlined in Section B of this document. The terms outlined in the attached Exhibit I - Standard Terms and Conditions shall be considered a part of this agreement.

Thank you for considering WithersRavenel for these services.

WithersRavenel



Frances S. Gallagher, PE
Project Manager



Brock M. Storrusten, PE
Director, Land Development

Attachment: Exhibit I - Standard Terms and
Conditions

Town of Mount Gilead

By: _____

Title: _____

Date: _____

EXHIBIT I

Standard Terms and Conditions

WithersRavenel, Inc.

The proposal submitted by WithersRavenel, INC. ("CONSULTANT") is subject to the following terms and conditions, which form an integral part of the Agreement. By accepting the proposal, the services, or any part thereof, the CLIENT agrees and accepts the terms and conditions outlined below:

1. Payment:

- a) The CLIENT will pay CONSULTANT for services and expenses in accordance with periodic invoices to CLIENT and a final invoice upon completion of the services. Each invoice is due and payable in full upon presentation to CLIENT. Invoices are past due after 30 days. Past due amounts are subject to interest at a rate of one and one-half percent per month (18% per annum) on the outstanding balance from the date of the invoice.
- b) If the CLIENT fails to make payment to the CONSULTANT within 45 days after the transmittal of an invoice, the CONSULTANT may, after giving 7 days written notice to the CLIENT, suspend services under this Agreement until all amounts due hereunder are paid in full. If an invoice remains unpaid after 90 days from invoice date, the CONSULTANT may terminate the Agreement. If Consultant initiates legal proceedings to collect the fees owed, Consultant shall also be entitled to recover the reasonable expenses of collection including attorney's fees.

2. Notification of Breach or Default: The CLIENT shall provide prompt written notice to the CONSULTANT if CLIENT becomes aware of any breach, error, omission, or inconsistency arising out of CONSULTANT's services or any other alleged breach of contract or negligence by the CONSULTANT. The failure of CLIENT to provide such written notice within ten (10) days from the time CLIENT became aware of the fault, defect, error, omission, inconsistency or breach, shall constitute a waiver by CLIENT of any and all claims against the CONSULTANT arising out of such fault, defect, error, omission, inconsistency or breach. Emails shall be considered adequate written notice for purposes of this Agreement.

3. Standard of Care: CONSULTANT shall perform its services in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with the standards of professionals providing the same services in the same or a similar locality as the Project. THERE ARE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE THAT WILL OR CAN ARISE OUT OF THE SERVICES PROVIDED BY CONSULTANT OR THIS AGREEMENT.

4. Waiver of Consequential Damages/Limitation of Liability: CLIENT agrees that CONSULTANT's aggregate liability for any and all claims that may be asserted by CLIENT is limited to \$50,000 or to the fee paid to CONSULTANT under this Agreement, whichever is greater. Both CLIENT and CONSULTANT hereby waive any right to pursue claims for consequential damages against one another, including any claims for lost profits.

5. Representations of CLIENT: CLIENT warrants and covenants that sufficient funds are available or will be available upon receipt of CONSULTANT's invoice to make payment in full for the services rendered by CONSULTANT.

6. Ownership of Instruments of Service: All reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by the CONSULTANT as instrument of service, shall remain the property of the CONSULTANT. The CONSULTANT shall retain all common law, statutory and other rights, including the copyright thereto. In the event of termination of this Agreement and upon full payment of fees owed to CONSULTANT,

CONSULTANT shall make available to CLIENT copies of all plans and specifications.

7. Change Orders: CONSULTANT will treat as a proposed change order any written or oral order (including directions, instructions, interpretations, or determinations) from CLIENT which requests changes in the Agreement or CONSULTANT's Scope of Services. If CONSULTANT accepts the proposed change order, CONSULTANT will give CLIENT written notice within ten (10) days of acceptance of any resulting increase in CONSULTANT's fees.

8. Opinion of Cost/Cost Estimates: Since the CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, or over methods of determining prices, or over competitive bidding or market conditions, any and all opinions as to costs rendered hereunder, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of CONSULTANT'S experience and qualifications and represent its reasonable judgment as an experienced and qualified professional familiar with the construction industry; but the CONSULTANT cannot and does not guarantee the proposals, bids or actual costs will not vary significantly from opinions of probable costs prepared by it. If at any time the CLIENT wishes assurances as to the amount of any costs, CLIENT shall employ an independent cost estimator to make such determination.

9. Assignment and Third Parties: Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the CLIENT and CONSULTANT, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the CLIENT and the CONSULTANT and not for the benefit of any other party. Neither the CLIENT nor the CONSULTANT shall assign, sublet, or transfer any rights under or interests in this Agreement without the written consent of the other, which shall not be unreasonably withheld. However, nothing contained herein shall prevent or restrict the CONSULTANT from employing independent subconsultants as the CONSULTANT may deem appropriate to assist in the performance of services hereunder.

10. Project Site: Should CLIENT not be owner of the Project site, then CLIENT agrees to notify the site owner of the possibility of unavoidable alteration and damage to the site. CLIENT further agrees to indemnify, defend, and hold harmless CONSULTANT against any claims by the CLIENT, the owner of the site, or persons having possession of the site which are related to such alteration or damage.

11. Access to Site: CLIENT is responsible for providing legal and unencumbered access to site, including securing all necessary site access agreements or easements, to the extent necessary for the CONSULTANT to carry out its services.

12. Survival: All of CLIENT's obligations and liabilities, including but not limited to, its indemnification obligations and limitations of liability, and CONSULTANT's rights and remedies with respect thereto, shall survive completion, expiration or termination of this Agreement.

13. Termination: Either party may terminate the Agreement with or without cause upon ten (10) days advance written notice, if the other party has not cured or taken reasonable steps to cure the breach giving rise to termination within the ten (10) day notice period. If CLIENT terminates without cause or if CONSULTANT terminates for cause, CLIENT will pay CONSULTANT for all costs incurred, non-cancelable commitments, and fees earned to the date of termination and through demobilization, including any cancellation charges of vendors and subcontractors, as well as demobilization costs.

14. **Severability:** If any provision of this Agreement, or application thereof to any person or circumstance, is found to be invalid then such provision shall be modified if possible, to fulfill the intent of the parties as reflected in the original provision. The remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by applicable law.

15. **No Waiver:** No waiver by either party of any default by the other party in the performance of any provision of this Agreement shall operate as or be construed as a waiver of any future default, whether like or different in character.

16. **Merger, Amendment:** This Agreement constitutes the entire Agreement between the CONSULTANT and the CLIENT and all negotiations, written and oral understandings between the parties are integrated and merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both the CONSULTANT and the CLIENT.

17. **Unforeseen Occurrences:** If, during the performance of services hereunder, any unforeseen hazardous substance, material, element of constituent or other unforeseen conditions or occurrences are encountered which affects or may affect the services, the risk involved in providing the service, or the recommended scope of services, CONSULTANT will promptly notify CLIENT thereof. Subsequent to that notification, CONSULTANT may: (a) if practicable, in CONSULTANT's sole judgment and with approval of CLIENT, complete the original Scope of Services in accordance with the procedures originally intended in the Proposal; (b) Agree with CLIENT to modify the Scope of Services and the estimate of charges to include study of the previously unforeseen conditions or occurrences, such revision to be in writing and signed by the parties and incorporated herein; or (c) Terminate the services effective on the date of notification pursuant to the terms of the Agreement.

18. **Force Majeure:** Should completion of any portion of the Agreement be delayed for causes beyond the control of or without the fault or negligence of CONSULTANT, including force majeure, the reasonable time for performance shall be extended for a period at least equal to the delay and the parties shall mutually agree on the terms and conditions upon which Agreement may be continued. Force majeure includes but is not restricted to acts of God, acts or failures of governmental authorities, acts of CLIENT's contractors or agents, fire, floods, epidemics, pandemics, riots, quarantine restrictions, strikes, civil insurrections, freight embargoes, and unusually severe weather.

19. **Safety:** CONSULTANT is not responsible for site safety or compliance with the Occupational Safety and Health Act of 1970 ("OSHA"). Job site safety remains the sole exclusive responsibility of CLIENT or CLIENT's contractors, except with respect to CONSULTANT'S own employees. Likewise, CONSULTANT shall have no right to direct or stop the work of CLIENT's contractors, agents, or employees.

20. **Dispute Resolution/Arbitration:** Any claim or other dispute arising out of or related to this Agreement shall first be subject to non-binding mediation in accordance with the then-current Construction Industry Mediation Procedures of the American Arbitration Association ("AAA"). If mediation is unsuccessful, such claim or other dispute shall be subject to arbitration in accordance with the AAA's then-current Construction Industry Arbitration Rules. Any demand for arbitration shall be filed in writing with the other party and with the American Arbitration Association. CLIENT agrees to the inclusion in such arbitration (whether by initial filing, by joinder or by consolidation) of any other parties and of any other claims arising out of or relating to the Project or to the transaction or occurrence giving rise to the claim or other dispute between CLIENT and CONSULTANT.

21. **Independent Contractor:** In carrying out its obligations, CONSULTANT shall always be acting as an independent contractor and not an employee, agent, partner or joint venturer of CLIENT. CONSULTANT's work does not include any supervision or direction of the work of other contractors, their employees or agents, and

CONSULTANT's presence shall in no way create any liability on behalf of CONSULTANT for failure of other contractors, their employees or agents to properly or correctly perform their work

22. **Hazardous Substances:** CLIENT agrees to advise CONSULTANT upon execution of this Agreement of any hazardous substances or any condition existing in, on or near the Project Site presenting a potential danger to human health, the environment or equipment. By virtue of entering into the Agreement or of providing services, CONSULTANT does not assume control of, or responsibility for, the Project site or the person in charge of the Project site or undertake responsibility for reporting to any federal, state or local public agencies, any conditions at the Project site that may present a potential danger to the public, health, safety or environment except where required of CONSULTANT by applicable law. In the event CONSULTANT encounters hazardous or toxic substances or contamination significantly beyond that originally represented by CLIENT, CONSULTANT may suspend or terminate the Agreement. CLIENT acknowledges that CONSULTANT has no responsibility as a generator, treater, storer, or disposer of hazardous or toxic substances found or identified at a site. Except to the extent that CONSULTANT has negligently caused such pollution or contamination, CLIENT agrees to defend, indemnify, and hold harmless CONSULTANT, from any claim or liability, arising out of CONSULTANT's performance of services under the Agreement and made or brought against CONSULTANT for any actual or threatened environmental pollution or contamination if the fault (as defined in N.C.G.S. 22B-1(f)(7)) of CLIENT or its derivative parties (as defined in N.C.G.S. 22B-1(f)(3)) is a proximate cause of such claim or liability.

23. **Choice of Law:** The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the law of the State of North Carolina, excluding only its conflicts of laws principles.

24. **Construction Services:** If construction administration and review services are requested by the CLIENT, CLIENT agrees that such administration, review, or interpretation of construction work or documents by CONSULTANT shall not relieve any contractor from liability in regard to its duty to comply with the applicable plans, specifications, and standards for the Project, and shall not give rise to a claim against CONSULTANT for contractor's failure to perform in accordance with the applicable plans, specifications or standards.

25. **Field Representative:** If CONSULTANT provides field services or construction observation services, the presence of the CONSULTANT's field personnel will only be for the purpose of providing observation and field testing of specific aspects of the Project. Should a contractor be involved in the Project, the CONSULTANT's responsibility does not include the supervision or direction of the actual work of any contractor, its employees, or agents. All contractors should be so advised. Contractors should also be informed that neither the presence of the CONSULTANT's field representative nor the observation and testing by the CONSULTANT shall excuse contractor in any way for defects in contractor's work. It is agreed that the CONSULTANT will not be responsible for job or site safety on the Project and that the CONSULTANT does not have the right to stop the work of any contractor.

26. **Submittals:** CONSULTANT's review of shop drawings and other submittals is to determine conformity with the design concept only. Review of shop drawings and submittals does not include means, methods, techniques, or procedures of construction, including but not limited to, safety requirements.

TOWN OF MOUNT GILEAD

**BUDGET AMENDMENT
FY 2020-21**

Department: POLICE DEPT

Amendment # BA21-0406-01

Title/Project Name: EQUIPMENT GRANT FUNDS

Date Processed: _____

Page 1 of 1

Department Head Signature: _____

Date of Approval by the Board: _____

Required Signatures

Department Head	_____	Date: _____
Manager	_____	Date: _____
Mayor	_____	Date: _____
Finance Director	_____	Date: _____

Notes: Amendments are required in all cases where budget line appropriations are expected to exceed fiscal year appropriations or when new grants or other funds which will be expended enter the town's system after the fiscal year budget ordinance is approved.

G/L ACCOUNT NUMBER	LINE ITEM DESCRIPTION	CURRENT BUDGET	INCREASE	DECREASE	AMENDED BUDGET	NARRATIVE JUSTIFICATION FOR EACH INCREASE/DECREASE
10-340-25	APPROVED STATE GRANT EQUIP FUNDS FOR PD	\$ 12,175.00	\$ 22,841.00		\$ 35,016.00	EARLY APPROVAL OF REQUESTED GRANT FUNDS FOR POLICE EQUIPMENT
10-550-60	EQUIPMENT GRANT EXPENSE G/L	\$ 12,500.00	\$ 22,841.00		\$ 35,341.00	ALLOCATED GRANT FUNDS FOR EQUIPMENT GRANT FOR PD
		\$ -			\$ -	



TOWN OF MOUNT GILEAD

110 West Allenton Street, Mount Gilead, North Carolina, 27306

AGENDA ITEM

To: Mayor and Commissioners
From: Hiram J. Marziano, II, Town Manager
Re: Summer Park Activities Decision

Summary

Due to the pandemic, the Park Program, pool and other activities at the park were suspended or limited. We need to decide what to do for the upcoming summer with the park, not just for budgetary purposes, but also for the community and social morale. Further, this decision needs to be made sooner rather than later as there are plenty of moving parts that need to align to get things going. It is not as simple as just saying we're going to do it.

Discussion

We have several options to consider. A few include do we conduct the Park Program this year and do we open the pool? When do we do these activities? Do we limit participation? These are the type of things we need to decide upon.

At the very least, we need to make a decision on if these activities will take place. We can develop the details in the coming weeks. With limited time to hire staff and get the pool operational, we need to commit soon to opening or not.

Some other items of note follow.

The Town did budget some money for parks and recreation for the current fiscal year. This will need to be used towards getting the park open and the pool ready. The pool will require an inspection and some maintenance. The extent of maintenance is unknown at this time but will be more clear as Public Works moves into their opening procedures.

Our coordinator for the park program and pool will not be able to return this summer to run these programs. As such, we have taken the initiative to go ahead and advertise for the position as this will be a big part of what we can and cannot do this summer and also one of those things that takes some time.

Recommendations

Staff recommends taking steps to open the park and pool operations for the Summer along with development of the Park Program in some capacity.



TOWN OF MOUNT GILEAD

110 West Allenton Street, Mount Gilead, North Carolina, 27306

AGENDA ITEM

To: Mayor and Commissioners
From: Hiram J. Marziano, II, Town Manager
Re: Public Hearing Request: Zoning and Development Ordinances 160D Updates

Summary

In 2019, North Carolina amended their land use legislation creating Chapter 160D of the North Carolina General Statutes. This in effect has consolidated enabling legislation for both municipalities and counties for development regulations, unifying the chapters (formerly 160A and 153A respectively). The 160D changes do not make major policy changes in authority granted to the Town by the State, in as far as we do not need to alter our regulatory aspects of our ordinances. We do need to update our administrative and procedural aspects.

Chapter 160D is effective now, but we have until July 1, 2021 to amend our ordinances to match. This includes all developmental ordinances, not just the Zoning Ordinance.

Discussion

The Planning Board reviewed these proposed amendments at their February and March meetings. The Planning Board is recommending that the Town Board adopt the proposed amendments. The following consistency statement was approved by the Planning Board.

The Town of Mount Gilead Planning Board hereby recommends adoption of the proposed update of the Town's development and land usage regulations to the Town Board and finds that (i) it is consistent with the Town's 2009 Land Use Plan which directs that the Town take steps and actions to ensure continued and responsible development; and (ii) that it is in the public interest because it will advance the public health, safety, and/or welfare of the Town of Mount Gilead through updated statutory procedures and requirements for development within the Town's planning jurisdiction.

In order to proceed with the process, the Town Board will need to hold a public hearing on these proposed amendments, as with any other change to the land use regulations. Staff is requesting that the Town Board set a public hearing for the May 4, 2021 meeting to be conducted at 7:00 PM.

I have generated a brief of the changes for each of the sections being amended. The draft changes are numerous and come in around 100 pages. As such, a public review copy shall be kept at Town Hall and a copy shall be kept on the Town's website on the home page. The Board has been given the proposed changes as an attachment to this agenda booklet.

Recommendations

Staff recommends the Town Board set a public hearing for Proposed Land Use and Development Ordinance Amendments for May 4, 2021 at or as soon thereafter 7:00 PM.



TOWN OF MOUNT GILEAD

110 West Allenton Street, Mount Gilead, North Carolina, 27306

MEMORANDUM

DATE: April 6, 2021
TO: Mayor and Board of Commissioners
FROM: Amy Roberts, Clerk/Finance Officer
RE: Mount Gilead 2021 Audit Contract – JB Watson and Co., Inc.

JB Watson and Co., Inc. has presented the 2021 Audit Contract and engagement letter for the Board to review. This is the standard letter and contract that is presented annually to be reviewed and signed.

As standard practice they will come in June and perform a preliminary audit and then return to perform the full audit in August or September. Pricing remains around the same cost as last year.

If federal grant money is used in this year, a yellow book audit will also have to be performed at an additional cost by another outside party.



TOWN MANAGER REPORT

March 2021

GENERAL UPDATES

- The Animal Ordinance updates were approved at the Town Board meeting in March. We decided to have them take effect on May 1st in order to give the citizens time to learn the new rules and make their preparations. The educational outreach has begun. We have posted the ordinance on the Town's website (home page) and on the bulletin board outside Town Hall. We have put notice on the website, placed it on the water bills and published it in the Herald. I have spoken to several individuals about this, so I believe the word is getting out.
- I issued a zoning permit for the placement of a new sign at the ABC store. This is for the placement of a backlit box sign on the side of the building.
- The Planning Board met on Tuesday March 23 (having been rescheduled from the prior Thursday). The Board discussed the proposed amendments to the zoning and developmental ordinances due to 160D and the selection of a Chair and Vice Chair for the board. Congratulations and thanks to Devon Little for volunteering to be the Chair and to Mitchel Lucas for volunteering to be the Vice Chair.
- We received a few complaints related to buzzards (also known as vultures) in Town roosting over on Cedar Street and the surrounding areas. This is an issue much of North Carolina faces and this is considered a protected species in the State. We did instruct those complaining to contact the NC Wildlife offices to see if they have any recommendations. It has been my experience that they sort of nomadically move around staying a few weeks where they find their food sources. I will follow up with NC Wildlife about our options.
- Work progressed on the Spring 2021 newsletter. Lee Ann Haithcock did an excellent job on it and it went out the last week of March.
- Daniel Medley, Public Works Director, and I drove out to look at Cotton Gin Drive and the condition of the gravel section as it goes from Hwy 109 to connect to Industry Avenue. There are sections that clearly need attention. There is an issue also where it appears the road has migrated from its original path. Daniel believes (and I agree) we need to start with a survey to determine the actual path of the road and right-of-way. Further, Daniel and I have some drainage concerns that may need to be addressed to help with any washing out or dips in the roadway. We will likely be getting prices to put into the budget.
- Met with Mr. Earl Poplin and discussed options for grant funding for the continued development of the small park on South Main Street. We also discussed some of the needs for the Redevelopment Corporation about a possible new roof and some other options. We will be meeting next week to cover some more on that.

PROJECT UPDATES

- ***Sewer Use Ordinance Updates:*** The final draft of the document was delivered in February. Many of the changes were about bringing the ordinance up-to-date, or modernized if you will. There was some tightening of the language surrounding campgrounds. The Board had its first reading of this at the March meeting and decided to wait until the April meeting to take action.
- ***NCGS 160D Planning & Development Updates:*** The proposed text amendments for the updates have been reviewed by the Planning Board and will be moving forward to the Town Board soon. The Planning Board did recommend approval of the draft amendments. The next steps are for the Town Board to accept the Planning Boards recommendation, set a public hearing and then make a final decision on the proposed amendments.
- ***Mount Gilead Comprehensive Plan:*** The staff at Mosaic are now writing the plan itself and preparing the draft document to share with the Town for review sometime in April at their last projection. *No significant update.*
- ***Main Street Stormwater Improvements:*** Daniel Medley, Public Works Director, and I met with Rob McIntyre of LKC in early mid-March to discuss this project in full. He confirmed that the project still consists redirecting the flow of the existing underground pipes; blocking off those pipes both from

Main Street and behind the antique mall and filling said pipes with flowable fill; and diverting the water down Ingram and then going under the road to the existing stream near the current outfall area. This will involve getting some form of easement from the church there. This project will also include the installation of a catch basin along Church Alley behind the antique mall to capture some runoff and take it to the large outfall ditch the pipes currently drain to. This will help the property owner and in turn help protect our infrastructure under the alley. The alley may be excavated and have the pipes removed and backfilled so as assist in blocking off the pipes from Main St.

- **East Allenton Street Sewer Replacement:** Daniel Medley, Public Works Director, has spoken with contractors to come and review the project site. Final pricing is pending. He can speak further on this during his report.
- **Wastewater Treatment Plant & Lift Stations #2, #6 and #10:** We are working with the contractor and getting their reimbursement for finalizing the project. At the same time, we are attempting to make use of the excess funds to finish out the fence at the plant. We have the quotes in but still need approval from the state and the contractor. *No significant change to report.*
- **East Allenton Sidewalk Project** – I received an email Friday March 19, 2021 from Alison Kluttz with NCDOT regarding this project. EB-5899, NC 731 (Allenton Street) Sidewalk. It has been selected to move forward with preliminary engineering. I have contacted Frances Gallagher with WithersRavenel whom we have the agreement with to provide the engineering. I met with Ms. Gallagher and we covered the basics of the project and expectations for moving forward. The April agenda has the contract for approval to execute before the Board.
- **East Ingram Street ROW Extension** – The maps were all signed and returned to the Town in March (two signatures were collected from out-of-state). I recorded the maps with the Register of Deeds on Wednesday March 24, 2021. Amy has sent the information to the town attorney to finalize any outstanding details of the development of this right-of-way.

FYE22 Budget Development

The board conducted their budget retreat on March 12 and 13. We did go over all the capital and project requests from the departments and made a lot of headway towards the second draft. Based on the conversations at the retreat, the Department Heads have been tasked with obtaining further information on some items and have also been informed on what was already dismissed from the budget discussions. The next discussion is to take place at the April 6th Town Board Meeting.

Just a few highlights:

- Discussed potential for salaries and wages including a discussion on possible COLA and/or Merit increases for staff, with instruction to continue research into pay scales of neighboring communities; considering Paid-On-Call program for the volunteer firefighters (pending final review of a policy); and possible increase in hourly pay for reserve police officers while keeping the budgeted amount the same.
- Discussed repairs/renovations to Town Hall, the Police Department and the Fire Department.
- Looking at a few new (or like-new) vehicles for Public Works and the WWTP (pending pricing).
- Considering new equipment for the WWTP in the form of a new effluent pump; Public Works in the forms of a gas detector, RDM meters and Christmas Lights (expansion and possible LED options); and Town Hall with a new server for the Town.
- Considering engineering services for smoke testing our lines, designing renovation to Town Hall, survey and design for dredging the lagoon at the WWTP and a possible new drying bed at the WWTP.
- Looking into professional services for generator maintenance program (shopping prices), our water/wastewater software systems, and a fire extinguisher maintenance service.
- Talked about repair options for the sidewalk on East Allenton and the entrance to the cemetery. Daniel is getting prices on those options.



Alliance Code
Enforcement LLC

PROTECTING QUALITY OF LIFE
Monthly Report
Town of Mount Gilead

Updated
03/30/2021

MARCH		
ADDRESS	VIOLATION	STATUS
500 W Allenton St	MH/JP/OL	OPEN
0 Industry Ave	AB/OL	OPEN
306 N Main St	MH/OL	OPEN
0 Julius Chambers Ave	MH/OL	OPEN
0 E Allenton	JV/JP	OPEN
0 Lumber St	MH/OL	OPEN
105 E Second St	MH/OL	OPEN
0 W Allenton St (419)	MH/JP/JV	OPEN
308 N Main St	MH/JP/OL	OPEN
101 N Main St	MH	OPEN
418 W Allenton St	JP	OPEN
202 E Allenton St	JP	OPEN
405 Julius Chambers St	OL	OPEN
109 E Second Ave	OL	OPEN
513 W Allenton St	JV	OPEN
320 Washington Park St	JP	OPEN
335 East Allenton St	JV	ABATED
207 East Second St	JP	ABATED
416 West Allenton St	JP	ABATED
444 N Main St	JP	ABATED
430 S Wadesboro Blvd	JP	OPEN
200 S Main St	MH	OPEN
109 S Main St	JV	OPEN
204 W Allenton St	JP	ABATED
501 W Allenton St	JP	ABATED
302 Cedar St	JV	OPEN
307 West Haywood Ln	JP	ABATED
111 Cedar St	JP	ABATED
412 Julius Chambers Ave	JP	ABATED
206 N School St	JP/JV	OPEN
204 S Main St	JP	ABATED
206 S Main St	JP	ABATED
226 N Main St	JP	OPEN
214 N Main St	JV	OPEN
412 Julius Chambers Ave	JV	OPEN
310 East Allenton St	JV	OPEN
323 East Allenton St	JV	OPEN



Alliance Code
Enforcement LLC

PROTECTING QUALITY OF LIFE
Monthly Report
Town of Mount Gilead

Updated
03/30/2021

156 Washington Park Ave	JP	OPEN
130 Marshall St	JV	OPEN
166 Emmaline St	JV	OPEN
0 Julius Chambers Ave	JP	OPEN
120 Williams St	JP	OPEN
302 Julius Chambers Ave	JV	OPEN
304 Julius Chambers Ave	JV	OPEN
400 W Allenton St.	OL	OPEN

Monthly Highlights

- JV and JP cases continue to be opened. Contact still remains for open cases.
- As spring begins I will begin opening OL cases for this upcoming season. I am preparing a folder that I will carry with me with OL templates that I will fill out by hand and post them on properties that are in violation.
- A NOH has been prepared and mailed for 109 S Main St. Hearing date has been set for the 14th of April. This case is in reference to the junk/abandoned vehicle downtown.
- A case has been opened for 400 W Allenton St. for OL. A NOV has been prepared and mailed for this case.
- A re-inspection was completed on the Speakman property and while the property remains in violation, considerable progress has been made. Numerous vehicles have been removed in addition to the removal of open storage of auto parts. There have also been 2 fitted car covers added. I will be following up and providing pictures to the attorney for the property owners and feel confident that they will continue the progress if given additional time. As a result, I would recommend an extension be provided.



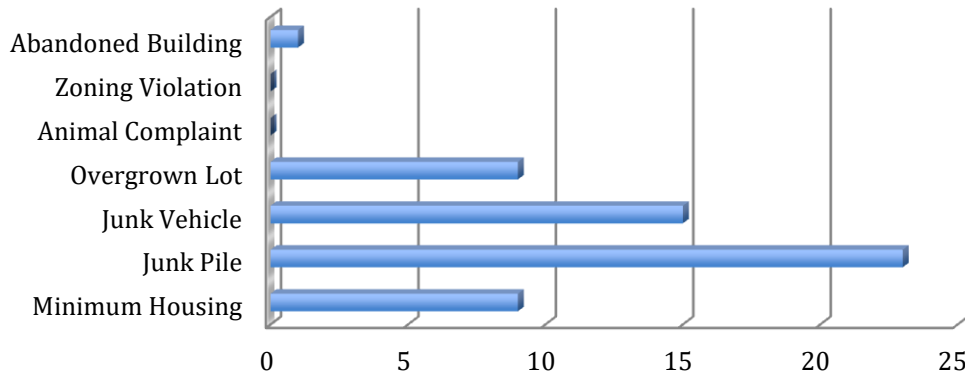
PROTECTING QUALITY OF LIFE

Alliance Code
Enforcement LLC

Monthly Report
Town of Mount Gilead

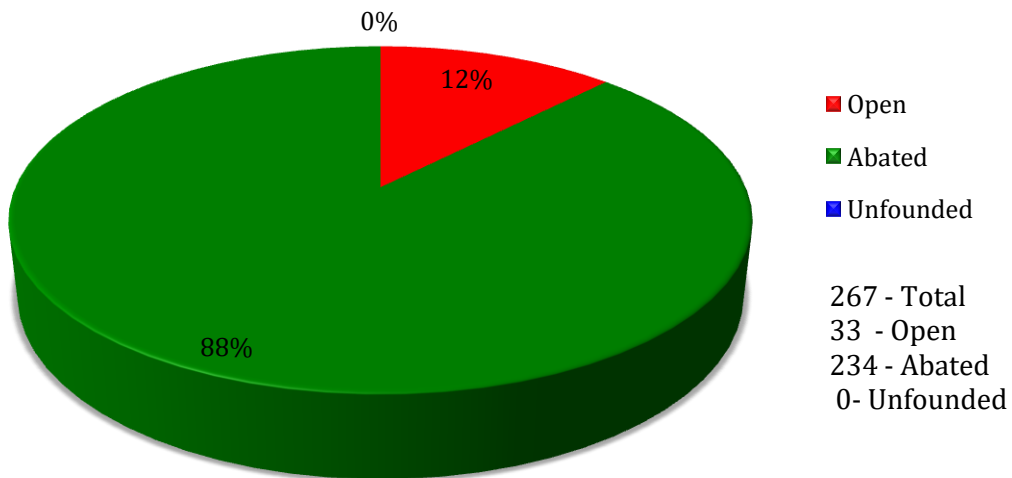
Updated
03/30/2021

Violations by the Numbers



	Minimum Housing	Junk Pile	Junk Vehicle	Overgrown Lot	Animal Complaint	Zoning Violation	Abandoned Building
Violations by the Numbers	9	23	15	9	0	0	1

Year to Date Case Status





TOWN OF MOUNT GILEAD DEPARTMENT REPORTS

110 West Allenton Street, Mount Gilead, North Carolina, 27306
March 2021

PUBLIC WORKS

The following is a list of the activities and duties performed by the Public Works Department in February

Water/Sewer Services

1. Repaired sewer line on Cedar St
2. Install pump at WWTP
3. Repaired coolant heater on generator at LS#11
4. Unclog sewer on Julius Chambers
5. Repair water leak on W Ingraham
6. Repair water leak on S Wadesboro

Repairs and Cleanup Activities

1. Removed bushes at FD
2. Clean storm drains
3. Cleaned park
4. Picked up trash on streets
5. Replanted grass at FD and library

Equipment/Vehicle Maintenance

- Preventive checks were performed on the town's vehicles.
- Oil change on service vehicle

Routine Monthly Activities

- Lift stations 1-15 - weekly checks
- Non-payment cutoffs - Completed -12
- Cleaned curbs and gutters on Julius Chambers, W. Allenton St N. Main
- Other street cleaning removing trash from right-of-way.

Completed Projects

In Progress Jobs

- Down town storm drain projects
- West Allenton St sewer



Town of
**Mount Gilead Police
Department**

**123 North Main Street – Post Office Box 325
Mount Gilead, North Carolina, 27306**
Phone: (910) 439-6711 Fax: (910) 439-1855

MEMORANDUM

**To: Hiram J. Marziano, II
Town Manager**

**From: Austen B. Morton
Lieutenant of Police**

Date: March 29, 2021

Subject: Mount Gilead Police Department Monthly Report for March 2021

During the month of March, Officers have began their 2021 in-service annual training along with the new state-mandated Brazo's software training. Brazos is a statewide software program provided by the Administrative Office of the Courts and will replace citation by mid April.

Our investigation continues into the robbery of the ABC store. We have no solid leads as of yet. The scene was processed, a bullet casing was recovered and surveillance footage obtained. Pictures of the suspect were posted on the Mount Gilead Police Department's Facebook page.

We were contacted by the Grant County Sheriff's Office in Washington about some stolen items that have been sold on ebay. These items are computer processors that are used to mine BitCoin, a virtual currency. We were able to locate one of the stolen servers with an estimated value of \$8,000 dollars and returned it to the Grant County Sheriff's Office via UPS ground shipping.

Covid 19 Risk – Department personnel are continuing to take the necessary steps to limit exposure when dealing with the public. Officers check temperatures at the beginning of each shift and disinfect their patrol vehicles at the end of the shift.

Professionalism: the skill, good judgment, and polite behavior that is expected from a person who is trained to do a job well.

Administration and Patrol

- Submitted an applicant's paperwork to Raleigh for approval.
- Completed the 2021 SBI Compliance Audit
- The entire department completed the SBI Security Awareness Training.
- Two checkpoints were established during the NCGHSP Booze It & Lose It campaign.
- Brazo's software installed on every laptop and computer.
- Investigation continues into the B&E at C's. No new leads.
- Investigated the strong armed robbery at the ABC store.
- Continued entry of SBI Traffic Stop Reports.
- Ranking Officers continue to fill in shifts as needed (sickness, training, vacancy etc.)
- Routinely reviewed body camera videos.
- Officers completing business checks and including "business check notes" placed upon the door or window upon completion of the security check.
- Provided escort and traffic control for Palm Sunday church parade.
- Continued escorts for businesses as they close at night.
- Department vehicles were serviced with oil changes and tire rotations.
- Continued trial testing of Intrensic body cameras to replace Viewu cameras.
- Completed court ordered expungment of records and evidence disposition.

Investigations Report

*Will continue this report when fully staffed.

Attachments

- Calls for Service
- Activity Summery
- Reported Incidents – Officer assigned

Professionalism: the skill, good judgment, and polite behavior that is expected from a person who is trained to do a job well.

Montgomery County Communications
 199 South Liberty St Troy , NC 27371

CFS By Department/Unit/Date
 3/21/2021 - 3/29/2021

MT GILEAD POLICE DEPT

702		
ALARM (NOT FIRE) COMMERCIAL	1	1.23%
SUSPICIOUS PERSON/VEH/ACTIVITY	1	1.23%
TRAFFIC STOP	2	2.47%
Total Unit Records For 702	4	
703		
911 HANG UP	1	1.23%
ALARM (NOT FIRE) COMMERCIAL	1	1.23%
COMMUNICATING THREATS	1	1.23%
ESCORT	8	9.88%
INFORMATION	1	1.23%
LARCENY	1	1.23%
SUSPICIOUS PERSON/VEH/ACTIVITY	1	1.23%
TRAFFIC ACCIDENTS (PD)	1	1.23%
UNSECURED PREMISE	1	1.23%
Total Unit Records For 703	16	
704		
CARELESS & RECKLESS	1	1.23%
CHILD CUSTODY	1	1.23%
CIVIL DISTURBANCE	1	1.23%
ESCORT	10	12.35%
FOLLOWUP INVESTIGATION	1	1.23%
SECURITY CHECK	4	4.94%
SHOTS FIRED	1	1.23%
SUSPICIOUS PERSON/VEH/ACTIVITY	3	3.70%
TRAFFIC STOP	2	2.47%
TRANSPORTATION PI	1	1.23%
Total Unit Records For 704	25	
705		
ALARM (NOT FIRE) COMMERCIAL	2	2.47%
ALARM (NOT FIRE) RESIDENTIAL	3	3.70%
ESCORT	4	4.94%
FALLS	1	1.23%
FIGHT	2	2.47%
INFORMATION	1	1.23%
INTOXICATED SUBJECT(s)	1	1.23%
PROPERTY (Found-Lost-Seized-Recoverd)	1	1.23%
ROAD HAZARD	1	1.23%
SHOTS FIRED	1	1.23%
SUSPICIOUS PERSON/VEH/ACTIVITY	2	2.47%

MT GILEAD POLICE DEPT

705		
TRAFFIC STOP	1	1.23%
TRESPASSING	1	1.23%
Total Unit Records For 705	21	
707		
ASSIST MOTORIST	1	1.23%
ESCORT	3	3.70%
INFORMATION	1	1.23%
SERVE PAPER	1	1.23%
SICK PERSON (SPECIFIC DIAGNOSIS)	1	1.23%
TRAFFIC STOP	3	3.70%
WELFARE CHECK	1	1.23%
Total Unit Records For 707	11	
722		
SECURITY CHECK	1	1.23%
TRAFFIC STOP	1	1.23%
TRANSPORTATION PI	1	1.23%
Total Unit Records For 722	3	
729		
SUSPICIOUS PERSON/VEH/ACTIVITY	1	1.23%
Total Unit Records For 729	1	
Total Records For MT GILEAD POLICE DEPT	81	100.00%

Activity Detail Summary (by Category)

MOUNT GILEAD POLICE DEPARTMENT

(02/24/2021 - 03/29/2021)

Incident\Investigations

120 - Robbery	1
23C - Shoplifting	1
23H - All Other Larceny	1
280 - Stolen Property Offenses	1
290 - Destruction/Damage/Vandalism of Property	3
35A - Drug/Narcotic Violations	3
35B - Drug Equipment Violations	1
520 - Weapon Law Violations	1
90J - Trespass of Real Property	1
90Z - All Other Offenses	3
Total Offenses	16
Total Incidents	12

Arrests

35A - Drug/Narcotic Violations	5
35B - Drug Equipment Violations	1
520 - Weapon Law Violations	1
90Z - All Other Offenses	1
Total Charges	8
Total Arrests	4

Accidents

Total Accidents **0**

Citations

Driving While License Revoked	8
Expired Registration	4
Inspection	1
No Operator License	5
Other (Infraction)	12

Activity Detail Summary (by Category)

MOUNT GILEAD POLICE DEPARTMENT

(02/24/2021 - 03/29/2021)

Citations

Possess/Consume Alcohol - Passenger	1
Running Red Light	1
Seat Belt	3
Speeding (Infraction)	5
Secondary Charge	21
Total Charges	61
Total Citations	40

Warning Tickets

Total Charges	0
Total Warning Tickets	0

Ordinance Tickets

Total Ordinance Tickets	0
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Criminal Papers

Total Criminal Papers Served	0
Total Criminal Papers	0

Civil Papers

Total Civil Papers Served	0
Total Civil Papers	0

Incident Offenses/Victims/Status By Reporting Officer

MOUNT GILEAD POLICE DEPARTMENT

All Case Statuses - (02/24/2021 - 03/29/2021)

2647 - Detective Jacob Shuping

Incident Number:	Offense:	Victim:	Case Status:	Exceptional Clearance:	Inc. Date:
2103-0042	35A - Simple Possession Sch VI 35B - Poss Drug Paraphernalia	State of NC, Mount Gilead	Closed by Arrest	Not Applicable	03/12/2021
2103-0043	90Z - Civil Complaint	The Gilead	Active		03/14/2021

Officer Total Incidents: 2

4531 - Patrol Officer Hunter T. Stone

Incident Number:	Offense:	Victim:	Case Status:	Exceptional Clearance:	Inc. Date:
2103-0039	290 - Destruction/Damage of Property	Monarch	Closed by Other Means	Not Applicable	03/13/2021
2103-0041	290 - Destruction/Damage of Property	Monarch	Closed by Other Means	Not Applicable	03/12/2021
2103-0048	280 - Receiving Stolen Property	Haywood, Jason Lee	Closed by Other Means	Not Applicable	03/23/2021

Officer Total Incidents: 3

6474 - Patrol Officer James L. Brown

Incident Number:	Offense:	Victim:	Case Status:	Exceptional Clearance:	Inc. Date:
2102-0032	90Z - Possible Overdose with Death	Austin, Landon Ray	Active		02/24/2021
2103-0035	90Z - OFA-Larceny	State of NC Rowan County, State of NC State of NC	Closed by Arrest		03/01/2021
2103-0037	23H - All Other Larceny	Chip's store	Active	Not Applicable	03/06/2021

Officer Total Incidents: 3

8523 - Sergeant Adam W. Lucas

Incident Number:	Offense:	Victim:	Case Status:	Exceptional Clearance:	Inc. Date:
2103-0036	290 - Damage of Property	WALL, SANANTONIO DEBOER	Active	Not Applicable	03/05/2021

Incident Offenses/Victims/Status By Reporting Officer

MOUNT GILEAD POLICE DEPARTMENT

All Case Statuses - (02/24/2021 - 03/29/2021)

8523 - Sergeant Adam W. Lucas

Incident Number:	Offense:	Victim:	Case Status:	Exceptional Clearance:	Inc. Date:
2103-0044	120 - Robbery	ABC Store	Active	Not Applicable	03/19/2021
2103-0045	35A - Poss of Marijuana 520 - Carrying Concealed Gun 35A - Possess Marijuana Paraphernalia	State of NC	Closed by Arrest	Not Applicable	03/20/2021
2103-0046	90J - Trespass of Real Property 23C - Shoplifting	Dollar General	Closed by Other Means	Not Applicable	03/21/2021

Officer Total Incidents: 4

Total Incidents: 12



TOWN OF MOUNT GILEAD

110 West Allenton Street, Mount Gilead, North Carolina, 27306

AGENDA ITEM

To: Mayor and Commissioners
From: Hiram J. Marziano, II, Town Manager
Re: FYE22 Budget Workshop

Summary

This is the continuation of our budgeting efforts. New draft budget sheets were delivered with the agenda packet. They were also placed online under the agenda for public review.

Discussion

Based on how things progress during this meeting, Staff would like to request a special workshop added to our calendar for one night between April 20 to April 23. The reason being if there is any further discussion on developing requests. I would like to have a completed draft budget for the May 4th meeting so that we can set the public hearing for June and not worry about still making sizable changes. Of course, this may not be necessary should be finalize the large-scale items at this meeting.

Recommendations

Staff recommends the Board conduct the workshop.

Budget vs Actual (Summary)

Town of Mount Gilead
3/31/2021 3:52:27 PM

Page 1 Of 1

Period Ending 6/30/2021

10 GENERAL FUND						
Description	Budget	Encumbranc	YTD	Variance	Percent	
Revenues						
	1,511,576	0.00	1,102,439.31	(409,136.51)	73%	
Revenues Totals:	1,511,576	0.00	1,102,439.31	(409,136.51)	73%	
Expenses						
ADMINISTRATION	169,900	2,349.93	105,885.04	61,665.03	64%	
STREETS AND GROUNDS	113,070	944.35	70,934.77	41,190.88	64%	
PLANNING & ZONING	45,850	0.00	14,358.00	31,492.00	31%	
SOLID WASTE	92,400	0.00	58,389.91	34,010.09	63%	
PARKS AND RECREATION	115,075	0.00	65,286.09	49,789.39	57%	
POLICE DEPARTMENT	605,850	12,937.59	360,937.45	231,974.96	62%	
FIRE DEPARTMENT	163,974	11,918.85	75,621.51	76,433.38	53%	
REDEVELOPMENT CORP.	22,200	0.00	2,479.66	19,720.34	11%	
FITNESS CENTER	0	0.00	0.00	0.00		
POWELL BILL	38,000	4,464.00	15,496.76	18,039.24	53%	
HIGHLAND COMM. CT.GRANT	0	0.00	0.00	0.00		
CEMETERY	24,500	0.00	1,757.37	22,742.63	7%	
GOVERNING BODY	88,357	0.00	60,312.79	28,043.81	68%	
LIBRARY	32,400	9,000.00	7,590.13	15,809.87	51%	
DEBT SERVICE	0	0.00	0.00	0.00		
	0	0.00	0.00	0.00		
Expenses Totals:	1,511,576	41,614.72	839,049.48	630,911.62	58%	
10 GENERAL FUND Totals:			263,389.83			
20 ENTERPRISE FUND						
Description	Budget	Encumbranc	YTD	Variance	Percent	
Revenues						
	1,433,219	0.00	920,880.46	(512,338.22)	64%	
Revenues Totals:	1,433,219	0.00	920,880.46	(512,338.22)	64%	
Expenses						
ADMINISTRATION	267,850	2,349.94	201,777.58	63,722.48	76%	
WATER OPERATIONS	304,737	4,612.85	214,860.37	85,264.13	72%	
WASTE WATER COLLECTION	383,612	15,049.90	247,072.43	121,490.00	68%	
WASTE WATER PLANT	231,900	1,655.00	125,532.62	104,712.38	55%	
SOLID WASTE	0	0.00	0.00	0.00		
GOVERNING BODY	0	0.00	0.00	0.00		
DEBT SERVICE	245,119	0.00	16,957.78	228,161.22	7%	
	0	0.00	0.00	0.00		
Expenses Totals:	1,433,219	23,667.69	806,200.78	603,350.21	58%	
20 ENTERPRISE FUND Totals:			114,679.68			

TOWN OF MOUNT GILEAD
Sewer Use Ordinance
(SUO)

(Adopted June 2002)
(Amended and Adopted January 12, 2010)
(Amended and Adopted _____, 2021)

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SECTION 1 - GENERAL PROVISIONS

1.1 Purpose and Policy

This ordinance sets forth uniform requirements for direct and indirect contributors to the wastewater collection and treatment system for the Town of Mount Gilead, hereafter referred to as the Town, and enables the Town to comply with all applicable State and Federal laws, including the Clean Water Act (33 U.S.C. § 1251 *et seq.*) and the General Pretreatment Regulations (40 CFR, Part 403).

The objectives of this ordinance are:

- (a) To prevent the introduction of pollutants into the municipal wastewater system which will interfere with the operation of the system or contaminate the resulting sludge;
- (b) To prevent the introduction of pollutants into the municipal wastewater system which will pass through the system, inadequately treated, into any waters of the State or otherwise be incompatible with the system;
- (c) To promote reuse and recycling of industrial wastewater and sludges from the municipal system;
- (d) To protect both municipal personnel who may be affected by sewage, sludge, and effluent in the course of their employment as well as protecting the general public;
- (e) To provide for equitable distribution of the cost of operation, maintenance and improvement of the municipal wastewater system; and
- (f) To ensure that the municipality complies with its NPDES or Non-discharge Permit conditions, sludge use and disposal requirements and any other Federal or State laws to which the municipal wastewater system is subject.

This ordinance provides for the regulation of direct and indirect contributors to the municipal wastewater system, through the issuance of permits to certain non-domestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

This ordinance shall apply to all users of the municipal wastewater system, as authorized by N.C.G.S. 160A-312. The Town shall designate an administrator of the POTW and pretreatment program, hereafter referred to as the POTW Director. Except as otherwise provided herein, the POTW Director shall administer, implement, and enforce the provisions of this ordinance. Any powers granted to or imposed upon the POTW Director may be delegated by the POTW Director to other Town personnel. By discharging wastewater into the municipal wastewater system, users

located outside the Town limits agree to comply with the terms and conditions established in this Ordinance, as well as any permits, enforcement actions, or orders issued hereunder.

1.2 Definitions And Abbreviations

- (a) Unless the context specifically indicates otherwise, the following terms and phrases, as used in this ordinance, shall have the meanings hereinafter designated:
- (1) *Act or "the Act"*. The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. §1251, et seq.
 - (2) *Approval Authority*. The Director of the Division of Water Resources of the North Carolina Department of Environmental Quality or his designee.
 - (3) *Authorized Representative of the Industrial User*.
 - (i) If the industrial user is a corporation, authorized representative shall mean:
 - A) the president, secretary, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or
 - B) the manager of one or more manufacturing, production, or operation facilities, provided the manager: (i) is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; (2) can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and (3) has been assigned or delegated authority to sign documents in accordance with corporate procedures.
 - (ii) If the industrial user is a partnership or sole proprietorship, an authorized representative shall mean a general partner or the proprietor, respectively.
 - (iii) If the industrial user is a Federal, State or local government facility, an authorized representative shall mean a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
 - (iv) The individuals described in paragraphs i-iii above may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility

for environmental matters for the company, and the written authorization is submitted to the Town.

- (v) If the designation of an authorized representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this section must be submitted to POTW Director prior to or contemporaneous with any reports to be signed by an authorized representative.
- (4) *Biochemical Oxygen Demand (BOD)*. The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20° centigrade, usually expressed as a concentration (e.g. mg/l).
- (5) *Building Sewer*. A sewer conveying wastewater from the premises of a user to the POTW.
- (6) *Bypass*. The intentional diversion of waste streams from any portion of a user's treatment facility.
- (7) *Camper Unit*. A tent or camping vehicle that can be temporary located on a campsite for transient dwelling purposes.
- (8) *Campground*. A parcel of land used by campers for seasonal, recreational or other similar temporary living purposes, in buildings of a moveable, temporary, or seasonal nature, such as cabins, tents, recreational vehicles or shelters.
- (9) *Campsite*. A plot of ground within a campground intended for the occupation of a Camper Unit.
- (10) *Categorical Standards*. National Categorical Pretreatment Standards or Pretreatment Standard.
- (11) *Director or POTW Director*. The person designated by the Town to supervise the operation of the publicly owned treatment works and who is charged with certain duties and responsibilities by this ordinance, or his duly authorized representative.
- (12) *Environmental Protection Agency or EPA*. The U.S. Environmental Protection Agency, or, where appropriate, the term may also be used as a designation for the Administrator or other duly authorized official of said agency.
- (13) *Grab Sample*. A sample which is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and over a period of time not to exceed 15 minutes.
- (14) *Holding Tank Waste*. Any waste from holding tanks, including but not limited to such holding tanks as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.

- (15) *Indirect Discharge or Discharge.* The discharge or the introduction from any nondomestic source regulated under section 307(b), (c), or (d) of the Act, (33 U.S.C. § 1317), into the POTW (including holding tank waste discharged into the system).
- (16) *Industrial User.* Any person or user of the POTW which is a source of indirect discharge.
- (17) *Interference.* The inhibition, or disruption of the POTW treatment processes, operations, or its sludge process, use, or disposal, which causes or contributes to a violation of any requirement of the POTW's NPDES or Non-discharge Permit or prevents sewage sludge use or disposal in compliance with specified applicable State and Federal statutes, regulations, or permits. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with section 405 of the Act, (33 U.S.C. 1345) or any criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act (SWDA)(42 U.S.C. §6901, *et seq.*), the Clean Air Act, the Toxic Substances Control Act, the Marine Protection Research and Sanctuary Act (MPRSA) or more stringent state criteria (including those contained in any State sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the POTW.
- (18) *Medical Waste.* Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.
- (19) *National Categorical Pretreatment Standard or Categorical Standard.* Any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. §1317) which applies to a specific category of industrial users, and which appears in 40 CFR Chapter 1, Subchapter N, Parts 405-471.
- (19) *National Prohibitive Discharge Standard or Prohibitive Discharge Standard.* Absolute prohibitions against the discharge of certain substances; these prohibitions appear in section **[2.1]** of this ordinance and are developed under the authority of 307(b) of the Act and 40 CFR, section 403.5.
- (20) *New Source.*
- (i) Any building, structure, facility, or installation from which there may be a discharge of pollutants, the construction of which commenced after the publication of proposed categorical pretreatment standards under section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with section 307(c), provided that:

- (A) the building, structure, facility, or installation is constructed at a site at which no other source is located; or
 - (B) the building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - (C) the production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.
- (ii) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of section **[(i)(B)]** or **[(C)]** above but otherwise alters, replaces, or adds to existing process or production equipment.
 - (iii) For purposes of this definition, construction of a new source has commenced if the owner or operator has:
 - (A) Begun, or caused to begin, as part of a continuous on-site construction program:
 1. Any placement, assembly, or installation of facilities or equipment; or
 2. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
 - (B) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this definition.
- (21) *Noncontact Cooling Water.* Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

- (22) *National Pollution Discharge Elimination System (NPDES) Permit.* A permit issued pursuant to section 402 of the Act (33 U.S.C. §1342), or pursuant to N.C.G.S. 143-215.1 by the State under delegation from EPA.
- (23) *Non-discharge Permit.* A disposal system permit issued by the State pursuant to N.C.G.S. 143-215.1.
- (24) *Pass Through.* A discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the POTW's NPDES or Non-discharge Permit, or a downstream water quality standard.
- (25) *Person.* Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all Federal, State, and local government entities.
- (26) *pH.* A measure of the acidity or alkalinity of a substance, expressed as standard units, and calculated as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.
- (27) *Pollutant.* Any "waste" as defined in N.C.G.S. 143-213(18) and dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).
- (28) *POTW Treatment Plant.* That portion of the POTW designed to provide treatment to wastewater.
- (29) *Pretreatment or Treatment.* The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollution into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes or other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.
- (30) *Pretreatment Program.* The program for the control of pollutants introduced into the POTW from non-domestic sources which was developed by the Town in compliance with 40 CFR 403.8 and approved by the approval authority as authorized by N.C.G.S. 143-215.3(a)(14) in accordance with 40 CFR 403.11.
- (31) *Pretreatment Requirements.* Any substantive or procedural requirement related to pretreatment, other than a pretreatment standard.

- (32) *Pretreatment Standards.* Prohibited discharge standards, categorical standards, and local limits.
- (33) *Publicly Owned Treatment Works (POTW) or Municipal Wastewater System.* A treatment works as defined by section 212 of the Act, (33 U.S.C. §1292) which is owned in this instance by the Town. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to the POTW treatment plant. For the purposes of this ordinance, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the Town who are, by contract or agreement with the Town, or in any other way, users of the POTW of the Town.
- (34) *Severe Property Damage.* Substantial physical damage to property, damage to the user's treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- (35) *Significant Industrial User.* Any industrial user of the wastewater disposal system that:
- (i) has an average daily process wastewater flow of 25,000 gallons or more, or
 - (ii) contributes more than 5% of any design or treatment capacity (i.e., allowable pollutant load) of the wastewater treatment plant receiving the indirect discharge, or
 - (iii) is required to meet a National categorical pretreatment standard, or
 - (iv) is found by the Town, the Division Of Water Quality or the U.S. Environmental Protection Agency (EPA) to have the potential for impact, either singly or in combination with other contributing industrial users, on the wastewater treatment system, the quality of sludge, the system's effluent quality, or compliance with any pretreatment standards or requirements.
- (36) *Significant Noncompliance or Reportable Noncompliance.* A status of noncompliance defined as follows:
- (i) Violations of wastewater discharge limits.
 - A. Chronic Violations. Sixty-six percent or more of the measurements exceed (by any magnitude) the same daily maximum limit or the same average limit in a six-month period.

- B. Technical Review Criteria (TRC) violations. Thirty-three percent or more of the measurements equal or exceed the TRC times the limit (maximum or average) in a six-month period. There are two groups of TRCs:
- For the conventional pollutants, including BOD, TSS, fats, oil and grease, TRC = 1.4
- For all other pollutants, TRC = 1.2
- C. Any other violation(s) of an effluent limit (average or daily maximum) that the control authority believes has caused, alone or in combination with other discharges, interference or pass-through; or endangered the health of the sewage treatment plant personnel or the public.
- D. Any discharge of a pollutant that has caused imminent endangerment to human health/welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge.
- (ii) Violations of compliance schedule milestones, contained in a pretreatment permit or enforcement order, for starting construction, completing construction, and attaining final compliance by 90 days or more after the schedule date.
- (iii) Failure to provide reports for compliance schedule, self-monitoring data, baseline monitoring reports, 90-day compliance reports, and periodic compliance reports within 30 days from the due date.
- (iv) Failure to accurately report noncompliance.
- (v) Any other violation or group of violations that the control authority considers to be significant.
- (37) *Slug Load or Discharge.* Any discharge at a flow rate or concentration which has a reasonable potential to cause Interference or Pass-Through, or in any other way violates the POTW's regulations, local limits, or Industrial User Permit conditions. This can include but is not limited to spills and other accidental discharges; discharges of a non-routine, episodic nature; a non-customary batch discharge; or any other discharges that can cause a violation of the prohibited discharge standards in section **[2.1]** of this ordinance.
- (38) *Standard Industrial Classification (SIC).* A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1987.
- (39) *Storm Water.* Any flow occurring during or following any form of natural precipitation and resulting therefrom.

- (40) *Suspended Solids.* The total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering.
 - (41) *Upset.* An exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities lack of preventive maintenance, or careless or improper operation.
 - (42) *Wastewater.* The liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, mobile sources, treatment facilities and institutions, together with any groundwater, surface water, and storm water that may be present, whether treated or untreated, which are contributed into or permitted to enter the POTW.
 - (43) *Wastewater Permit.* As set forth in section [4.2] of this ordinance.
 - (44) *Waters of the State.* All streams, lakes, ponds, marshes, watercourse, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State or any portion thereof.
- (b) This ordinance is gender neutral and the masculine gender shall include the feminine and vice-versa.
 - (c) Shall is mandatory; may is permissive or discretionary.
 - (d) The use of the singular shall be construed to include the plural and the plural shall include the singular as indicated by the context of its use.
 - (e) The following abbreviations when used in this ordinance, shall have the designated meanings:

(1)	BOD	Biochemical Oxygen Demand
(2)	CFR	Code of Federal Regulations
(3)	COD	Chemical Oxygen Demand
(4)	EPA	Environmental Protection Agency
(5)	gpd	Gallons per day
(6)	l	Liter
(7)	mg	Milligrams
(8)	mg/l	Milligrams per liter
(9)	N.C.G.S.	North Carolina General Statutes
(10)	NPDES	National Pollution Discharge Elimination System

(11)	O & M	Operation and Maintenance
(12)	POTW	Publicly Owned Treatment Works
(13)	RCRA	Resource Conservation and Recovery Act
(14)	SIC	Standard Industrial Classification
(15)	SWDA	Solid Waste Disposal Act
(16)	TSS	Total Suspended Solids
(17)	TKN	Total Kjeldahl Nitrogen
(18)	U.S.C.	United States Code.

SECTION 2 - GENERAL SEWER USE REQUIREMENTS

2.1 Prohibited Discharge Standards

- (a) General Prohibitions. No user shall contribute or cause to be contributed into the POTW, directly or indirectly, any pollutant or wastewater which causes interference or pass through. These general prohibitions apply to all users of a POTW whether or not the user is a significant industrial user or subject to any National, State, or local pretreatment standards or requirements.
- (b) Specific Prohibitions. No user shall contribute or cause to be contributed into the POTW the following pollutants, substances, or wastewater:
 - (1) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21.
 - (2) Solid or viscous substances in amounts which will cause obstruction of the flow in, or damage to, the POTW resulting in interference, but in no case solids greater than one half inch (1/2") in any dimension.
 - (3) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through.
 - (4) Any wastewater having a pH less than 6.0 or more than 9.0 or wastewater having any other corrosive property capable of causing damage to the POTW or equipment.
 - (5) Any wastewater containing pollutants, including oxygen-demanding pollutants, (BOD, etc) in sufficient quantity, (flow or concentration) either singly or by interaction with other pollutants, to cause interference with the POTW.
 - (6) Any wastewater having a temperature greater than 150° F (66° C), or which will inhibit biological activity in the POTW treatment plant resulting in Interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104° F (40° C).
 - (7) Any pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
 - (8) Any trucked or hauled pollutants, except at discharge points designated by the POTW Director in accordance with section **[2.9]** of this ordinance.
 - (9) Any noxious or malodorous liquids, gases, or solids or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.

- (10) Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal regulations or permits issued under section 405 of the Act; the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or State criteria applicable to the sludge management method being used.
- (11) Any wastewater which imparts color which cannot be removed by the treatment process, including, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts sufficient color to the treatment plant's effluent to render the waters injurious to public health or secondary recreation or to aquatic life and wildlife or to adversely affect the palatability of fish or aesthetic quality or impair the receiving waters for any designated uses.
- (12) Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the POTW Director in compliance with applicable State or Federal regulations.
- (13) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water and unpolluted industrial wastewater, unless specifically authorized by the POTW Director.
- (14) Fats, oils, or greases of animal or vegetable origin in concentrations greater than one hundred (100) mg/l.
- (15) Any sludges, screenings or other residues from the pretreatment of industrial wastes.
- (16) Any medical wastes, except as specifically authorized by the POTW Director in a wastewater discharge permit.
- (17) Any material containing ammonia, ammonia salts, or other chelating agents which will produce metallic complexes that interfere with the municipal wastewater system.
- (18) Any material that would be identified as hazardous waste according to 40 CFR Part 261 if not disposed of in a sewer except as may be specifically authorized by the POTW Director.
- (19) Any wastewater causing the treatment plant effluent to violate State Water Quality Standards for toxic substances as described in 15A NCAC 2B .0200.
- (20) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.
- (21) Recognizable portions of the human or animal anatomy.

- (22) Any wastes containing detergents, surface active agents, or other substances which may cause excessive foaming in the municipal wastewater system.
- (23) Any insoluble household material, including, but not limited to, cleaning supplies or products, residential refuse, household debris, building materials, or any other product or material not intended for disposal in a municipal wastewater system.
- (24) At no time, shall two successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than five percent (5%) nor any single reading over ten percent (10%) of the lower explosive limit (LEL) of the meter.

Pollutants, substances, wastewater, or other wastes prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the municipal wastewater system. All floor drains located in process or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the system.

When the POTW Director determines that a user(s) is contributing to the POTW, any of the above enumerated substances in such amounts which may cause or contribute to interference of POTW operation or pass through, the POTW Director shall:

- 1) advise the user(s) of the potential impact of the contribution on the POTW in accordance with section [8.1]; and
- 2) take appropriate actions in accordance with this ordinance for such user to protect the POTW from interference or pass through.

2.2 National Categorical Pretreatment Standards

Users subject to categorical pretreatment standards are required to comply with applicable standards as set out in 40 CFR Chapter 1, Subchapter N, Parts 405-471 and incorporated herein.

- (a) Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the POTW Director may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).
- (b) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the POTW Director shall impose an alternate limit using the combined wastestream formula in 40 CFR 403.6(e).
- (c) A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.
- (d) A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.

2.3 Local Limits

An industrial waste survey is required prior to a User discharging wastewater containing in excess of the following average discharge limits.

BOD	250	mg/l	
TSS	250	mg/l	
NH ₃	25	mg/l	
Arsenic	0.003	mg/l	
Cadmium	0.003	mg/l	
Chromium	0.05	mg/l	(total chromium)
Copper	0.061	mg/l	
Cyanide	0.015	mg/l	
Lead	0.049	mg/l	
Mercury	0.0003	mg/l	
Nickel	0.021	mg/l	
Silver	0.005	mg/l	
Zinc	0.175	mg/l	

Industrial Waste Survey information will be used to develop user-specific local limits when necessary to ensure that the POTW's maximum allowable headworks loading are not exceeded for particular pollutants of concern. User-specific local limits for appropriate pollutants of concern shall be included in wastewater permits. The POTW Director may impose mass based limits in addition to, or in place of concentration based limits.

2.4 State Requirements

State requirements and limitations on discharges shall apply in any case where they are more stringent than Federal requirements and limitations or those in this ordinance.

2.5 Right of Revision

The Town reserves the right to establish limitations and requirements which are more stringent than those required by either State or Federal regulation if deemed necessary to comply with the objectives presented in section [1.1] of this ordinance or the general and specific prohibitions in section [2.1] of this ordinance, as is allowed by 40 CFR 403.4.

2.6 Dilution

No user shall ever increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the National categorical pretreatment standards, unless expressly authorized by an

applicable pretreatment standard, or in any other pollutant-specific limitation developed by the Town or State.

2.7 Pretreatment of Wastewater

(a) Pretreatment Facilities

Users shall provide wastewater treatment as necessary to comply with this ordinance and wastewater permits issued under section [4.2] of this ordinance and shall achieve compliance with all national categorical pretreatment standards, local limits, and the prohibitions set out in section [2.1] of this ordinance within the time limitations as specified by EPA, the State, or the POTW Director, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the Town for review, and shall be approved by the POTW Director before construction of the facility. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the Town under the provisions of this ordinance. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be approved by the POTW Director prior to the user's initiation of the changes.

(b) Additional Pretreatment Measures

1. Whenever deemed necessary, the POTW Director may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage waste streams from industrial waste streams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this ordinance.
2. The POTW Director may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.
3. Grease, oil, and sand interceptors shall be provided when, in the opinion of the POTW Director, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the POTW Director and shall be so located to be easily accessible for cleaning and inspection. Such interceptors

shall be inspected, cleaned, and repaired regularly, as needed, by the user at their expense.

4. Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

2.8 Accidental Discharge/Slug Control Plans

(a) The POTW Director shall evaluate whether each significant industrial user needs a plan or other action to control and prevent slug discharges and accidental discharges as defined in Section **[1.2(a)(36)]**. Such evaluation will be based on information provided to the Director by the SIU, as well as information gathered in the course of administering the POTW system. All SIUs must be evaluated within one year of being designated an SIU. The POTW Director may require any user to develop, submit for approval, and implement such a plan or other specific action. Alternatively, the POTW Director may develop such a plan for any user.

(b) All SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load.

(c) An accidental discharge/slug control plan shall address, at a minimum, the following:

- (1) Description of discharge practices, including non-routine batch discharges;
- (2) Description of stored chemicals;
- (3) Procedures for immediately notifying the POTW Director of any accidental or slug discharge, as required by section **[5.6]** of this ordinance; and
- (4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

2.9 Hauled Wastewater

(a) Septic tank waste may be introduced into the POTW only at locations designated by the POTW Director, and at such times as are established by the POTW Director. Such waste shall not violate section **[2]** of this ordinance or any other requirements established by the Town. The POTW Director may require septic tank waste haulers to obtain wastewater discharge permits.

(b) The POTW Director shall require haulers of industrial waste to obtain wastewater discharge permits. The POTW Director may require generators of hauled industrial waste to obtain wastewater discharge permits. The POTW Director also may

prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this ordinance.

- (c) Industrial waste haulers may discharge loads only at locations designated by the POTW Director. No load may be discharged without prior consent of the POTW Director. The POTW Director may collect samples of each hauled load to ensure compliance with applicable standards. The POTW Director may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.
- (d) Industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

SECTION 3 - FEES

3.1 Purpose

It is the purpose of this section to provide for the recovery of costs from users of the wastewater disposal system of the Town for the implementation of the program established herein. The applicable charges or fees shall be set forth in a schedule of sewer use charges and fees by the POTW Director and approved by the Town Board. A copy of these charges and fees will be made available from the POTW Director.

3.2 User Charges

A user charge shall be levied on all users including, but not limited to, persons, firms, corporations or governmental entities that discharge, cause or permit the discharge of sewage into the POTW.

- (a) The user charge shall reflect, at least, the cost of debt service, operation and maintenance (including replacement) of the POTW.
- (b) Each user shall pay its proportionate cost based on volume of flow.
- (c) The Manager of the Town shall review annually the sewage contributions of users, the total costs of debt service, operation and maintenance of the POTW and will make recommendations to the Council or Board serving the Town for adjustments in the schedule of charges and fees as necessary.
- (d) Charges for flow to the POTW not directly attributable to the users shall be distributed among all users of the POTW based upon the volume of flow of the users.

3.3 Surcharges

Surcharges shall be based upon the volume of flow and the character and concentration of the constituents of the wastewater as follows.

- (a) The volume of flow used in determining the total discharge of wastewater for payment of user charges and surcharges shall be based on the following:
 - (1) Metered water consumption as shown in the records of meter readings maintained by the Town; or
 - (2) If required by the Town or at the individual dischargers option, other flow monitoring devices which measure the actual volume of wastewater discharged to the sewer. Such devices shall be accessible and safely located, and the measuring system shall be installed in accordance with plans approved by the Town. The metering system shall be installed and maintained at the users expense according to arrangements that may be made with the Town.
 - (3) Where any user procures all or part of his water supply from sources other than the Town, the user shall install and maintain at his own expense a flow measuring device of a type approved by the Town.

- (b) The character and concentration of the constituents of the wastewater used in determining surcharges shall be determined by samples collected and analyzed by the Town. Samples shall be collected in such a manner as to be representative of the actual discharge and shall be analyzed using procedures set forth in 40 CFR Part 136.
- (c) The determination of the character and concentration of the constituents of the wastewater discharge by the POTW Director or his duly appointed representatives shall be binding as a basis for charges.

3.4 Pretreatment Program Administration Charges

The schedule of charges and fees adopted by the Town may include charges and fees for:

- (a) reimbursement of costs of setting up and operating the Pretreatment Program;
- (b) monitoring, inspections and surveillance procedures;
- (c) reviewing slug control plans, including accidental and/or slug load discharge procedures and construction plans and specifications;
- (d) permitting;
- (e) other fees as the Town may deem necessary to carry out the requirements of the Pretreatment Program.

SECTION 4 - WASTEWATER DISCHARGE PERMIT APPLICATION AND ISSUANCE

4.1 Wastewater Dischargers

It shall be unlawful for any person to connect or discharge to the POTW without first obtaining the permission of the Town. When requested by the POTW Director, a user must submit information on the nature and characteristics of its wastewater within thirty (30) days of the request. The POTW Director is authorized to prepare a form for this purpose and may periodically require users to update this information.

4.2 Wastewater Permits

All significant industrial users shall obtain a significant industrial user permit prior to the commencement of discharge to the POTW. Existing industrial users who are determined by the POTW Director to be significant industrial users shall apply for a significant industrial user permit within 90 days of receiving notification of the POTW Director's determination. Industrial users who do not fit the significant industrial user criteria may at the discretion of the POTW Director upon review of information provided by the SIU and after consultation with the Town engineer and review of applicable State regulations and permits issued to the Town, be required to obtain a wastewater discharge permit for non-significant industrial users.

(a) **Significant Industrial User Determination**

All persons proposing to discharge non-domestic wastewater, or proposing to change the volume or characteristics of an existing discharge of non-domestic wastewater shall request from the POTW Director a significant industrial user determination. If the POTW Director determines that the proposed discharge fits the significant industrial user criteria, he will require that a significant industrial user permit application be filed.

(b) **Significant Industrial User Permit Application**

Users required to obtain a significant industrial user permit shall complete and file with the Town, an application in the form prescribed by the POTW Director, and accompanied by an application fee in the amount prescribed in the schedule of charges and fees. Significant industrial users shall apply for a significant industrial user permit within 90 days after notification of the POTW Director's determination in **[4.2(a)]** above. In support of the application, the user shall submit, in units and terms appropriate for evaluation, the following information:

- (1) Name, address, and location, (if different from the address);
- (2) Standard Industrial Classification (SIC) codes for pretreatment, the industry as a whole, and any processes for which categorical pretreatment standards have been promulgated;

- (3) Analytical data on wastewater constituents and characteristics including but not limited to those mentioned in section [2] of this ordinance, any of the priority pollutants (section 307(a) of the Act) which the applicant knows or suspects are present in the discharge as determined by a reliable analytical laboratory, and any other pollutant of concern to the POTW; sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to section 304(g) of the Act and contained in 40 CFR, Part 136, as amended and as required in Sections 5.10 and 5.11;
- (4) Time and duration of the indirect discharge;
- (5) Average daily and 30 minute peak wastewater flow rates, including daily, monthly and seasonal variations if any;
- (6) Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, floor drains, sewer connections, direction of flow and appurtenances by the size, location and elevation;
- (7) Description of activities, facilities and plant processes on the premises including all materials which are or could be accidentally or intentionally discharged;
- (8) Where known, the nature and concentration of any pollutants in the discharge which are limited by any Town, State, or Federal Pretreatment Standards, and a statement regarding whether or not the pretreatment standards are being met on a consistent basis and if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the user to meet applicable pretreatment standards;
- (9) If additional pretreatment and/or O&M will be required to meet the pretreatment standards; the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard. The following conditions apply to this schedule:
 - (i) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards. No increment in the schedule shall exceed nine (9) months.
 - (ii) No later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the POTW Director including, at a minimum, whether or not it complied with the increment of progress, the reason for any delay, and if appropriate, the steps being taken by the user to return to the established schedule. In no event shall more

than nine (9) months elapse between such progress reports to the POTW Director.

- (10) Each product produced by type, amount, process or processes and rate of production;
- (11) Type and amount of raw materials processed (average and maximum per day);
- (12) Number and type of employees, and hours of operation of plant and proposed or actual hours of operation of pretreatment system;
- (13) If subject to a categorical standard, a baseline monitoring report in accordance with 40 CFR 403.12(b) and 15A NCAC 2H .0908(a), as outlined in section **[5.1]** of this ordinance.
- (14) Any other information as may be deemed by the POTW Director to be necessary to evaluate the permit application.

(c) Application Signatories and Certification

All wastewater discharge permit applications and user reports must be signed by the current authorized representative of the user on file with the Control Authority and/or Municipality as defined in Section **[1.2(a)(3)]** and contain the following certification statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

(d) Application Review And Evaluation

The POTW Director will evaluate the data furnished by the user and may require additional information.

- (1) The POTW Director is authorized to accept applications for the Town and shall refer all applications to the POTW staff for review and evaluation.
- (2) Within 30 days of receipt the POTW Director shall acknowledge and accept the complete application; or if not complete, shall return the application to the applicant with a statement of what additional information is required.

(e) Tentative Determination and Draft Permit

- (1) The POTW staff shall conduct a review of the application and an on-site inspection of the significant industrial user, including any pretreatment facilities, and shall prepare a written evaluation and tentative determination to issue or deny the significant industrial user permit. The tentative determination issued under this section is not a final determination from the Town, shall not be binding on the Town, shall not permit any discharge into the POTW, and is prepared solely for the applicant's assistance in obtaining any additional approvals required for operation.
 - (2) If the staff's tentative determination in Paragraph (1) above is to issue the permit, the following additional determinations shall be made in writing:
 - (i) proposed discharge limitations for those pollutants proposed to be limited;
 - (ii) a proposed schedule of compliance, including interim dates and requirements, for meeting the proposed limitations; and
 - (iii) a brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.
 - (3) The staff shall organize the determinations made pursuant to Paragraphs (1) and (2) above and the general permit conditions of the Town into a significant industrial user permit.
- (f) Permit Synopsis
- A fact sheet providing a brief synopsis of the application shall be prepared by the POTW staff for submission to the applicant and the approval authority and shall be made available to the public upon request. The contents of such fact sheets shall include at least the following information:
- (1) a sketch and detailed description of the industrial facilities and pretreatment facilities including the location of all points of discharge to the POTW and all established compliance monitoring points.
 - (2) a quantitative description of the discharge described in the application which includes at least the following:
 - (i) the rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow;
 - (ii) the actual average daily discharge in pounds per day of any limited pollutant and any pollutant identified in the application as known or suspected present; and,
 - (iii) the basis for the pretreatment limitations including the documentation of any calculations in applying categorical pretreatment standards.
- (g) Final Action On Significant Industrial User Permit Applications

- (1) The POTW Director shall take final action on all applications not later than 90 days following receipt of a complete application.
- (2) The POTW Director is authorized to:
 - (i) issue a significant industrial user permit containing such conditions as are necessary to effectuate the purposes of this ordinance and N.C.G.S. 143-215.1;
 - (ii) issue a significant industrial user permit containing time schedules for achieving compliance with applicable pretreatment standards and requirements;
 - (iii) modify any permit upon not less than 60 days notice and pursuant to section **[4.2(i)]** of this ordinance;
 - (iv) revoke any permit pursuant to section **[8.1]** of this ordinance;
 - (v) suspend a permit pursuant to section **[8.1]** of this Ordinance;
 - (vi) deny a permit application when in the opinion of the POTW Director such discharge may cause or contribute to pass-through or interference of the wastewater treatment plant or where necessary to effectuate the purposes of N.C.G.S. § 143-215.1.
- (h) Hearings. The local government may conduct hearings in accordance with its regular hearing procedure.
 - (1) Initial Adjudicatory Hearing. An applicant whose permit is denied, or is granted subject to conditions he deems unacceptable; a permittee/user assessed a civil penalty under section **[8.3]**; or one issued an administrative order under section **[8.1]** shall have the right to an adjudicatory hearing before a hearing officer designated by the POTW Director upon making written demand, identifying the specific issues to be contested, to the POTW Director within 30 days following receipt of the significant industrial user permit, civil penalty assessment, or administrative order. Unless such written demand is made within the time specified herein, the action shall be final and binding. The hearing officer shall make a final decision on the contested permit, penalty, or order within **[45]** days of the receipt of the written demand for a hearing. The POTW Director shall transmit a copy of the hearing officer's decision by registered or certified mail.
 - (i) New Permits. Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a newly issued permit, the terms and conditions of the entire permit are stayed and the permit is not in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.

- (ii) Renewed Permits. Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a renewed permit, the terms and conditions of the existing permit remain in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
- (2) Final Appeal Hearing. Any decision of a hearing officer made as a result of an adjudicatory hearing held under section **[4.2(h)(1)]** above may be appealed, to the Town Board upon filing a written demand within 10 days of receipt of notice of the decision. Hearings held under this Subdivision shall be conducted in accordance with local hearing procedures in place at the time of the hearing. Failure to make written demand within the time specified herein shall bar further appeal. The Town Board shall make a final decision on the appeal within 90 days of the date the appeal was filed and shall transmit a written copy of its decision by registered or certified mail.
 - (3) Official record. When a final decision is issued under section **[4.2(h)(2)]** above, the Town Board shall prepare an official record of the case that includes:
 - (i) All notices, motions, and other like pleadings;
 - (ii) A copy of all documentary evidence introduced;
 - (iii) A certified transcript of all testimony taken, if testimony is transcribed. If testimony is taken and not transcribed, then a narrative summary of any testimony taken.
 - (iv) A copy of the final decision of the Town Board.
 - (4) Judicial Review. Any person against whom a final order or decision of the Town Board is entered, pursuant to the hearing conducted under section **[4.2(h)(2)]** above, may seek judicial review of the order or decision by filing a written petition within 30 days after receipt of notice by registered or certified mail of the order or decision with the Superior Court of Montgomery County. Within 30 days after receipt of the copy of the petition of judicial review, the Town Board shall transmit to the reviewing court the original or a certified copy of the official record.
- (i) Permit Modification
 - (1) Modifications of permits shall be subject to the same procedural requirements as the issuance of permits. Notwithstanding the foregoing, the following modifications are deemed minor modifications, and may be made by the POTW Director at his discretion:
 - (i) changes in the ownership of the discharge when no other change in the permit is indicated,

- (ii) a single modification of any compliance schedule not in excess of four months,
- (iii) modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational.

Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

- (2) Within 9 months of the promulgation of a National categorical pretreatment standard, the wastewater discharge permit of users subject to such standards shall be revised to require compliance with such standard within the time frame prescribed by such standard. Where a user, subject to a National categorical pretreatment standard, has not previously submitted an application for a wastewater discharge permit as required by section **[4.2(b)]**, the user shall apply for a wastewater discharge permit within 180 days after the promulgation of the applicable National categorical pretreatment standard.
- (3) A request for a modification by the permittee shall constitute a waiver of the 60-day notice required by G.S. 143-215.1(b) for modifications.

(j) Permit Conditions

- (1) The POTW Director shall have the authority to grant a permit with such conditions attached as he believes necessary to achieve the purpose of this ordinance and N.C.G.S. 143-215.1. Wastewater permits shall contain, but are not limited to, the following:
 - (i) a statement of duration (in no case more than five years);
 - (ii) a statement of non-transferability;
 - (iii) applicable effluent limits based on categorical standards or local limits or both;
 - (iv) applicable monitoring, sampling, reporting, notification, and record keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on Federal, State and local law;
 - (v) requirements for notifying the POTW in the event of an accidental discharge or slug load as defined in Section **[1.2(a)(36)]**;
 - (vi) requirements to implement a Plan or other controls for prevention of accidental discharges and/or slug loads as defined in Section **[1.2(a)(36)]**, if determined by the POTW Director to be necessary for the user;
 - (vii) requirements for immediately notifying the POTW of any changes at its facility affecting the potential for spills and other accidental discharges, or slug load as defined in **[1.2(a)(36)]**; and

- (viii) a statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule.
- (2) In addition, permits may contain, but are not limited to, the following:
- (i) Limits on the average and/or maximum rate of discharge, and/or requirements for flow regulation and equalization.
 - (ii) Limits on the instantaneous, daily and monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties.
 - (iii) Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.
 - (iv) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the municipal wastewater system.
 - (v) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system.
 - (vi) Requirements for installation and maintenance of inspection and sampling facilities and equipment.
 - (vii) Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.
 - (vii) Requirements for immediate reporting of any instance of noncompliance and for automatic resampling and reporting within thirty (30) days where self-monitoring indicates a violation(s).
 - (ix) Compliance schedules for meeting pretreatment standards and requirements.
 - (x) Requirements for submission of periodic self-monitoring or special notification reports.
 - (xi) Requirements for maintaining and retaining plans and records relating to wastewater discharges as specified in section **[5.13]** and affording the POTW Director, or his representatives, access thereto.
 - (xii) Requirements for prior notification and approval by the POTW Director of any new introduction of wastewater pollutants or of any significant change in the volume or character of the wastewater prior to introduction in the system.

- (xiii) Requirements for the prior notification and approval by the POTW Director of any change in the manufacturing and/or pretreatment process used by the permittee.
 - (xiv) A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the terms of the permit.
 - (xv) Other conditions as deemed appropriate by the POTW Director to ensure compliance with this ordinance, and State and Federal laws, rules, and regulations.
- (k) Permit Duration
- Permits shall be issued for a specified time period, not to exceed five (5) years. A permit may be issued for a period less than a year or may be stated to expire on a specific date.
- (l) Permit Transfer
- Wastewater permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user, different premises, or a new or changed operation.
- (m) Permit Reissuance
- A significant industrial user shall apply for permit reissuance by submitting a complete permit application in accordance with section [4.2] a minimum of 180 days prior to the expiration of the existing permit.

SECTION 5 - REPORTING REQUIREMENTS

5.1 Baseline Monitoring Reports

- (a) Within either one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the POTW Director a report which contains the information listed in paragraph **[(b)]**, below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the POTW Director a report which contains the information listed in paragraph **[(b)]**, below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.
- (b) Users described above shall submit the information set forth below.
- (1) Identifying Information. The name and address of the facility, including the name of the operator and owner.
 - (2) Environmental Permits. A list of any environmental control permits held by or for the facility.
 - (3) Description of Operations. A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.
 - (4) Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula set out in 40 CFR 403.6(e).
 - (5) Measurement of Pollutants.
 - (i) The categorical pretreatment standards applicable to each regulated process.
 - (ii) The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the POTW Director, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in section **[5.10]** of this ordinance.

- (iii) Sampling must be performed in accordance with procedures set out in section **[5.11]** of this ordinance and 40 CFR 403.12(b) and (g), including 40 CFR 403.12(g)(4).
- (6) Certification. A statement, reviewed by the user's current authorized representative as defined in Section **[1.2(a)(3)]** and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.
- (7) Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in section **[5.2]** of this ordinance.
- (8) Signature and Certification. All baseline monitoring reports must be signed and certified in accordance with section **[4.2(c)]** of this ordinance.

5.2 Compliance Schedule Progress Reports

The following conditions shall apply to the compliance schedule required by section **[5.1(b)(7)]** of this ordinance:

- (a) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);
- (b) No increment referred to above shall exceed nine (9) months;
- (c) The user shall submit a progress report to the POTW Director no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and
- (d) In no event shall more than nine (9) months elapse between such progress reports to the POTW Director.

5.3 Reports on Compliance with Categorical Pretreatment Standard, Deadline

Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the POTW Director a report containing the information described in section **[5.1(b)(4-6)]** of this ordinance. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with section **[4.2(c)]** of this ordinance.

5.4 Periodic Compliance Reports

At the discretion of the POTW Director, the Town may sample and analyze user discharges in lieu of requiring the users to conduct sampling and analysis. In the absence of an exercise of such discretion:

- (a) Unless the applicable permit provides a different frequency, every six months, all significant industrial users shall submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the applicable flows for the reporting period. Sampling and analysis must be performed in accordance with procedures set out in section **[5.10 and 5.11]** of this ordinance. All periodic compliance reports must be signed and certified in accordance with section **[4.2(c)]** of this ordinance.
- (b) The POTW Director may request periodic compliance reports at a greater frequency to ensure compliance with the provisions of this ordinance, or to investigate suspected noncompliance.
- (c) If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the POTW Director, using the procedures prescribed in section **[5.10 and 5.11]** of this ordinance, the results of this monitoring shall be included in the report.

5.5 Reports of Changed Conditions

Each user must notify the POTW Director of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least [thirty (30)] days before the change. See Section 5.6(d) for other reporting requirements.

- (a) The POTW Director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under section [4.2] of this ordinance.
- (b) The POTW Director may issue a wastewater discharge permit under section [4.2] of this ordinance or modify an existing wastewater discharge permit under section [4.2] of this ordinance in response to changed conditions or anticipated changed conditions.
- (c) For purposes of this requirement, significant changes include, but are not limited to, flow increases of twenty percent (20%) or greater, and the discharge of any previously unreported pollutants.

5.6 Reports of Potential Problems

- (a) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug load as defined in Section [1.2(a)(36)], that may cause potential problems for the POTW, the user shall immediately telephone and notify the POTW Director of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.
- (b) Within five (5) days following such discharge, the user shall, unless waived by the POTW Director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this ordinance.
- (c) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in paragraph (a), above. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.
- (d) All SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load as defined in Section [1.2(a)(36)].

5.7 Reports from Unpermitted Users

All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the POTW Director as the POTW Director may require.

5.8 Notice of Violation/Repeat Sampling and Reporting

- (a) If sampling performed by a user indicates a violation, the user must notify the POTW Director within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the POTW Director within thirty (30) days after becoming aware of the violation. If allowed by the POTW Director, the user is not required to resample:
 - (i) if the POTW Director monitors at the user's facility at least once a month; or
 - (ii) if the POTW Director samples between the user's initial sampling and when the user receives the results of this sampling.
- (b) If the POTW Director does not require the user to perform any self-monitoring and the POTW sampling of the user indicates a violation, the POTW Director shall repeat the sampling and obtain the results of the repeat analysis within thirty (30) days after becoming aware of the violations, unless one of the following occurs:
 - (i) the POTW Director monitors at the user's facility at least once a month; or
 - (ii) the POTW Director samples the user between their initial sampling and when the POTW receives the results of this initial sampling; or
 - (iii) the POTW Director requires the user to perform sampling and submit the results to the POTW Director within the 30 day deadline of the POTW becoming aware of the violation.

5.9 Notification of the Discharge of Hazardous Waste

The Town prohibits the discharge of any hazardous wastes without notification and approval of the POTW Director.

- (a) Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharge during the calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180)

days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharge. However, notifications of changed conditions must be submitted under section [5.5] of this ordinance. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of sections [5.1, 5.3, and 5.4] of this ordinance.

- (b) Dischargers are exempt from the requirements of paragraph [(a)], above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specific in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.
- (c) In the case of any new regulation under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the POTW Director, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.
- (d) In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- (e) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this ordinance, a permit issued thereunder, or any applicable Federal or State law.

5.10 Analytical Requirements

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by EPA.

5.11 Grab and Composite Sample Collection

- (a) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean,

and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

- (b) Grab Samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, volatile organic compounds, and any other pollutants as required by 40 CFR 136. The POTW shall determine the number of grabs necessary to be representative of the User's discharge. See 40 CFR 403.12(g)(5) for additional grab sample number requirements for BMR and 90 Day Compliance Reports. Additionally, the POTW Director may allow collection of multiple grabs during a 24 hour period which are composited prior to analysis as allowed under 40 CFR 136.
- (c) Composite Samples: All wastewater composite samples shall be collected with a minimum of hourly aliquots or grabs for each hour that there is a discharge. All wastewater composite samples shall be collected using flow proportional composite collection techniques, unless time-proportional composite sampling or grab sampling is authorized by the POTW Director. When authorizing time-proportional composites or grabs, the samples must be representative and the decision to allow the alternative sampling must be documented.

5.12 Timing

Written reports will be deemed to have been submitted on the date postmarked. For reports which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.

5.13 Record Keeping

Users subject to the reporting requirements of this ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this ordinance and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the user or the Town, or where the user has been specifically notified of a longer retention period by the POTW Director.

5.14 Electronic Reporting

The POTW Director may develop procedures for receipt of electronic reports for any reporting requirements of this Ordinance. Such procedures shall comply with 40 CFR Part 3. These procedures shall be enforceable under Section 8 of this Ordinance.

SECTION 6 - COMPLIANCE MONITORING

6.1 Monitoring Facilities

The Town requires the user to provide and operate at the user's own expense, monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer and/or internal drainage systems. The monitoring facility should normally be situated on the user's premises, but the Town may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles.

There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user.

Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the requirements of the Town and all applicable local construction standards and specifications. Construction shall be completed within 90 days following written notification by the Town.

6.2 Inspection and Sampling

The Town will inspect the facilities of any user to ascertain whether the purpose of this ordinance is being met and all requirements are being complied with. Persons or occupants of premises where wastewater is created or discharged shall allow the Town, approval authority and EPA or their representative ready access at all reasonable times to all parts of the premises for the purposes of inspection, sampling, records examination and copying or in the performance of any of their duties. The Town, approval authority and EPA shall have the right to set up on the user's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. Where a user has security measures in force which would require proper identification and clearance before entry into their premises, the user shall make necessary arrangements with their security guards so that upon presentation of suitable identification, personnel from the Town, approval authority and EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities. Denial of the POTW Director's approval authority's, or EPA's access to the user's premises shall be a violation of this ordinance. Unreasonable delays may constitute denial of access.

6.3 Search Warrants

If the POTW Director, approval authority, or EPA has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine

inspection and sampling program of the Town designed to verify compliance with this ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the POTW Director, approval authority, or EPA may seek issuance of a search warrant from the court having jurisdiction within the Town.

SECTION 7 - CONFIDENTIAL INFORMATION

Information and data on a user obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the POTW Director that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user. Any such request must be asserted at the time of submission of the information or data.

When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available upon written request to governmental agencies for uses related to this ordinance, the National Pollutant Discharge Elimination System (NPDES) Permit, Non-discharge permit and/or the pretreatment programs; provided, however, that such portions of a report shall be available for use by the State or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

All records relating to compliance with Pretreatment Standards shall be made available to officials of the approval authority and EPA upon request.

SECTION 8 - ENFORCEMENT

8.1 Administrative Remedies

(a) Notification Of Violation

Whenever the POTW Director finds that any user has violated or is violating this Ordinance, wastewater permit, or any prohibition, limitation or requirements contained therein or any other pretreatment requirement the POTW Director may serve upon such a person a written notice stating the nature of the violation. Within 30 days from the date of this notice, an explanation for the violation and a plan for the satisfactory correction thereof shall be submitted to the Town by the user. Submission of this plan does not relieve the discharger of liability for any violations occurring before or after receipt of the notice of violation.

(b) Consent Orders

The POTW Director is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the discharger to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as an administrative order issued pursuant to section **[8.1(d)]**, below.

(c) Show Cause Hearing

The POTW Director may order any user who causes or is responsible for an unauthorized discharge, has violated this ordinance or is in noncompliance with a wastewater discharge permit to show cause why a proposed enforcement action should not be taken. In the event the POTW Director determines that a show cause order should be issued, a notice shall be served on the user specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days before the hearing. Service may be made on any agent or officer of a corporation.

The POTW Director shall review the evidence presented at the hearing and determine whether the proposed enforcement action is appropriate.

A show cause hearing under this section is not a prerequisite to the assessment of a civil penalty under section **[8.3]** nor is any action or inaction taken by the POTW

Director under this section subject to an administrative appeal under section [4.2(h)].

(d) Administrative Orders

When the POTW Director finds that a user has violated or continues to violate this ordinance, permits, or orders issued hereunder, or any other pretreatment requirement the POTW Director may issue an order to cease and desist all such violations and direct those persons in noncompliance to do any of the following:

- (1) Immediately comply with all requirements;
- (2) Comply in accordance with a compliance time schedule set forth in the order;
- (3) Take appropriate remedial or preventive action in the event of a continuing or threatened violation;
- (4) Disconnect unless adequate treatment facilities, devices or other related appurtenances are installed and properly operated within a specified time period.

(e) Emergency Suspensions

The POTW Director may suspend the wastewater treatment service and/or wastewater permit when such suspension is necessary in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons or the environment, interferes with the POTW or causes the POTW to violate any condition of its NPDES or Non-discharge permit.

Any user notified of a suspension of the wastewater treatment service and/or the wastewater permit shall immediately stop or eliminate the contribution. A hearing will be held within 15 days of the notice of suspension to determine whether the suspension may be lifted or the user's waste discharge permit terminated. In the event of a failure to comply voluntarily with the suspension order, the POTW Director shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any individuals. The POTW Director shall reinstate the wastewater permit and the wastewater treatment service upon proof of the elimination of the noncompliant discharge. The industrial user shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the POTW Director prior to the date of the above-described hearing.

(f) Termination of Permit or Permission to Discharge

The POTW Director may revoke a wastewater discharge permit or terminate permission to discharge for good cause, including, but not limited to, the following reasons:

- (1) Failure to accurately report the wastewater constituents and characteristics of his discharge;
- (2) Failure to report significant changes in operations, or wastewater constituents and characteristics;
- (3) Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or,
- (4) Violation of conditions of the permit or permission to discharge, conditions of this ordinance, or any applicable State and Federal regulations.

Noncompliant users will be notified of the proposed termination of their wastewater permit or permission to discharge and will be offered an opportunity to show cause under section [8.1] of this ordinance why the proposed action should not be taken.

8.2 Special Administrative Remedies for Campgrounds

Campground sewer use presents unique circumstances with regard to the Ordinance and its enforcement. Campgrounds, because of their dense development and the temporary nature of the hookups, require a different treatment within this Ordinance; specifically, the likelihood of improper hookups and installations make it is vital that these users be diligent in their connection to and use of the service provided connections to ensure the sewer system serving these communities complies with all local and State regulations. Furthermore, because Campgrounds are frequently used by visitors, tourists, and users other than the registered owner of the individual lot, additional notice and compliance requirements are appropriate to ensure the integrity and safe operation of the POTW.

- (a) When the POTW Director finds that the user(s) or owner(s) of an individual camp site or a cluster of camp sites within a Campground has violated or continues to violate this ordinance, permits or orders issued hereunder, or has failed to provide adequate payment to the Town for sewer service, the POTW Director may issue a notice of violation under this ordinance.
- (b) When such violations or failure of payment occur, the POTW Director shall provide notice to the owner or operator of the Campground in which the individual camp site is located of the violation, including a copy of the notice of violation issued to the user or owner. The owner or operator of the Campground shall use reasonable efforts to assist in resolving the violation, including, but not limited to, contacting the individual owner of the camp site, posting notices of violation in public areas within the Campground, and/or providing notice to owners of individual sites of their obligations to comply with this Ordinance.
- (c) The user(s) or owner(s) of the individual camp site(s) in receipt of a notice pursuant to this section shall remedy the violation within seven (7) days of receipt of the notice

of violation. If the nature of the violation is such that it cannot practically be remedied within seven (7) days, the user(s) or owner(s) shall provide the POTW Director an explanation, in writing, of the circumstances preventing timely remediation. The POTW Director will then, at his or her discretion, establish a deadline for completion of remediation.

- (d) If the user(s) or owner(s) of the individual camp site(s) for which a notice of violation was issued fail to resolve the cited violations within seven (7) days of receipt, or fail to provide the explanation described above to the POTW Director within seven (7) days, or if the owners or operators of the Campground in which the violation(s) occurred fail to make reasonable efforts to ensure compliance with the Ordinance, the POTW Director may, in his or her discretion, issue a citation imposing civil penalties for the violation in accordance with Section 8.3 of this Ordinance and/or seek any other remedy available under Section 8.4 of this Ordinance.

8.3 Civil Penalties

- (a) Any user who is found to have failed to comply with any provision of this ordinance, or the orders, rules, regulations and permits issued hereunder, may be fined up to twenty-five thousand dollars (\$25,000) per day per violation.
 - a. Penalties between \$10,000 and \$25,000 per day per violation may be assessed against a violator only if:
 - i. For any class of violation, only if a civil penalty has been imposed against the violator within the five years preceding the violation, or
 - ii. In the case of failure to file, submit, or make available, as the case may be, any documents, data, or reports required by this ordinance, or the orders, rules, regulations and permits issued hereunder, only if the POTW Director determines that the violation was intentional and a civil penalty has been imposed against the violator within the five years preceding the violation.
- (b) In determining the amount of the civil penalty, the POTW Director shall consider the following:
 - (i) The degree and extent of the harm to the natural resources, to the public health, or to public or private property resulting from the violation;
 - (ii) The duration and gravity of the violation;
 - (iii) The effect on ground or surface water quantity or quality or on air quality;
 - (iv) The cost of rectifying the damage;
 - (v) The amount of money saved by noncompliance;
 - (vi) Whether the violation was committed willfully or intentionally;

- (vii) The prior record of the violator in complying or failing to comply with the pretreatment program;
 - (viii) The costs of enforcement to the Town.
- (c) Appeals of civil penalties assessed in accordance with this section shall be as provided in section **[4.2(h)]**.

8.4 Other Available Remedies

Remedies, in addition to those previously mentioned in this ordinance, are available to the POTW Director who may use any single one or combination against a noncompliant user. Additional available remedies include, but are not limited to:

- (a) **Criminal Violations.**
The District Attorney for the applicable Judicial District may, at the request of the Town, prosecute noncompliant users who violate the provisions of N.C.G.S. 143-215.6B. [Note: Under North Carolina law, it is a crime to negligently violate any term, condition, or requirement of a pretreatment permit, or negligently fail to apply for a pretreatment permit, issued by local governments (G.S. 143-215.6B(f)), to knowingly and willfully violate any term, condition, or requirement of a pretreatment permit, or knowingly and willfully fail to apply for a pretreatment permit, issued by local governments (G.S. 143-215.6B(g)), to knowingly violate any term, condition, or requirement of a pretreatment permit issued by local governments, or knowingly fail to apply for a pretreatment permit, knowing at the time that a person is placed in imminent danger of death or serious bodily injury, (G.S. 143-215.6B(h)), and to falsify information required under Article 21 of Chapter 143 of the General Statutes (G.S. 143-215.6B(i)).]
- (b) **Injunctive Relief**
Whenever a user is in violation of the provisions of this ordinance or an order or permit issued hereunder, the POTW Director, through the Town Attorney, may petition the Superior Court of Justice for the issuance of a restraining order or a preliminary and permanent injunction which restrains or compels the activities in question.
- (c) **Water Supply Severance**
Whenever an industrial user is in violation of the provisions of this ordinance or an order or permit issued hereunder, water service to the industrial user may be severed and service will only recommence, at the user's expense, after it has satisfactorily demonstrated ability to comply.
- (d) **Public Nuisances**

Any violation of the prohibitions or effluent limitations of this ordinance or of a permit or order issued hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed by the POTW Director. Any person(s) creating a public nuisance shall be subject to the provisions of the appropriate ordinances of the Town governing such nuisances, including reimbursing the POTW for any costs incurred in removing, abating or remedying said nuisance.

SECTION 9 - ANNUAL PUBLICATION OF SIGNIFICANT NONCOMPLIANCE

At least annually, the POTW Director shall publish in a newspaper of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW, a list of those industrial users which were found to be in significant noncompliance, also referred to as reportable noncompliance, in 15A NCAC 2H .0903(b)(10), with applicable pretreatment standards and requirements, during the previous 12 months.

SECTION 10 - AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

10.1 Upset

- (a) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of paragraph (b), below, are met.
- (b) A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (1) An upset occurred and the user can identify the cause(s) of the upset;
 - (2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
 - (3) The user has submitted the following information to the POTW Director within twenty-four (24) hours of becoming aware of the upset [if this information is provided orally, a written submission must be provided within five (5) days]:
 - (i) A description of the indirect discharge and cause of noncompliance;
 - (ii) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
 - (iii) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- (c) In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.
- (d) Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.
- (e) Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

10.2 Prohibited Discharge Standards Defense

A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in section **[2.1 (a)]** of this ordinance or the

specific prohibitions in sections **[2.1(b)(2), (3), 5-7), and (9-23)]** of this ordinance if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

- (a) A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or
- (b) No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the Town was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

10.3 Bypass

- (a) A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs **[(b)]** and **[(c)]** of this section.
- (b)
 - (1) If a user knows in advance of the need for a bypass, it shall submit prior notice to the POTW Director, at least ten (10) days before the date of the bypass, if possible.
 - (2) A user shall submit oral notice to the POTW Director of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of this time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The POTW Director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.
- (c)
 - (1) Bypass is prohibited, and the POTW Director may take an enforcement action against a user for a bypass, unless
 - (i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during

normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

- (iii) The user submitted notices as required under paragraph (b) of this section.
- (2) The POTW Director may approve an anticipated bypass, after considering its adverse effects, if the POTW Director determines that it will meet the three conditions listed in paragraph [(c)(1)] of this section.

SECTION 11 - SEVERABILITY

If any provision, paragraph, word, section or article of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, and chapters shall not be affected and shall continue in full force and effect.

SECTION 12 - CONFLICT

All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this ordinance are hereby repealed to the extent of such inconsistency or conflict.

SECTION 13 - EFFECTIVE DATE

This ordinance shall be effective when approved by the Town Board.

INTRODUCED the ____ day of _____, 20__.

FIRST READING: _____, 20__.

SECOND READING: _____, 20__.

PASSED this ____ day of _____, 20__.

AYES:

NAYS:

ABSENT:

NOT VOTING:

APPROVED this ____ day of _____, 20__.

MAYOR, of the Town

ATTEST: _____(Seal) Town Clerk

Published the ___ day of _____, 20__.

Brief Summary for Proposed Land Use Amendments

Presented here are the following sections of proposed land use amendments being requested for review. There are no development changes proposed, only administrative, however some changes are being made to reduce repetitiveness and add clarity.

Items to be removed are marked with ~~RED STRIKETHROUGH~~ and those being added are in **RED BOLD UNDERLINE**. Only those sections of the chapters and ordinances being proposed for amendment are presented here.

The purposed of these changes are to come into compliance with Chapter 160D of the North Carolina General Statutes. Deadline for compliance to the Chapter 160D regulations is July 1, 2021.

ARTICLE 1. AUTHORITY AND PURPOSE

1.1 AUTHORITY.

These regulations are adopted pursuant to the authority vested in the Town of Mount Gilead by its charter, the Session laws, and the General Statutes of North Carolina, particularly Chapter ~~160A, Article 19, Part 3~~ **160D** and any special local legislation enacted by the General Assembly for the Town of Mount Gilead.

1.4 JURISDICTION.

These regulations govern the development of land and structures within the corporate limits and the extraterritorial zoning jurisdiction (**ETJ**) of the Town of Mount Gilead.

(A) For an extension of the ETJ, the Town shall provide mailed notice thirty (30) days prior to the ETJ Hearing. One hearing with a single mailed notice may be used for the ETJ extension and the initial zoning map amendment.

1.5 ZONING MAP.

The Board of Commissioners has adopted a Zoning Map entitled “Official Zoning Map, Town of Mount Gilead, NC” which is retained in the office of the Town Clerk. The Zoning Map sets out and delineates the zoning districts established in Article 4. The Zoning Map and notations thereon are hereby designated, established, and incorporated as a part of these regulations and shall be as much a part of these regulations as if they were fully described herein.

(A) Prior zoning maps will be kept and maintained for public inspection in either paper or digital formatting.

(B) Other local, state or federal maps incorporated by reference into the Official Zoning Map will be kept and maintained for public inspection in either paper or digital formatting.

(C) Copies of the zoning district map may be reproduced by any method of reproduction that gives legible and permanent copies and, when certified by the

Town Clerk in accordance with G.S. 160A-79, shall be admissible into evidence and shall have the same force and effect as would the original map.

ARTICLE 2. APPLICABILITY AND INTERPRETATION OF ORDINANCE

2.1 VESTED DEVELOPMENT RIGHTS.

- (A) **In General.** Any amendments, modifications, supplements, repeal or other changes in these regulations or the zoning maps shall not be applicable or enforceable without the consent of the owner with regard to buildings and uses:
- (1) For which a building permit has been issued prior to the effective date of the ordinance making the change so long as the permit remains valid and unexpired pursuant to G.S. ~~160A-418~~ 160D-108(d)(1) and the building permit has not been revoked pursuant to G.S. ~~160A-422~~ 160D-1111; or
 - (2) For which a zoning permit has been issued prior to the effective date of the ordinance making the change so long as the permit remains valid and unexpired pursuant to this article and G.S. 160D-108(d)(2); or
 - (3) For which a vested right has been established and remains valid and unexpired pursuant to this section.
- (B) ~~Additional Procedures for Establishing a Vested Right Site-Specific Vesting Plan.~~ A vested right to commence with a ~~planned development or~~ use of property according to a ~~site-specific development plan~~ site-specific vesting plan shall be established upon approval of a development site plan, ~~conditional~~ special use permit or conditional zoning district by the Town Board. The vested right thus established is subject to the terms and conditions of the ~~site~~ site-specific vesting plan. Only those design elements shown on or made a part of the ~~site~~ site-specific vesting plan or permit shall be vested.

The site-specific vesting plan shall at a minimum include the following:

- (1) Approximate boundaries of the site;
- (2) Significant topographical and other natural features affecting development of the site;
- (3) The approximate location on the site of the proposed buildings, structures, and other improvements;
- (4) The approximate dimensions, including height, of the proposed buildings and other structures; and
- (5) The approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways.

What constitutes a site-specific vesting plan shall be defined by the relevant development regulation, and the development approval that triggers vesting shall be so identified at the time of its approval. At a minimum, the regulation shall designate a vesting point earlier than the issuance of a building permit. A variance shall not constitute a site-specific vesting plan and approval of a site-specific vesting

plan with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained. If a sketch plan or other document fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property, it may not constitute a site-specific vesting plan.

(D) **Declaration of a vested right upon voluntary annexation.** A petition for annexation filed with the Town under G.S. 160A-31 or G.S. 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established. A statement that declares that no ~~zoning development~~ vested right has been established under G.S. ~~160A-385.1 or G.S. 153A-344.1~~ **160D-108**, or the failure to sign a statement declaring whether or not a ~~zoning development~~ vested right has been established shall be binding on the landowner, and any such zoning vested right which may have existed shall be terminated.

(E) **Multiphase Developments. A multiphase development shall be vested for the entire development with the zoning regulations, subdivision regulations, and other development ordinances in place at the time a site plan approval is granted for the initial phase of the multiphase development. This right shall remain vested for a period of seven (7) years from the time a site plan approval is granted for the initial phase of the multiphase development.**

For purposes of this subsection, "multiphase development" means a development containing 100 acres or more that:

- (1) Is submitted for site plan approval for construction to occur in more than one phase; and
- (2) Is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval.

2.2 PERMIT CHOICE.

If an application made in accordance with this ordinance is submitted for a development approval required pursuant to this G.S. 160D and a development regulation changes between the time the application was submitted and a decision is made, the applicant may choose which version of the development regulation will apply to the application. If the development permit applicant chooses the version of the rule or ordinance applicable at the time of the permit application, the development permit applicant shall not be required to await the outcome of the amendment to the rule, map, or ordinance prior to acting on the development permit. This section applies to all development approvals issued by the Town. The duration of vested rights created by development approvals is as set forth in 2.2(C).

2.4 RULES OF CONSTRUCTION.

For the purposes of these regulations, the following rules of construction apply:

- (A) Interpretations shall be guided by statements of intent.
- (B) The term *this ordinance* shall refer to the Town of Mount Gilead Zoning Ordinance.

- (C) The words *shall, must, and will* are mandatory, implying an obligation or duty to comply with the particular provision.
- (D) The word *may* is permissive, except when the context of the particular use is negative, then it is mandatory (e.g., *may not*).
- (E) The word *should*, whether used in the positive or the negative, is a suggested guideline.
- (F) References to days will always be construed to be business days, excluding weekends and holidays, unless the context of the language clearly indicates otherwise.
- (G) For purposes of interpreting this ordinance, certain words, concepts, and ideas are defined in Appendix A except as defined herein, all other words used in this ordinance shall have their everyday dictionary definition.
- (H) Words used in the present tense include the future tense, and words used in the future tense include the present tense.
- (I) Words used in the singular number include the plural, and words used in the plural number include the singular.
- (J) The word *person* includes a firm, association, organization, partnership, corporation, trust, and company, as well as an individual.
- (K) The word *lot* includes the words plot, parcel or tract.
- (L) The word *building* includes the words structure, and the word structure includes the word building.
- (M) The words *used or occupied* as applied to any land or building shall be construed to include the words intended, arranged, or designed to be used or occupied.
- (N) Words used in the masculine gender include the feminine gender.
- (O) The word *street* includes the words road, avenue, place, way, drive, lane, boulevard, highway, and any other facility principally designed for motor vehicle traffic, except an alley or an easement solely for utilities or pedestrians.
- (P) The term *town board* shall mean the Board of Commissioners of the Town of Mount Gilead, North Carolina.
- (Q) The term *planning board* shall mean the Planning and Zoning Board of the Town of Mount Gilead, North Carolina.
- (R) The term *zoning administrator* shall mean the Zoning Administrator of the Town of Mount Gilead, North Carolina.
- (S) The term *subdivision administrator* shall mean the Subdivision Administrator of the Town of Mount Gilead, North Carolina.
- (T) The term *mayor* shall mean the Mayor of the Town of Mount Gilead, North Carolina.

(U) The term *board of adjustment* shall mean the Board of Adjustment of the Town of Mount Gilead, North Carolina.

(V) The term *state* shall mean the State of North Carolina.

(W) Any reference to an *article* shall mean an article of the Town of Mount Gilead Zoning Ordinance, unless otherwise specified.

2.4 INTERPRETATION.

(A) Zoning Boundaries. Where uncertainty exists as to the boundaries of any district shown on the official zoning map, the Zoning Administrator shall employ the following rules of interpretation.

(1) Where the zoning map shows a boundary line located within a street right-of-way, railroad or utility line right-of-way, easement or waterway, it shall be considered to be in the center of the right-of-way, easement or waterway. If the actual location of such right-of-way, easement or waterway varies slightly from the location as shown on the zoning map, then the actual location shall control.

(2) Where the zoning map shows a district boundary to approximately coincide with a property line or city, town or county border, the property line or border shall be considered to be the district boundary, unless otherwise indicated on.

(3) Where the zoning map shows a district boundary to not coincide or approximately coincide with any street, alley, railroad, waterway or property line, and no dimensions are shown, the location of the boundary shall be determined by use of the scale appearing on the zoning map.

(4) If, because of error or omission in the zoning map, any property within the jurisdiction of this ordinance is not shown as currently being in a zoning district, such property will be classified as R-15, until changed by amendment.

(5) Where district boundaries appear to be parallel to the centerline of streets, easements or rights-of-way, such district boundaries shall be construed to be parallel thereto and at such a distance therefrom as is indicated on the zoning map.

(6) The Zoning Administrator shall decide the exact location of zoning district boundary lines when a question arises concerning boundary lines shown on the zoning maps. This decision may be appealed to the zoning board of adjustment.

(B) Split tracts and fractional requirements. The Zoning Administrator shall employ the following rules with respect to split tracts and fractional requirements:

(1) Where a district boundary line divides a lot or tract in single ownership, the district requirements for the least restricted portion of such lot or tract shall be extended to apply to the whole, provided such extensions shall not include any part of a lot or tract more than thirty-five feet beyond the district

boundary line. The term least restrictive shall refer to all zoning restrictions except lot or tract size.

(2) When any requirement of this ordinance results in a fraction of a dwelling unit or other measurement, that fraction will be disregarded and the nearest lower whole number shall apply.

(3) Whenever a density calculation for a legal lot of record results in less than one dwelling unit being permitted, one dwelling unit will be permitted subject to the remaining provisions of this ordinance.

(C) General rules of conflict.

(1) In the event of a conflict between the text of this article and any caption, figure, illustration, or table included herein, the text of this article shall control.

(2) In the event there is a conflict in limitations, requirements or standards applying to any individual use or structure, the more stringent or restrictive provision shall apply.

(D) Distance measurements.

Distance separations are required for many uses in this article. Unless otherwise specified, the following rules shall apply in determining such measurements:

(1) Where lot separation is required, measurements shall be made from lot line to lot line using the shortest straight-line distance between lots.

(2) Where separation between a building, structure, parking area, buffer, driveway or similar feature on a development site and any other feature on the same or abutting site is required or is part of a regulation contained herein, such separation shall be measured between the closest points on the feature using the shortest straight line distance between the two.

ARTICLE 4. ZONING DISTRICTS.

4.1 ZONING DISTRICTS ESTABLISHED.

(C) Zoning District Boundary Interpretation.

~~(7) In instances where none of the above methods are sufficient to resolve the boundary location, the Board of Adjustment shall establish the boundary location.~~

4.2 GENERAL DISTRICTS.

(A) Permitted Uses. Uses permitted by right, uses with conditions, and uses permitted upon the issuance of a special use permit are listed in the TABLE OF PERMITTED USES in Section 4.5. This applies to all zoning districts unless otherwise noted.

(B) Dimensional Requirements and Supplemental Standards.

(1) All lots shall meet the minimum dimensional requirements shown in Section 4.4.

(2) Development density, amount and location of open space, arrangement of streets and lots, yard dimensions, and access to existing roads shall be controlled by the most recently approved subdivision plan (sketch, preliminary, or final). Any modifications to an approved subdivision plan shall maintain the density of the original plan.

(AC) RESIDENTIAL AGRICULTURAL DISTRICT (R-A and R-A-CD)

~~(1) Intent~~

The R-A Residential Agriculture District is intended to provide land for low density single-family residential and agricultural uses. The regulations of this district are intended to protect the agricultural sections of the community from an influx of uses likely to render them undesirable for farms and future development, and to insure that residential developments dependent upon private wells and septic tank systems for sewage disposal will occur at sufficiently low densities to insure a healthful environment.

~~(2) Permitted Uses.~~

~~Uses permitted by right, uses with conditions, and uses permitted upon the issuance of a conditional use permit are listed in the TABLE OF PERMITTED USES in Section 4.5.~~

~~(3) Dimensional Requirements and Supplemental Standards.~~

~~(a) All lots shall meet the minimum dimensional requirements shown in Section 4.4.~~

~~(b) Development density, amount and location of open space, arrangement of streets and lots, yard dimensions, and access to existing roads shall be controlled by the most recently approved subdivision plan (sketch, preliminary, or final). Any modifications to an approved subdivision plan shall maintain the density of the original plan.~~

(BD) LOW/MODERATE DENSITY SINGLE-FAMILY RESIDENTIAL DISTRICT (R-15 and R-15-CD)

~~(1) Intent~~

The R-15 Low/Moderate Density Single-Family Residential District is primarily intended to provide land for low to moderate density single-family detached dwellings with an overall maximum density between two (2) and three (3) dwelling units per acre. Public facilities, including public water and sewer and public roads are generally available. Residential developments dependent upon septic tank systems for sewage disposal will occur at sufficiently low densities to insure a healthful environment.

~~(2) Permitted Uses.~~

~~Uses permitted by right, uses with conditions, and uses permitted upon the issuance of a conditional use permit are listed in the TABLE OF PERMITTED USES in Section 4.5.~~

~~(3) — Dimensional Requirements and Supplemental Standards.~~

~~(a) — All lots shall meet the minimum dimensional requirements shown in Section 4.4.~~

~~(b) — Development density, amount and location of open space, arrangement of streets and lots, yard dimensions, and access to existing roads shall be controlled by the most recently approved subdivision plan (sketch, preliminary, or final). Any modifications to an approved subdivision plan shall maintain the density of the original plan.~~

(CE) MEDIUM DENSITY RESIDENTIAL DISTRICT (R-8 and R-8-CD)

~~(1) — Intent.~~

The R-8 Medium Density Residential District is intended to accommodate medium density residential development at a maximum density of five (5) dwelling units per acre. Types of residential development accommodated in the R-8 District may include single-family attached and detached dwellings in addition to multi-family structures. Public water and sewer, public roads, parks and other governmental support services are available. Uses which would negatively impact the residential nature of the district are discouraged.

~~(2) — Permitted Uses.~~

~~Uses permitted by right, uses with conditions, and uses permitted upon the issuance of a conditional use permit are listed in the TABLE OF PERMITTED USES in Section 4.5.~~

~~(3) — Dimensional Requirements and Supplemental Standards.~~

~~(a) — All lots shall meet the minimum dimensional requirements shown in Section 4.4.~~

~~(b) — Development density, amount and location of open space, arrangement of streets and lots, yard dimensions, and access to existing roads shall be controlled by the most recently approved subdivision plan (sketch, preliminary, or final). Any modifications to an approved subdivision plan shall maintain the density of the original plan.~~

(DF) HIGH DENSITY RESIDENTIAL ZONING DISTRICT (R-6 and R-6-CD)

~~(1) — Intent.~~

The R-6 High Density Residential Zoning District is primarily intended to accommodate residential uses such as single-family dwellings, two-family dwellings, multi-family residential buildings, and manufactured homes located within manufactured home parks at a maximum density of seven (7) dwelling units per acre. Public facilities, including public water and sewer, public roads,

parks, and other governmental support services are available. Uses that would interfere with the residential nature of the district are strongly discouraged.

~~(2) — Permitted Uses.~~

~~Uses permitted by right, uses with conditions, and uses permitted upon the issuance of a conditional use permit are listed in the TABLE OF PERMITTED USES in Section 4.5.~~

~~(3) — Dimensional Requirements and Supplemental Standards.~~

~~(a) All lots shall meet the minimum dimensional requirements shown in Section 4.4.~~

~~(b) Development density, amount and location of open space, arrangement of streets and lots, yard dimensions, and access to existing roads shall be controlled by the most recently approved subdivision plan (sketch, preliminary, or final). Any modifications to an approved subdivision plan shall maintain the density of the original plan.~~

(EG) OFFICE INSTITUTIONAL DISTRICT (O-I and O-I-CD)

~~(1) — Intent.~~

The O-I Office and Institutional Districts established primarily for office and institutional uses which have only limited contact with the general public and which have no offensive noises, odors, smoke, fumes, or other objectionable conditions. As residences are permitted in this zone and as this zone is usually adjacent to residential districts, provisions are made for yards, off-street parking and off-street loading areas.

~~(2) — Permitted Uses.~~

~~Uses permitted by right, uses with conditions, and uses permitted upon the issuance of a conditional use permit are listed in the TABLE OF PERMITTED USES in Section 4.5.~~

~~(3) — Dimensional Requirements and Supplemental Standards.~~

~~(a) All lots shall meet the minimum dimensional requirements shown in Section 4.4.~~

~~(b) Development density, amount and location of open space, arrangement of streets and lots, yard dimensions, and access to existing roads shall be controlled by the most recently approved subdivision plan (sketch, preliminary, or final). Any modifications to an approved subdivision plan shall maintain the density of the original plan.~~

(FH) CENTRAL BUSINESS DISTRICT (CB and CB-CD)

~~(1) — Intent.~~

The CB Central Business District is intended to encourage high density, compact, urban development. The district is intended to accommodate a wide range of uses, including office, retail, service, and institutional development in a pedestrian-oriented setting. The district also accommodates high-density residential development. These uses may be mixed on the same tract of land or within the same structure.

~~(2) — Permitted Uses.~~

~~Uses permitted by right, uses with conditions, and uses permitted upon the issuance of a conditional use permit are listed in the TABLE OF PERMITTED USES in Section 4.5.~~

~~(3) — Dimensional Requirements and Supplemental Standards.~~

~~(a) — All lots shall meet the minimum dimensional requirements shown in Section 4.4.~~

~~(b) — Development density, amount and location of open space, arrangement of streets and lots, yard dimensions, and access to existing roads shall be controlled by the most recently approved subdivision plan (sketch, preliminary, or final). Any modifications to an approved subdivision plan shall maintain the density of the original plan.~~

(G) GENERAL BUSINESS DISTRICT (G-B and G-B-CD)

~~(1) — Intent.~~

The GB General Business District is established to provide locations for retail, service and distributive establishments which require high visibility and good road access, or which cater primarily to passing motorists. Because these zones are generally located adjacent to main thoroughfares where they are subject to public view, they should provide an appropriate appearance, ample parking, and suitable landscaping.

~~(2) — Permitted Uses.~~

~~Uses permitted by right, uses with conditions, and uses permitted upon the issuance of a conditional use permit are listed in the TABLE OF PERMITTED USES in Section 4.5.~~

~~(3) — Dimensional Requirements and Supplemental Standards.~~

~~(a) — All lots shall meet the minimum dimensional requirements shown in Section 4.4.~~

~~(b) — Development density, amount and location of open space, arrangement of streets and lots, yard dimensions, and access to existing roads shall be controlled by the most recently approved subdivision plan (sketch, preliminary, or final). Any modifications to an approved subdivision plan shall maintain the density of the original plan.~~

(H) NEIGHBORHOOD BUSINESS DISTRICT (N-B and N-B-CD)

~~(1) — Intent.~~

The NB Neighborhood Business District is established as a zone in which the principal use of land is for commercial and service uses to serve the surrounding residential zones and in which traffic and parking congestion can be reduced to a minimum in order to preserve the residential character of the surrounding residential zones. Residential, heavy commercial and industrial uses of land and other uses of land which would substantially interfere with the development or continuation of the commercial uses in the zone are prohibited. Uses, which due to their character or size, would interfere with the use of land in the district as a shopping and service center for the surrounding residential zones are discouraged.

~~(2) — Permitted Uses.~~

~~Uses permitted by right, uses with conditions, and uses permitted upon the issuance of a conditional use permit are listed in the TABLE OF PERMITTED USES in Section 4.5.~~

~~(3) — Dimensional Requirements and Supplemental Standards.~~

~~(a) — All lots shall meet the minimum dimensional requirements shown in Section 4.4.~~

~~(b) — Development density, amount and location of open space, arrangement of streets and lots, yard dimensions, and access to existing roads shall be controlled by the most recently approved subdivision plan (sketch, preliminary, or final). Any modifications to an approved subdivision plan shall maintain the density of the original plan.~~

~~(K)~~ **INDUSTRIAL DISTRICT** (I and I-CD)

~~(1) — Intent.~~

The I Industrial District's purpose is to promote and protect both the existing industrial activities and potential sites where urban services are available and which are considered suitable for continued or future industrial use. Uses of land which would substantially interfere with the continuation of industrial uses permitted in the district are prohibited. The operation of well-planned and well-maintained industrial facilities which can be operated in a relatively clean and quiet manner and which will not be obnoxious or have significant negative effects to adjacent residential or business properties is promoted.

~~(2) — Permitted Uses.~~

~~Uses permitted by right, uses with conditions, and uses permitted upon the issuance of a conditional use permit are listed in the TABLE OF PERMITTED USES in Section 4.5.~~

~~(3) — Dimensional Requirements and Supplemental Standards.~~

~~(a) — All lots shall meet the minimum dimensional requirements shown in Section 4.4.~~

~~(b) — Development density, amount and location of open space, arrangement of streets and lots, yard dimensions, and access to existing roads shall be controlled by the most recently approved subdivision plan (sketch, preliminary, or final). Any modifications to an approved subdivision plan shall maintain the density of the original plan.~~

(JL) LAKESIDE DEVELOPMENT CONDITIONAL DISTRICT (LD-CD)

~~(1) — Intent.~~

The LD-CD Lakeside Development Conditional District is intended to provide an appropriate location for a mixture of lake-oriented businesses, public and semi-public recreational opportunities and residential uses. Properties appropriate for rezoning to LD-CD shall be located within 2,000 feet of Lake Tillery. Uses may be mixed on the same tract of land or within the same structure and shall be designed to complement surrounding land uses through appropriate screening, buffers, and landscaping.

(2) Permitted Uses.

Uses permitted shall be those listed on the applicant’s rezoning application for Lakeside Development and approved by the Town Board and shall be selected from the uses listed in the TABLE OF PERMITTED USES in Section 4.5.

~~(3) — Dimensional Requirements and Supplemental Standards.~~

~~(a) — All lots shall meet the minimum requirements shown in Section 4.4.~~

~~(b) — Development density, amount and location of open space, arrangement of streets and lots, yard dimensions, and access to existing roads shall be controlled by the most recently approved subdivision plan (sketch, preliminary, or final). Any modifications to an approved subdivision plan shall maintain the density of the original plan.~~

4.3 OVERLAY DISTRICTS.

(A) HISTORIC OVERLAY DISTRICT (H-O)

(2) Permitted Uses.

Uses permitted by right, uses with conditions, and uses permitted upon the issuance of a conditional-special use permit are the same as those listed in the TABLE OF PERMITTED USES in Section 4.5 for the underlying or base zoning district.

4.5 TABLE OF PERMITTED USES.

The following table lists uses permitted in each zoning district by 1) issuance of a zoning permit from the Zoning Administrator with or without conditions, and 2) issuance of a conditional-special use permit (abbreviated CUP-SUP in the legend at the top of the table) from the Board of Commissioners. The table

also denotes which districts certain uses are not permitted and where the uses permitted within an overlay district are determined by the uses permitted in the underlying district. For the purposes of interpreting the table, the zoning districts are abbreviated as listed in 4.1 (B) and are repeated as follows:

District Abbreviation	District Name
R-A & R-A-CD	Residential Agricultural District
R-15 & R-15-CD	Low/Moderate Density Single-Family Residential District
R-8 & R-8-CD	Medium Density Residential District
R-6 & R-6-CD	High Density Residential District
OI & OI-CD	Office Institutional District
CB & CB-CD	Central Business District
GB & GB-CD	General Business District
NB & NB-CD	Neighborhood Business District
I & I-CD	Industrial District
LD-CD	Lakeside Development Conditional District

Interpreting Permitted Uses. If a use is not specifically listed in any of the districts listed in this Ordinance, then the Town Zoning Administrator shall have the authority to interpret in which district, if any, the use shall be permitted. In determining if a use is permitted, the Zoning Administrator shall consider which category of expressed uses most closely matches the use proposed and apply the regulations pertaining to that category to the proposed use. In determining the use which most closely matches the proposed use, the Zoning Administrator shall consider the density and intensity of the use, and anticipated traffic, noise, light, and odor on adjacent properties. If requested, the applicant shall submit evidence to the Zoning Administrator of the anticipated traffic, noise, light, or odor of the proposed use. Reports prepared by the applicable professional trade may be required (i.e. transportation engineer, environmental scientist, etc.). Such interpretation shall be provided in writing to the property owner and subject to appeal by the Board of Adjustment.

[EDITOR’S NOTE: The Table of Uses has multiple changes involving only the change in coding from CU to S. These instances have been left out of this document to save space but may be reviewed at Town Hall. Only substantive changes and an example of the coding changes are presented here.]

Uses											
	R-A	R-15	R-8	R-6	O-I	CB	GB	NB	I	LD-CD	Additional Conditions
X = Permit from Zoning Administrator CU S = CU S ^{SUP} from Board of Commissioners X/C = Permit from Zoning Administrator; use must meet additional conditions “-“ = not permitted U = Uses determined by underlying zoning district											
Agriculture, bona-fide farms, including processing or sale of products grown on the same zoning lot, excluding agricultural industry	X	X	-	-	-	-	-	-	X	-	<u>9.96</u>
Animal Feeder/Breeder Operations	CU S	-	-	-	-	-	-	-	CU S	-	9.8
<u>Fuel Dealer</u>									CU S		<u>9.33</u>
Clinics	-	-	-	-	X	X	X	-	-	-	<u>9.21</u>

Airports	CU S	-	-	-	-	-	-	-	-	-	-	<u>9.5</u>
Fairgrounds	CU S	-	-	-	-	-	-	-	-	-	-	<u>9.30</u>
Heliport	X/C	-	-	-	-	-	-	-	X/C	-	-	<u>9.39</u>
Recycling, Drop-Off Site	CU S	-	-	-	-	CU S	CU S	-	-	-	-	<u>9.70</u>
Temporary Seasonal Uses and Structures, including seasonal markets	X/C	X/C	-	-	-	X/C	X/C	X/C	-	-	-	<u>9.89</u>

ARTICLE 7 SIGNAGE

7.5 PERMANENT SIGNS BY ZONING DISTRICT.

Signs shall be permitted and prohibited within certain zoning districts as follows:

Permanent Signs by Sign Type and Zoning District

<i>SIGN TYPE</i>	R-A	R-15	R-8	R-6	O-I	CB	GB	NB	I	LD-CD
Canopy/Awning	-	-	-	-	Z	Z	Z	Z	Z	Z
Directional/Incidental	P	P	P	P	P	P	P	P	P	P
Directory	-	-	-	-	Z	-	Z	Z	Z	Z
Flag	P	P	P	P	P	P	P	P	P	P
Freestanding (Pole)	-	-	-	-	Z	-	Z	Z	Z	-
Marquee	-	-	-	-	-	Z	-	-	-	-
Monument (Ground)	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
Outdoor Advertising (Billboard)	-	-	-	-	-	-	-	-	CU S	-
Planned Development (Shopping Center)	-	-	-	-	-	-	Z	Z	Z	-
Portable	-	-	-	-	-	-	-	-	-	-
Portable, Sandwich or Menu Board	-	-	-	-	-	P	-	P	-	P
Projecting	-	-	-	-	Z	Z	-	Z	-	-
Suspended	-	-	-	-	Z	Z	Z	Z	-	Z
Wall	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
Window	-	-	-	-	Z	Z	Z	Z	Z	Z

P = permitted without a permit

Z = permitted only upon issuance of a valid zoning permit

~~CU~~ S = permitted only upon issuance of a ~~conditional~~ special use permit

"- " = not permitted

Important Note: Sign types not specifically listed in this table are not permitted

ARTICLE 9 ADDITIONAL CONDITIONS FOR CERTAIN USES

Note: These conditions apply only to uses "Permitted with Conditions" or by "~~Conditional-Special~~ Use Permit" in the applicable zoning district as listed in Section 4.5, Table of Permitted Uses.

9.2 Accessory Communication Antennae.

See applicable conditions for Accessory Communication Antennae listed under 9.879.88 Telecommunications Towers.

9.17 Bulk Storage of Petroleum Products.

- (F) The product shall be sold in the same form as received and shall not be altered, except that two (2) or more products may be blended. Any other alteration of the product shall be deemed a manufacturing use, requiring approval of a ~~conditional~~ special use permit.

9.45 Landfill, Construction and Demolition.

- (A) Applicants planning to develop a Construction and Demolition Landfill shall comply with all NC Division of Waste Management's requirements for construction, operation, and closure of a Construction and Demolition Landfill. Applicants shall provide copies of all plans and application materials to the Zoning Administrator prior to submittal of their ~~conditional~~ special use permit application and the approved Construction and Demolition permit or notification form issued by the North Carolina Department of Environment Natural Resources, Division of Solid Waste Management shall be presented prior to the commencement of fill activity.

9.47 Landfill, Sanitary.

- (J) Approval of the ~~conditional~~ special use permit will not become effective unless all applicable permits for the sanitary landfill have been issued by the appropriate State and Federal agencies governing operation of the facility. ~~Conditional~~ Special use permits will automatically expire if at any time after the issuance, State or Federal permits are revoked.

9.50 Manufactured Home Parks.

- (E) Procedure for Securing Approval of Manufactured Home Parks.

~~(1)~~ Manufactured Home Park Initial Permit Application Procedure

- ~~(a)~~ Prior to the construction of a new manufactured home park or the expansion of an existing manufactured home park, the developer shall make application to the Zoning Administrator for a permit to construct or expand such a park. ~~The application shall be accompanied by five (5) copies of the proposed park plan.~~

- ~~(b)~~ The park plan shall be drawn at a scale of 50 feet to one (1) inch or larger and shall include the following:

- ~~1~~a. The name of the park, the names and addresses of the owner or owners, and the designer or surveyor;
- ~~2~~b. Date, scale, and approximate North arrow;
- ~~3~~c. Boundaries of the tract shown with- bearings and distances;
- ~~4~~d. Site plan showing streets, traffic circulation, driveways, recreation areas, parking spaces, service buildings, water courses, easements, manufactured home lots, lot numbers, all structures to be located on the park site, and total acreage of the park;
- ~~5~~e. Vicinity map showing the location of the park and the surrounding land usage;
- ~~6~~f. Names of adjoining property owners;

- 7g. The existing and proposed utility system for surface water drainage, street lights, water supply, and solid waste and sewage disposal facilities;
- 8h. Certification of approval of water supply system plans by the appropriate state and county officials;
- 9i. Certification of approval of sewerage collection systems by the appropriate state, ~~and~~ county and/or city officials;
- 10j. Certification of approval of solid waste storage, collection, and disposal plans by the County Health Department;
- 11k. Land contours with vertical intervals of not less than two (2) feet for all manufactured home parks with 25 manufactured home spaces or more; and
- 12l. Certification of lot approved by Soil and Water Conservation District, including suitability for septic tank systems, if used.

~~(2) — Review of the Proposed Manufactured Home Park Plan.~~

~~(a) — The Zoning Administrator shall review the proposed park plan to determine if it is in accordance with the requirements set forth in this section.~~

~~(b) — If the Zoning Administrator finds that all requirements have been met, the plan shall be submitted to the Planning and Zoning Commission for review. The Planning and Zoning Board shall recommend approval or denial to the Board of Commissioners. The Town Board of Commissioners shall approve or deny the application following a public hearing.~~

~~(3) — Issuance of Initial Permit.~~

~~(a) — After receiving approval of the proposed manufactured home park plan, the Zoning Administrator is authorized to issue an initial permit. The intent of this permit is to enable the construction of the park according to the proposed plan, but shall not be construed to entitle the applicant to offer spaces for rent or lease, or to operate a manufactured home park.~~

~~(b) — If construction of the manufactured home park has not begun within six (6) months from the issued date of the initial permit, the Zoning Administrator may grant an extension of the permit when the applicant shows reasonable cause for the delay.~~

9.88 Telecommunication Towers.

(J) Co-location required.

- (2) Subsequent co-location or shared use of antennae on existing telecommunications towers which do not increase the height of the existing tower shall not require a conditional special use permit. Subsequent co-location of accessory communication facilities on other structures shall not require a conditional special use permit.

- (T) Prior to erecting a telecommunications tower or antenna or accessory communication facility, or installing same on any structure, any builder, user, carrier, etc., must be granted a ~~conditional-special~~ use permit by the Town of Mount Gilead Board of Commissioners, pursuant to the provisions of this article, except that a stealth telecommunications antenna may be erected or installed upon approval by the Zoning Administrator, with a right of appeal to the Board of Adjustment pursuant to Section 11.2 of this ordinance. The builder, user, carrier, etc., may be granted a ~~conditional-special~~ use permit only upon submission of an application and fee payment to the Town of Mount Gilead, who shall ~~transmit the application to the Board of Adjustment~~ **follow the procedures outlined in Article 10 of this ordinance**; in the case of a stealth telecommunications antenna, approval by the Zoning Administrator may be granted only upon submission of an application and fee payment to the Town of Mount Gilead. The application must be in the form prescribed by the Zoning Administrator and, in addition to any other or further requirements of this article, must contain the following information prior to being granted:

9.96 Bona Fide Farm in ETJ [Pursuant to G.S. 160D-903]

- (A) **Property that is located in the Town's extraterritorial planning and development regulation jurisdiction and that is used for bona fide farm purposes is exempt from the Town's zoning regulation to the same extent bona fide farming activities are exempt from county zoning pursuant to G.S. 160D-903(a).**
- (B) **Accessory buildings for a "bone fide farm" has the same building code requirements as it does under Montgomery County's regulations.**
- (C) **Activities that are not related to the operation of a bona fide farm are still subject to the rules and regulations of this ordinance for the applicable zoning district.**
- (D) **For purposes of determining whether a property is being used for bona fide farm purposes, any of the following shall constitute sufficient evidence that the property is being used for bona fide farm purposes:**
- (1) **A farm sales tax exemption certificate issued by the Department of Revenue.**
 - (2) **A copy of the property tax listing showing that the property is eligible for participation in the present-use value program pursuant to G.S. 105-277.3.**
 - (3) **A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.**
 - (4) **A forest management plan.**
- (E) **A building or structure that is used for agritourism is a bona fide farm purpose if the building or structure is located on a property that:**
- (1) **Is owned by a person who holds a qualifying farm sales tax exemption certificate from the Department of Revenue pursuant to G.S. 105-164.13E(a);**
or
 - (2) **Is enrolled in the present-use value program pursuant to G.S. 105-277.3.**

ARTICLE 10 ADMINISTRATION

10.1 THE STAFF.

(A) **The Zoning Administrator.** The Zoning Administrator shall have the following powers and duties to be carried out in accordance with these regulations, which include but are not limited to:

(1) To serve as staff to the Town Board, Planning and Zoning Board, Historic Preservation Commission and the Board of Adjustment with regard to their functions under these regulations, and to inform such bodies of all facts and information at their disposal with respect to applications for amendments to the text of these regulations, amendments to the zoning map, appeals, variances, ~~conditional-special~~ use permit requests, certificates of appropriateness and any other matters brought before them under this article.

(8) Determinations made by the Zoning Administrator must be in writing and delivered by personal delivery, electronic mail or first-class mail to the property owner and party seeking determination, if different from the owner.

(B) **The Zoning Enforcement Officer.** The Zoning Enforcement Officer is charged with enforcing the provisions of the zoning regulations as set out herein except for enforcement duties specifically assigned to the Zoning Administrator.

(1) The Zoning Enforcement Officer will conduct inspections of properties from time to time. When inspecting, the Zoning Enforcement Officer must enter the premises during reasonable hours and upon presenting credentials. The Zoning Enforcement Officer must have the consent of premises owner or an administrative search warrant to inspect areas not open to the public or not visible from public access.

~~(2) If the Zoning Enforcement Officer shall find that any of the provisions of this article are being violated, he/she shall notify, in writing, the person responsible for such violations, indicating the nature of the violation and ordering that necessary actions be taken to correct the deficiency. He/she shall order discontinuances of illegal uses of land, buildings, or structures; removal of illegal buildings or structures, or of illegal additions, alterations or structural changes, discontinuance of any illegal work being done; and shall take any other action authorized by this article to insure its compliance.~~

(a) Shall order discontinuances of illegal uses of land, buildings, or structures;

(b) Shall order removal of illegal buildings or structures, or of illegal additions, alterations or structural changes;

(c) Shall order discontinuance of any illegal work being conducted; and

(d) Shall take any other action authorized by this article [Section 10.7] or State law to insure compliance.

(3) Determinations made by the Zoning Enforcement Officer must be in writing and delivered by personal delivery, electronic mail or first-class mail to the property owner and party seeking determination, if different from the owner.

(C) **The Town Manager.** The Town Manager shall appoint the Zoning Administrator and the Zoning Enforcement Officer, and shall have the authority to exercise any and all duties and authorities assigned to such.

(1) Determinations made by the Town Manager must be in writing and delivered by personal delivery, electronic mail or first-class mail to the property owner and party seeking determination, if different from the owner.

(D) Conflict of Interest. In accordance with G.S. 160D-109, no staff member shall make a final decision on an administrative decision required by this ordinance if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.

No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation by this ordinance unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.

10.2. THE BOARDS.

(A) Conflicts of Interest. The following shall govern conflict of interest for each of the boards, including the Town Board, in accordance with G.S. 160D-309.

(1) Town Board. – A town board member shall not vote on any legislative decision regarding a development regulation adopted pursuant to this ordinance where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A town board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(2) Appointed Boards. – Members of appointed boards, to include the Planning Board, the Board of Adjustment, the Historic Preservation Commission and

any other board applicable under G.S. 160D, shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this ordinance where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(3) Quasi-Judicial Decisions. – A member of any board exercising quasi-judicial functions pursuant to this ordinance shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

(4) Resolution of Objection. – If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

(5) Familial Relationship. – For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

(AB) The Town Board. The Town Board shall have the following duties related to this article:

(5) A member of the Town Board shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. In accordance with G.S. 160D-308, the Town Board shall keep minutes of its proceedings.

(BC) The Planning Board. The Planning Board shall have duties related to this Ordinance that include, but may not be limited to, the following:

(2) Appointment. Planning Board Members shall be appointed for three (3) year staggered terms, but both regular members and ETJ members may continue to serve until their successors have been appointed. Board members may be appointed to succeed themselves.

If a regular member moves outside the town, or if an extraterritorial member moves outside the planning jurisdiction that shall constitute a resignation from the board, effective upon the date a replacement is appointed.

ETJ representation will be based on ETJ population estimates, updated at least with each decennial census as per G.S. 160D-307.

(4) Oath of Office. All members appointed to the Planning Board shall, before entering their duties, qualify by taking an oath of office as required by G.S. 160A-61.

(C) The Board of Adjustment.

(1) Establishment. The Board of Adjustment consists of five (5) regular members and two alternates. Four (4) regular members and one (1) alternate shall be appointed by the Town Board and one (1) regular member and one (1) alternate shall be appointed by the Board of County Commissioners of Montgomery County. In the event the Board of County Commissioners fails to make the appointments within 90 days after receipt of a resolution from the Town Board requesting that such appointments be made, the Town Board may thereupon make such appointments. The regular member and alternate member appointed to the Board of Adjustment by the Board of County Commissioners shall be residents of the Town's extraterritorial planning area (ETJ).

(2) Appointment. The Planning board will serve as the Board of Adjustment and will maintain the terms of their appointment to that board. The Town Board shall designate which members of the Planning Board are regular members or alternate members of the Board of Adjustment.

If a regular or alternate in-town member moves outside the town, or if an extraterritorial area regular or alternate member moves outside the planning jurisdiction that shall constitute a resignation from the board, effective upon the date a replacement is appointed.

The in-town alternate may sit only in lieu of a regular in-town member and the extraterritorial area alternate may sit only in lieu of the regular extraterritorial area member. When so seated, alternates shall have the same powers and duties as the regular member they replace.

(3) Oath of Office. All members appointed to the Board of Adjustment shall, before entering their duties, qualify by taking an oath of office as required by G.S. 160A-61.

(4) Expenses. Members of the Board of Adjustment shall serve without pay.

(+5) Powers and Duties. The Board of Adjustment shall have the following powers and duties:

(a) To hear and decide appeals according to the procedures of this article, where it is alleged there is an error in any order, decision, determination, or interpretation made by the Zoning Administrator or Zoning Enforcement Officer in the administration and enforcement of this article.

- (b) To grant variances from the terms of this article according to the standards and procedures prescribed herein.
- (c) To serve as the local watershed review board as authorized and prescribed in G.S. 15A NCAC 02B and these regulations.

(6) Meetings. All meetings of the Board of Adjustment shall be held at a regular place and time and shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, an indication of such fact. Final disposition of permits, appeals or variances shall be recorded in the minutes, indicating the reasons of the board therefore, all of which shall become a part of the public record.

(7) Quorum. No final action shall be taken on any matter unless a quorum is present. For the purposes of granting variances, a quorum shall be 4/5ths of the membership of the board. For the purposes of conducting other business related to the function of the board, such as adopting or amending rules of procedure or approving the agenda, a quorum shall be a simple majority of the full membership of the board. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting shall not be considered 'members of the board' for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

(8) Officers. The Board of Adjustment shall elect one (1) of its members as chair and another as vice-chair and shall appoint a secretary to keep minutes of its proceedings.

(9) Rules of Procedure. The Board shall abide by the following rules of procedure until such time as they need to be altered to conform to judicial rulings.

(a) All meetings of the Board of Adjustment are quasi-judicial meetings.

(b) All persons wishing to testify about a matter before the Board of Adjustment must be sworn in.

(c) Board members can only consider testimony that is pertinent to the matter at hand.

(d) Only those individuals who are party to a matter before the Board are allowed to testify. Parties are considered to be any groups or individuals with standing per §160D-1402(c).

(e) Each party is allowed to cross-examine the witnesses of the other party.

(f) Each party is allowed to present exhibits that support their case.

(g) The Board may not consider the opinions of the parties involved.

Testimony must be based on factual evidence.

(h) Board members may not discuss the issue with other members of the Board prior to the hearing.

(i) The decision of the Board must be based on the facts presented at the hearing. The Board must render its decision in writing. This decision must state which facts the Board found to be most important and why. It must also describe why those that voted in the minority voted the way that they did.

(j) All questions concerning rules or procedure should be directed to the Town Attorney or Town Manager.

(10) Voting. The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal. Vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

Extraterritorial area members may vote on all matters coming before the Board.

(11) Re-Application and Appeals from a Decision of the Board of Adjustment.

(a) Re-Application Waiting Period Required. Upon the denial of an original application or adverse ruling on appeal, or upon the denial of an application for which a rehearing has been conducted, whichever is applicable, a similar application may not be filed for a period of one year after the date of denial of the original application.

(b) Appeals. Any person or persons, jointly or severally, aggrieved by any decision of the board, may, within 30 days after the board's decision, but not thereafter, present to a court of competent jurisdiction a petition duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of illegality, whereupon such decision of the board shall be subject to review by Superior Court proceedings in the nature of certiorari as provided by law.

(DE) Historic Preservation Commission.

(1) Establishment. The Historic Preservation Commission was established by the Mount Gilead Board of Commissioners in May 2006 and consists of five (5) members, all of whom shall be residents of the Town of Mount Gilead or the Town of Mount Gilead Extra Territorial Jurisdiction (ETJ). There must be ETJ representation on the Board if there is a landmark or district designated for historic preservation in the ETJ.

The Ordinance establishing the Historic District Commission stipulates that a majority of the Commission members demonstrate expertise in history or architecture through special interest, education, or experience.

(2) Appointment. The members of the Commission shall be appointed by the Town Board and shall serve a term of three (3) years. Commission members shall continue to serve until their successors have been appointed. Board members may be appointed to succeed themselves.

If a member moves outside the town or extraterritorial planning jurisdiction that shall constitute a resignation from the board, effective upon the date a replacement is appointed.

(3) Oath of Office. All members appointed to the Historic Preservation Commission shall, before entering their duties, qualify by taking an oath of office as required by G.S. 160A-61.

(4) Expenses. Members of the Historic Preservation Commission shall serve without pay.

(5) Meetings. The Historic Preservation Commission shall establish a meeting time and shall meet at least quarterly and more often as it shall determine and require. All meetings of the Commission shall be open to the public, and reasonable notice of the time and place thereof shall be given to the public. All meetings shall conform to the North Carolina Open Meetings Law, G.S. § 143-318.9 et seq

(6) Rules of Procedure. The Historic Preservation Commission shall adopt and publish rules of procedure for the conduct of its business.

(7) Minutes. The Commission shall keep permanent minutes of all its meetings. The minutes shall record attendance of its members and its resolutions, findings, recommendations and actions. The minutes of the Commission shall be a public record.

(8) Attendance. Any member of the Historic Preservation Commission who misses more than three consecutive meetings or more than half the regular meetings in a calendar year may lose his or her status as a member of the Commission and may be replaced or reappointed by the Town Board. Absences due to sickness, death or other emergencies of like nature shall be

recognized as approved absences and shall not affect the member's status on the Commission.

- (+9) **Powers and Duties.** The Historic Preservation Commission shall have the following powers and duties:
- (a) Undertaking inventories of properties of historical, architectural, pre-historical, and or cultural significance.
 - (b) Recommending to the Mount Gilead Town Board areas to be designated by ordinance as “Historic Overlay Zoning Districts”, as well as individual structures, buildings, sites, areas, or objects to be designated by ordinance as “Landmarks”. Prior to recommending such designation to the Mount Gilead Board of Commissioners, The Historic Preservation Commission shall notify its intent, provide pertinent information to, and seek comment from North Carolina’s State Historic Preservation Officer (SHPO) and the Mount Gilead Planning Board.
 - (c) Acquiring by any lawful means the fee or any lesser included interest, including options to purchase and conservation easements, to properties within established historic districts, or to any properties designated as landmarks, to hold, manage, preserve, restore, and improve the same, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions, which will secure appropriate rights of public access and promote the preservation of the property.
 - (d) Restoring, preserving, and operating historic properties.
 - (e) Recommending to the Mount Gilead Town Board that designation of any area as a historic district, or part thereof, or designation of any building, structure, site, area, or object as a landmark, be revoked or removed for cause. Prior to recommending such revocation of designation to the Mount Gilead Board of Commissioners, The Historic Preservation Commission shall notify of its intent, provide pertinent information to, and seek comment from North Carolina’s State Historic Preservation Officer (SHPO) and the Mount Gilead Planning Board.
 - (f) Conducting educational programs with respect to historic properties and districts within the Town limits and extraterritorial zoning jurisdiction of the Town of Mount Gilead.
 - (g) Cooperating with state, federal, and local governments, in pursuance of protecting and preserving Mount Gilead’s architectural and historical character and promoting its use and conservation for the education, pleasure, and enrichment of its citizens and people.
 - (h) Entering, solely in performance of its official duties, and only at reasonable times, upon private lands for the examination or survey thereof. However, no member, employee, or agent of the Commission

may enter any private building or structure without the express consent of the owner or occupant thereof.

- (i) Preparing and recommending the official adoption of a preservation element or component as part of any comprehensive land use plan adopted by the Mount Gilead Board of Commissioners. In making such recommendation, the Commission shall consult with the Mount Gilead Planning Board.
- (j) Reviewing and acting upon, through approval or denial, applications for a Certificate of Appropriateness for alterations, demolitions, or new construction within any designated historic overlay zoning districts, or regarding any designated landmark within the town limits and extraterritorial zoning jurisdiction of the Town of Mount Gilead. A Certificate of Appropriateness issued by the Commission shall be required prior to the issuance of a building, zoning, or any other permit issued by the Town of Mount Gilead or Montgomery County, which may be required by the construction, alteration, moving, or demolition of any structure.
- (k) Negotiating at any time with the owner of a building, structure, site, area, or object for its acquisition, or preservation, when such action is reasonably necessary or appropriate.

10.3 PERMITS.

- (A) **Permit Required.** No building or land shall hereafter be used or occupied and no building or structure shall be erected, expanded or moved until a zoning permit as required by this article shall have been issued. The form and content of such permit, when not expressly set out in this article, shall be determined by the Zoning Administrator and may include any information required for the applicant to demonstrate an intent to comply with the zoning regulations. Zoning permit forms shall be available at the office of the Zoning Administrator.

Applications for development approvals must be made by a person with a property interest in the property or a contract to purchase the property.

- (B) **Permit Type.** Permits shall be required for any use by right, unless specifically exempted by this article and ~~conditional-special~~ uses.
- (C) **Expiration of Permit.** Any zoning permit issued by the Zoning Administrator shall become null and void after a period of ~~six (6)~~ **twelve (12)** months from the date of issuance of the permit unless a valid building permit has been issued for the work authorized by the permit or, if a building permit is not required, substantial work has not begun. Once a zoning permit has expired, construction on the property in question cannot proceed until a new zoning permit has been issued.

10.4 ~~CONDITIONAL~~SPECIALUSE PERMITS.

- (A) **Purpose.** The development and execution of this Ordinance is based upon the division of the community into zones within which the use of land and buildings, and the bulk and

location of buildings and structures in relation to the land, are substantially uniform. It is recognized, however, that there are certain uses which, because of their unique characteristics, cannot be properly classified in any particular zone or zones, without consideration, in each case, of the impact of those uses in the particular location. Such ~~conditional-special~~ uses fall into two categories:

- (1) Uses publicly operated or traditionally affecting a public interest.
 - (2) Uses entirely private in character, but of such an unusual nature that their operation may give rise to unique problems with respect to their impact upon neighboring property or public facilities.
- (B) **Applicants.** ~~Any person having a freehold interest in land, or a possessor interest entitled to exclusive possession, or a contractual interest which may become a free hold interest or an exclusive possessor interest and which is specifically enforceable, may file an application to use such land for one or more of the conditional uses provided for in this Ordinance in the zone in which the land is located. Applications for development approvals must be made by a person with a property interest in the property or a contract to purchase the property.~~
- (C) **Application Required.**
- (1) An application for a ~~conditional-special~~ use shall be filed with the Zoning Administrator, on a form prescribed by the Zoning Administrator, at least ~~three (3) weeks~~ thirty (30) days prior to the date of the regularly scheduled Planning Board meeting. The application shall be accompanied by such plans and/or data prescribed in this Ordinance and shall include a statement in writing by the applicant and adequate evidence showing that the proposed ~~conditional-special~~ use will conform to the standards set forth in Section 10.4 (F).
 - (2) Upon receiving a complete application, the Zoning Administrator shall cause a notice of ~~public evidentiary~~ hearing to be published in a newspaper of general circulation. Said notice shall be published not less than ten (10) or more than 25 days prior to the date established for the ~~public evidentiary~~ hearing. All owners of property within 100 feet of the area under consideration shall be mailed notice of the ~~public evidentiary~~ hearing. Notice shall conform to the requirements set forth in the NC General Statutes. The ~~public evidentiary~~ hearing shall be held by the Town Board of Commissioners. ~~At its discretion, the Planning and Zoning Board may also hold a public hearing on the conditional use permit application. If a public hearing is to be held by the Planning and Zoning Board, public notice shall be provided as delineated for the Town Board public hearing.~~
- (D) **Planning Board Review.** The ~~conditional special~~ use permit application shall be forwarded from the Zoning Administrator to the Planning Board. The Planning Board shall review the application and prepare a recommendation thereon to the Town Board. ~~The Planning Board may hold a public hearing concerning the application provided adequate notice is provided as set forth in Section 10.4 (C).~~
- (E) **Public Evidentiary Hearing.** The Town Board shall conduct ~~a public an evidentiary~~ hearing on the application for a ~~conditional special~~ use permit to receive evidence. Notice of the evidentiary hearing will be in accordance with Section 11.1(B). ~~At the~~

~~public hearing, all interested persons shall be permitted to testify. The Town Board, in~~ **In** considering ~~conditional special~~ use permit requests, **the Town Board** acts in a quasi-judicial capacity and, ~~accordingly,~~ is required to observe the procedural requirements established for ~~the Board of Adjustment except that no vote greater than quasi-judicial procedures per Section 11.1. Aa~~ majority vote shall be required by the **Town Board of Commissioners** to issue a ~~conditional special~~ use permit.

The applicant, the Zoning Administrator, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the Town Board.

At the conclusion of the ~~public~~ **evidentiary** hearing, the Town Board may proceed to vote on the ~~conditional special~~ use application request, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure. **The Town Board must make a decision in a reasonable time.**

(F) **Town Board Review**

- (1) The Town Board shall consider the application and recommendations of the Planning Board, and may grant or deny the ~~Conditional Special~~ Use Permit requested.
- (2) The ~~Conditional Special~~ Use Permit, if granted, shall include approval of plans as may be required. In granting the permit, the Town Board shall find:
 - (a) that the use meets all required conditions and specifications **and other conditions agreed to by the applicant and the Town;**
- (3) In granting the ~~Conditional Special~~ Use Permit, the Planning Board may recommend and the Town Board may designate additional conditions to assure that the use in its proposed location will be harmonious with the area in which it is proposed to be located, with the spirit of this Ordinance and clearly in keeping with the public welfare. All such additional conditions shall be entered in the minutes of the meeting, at which the ~~Conditional Special~~ Use Permit is granted, on the ~~Conditional Special~~ Use Permit itself, and on the approved plans submitted therewith. All specific conditions shall run with the land and shall be binding on the original applicants for the ~~Conditional Special~~ Use Permit, their heirs, successors and assigns.
- (4) If the Planning Board recommends the disapproval of the ~~Conditional Special~~ Use Permit, and if the Town Board denies the permit, each body shall enter the reason for its action in the minutes of the meeting at which the action is taken.
- (5) No appeal may be taken to the Board of Adjustment from the action of the Town Board in granting or denying a ~~Conditional Special~~ Use Permit. Any such action by the Town Board shall be considered as the equivalent of action on a proposed zoning amendment and shall be reviewable only in the same manner as action on a proposed amendment.

- (6) In addition to the conditions specifically imposed in this paragraph and such further conditions as the Town Board may deem reasonable and appropriate, conditional-special uses shall comply with the height, area and parking regulations for the zone district in which they are located.
- (G) **Conditions and Guarantees.** Prior to the granting of any conditional-special use, the Planning Board may recommend, and the Town Board may stipulate, such conditions and restrictions upon the establishment, location, construction, maintenance, and operation of the conditional special use as is deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements specified in Section 10.4 (F) above. In all cases in which conditional-special uses are granted, the Town Board shall require such evidence and guarantees as it may deem necessary as proof that the conditions stipulated in connection therewith are being and will be complied with.

Such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made for recreational space and facilities. Conditions and safeguards imposed under this subsection shall not include requirements for which the Town does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the Town, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land. All such conditions shall be consented to in writing by the applicant or landowner.

- (H) **Expiration.** In any case where a conditional-special use has not been exercised within the time limit set by the Town Board, or within one (1) year if no specific time limit has been set nor a vested right established pursuant to Section 2.2, then without further action, the permit shall be null and void. “Exercised” as set forth in this section shall mean that binding contracts for the construction of the main building have been let; or in the absence of contracts that the main building is under construction to a substantial degree; or that prerequisite conditions involving substantial investment are contracted for, in substantial development, or completed (sewage, drainage, etc.) When construction is not a part of the use, “exercised” shall mean that the use is in operation in compliance with the conditions set forth in the permit. Further, all work on the conditional-special use must be completed within three (3) years of board approval or the permit shall be null and void.
- (I) **Withdrawal or Amendment of a Conditional-Special Use Permit Application.** An application for a conditional-special use permit may be withdrawn or amended as follows:
- (1) A petitioner may withdraw the petition filed according to this article at any time up to the scheduling of the date of the public evidentiary hearing on the petition.
 - (2) If the petitioner wishes to withdraw the petition after the scheduling of the public evidentiary hearing, the petitioner may file a request to withdraw with the Zoning Administrator. On the date scheduled for the hearing, the Town Board may approve the request for withdrawal if it finds that there are substantial circumstances favoring the withdrawal and that the withdrawal will not be detrimental to the interests of citizens affected by the petition.

- (3) Once the petition has been filed, the petitioner shall not be allowed to amend it except by request to the Zoning Administrator no later than two (2) weeks prior to the scheduled public evidentiary hearing date. No changes to the petition shall be accepted in the intervening weeks prior to the public evidentiary hearing. No changes to the petition shall be made at the hearing, except that changes proposed by the petitioner, Town Board, and other interested parties may be presented at the hearing and considered by the Town Board during their deliberations.
- (4) If the Town Board deems any amendment to be a substantial change to the petition, it shall defer action on the petition for 30 days to allow interested parties with standing the opportunity to comment on the amendment to the petition.
- (5) If the Town Board deems any amendment to be an intensification of the petition, it shall call for a new public evidentiary hearing.

(J) Effect of Denial.

- (1) If the Town Board denies an application for a conditional-special use permit, a reapplication for that conditional-special use on that property shall not be made within one (1) year of the date of denial.
- (2) The Town Board may allow re-submission of the application within the one-year restricted period, however, if it determines that since the date of action on the prior application one of the following criteria has been met:
 - (a) The Town Board has adopted a new or amended plan for the area that changes public policy regarding how the subject property and/or the general area affected by the conditional-special use permit should be developed; or
 - (b) Construction or expansion of a road, water line, sewer line, or other infrastructure has occurred or is to occur in such a time frame as to serve the property and comfortably accommodate the type and intensity of development which would be allowed under the proposed conditional special use permit; or
 - (c) There has been a substantial change in conditions or circumstances, outside the control of the applicant, which justifies waiver of the one (1) year restriction on resubmission of a conditional-special use permit application for the property; this shall not include a change in the ownership of the subject property nor a change in the scale or features of the development proposed in the prior application.

(K) Amendment to an Approved Conditional-Special Use Permit.

- (1) Any major change to a development approved by conditional-special use permit shall require an amendment to the conditional-special use permit by the Town Board. Any proposed change in use, increase in density or intensity, decrease in open space and common recreational facilities, substantial change in the location of uses or streets from what is shown on the approved plans, any change in a

condition imposed on the use by the Town Board, or any other change the Zoning Administrator determines is significant shall be deemed a major change requiring an amendment to the conditional-special use permit. Factors to be considered by the Zoning Administrator in determining if a change is substantial include, but are not limited to, the extent of the change, the expected impact on adjacent properties, and the impact on offsite streets and other public infrastructure. Otherwise, the Zoning Administrator may approve minor changes to a permit.

- (2) The owner of property which is subject to an approved conditional-special use permit may petition for an amendment of the conditional-special use permit and accompanying conditions by following the procedures applicable to initiation of new conditional-special use permits.
- (3) Evidence presented at the hearing on the proposed amendment will be limited to the effect of the proposal on the original conditional-special use permit, any plans or conditions which were a part of the original conditional-special use permit, and the present standards and requirements in this zoning ordinance.

~~(M) — Recognition of Previously Approved Conditional Use Permits. Conditional use permits, which have been previously granted by the Town Board, will be recognized for building permit and other administrative purposes during the period of time the project was vested by the ordinance under which it was approved. After the vesting period, if construction of the development has not begun or there is no valid building permit in effect for the property, the conditional use permit will be considered null and void.~~

~~(NM)~~ **Revocation of a Conditional-Special Use Permit.**

- (1) If at any time the Zoning Administrator determines that construction inconsistent with the approved conditional-special use permit is occurring within the development, he or she shall cause to be issued a stop work order on such construction, and shall notify the responsible parties of the violation who will immediately cease and desist further work on the project. If the nonconforming construction is not brought into compliance with the permit or the applicant has not filed an appeal with the Board of Adjustment within 30 days, the Zoning Administrator may initiate a revocation of the conditional-special use permit. The Zoning Administrator may also act to suspend the issuance of any additional building permits within the development if he or she has reason to believe that such construction will not be in conformance with the approved permit or such construction will increase or reinforce the degree of nonconformance.
- (2) If the nonconformance involves a completed, unoccupied building, no certificate of occupancy shall be granted for such building until the violation is corrected. If the nonconformance involves initial construction or provision of any of the public facilities, open space, required landscaping, or similar common features of the approved permit, no building permits or certificates of occupancy will be issued within the development until the violation is corrected or a new conditional-special use permit has been granted by the Town Board.
- (3) ~~Action to revoke a permit shall be taken by the Town Board after receiving a request from staff. Such a request shall be in writing and shall declare that the~~

~~applicant and all property owners within the development, as recorded at the Register of Deeds office, have been notified at least ten (10) days before the meeting of the pending action and the date, time, and place of the Town Board meeting at which the request will be made. Said applicant and property owners shall have the right to appear before the Board at said meeting and show cause why the Town Board should not revoke the permit. Notification shall be deemed given when written notice is sent by first class mail to the property owner at the address shown on the most recent property tax records and one (1) or more signs are posted in prominent locations on the subject site reasonably calculated to give notice of the action.~~ **The process to revoke a special use permit shall follow the same procedure in which the special use permit was approved.**

10.5 AMENDMENTS.

- (B) **Initiation.** Any amendment to the zoning text or map, except for the classification of property to a conditional district, may be initiated by:
- (3) A petitioner other than the Town Board or property owner. **Third party downzonings are prohibited per S.L. 2019-111, Pt. I.**
- (D) **Application for a Map Amendment.** A petition for an amendment to the zoning map shall consist of:
- (2) A list of adjoining properties, including tax parcel numbers and the name and address of each owner. For the purposes of this section, adjoining property owners shall include owners of properties ~~lying within 100 feet of the subject property if located across a public or private street~~ **separated from the subject property by street, railroad, easement or other transportation corridor.**
- (E) **Conditional District Rezoning.**
- (3) Conditions. Prior to the action on the proposed amendment (which may also include a period after the ~~public evidentiary~~ hearing) ~~any Planning Board or Town Board member (or any group of members not comprising a majority of such board)~~ **the Zoning Administrator** may meet with the petitioner to discuss the proposed plan and suggest features to be included in the rezoning proposal. **During the evidentiary hearing, the Town Board may suggest additional features to be included or reflected in the proposal prior to taking action on the request.** The specifics of the plan may be negotiated to address community issues or concerns and to insure that the spirit and intent of this ordinance are preserved. ~~During the public hearing, the Town Board may suggest additional features to be included or reflected in the proposal prior to taking action on the request.~~
- The applicant/landowner must supply written consent to the conditions related to conditional-zoning approval to ensure enforceability per S.L. 2019-111, Pt. I.**
- (F) **Copies.** ~~The Zoning Administrator shall determine the number of copies of each petition and other required documentation to be submitted by the petitioner so that copies may be circulated to all appropriate staff, agencies, and boards for review and comment.~~

Legislative Process. All amendment decisions shall follow legislative process. Complete applications must be submitted no later than thirty (30) days prior to the next Planning Board meeting. Adoption of any legislative decision for development regulation may occur on the first reading by a simple majority.

(G) Withdrawal or Amendment of Petition.

- (1) A petition filed according to this article may be withdrawn by the petitioner at any time up to the scheduling, by the Town Board, of the date of the **public evidentiary** hearing on the petition.
- (2) If the petitioner wishes to withdraw the petition after the scheduling of the **public evidentiary** hearing, the petitioner may file a request to withdraw with the Town Clerk. On the date scheduled for the hearing, the Town Board may approve the request for withdrawal if it finds that there are substantial circumstances favoring the withdrawal and that the withdrawal will not be detrimental to the interests of citizens affected by the petition.
- (3) Once the petition has been filed, the petitioner shall not be allowed to amend it except by request to the Zoning Administrator no later than three (3) weeks prior to the scheduled **public evidentiary** hearing date. No changes to the petition shall be accepted ~~in the intervening weeks prior to the public hearing after~~ **publication and notice of the evidentiary hearing has occurred. No changes to the petition shall be made at the hearing, although potential Potential** changes proposed by the petitioner, Planning Board, Town Board, and other interested parties may be presented at the hearing and considered by the **Planning Board and** Town Board during their deliberations.
- (5) If the Town Board deems any amendment to be an intensification of the petition, it shall call for a new **public evidentiary** hearing.

~~(H) Protest Petitions.~~

- ~~(1) In the event of a qualified protest against a zoning map amendment, that amendment shall not become effective except by favorable vote of three-fourths (3/4) of all the members of the Town Board. Vacant positions on the Board and members who are excused from voting shall not be considered 'members of the Board' for calculation of the requisite three-fourths (3/4) supermajority.~~
- ~~(2) To qualify as a protest under this section, the petition must be signed by the owners of either 20% or more of the area included in the proposed change, or five percent (5%) of a 100-foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel.~~
- ~~(3) The Town may use the county tax listings to determine the owners of potentially qualifying areas.~~

- ~~(a) — The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening approved.~~
- ~~(b) — No protest against any amendment to a zoning ordinance or zoning map shall be valid or effective unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed amendment, and unless it shall have been received by the Town Clerk in sufficient time to allow the town at least two full normal work days, excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed amendment to determine the sufficiency and accuracy of the petition.~~
- ~~(c) — All protest petitions shall be on a form prescribed and furnished by the town, and such form may prescribe any reasonable information deemed necessary to permit the town to determine the sufficiency and accuracy of the petition.~~
- ~~(d) — A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment.~~
- ~~(e) — Only those protest petitions that meet the qualifying standards set forth in G.S. 160A 385 at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement.~~

(H) Hearing.

- ~~(1) — The Town Board may refuse to call for a public hearing on any petition for an amendment to the zoning text or zoning map if, in the Board's opinion, such petition lacks merit.~~
- ~~(21) Notice of **public** hearings required under these regulations shall be in accordance with the North Carolina General Statutes. **That being that notification shall be sent to interested parties and published in a newspaper of general circulation no less than ten (10) days but no more than twenty-five (25) days prior to the hearing. For zoning map amendments, notice must be posted on-site or by an adjacent highway during the time period from twenty-five (25) day through ten (10) days before the hearing.**~~
- ~~(32) Notice of any request for a change in the zoning map shall state that the Planning Board and Town Board may consider the application of **any** of the zoning districts to the property, not just the classification requested.~~
- ~~(43) Amendments to the Zoning Ordinance text and Official Zoning Map shall be made in **accordance with consideration of** the adopted land use plan **and any other developmental plans adopted by the Town per 10.5(J)**. **Prior to adopting or rejecting any zoning amendment, the Town Board shall adopt a statement**~~

~~describing whether its action is consistent with the adopted land use plan and explain why the board considers the action taken to be reasonable and in the public interest.~~

~~(54)~~ Conduct of ~~Public~~ Hearing.

- (a) No amendment shall be adopted until after the Town Board has held a ~~public~~ hearing on the proposed amendment.
- (b) The hearing shall be conducted in accordance with rules and procedures established by the Mayor and Town Board. **For applications involving a conditional district rezoning, the hearing shall be conducted as an evidentiary hearing.**
- (c) When presenting a petition for the reclassification of property to a general-use district, as opposed to a conditional zoning district, the petitioner shall refrain from using any graphic materials or descriptions of the proposed use or development site design, ~~except for those which would apply to any use or development site design permitted in the requested district.~~

~~(H)~~ **Recommendation and Decision.**

- (1) No proposed amendment shall be approved unless it is first submitted to the Planning Board for a recommendation. ~~If the Planning Board does not make a recommendation to approve, approve with conditions, deny, or defer a decision on the proposed amendment within 30 calendar days after the petition has been referred to it, then the Planning Board shall be considered to have recommended deferral for additional deliberation.~~ The petition, along with the recommendation of the Planning Board, shall be placed on the agenda of the Town Board at its next regular meeting.
- (2) The Town Board, after receiving the recommendation of the Planning Board, shall ~~within a reasonable time either reject the proposed amendment or approve the proposed amendment, with or without modifications~~ **set a hearing as per Section 10.5(H).**

~~(J)~~ **Plan Consistency.**

- (1) When adopting or rejecting any zoning text or map amendment, the Town Board shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the Town Board that at the time of action on the amendment the Town Board was aware of and considered the Planning Board's recommendations and any relevant portions of an adopted comprehensive plan. (G.S. 160D-605(a))**
- (2) If a zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land-use map in the approved plan, and**

no additional request or application for a plan amendment shall be required. A plan amendment and a zoning amendment may be considered concurrently (G.S. 160D-605(a)).

(3) The plan consistency statement is not subject to judicial review (G.S. 160D-605(a)).

(4) If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the Town Board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken (G.S. 160D-605(a)).

(5) When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the Town Board. Per G.S. 160D-605(b), this statement of reasonableness may consider, among other factors:

(a) The size, physical conditions, and other attributes of the area proposed to be rezoned;

(b) The benefits and detriments to the landowners, the neighbors, and the surrounding community;

(c) The relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment;

(d) Any the action taken is in the public interest; and

(e) Any changed conditions warranting the amendment.

(6) If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the governing board statement on reasonableness may address the overall rezoning (G.S. 160D-605(b)).

(7) The statement of reasonableness and the plan consistency statement required by this section may be approved as a single statement (G.S. 160D-605(c)).

~~(K)~~ **Effect of the Denial of a Petition.**

10.6 WATERSHED AMENDMENTS AND VARIANCES.

(B) Watershed Variances.

- (4) The Zoning Administrator shall notify any jurisdictions within the watershed of a proposed variance to the watershed regulations. Local governments may submit any comments to the Zoning Administrator before the **public evidentiary** hearing by the Board of Adjustment.

10.7 ENFORCEMENT.

(A) **Permit Revocation.** The Zoning Administrator/Zoning Enforcement Officer may revoke any zoning permit issued by staff after written notification to the permit holder when violations of this ordinance have occurred, when false statements or misrepresentations were made in securing the permit, work is being or has been done in substantial departure from the approved application or plan, or a permit has been mistakenly issued in violation of this ordinance. **Revocation of development approval must follow the same process as was used for the approval.**

(H) Notice of Violation (NOV). For any violation or situation which requires enforcement action, the Zoning Administrator or Zoning Enforcement Officer shall issue a written notice of violation (NOV), detailing the nature of the violation and ordering the necessary action(s) to remedy the violation. The NOV shall follow these guidelines:

(1) NOV shall be given to the permittee, and the landowner if different;

(2) NOV may be given to the occupant or person underrating the activity;

(3) NOV will be delivered by hand, email, or first-class mail;

(4) NOV may be posted on-site; and

(5) NOV will be certified by the Zoning Administrator or Zoning Enforcement Officer for the file.

10.8 DEVELOPMENT AGREEMENTS.

(A) Purpose.

(1) Development projects often occur in multiple phases over several years, requiring a long-term commitment of both public and private resources.

(2) Such developments often create community impacts and opportunities that are difficult to accommodate within traditional zoning processes.

(3) Because of their scale and duration, such projects often require careful coordination of public capital facilities planning, financing, and construction schedules and phasing of the private development.

(4) Such projects involve substantial commitments of private capital; which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of the development.

(5) Such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas.

(6) To better structure and manage development approvals for such developments and ensure their proper integration into local capital facilities programs, local governments need flexibility to negotiate such developments.

(B) Entering into a Development Agreement. The Town Board may consider and enter into development agreements with developers or other governmental or quasi-governmental entities. The following always applies:

(1) In entering into a development agreement, the Town may not exercise any authority or make any commitment not authorized by general or local ordinances and may not impose any tax or fee not authorized by otherwise applicable law.

(2) A development agreement is supplemental to the powers conferred upon the Town by the State and does not preclude or supersede rights and obligations established pursuant to other laws regarding development approvals, site-specific vesting plans, or other provisions of law.

(3) A development agreement shall not exempt the property owner or developer from compliance with the State Building Code or local housing codes that are not part of the Town's development regulations.

(4) Development authorized by a development agreement shall comply with all applicable laws, including all ordinances, resolutions, regulations, permits, policies, and laws affecting the development of property, including laws governing permitted uses of the property, density, intensity, design, and improvements.

(5) If more than one local government is made party to an agreement, the agreement must specify which local government is responsible for the overall administration of the development agreement.

(C) Approval of a Development Agreement. A development agreement must be approved by the Town Board as a legislative procedure in accordance with G.S. 160D-1005 and must be by ordinance, not a resolution.

(1) The procedures for zoning map amendments shall be followed (see Section 10.5 Amendments).

(2) An evidentiary hearing shall be held after proper notice has been published and adjacent property owners have been notified.

(3) The notice for the evidentiary hearing must specify:

(a) The location of the property subject to the development agreement;

(b) The development uses proposed on the property; and

(c) Must specify a place where a copy of the proposed development agreement can be obtained.

(4) The developer shall record the agreement with the Montgomery County Register of Deeds within 14 days after the Town and developer execute an approved development agreement. No development approvals may be issued until the development agreement has been recorded. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

(D) Content and Modification.

(1) A development agreement shall, at a minimum, include all of the following:

(a) A description of the property subject to the agreement and the names of its legal and equitable property owners;

(b) The duration of the agreement;

(i) The parties may enter into subsequent development agreements that extend the original duration period.

(c) The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design;

(d) A description of public facilities that will serve the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development. In the event that the development agreement provides that the local government shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development, such as meeting defined completion percentages or other performance standards;

(e) A description of any reservation or dedication of land for public purposes and any provisions agreed to by the developer that exceed existing laws related to protection of environmentally sensitive property;

(f) A description of any conditions, terms, restrictions, or other requirements for the protection of public health, safety, or welfare; and

(g) A description of any provisions for the preservation and restoration of historic structures.

(2) A development agreement may also provide that the entire development or any phase of it be commenced or completed within a specified period of time. The development agreement shall provide a development schedule, including commencement dates and interim completion dates at no greater

than five-year intervals. Failure to meet a commencement or completion date does not, in and of itself, constitute a material breach of the development agreement pursuant to G.S. 160D-1008 but must be judged based upon the totality of the circumstances. The developer may request a modification in the dates as set forth in the agreement.

- (3) The development agreement also may cover any other matter, including defined performance standards. The development agreement may include mutually acceptable terms regarding provision of public facilities and other amenities and the allocation of financial responsibility for their provision, provided any impact mitigation measures offered by the developer beyond those that could be required by the local government shall be expressly enumerated within the agreement, and provided the agreement may not include a tax or impact fee not otherwise authorized by law.
- (4) Consideration of a proposed major modification of the agreement shall follow the same procedures as required for initial approval of a development agreement. What changes constitute a major modification may be provided for in the development agreement.
- (5) Any performance guarantees under the development agreement shall comply with G.S. 160D-804.1.
- (6) A development agreement may be amended or terminated by mutual consent of the parties.

(E) Vested Rights. A vested right of reasonable duration shall be specified in a development agreement with the consent of the parties involved. Unless the development agreement specifically provides for the application of subsequently enacted laws, the laws applicable to development of the property subject to a development agreement are those in force at the time of execution of the agreement. The Town may not apply subsequently adopted ordinances or development policies to a development that is subject to a development agreement unless provided for by law.

In the event State or federal law is changed after a development agreement has been entered into and the change prevents or precludes compliance with one or more provisions of the development agreement, the Town may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the development agreement.

(F) Monitoring and Enforcement.

- (1) Procedures established in a development agreement may include a provision requiring periodic review by the zoning administrator or other appropriate officer of the Town, at which time the developer shall demonstrate good-faith compliance with the terms of the development agreement.
- (2) If the Town finds and determines that the developer has committed a material breach of the agreement, the zoning administrator shall notify the developer in writing setting forth the nature of the breach and the evidence

supporting the finding and determination and providing the developer a reasonable time in which to cure the material breach.

- (3) If the developer fails to cure the material breach within the time given, then the Town unilaterally may terminate or modify the development agreement, provided the notice of termination or modification may be appealed to the Board of Adjustment following the appeals of administrative decisions process (see Article 11).
- (4) A development agreement may specify other penalties for breach in lieu of termination, including, but not limited to, penalties allowed for violation of a development regulation. Nothing in this section shall be construed to remove the power of the Town to enforce applicable law.
- (5) A development agreement shall be enforceable by any party to the agreement notwithstanding any changes in the development regulations made subsequent to the effective date of the development agreement. Any party to the agreement may file an action for injunctive relief to enforce the terms of a development agreement.

10.9 TEMPORARY MORATORIA PROCEDURES.

North Carolina General Statute 160D-107 explicitly recognizes the authority of cities/towns to adopt temporary moratoria on any development approval required by law, except for the purpose of developing and adopting new or amended plans or development regulations governing residential uses. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions as provided in NCGS 160D-107.

ARTICLE 11 BOARD OF ADJUSTMENT QUASI-JUDICIAL PROCEDURES AND HEARINGS

11.1 THE BOARD OF ADJUSTMENT

- (A) Establishment. The Board of Adjustment consists of five (5) regular members and two alternates. Four (4) regular members and one (1) alternate shall be appointed by the Town Board and one (1) regular member and one (1) alternate shall be appointed by the Board of County Commissioners of Montgomery County. In the event the Board of County Commissioners fails to make the appointments within 90 days after receipt of a resolution from the Town Board requesting that such appointments be made, the Town Board may thereupon make such appointments. The regular member and alternate member appointed to the Board of Adjustment by the Board of County Commissioners shall be residents of the Town's extraterritorial planning area (ETJ).
- (B) Appointment. Board of Adjustment regular members and alternates shall be appointed for three (3) year staggered terms, but both regular members and alternates may continue to serve until their successors have been appointed. Vacancies may be filled for the unexpired terms only. Board members may be appointed to succeed themselves.

If a regular or alternate in town member moves outside the town, or if an extraterritorial

~~area regular or alternate member moves outside the planning jurisdiction that shall constitute a resignation from the board, effective upon the date a replacement is appointed.~~

~~(C) **Expenses.** Members of the Board of Adjustment shall serve without pay.~~

~~(D) **Powers and Duties.** The Board of Adjustment shall have the following powers and duties:~~

~~(1) To hear and decide appeals according to the procedures of this article, where it is alleged there is an error in any order, decision, determination, or interpretation made by the Zoning Administrator or Zoning Enforcement Officer in the administration and enforcement of this article.~~

~~(2) To grant variances from the terms of this article according to the standards and procedures prescribed herein.~~

~~(3) To serve as the local watershed review board as authorized and prescribed in G.S. 15A NCAC 02B and these regulations.~~

~~(E) **Meetings.** All meetings of the Board of Adjustment shall be held at a regular place and time and shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, an indication of such fact. Final disposition of permits, appeals or variances shall be recorded in the minutes, indicating the reasons of the board therefore, all of which shall become a part of the public record.~~

~~(F) **Quorum.** No final action shall be taken on any matter unless a quorum is present. For the purposes of granting variances, appeals, and permits, a quorum shall be 4/5ths of the membership of the board. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members. For the purposes of conducting other business related to the function of the board, such as adopting or amending rules of procedure or approving the agenda, a quorum shall be a simple majority of the full membership of the board.~~

~~(G) **Conflicts of Interest.** A member of the Board of Adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate the affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.~~

~~(H) **Officers.** The Board of Adjustment shall elect one (1) of its members as chair and another as vice chair and shall appoint a secretary to keep minutes of its proceedings.~~

~~(I) **Rules of Procedure.** The Board shall abide by the following rules of procedure until such time as they need to be altered to conform to judicial rulings.~~

- ~~(1) — All meetings of the Board of Adjustment are quasi-judicial meetings.~~
- ~~(2) — All persons wishing to testify about a matter before the Board of Adjustment must be sworn in.~~
- ~~(3) — Board members can only consider testimony that is pertinent to the matter at hand.~~
- ~~(4) — Only those individuals who are party to a matter before the Board are allowed to testify. Parties are considered to be the individual/group making the request and adjacent property owners.~~
- ~~(5) — Each party is allowed to cross-examine the witnesses of the other party.~~
- ~~(6) — Each party is allowed to present exhibits that support their case.~~
- ~~(7) — The Board may not consider the opinions of the parties involved. Testimony must be based on factual evidence.~~
- ~~(8) — Board members may not discuss the issue with other members of the Board prior to the hearing.~~
- ~~(9) — The decision of the Board must be based on the facts presented at the hearing. The Board must render its decision in writing. This decision must state which facts the Board found to be most important and why. It must also describe why those that voted in the minority voted the way that they did.~~
- ~~(10) — All questions concerning rules or procedure should be directed to the Town Attorney or Town Manager.~~

~~(J) — **Voting.** A concurring vote of the four-fifths (4/5) majority of the Board shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator or to decide in favor of the applicant any matter upon which it is required to pass under this chapter or to effect any variance authorized by this article. Vacant seats on the Board and members disqualified from voting in a particular case shall not be considered 'members of the Board' when calculating the requisite 4/5 majority.~~

~~— Extraterritorial area members may vote on all matters coming before the Board.~~

~~The in-town alternate may sit only in lieu of a regular in-town member and the extraterritorial area alternate may sit only in lieu of the regular extraterritorial area member. When so seated, alternates shall have the same powers and duties as the regular member they replace.~~

~~(K) — **Re-hearings and Appeals from a Decision of the Board of Adjustment.**~~

~~(1) — **Rehearing.** An application for a rehearing shall be made in the same manner as provided for an original appeal within a period of 15 days after the Board's decision has been filed with the Zoning Administrator or their designee. In addition, specific information to enable the Board of Adjustment to determine whether or not there has been a substantial change in facts, evidence, or conditions of the case, shall be presented in writing or graphically. The Board shall deny a rehearing, if, in its judgment, such change in facts, evidence or conditions has not been proven. In the event that the Board finds that a rehearing is warranted, it shall thereupon proceed in the same manner as for the original hearing.~~

~~(2) — **Waiting Period Required.** Upon the denial of an original application or adverse ruling on appeal, or upon the denial of an application for which a rehearing has~~

been conducted, whichever is applicable, a similar application may not be filed for a period of one year after the date of denial of the original application.

- (3) — Appeals. Any person or persons, jointly or severally, aggrieved by any decision of the board, may, within 30 days after the board's decision, but not thereafter, present to a court of competent jurisdiction a petition duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of illegality, whereupon such decision of the board shall be subject to review by Superior Court proceedings in the nature of certiorari as provided by law.

11.1 QUASI-JUDICIAL PROCEDURE

- (A) Process Required. Boards shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision as defined by G.S. 160D-102(28).
- (B) Notice of Hearing. Notice of evidentiary hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing (right-of-way centerlines may be used to determine properties which abut); and to any other persons with standing entitled to receive notice. In the absence of evidence to the contrary, the local government may rely on the county tax listing to determine owners of property entitled to mailed notice.
- The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the local government shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.
- The person required to provide notice shall certify to the Town that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.
- The board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.
- (C) Administrative Materials. The Zoning Administrator or staff to the board shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.

(D) Presentation of Evidence. The applicant, the Town, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board.

Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

(E) Appearance of Official. The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the Town, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.

(F) Administering Oaths. The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

(G) Subpoenas. The board making a quasi-judicial decision through the chair or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the Town, and any person with standing under G.S. 160D-1402(c) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

(H) Appeals in Nature of Certiorari. When hearing an appeal pursuant to G.S. 160D-947(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below, and the scope of review shall be as provided in G.S. 160D-1402(j).

(I) Voting. The concurring vote of four-fifths of the Board of Adjustment shall be necessary to grant a variance. A majority of the members of the relevant board shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari.

For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

- (J) Decisions. The board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.

Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board.

A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or to the Town Clerk. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the Town that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

- (K) Judicial Review. Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d).

11.2 APPEALS.

- (A) The Board of Adjustment shall hear and decide appeals from any order, requirement, decision, or determination made by the Zoning Administrator or Zoning Enforcement Officer pertaining to this article. Appeals will use the standards and practices of Section 11.1.
- (B) An appeal may be taken by any person with standing aggrieved by any order, requirement, decision or determination made by the Zoning Administrator, Zoning Enforcement Officer or other Town official based in whole or in part upon the provisions of this article. ~~The appeal shall be taken within the time as shall be prescribed by the Board by general rule by filing with the Zoning Administrator a notice of appeal and specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all the papers constituting a record upon which the action appealed from was taken.~~ The property owner or other party has 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal has 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal.
- (C) ~~An~~ A written appeal, specifying in detail the grounds thereof, shall be filed with the Zoning Administrator ~~on a form provided by the Zoning Administrator. Once an appeal is~~

~~filed, the Zoning Administrator shall forthwith transmit all papers with reference to the case to the Board of Adjustment.~~

- (D) The Zoning Administrator shall set and advertise a date and time for a **public evidentiary** hearing before the Board of Adjustment. Notice of such hearing shall be **given as required in Section 11.1(B)**, ~~published in a newspaper of general local circulation not less than ten (10) days nor more than 25 days before the date set for the public hearing. During this period all adjacent property owners shall be mailed a notice of the hearing, via 1st class mail. The person mailing notices shall certify that the notices have been mailed, and the date of such mailing. Cost of postage shall be reimbursed through fees set by the Board of Commissioners. In addition, the property involved shall be posted at least one (1) week before the public hearing.~~
- (E) The Board shall conduct **public evidentiary** hearings using quasi-judicial procedures **as laid out in Section 11.1**, ~~allowing cross examination among all participants. Hearings shall be conducted allowing sworn testimony by all interested parties, for the single purpose of collection of factual evidence. The Board may disallow presentation of opinion and hearsay, and if allowed, shall discount such presentation as secondary and insufficient to refute any factual representation entered into evidence; provided that technical opinions rendered by persons professionally qualified and with no personal or financial interest in the case, may be given consideration as fact.~~
- (F) The Board of Adjustment may reverse or affirm, in whole or in part, or modify the order, requirement, decision, or determination **appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision** ~~with reference to the appeal.~~
- (G) **Stay of Proceedings.** An appeal stays all legal proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board of Adjustment after the notice of appeal shall have been filed with him or her, that, by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life and property. In that case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application, on notice to the Zoning Administrator and on the cause shown. **If enforcement proceedings are not stayed, the appellant may file with the Zoning Administrator a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after the request is filed.**

11.3 VARIANCES.

The Board of Adjustment may authorize upon appeal in specific cases variances from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions a literal enforcement of the provisions of this chapter would result in practical difficulty or unnecessary hardship. The Board of Adjustment shall not grant a variance from the terms of this ordinance unless and until the Board has found all of the following:

- (A) A written application for a variance is submitted demonstrating: **there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of a zoning regulation, the Board of Adjustment shall vary any of the provisions of the zoning regulation upon a showing of all of the following:**

(1) Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography.

(a) Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

(b) A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

(3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.

(4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

~~(1) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of these regulations. This shall be construed to mean:~~

~~(a) If the property owner complies with the provisions of this chapter, he or she can secure no reasonable return from, nor make reasonable use of his or her property;~~

~~(b) The hardship results from the application of the requirements of this chapter;~~

~~(c) The hardship is suffered by the applicant's property;~~

~~(d) The hardship is not the result of the applicant's own actions; and~~

~~(e) The hardship is peculiar to the applicant's property.~~

~~(2) That the variance would be in harmony with the general purpose and intent of this chapter and preserves its spirit.~~

~~(3) That in granting the variance, the public safety and welfare have been assured and substantial justice has been done.~~

~~(4) That the reasons set forth in the application justify the granting of a variance, and that the variance is the minimum one that will make possible the reasonable use of the land or structure.~~

(B) The application must be filed at least thirty (30) days prior to the next Board of Adjustment meeting.

- (~~BC~~) Notice of public evidentiary hearing shall be given as required in Section 11.1(B), ~~by state statute for quasi-judicial decisions~~. At the public evidentiary hearing any party may appear in person or by agent or by attorney.
- (~~CD~~) The Board of Adjustment shall make findings that all requirements have been met for a variance.
- (~~DE~~) The Board of Adjustment shall make a finding that the reasons set forth in the application justify the granting of the variance and that the variance is the minimum one that will make possible the reasonable use of the land, building or structure.
- (~~EF~~) The Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance and the Land Use Plan, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare. The fact that property may be utilized more profitably will not be considered in granting a variance.
- (~~FG~~) In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of the conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.
- (~~GH~~) Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in the district involved.

ARTICLE 12 HISTORIC DISTRICT REGULATIONS

~~12.4 THE HISTORIC PRESERVATION COMMISSION~~

- ~~(A) Establishment. The Historic Preservation Commission was established by the Mount Gilead Board of Commissioners in May 2006 and consists of five (5) members, all of whom shall be residents of the Town of Mount Gilead or the Town of Mount Gilead Extra-Territorial Jurisdiction (ETJ). The Ordinance establishing the Historic District Commission stipulates that a majority of the Commission members demonstrate expertise in history or architecture through special interest, education, or experience.~~
- ~~(B) Appointment. The members of the Commission shall be appointed by the Town Board and shall serve a term of three (3) years. Commission members shall continue to serve until their successors have been appointed. Board members may be appointed to succeed themselves.~~
- ~~If a member moves outside the town or extraterritorial planning jurisdiction that shall constitute a resignation from the board, effective upon the date a replacement is appointed.~~
- ~~(C) Expenses. Members of the Historic Preservation Commission shall serve without pay.~~
- ~~(D) Meetings. The Historic Preservation Commission shall establish a meeting time and shall meet at least quarterly and more often as it shall determine and require. All meetings of the Commission shall be open to the public, and reasonable notice of the time and place~~

~~thereof shall be given to the public. All meetings shall conform to the North Carolina Open Meetings Law, G.S. § 143-318.9 et seq~~

~~(E) **Rules of Procedure.** The Historic Preservation Commission shall adopt and publish rules of procedure for the conduct of its business.~~

~~(F) **Minutes.** The Commission shall keep permanent minutes of all its meetings. The minutes shall record attendance of its members and its resolutions, findings, recommendations and actions. The minutes of the Commission shall be a public record.~~

~~(G) **Attendance.** Any member of the Historic Preservation Commission who misses more than three consecutive meetings or more than half the regular meetings in a calendar year may lose his or her status as a member of the Commission and may be replaced or reappointed by the Town Board. Absences due to sickness, death or other emergencies of like nature shall be recognized as approved absences and shall not affect the member's status on the Commission.~~

~~(H) **Powers and Duties.** The Historic Preservation Commission shall have the following powers and duties:~~

~~(1) Undertaking inventories of properties of historical, architectural, pre-historical, and or cultural significance.~~

~~(2) Recommending to the Mount Gilead Town Board areas to be designated by ordinance as "Historic Overlay Zoning Districts", as well as individual structures, buildings, sites, areas, or objects to be designated by ordinance as "Landmarks". Prior to recommending such designation to the Mount Gilead Board of Commissioners, The Historic Preservation Commission shall notify its intent, provide pertinent information to, and seek comment from North Carolina's State Historic Preservation Officer (SHPO) and the Mount Gilead Planning Board.~~

~~(3) Acquiring by any lawful means the fee or any lesser included interest, including options to purchase and conservation easements, to properties within established historic districts, or to any properties designated as landmarks, to hold, manage, preserve, restore, and improve the same, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions, which will secure appropriate rights of public access and promote the preservation of the property.~~

~~(4) Restoring, preserving, and operating historic properties.~~

~~(5) Recommending to the Mount Gilead Town Board that designation of any area as a historic district, or part thereof, or designation of any building, structure, site, area, or object as a landmark, be revoked or removed for cause. Prior to recommending such revocation of designation to the Mount Gilead Board of Commissioners, The Historic Preservation Commission shall notify of its intent, provide pertinent information to, and seek comment from North Carolina's State Historic Preservation Officer (SHPO) and the Mount Gilead Planning Board.~~

- ~~(6) — Conducting educational programs with respect to historic properties and districts within the Town limits and extraterritorial zoning jurisdiction of the Town of Mount Gilead.~~
- ~~(7) — Cooperating with state, federal, and local governments, in pursuance of protecting and preserving Mount Gilead’s architectural and historical character and promoting its use and conservation for the education, pleasure, and enrichment of its citizens and people.~~
- ~~(8) — Entering, solely in performance of its official duties, and only at reasonable times, upon private lands for the examination or survey thereof. However, no member, employee, or agent of the Commission may enter any private building or structure without the express consent of the owner or occupant thereof.~~
- ~~(9) — Preparing and recommending the official adoption of a preservation element or component as part of any comprehensive land use plan adopted by the Mount Gilead Board of Commissioners. In making such recommendation, the Commission shall consult with the Mount Gilead Planning Board.~~
- ~~(10) — Reviewing and acting upon, through approval or denial, applications for a Certificate of Appropriateness for alterations, demolitions, or new construction within any designated historic overlay zoning districts, or regarding any designated landmark within the town limits and extraterritorial zoning jurisdiction of the Town of Mount Gilead. A Certificate of Appropriateness issued by the Commission shall be required prior to the issuance of a building, zoning, or any other permit issued by the Town of Mount Gilead or Montgomery County, which may be required by the construction, alteration, moving, or demolition of any structure.~~
- ~~(11) — Negotiating at any time with the owner of a building, structure, site, area, or object for its acquisition, or preservation, when such action is reasonably necessary or appropriate.~~

12.54 CERTIFICATES OF APPROPRIATENESS.

(A) Certificate of Appropriateness Required.

~~**(1) The Historic Preservation Commission shall review and make determinations on all Certificates of Appropriateness using the quasi-judicial process outlined in Section 11.1. Administrative decisions on minor works and other decisions that do not need a Certificate of Appropriateness do not require quasi-judicial proceedings.**~~

~~**(5) All actions related to Certificates of Appropriateness shall adhere to G.S. 160D-947.**~~

(B) Approval Required for Repairs and Minor Works. Certificates of Appropriateness are not necessary for repairs using original materials, designs, and colors that do not alter the exterior appearance of the property. However, removal of architectural design features that would alter the appearance of the property and repair or maintenance that would change the original look or character of the property do require a Certificate of Appropriateness.

Some minor work does not require a Certificate of Appropriateness, but does require the approval of the Zoning Administrator and the Chairperson and the Vice-Chairperson of the Historic Preservation Commission. Minor work is defined as exterior changes that do not involve substantial alterations, additions, or removals that could impair the integrity of the landmark or property. ~~The types of changes that fall into this category are listed in Chapter 1, Section E of the adopted Mount Gilead Historic District Guidelines. Non-permanent window signage which does not obstruct architectural features may be considered a minor work.~~

- (C) **Certificate of Appropriateness Application.** An application for a Certificate of Appropriateness shall be obtained from the office of the Town Manager or Zoning Administrator and when completed, filed with the appropriate administrative official. Applications for Certificates of Appropriateness shall first be considered by the Zoning Administrator and Chair ~~and Vice-Chair~~ of the Historic Preservation Commission to determine whether the request concerns a minor work or ordinary maintenance or repair which does not involve a change in design, material, color, or outer appearance of any architectural feature in the Historic District. If the application does not require review and approval by the full Commission, a report of their decision will be reported at the next regularly scheduled meeting of the Commission. If a Certificate of Appropriateness is required the application shall be considered by the Historic Preservation Commission at its next regular meeting, provided they have been filed, complete in form and content, at least ~~ten (10)~~ thirty (30) calendar days before the regularly scheduled meeting of the Commission; otherwise, consideration shall be deferred until the following meeting.

~~(4) **Notification of Historic Preservation Commission.** Upon receipt of an application, the appropriate administrative official shall notify the Historic Preservation Commission at least five (5) calendar days before its regularly scheduled meeting.~~

~~(5) **Notification of Affected Property Owners.** Prior to issuance or denial of a Certificate of Appropriateness, the Commission shall take such action as may reasonably be required to inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard.~~

~~(6) **Public Evidentiary Hearing.** In cases where the Commission deems it necessary, it may hold a public hearing concerning the application. The Commission shall conduct evidentiary hearings using quasi-judicial procedures as laid out in Section 11.1.~~

- (D) **Commission Action on the Application.**

~~(2) Action by the Commission shall follow the procedure for quasi-judicial proceedings as outlined in Section 11.1.~~

~~(F) **Time Limit for Action by Commission.** Action on an application for a Certificate of Appropriateness must be taken by the Commission within 30 days after the filing of a complete application. This time limit can be extended by mutual agreement between the applicant and the Commission.~~

- ~~(H) **Appeals from the Commission's Decisions.**~~

~~(1) An appeal to an administrative decision involving a minor work or other administrative action may be made filed with the Historic Preservation Commission using the process laid out in Section 11.2.~~

(+2) An appeal may be taken to the Zoning Board of Adjustment from the Commission's action in granting or denying any Certificate of Appropriateness using the process laid out in Section 11.2.

(23) Such appeals may be taken by any aggrieved party **with standing**; shall be taken within times prescribed by the Historic Preservation Commission by general rule and shall be in the nature of certiorari.

~~ARTICLE 13 APPENDIX A RULES OF CONSTRUCTION, INTERPRETATION, AND DEFINITIONS~~

~~13.1 RULES OF CONSTRUCTION.~~

~~For the purposes of these regulations, the following rules of construction apply:~~

~~(A) Interpretations shall be guided by statements of intent.~~

~~(B) The term *this ordinance* shall refer to the Town of Mount Gilead Zoning Ordinance.~~

~~(C) The words *shall*, *must*, and *will* are mandatory, implying an obligation or duty to comply with the particular provision.~~

~~(D) The word *may* is permissive, except when the context of the particular use is negative, then it is mandatory (e.g., *may not*).~~

~~(E) The word *should*, whether used in the positive or the negative, is a suggested guideline.~~

~~(F) References to days will always be construed to be business days, excluding weekends and holidays, unless the context of the language clearly indicates otherwise.~~

~~(G) For purposes of interpreting this ordinance, certain words, concepts, and ideas are defined in Section 13.3 except as defined herein, all other words used in this ordinance shall have their everyday dictionary definition.~~

~~(H) Words used in the present tense include the future tense, and words used in the future tense include the present tense.~~

~~(I) Words used in the singular number include the plural, and words used in the plural number include the singular.~~

~~(J) The word *person* includes a firm, association, organization, partnership, corporation, trust, and company, as well as an individual.~~

~~(K) The word *lot* includes the words plot, parcel or tract.~~

~~(L) The word *building* includes the words structure, and the word structure includes the word building.~~

- (M) ~~The words *used* or *occupied* as applied to any land or building shall be construed to include the words intended, arranged, or designed to be used or occupied.~~
- (N) ~~Words used in the masculine gender include the feminine gender.~~
- (O) ~~The word *street* includes the words road, avenue, place, way, drive, lane, boulevard, highway, and any other facility principally designed for motor vehicle traffic, except an alley or an easement solely for utilities or pedestrians.~~
- (P) ~~The term *town board* shall mean the Board of Commissioners of the Town of Mount Gilead, North Carolina.~~
- (Q) ~~The term *planning board* shall mean the Planning and Zoning Board of the Town of Mount Gilead, North Carolina.~~
- (R) ~~The term *zoning administrator* shall mean the Zoning Administrator of the Town of Mount Gilead, North Carolina.~~
- (S) ~~The term *subdivision administrator* shall mean the Subdivision Administrator of the Town of Mount Gilead, North Carolina.~~
- (T) ~~The term *mayor* shall mean the Mayor of the Town of Mount Gilead, North Carolina.~~
- (U) ~~The term *board of adjustment* shall mean the Board of Adjustment of the Town of Mount Gilead, North Carolina.~~
- (V) ~~The term *state* shall mean the State of North Carolina.~~
- (W) ~~Any reference to an *article* shall mean an article of the Town of Mount Gilead Zoning Ordinance, unless otherwise specified.~~

~~13.2 INTERPRETATION.~~

- (A) ~~**Zoning Boundaries.** Where uncertainty exists as to the boundaries of any district shown on the official zoning map, the Zoning Administrator shall employ the following rules of interpretation:~~
- ~~(1) Where the zoning map shows a boundary line located within a street right of way, railroad or utility line right of way, easement or waterway, it shall be considered to be in the center of the right of way, easement or waterway. If the actual location of such right of way, easement or waterway varies slightly from the location as shown on the zoning map, then the actual location shall control.~~
 - ~~(2) Where the zoning map shows a district boundary to approximately coincide with a property line or city, town or county border, the property line or border shall be considered to be the district boundary, unless otherwise indicated on.~~
 - ~~(3) Where the zoning map shows a district boundary to not coincide or approximately coincide with any street, alley, railroad, waterway or~~

~~property line, and no dimensions are shown, the location of the boundary shall be determined by use of the scale appearing on the zoning map.~~

- ~~(4) — If, because of error or omission in the zoning map, any property within the jurisdiction of this ordinance is not shown as currently being in a zoning district, such property will be classified as R-15, until changed by amendment.~~
- ~~(5) — Where district boundaries appear to be parallel to the centerline of streets, easements or rights of way, such district boundaries shall be construed to be parallel thereto and at such a distance therefrom as is indicated on the zoning map.~~
- ~~(6) — The Zoning Administrator shall decide the exact location of zoning district boundary lines when a question arises concerning boundary lines shown on the zoning maps. This decision may be appealed to the zoning board of adjustment.~~

~~(B) — **Split tracts and fractional requirements.** The Zoning Administrator shall employ the following rules with respect to split tracts and fractional requirements:~~

- ~~(1) — Where a district boundary line divides a lot or tract in single ownership, the district requirements for the least restricted portion of such lot or tract shall be extended to apply to the whole, provided such extensions shall not include any part of a lot or tract more than thirty-five feet beyond the district boundary line. The term least restrictive shall refer to all zoning restrictions except lot or tract size.~~
- ~~(2) — When any requirement of this ordinance results in a fraction of a dwelling unit or other measurement, that fraction will be disregarded and the nearest lower whole number shall apply.~~
- ~~(3) — Whenever a density calculation for a legal lot of record results in less than one dwelling unit being permitted, one dwelling unit will be permitted subject to the remaining provisions of this ordinance.~~

~~(C) — **General rules of conflict.**~~

- ~~(1) — In the event of a conflict between the text of this article and any caption, figure, illustration, or table included herein, the text of this article shall control.~~
- ~~(2) — In the event there is a conflict in limitations, requirements or standards applying to any individual use or structure, the more stringent or restrictive provision shall apply.~~

~~(D) — **Distance measurements.**~~

~~Distance separations are required for many uses in this article. Unless otherwise specified, the following rules shall apply in determining such measurements:~~

- ~~(1) — Where lot separation is required, measurements shall be made from lot line to lot line using the shortest straight-line distance between lots.~~

- ~~(2) — Where separation between a building, structure, parking area, buffer, driveway or similar feature on a development site and any other feature on the same or abutting site is required or is part of a regulation contained herein, such separation shall be measured between the closest points on the feature using the shortest straight line distance between the two.~~

~~13.3 — DEFINITIONS.~~

~~**ADMINISTRATIVE DECISION. Decisions made in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in this ordinance. These are sometimes referred to as ministerial decisions or administrative determinations.**~~

~~**BONA FIDE FARM. A property that is located in the Town's extraterritorial jurisdiction that is used for bona fide farm purposes in accordance with G.S. 160D-903(a) and is exempt from zoning regulation to the same extent bona fide farming activities are exempt from county zoning pursuant to G.S. 160D-903.**~~

~~**DETERMINATION. A written, final, and binding order, requirement, or determination regarding an administrative decision of the UDO Administrator. Such determinations shall be provided to interested parties in accordance with NCGS 160D-403(b).**~~

~~**DEVELOPMENT APPROVAL. An administrative or quasi-judicial approval made pursuant to this ordinance that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, and variances. The term also includes all other regulatory approvals required by regulations adopted pursuant to this ordinance, including plat approvals, permits issued, development agreements entered into, and building permits issued. Unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations created by development approvals made pursuant to this ordinance attach to and run with the land. Town-issued development approval permits expire one (1) year after issuance unless work authorized by the permit has substantially commenced.**~~

~~**DEVELOPMENT REGULATION. A unified development ordinance, zoning regulation, subdivision regulation, floodplain or flood damage prevention regulation, stormwater control regulation, wireless telecommunication facility regulation, building code regulation, or any other regulation adopted pursuant to this ordinance.**~~

~~**EVIDENTIARY HEARING. A hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation adopted under this ordinance.**~~

~~**LEGISLATIVE DECISION. The adoption, amendment, or repeal of a regulation under this ordinance, which shall include any text or map amendment (rezoning). The term also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of NCGS.**~~

~~**QUASI-JUDICIAL DECISION. A decision involving the finding of facts regarding a specific application of a development regulation and that requires the exercise of discretion**~~

when applying the standards of the regulation. The term includes, but is not limited to, decisions involving variances, special use permits, and appeals of administrative determinations.

SITE SPECIFIC VESTING PLAN. A site-specific vesting plan consists of a plan submitted to the Town in which the applicant requests vesting pursuant to this ordinance and in accordance with the required procedure for approval, describing with reasonable certainty on the plan the type and intensity of use for a specific parcel or parcels of property.

SUBDIVISION. All divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions when any one (1) or more of those divisions are created for the purpose of sale or building development (whether immediate or future) and includes all divisions of land involving the dedication of a new street or a change in existing streets; provided, however, that the following shall not be included within this definition:

(G) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes

SUBDIVISION, MINOR EXPEDITED. The division of one existing parcel of land under single ownership that is not exempt per G.S. 160D-802(a);

(A) Where no part of the tract or parcel to be divided has been divided in the 10 years prior to the proposed division;

(B) The entire area of the tract or parcel to be divided is greater than 5 acres;

(C) After division, no more than three lots result from the division and all resultant lots comply with all lot dimension size requirements of the applicable zoning district and the use of the lots is in conformity with the applicable zoning district; and

(D) A permanent means of ingress and egress is recorded for each.

VESTED RIGHT (ZONING). ~~A right established pursuant to the provisions of this ordinance to undertake and complete the development and use of property.~~ Vested right shall be based upon the following criteria:

(A) Having an outstanding valid building permit in compliance with NCGS 160D-108; 108.1, or

(B) Having an approved site specific or phased development vesting plan or multi phased development plan in compliance with NCGS 160D-108; 108.1.

TOWN OF MOUNT GILEAD SUBDIVISION REGULATIONS ORDINANCE

ARTICLE I. LEGAL PROVISIONS

C. AUTHORITY

The provisions of this Ordinance are adopted under the authority granted by the North Carolina General Assembly, particularly GS Chapter ~~153A, Article 18, Part~~ 160D-801.

E. PLAT RECORDING REQUIREMENTS

After the effective date of this ordinance, each individual subdivision plat of land within the Town's jurisdiction shall be reviewed and approved by the Town of Mount Gilead ~~Planning Board,~~ hereinafter referred to as the Planning Board as described in these ordinances. ~~The Planning Board~~

~~has the authority to approve, approve with conditions or modifications or disapprove subdivision plans. The Town Board has the authority to review and render decisions in appeal cases.~~

The Montgomery Register of Deeds shall not file or record a plat of subdivision of land located within the territorial jurisdiction of the Town of Mount Gilead that has not been approved in accordance with these provisions, nor shall the Clerk of Superior Court order or direct the recording of a plat if the recording would be in conflict with this section.

~~Subdivision lots which are not approved for building development may be approved for recording through the minor subdivision procedures. Such plats shall display a note stating the lots are not approved for building development and do not meet the requirements of the subdivision regulations but are approved for recording purpose only.~~

Pursuant to GS ~~153A-330~~ 160D-803 a final plat shall be prepared, approved and recorded pursuant to the provisions of this Ordinance whenever any subdivision of land takes place.

J. VESTED INTEREST AND RIGHTS

The purpose of this Section is to implement the provisions of GS ~~160A-385.1~~ 160D-108 and 160D-108.1 pursuant to which a statutory vested right is established.

A vested right shall be deemed established with respect to any property upon the valid approval, or conditional approval, of a site-specific development vesting plan or phased development plan, following notice and ~~public~~ hearing by the Town Board. 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 vesting plan or the phased development plan including any amendments thereto. The Town Board may approve a site-specific development vesting plan or 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 Board shall not require a landowner to waive his vested rights as a condition of developmental approval. A site-specific development vesting plan or phased development plan shall be deemed approved upon the effective date of the Town Board's action. A right which has been vested shall remain vested for a period of two years.

A vested right, once established, precludes any zoning action which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site-specific development vesting plan or an approved phased development except:

1. With written consent of the affected landowner; or
2. Upon findings that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety and welfare if the project were to proceed as contemplated in the site-specific development plan or the phased development plan; or
3. To the extent the affected landowner receives compensation for all costs, expenses and losses incurred; or
4. Upon findings the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the

approval by the Town Board of the site-specific development plan or the phased development plan; or

5. Upon the enactment of a State or Federal Law or Regulation which precludes development as contemplated in the site-specific development plan or phased development plan.

K. VARIANCES

~~The Planning Board may upon appeal authorize in individual cases a variance from the terms of this Ordinance. The Board shall take into account the nature of the proposed subdivision, the existing use of land in the vicinity, the number of persons to reside or work in the subdivision and the probable effect of the subdivision on traffic conditions. The variance shall not be contrary to the public interest, safety, health and welfare and shall meet the following conditions:~~

- ~~1. There are extraordinary and exceptional conditions affecting the property due to the size, shape or topography that are not applicable to other land or structures in the same district. The following are such physical conditions:
 - a. Marshlands and low lying swampy areas;
 - b. Steep slope conditions (25% and over);
 - c. Natural or man made water courses and lakes;
 - d. Deep ravines;
 - e. Poor soil conditions that result in failure to pass soil testing standards for on lot sewage;
 - f. Public utility easements and rights of way that isolate portions of the lots. This does not include overhead power or communication lines that do not necessarily restrict access. All land within any public utility easement may be considered dead property in the sense that future development is severely restricted.~~
- ~~2. Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.~~
- ~~3. The exceptional circumstances are not the result of the actions of the applicant.~~
- ~~4. A literal interpretation of the Ordinance provisions would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.~~
- ~~5. The granting of the variance will not be detrimental to the public health, safety and welfare or injurious to other property in the territory in which said property is situated.~~
- ~~6. The variance request is the minimum variance that will make possible the legal use of the land, building or structure.~~

An applicant may seek a variance to the regulations laid out in this ordinance. The applicant shall file a variance request with the Town Zoning Administrator to be heard before the Board of Adjustment no later than thirty (30) days before the meeting at which the variance will be heard. Variances will follow the procedures laid out in Article 11 of the Town of Mount Gilead Zoning Ordinance.

ARTICLE II. INTERPRETATION OF TERMS AND DEFINITIONS

B. DEFINITIONS

~~**Site Specific Development Plan.** A plan which has been submitted to the Town by a landowner describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of, but not be limited to, any of the following plans or approvals: a planned unit development plan, a subdivision plat, a preliminary or general development plan, a conditional or special use permit, a conditional or special use district zoning plan, or any other land use approval designation as may be utilized by the Town. Unless otherwise expressly provided by the Town, such a plan shall include the approximate boundaries of the site, significant topographical and other natural features effecting development of the site; the approximate location on the site of the proposed buildings, structures and other improvements; the approximate dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructures on the site, including water, sewer, roads and pedestrian walkways. What constitutes a site specific development plan under this section that would trigger a vested right shall be finally determined by the Town pursuant to this Ordinance and the Town's Zoning Ordinance. However, at a minimum, the Town shall designate a vesting point earlier than the issuance of a building permit. A variance shall not constitute a site-specific development plan, and approval of a site specific development with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained. Neither a sketch plan nor any other document which fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property may constitute a site specific development plan~~

Site-Specific Vesting Plan. A site-specific vesting plan consists of a plan submitted to the Town in which the applicant requests vesting pursuant to this section, describing with reasonable certainty on the plan the type and intensity of use for a specific parcel or parcels of property. The plan may be in the form of, but not be limited to, any of the following plans or approvals: a planned unit development plan, a subdivision plat, a preliminary or general development plan, a special use permit, a conditional district zoning plan, or any other land-use approval designation as may be utilized by the Town. The plan shall include the approximate boundaries of the site; significant topographical and other natural features affecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. A variance does not constitute a site-specific vesting plan, and approval of a site-specific vesting plan with the condition that a variance be obtained does not confer a vested right unless and until the necessary variance is obtained. If a sketch plan or other document fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property, it may not constitute a site-specific vesting plan.

Street, Private. An undedicated private right-of-way which affords access to abutting properties according to the standards of this Ordinance and requires a subdivision streets disclosure statement in accordance with NC General Statute GS ~~136-102-6~~ **136-102(f)**.

Subdivision Administrator. An individual or individuals appointed by the Mount Gilead Town Board to issue rulings on all minor subdivisions and review and make recommendations ~~to the Planning Board~~ on all major subdivisions, commercial subdivisions, planned unit developments and variance requests.

Subdivision Plat. The final map or drawing, described in these regulations, on which the subdivision is presented ~~to the Planning Board~~ for approval and which, is approved, may be submitted to the Register of Deeds for recording.

~~**Subdivision.** All divisions of a tract or parcels of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future). The following shall not be included within this definition nor be subject to any regulations:~~

- ~~1. — The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the Town standards.~~
- ~~2. — The division of land into parcels greater than ten (10) acres where no street right-of-way dedication is involved.~~
- ~~3. — The public acquisition by purchase of land strips for widening or opening streets.~~
- ~~4. — The division of a tract in single ownership whose entire area is no greater than two (2) acres into three (3) or fewer lots equal to or exceeding Town standards, where no street right-of-way dedication is involved.~~
- ~~5. — A conveyance made for the purpose of dividing the estate of a decedent among the heirs and devisees, by will or the courts.~~

Subdivision. All divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions when any one (1) or more of those divisions are created for the purpose of sale or building development (whether immediate or future) and includes all divisions of land involving the dedication of a new street or a change in existing streets; provided, however, that the following shall not be included within this definition:

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the Town of Mount Gilead Subdivision Regulations.**
- (2) The division of land into parcels greater than ten (10) acres where no street right-of-way dedication is involved.**
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets or the location of public utility rights-of-way.**
- (4) The division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where no street right-of-way dedication is**

involved and where the resultant lots are equal to or exceed the standards of the Town of Mount Gilead Zoning Ordinance.

- (5) The division of land into plots or lots for use as a cemetery.
- (6) Subdivisions resulting from proceedings to partition interests in lots or parcels pursuant to Chapter 46 of the North Carolina General Statutes (or any successor statute) resulting in the division of a lot or parcel into two (2) or more lots or parcels except where the partition proceeding is brought to circumvent the provisions of this ordinance.
- (7) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes

Subdivision, Minor Expedited. The division of one existing parcel of land under single ownership that is not exempt per G.S. 160D-802(a);

- (1) Where no part of the tract or parcel to be divided has been divided in the 10 years prior to the proposed division;
- (2) The entire area of the tract or parcel to be divided is greater than 5 acres;
- (3) After division, no more than three lots result from the division and all resultant lots comply with all lot dimension size requirements of the applicable zoning district and the use of the lots is in conformity with the applicable zoning district; and
- (4) A permanent means of ingress and egress is recorded for each.

ARTICLE III ADMINISTRATION

E. RECOMBINATION OF LAND

Any plat or any part of any plat may be ~~vacated~~ **recombined** by the owner at any time ~~before the sale of any lot in the subdivision~~ by written instrument to which a copy of such plat shall be attached, ~~declaring the same to be vacated.~~

Such an instrument shall be **reviewed and** approved by ~~the same agencies as approved the final plat.~~ ~~The Planning Board~~ **Subdivision Administrator who** may reject any such instrument which abridges or destroys any public rights in any of its public uses, improvements, streets or alleys. **If approved, the recombination plat shall be filed with the Montgomery County Register of Deeds.**

~~Such an instrument shall be executed, acknowledged or approved and recorded and filed in the same manner as a final plat; and being duly recorded or filed shall operate to destroy the force and effect of the recording of the plat so vacated, and to divest all public rights in the streets, alleys, and public grounds, and all dedications laid out or described in such plat.~~

~~When lots have been sold, the plat may be vacated with the consensus of all owners of the lots in such plat joining in the execution of such writing.~~

F. RIGHT OF APPEAL

If any subdivision plan is denied or revoked, the applicant may appeal the action. ~~Should an appeal to the Town Board be unsuccessful, any further recourse shall be to the applicable court as provided by Law.~~ **Appeals of subdivision decisions may be made pursuant to G.S. 160D-1403. In effect, administrative decisions shall be appealed to the Board of Adjustment per the regulations of Article 11 of the Town of Mount Gilead Zoning Ordinance and appeals of the Town Board shall be made with the superior court.**

ARTICLE IV REVIEW AND APPROVAL PROCEDURES

B. MINOR SUBDIVISION REVIEW AND APPROVAL PROCEDURES

2. **Final Plat.** Upon approval of the sketch plan by the Administrator the subdivider may proceed with the preparation of the final plat in accordance with the requirements of this Ordinance. The final plat shall be prepared by a Registered Land Surveyor and shall conform to the provisions set forth in North Carolina General Statutes GS 47-30 and the Manual of Practice for Land Surveying in North Carolina.

The subdivider may make revisions to the plat to bring the final plat into compliance and resubmit to the Administrator for reconsideration or appeal to the Town of Mount Gilead ~~Planning~~ Board of Adjustment.

3. Expedited Minor Subdivision Plat. For qualifying, expedited minor subdivisions, to be approved administratively, only a final plat for recordation is required for the division of a tract or parcel of land in single ownership if all of the following criteria are met:

- a. The tract or parcel to be divided is not exempted under G.S 160D-802(a).
- b. No part of the tract or parcel to be divided has been divided under this subsection in the 10 years prior to division.
- c. The entire area of the tract or parcel to be divided is greater than 5 acres.
- d. After division, no more than three lots result from the division.
- e. After division, all resultant lots comply with all of the following:
 - i. All lot dimension size requirements of the applicable zoning district.
 - ii. The use of the lots is in conformity with the applicable zoning district.
 - iii. A permanent means of ingress and egress is recorded for each.

Upon Administrator approval of the final plat, the original tracing and (1) copy shall be retained by the Administrator and the following certification shall be shown on each copy of the plat:

Certificate of Subdivision Administrator Approval

I hereby certify the subdivision plat shown hereon has been found to comply with the Subdivision Regulations of the Town of Mount Gilead, North Carolina and this plat has been approved for recording in the Office of the Montgomery County Register of Deeds.

Subdivision Administrator Date

C. MAJOR SUBDIVISION REVIEW AND APPROVAL PROCEDURES

2. **Preliminary Plat.** For every major subdivision within the territorial jurisdiction of the Town of Mount Gilead the subdivider shall submit a preliminary plat which shall be reviewed and approved by the ~~Planning~~ Town Board (after review and

recommendation by the Planning Board) prior to beginning any construction or installation of any improvements.

Four copies (4) copies of the preliminary plat (as well as any additional copies which the Administrator determines are needed for other agencies) shall be submitted to the Administrator at least ~~fifteen (15) working~~ thirty (30) days prior to the Planning Board meeting at which the subdivider desires the preliminary plat to be ~~review and considered~~ reviewed. All comments from other agencies shall be required prior to this application deadline.

Preliminary plats shall meet the specifications as outlined on the Preliminary and Final Plat Checklist Form (Attachment A).

- a. **Review by Other Agencies.** The subdivider or developer shall submit copies of the preliminary plat and any accompanying material to the appropriate officials and agencies concerned with new development including, but not limited to:
- i. District Highway Engineer
 - ii. Montgomery County Health Department
 - iii. NC DENR Land Quality Section
 - iv. Other agencies as designated by the Planning Board Subdivision Administrator

Percolation or other forms of soil test shall be performed for all subdivisions unless a central sewage disposal system is planned. The test shall be approved by the Montgomery County Health Department.

- b. **Review by Planning Board.** The Planning Board shall review the preliminary plat at ~~or before~~ its next regularly scheduled meeting which follows ~~at least fifteen (15) days after the subdivision administrator receives~~ the complete submission of the preliminary plat and the comments from appropriate agencies.

The Planning Board shall recommend that the Town Board approve, approve with conditions to ensure Ordinance compliance, or disapprove with reasons ~~within forty (40) days of consideration.~~

~~If approved the preliminary plat shall note approval on two (2) copies. One (1) copy shall be retained by the Administrator and one (1) returned to the subdivider.~~

~~Preliminary plats receiving conditional approval shall also note the approval with the specified conditions on two (2) copies. One (1) copy shall be retained by the Administrator and one (1) returned to the subdivider. If disapproved the preliminary plat shall note disapproval with the reasons on two (2) copies. One (1) copy shall be retained by the Administrator and one (1) returned to the subdivider.~~

~~If the preliminary plat is disapproved, the subdivider may make necessary changes and submit a revised preliminary plat to the Planning Board or appeal the decision to the Town of Mount Gilead Board of Commissioners.~~

- c. Review by Town Board. The Town Board shall receive the preliminary plat at its next regularly scheduled meeting following the Planning Board's review and recommendation. At this meeting, the Town Board shall set an evidentiary hearing following the quasi-judicial procedures laid out in the Town of Mount Gilead Zoning Ordinance.**

After the evidentiary hearing, the Town Board shall approve, approve with conditions to ensure Ordinance compliance, or disapprove with reasons. The Town Board must make a decision within sixty (60) days after the evidentiary hearing.

The preliminary plat shall note on two (2) copies, one (1) copy to be retained by the Town and one (1) returned to the subdivider, approval, the conditions of approval, or disapproval, based on the decision of the Town Board.

If the preliminary plat is disapproved, the subdivider may make necessary changes and submit a revised preliminary plat or appeal the decision as per Article III F of this ordinance.

3. **Final Plat.** Upon approval of the preliminary plat by the ~~Planning~~ **Town** Board, the subdivider may proceed with the preparation of the final plat. The final plat shall be prepared by a Registered Land Surveyor and shall conform to the provisions set forth in North Carolina General Statutes GS 47-30 and the Manual of Practice for Land Surveying in North Carolina. The final plat for the first stage of the subdivision shall be submitted not more than twelve (12) months after the date on which the preliminary plat was approved; otherwise, such approval shall be null and void, unless written extension of this limit is requested by the subdivider and granted by the Planning Board.

The Administrator shall review the final plat for general compliance with the requirements of this Ordinance and the prior approval ~~or approval with conditions~~ of the ~~Planning~~ **Town** Board. The Administrator may appoint a registered surveyor to confirm the accuracy of the final plat. If substantial errors are found, the costs shall be charged to the subdivider and the plat shall not be recommended for approval until such errors have been corrected. The final plat shall meet the specifications as outlined on the Preliminary and Final Plat Checklist Form (Attachment A).

Prior to approval of the final plat, the subdivider shall have installed the improvements specified in this Ordinance or guaranteed installation as provided herein. No final plat will be accepted for review by the ~~Planning~~ **Town** Board unless the Administrator verifies compliance with the improvement and guarantee standards of this Ordinance. The final plat shall constitute only that portion of the preliminary plat which the subdivider proposes to record and develop at that time; such portion shall conform to all requirements of this Ordinance.

4. **Improvement Performance Guarantees**

~~Agreement and Security Required.~~ In lieu of requiring the completion, installation and dedication of all improvements prior to final plat approval the Town Board may enter into an installation agreement with the subdivider. The Town Board shall review on an individual basis and may negotiate a joint cost sharing plan for the installation of the water and sewer infrastructure needs and streets. The Town Board may also elect to require the subdivider to complete all required improvements. Once an agreement on the installation and dedication of all improvements is signed by both parties and the security required herein is provided, the final plat may be approved by the **Planning Town** Board, if all other requirements of the Ordinance are met.

Nothing in this section shall require that the Town Board enter into a performance guarantee nor shall any provision violate G.S. Chapter 160D-804.1.

To secure the agreement, the subdivider shall provide, subject to the approval of the Town Board, either one, or a combination of the following guarantees not exceeding one point two five (1.25) times the subdivider's cost as provided herein:

- b. **Cash or Equivalent Security.** The subdivider shall deposit cash, or irrevocable letter of credit or other instrument readily convertible into cash at face value, either with the Town or in escrow with the financial institution designated as an official depository of the Town. The use of any instrument other than cash shall be subject to the approval of the Town Board. The amount of deposit shall be equal to one point two five (1.25) times the cost, as estimated by the subdivider and approved by the Town Board, of installing all required improvements.

If cash or other instrument is deposited in escrow with a financial institution as provided herein, then the subdivider shall file with the Town Board an agreement between the financial institution and the subdivider guaranteeing the following:

- iv. The Town Board may release a portion of any security posted as the improvements are completed and approved by the **Planning Board Subdivision Administrator**. When the **Planning Board Subdivision Administrator** approves said improvements, the Town Board shall ~~immediately~~ release any security posted **at their next regular meeting.**

c. Timing. The Town Board, at its discretion, may require the performance guarantee to be posted either at the time the plat is recorded or at a time subsequent to plat recordation.

d. Coverage. The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance after completion.

e. Legal Responsibilities. No person shall have or may claim any rights under or to any performance guarantee provided pursuant to this subsection or in the proceeds of any such performance guarantee other than the following:

- i. The local government to whom the performance guarantee is provided.**
- ii. The developer at whose request or for whose benefit the performance guarantee is given.**

- iii. The person or entity issuing or providing the performance guarantee at the request of or for the benefit of the developer.
- f. Multiple Guarantees. The developer shall have the option to post one type of a performance guarantee as provided for in this section, in lieu of multiple bonds, letters of credit, or other equivalent security, for all development matters related to the same project requiring performance guarantees.
- g. Exclusion. Performance guarantees associated with erosion control and stormwater control measures are not subject to the provisions of this section.

5. Certificates. The following certifications shall be required on all final plats:

56. Final Plat Review by Planning Board. The Planning Board shall review the final plat at or before its next regularly scheduled meeting which follows at least fifteen (15) days after the subdivision administrator receives the final plat and the comments from appropriate agencies. The process to review and approve the final plat shall be the same as the preliminary plat with review by the Planning Board and then evidentiary hearing and review by the Town Board.

The Planning Town Board shall approve, ~~approve with conditions to ensure compliance, or disapprove with reasons within forty (40) days of consideration~~ or deny the final plat within sixty (60) days of the evidentiary hearing.

If approved the final plat shall note approval on two (2) copies. One (1) copy shall be retained by the Town and one (1) returned to the subdivider. ~~Final plats receiving conditional approval shall also note the approval with the specified conditions on two (2) copies. One (1) copy shall be retained by the Administrator and one (1) returned to the subdivider.~~ If disapproved the preliminary final plat shall note disapproval with the reasons on the two (2) copies. ~~One (1) copy shall be retained by the Administrator and one (1) returned to the subdivider.~~

The subdivider shall file the approved final plat with the Montgomery County Register of Deeds within thirty (30) days of the approval; otherwise, such approval shall be null and void.

If the application is disapproved the Subdivision Administrator shall state in writing the reasons for disapproval. A copy of the disapproval shall be provided to the subdivider ~~and the Montgomery County Inspections Department. The Administrator shall retain a copy of the disapproval and one (1) print of the plat.~~

The subdivider may make revisions to the plat to bring the final plat into compliance and resubmit for reconsideration or appeal the decision as per Article III F of this ordinance.

The following certification shall be required on all Planning Board approved final plats:

Certification of Planning Board Approval for Recording

I hereby certify the subdivision plat shown hereon has been found to comply with the Subdivision Regulations of the Town of Mount Gilead, North Carolina, and this plat has been

~~approved by the Mount Gilead Planning Board for recording
in the Office of the Montgomery County Register of Deeds.~~

~~_____
Planning Board Chairman _____ Date~~

ARTICLE V. DESIGN STANDARDS

A. GENERAL PROVISIONS

Each subdivision shall contain the improvements specified in this article, which shall be installed in accordance with the requirements of this ordinance and paid for by the subdivider, unless other means of financing is specifically agreed upon by the Town Board.

3. **Municipal Regulations.** All subdivisions shall comply with previously approved regulations in the Town of Mount Gilead including the Zoning Ordinance, Manufactured Home Park Ordinance (if applicable), Sewer and Pretreatment Ordinance, Impact Policy, **other development policies and ordinances** and Code of Ordinances.

5. **Streets.** All public and/or private streets shall be built to the standards of NC Department of Transportation, Division of Highways, as taken from the American Association of State Highway Officials (AASHO) Manual. The design and construction of streets and roads shall be certified by a licensed engineer, architect, contractor or surveyor prior to final approval. Streets connecting to any existing State road shall also receive a permit from the Division of Highways District Engineer.

Privately maintained streets and roads may be allowed ~~by the Planning Board~~ provided the status and maintenance of said roads is made known by appropriate notes on the plat, in deeds, protective covenants or other means approved by the **Planning Town** Board.

9. **Sidewalks.** The installation of sidewalks along streets is optional. Sidewalks around amenities such as laundry facilities, clubhouses, schools, shopping centers, playgrounds and any other area subject to heavy pedestrian traffic is required. Sidewalks shall be constructed to a minimum width of four (4) feet and shall consist of a minimum thickness of four (4) inches of concrete. The minimum thickness shall increase to six (6) inches at all driveway crossings. All sidewalks shall be constructed in the right-of-way, unless platted as a planned unit or group development. **In all cases, ADA requirements will take precedence.**

13. **Common Open Space.** The location, shape, size and character of the common open space shall be reviewed. Common open space must be used for amenity or recreational purposes. The uses authorized for the common open space shall be appropriate to the scale and character of the planned development.

There shall be a minimum of fifteen percent (15%) of the total land area reserved as common open space. Roads and rights-of-way shall not be calculated as common open space. Common open space must be suitable for improvement but space containing natural features worthy of preservation may be left unimproved.

Appropriate buildings, structures and improvements must conserve and enhance the amenities of the common open space with regard to its topography and unimproved condition.

The use and improvements of common open space must be planned in relation to any existing or proposed public or semi-public open space which adjoins or which is with close proximity to the perimeter of the planned development.

All land shown on the final master plan as common open space must be conveyed under one (1) of the following options:

- a. Conveyance to a public agency which will agree to maintain the common open space and any buildings, structures, or improvements which have been placed on the land is permitted.
- b. Conveyance to a trustee(s) provided in a deed of record which establishes an association or similar organization for the maintenance of the planned development. The common open space may be conveyed to the trustees subject to the approval of the **Planning Town** Board which will result in the restriction of the common open space to the uses specified on the final plan, and which will provide for the maintenance of the common open space in a manner which assures the continuance of the intended purpose.

14. Utilities. Subdividers and developers installing utilizes shall design for underground utilities. The Town Board may allow above ground utilities if the subdivider can show a valid hardship in complying.

CHAPTER 150: BUILDING REGULATIONS

General Provisions

150.01 Moratoria

Repair, Closing or Demolition of Abandoned Structures

GENERAL PROVISIONS

§ 150.01 MORATORIA. Repealed [Insert Ordinance date]

~~(A) The town may adopt temporary moratoria on any development approval required by law. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the Board of Commissioners shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements~~

~~of G.S. § 160A-364. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. § 160A-417 is outstanding, to any project for which a conditional use permit application or special use permit application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to G.S. § 160A-385.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the town prior to the call for public hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the town prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium. Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:~~

~~(1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the town and why those alternative courses of action were not deemed adequate;~~

~~(2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium;~~

~~(3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium; and~~

~~(4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the town during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.~~

~~(B) No moratorium may be subsequently renewed or extended for any additional period unless the town shall have taken all reasonable and feasible steps proposed to be taken by the town in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in division (A)(1) through (4) of this section, including what new facts or conditions warrant the extension.~~

~~(C) Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such action, the town shall have the burden of showing compliance with the procedural requirements of this division. (See G.S. § 160A-381(e))
(Ord. 2006-11, passed 5-9-2006)~~

REPAIR, CLOSING OR DEMOLITION OF ABANDONED STRUCTURES

§ 150.15 FINDING; INTENT.

It is hereby found that there exists within the town, abandoned structures which the Board of Commissioners finds to be hazardous to the health, safety and welfare of the residents of the town due to the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children, or frequent use by vagrants as living quarters in the absence of sanitary facilities. Therefore, pursuant to the authority granted by G.S. § ~~160A-441~~ 160D-1201(b), it is the intent of this subchapter to provide for the repair, closing or demolition of any such abandoned structures in accordance with the same provisions and procedures as are set forth by law for the repair, closing or demolition of dwellings unfit for human habitation. If the provisions of this Chapter conflict with the provisions of Article 12 of G.S. § 160D, then the rules, regulations and procedures of G.S. § 160D shall govern the actions of the Town.

(Ord. passed 7-10-1978)

CHAPTER 151: MINIMUM HOUSING CODE

§ 151.01 FINDING; PURPOSE.

(C) In order to protect the health, safety and welfare of the residents of the town as authorized by G.S. Chapter ~~160A, Article 19, Part 6~~ 160D Article 12, it is the purpose of this subchapter to establish and enforce minimum standards of fitness for the existence and initial and continued occupancy of all buildings used for human habitation, and for the protection of occupants of neighboring housing and other residents of the town, as expressly authorized by G.S. § ~~160A-444~~ 160D-1205.

(Ord. passed 7-13-2004)

§ 151.02 DEFINITIONS.

INSPECTOR. The Director of Inspections and Permits Division of the Department of Development services of the town, or a successor division thereto, and his or her designee(s). In addition to the powers and responsibilities granted in this chapter, the Inspector shall have and may exercise the powers ~~and responsibilities of public officer set forth in G.S. § 160A-441 et seq~~ outlined in Chapters 143 and 160D of the NC General Statutes.

§ 151.14 PROCEDURE FOR ENFORCEMENT.

(C) *Compliance with state law.* The Inspector shall comply with any requirements of G.S. § ~~160A-443(8)~~ 160D-1203 and other provisions of 160D Article 12.

§ 151.15 APPEALS FROM ORDERS OF THE INSPECTOR; REVIEW BY COURT.

Appeals from the orders of the building inspector shall follow the procedures outlined in G.S. §160D-1208. For the purpose of these appeals, the housing appeals board shall be the Board of Adjustment. These hearings are quasi-judicial and shall follow the procedures of G.S. §160D-406.

~~(A) Appeals Board. All appeals which may be taken from decisions or orders of the Inspector pursuant to this chapter shall be heard and determined by the Zoning Board of Adjustment. If the Zoning Board of Adjustment ("Board of Adjustment") consists of more than five members, the Chairman may designate five members to hear appeals under this chapter. As the appeals body, the Board shall have the power to fix the times and places of its meetings, to adopt necessary rules of procedure and any other rules and regulations which may be necessary for the proper discharge of its duties. The Board shall keep an~~

~~accurate journal of all its proceedings.~~

~~(B) *When appeal may be taken.* An appeal may be taken by the owner or party in interest, or by any officer, board or commission of the town, from a final decision or an order of the Inspector, unless a different method of appeal is provided for herein. Any appeal shall be taken within ten days from the rendering of the decision or service of the order, as the case may be, by filing with the Inspector and with the Board of Adjustment a written notice of appeal which shall specify with particularity all of the grounds upon which the appeal is based.~~

~~(C) *Duty of Inspector upon the filing of an appeal.* Upon the filing of any notice of appeal, the Inspector shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the final decision or order appealed from was made.~~

~~(D) *Staying of action.* When an appeal is from a decision or order of the Inspector refusing to allow the person aggrieved thereby to do any act, the Inspector's decision or order shall remain in force until modified or reversed. When an appeal is from a decision or order of the Inspector requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the Board, unless the Inspector certifies to the Board, after the notice of appeal is filed with the Inspector, that by reason of the facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of the Inspector's requirement would cause imminent peril to life or property. In that case, the requirement shall not be suspended except for due cause shown upon not less than one day's written notice to the Inspector, by the Board of Adjustment, or by a court of record upon petition made pursuant to G.S. § 160A-446(f) and this section.~~

~~(E) *Hearing of appeals.* The Board of Adjustment shall fix a reasonable time for the hearing of all appeals, shall give due notice to all the parties and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The Board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make any decision and order as in its opinion ought to be made in the matter, and to that end it shall have all the powers of the Inspector, but the concurring vote of four members of the Board shall be necessary to reverse or modify any decision or order of the Inspector. The Board shall have power also in passing upon appeals, in any case where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this chapter, to adapt the application of this chapter to the necessities of the case to the end that the spirit of this chapter shall be observed, public safety and welfare secured, and substantial justice done. A copy of the Board's decision shall be served on the appellant by the Inspector.~~

~~(F) *Petition to Superior Court.*~~

~~(1) Every decision of the Board of Adjustment shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the date of service of the decision of the Board, but not otherwise.~~

~~(2) Any person aggrieved by an order issued by the Inspector or a decision rendered by the Board of Adjustment may petition the Superior Court for an injunction restraining the Inspector from carrying out the order or decision and the court may, upon such petition, issue a temporary injunction restraining the Inspector pending a final disposition of the cause. The petition shall be filed within 30 days after issuance of the order or rendering of the decision. Hearings shall be held in accordance with G.S. § 160A-446(f).~~

~~(Ord. passed 7-13-2004)~~

§ 151.20 CONFLICT WITH OTHER PROVISIONS.

In the event any provision, standard or requirement of this chapter is found to be in conflict with any provision of any other ordinance or code of the town or the State, the provision which establishes the higher standard or more stringent requirement for the promotion and protection of the health and safety of the residents of the town or that takes legal precedence shall prevail. The headings contained in this chapter are for ease of reference only and shall not limit or otherwise define the contents of the sections. (Ord. passed 7-13-2004)

§ 151.99 PENALTY.

(B) *Action pursuant to ordinance.* If the owner of deteriorated or dilapidated housing fails to comply with an order of the Inspector within the time specified therein and court ordered relief has not been sought or has not been granted as provided in division (D) of this section, the Inspector may cause the housing to be repaired, altered, improved, vacated, closed or demolished and removed, as required by the order, provided the Inspector takes the following steps. The Inspector may submit to the Town Council for adoption an ordinance describing the property and ordering the Inspector to proceed to effectuate the purpose of this chapter with respect to the particular property or properties which the Inspector found to be substandard or unfit for human habitation. No such ordinance shall be adopted to require demolition and removal of housing until the owner has first been given a reasonable opportunity to bring it into conformity with this chapter. Such ordinance shall be recorded in the office of the Register of Deeds of the county, and shall be indexed in the name of the property owner in the grantor index. The Inspector may place a placard on any housing so closed stating “This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful.” Notwithstanding any other provision of this chapter, in accordance with G.S. § ~~160A-443(4)~~ 160D-1203, occupation of a building so posted shall constitute a Class 1 misdemeanor, punishable by a fine of not more than \$500 or imprisonment of not more than 30 days. If, after adoption of such ordinance, any occupant fails to comply with an order to vacate housing, the Inspector may file a civil action in the name of the town to remove such occupant in accordance with G.S. § ~~160A-443(7)~~ 160D-1203, including the provision of 30 days’ prior notice to an occupant who is a tenant of the owner.

(C) *Additional ordinance one year later.* If the Town Council shall have adopted an ordinance pursuant to division (B) above or, if the Inspector shall have issued an order ordering a dwelling to be repaired or vacated and closed, as provided in § 151.14(B)(1), and if the owner has vacated and closed such housing and kept such housing vacated and closed for a period of one year pursuant to the ordinance or order, then, if the Town Council shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the housing in its vacated and closed status would be inimical to the health, safety, morals and welfare of the town in that the housing would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, or would render unavailable property and housing which might otherwise have been made available to ease the persistent shortage of decent and affordable housing, in such circumstances the Town Council may, after the expiration of such one-year period, enact an ordinance and serve such ordinance on the owner requiring the owner to either repair or demolish and remove the housing within 90 days. Such ordinance shall meet the requirements set forth in G.S. § ~~160A-443(5a)~~ 160D-1203 and shall be recorded in the office of the County Register of Deeds and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this chapter within the time fixed by such ordinance, then the Inspector

shall effectuate the purpose of the ordinance. The cost of such repairs, demolition or removal shall be a lien on the property.

(D) *Court-ordered relief.* If the owner of any deteriorated housing shall fail to comply with an order of the Inspector to repair, alter, or improve or to vacate and close the same within the time specified therein, or if the owner of dilapidated housing shall fail to comply with an order of the Inspector to repair, alter or improve or to vacate and close and demolish and remove the same within the time specified therein, or if any housing is erected, constructed, altered, repaired, converted, maintained, or used in violation of this chapter or any valid order or decision of the Inspector or Board of Adjustment made pursuant to this chapter, the Inspector may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration or use; to restrain, correct or abate the violation; to prevent the occupancy of the housing; or for any other purpose authorized by G.S. § ~~160A-446(g)~~ **160D** and other law.

CHAPTER 156: FLOOD DAMAGE PREVENTION

GENERAL PROVISIONS

§ 156.01 STATUTORY AUTHORIZATION.

The Legislature of the State of North Carolina has in G.S. Ch. 143, Art. 21, Part 6; G.S. Ch. ~~160A, Art. 19, Parts 3, 5, and 8~~ **160D**; and G.S. Ch. 160A, Art. 8, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare. (Ord. passed 1-8-2019)

The	Governing Board Town Council
of	Primary Government Unit (or charter holder) Town of Mount Gilead, NC
and	Discretely Presented Component Unit (DPCU) (if applicable)

Primary Government Unit, together with DPCU (if applicable), hereinafter referred to as Governmental Unit(s)

and	Auditor Name J.B. Watson & Co., PLLC
	Auditor Address PO Box 341; Wadesboro, NC 28170

Hereinafter referred to as Auditor

for	Fiscal Year Ending 06/30/21	Audit Report Due Date 10/31/21
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Must be within four months of FYE

hereby agree as follows:

1. The Auditor shall audit all statements and disclosures required by U.S. generally accepted auditing standards (GAAS) and additional required legal statements and disclosures of all funds and/or divisions of the Governmental Unit(s). The non-major combining, and individual fund statements and schedules shall be subjected to the auditing procedures applied in the audit of the basic financial statements and an opinion shall be rendered in relation to (as applicable) the governmental activities, the business- type activities, the aggregate DPCUs, each major governmental and enterprise fund, and the aggregate remaining fund information (non-major government and enterprise funds, the internal service fund type, and the fiduciary fund types).

2. At a minimum, the Auditor shall conduct his/her audit and render his/her report in accordance with GAAS. The Auditor shall perform the audit in accordance with *Government Auditing Standards* if required by the State Single Audit Implementation Act, as codified in G.S. 159-34. If required by OMB *Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) and the State Single Audit Implementation Act, the Auditor shall perform a Single Audit. This audit and all associated audit documentation may be subject to review by Federal and State agencies in accordance with Federal and State laws, including the staffs of the Office of State Auditor (OSA) and the Local Government Commission (LGC). If the audit requires a federal single audit performed under the requirements found in Subpart F of the Uniform Guidance (§200.501), it is recommended that the Auditor and Governmental Unit(s) jointly agree, in advance of the execution of this contract, which party is responsible for submission of the audit and the accompanying data collection form to the Federal Audit Clearinghouse as required under the Uniform Guidance (§200.512).

If the audit and Auditor communication are found in this review to be substandard, the results of the review may be forwarded to the North Carolina State Board of CPA Examiners (NC State Board).

3. If an entity is determined to be a component of another government as defined by the group audit standards, the entity's auditor shall make a good faith effort to comply in a timely manner with the requests of the group auditor in accordance with AU-6 §600.41 - §600.42.
4. This contract contemplates an unmodified opinion being rendered. If during the process of conducting the audit, the Auditor determines that it will not be possible to render an unmodified opinion on the financial statements of the unit, the Auditor shall contact the LGC Staff to discuss the circumstances leading to that conclusion as soon as is practical and before the final report is issued. The audit shall include such tests of the accounting records and such other auditing procedures as are considered by the Auditor to be necessary in the circumstances. Any limitations or restrictions in scope which would lead to a qualification should be fully explained in an attachment to this contract.
5. If this audit engagement is subject to the standards for audit as defined in *Government Auditing Standards*, 2018 revision, issued by the Comptroller General of the United States, then by accepting this engagement, the Auditor warrants that he/she has met the requirements for a peer review and continuing education as specified in *Government Auditing Standards*. The Auditor agrees to provide a copy of the most recent peer review report to the Governmental Unit(s) and the Secretary of the LGC prior to the execution of an audit contract. Subsequent submissions of the report are required only upon report expiration or upon auditor's receipt of an updated peer review report. If the audit firm received a peer review rating other than pass, the Auditor shall not contract with the Governmental Unit(s) without first contacting the Secretary of the LGC for a peer review analysis that may result in additional contractual requirements.
- If the audit engagement is not subject to *Government Accounting Standards* or if financial statements are not prepared in accordance with U.S. generally accepted accounting principles (GAAP) and fail to include all disclosures required by GAAP, the Auditor shall provide an explanation as to why in an attachment to this contract or in an amendment.
6. It is agreed that time is of the essence in this contract. All audits are to be performed and the report of audit submitted to LGC Staff within four months of fiscal year end. If it becomes necessary to amend this due date or the audit fee, an amended contract along with a written explanation of the delay shall be submitted to the Secretary of the LGC for approval.
7. It is agreed that GAAS include a review of the Governmental Unit's (Units') systems of internal control and accounting as same relate to accountability of funds and adherence to budget and law requirements applicable thereto; that the Auditor shall make a written report, which may or may not be a part of the written report of audit, to the Governing Board setting forth his/her findings, together with his recommendations for improvement. That written report shall include all matters defined as "significant deficiencies and material weaknesses" in AU-C 265 of the *AICPA Professional Standards (Clarified)*. The Auditor shall file a copy of that report with the Secretary of the LGC.
8. All local government and public authority contracts for audit or audit-related work require the approval of the Secretary of the LGC. This includes annual or special audits, agreed upon procedures related to internal controls, bookkeeping or other assistance necessary to prepare the Governmental Unit's (Units') records for audit, financial statement preparation, any finance-related investigations, or any other audit-related work in the State of North Carolina. Approval is not required on contracts and invoices for system improvements and similar services of a non-auditing nature.
9. Invoices for services rendered under these contracts shall not be paid by the Governmental Unit(s) until the invoice has been approved by the Secretary of the LGC. (This also includes any progress billings.) [G.S. 159-34 and 115C-447] All invoices for Audit work shall be submitted in PDF format to the Secretary of the LGC for approval. The invoice marked 'approved' with approval date shall be returned to

the Auditor to present to the Governmental Unit(s) for payment. This paragraph is not applicable to contracts for audits of hospitals.

10. In consideration of the satisfactory performance of the provisions of this contract, the Governmental Unit(s) shall pay to the Auditor, upon approval by the Secretary of the LGC if required, the fee, which includes any costs the Auditor may incur from work paper or peer reviews or any other quality assurance program required by third parties (federal and state grantor and oversight agencies or other organizations) as required under the Federal and State Single Audit Acts. This does not include fees for any pre-issuance reviews that may be required by the NC Association of CPAs (NCACPA) Peer Review Committee or NC State Board of CPA Examiners (see Item 13).

11. If the Governmental Unit(s) has/have outstanding revenue bonds, the Auditor shall submit to LGC Staff, either in the notes to the audited financial statements or as a separate report, a calculation demonstrating compliance with the revenue bond rate covenant. Additionally, the Auditor shall submit to LGC Staff simultaneously with the Governmental Unit's (Units') audited financial statements any other bond compliance statements or additional reports required by the authorizing bond documents, unless otherwise specified in the bond documents.

12. After completing the audit, the Auditor shall submit to the Governing Board a written report of audit. This report shall include, but not be limited to, the following information: (a) Management's Discussion and Analysis, (b) the financial statements and notes of the Governmental Unit(s) and all of its component units prepared in accordance with GAAP, (c) supplementary information requested by the Governmental Unit(s) or required for full disclosure under the law, and (d) the Auditor's opinion on the material presented. The Auditor shall furnish the required number of copies of the report of audit to the Governing Board upon completion.

13. If the audit firm is required by the NC State Board, the NCACPA Peer Review Committee, or the Secretary of the LGC to have a pre-issuance review of its audit work, there shall be a statement in the engagement letter indicating the pre-issuance review requirement. There also shall be a statement that the Governmental Unit(s) shall not be billed for the pre-issuance review. The pre-issuance review shall be performed prior to the completed audit being submitted to LGC Staff. The pre-issuance review report shall accompany the audit report upon submission to LGC Staff.

14. The Auditor shall submit the report of audit in PDF format to LGC Staff. For audits of units other than hospitals, the audit report should be submitted when (or prior to) submitting the final invoice for services rendered. The report of audit, as filed with the Secretary of the LGC, becomes a matter of public record for inspection, review and copy in the offices of the LGC by any interested parties. Any subsequent revisions to these reports shall be sent to the Secretary of the LGC along with an Audit Report Reissued Form (available on the Department of State Treasurer website). These audited financial statements, excluding the Auditors' opinion, may be used in the preparation of official statements for debt offerings by municipal bond rating services to fulfill secondary market disclosure requirements of the Securities and Exchange Commission and for other lawful purposes of the Governmental Unit(s) without requiring consent of the Auditor. If the LGC Staff determines that corrections need to be made to the Governmental Unit's (Units') financial statements, those corrections shall be provided within three business days of notification unless another deadline is agreed to by LGC Staff.

15. Should circumstances disclosed by the audit call for a more detailed investigation by the Auditor than necessary under ordinary circumstances, the Auditor shall inform the Governing Board in writing of the need for such additional investigation and the additional compensation required therefore. Upon approval by the

Secretary of the LGC, this contract may be modified or amended to include the increased time, compensation, or both as may be agreed upon by the Governing Board and the Auditor.

16. If an approved contract needs to be modified or amended for any reason, the change shall be made in writing and pre-audited if the change includes a change in audit fee (pre-audit requirement does not apply to charter schools or hospitals). This amended contract shall be completed in full, including a written explanation of the change, signed and dated by all original parties to the contract. It shall then be submitted to the Secretary of the LGC for approval. No change to the audit contract shall be effective unless approved by the Secretary of the LGC, the Governing Board, and the Auditor.

17. A copy of the engagement letter, issued by the Auditor and signed by both the Auditor and the Governmental Unit(s), shall be attached to this contract, and except for fees, work, and terms not related to audit services, shall be incorporated by reference as if fully set forth herein as part of this contract. In case of conflict between the terms of the engagement letter and the terms of this contract, the terms of this contract shall take precedence. Engagement letter terms that conflict with the contract are deemed to be void unless the conflicting terms of this contract are specifically deleted in Item 28 of this contract. Engagement letters containing indemnification clauses shall not be accepted by LGC Staff.

18. Special provisions should be limited. Please list any special provisions in an attachment. *See attached engagement letter.*

19. A separate contract should not be made for each division to be audited or report to be submitted. If a DPCU is subject to the audit requirements detailed in the Local Government Budget and Fiscal Control Act and a separate audit report is issued, a separate audit contract is required. If a separate report is not to be issued and the DPCU is included in the primary government audit, the DPCU shall be named along with the primary government on this audit contract. DPCU Board approval date, signatures from the DPCU Board chairman and finance officer also shall be included on this contract.

20. The contract shall be executed, pre-audited (pre-audit requirement does not apply to charter schools or hospitals), and physically signed by all parties including Governmental Unit(s) and the Auditor, then submitted in PDF format to the Secretary of the LGC.

21. The contract is not valid until it is approved by the Secretary of the LGC. The staff of the LGC shall notify the Governmental Unit and Auditor of contract approval by email. The audit should not be started before the contract is approved.

22. Retention of Client Records: Auditors are subject to the NC State Board of CPA Examiners' Retention of Client Records Rule 21 NCAC 08N .0305 as it relates to the provision of audit and other attest services, as well as non-attest services. Clients and former clients should be familiar with the requirements of this rule prior to requesting the return of records.

23. This contract may be terminated at any time by mutual consent and agreement of the Governmental Unit(s) and the Auditor, provided that (a) the consent to terminate is in writing and signed by both parties, (b) the parties have agreed on the fee amount which shall be paid to the Auditor (if applicable), and (c) no termination shall be effective until approved in writing by the Secretary of the LGC.

24. The Governmental Unit's (Units') failure or forbearance to enforce, or waiver of, any right or an event of breach or default on one occasion or instance shall not constitute the waiver of such right, breach or default on any subsequent occasion or instance.

25. There are no other agreements between the parties hereto and no other agreements relative hereto that shall be enforceable unless entered into in accordance with the procedure set out herein and approved by the Secretary of the LGC.

26. E-Verify. Auditor shall comply with the requirements of NCGS Chapter 64 Article 2. Further, if Auditor utilizes any subcontractor(s), Auditor shall require such subcontractor(s) to comply with the requirements of NCGS Chapter 64, Article 2.

27. **Applicable to audits with fiscal year ends of June 30, 2020 and later.** For all non-attest services, the Auditor shall adhere to the independence rules of the AICPA Professional Code of Conduct and Governmental Auditing Standards, 2018 Revision (as applicable). Financial statement preparation assistance shall be deemed a "significant threat" requiring the Auditor to apply safeguards sufficient to reduce the threat to an acceptable level. If the Auditor cannot reduce the threats to an acceptable level, the Auditor cannot complete the audit. If the Auditor is able to reduce the threats to an acceptable level, the documentation of this determination, including the safeguards applied, must be included in the audit workpapers.

All non-attest service(s) being performed by the Auditor that are necessary to perform the audit must be identified and included in this contract. The Governmental Unit shall designate an individual with the suitable skills, knowledge, and/or experience (SKE) necessary to oversee the services and accept responsibility for the results of the services performed. If the Auditor is able to identify an individual with the appropriate SKE, s/he must document and include in the audit workpapers how he/she reached that conclusion. If the Auditor determines that an individual with the appropriate SKE cannot be identified, the Auditor cannot perform both the non-attest service(s) and the audit. See "Fees for Audit Services" page of this contract to disclose the person identified as having the appropriate SKE for the Governmental Unit.

28. **Applicable to audits with fiscal year ends of June 30, 2021 and later.** The auditor shall present the audited financial statements including any compliance reports to the government unit's governing body or audit committee in an official meeting in open session as soon as the audited financial statements are available but not later than 45 days after the submission of the audit report to the Secretary. The auditor's presentation to the government unit's governing body or audit committee shall include:

- a) the description of each finding, including all material weaknesses and significant deficiencies, as found by the auditor, and any other issues related to the internal controls or fiscal health of the government unit as disclosed in the management letter, the Single Audit or Yellow Book reports, or any other communications from the auditor regarding internal controls as required by current auditing standards set by the Accounting Standards Board or its successor;
- b) the status of the prior year audit findings;
- c) the values of Financial Performance Indicators based on information presented in the audited financial statements; and
- d) notification to the governing body that the governing body shall develop a "Response to the Auditor's Findings, Recommendations, and Fiscal Matters," if required under 20 NCAC 03 .0508.

29. Information based on the audited financial statements shall be submitted to the Secretary for the purpose of identifying Financial Performance Indicators and Financial Performance Indicators of Concern.

30. Applicable to charter school contracts only: No indebtedness of any kind incurred or created by the charter school shall constitute an indebtedness of the State or its political subdivisions, and no indebtedness of the charter school shall involve or be secured by the faith, credit, or taxing power of the State or its political subdivisions.

31. All of the above paragraphs are understood and shall apply to this contract, except the following numbered paragraphs shall be deleted (See Item 16 for clarification).

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32. The process for submitting contracts, audit reports and invoices is subject to change. Auditors and units should use the submission process and instructions in effect at the time of submission. Refer to the N.C. Department of State Treasurer website at <https://www.nctreasurer.com/state-and-local-government-finance-division/local-government-commission/submitted-your-audit>

33. All communications regarding audit contract requests for modification or official approvals will be sent to the email addresses provided on the signature pages that follow.

34. Modifications to the language and terms contained in this contract form (LGC-205) are not allowed.

FEEES FOR AUDIT SERVICES

1. For all non-attest services, the Auditor shall adhere to the independence rules of the AICPA Professional Code of Conduct (as applicable) and *Governmental Auditing Standards, 2018 Revision*. Refer to Item 27 of this contract for specific requirements. The following information must be provided by the Auditor; contracts presented to the LGC without this information will not be approved.

Financial statements were prepared by: Auditor Governmental Unit Third Party

If applicable: Individual at Governmental Unit designated to have the suitable skills, knowledge, and/or experience (SKE) necessary to oversee the non-attest services and accept responsibility for the results of these services:

Name: Hiram J. Marziano, II, MPA CFM	Title and Unit / Company: Town Manager	Email Address: manager@mtgileadnc.com
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OR Not Applicable (Identification of SKE Individual not applicable for GAAS-only audit or audits with FYEs prior to June 30, 2020.)

2. Fees may not be included in this contract for work performed on Annual Financial Information Reports (AFIRs), Form 990s, or other services not associated with audit fees and costs. Such fees may be included in the engagement letter but may not be included in this contract or in any invoices requiring approval of the LGC. See Items 8 and 13 for details on other allowable and excluded fees.

3. Prior to submission of the completed audited financial report, applicable compliance reports and amended contract (if required) the Auditor may submit invoices for approval for services rendered, not to exceed 75% of the billings for the last annual audit of the unit submitted to the Secretary of the LGC. Should the 75% cap provided below conflict with the cap calculated by LGC Staff based on the billings on file with the LGC, the LGC calculation prevails. All invoices for services rendered in an audit engagement as defined in 20 NCAC .0503 shall be submitted to the Commission for approval before any payment is made. Payment before approval is a violation of law. (This paragraph not applicable to contracts and invoices associated with audits of hospitals).

PRIMARY GOVERNMENT FEES

Primary Government Unit	Town of Mount Gilead, NC
Audit Fee	\$ 11,000 + \$130/hour for any Single Audit procedures, if applicable
Additional Fees Not Included in Audit Fee:	
Fee per Major Program	\$
Writing Financial Statements	\$ 4,500
All Other Non-Attest Services	\$ 130/hour
75% Cap for Interim Invoice Approval <i>(not applicable to hospital contracts)</i>	\$ 19,425.00

DPCU FEES (if applicable)

Discretely Presented Component Unit	
Audit Fee	\$
Additional Fees Not Included in Audit Fee:	
Fee per Major Program	\$
Writing Financial Statements	\$
All Other Non-Attest Services	\$
75% Cap for Interim Invoice Approval <i>(not applicable to hospital contracts)</i>	\$

SIGNATURE PAGE

AUDIT FIRM

Audit Firm* J.B. Watson & Co., PLLC	
Authorized Firm Representative (typed or printed)* Dencal H. Bennett, CPA	Signature* <i>Dencal H. Bennett, CPA</i>
Date* 04/06/21	Email Address* dbennett@jbandco.com

GOVERNMENTAL UNIT

Governmental Unit* Town of Mount Gilcad, NC	
Date Primary Government Unit Governing Board Approved Audit Contract* (G.S.159-34(a) or G.S.115C-447(a))	04/06/21
Mayor/Chairperson (typed or printed)* Joseph M. Miller, Jr., Mayor	Signature*
Date 04/06/21	Email Address cmiller@jordanlumber.com

Chair of Audit Committee (typed or printed, or "NA") N/A	Signature
Date	Email Address

GOVERNMENTAL UNIT – PRE-AUDIT CERTIFICATE

Required by G.S. 159-28(a1) or G.S. 115C-441(a1).
Not applicable to hospital contracts.

This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act or by the School Budget and Fiscal Control Act.

Primary Governmental Unit Finance Officer* (typed or printed) Amy C. Roberts, CMC, NCCMC	Signature*
Date of Pre-Audit Certificate* 04/06/21	Email Address* aroberts@mtgileadnc.com

**SIGNATURE PAGE – DPCU
(complete only if applicable)**

DISCRETELY PRESENTED COMPONENT UNIT

DPCU*	
Date DPCU Governing Board Approved Audit Contract* (Ref: G.S. 159-34(a) or G.S. 115C-447(a))	
DPCU Chairperson (typed or printed)*	Signature*
Date*	Email Address*

Chair of Audit Committee (typed or printed, or "NA")	Signature
Date	Email Address

DPCU – PRE-AUDIT CERTIFICATE

Required by G.S. 159-28(a1) or G.S. 115C-441(a1).
Not applicable to hospital contracts.

This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act or by the School Budget and Fiscal Control Act.

DPCU Finance Officer (typed or printed)*	Signature*
Date of Pre-Audit Certificate*	Email Address*

Remember to print this form, and obtain all required signatures prior to submission.

PRINT

J. B. WATSON & CO., P.L.L.C.

CERTIFIED PUBLIC ACCOUNTANTS

120 SOUTH RUTHERFORD STREET

P. O. BOX 341

WADESBORO, N.C. 28170

JAMES F. HANNA, CPA
DENEAL H. BENNETT, CPA
J. DAVID BURNS, CPA

TELEPHONE (704) 694-5174
FACSIMILE (704) 694-6970

April 6, 2021

To The Town Council
Town of Mount Gilead
PO Box 325
Mount Gilead, North Carolina 27371

We are pleased to confirm our understanding of the services we are to provide Town of Mount Gilead for the year ended June 30, 2021. We will audit the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information, including the related notes to the financial statements, which collectively comprise the basic financial statements, of Town of Mount Gilead as of and for the year ended June 30, 2021. Accounting standards generally accepted in the United States of America provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement Town of Mount Gilead's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to Town of Mount Gilead's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtain during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by U.S. generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

- 1) Management's Discussion and Analysis
- 2) Local Governmental Employees' Retirement System Schedule of the Proportionate Share of the Net Pension Liability (Asset) and Schedule of Contributions
- 3) Law Enforcement Officers' Special Separation Allowance's Schedule of Changes in Total Pension Liability and Schedule of Total Pension Liability as a Percentage of Covered Payroll

We have also been engaged to report on supplementary information other than RSI that accompanies Town of Mount Gilead's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America, and we will provide an opinion on it in relation

to the financial statements as a whole in a report combined with our auditors' report on the financial statements:

- 1) Combining and Individual Fund Statements and Schedules
- 2) Budgetary Schedules
- 3) Other Schedules
- 4) Schedule of Expenditures of Federal and State Awards

Audit Objectives

The objective of our audit is the expression of opinions as to whether your financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements as a whole. The objective also includes reporting on –

- Internal control over financial reporting and compliance with the provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
- Internal control over compliance related to major programs and an opinion (or a disclaimer of opinion) on compliance with federal and State statutes, regulations, and the terms and conditions of federal and State awards that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996; Title 2 U.S. Code of Federal Regulations (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance); and the State Single Audit Implementation Act.

The *Government Auditing Standards* report on internal control over financial reporting and on compliance and other matters will include a paragraph that states that (1) the purpose of the report is solely to describe the scope of testing of internal control and compliance and the results of that testing and not to provide an opinion on the effectiveness of the entity's internal control or on compliance, and (2) the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. The Uniform Guidance and State Single Audit Implementation Act reports on internal control over compliance will include a paragraph that states that the purpose of the report on internal control over compliance is solely to describe the scope of testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance and the State Single Audit Implementation Act. Each report will state that the report is not suitable for any other purpose.

Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America; the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996;

the provisions of the Uniform Guidance; and the State Single Audit Implementation Act and will include tests of accounting records, a determination of major program(s) in accordance with the Uniform Guidance and the State Single Audit Implementation Act, and other procedures we consider necessary to enable us to express such opinions. We will issue written reports upon completion of our Single Audit. Our reports will be addressed to the Mayor and Town Council of Town of Mount Gilead. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue reports, or we may withdraw from this engagement.

If during our audit we become aware that Town of Mount Gilead is not subject to an audit in accordance with the Single Audit Act Amendments of 1996, the provisions of the Uniform Guidance, and/or the State Single Audit Implementation Act, we will conduct the audit only in accordance with the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, or U.S. generally accepted auditing standards, whichever is applicable.

Audit Procedures - General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the government or to acts by management or employees acting on behalf of the government. Because the determination of waste and abuse is subjective, *Government Auditing Standards* do not expect auditors to perform specific procedures to detect waste or abuse in financial audits nor do they expect auditors to provide reasonable assurance of detecting waste or abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, an unavoidable risk exists that some material misstatements or noncompliance may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards and *Government Auditing Standards*. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or on major programs. However, we will inform the appropriate level of management of any material errors, any fraudulent financial reporting, or misappropriation of assets that come to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to

our attention, unless clearly inconsequential. We will include such matters in the reports required for a Single Audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables, revenues, and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about your responsibilities for the financial statements; schedule of expenditures of federal and State awards; federal and State award programs; compliance with laws, regulations, contracts, and grant agreements; and other responsibilities required by generally accepted auditing standards.

Audit Procedures - Internal Control

Our audit will include obtaining an understanding of the government and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

As required by the Uniform Guidance and the State Single Audit Implementation Act, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal and State award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to the Uniform Guidance and the State Single Audit Implementation Act.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. Accordingly, we will express no such opinion. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, *Government Auditing Standards*, the Uniform Guidance, and the State Single Audit Implementation Act.

Audit Procedures - Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of Town of Mount Gilead's compliance with provisions of applicable laws, regulations, contracts, and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance, and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

The Uniform Guidance and the State Single Audit Implementation Act require that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with applicable federal and State statutes, regulations, and the terms and conditions of federal and State awards applicable to major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the OMB *Compliance Supplement* and in the *Audit Manual for Governmental Auditors in North Carolina* for the types of compliance requirements that could have a direct and material effect on each of Town of Mount Gilead's major programs. For federal and State programs that are included in the 2020 Compliance Supplement, our compliance and internal control procedures will relate to the compliance requirements that the 2020 Compliance Supplement identifies as being subject to audit. The purpose of these procedures will be to express an opinion on Town of Mount Gilead's compliance with requirements applicable to each of its major programs in our reports on compliance issued pursuant to the Uniform Guidance and the State Single Audit Implementation Act.

Other Services

We will also prepare the financial statements, related notes, and the schedule of expenditures of federal and State awards, and related notes of Town of Mount Gilead in conformity with U.S. generally accepted accounting principles, the Uniform Guidance, and the State Single Audit Implementation Act based on information provided by you. This will include proposed audit adjustments to convert the financial statements from modified accrual to accrual basis (including the accrual of the total pension liability (LEO) and the net pension liability/asset for LGERS). We will also assist in calculating depreciation for the year based on information provided by you. We will also prepare the Annual Financial Information Report (AFIR) using the financial statements and other information provided by you. These nonaudit services do not constitute an audit under *Government Auditing Standards*, and such services will not be conducted in accordance with *Government Auditing Standards*. We will perform the services in accordance with applicable professional standards. The other services are limited to the financial statement services, depreciation services, and AFIR preparation previously defined. We, in our sole professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities.

Management Responsibilities

Management is responsible for (1) designing, implementing, establishing, and maintaining effective internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error, including internal controls over federal and State awards, and for evaluating and monitoring ongoing activities, to help ensure that appropriate goals and objectives are met; (2) following laws and regulations; (3) ensuring that there is reasonable assurance that government programs are administered in compliance with compliance requirements; and (4) ensuring that management and financial information is reliable and properly reported. Management is also responsible for implementing systems designed to achieve compliance with applicable laws, regulations, contracts, and grant agreements. You are also responsible for the selection and application of accounting principles; for the preparation and fair presentation of the financial statements, schedule of expenditures of federal and State awards, and all accompanying information in conformity with U.S. generally accepted accounting principles; and for compliance with applicable laws and regulations (including federal and State statutes) and the provisions of contracts and grant agreements (including award agreements). Your responsibilities also include identifying significant contractor relationships in which the contractor has responsibility for program compliance and for the accuracy and completeness of that information.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, including identification of all related parties and all related-party relationships and transactions, (2) access to personnel, accounts, books, records, supporting documentation, and other information as needed to perform an audit under the Uniform Guidance and the State Single Audit Implementation Act, (3) additional information that we may request for the purpose of the audit, and (4) unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence.

Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements of each opinion unit as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud and for informing us about all known or suspected fraud affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the government complies with applicable laws, regulations, contracts, agreements, and grants. Management is also responsible for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements that we report. Additionally, as required by the

Uniform Guidance and the State Single Audit Implementation Act, it is management's responsibility to evaluate and monitor noncompliance with federal and State statutes, regulations, and the terms and conditions of federal and State awards; take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings; promptly follow up and take corrective action on reported audit findings; and prepare a summary schedule of prior audit findings and a separate corrective action plan. The summary schedule of prior audit findings should be available for our review during our fieldwork.

With regard to including the auditors' report in an exempt offering document, you agree that the aforementioned auditors' report, or reference to J.B. Watson & Co., P.L.L.C., will not be included in any such offering document without our prior permission or consent. Any agreement to perform work in connection with an exempt offering document, including an agreement to provide permission or consent, will be a separate engagement.

You are responsible for identifying all federal and State awards received and understanding and complying with the compliance requirements and for the preparation of the schedule of expenditures of federal and State awards (including notes and noncash assistance received) in conformity with the Uniform Guidance and the State Single Audit Implementation Act. You agree to include our report on the schedule of expenditures of federal and State awards in any document that contains and indicates that we have reported on the schedule of expenditures of federal and State awards. You also agree to include the audited financial statements with any presentation of the schedule of expenditures of federal and State awards that includes our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the schedule of expenditures of federal and State awards in accordance with the Uniform Guidance and the State Single Audit Implementation Act; (2) you believe the schedule of expenditures of federal and State awards, including its form and content, is stated fairly in accordance with the Uniform Guidance and the State Single Audit Implementation Act; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the schedule of expenditures of federal and State awards.

You are also responsible for the preparation of the other supplementary information, which we have been engaged to report on, in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains, and indicates that we have reported on, the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the supplementary information in accordance with GAAP; (2) you believe the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying and providing report copies of previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

With regard to the electronic dissemination of audited financial statements, including financial statements published electronically on your website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

You agree to assume all management responsibilities relating to the financial statements, schedule of expenditures of federal and State awards, and related notes, and any other nonaudit services we provide. You will be required to acknowledge in the management representation letter our assistance with preparation of the financial statements, schedule of expenditures of federal and State awards, and related notes and that you have reviewed and approved the financial statements, schedule of expenditures of federal and State awards, and related notes prior to their issuance and have accepted responsibility for them. Further, you agree to oversee the nonaudit services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of these services; and accept responsibility for them. For an audit subject to *Government Auditing Standards*, you further agree to acquire the services of an independent certified public accountant to read and review the financial statements prepared by our firm based on information provided by you.

In connection with this engagement, we may communicate with you or others via email transmission. As emails can be intercepted and read, disclosed, or otherwise used or communicated by an unintended third party, or may not be delivered to each of the parties to whom they are directed and only to such parties, we cannot guarantee or warrant that emails from us will be properly delivered and read only by the addressee. Therefore, we specifically disclaim and waive any liability or responsibility whatsoever for interception or unintentional disclosure of emails transmitted by us in connection with the performance of this engagement. In that regard, you agree that we shall have no liability for any loss or damage to any person or entity resulting from the use of email transmissions, including any consequential, incidental, direct, indirect, or special damages, such as loss of revenues or anticipated profits, or disclosure or communication of confidential or proprietary information.

Engagement Administration, Fees, and Other

We understand that your employees will assist in preparing all cash, accounts receivable, revenue, or other confirmations we request and will locate any documents selected by us for testing.

We will schedule the engagement based in part on deadlines, working conditions, and the availability of your key personnel. We will plan the engagement based on the assumption that your personnel will cooperate and provide assistance by performing tasks such as preparing requested schedules, retrieving supporting documents, and assisting in preparing confirmation requests. If for whatever reason your personnel are unavailable to provide the necessary assistance in a timely manner, it may substantially increase the work we have to do to complete the engagement within the established deadlines, resulting in an increase in fees over our original fee estimate.

At the conclusion of the engagement, we will complete the appropriate sections of the Data Collection Form (if applicable) that summarizes our audit findings, if any. It is management's responsibility to electronically submit the reporting package (including financial statements, schedule of expenditures of federal and State awards, summary schedule of prior audit findings, auditors' reports, and a corrective action plan) along with the Data Collection Form to the Federal Audit Clearinghouse. We will coordinate with you the electronic submission and certification. If applicable, we will provide copies of our report for you to include with the reporting package you will submit to pass-through entities. The Data Collection Form and the reporting package must be submitted within the earlier of 30 calendar days after receipt of the auditors' reports or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audits.

We will provide copies of our reports to Town of Mount Gilead and to the Local Government Commission of the North Carolina Department of State Treasurer; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is the property of J.B. Watson & Co., P.L.L.C. and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to a cognizant agency or its designee, a federal or State agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of J.B. Watson & Co., P.L.L.C. personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of five years after the report release date or for any additional period requested by the cognizant agency, oversight agency for audit, or pass-through entity. If we are aware that a federal or State awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

We expect to begin our audit in late-summer 2021 and to issue our report no later than October 31, 2021 (or December 1, 2021, if additional time is warranted). Deneal H. Bennett, CPA is the engagement partner and is responsible for supervising the engagement and signing the reports or authorizing another individual to sign them.

To ensure J. B. Watson & Co., P.L.L.C.'s independence is not impaired under the AICPA *Code of Professional Conduct* you agree to inform the engagement partner before entering into any substantive employment discussions with any of our personnel.

Our fee for these services will be \$15,500 plus \$130 per hour for Single Audit procedures and/or any nonattest services (including year-end bookkeeping), as applicable. This estimate is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

Contract to Audit Accounts (LGC-205) for audits subject to *Government Auditing Standards* requires we provide you with a copy of our most recent peer review report. Our 2020 peer review report has been provided to you and the Secretary of the LGC previously.

We appreciate the opportunity to be of service to Town of Mount Gilead and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Very truly yours,



J.B. Watson & Co., P.L.L.C.

RESPONSE:

This letter correctly sets forth the understanding of Town of Mount Gilead.

Management signature: _____

Title: _____

Date: _____

Governance signature: _____

Title: _____

Date: _____