



Town of Waynesville, NC Board of Aldermen – Regular Meeting

Town Hall, 9 South Main Street, Waynesville, NC 28786

Date: **September 8, 2015** Time: **6:30 p.m.**

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(828) 452-2491

gowens@waynesvillenc.gov

A. CALL TO ORDER - *Mayor Gavin Brown*

1. Welcome/Calendar/Announcements
2. Adoption of Minutes

Motion: To approve the minutes of the August 11, 2015 regular meeting, and the closed session minutes of February 10, 2015, June 9, 2015, and July 28, 2015 as presented [or as corrected].

3. Proclamations
 - a. National Day of Service and Remembrance – Friday, September 11, 2015
 - b. Constitution Week – September 17 – 23, 2015

B. PUBLIC HEARING

4. Public Hearing to consider application from Premier Magnesia, LLC, (AKA Giles Manufacturing) to rezone the property at 75 Giles Place to Commercial-Industrial-Conditional District (CI-CD)

Motion: To adopt the Resolution to rezone property at 75 Giles Place from Commercial-Industrial, to a Commercial-Industrial-Conditional District (CI-CD, as presented.

C. UNFINISHED BUSINESS

5. Wholesale Power Contract Negotiations Update & Authorizing the engagement of outside legal counsel
 - Louis Davis & Ted Orrell/Utility Technology Engineers-Consultants (UTEC)
 - Mike Brown/Vice President, Wholesale & Industrial Services, Santee Cooper
 - Mike Cool/Manager, Wholesale Markets, Santee Cooper
 - Jennifer Wadford/Director, Wholesale Power Contract Admin., Santee Cooper

TOWN OF WAYNESVILLE – REGULAR SESSION AGENDA

September 8, 2015

- 2 -

Motion: *To authorize the manager to engage the services of outside legal counsel to assist in reviewing and finalizing the 10-year wholesale power purchase agreement with Santee Cooper as drafted, in accordance with the previously adopted proposal by Santee Cooper of March 27, 2015, with an effective date of 1/1/17, and a one-year power purchase extension agreement with Duke Energy and a ten-year transmission agreement with Duke Energy, in accordance with the negotiated proposals as presented .*

D. COMMUNICATIONS FROM STAFF

6. Town Manager – Marcy Onieal

7. Town Attorney – Woody Griffin

E. COMMUNICATIONS FROM MAYOR & BOARD OF ALDERMEN

F. CALL ON THE AUDIENCE

G. ADJOURN



TOWN OF WAYNESVILLE

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 16 South Main Street
 Waynesville, NC 28786
 Phone (828) 452-2491 • Fax (828) 456-2000
 www.waynesvillenc.gov

CALENDAR September 8, 2015

2015	
Mon, Sep 7	Labor Day Holiday Town Offices Closed
Mon, Sep 7 10:00 AM Champion Drive, Canton	Canton Labor Day Parade – elected officials have been asked to participate
Tues, Sep 8 6:30 PM Board Room, 9 S. Main	Board of Aldermen Meeting – Regular Session
Thu, Sep 10 7:30 AM – 4:30 PM Lake Junaluska Gym	United Way Day of Caring/Pace Setter Campaign Announcement Town Employees Participating
Fri, Sep 11 6:00 PM Clyde Fire Department	Clyde Fire Dept 5 th Annual 9/11 Memorial Ceremony
Sat. Sep 12 9:00 AM	Commission for a Clean County – Maggie Valley Clean Up Day
Sat, Sep 12 3:00 – 7:00 PM American Legion Field	Pig-Pickin’ and Meet & Greet for Haywood County Electoral Candidates, sponsored by Terry Ramey & Monroe Miller
Tue, Sep 15 1:00 – 4:30 PM Morganton Community House	Financial Fiduciary Responsibilities for Elected Officials Workshop Sponsored by Local Government Commission & NCLM Registration Required by 9/10 (please contact mgr if interested)
Sat. Sep 19 10:00 AM to 2:00 PM Lake Junaluska Open Air Gym	Communities Rallying for Recovery – sponsored by Drugs in Our Midst
Sat, Sep 19 2:00 PM HCC	Haywood Community College – 50 th Anniversary Flag Raising Ceremony
Sat, Sep 19 5:00 PM Main Street	Block Party – Downtown Waynesville Association sponsored event <i>(NOTE: Date changed from Sept 5)</i>
Tues, Sep 22 6:30 PM Board Room, 9 S. Main	Board of Aldermen Meeting – Regular Session

Thu, Sep 24 Noon Davis Cove Road	Habitat for Humanity Groundbreaking Ceremony Walton Woods
Thu, Sep 24 2:00 – 5:00 PM Canton Rec Park upstream by ballfield	Leaders in the Creek, sponsored by Haywood Waterways With Unveiling of the New Generation Leaders' Greenway & Trail Signage Project (RSVP to Haywood Waterways)
Fr-Sun, Sep 25-27 Waynesville Recreation Center	2015 Cycle North Carolina Mountains-to-the-Coast Ride Waynesville serving as Host Start City Cyclists depart 8:00 AM Sunday morning
Sa-Sa, Sep 26-Oct 3	Waynesville Recreation Center Closed to the Public for one week - Annual Facility Maintenance
Mon, Sep 28 6:30 PM Location TBD	Southwestern Commission Region A Regular Meeting
Tues, Sep 29 11:30 AM - 1:00 PM Waynesville Inn	Boards and Commissions Appreciation Luncheon Blue Ridge Business Center Room at Waynesville Inn (this is rescheduled from Aug 18)
Tues, Sep 29 6:00 – 9:00 PM Town Hall Board Room	The Mountaineer Candidate Forum Candidates for Waynesville Mayor & Board of Aldermen
Fri, Oct 2 5:00 PM – 9:00 PM Main Street & Frog Level	Art After Dark – Waynesville Gallery Association
Wed, Oct 7 8:00 AM Laurel Ridge CC	Chamber of Commerce Issues & Eggs Candidate Forum (Maggie Valley & Clyde Candidates)
Sat, Oct 10 10:00 AM – 5:00 PM Church Street	32 nd Annual Church Street Art and Craft Show Street Closure – Church Street
Tues, Oct 13 6:30 PM Board Room, 9 S. Main	Board of Aldermen Meeting – Regular Session
Su-Tu, Oct 11-13	NCLM Annual Conference: City Vision 2015 Winston-Salem (Deadline for early registration is Sept 11)
Sat, Oct 17 10:00 AM – 5:00 PM Main Street	27 th Annual Apple Harvest Festival – Chamber of Commerce Street Closure – Main Street
Thu, Oct 22 8:30 AM 63 Elmwood Way, Suite A	One Stop Voting Begins – Municipal Elections Haywood County Board of Elections
Tues, Oct 27 6:30 PM Board Room, 9 S. Main	Board of Aldermen Meeting – Regular Session
Mon, Oct 26 5:30 PM Waynesville – location TBD	Haywood County Council of Governments (COG) meeting Town of Waynesville Hosting
Sat, Oct 31 1:00 PM 63 Elmwood Way, Suite A	One Stop Voting Ends – Municipal Elections, Haywood County

Sat, Oct 31 5:00 PM – 7:00 PM Main Street	Treats on the Street – Downtown Waynesville Merchants
Tue, Nov 3 6:30 AM – 7:30 PM	Election Day – Haywood County Municipal Elections (All municipal precincts)
We-Sa, Nov 4-7	National League of Cities Annual Congress of Cities & Exposition Nashville, TN
Fri, Nov 6 5:00 PM – 9:00 PM Main Street & Frog Level	Art After Dark – Waynesville Gallery Association
Tues, Nov 10 11:00 AM 63 Elmwood Way, Suite A	Canvass of Election – Haywood County Board of Elections
Tue, Nov 10 6:30 PM Board Room, 9 S. Main	Board of Aldermen Meeting – Regular Session
Wed, Nov 11	Veterans Day Holiday Town Offices Closed
Mon, Nov 23 6:30 PM Location TBD	Southwestern Commission Region A Regular Meeting
Tue, Nov 24 6:30 PM Board Room, 9 S. Main	Board of Aldermen Meeting – Regular Session
Thur – Fri, Nov 26-27	Thanksgiving Holiday Town Offices Closed
Th-Fr, Dec 3-11 One-Day Training Workshops Locations TBD	NCLM New Mayors' Orientation Training One Day Workshops - Various locations across the state
Fr-Mo, Dec 4-7 Downtown Waynesville	Holly Days Seasonal Events in Downtown Waynesville throughout the weekend, beginning with Art after Dark on Friday evening, culminating with the Holiday Parade on Monday evening
Fri, Dec 4 5:00 PM – 9:00 PM Main Street & Frog Level	Art After Dark – Waynesville Gallery Association
Mon, Dec 7 6:00 PM Main Street	Waynesville Christmas Parade – Downtown Waynesville Association sponsored event Street Closure – Main Street
Tues, Dec 8 6:30 PM Board Room, 9 S. Main	Board of Aldermen Meeting – ORGANIZATIONAL MEETING
Sat, Dec 12 6:00 PM – 9:00 PM Main Street	A Night Before Christmas – Downtown Waynesville Association sponsored event
Su-Th, Dec 13-24	Twelve Days of Christmas – Downtown Waynesville Association Holiday Sales & Event Promotions
Tues, Dec 22 6:30 PM Board Room, 9 S. Main	Board of Aldermen Meeting – Regular Session

We – Fri, Dec 23-25	Christmas Holiday Town Offices Closed
2016	
Fri, Jan 1	New Years Day Holiday Town Offices Closed
Fr-Sa, Jan 8-9 2 full days Hickory, NC	Essentials of Municipal Government, sponsored jointly by the NC League of Municipalities & UNC School of Government Training for Newly Elected Officials – various locations
Mon, Jan 18	Martin Luther King Jr Holiday Town Offices Closed
We-Th, Jan 20-21 2 full days Chapel Hill, NC	Essentials of Municipal Government, sponsored jointly by the NC League of Municipalities & UNC School of Government Training for Newly Elected Officials – various locations
Fr-Sa, Jan 29-30 All Day Location TBD	Board of Alderman Orientation & Planning Retreat – Tentative
Tu-We, Feb 9-10 2 full days Sunset Beach, NC	Essentials of Municipal Government, sponsored jointly by the NC League of Municipalities & UNC School of Government Training for Newly Elected Officials – various locations
We-Th, Feb 17-18 2 full days Asheville, NC	Essentials of Municipal Government, sponsored jointly by the NC League of Municipalities & UNC School of Government Training for Newly Elected Officials – various locations
Fr-Sa, Mar 4-5 2 full days New Bern, NC	Essentials of Municipal Government, sponsored jointly by the NC League of Municipalities & UNC School of Government Training for Newly Elected Officials – various locations
We-Fr, Mar 16-18	NC Main Street Conference Goldsboro, NC
Fri, Mar 25	Good Friday Holiday Town Offices Closed
Wed, May 18 10:00 AM to Noon Webinar	Ethics for Local Elected Officials – required for all newly elected and re-elected officials
Mon, May 30	Memorial Day Holiday Town Offices Closed
Mon, Jul 4	Independence Day Holiday Town Offices Closed
Mon, Sep 5	Labor Day Holiday Town Offices Closed

Fri, Nov 11	Veterans' Day Holiday Town Offices Closed
Th-Fr, Nov 24-25	Thanksgiving Holiday Town Offices Closed
Fr-Tu, Dec 23, 26-27	Christmas Holiday Town Offices Closed

Board and Commission Meetings –September/October 2015

ABC Board	ABC Office – 52 Dayco Drive	September 16 3 rd Tuesdays 10:00 AM
Board of Adjustment	Town Hall – 9 S. Main Street	October 6 1 st Tuesdays 5:30 PM
Community Action Forum	Police Department Training Room – 9 S. Main Street	Meets as needed; <i>No meeting currently scheduled</i>
Downtown Waynesville Association	UCB Board Room – 165 North Main	September 24 4 th Thursdays 12 Noon
Firefighter's Relief Fund Board	Fire Station 1 – 1022 N. Main Street	Meets as needed; <i>No meeting currently scheduled</i>
Historic Preservation Commission	Town Hall – 9 S. Main Street	October 7 1 st Wednesdays 2:00 PM
Planning Board	Town Hall – 9 S. Main Street	September 21 3 rd Mondays 5:30 PM
Public Art Commission	Town Hall – 9 S. Main Street	September 10 2 nd Thursdays 4:00 PM
Recreation & Parks Advisory Commission	Rec Center Office – 550 Vance Street	September 22 3 rd Tuesdays 5:30 PM
Waynesville Housing Authority	Waynesville Towers – 65 Church Street	October 7 1 st Wednesdays 5:30 PM

BOARD/STAFF SCHEDULE

Su – Tu, Oct 11-13	Mayor & Aldermen Manager & Clerk	NCLM Annual Conference: CityVision 2015 Winston – Salem, NC
Sa-Sa, Oct 17-24	Town Manager	Vacation
Sa – Sa, Jan 16-23	Town Clerk	Vacation
We-Fr, Feb 3-5, 2016	Town Manager	NCCMA Manager's Continuing Ed - Winter Seminar
Th-Sa, Jun 23-25, 2016	Town Manager	NCCMA Manager's Continuing Ed - Summer Seminar

MINUTES OF THE TOWN OF WAYNESVILLE BOARD OF ALDERMEN
REGULAR MEETING
August 25, 2015

THE WAYNESVILLE BOARD OF ALDERMEN held a regular meeting on Tuesday, August 25, 2015 at 6:30 p.m. in the board room of Town Hall, 9 South Main Street, Waynesville, NC.

A. CALL TO ORDER

Mayor Brown called the meeting to order at 6:30 p.m. with the following members present:

Mayor Gavin Brown
Alderman Gary Caldwell
Alderman Julia Freeman
Alderman J. Wells Greeley
Alderman LeRoy Roberson

The following staff members were present:

Marcy Onieal, Town Manager
Woodrow Griffin, Town Attorney
Amie Owens, Town Clerk

The following media representatives were present:

Mary Ann Enloe, the Mountaineer

1. Welcome /Calendar/Announcements

Mayor Gavin Brown welcomed everyone to the meeting.

Mayor Brown asked Manager Onieal to update regarding calendar events. Manager Onieal called attention to the following changes to the calendar since its last publication:

- August 26 – the opening of Haywood County Fair – elected officials are encouraged to attend and be recognized during the opening ceremonies.
- September 2 – Issues and Eggs Candidate Forum sponsored by the Haywood Chamber.
- September 15 – the NC Local Government Commission is offering a workshop on Financial Fiduciary Responsibilities of Elected Officials in Morganton 1:00 p.m. until 4:30 p.m.
- May 2016 – The required Ethics Training for all elected officials is scheduled

Manager Onieal noted one correction to the calendar related to the Boards and Commissions Appreciation Luncheon. This event was rescheduled from August 18 to October 8; however, it has been rescheduled again due to a conflict with the venue. The new date is Tuesday, September 29, 2015 and invitations are being re-sent for this event.

2. Adoption of Minutes

Alderman Caldwell made a motion, seconded by Alderman Roberson, to approve the minutes of the August 11, 2015 regular meeting, as presented. The motion carried unanimously.

B. PRESENTATIONS

3. Haywood Waterways Association Presentation

Eric Romaniszyn, Executive Director of Haywood Waterways Association (HWA) provided a short video regarding the watershed restoration activities occurring in Haywood County and highlighting the various partnerships required for this success, noting the Town's support and Manager Onieal's participation in the filming of the video. Following the video, Mr. Romaniszyn provided some statistics and activities reporting. He explained that HWA has entered its ninth year assisting the Town with Phase II Stormwater permitting including outreach and public presentation of this information. HWA has been instrumental in the various Adopt a Stream clean-ups and storm drain stenciling utilizing over 100 volunteers to stencil 100 drains within the Town as a way to raise awareness of stormwater runoff. Mr. Romaniszyn added that these clean ups have netted over 6,000 lbs. of trash from local streams. He explained that Richland Creek is still on impaired listing with the state; however, there has been a reintroduction of fish and biologists are seeing reproduction of fish. With this positive news, it is hoped that the entire stream off the impaired list in 2018. Mr. Romaniszyn thanked the funders and partners for their support and pledged to continue working to keep Richland Creek off the list in the future. Mr. Romaniszyn noted that within the Phase II stormwater project is the fixing of failing septic systems. To date, 40 systems have been repaired resulting in about 14,000 gallons of untreated human waste water from getting into the streams each day.

Mr. Romaniszyn commented that he had been part of the Development Services Advisory Task Force to assist with guidance related to sustainable development and greenways. HWA has worked with the New Generations Leadership Team on signage for greenways to promote their use and helped get the core permit for the park in Hazelwood. He explained that another core permit is for East Street Park and added that the next presentation would illustrate the improvements made in that area.

Mr. Romaniszyn concluded by noting that there would be a new event tentatively on September 24 called Leaders in the Creek, which is similar to Kids in the Creek, but allows local leaders the opportunity to learn about the water conservation and quality efforts in the county. The event will be from 2 p.m. to 5 p.m. at the Canton Recreation Park and there will be a post event celebration. He announced that February 6, 2016 is the date for the annual Polar Plunge at Lake Junaluska.

4. East Street Park Presentation

Ralphene Rathbone, independent consultant, explained that she had worked with HWA and had been approached by Katie Messer related to her capstone program for the Low Impact Development (LID) program at Haywood Community College. She added that East Street Park presented lots of opportunities for continued improvement and highlighted the various partners involved with this project. The Town was involved in stream restoration and erosion control.

Ms. Rathbone illustrated the approach of LID involves:

1. Encouraging conservation measures
2. Promoting impact minimization techniques such as impervious surface reduction
3. Providing for strategic runoff timing by slowing flow using the landscape
4. Use an array of integrated management practices to reduce and cleanse runoff
5. Advocating for pollution prevention measures to reduce the introduction of pollutants to the environment

By using water as a resource rather than treating it as waste water, the East Street Park project has various opportunities for improvement including stabilization of the creek bank, better ecological performance, and maintaining an established park within the town.

Ms. Messer explained that she had worked with Jonathan Yates in developing a holistic approach to better use the water to improve the park. Such planning included changes to better meet goals outlined in the 2020 and recreation master plans. She outlined the current conditions within the park that could be modified to better utilize water and the other natural resources. Ms. Messer provided some possible phase I and phase II improvements including natural collection areas, butterfly gardens, nature trail, playground enhancements with natural resources and existing topography rather than placing a hard plastic or metal structure, all of which would meet ADA accessibility guidelines. Ms. Messer concluded by noting some of these improvements were already in the 2020 master plan and questioned, why not work with what we have?

Mayor Brown inquired as to the timeline for these improvements. Ms. Messer explained that Phase I should be completed by November. The stream bank restoration is currently in progress with final design of the rain garden expected by November as well. Mr. Romaniszyn added that current project cost is \$18,000 and is being funded by the Pigeon River Fund. The Town is assisting with stream redirection to allow water to flow away from the road and prevent erosion concerns. Mayor Brown added that as part of the Recreation Master Plan, East Street improvements should be considered. All agreed with Ms. Messer adding that the goal is to have a more natural feel to the park – having it in town but still utilizing the natural resources of the outdoors.

Mayor Brown noted that having projects such as those involving Richland Creek certainly helps everyone. One example is the prevention of sediment and silt from entering into Lake Junaluska rather than having to dredge it to remove it. Mr. Romaniszyn agreed that the focus should be about stopping it before it starts. He added that East Street Park would be a good demonstration project so show the success of such restoration and preservation. Educational signage will be at the park as well.

Mayor Brown thanked Ms. Rathbone, Ms. Messer and Mr. Romaniszyn for their presentations and their work in the community.

C. CALL FOR PUBLIC HEARING

5. Call for Public Hearing - Rezoning

Manager Onieal noted that Premier Magnesia, LLC (aka Giles Manufacturing) has submitted a request to rezone its property located at 75 Giles Place as a commercial industrial conditional district.

The plan was approved unanimously by the Planning Board at their August 17, 2015 meeting. Manager Onieal noted that information was contained in the agenda packet and that Elizabeth Teague, Development Services Director would be at next meeting to provide additional information and answer any questions prior to the hearing. Manager Onieal added that this was to call for the public hearing only and that no additional action was required by the board at this time.

Alderman Greeley made a motion, seconded by Alderman Roberson, to call for a public hearing on Tuesday, September 8, 2015 at 6:30 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 9 South Main Street, to consider adoption of a change in land use as requested by Giles Manufacturing. The motion carried unanimously.

D. OLD BUSINESS

6. Resolution Accepting Proposal for Option and Lease and Authorizing Upset Bid Process (request from US Cellular)

Manager Onieal explained that at the May 18, 2015 meeting of the Planning Board, a special use permit was granted to US Cellular. On March 10, 2015, prior to the granting of the permit, the Board of Aldermen had approved the terms of lease. Manager Onieal noted that the fee is \$18,250 annually with 3% increase annually for the term. The initial term is a 5-year term with up to 10 extensions. Based on the potential for a long-term lease, the lease must be treated similarly to a sale of property and is, therefore, subject to the upset bid process.

Mayor Brown added that statutorily sales or long-term leases have to be advertised as upset bid and authorization is required for such publication.

Alderman Freeman made a motion, seconded by Alderman Greeley, to adopt the Resolution Accepting Proposal for Option and Lease and Authorizing Upset Bid Process and authorizing the Town Manager to execute the instruments necessary to convey the option and enter into the lease. The motion carried unanimously.

E. NEW BUSINESS

7. Correction to FY 16 Adopted Personnel Allocation

Manager Onieal noted that this action would be a budget document correction. The FY16 adopted budget document contained an error in the official personnel allocation (page 10, behind tab 9), indicating that the Town has 112 full-time employees, instead of 113 in the General Fund and 169, instead of 170 FT total. The reduction was indicated because of the de-allocation of one meter reader position in Finance; however, the General Fund full-time allocation should have remained the same as the FY15 allocation, because two permanent part-time administrative assistant positions, each of which had been 20+ hour/week positions with benefits, were combined into a single full-time position in the Administrative Services Department. Brittany Buchanan is now a full-time employee.

Manager Onieal explained that the board must approve the full-time allocation of personnel. Mayor Brown added that there is no funding change, no additional costs, these positions are already

included in the total costs for the FY, this is simply an adjustment to the approved allocation of full-time employees.

Alderman Greeley made a motion, seconded by Alderman Caldwell, to approve the correction in the FY 16 adopted personnel allocation from 169 to 170 full-time employees, which resulted from the combining of two permanent part-time (20 hour/week) administrative assistant positions into one full-time position in Administrative Services, effective August 1, 2015. The motion carried unanimously.

8. Adoption of Fee for Large Format Printed Copies (24" – 48")

Manager Onieal reported that due to the increase in number of requests for large format printed copies (24" to 48") fees for such copies are being proposed. The proposed fee is \$3.00 for black and white copies and \$10.00 for color pages. These pages are printed off a large plotter and the fees represent the actual printing costs – no labor is included. Mayor Brown clarified that if someone requests the information in a large printed format, the town has to comply and can only recoup printing costs. Manager Onieal confirmed that this is part of the NC General Statutes related to public information.

Alderman Freeman made a motion, seconded by Alderman Roberson to approve a fee of \$3.00/sheet for black and white and \$10.00/sheet for color large format printed copies (24" to 48" width) to be added to the Town's standard schedule of fees and charges. The motion carried unanimously.

F. COMMUNICATIONS FROM STAFF

9. Town Manager – Marcy Onieal

Manager Onieal brought an additional action item to the Board for review. A request was received from the United Way for the Town of Waynesville to be a Pacesetter organization for the annual United Way Campaign. Manager Onieal explained that although the Town contributes directly to several of the partner agencies of the United Way via the strategic partner funding process, the Town had not participated actively in an annual campaign in many years. She noted that there were 27 employees and one board member who have contributed via payroll deduction, generating \$3,756 annually for United Way.

Manager Onieal requested that the Town provide nominal non-cash incentives and matching funds up to \$5,000 as a way to jump start the campaign and encourage participation by employees. Some proposed incentives include:

1. a kick off luncheon in September where donors would receive a nominal gift or gift card
2. for those pledging as an Every Day Hero (\$1.00 per day donation) will receive one day off with pay during the year
3. department with the highest percentage of Fair Share donors will have a catered gourmet meal served by management staff
4. all Fair Share Donors will be entered into a drawing for a week's vacation (trip is privately donated)

5. first time donors and current donors who increase their gift will have their gift matched by the Town matching and can designate to which agency the matching funds are contributed

Mayor Brown asked if the leadership team was involved and on board with this suggestion. Manager Onieal confirmed noting that several leadership team members are already donors to United Way and have served on the United Way board or as active volunteers in the past. Manager Onieal added that the matching funds would come from the unallocated funds still set aside in the strategic partner funding line item of the adopted budget.

Alderman Greeley made a motion, seconded by Alderman Roberson, to approve nominal non-cash incentives and matching funds in an amount not to exceed \$5,000 to serve as incentives to encourage voluntary charitable giving by employees to the 2015 Haywood County United Way campaign in support of its 22 partner agencies. The motion carried unanimously.

Manager Onieal thanked the Board for their support of this activity. She noted that the annual United Way Day of Caring is on September 10 with a number of town employees participating in service activities that day throughout the county.

Manager Onieal is continuing to work on a report regarding multiple items referenced during the August 11, 2015 meeting. Due to staff absences and the unexpected events and difficult scheduling associated with the tragic events of August 19, she has not completed compiling the information. She apologized for the delay.

10. Town Attorney – Woody Griffin

Attorney Griffin had no business to discuss.

G. COMMUNICATIONS FROM MAYOR & BOARD OF ALDERMEN

Mayor Brown noted that he had forwarded an email to the Board from Perry Hines, Executive Director, The Open Door, who has been working on their service schedule and developing a plan to address vagrancy issues including specific steps and implementations.

H. CALL ON THE AUDIENCE

No one addressed the board.

I. ADJOURN

There being no further business to discuss, Alderman Caldwell made a motion, seconded by Alderman Greeley, to adjourn the meeting at 7:12 p.m. The motion carried unanimously.

ATTEST

Gavin A. Brown, Mayor

Marcia D. Onieal, Town Manager

Amanda W. Owens, Town Clerk

Town of Waynesville

Proclamation

**NATIONAL DAY OF SERVICE AND REMEMBRANCE
FRIDAY, SEPTEMBER 11, 2015**

WHEREAS, in an unprovoked and senseless act of terrorism, four civilian aircrafts were hijacked on September 11, 2001, and crashed in New York City, Pennsylvania and the Pentagon, resulting in a momentous loss of innocent U.S. lives of all heritages; and

WHEREAS, while we still continue to recover from the loss of innocent lives, the spirit of the U.S. has been revitalized, giving way to expressions of patriotism; and

WHEREAS, inspired by the heroism of our nation's public service personnel, military service members and countless volunteers, our nation found unity and strength; and

WHEREAS, from the tragedy of September 11 emerged a stronger nation, renewed by the spirit of national pride, and a true love of country; and

WHEREAS, Americans also have fought back against terror by choosing to overcome evil with good by loving their neighbors as they would like to be loved, contributing to relief efforts, and volunteering their time to aid those in need;

NOW, THEREFORE, BE IT RESOLVED, that I, Gavin A. Brown, by virtue of the authority vested in me as Mayor of the Town of Waynesville, do hereby proclaim September 11, 2015, as

NATIONAL DAY OF SERVICE AND REMEMBRANCE

in the Town of Waynesville and urge our citizens to recognize the heroism of firefighters, rescue and law enforcement personnel, military service members and the many volunteers who responded to these tragic events with courage, selfless compassion, determination and skill; and to remember the victims and innocent lives lost as a result of the tragic events on September 11, 2001.

This the 8th day of September, 2015.


Gavin A. Brown, Mayor



**Proclamation
Constitution Week
September 17-23, 2015**

WHEREAS, September 17, 2015 marks the two hundred twenty-eighth anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

WHEREAS, it is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary, and to the patriotic celebrations which will commemorate the occasion, and

WHEREAS, Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 through 23 as Constitution Week.

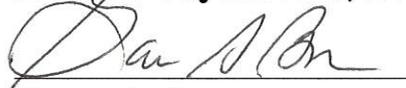
NOW, THEREFORE, I, Gavin A. Brown, by virtue of the authority vested in me as Mayor of the Town of Waynesville, North Carolina do hereby proclaim the week of September 17 through 23 as

Constitution Week

and ask our citizens to reaffirm the ideals the Framers of the Constitution had in 1787 by vigilantly protecting the freedom guaranteed to us through this guardian of our liberties, remembering that lost rights may never be regained.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the Town to be affixed this 8th day of September, of the year of our Lord two thousand fifteen.

Town of Waynesville, N.C.



**Gavin A. Brown
Mayor**

ATTEST:



**Amie Owens
Town Clerk**



TOWN OF WAYNESVILLE BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: September 8, 2015

SUBJECT: Public Hearing to consider application from Premier Magnesia, LLC, (AKA Giles Manufacturing) to rezone the property at 75 Giles Place to Commercial-Industrial- Conditional District (CI-CD).

AGENDA INFORMATION:

Agenda Location: Public Hearing
Item Number: 4-B
Department: Development Services
Contact: Elizabeth Teague, Development Services Director
Presenter: Elizabeth Teague, Development Services Director
Patrick Bradshaw, P.E. Civil Design Concepts
Matt Haynes, Director of Operations, Giles Manufacturing

BRIEF SUMMARY:

At their August 17, 2015 Meeting, the Town's Planning Board unanimously found that this rezoning was consistent with the Town's Land Use Plan and recommends that the Board of Aldermen adopt this request. The rezoning is based on a site specific Master Plan which was approved by the Planning Board previously and which allows Giles to make improvements and expand operations on the site.

MOTIONS FOR CONSIDERATION:

1. To adopt the attached Ordinance of Zoning Map and Text Amendments.

FUNDING SOURCE/IMPACT: N/A

ATTACHMENTS:

- Staff Report and Application submitted on behalf of Premier Magnesia, LLC by Civil Design Concepts
- Planning Board Minutes
- Zoning Map of property

MANAGER'S COMMENTS AND RECOMMENDATIONS: The conditional district rezoning allows this rezoning request to come before you for consideration and a public hearing,

pursuant to NCGS and local Land Development Standards. This action will establish a new classification of zoning at this location which will allow Premier Magnesia, LLC to expand operations and make improvements to this existing industrial site.

Board of Aldermen Staff Report

Subject: Conditional District Request: Giles Chemical Expansion Site: From Commercial Industrial to Commercial-Industrial- Conditional District (CI-CD).
Ordinance Section: 15.15
Applicant: Premier Magnesia, LLC, also known as "Giles Chemical"
Meeting Date: September 8, 2015

Summary Information:

Application Date: July 23, 2015
Proposed Location: 75 Giles Place PIN# 8605-72-8509
Property Owner: Richland Creek Attention: Rick Wrenn
Acreage of site: 8 acres
Zoning District: Commercial Industrial
Existing Development: 100% disturbed area with existing parking lots, driveway, structure and storage
Planning Board: Major Site Plan Approval June 15, 2015
Hearing and recommendation for rezoning approval August 17, 2015

Background:

The subject property consists of approximately 8 acres with a storage facility and an office building currently utilized by Giles Chemical. Giles Chemical would like to expand their usage of the site, add office and warehouse space and make multiple site improvements to the parking lot, driveway, loading, and outdoor storage and utility areas according to the specified major site plan which was approved by the Planning Board on June 15, 2015. In that decision, the Planning Board affirmed that the site plan met the five general findings required for major site plan approval:

1. Compliance with the adopted plans and policies of the Town;
2. Compliance with applicable requirements;
3. Existence of adequate infrastructure;
4. Conformity with the neighborhood; and
5. The application will not substantially injure property values of adjoining or abutting property, nor be detrimental to the use and development of adjacent properties or other neighborhood uses.

The underlying property is under the unified control of Premier Magnesia, LLC which plans to utilize the site for manufacturing and warehousing according to the approved Master Plan.

Current zoning is Commercial Industrial (CI). The purpose and intent of this district as established by the Land Development Standards, Section 2.3.8A, is:

The **Commercial Industrial District (CI)** is an area designed to accommodate research and development, industrial and manufacturing uses, administrative facilities and limited supporting commercial services. While a broad mixture of uses is permitted, the principal focus in this area shall be on industrial development. High design and performance standards will be important for future development as this district is highly visible not only from a usage standpoint but also because of its location at one of the major entrances into Waynesville. Connectivity within the district is required to create an industrial campus feel within this area.

The purpose and intent for a Conditional Overlay District as established by the Land Development Standards, Section 2.7, is:

Conditional Districts are districts with conditions voluntarily added by the applicant and approved in a legislative procedure by the Board of Alderman in accordance with G.S. 160A-382. Conditional Districts provide for orderly and flexible development under the general policies of this Ordinance without the constraints of some of the prescribed standards guiding by-right development. Because Conditional District developments are constructed in a comprehensive manner, they establish their own building, street, block, and lot pattern which may be unique from other surrounding blocks or neighborhoods. This Conditional District may be used in any district but is not intended to relieve hardships that would otherwise be handled using a variance procedure.

Site was posted beginning on July 29, 2015, and Notice of the Public Hearing was mailed on July 31, 2015 and submitted to local media for the Planning Board Hearing on August 17, 2015. Posting on site were updated with second hearing notice for the Board of Aldermen Meeting , and Notice of the Public Hearing was sent to local media and adjacent properties on Wednesday August 26, 2015.

Consistency with 2020 Land Development Plan:

Under North Carolina law local municipal zoning is required to be based on an adopted comprehensive land development plan. In Waynesville this document is: Waynesville Our Heritage, Our Future, 2020 Land Development Plan. According to the Land Development Plan:

- Map 15, Area 4, the planned land use for the subject property is Commercial/ Industrial.
- Goal and Objective 4-5 is to “promote the reuse of vacant or under utilized Industrial land”.
- Goal, Chapter 4: Economic Vitality is to “maintain and strengthen a broad-based economy in Waynesville of vibrant and expanding manufacturing, . . .”

The requested rezoning will allow re-use of an existing manufacturing site and support the expansion of a successful manufacturing operation and is therefore consistent with the Town of Waynesville comprehensive land development plan.

Surrounding Land Use/ Zoning Patterns:

Surrounding land use is primarily commercial along Hazelwood Avenue with small to medium sized retail and service businesses. To the southeast is Haywood Vocational Opportunities along Riverbend Street which is also an industrial site currently being re-used. To the south is residentially developed along Robinson Street. The western border is primarily open and is property formerly utilized as industrial property. The eastern border of the site is along the existing railroad line and there is also an existing railroad track spur within the site. This request would take advantage of this site's location as a traditional industrial and commercial area. It also allows a local manufacturing business to expand their operations in an existing industrial area within the Town of Waynesville without having to create new development or to find locations outside of the Town.

Proposed Development:

This project is proposed to re-use existing site elements and to build additional features to be phased over the next 5 years, with building 1 and 3 being constructed starting in 2015, and other elements being phased in subsequently. The applicant requests the following be accommodated as part of the conditional district as presented in their application:

1. Chapter 2, Table 2.4.3d- Pervious surface (min) 20%, be reduced 5% minimum
2. Chapter 4, 4.3.1- all lots front on public Street, Civic Space or approved driveway, Remove
3. Chapter 5, 5.11- Industrial building design standards, Remove 5.11.1, 5.11.2 and 5.11.3
4. Chapter 6, 6.8- Pedestrian facilities, remove, with the exception of those facilities as shown on the Master Plan
5. Chapter 8, 8.4.2A buffer yard types, remove the wall or berm referenced *replace the same with a requirement that all planting densities be double.* In addition, remove the requirement that the developer provide screening against both the railroad track and adjacent parcels that are zoned as Hazelwood Business District with the exception of parcel known as PIN#8605-72-5769 at the corner of the subject property. In addition, it should be noted that the developer will make every effort to not adversely affect the existing smoke stack that exists on the subject parcel during the installation of the same.
6. Chapter 8, 8.6- Parking lot landscaping- allow the developer the flexibility to provide the same number of plantings, but remove the specificity of location with relationship to parking spaces
7. Chapter 8, 8.7- Screening of dumpsters, loading docks, outdoor storage area and utility structures, remove, with the exception of those areas that are covered by 8.4.2A buffer yard areas.
8. Chapter 9, 9.4.3 Connectivity, Remove
9. Chapter 9, 9.4.4- Pedestrian corridors in parking lots, remove

The application of these items accommodates the re-use of the existing site as it is now within the context and physical constraints of the site's location, particularly the site's location along the railroad right-of-way and the fact that it sits back from the right of way and is accessible only by a drive. The

railroad right-of-way makes any plantings installed within that area subject to spraying or elimination by the railroad. The location of the parcel behind buildings along the Hazelwood Business District and adjacent to other Commercially zoned areas limit the public visibility of buildings and storage areas, as well as limit the need for connectivity between adjacent parking lots.

Staff Recommendations:

Approval of this Conditional District allows the applicant to implement the site plan and specified improvements for their needs, while asking for flexibility in the ordinance as enumerated above. Because of the site location along the railroad track and set back from the main thoroughfare, and because of the current conditions of the site, the elements of the Conditional District request are in keeping with the industrial and commercial character of the underlying district while accommodating for the specific context of this area. Additionally, this site plan will allow Giles Chemical to expand their operation while improving the existing buffering, infrastructure and overall look of the site now. Staff and the Planning Board found that:

1. The applicant desires to voluntarily submit to a conditional district overlay required for the re-development of an existing commercial/industrial site at 75 Giles Place PIN# 8605-72-8509;
2. The location of the site is in the Commercial Industrial Zoning District and the proposed manufacturing and warehousing uses are permitted within that district;
3. The Conditional District request is in accordance with the Major Site Plan approved by the Planning Board on June 15, 2015 and met the required findings for such approval and is under the Unified Control of Premier Magnesia, LLC;
4. The Conditional District Request was heard and recommended for approval at the Planning Board on August 17, 2015.
5. Notice of this hearing was provided and given as required by the Land Development Standards, the Ordinances of the Town of Waynesville and the North Carolina General Statutes;
6. The Conditional Overlay is consistent with the Town's 2020 Land Development Plan goals for economic vitality and the re-use of existing industrial sites;
7. The plan complies with the dimensional requirements of the District, and the Conditional Overlay designation will allow for development within the constraints of the site location and the re-use of existing buildings, parking lots and storage areas. Specifically:
 - A reduction in the pervious surface requirement from 20% to 5% is necessary to reuse existing parking areas and meet the needs of truck, trailer and automobile usage required for the conducting of manufacturing and warehousing on the site.
 - The site is already established off of the public street on an existing driveway.
 - The operations will take place within existing and new buildings which are not visible from the public roadway and which will be screened from the adjacent residential district.

Therefore the application of Industrial Building Design Standards would not serve a public purpose and would create additional cost and hardship for the re-use of the site.

- The site's location along the railway right-of-way prohibits the installation of berms or walls, at the eastern boundary, however the parking lot is allowed within the railroad right-of-way. The location of the site behind existing buildings within the Hazelwood Business District and existing pavement also restrict the ability of installing walls or berms. However, the applicant is proposing to double the planting densities and to be given flexibility in placing plantings along the site's boundaries where feasible.
 - While the developer is also asking for flexibility in the location of plantings within parking lots, the developer will utilize the required number of plantings.
 - The location of dumpsters, storage areas and utility structures within the interior of the site reduce the need for screening requirements except in those areas which are adjacent to buffer areas which will be planted. Therefore screening requirements for those site elements will be met in terms of their visibility from public areas or the exterior of the lot.
 - Requirements for connectivity and pedestrian corridors within parking lots will inhibit the use of the site for the proposed manufacturing and warehousing operation and the re-use of existing parking areas, and could be waived without detrimental effects to the public welfare, health and safety.
8. There exists adequate infrastructure to support the plan as approved and the rezoning to a conditional district.
9. The rezoning of the property to a conditional district will not substantially change the character of the site as it exists today nor injure the value of adjoining or abutting property. Nor will this designation be detrimental to the use and development of adjacent properties and neighborhood uses now in existence.

Planning Board Recommendation:

The Planning Board recommended in an unanimous vote that the Board of Aldermen adopt in favor of the applicants request.

Attachments:

1. Application Materials Submitted
2. Site Map
3. Planning Board Minutes

Suggested Actions:

1. Motion to adopt the attached Ordinance.



To: Jason Rogers - Codes Administrator
Elizabeth Teague – Development Services Director

CC: Matt Haynes – Director of Manufacturing – Giles Chemical

From: Patrick Bradshaw, PE 

Date: July 23, 2015

Re: Giles Chemical Conditional District Request

Per Section 2.7 and Section 15.15 of the Town of Waynesville Land Development Standards and in accordance with the enclosed Master Plan drawing, Richland Creek, LLC as Property Owner and Giles Chemical as Developer respectfully requests the following items be instituted as a Conditional District for Haywood County PIN # 8605-72-8509, located within the Town of Waynesville.

- Chap 2, Table 2.4.2.3.d – Pervious Surface (min) 20%, be reduced 5% minimum
- Chap 4, 4.3.1 – All Lots to Front on Public Street, Civic Space or Approved Driveway, remove
- Chap 5, 5.11 – Industrial Building Design Standards, remove 5.11.1, 5.11.2 and 5.11.3
- Chap 6, 6.8 – Pedestrian Facilities, remove, with the exception of those facilities as shown on the Master Plan
- Chap 8, 8.4.2.A Buffer Yard Types, remove the wall or berm reference and replace the same with a requirement that all planting densities be doubled (ex. 4 evergreen trees becomes 8 evergreen trees, etc.). In addition, remove the requirement that the developer provide screening against both the railroad track and the adjacent parcels that are zoned as Hazelwood Business District with the exception of the parcel known as PIN # 8605-72-5769 at the northeast corner of the subject property. In addition, it should be noted that the developer will make every effort to not adversely affect the existing smoke stack that exists on the subject parcel during the installation of the same.
- Chap 8, 8.6 – Parking Lot Landscaping – allow the developer to flexibility to provide the same number of plantings, but remove the specificity of location with relationship to parking spaces
- Chap 8, 8.7 – Screening of Dumpsters, Loading docks, Outdoor Storage Area and Utility structures, remove, with the exception of those areas that are covered by 8.4.2.A buffer yard areas
- Chap 9, 9.4.3 Connectivity, remove
- Chap 9, 9.4.4 Pedestrian Corridors in Parking Lots, remove

We appreciate your consideration of this matter and look forward to discussing the same at the Planning Board meeting on August 17, 2015. If you have any questions in the meantime, please do not hesitate to contact me.

ENVIRONMENTAL SURVEY

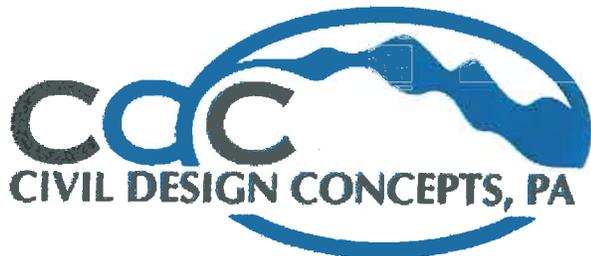
FOR

GILES CHEMICAL

OWNER / DEVELOPER:

GILES CHEMICAL
75 GILES PLACE
WAYNESVILLE, NC 28786

PREPARED BY:



168 Patton Ave.
Asheville, NC 28801
Phone: 828-252-5388
Fax: 828-252-5365

52 Walnut Street – Suite 9
Waynesville, NC 28786
Phone: 828-452-4410
Fax: 828-456-5455

www.civildesignconcepts.com

NCBELS LICENSE #: C-2184

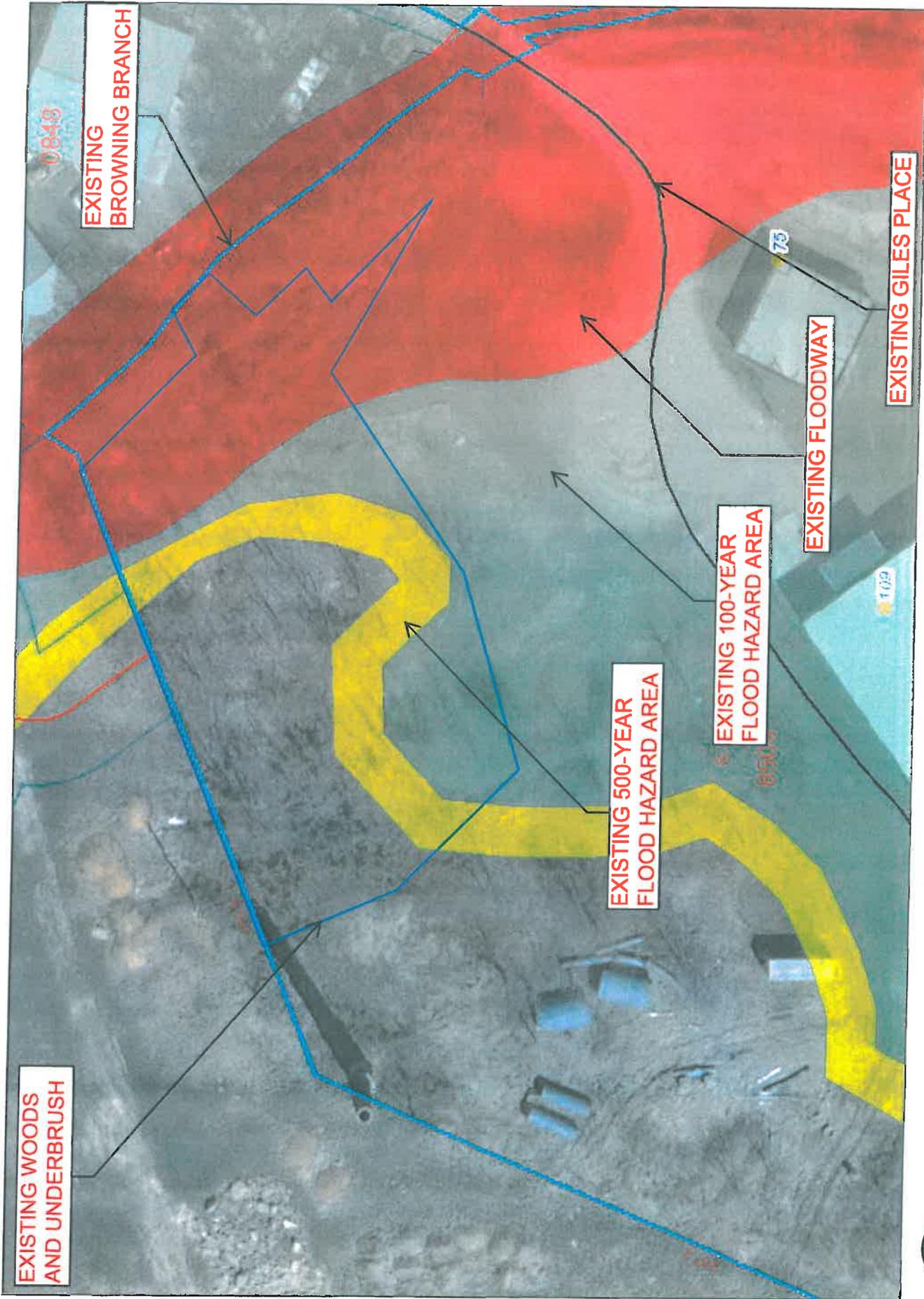
CDC Job No. 21425
July 23, 2015



Project Name: Giles Warehouse
Project Location: Waynesville, NC
CDC Project No. 21425
Date: May 19, 2015

ENVIRONMENTAL SURVEY

Giles Warehouse is located at 75 Giles Place, Waynesville, Haywood County, North Carolina. The project site contains some sparsely populated woods and underbrush on the north side of the property. The northeast border of the site follows Browning Branch. Subsequently, a portion of the site lies in the existing floodway, the FEMA 100-year flood hazard area, and the FEMA 500-year flood hazard area. On-site stormwater naturally flows northeast into Browning Branch. The site contains no wetlands or previously identified endangered species habitats.

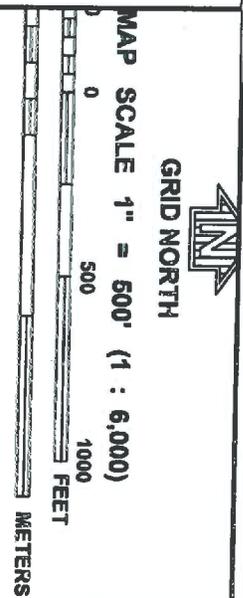
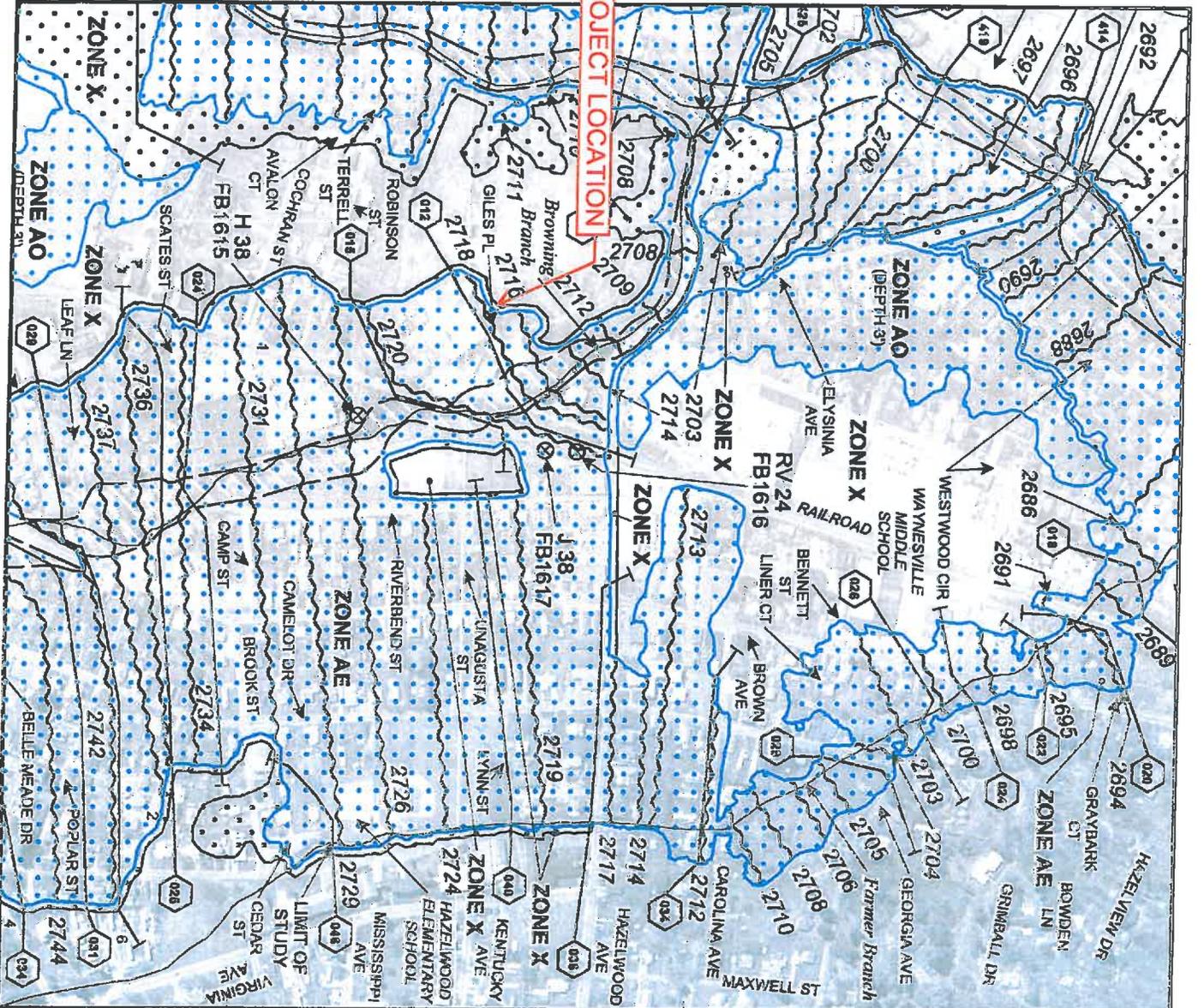


Disclaimer: The maps on this site are not surveys. They are prepared from the inventory of real property found within this jurisdiction and are compiled from recorded deeds, plats and other public records and data. Users of this site are hereby notified that the aforementioned public primary information sources should be consulted for verification of any information contained on these maps. Haywood county and the website provider assume no legal responsibility for the information contained on these maps.

Haywood County

1 inch = 50 feet
 May 19, 2015





NFIP

PANEL 8605J

FIRM

FLOOD INSURANCE RATE MAP

NORTH CAROLINA

PANEL 8605

(SEE LOCATOR DIAGRAM OR MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COUNTY:	WAINESVILLE	CITY:	WAINESVILLE
TOWNSHIP:	WAINESVILLE	SECTION:	8605
DATE:	APRIL 3, 2012	SHEET:	J

Notes to User: This Map Number shown below should be used when placing responsibility for the Community Number shown above should be used on insurance applications for the subject community.

EFFECTIVE DATE **MAP NUMBER**
APRIL 3, 2012 **3710860500J**

State of North Carolina
 Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov

Parcel Report For 8605-72-8509

RICHLAND CREEK LLC
PO BOX 370
WAYNESVILLE, NC 28786

Account Information

PIN: 8605-72-8509
Deed: 464/634

Site Information

OFFICE, GENERAL INDUSTRIAL
COMMERCIAL USE, COMMERCIAL USE
75 GILES PL

Heated Area:

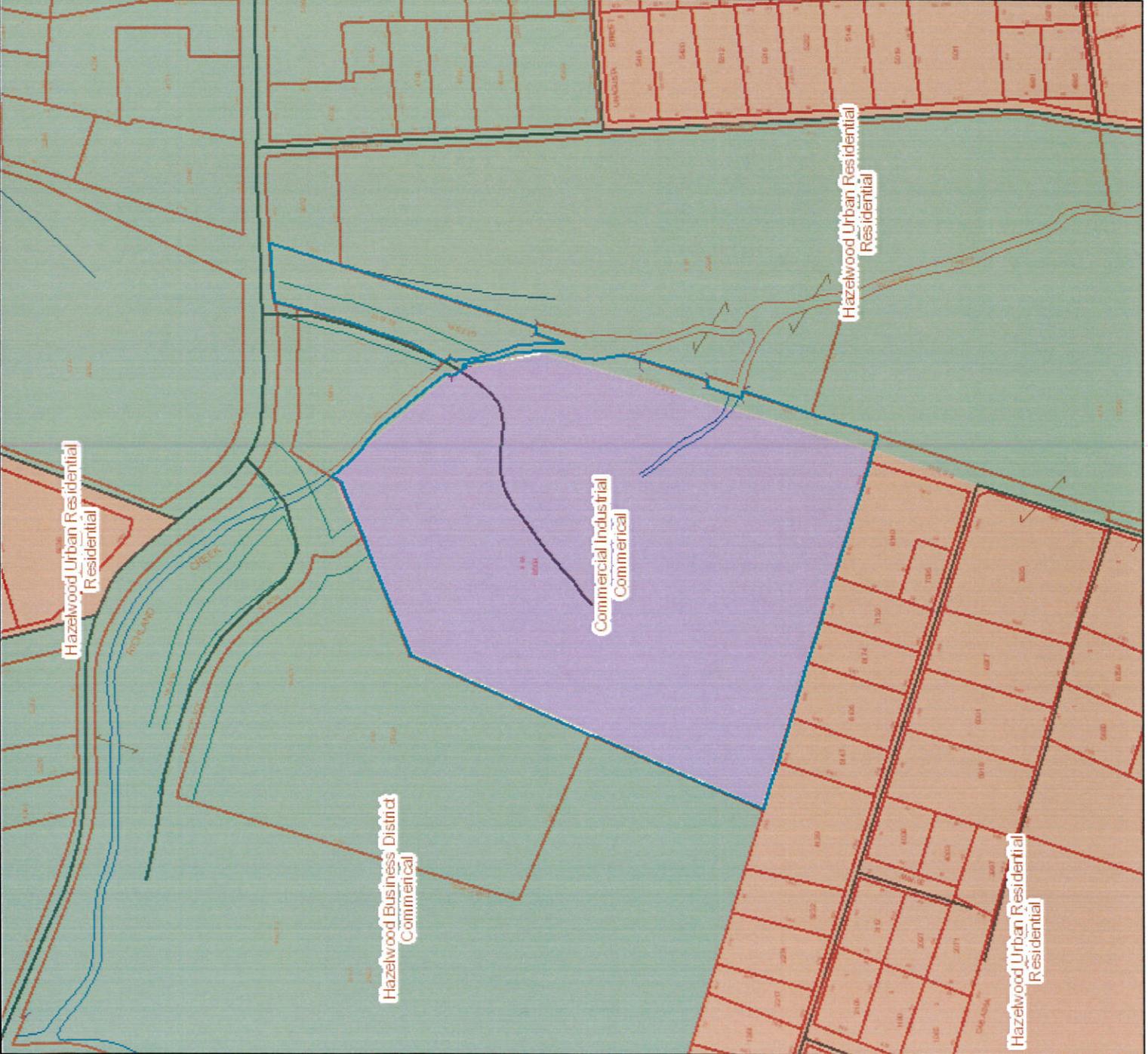
Year Built:

Total Acreage: 8 AC

Township: TOWN OF WAYNESVILLE

Site Value Information

Land Value: \$517,500
Building Value: \$201,100
Market Value: \$718,600
Deferred Value: \$0
Assessed Value: \$718,600
Sale Price: \$0
Sale Date: 03/12/1998
Tax Bill 1: \$3,889.78
Tax Bill 2: \$3,126.01



1 inch = 200 feet
August 17, 2015

Disclaimer: The maps on this site are not surveys. They are prepared from the inventory of real property found within this jurisdiction and are compiled from recorded deeds, plats and other public records and data. Users of this site are hereby notified that the aforementioned public primary information sources should be consulted for verification of any information contained on these maps. Haywood county and the website provider assume no legal responsibility for the information contained on these maps.



TOWN OF WAYNESVILLE

Planning Board

9 South Main Street
Waynesville, NC 28786
Phone (828) 456-8647 • Fax (828) 452-1492
www.waynesvillenc.gov

Chairman

Patrick McDowell

Planning Board Members

Danny Wingate (Vice)

John Feichter

Marty Prevost

Robert Herrmann

Phillip Gibbs

H.P. Dykes, Jr.

Shell Isenberg

L. Brooks Hale

Development Services

Director

Elizabeth Teague

MINUTES OF THE TOWN OF WAYNESVILLE PLANNING BOARD REGULAR MEETING

Town Hall – 9 South Main St., Waynesville, NC 28786
August 17, 2015

THE WAYNESVILLE PLANNING BOARD held a regular meeting on August 17, 2015 at 5:30 p.m. in the board room of the Town Hall, 9 South Main Street, Waynesville, NC.

A. CALL TO ORDER

1. Welcome/Calendar/Announcements

Vice Chairman Danny Wingate welcomed everyone and called the meeting to order at 5:30 p.m.

The following members were present:

Danny Wingate
Shell Isenberg
Robert Herrmann
Bucky Dykes
Jon Feichter
Phillip Gibbs
Marty Prevost
Brooks Hale

The following staff members were present:

Marcy Onieal, Town Manager
Elizabeth Teague, Development Services Director
Byron Hickox, Land Use Administrator

Jason Rogers, Codes Administrator
Eddie Ward, Deputy Town Clerk

Also present was Ron Sneed, Attorney to the Planning Board, Patrick Bradshaw P.E. of Civil Design Concepts, Matt Haynes, Director of Operations Giles Chemical, Jayson Clapp, Jr. P.E., PTOE of Ramey-Kemp, and Pat and Zeb Smathers, attorneys representing several residents of the Francis Cove neighborhood.

2. Adoption of Minutes

Board Member Jon Feichter made a motion, seconded by Board Member Bucky Dykes, to approve the minutes of July 20, 2015 as presented. The motion passed unanimously.

B. NEW BUSINESS

3. Public Hearing for Conditional District Land Use for Giles Chemical at 75 Giles Place PIN 8605-72-8509

Vice Chairman Danny Wingate asked Ms. Elizabeth Teague, Development Services Director, to present the staff report for Giles Chemical. Ms. Teague gave the following presentation:

Planning Board Staff Report

Subject: Conditional Overlay District Request: Giles Chemical Expansion Site
Ordinance Section: 15.15
Applicant: Premier Magnesia, LLC, also known as "Giles Chemical"
Meeting Date: August 17, 2015

Summary Information:

Application Date: July 23, 2015
Proposed Location: 75 Giles Place PIN# 8605-72-8509
Property Owner: Richland Creek Attention: Rick Wrenn
Acreage of site: 8 acres
Zoning District: Commercial Industrial
Existing Development: 100% disturbed area with existing parking lots, driveway, structure and storage

Background:

The subject property consists of approximately 8 acres with a storage facility and an office building currently utilized by Giles Chemical. Giles Chemical would like to expand their usage of the site, add office and warehouse space and make multiple site improvements to the parking lot, driveway, loading, and outdoor storage and utility areas according to the specified major site plan which was approved by the Planning Board on June 15, 2015. In that decision, the Planning Board affirmed that the site plan met the five general findings required for approval:

Town of Waynesville Planning Board Minutes
August 17, 2015

1. Compliance with the adopted plans and policies of the Town;
2. Compliance with applicable requirements;
3. Existence of adequate infrastructure;
4. Conformity with the neighborhood; and
5. The application will not substantially injure property values of adjoining or abutting property, nor be detrimental to the use and development of adjacent properties or other neighborhood uses.

The underlying property is under the unified control of Premier Magnesia, LLC which plans to utilize the site for manufacturing and warehousing according to the approved Master Plan.

Current zoning is Commercial Industrial (CI). The purpose and intent of this district as established by the Land Development Standards (Section 2.3.8A) is:

The **Commercial Industrial District (CI)** is an area designed to accommodate research and development, industrial and manufacturing uses, administrative facilities and limited supporting commercial services. While a broad mixture of uses is permitted, the principal focus in this area shall be on industrial development. High design and performance standards will be important for future development as this district is highly visible not only from a usage standpoint but also because of its location at one of the major entrances into Waynesville. Connectivity within the district is required to create an industrial campus feel within this area.

The purpose and intent for a Conditional Overlay District as established by the Land Development Standards (section 2.7) is:

Conditional Districts are districts with conditions voluntarily added by the applicant and approved in a legislative procedure by the Board of Alderman in accordance with G.S. 160A-382. Conditional Districts provide for orderly and flexible development under the general policies of this Ordinance without the constraints of some of the prescribed standards guiding by-right development. Because Conditional District developments are constructed in a comprehensive manner, they establish their own building, street, block, and lot pattern which may be unique from other surrounding blocks or neighborhoods. This Conditional District may be used in any district but is not intended to relieve hardships that would otherwise be handled using a variance procedure.

Site was posted beginning on July 29, 2015, and Notice of the Public Hearing was mailed on July 31, 2015 and submitted to local media.

Consistency with 2020 Land Development Plan:

Under North Carolina law local municipal zoning is required to be based on an adopted comprehensive land development plan. In Waynesville this document is: Waynesville Our Heritage, Our Future, 2020 Land Development Plan. According to this plan, specifically Map 15 area 4 planned land use for the subject property is Commercial/ Industrial and specifically listed for a goal and objective (4-5) to “promote the reuse of vacant or under utilized Industrial land”. Additionally, this project supports the

overall goal of Chapter 4: Economic Vitality to “maintain and strengthen a broad-based economy in Waynesville of vibrant and expanding manufacturing, . . .”

The requested overlay will allow re-use of an existing site and support the expansion of a successful manufacturing operation and is therefore consistent with the Town of Waynesville comprehensive land development plan.

Surrounding Land Use/ Zoning Patterns:

Surrounding land use is primarily commercial along Hazelwood Avenue with small to medium sized retail and service businesses. To the southeast is Haywood Vocational Opportunities along Riverbend Street which is also an industrial site currently being re-used. To the south is residentially developed along Robinson Street. The western border is primarily open and is property formerly utilized as industrial property. The eastern border of the site is along the existing railroad line and there is also an existing railroad track spur within the site. This request would take advantage of this site’s location as a traditional industrial and commercial area. It also allows a local manufacturing business to expand their operations in an existing industrial area within the Town of Waynesville without having to create new development or to find locations outside of the Town.

Proposed Development:

This project is proposed to re-use existing site elements and to build additional features to be phased over the next 5 years, with building 1 and 3 being constructed starting in 2015, and other elements being phased in subsequently.

The applicant requests the following be accommodated as part of the conditional district:

1. Chapter 2, Table 2.4.3d- Pervious surface (min) 20%, be reduced 5% minimum
2. Chapter 4. 4.3.1- all lots front on public Street, Civic Space or approved driveway, Remove
3. Chapter 5, 5.11- Industrial building design standards, Remove 5.11.1, 5.11.2 and 5.11.3
4. Chapter 6, 6.8- Pedestrian facilities, remove, with the exception of those facilities as shown on the Master Plan
5. Chapter 8, 8.4.2A buffer yard types, remove the wall or berm referenced replace the same with a requirement that all planting densities be double. In addition, remove the requirement that the developer provide screening against both the railroad track and adjacent parcels that are zoned as Hazelwood Business District with the exception of parcel known as PIN#8605-72-5769 at the corner of the subject property. In addition, it should be noted that the developer will make every effort to not adversely affect the existing smoke stack that exists on the subject parcel during the installation of the same.
6. Chapter 8, 8.6- Parking lot landscaping- allow the developer the flexibility to provide the same number of plantings, but remove the specificity of location with relationship to parking spaces

7. Chapter 8, 8.7- Screening of dumpsters, loading docks, outdoor storage area and utility structures, remove, with the exception of those areas that are covered by 8.4.2A buffer yard areas.
8. Chapter 9, 9.4.3 Connectivity, Remove
9. Chapter 9, 9.4.4- Pedestrian corridors in parking lots, remove

The application of these items into the District allow for the re-use of the existing site as it is now and to improve the site along the lines of district regulations within the context and physical constraints of the site's location, particularly the site's location along the railroad right-of-way and the fact that it is not along a public street, but accessed by an existing drive (see attached site location map and application materials).

Staff Recommendations:

Approval of this Conditional Overlay request allows the applicant to implement the site plan and specified improvements for their needs, while asking for flexibility in the ordinance as enumerated above. Because of the location and current conditions of the site, the elements of the Conditional District Request are in keeping with the industrial and commercial character of the underlying district. Additionally, this site plan will allow Giles Chemical to expand their operation while improving the existing buffering, infrastructure and overall look of the site now. Staff recommends that the Planning Board could therefore find the following:

1. The applicant desires to voluntarily submit to a conditional district overlay required for the re-development of an existing commercial/industrial site at 75 Giles Place PIN# 8605-72-8509;
2. The location of the site is in the Commercial Industrial Zoning District and the proposed manufacturing and warehousing uses are permitted within that district;
3. The Conditional Overlay Request is in accordance with the Major Site Plan approved by the Planning Board on June 15, 2015 and met the required findings for such approval and is under the Unified Control of Premier Magnesia, LLC;
4. Notice of this hearing was provided and given as required by the Land Development Standards, the Ordinances of the Town of Waynesville and the North Carolina General Statutes;
5. The Conditional Overlay is consistent with the Town's 2020 Land Development Plan goals for economic vitality and the re-use of existing industrial sites;
6. The plan complies with the dimensional requirements of the District, and the Conditional Overlay designation will allow for development within the constraints of the site location and the re-use of existing buildings, parking lots and storage areas. Specifically:

- A reduction in the pervious surface requirement from 20% to 5% is necessary to reuse existing parking areas and meet the needs of truck, trailer and automobile usage required for the conducting of manufacturing and warehousing on the site.
 - The operations will take place within existing and new buildings which are not visible from the public roadway and which will be screened from the adjacent residential district. Therefore the application of Industrial Building Design Standards would not serve a public purpose and would create add
 - The site's location along the railway right-of-way prohibits the installation of berms or walls, at the eastern boundary, however the parking lot is allowed within the railroad right-of-way. The location of the site behind existing buildings within the Hazelwood Business District and existing pavement also restrict the ability of installing walls or berms. However, the applicant is proposing to double the planting densities and to be given flexibility in placing plantings along the site's boundaries where feasible.
 - While the developer is also asking for flexibility in the location of plantings within parking lots, the developer will utilize the required number of plantings.
 - The location of dumpsters, storage areas and utility structures within the interior of the site reduce the need for screening requirements except in those areas which are adjacent to buffer areas which will be planted. Therefore screening requirements for those site elements will be met in terms of their visibility from public areas or the exterior of the lot.
 - Requirements for connectivity and pedestrian corridors within parking lots will inhibit the use of the site for the proposed manufacturing and warehousing operation and the re-use of existing parking areas, and could be waived without detrimental effects to the public welfare, health and safety.
7. There exists adequate infrastructure to support the plan as approved and the rezoning to a conditional district.
8. The rezoning of the property to a conditional district will not substantially change the character of the site as it exists today nor injure the value of adjoining or abutting property. Nor will this designation be detrimental to the use and development of adjacent properties and neighborhood uses now in existence.

Attachments:

1. Site location map
2. Application Materials Submitted

Suggested Actions:

1. Motion to adopt the recommended Findings as provided (or as amended) in the staff's recommendation of this report.

2. Motion to recommend approval (or approval with conditions, or denial) of the request as discussed to the Waynesville Board of Alderman for Conditional District Zoning Designation.

**Patrick Bradshaw – Civil Design Concepts
1210 South Main St
Waynesville, NC 28786**

Mr. Bradshaw stated that Premier Magnesia LLC, also known as Giles Chemical, had been before the Planning Board on June 15, 2015, and the site plan was approved for an approximate 38,000 square foot warehouse to store bulk product. In that decision, the Board affirmed the site plan met the general findings required for the approval.

The current zoning for the property is Commercial Industrial (CI). The requested conditional zoning for the property will allow re-use of an existing site and support the expansion, and improvements for the successful manufacturing operation. This is consistent with the Town of Waynesville Comprehensive Land Development Plan. The proposed project is to re-use site elements and build additional features which will be phased in over the next five years. This will allow Giles to expand operations without having to find locations outside of the Town.

As part of the Conditional Use, Mr. Bradshaw asked the Board to consider:

- The pervious surface requirement surface requirement be reduced from 20% to 5% to meet the needs of vehicle usage for manufacturing. The application of the industrial building design would create an additional cost for the re-use of the site.
- To be given flexibility in the location of planting densities because of the railroad right of way and the developer will utilize the interior of the site.
- Reduce the need for screening requirements because of the location of dumpsters, storage areas, and utility structures within the interior of the site.
- Waive the requirements for connectivity and pedestrian corridors within parking lots. This could be done with no detrimental effects to the public.

The Board had several questions for Mr. Bradshaw concerning the large trucks that would be entering the property, and the buffering for the project. Mr. Bradshaw told the Board that rezoning the property to a conditional district overlay will not change the character if the site as it exists today, nor will it injure the value of surrounding properties.

**Matt Haynes, Director of Operations, Giles Chemical
258 Haynes Hollow Drive
Waynesville, NC 28786**

Mr. Haynes presented the attached information and stated that Giles Chemical always strives to be a good neighbor to the residents of the Town of Waynesville. With the approval of this expansion, a total of nine new professional positions will be added to the company in Finance, Customer Service, Town of Waynesville Planning Board Minutes
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and Logistics. Mr. Haynes told the Board that most of the people working at Giles live in Waynesville area. He answered questions from the Board concerning the time frame of five years for construction, and the type of materials used for the building.

A motion was made by Board Member Brooks Hale, seconded by Board Member Robert Herrmann, to adopt the Findings of Fact provided in the staff's recommendation. The motion passed unanimously.

A motion was made by Board Member Robert Herrmann, seconded by Board Member Brooks Hale, to approve the request for Conditional District Land Use for Giles Chemical at 75 Giles Place, PIN 8605-72-8509. The motion passed unanimously.

DRAFT

4. Public Hearing for Special Use Permit for Shining Rock Classical Academy, located at the corner of Raccoon Road (SR 1812) and Pigeon Road (Highway 276) PIN 8625-02-1571

Vice Chairman Wingate opened the Public Hearing and addressed the Protocols for Quasi-Judicial Hearings. He asked any witnesses that wished to speak to come forward and be sworn in. Attorney Pat Smathers stated he and Zeb Smathers represented the Francis Cove Neighborhood Committee and would be sworn in for that committee. After the swearing in, Vice Chairman Wingate polled the membership about ethical considerations. There were no objections concerning the impartiality of the Board.

Attorney Sneed to give a brief explanation of the Quasi-Judicial procedures the Planning Board follows. He said that in this capacity, the Board has to make a decision based on the Town's ordinances, and evidence presented. The Board has a checklist containing several items that must be met satisfactorily in order to obtain a Special Use Permit. He explained that due to the larger crowd, a three minute time limit would be in place for speakers, and seven minutes for speakers representing a group of speakers.

Vice Chairman Wingate asked Ms. Elizabeth Teague, Director of Development Services to present a staff report. Ms. Teague gave the following report:

Planning Board Staff Report

Subject: Special Use Permit Request: Shining Rock Classical Academy
Ordinance Section: 3.1.3; 3.7.3; 15.15
Applicant: Shining Rock Classical Academy
Meeting Date: August 17, 2015

Summary Information:

Application Date: July 24, 2015
Proposed Location: Corner of Raccoon Road (SR1812) and Pigeon Road (US276), PIN 8625-02-1571
Property Owner: Collins Orchard Inc.
Acreage of site: Approximately 32 acres; 9 acres of proposed disturbance
Zoning District: Francis Cove – Low Density Residential (FC-RL), and within the ETJ area.
Existing Development: Agricultural

Background:

The subject property is agricultural land on the corner of US276 and Raccoon Road within the Francis Cove Low Density District. The purpose and intent statement for this District reads:

The Francis Cove Residential—Low Density District (FC-RL) is an area that will remain as a very sparsely developed area. Few urban services are available in this area to support dense development and the topography poses a limitation on development as well. Agricultural and residential uses will be the predominant future land use. Maintaining the rural character of this

area will be an important focus. Clustering future development in small areas while leaving large areas undeveloped will be critical in achieving this goal.

The applicants would like to purchase this property for the purpose of locating an elementary and secondary school, contingent upon zoning approval. Schools are allowed in all residential districts of the Town of Waynesville under a Special Use Permit (“SUP”). This school is targeted for 250 to 500 students. Special Uses are:

“...uses which are generally compatible with other land uses permitted in a land development district but which, because of their unique characteristics or potential impacts on the surrounding neighborhood and/or the town as a whole, require individual consideration in their location, design, configuration, and/or operation at the particular location.”

In addition to determining that the application ordinance requirements, the Planning Board must find the following related to the proposed SUP:

1. Conforms to the character of the neighborhood, considering the location, type and height of buildings or structures and the type and extent of landscaping on the site.
2. Adequate measures shall be taken to provide ingress and egress so designed as to minimize traffic hazards and to minimize traffic congestion on the public roads.
3. Adequate utilities (water, sewer, drainage, electric, etc.) are available for the proposed use.
4. Shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas.
5. Shall not impede the orderly development and improvement of surrounding property for permitted uses within the land development district.
6. The establishment, maintenance or operation of the use shall not be detrimental to or endanger the public health, safety or general welfare.

The Planning Board may place conditions on the SUP as part of the approval to assure that mitigation measures are associated with the development. Such imposed conditions become part of the permit approval and shall be included in the final site plan application.

This project must also comply with minimum standards for the FC-RL District, and any additional conditions imposed on the development and operation to ensure the public health, safety, and welfare. Additionally the project must comply with the Supplemental Use Standards for Elementary and Secondary Schools, specifically:

1. Buffering from adjacent residentially zoned property with a Type B buffer as set forth in Section 8.4.2.B.
2. Parking and active recreation areas shall not be located within the required yards.
3. Primary access shall be provided from thoroughfare and collector streets. Local residential streets shall not be used for primary access.
4. Connectivity (vehicular and pedestrian) to surrounding residential areas is encouraged.

A pre-application meeting was held with the applicants' representative, Patrick Bradshaw, P.E. on Thursday July 23 and 24, and application materials were then filed with the Development Services Department including an Environmental Survey, a Master Plan and Building Elevations, as well as a scope of services for a traffic study on the potential impacts a school locating in that area. Site plans were reviewed by the Town's Development Services staff, Public Services staff and Fire Department. Plans were also forwarded to NCDOT for their consideration.

The site was posted beginning on August 3, and Notice of the Public Hearing was mailed on August 3, 2015 and submitted to local media.

Consistency with 2020 Land Development Plan:

Under North Carolina law local municipal zoning is required to be based on an adopted comprehensive land development plan. In Waynesville this document is: Waynesville Our Heritage, Our Future, 2020 Land Development Plan. According to this plan, "the town does not have direct control of school facilities, and the location of such facilities are ultimately at the discretion of the school system" (p 3-41). Under Land Use Goals, the Town should promote orderly growth, development and land values, by preserving and improving existing neighborhoods. The objective is to "designate appropriate amounts of land to reflect desired development patterns and to accommodate the projected residential, commercial, industrial and institutional needs of the Town" (p. 4-2).

The Land Development Plan therefore defers to the School Board for the location of schools. However, one could argue that the development of a school is consistent with the Land Development Plan, and this conclusion is supported by zoning, but only as long as the school development itself is in character with the surrounding neighborhood. Staff expressed uncertainty as to whether the school as proposed achieves this.

Surrounding Land Use/ Zoning Patterns:

The site is located within the Town's extra-territorial jurisdiction and is surrounded by low density residential and agricultural areas. Even though it is outside the Town limits, the site is located within the Town's Urban Services Boundary as denoted in the 2020 Land Development Plan. The site is bordered on two sides by State maintained roadways, and on the other side by privately owned farmland. Across the roadway and less than .3 miles away is the Francis Cove neighborhood of single family residences.

Proposed Development:

The project will place three modular buildings, construct an office building, an athletic field, and parking and driveway areas. All uses except for the driveway entrance and proposed sidewalk are within the required yard setbacks for the District and conform to the FC-RL dimensional requirements. Other considerations for the SUP are below.

1. Conforms to the character of the neighborhood, considering the location, type and height of buildings or structures and the type and extent of landscaping on the site?

Elevations indicate single story construction and single story modular classrooms located in the interior of the development area with landscaping. Closest to the roadway will be a multi-purpose open field for athletics.

2. Adequate measures shall be taken to provide ingress and egress so designed as to minimize traffic hazards and to minimize traffic congestion on the public roads?

The proposed driveway will ingress/egress to the site is proposed off of Raccoon Road and is subject to the requirements and driveway permitting of NCDOT. Traffic mitigation measures will be needed to manage school traffic for a school of this size as pursuant to a sealed traffic study. Staff recommends special consideration for the inclusion of designated turning lanes off of Raccoon Road. This will require an amendment to the proposed site plan by dedicating additional right-of-way from the property. Staff also will require a secondary emergency access to be developed for the purpose of public safety, possibly at the location of Bluegrass Road. All recommendations either from staff or a traffic study within the public right-of-way however, are subject to NCDOT approval. Staff presented additional evidence showing NCDOT Annual Average Daily Traffic Counts near the intersection, and showing that the 276 corridor in that location is on the Long Range Transportation Plan as a thoroughfare concern.

3. Adequate utilities (water, sewer, drainage, electric, etc.) are available for the proposed use?

Adequate utilities for water and sewer are available along Raccoon Road and the Town has the capacity to serve a school of this size at that location. However, the applicant will be responsible for all associated tap, capacity, and construction fees associated with utility extensions and such extensions must be approved by the Board of Aldermen.

4. Shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas?

A school use should not generate vibration, odor, dust, smoke or gas. Outdoor athletic events, and daily recess may generate levels of noise, but which probably wouldn't reach levels or be of a type that are considered noxious or offensive. However, special events or athletic activities or the field could generate noise or possible light impacts.

5. Shall not impede the orderly development and improvement of surrounding property for permitted uses within the land development district?

The location of a school on this site would not prohibit the continuation of the existing residential and agricultural land uses. The location of a school may increase the desirability of increased residential development nearby.

6. The establishment, maintenance or operation of the use shall not be detrimental to or endanger the public health, safety or general welfare?

The biggest concern in terms of general public health, safety and welfare are the traffic impacts of placing a school this size adjacent to what is already a busy intersection of

two, two-lane roads. Another concern however is that adequate safety measures be in place for the specific health, safety and welfare of the students and faculty on the site. Staff reiterated the need for some type of secondary entrance for emergency access.

Staff Recommendations:

Staff feels that the Planning Board could argue either way for the case as to whether the siting of a school at this location would conform to the character of the surrounding neighborhood. Even though the Zoning District does allow elementary and secondary schools within residential districts with Special Use Permits; this particular development at this location will have impacts on the surrounding area, especially in terms of traffic. If however, the structures placed on the site are sensitively landscaped and placed as shown on the elevations and traffic and safety concerns are addressed in the site plan, the Board could determine the Special Use Permit is appropriate with the following suggested findings of facts. Staff however, feels ambivalent.

1. The Planning Board has jurisdiction to hear this application for a special use permit as part of its role pursuant to Section 14.3.1.E.3 of the Land Development Standards of the Code of Ordinances for the Town of Waynesville.
2. The applicant desires to establish a charter school on the property located at the Corner of Raccoon Road (SR1812) and Pigeon Road (US276), PIN 8625-02-1571, within the extra-territorial jurisdiction of the Town of Waynesville and within the Town's Urban Services Boundary.
3. The described real property is owned by Collins Orchard, Inc.
4. The Shining Rock Classical Academy, as the SUP applicant, has an option or contract to purchase the property contingent upon obtaining a Special Use Permit to construct and operate a school on the described property, and thus has standing to pursue this application.
5. A special use permit is required by Section 2.5.3 of the Land Development Standards for the property to be used for a school.
6. Proper notice of the hearing was posted and published as required by North Carolina General Statutes and by the Town of Waynesville.
7. The proposed Special Use as described in the application and as shown on the conceptual site plan meets the minimum requirements of the FC-RL District.
8. The proposed Special Use meets the 6 standards and requirements of a Special Use District and is not detrimental to the public health, safety and welfare, as long as the following conditions are met:
 - Landscaping is maximized and shown on the site plan to help screen the modular structures, as shown in the building elevations.
 - A type B buffer shall be installed along the northeast boundary where the property is adjacent to an existing residential structure.

- Applicant shall pursue traffic measures to mitigate impacts upon the adjacent public roadways pursuant to the recommendations of the traffic study and NCDOT permit requirements. The applicant will adjust the site plan to accommodate a turn lane from Raccoon Road to prevent traffic back ups during peak traffic hours, and an emergency access onto Bluegrass Lane.
 - Applicant is approved by the Town Board of Aldermen for extension of Town utility service and in accordance with all applicable Town policies.
9. The conceptual site plan shows that parking and active recreation areas are not located within the required yard setbacks.
10. Primary access to the property will be from Raccoon Road (SR1812), a collector street or thoroughfare, and not a local residential street, as Raccoon Road intersects with US276 a regional thoroughfare, and connects nearby neighborhoods and farmland to the Town of Waynesville, and the Bethel community.

Attachments:

1. Application Materials Submitted with site location map included in Environmental Survey.
2. Comments from reviewing staff.

Suggested Actions:

1. Motion to adopt the recommended Findings of Fact provided (or as amended) in the staff's recommendation of this report.
2. Motion to recommend approval (or approval with conditions, or denial) of the Special Use Permit.

Ms. Teague reiterated several times that a school is an allowable use in the Francis Cove Residential – Low Density District (FC-RL). The six conditions in the staff report are required in the District and must be met. The Board had several questions for Ms. Teague pertaining to the proposed turn lanes, and how the turn lanes would operate, and who would bear the expense of the road project. Also, there were questions concerning the modular buildings. Board members asked if the building would be permanent. Ms. Teague said the school classrooms would be modular buildings that could be moved onto the site, and as the enrollment increases, more permanent structures would be considered. At that time, Shining Rock would have to come before the Board again with new design guidelines.

**Patrick Bradshaw – Civil Design Concepts
1210 South Main St
Waynesville, NC 28786**

Mr. Bradshaw states this application is for a Charter School, Shining Rock Classical Academy, operating with grades K – 6. The estimated enrollment is about 250, with a grade per year added. He referenced the Findings of Fact for the application and the requirements that need to be met. He stated
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that only 8 – 9 of the approximate 32 acres would be utilized now. The project consists of single story modular structures that will not exceed the size of the related structures in the neighborhood. The landscaping around the structures will be more extensive than what is required. Mr. Bradshaw said the project is very comparable to the Haywood County Agricultural Building on Raccoon Road. Mixed Use Overlay Zoning covers a portion of the property and shows a variety of personal, professional, and animal services. Mr. Bradshaw said this speaks to the fact that the Town of Waynesville has recognized the importance of this area for further development. He advised that the Mixed Use Overlay did not include retail services or convenience stores, but a number of opportunities could be utilized along that area.

Mr. Bradshaw told the Board that the applicant recognizes that traffic is a very important factor at any school location, and they anticipate a number of improvements at this location. A 200 foot long turn lane into the school will be installed. A 100 foot right turn lane is proposed as a part of the traffic study submitted by Ramey Kemp and Associates. In addition a dedicated right turn onto Highway 276 from Raccoon Road is also proposed.

Mr. Bradshaw stated adequate water and sewer utilities are available to the proposed project from the Town of Waynesville. Duke Energy is the power provider in addition to Charter Communications servicing the area. Because Shining Rock is a school, it is anticipated that the school isn't noxious, or offensive by way of vibration, odor, smoke, or gas, with the only exception being noise. Mr. Bradshaw feels the noise emitted from the school would be in line with the activities and noise from the adjacent church and Francis Mill, and would not be any more noise than from the other schools in the area.

Mr. Bradshaw stated that as a Professional Engineer in the state of North Carolina, he is charged with safeguarding health, property, and promoting public welfare. He has successfully completed school sites throughout Western North Carolina. A number of these sites are similar in context to the Francis Cove Community. School sites located in rural settings are not detrimental and do not endanger the health, safety, and general welfare of the surrounding areas.

Several Board Members had questions for Mr. Bradshaw concerning the development of the remainder of the property, particularly about light and noise from an athletic field. Mr. Bradshaw assured the Board that any other development on the property would be brought before the Planning Board for approval.

The Board also had questions about the geotechnical surveys for soil and storm water provisions. Mr. Bradshaw said these will be addressed later in the project.

Attorney Pat Smathers
118 Main Street
Canton, NC 28716

Attorney Pat Smathers had several questions for Mr. Bradshaw concerning the financial ability of Shining Rock to pay for the improvement of Highway 276 and Raccoon Road. They also asked questions about the development of the remaining acreage on the property. Mr. Bradshaw said that should a private developer acquire this property, in all probability they would develop all 32 acres of

the property instead of the 8 – 9 acres the school would use. This would be against the purpose and intent of the Francis Cove Residential District as stated in the Land Development Standards.

Attorney Zeb Smathers
118 Main Street
Canton, NC 28716

Attorney Zeb Smathers questioned Mr. Bradshaw about traffic and parking issues, and how these issues will be addressed in the future. There were questions about fire hydrants, fire codes, and fire ratings. Mr. Bradshaw advised all these issues would be addressed in the process of obtaining a building permit.

Jayson Clapp, Jr. P.E., PTOE – Ramey Kemp
621 Jonestown Road
Winston Salem, NC 27103

Mr. Platt said his company, Ramey Kemp, has been in business for twenty three years and has been involved with traffic studies for a number of schools. The traffic study for Shining Rock utilizes the Municipal and School Transportation Assistance (MSTA) School Calculator to calculate the amount of weekday daily, as well as AM and PM peak hours traffic that will be generated by the Charter School. This study is based on a maximum enrollment of 620 K – 12. Mr. Platt stated that his firm had collected traffic numbers at the intersections of Crymes Cove, Raccoon Road, and Highway 276. Based on Shining Rock's enrollment information which included 572 students, staff, parents, and student drivers, it was determined that left turn and right turn lanes were needed at the school driveway. In order to mitigate the impact of traffic at the intersection, an addition of a full right turn onto Highway 276 from Raccoon Road is planned. Because these roads are state maintained roads, the improvements will be coordinated with North Carolina Department of Transportation and will be submitted to them for review. Mr. Platt said that based on a typical day, 2300 linear feet of storage is recommended in order to accommodate traffic so it won't back up on Raccoon Road. He said additional stacking may be required for high demand on the site. Traffic counts were done for 12 hours during the peak times of the day. The Board had many questions concerning the number of vehicles, time periods, and time of year.

Attorney Zeb Smathers and Attorney Pat Smathers asked several question concerning the traffic study, and the process MSTA uses for the school.

Ben Butler – Director, Shining Rock Academy
415 West Haywood St
Asheville, NC 28802

A question was asked by Board Member Jon Feichter concerning how the enrollment number of 572 had been determined. Mr. Butler stated the number is based on speculation of 24 students per class and 13 grades K – 12.

Steven Amodio
17 Ruffed Grouse Lane
Waynesville, NC 28786

Mr. Amodio stated he represented the Quail Ridge Home Owners Association. Quail Ridge is located north of the intersection of Raccoon Road and Highway 276. The residents of Quail Ridge question the need for a school at this proposed location. Mr. Amodio and the residents are concerned about traffic in the area should an emergency occur. The proposed location of Shining Rock offers no opportunity for alternate routes to avoid traffic in the area. They feel that Raccoon Road carries substantial commercial and personal traffic and cannot accommodate more. Mr. Amodio asked for a no approval vote.

Lisa Nelson
35 Treble Clef Lane
Waynesville, NC 28786

Ms. Nelson states she is a retired teacher from Hazelwood Elementary School. She said the traffic flow at the two different locations of the school was extreme. She is concerned about the traffic at the proposed location. Ms. Nelson does not think this is the appropriate site for Shining Rock.

Robert Price
618 Trails Gap Drive
Waynesville, NC 28786

Mr. Price said he is speaking for his subdivision. He had questions concerning the time frame for the site preparation. He stated he felt everything proposed is premature. Mr. Price had many concerns for the traffic situations. He asked the Board that if the Special Use Permit is approved, that there be no conditions attached to it.

David Sanford Boone
44 Autumn Hills Drive
Weaverville, NC 28787

Mr. Boone stated he owned Bluegrass Lane off Pigeon Road, and that road would not be used as an emergency access road. He gave a brief history of Francis Cove, and the people who live there. He stated that the proposed site is not acceptable for a school because of the toxicity of the soil.

Alan Walker
99 Banbury Court
Waynesville, NC 28786

Mr. Walker stated the soils in the area of the proposed project are prime farm land. He encouraged the Board to not cover the farm land with buildings. He said there are other places the Charter School could locate.

Jim Henry
55 Bluegrass Lane
Waynesville, NC 28786

Mr. Henry said this was very personal for him because the proposed project is directly in front of his house. He stated concerns about lighting that might be placed on an athletic field at the school.

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Fencing around the field was also a concern for him. He said the homes that are adjacent to the property are elevated about 10 feet and this elevation means the homes will be looking down on the fence and modular buildings.

John Queen
480 Queen Cove Road
Waynesville, NC 28785

Mr. Queen expressed concerns about traffic on Highway 276 and Raccoon Road. He said the proposed turn lanes are not feasible. He also feels the Charter School is acting prematurely.

Mr. Pat Smathers stated this is a legal issue concerning the six Findings of Fact that must be proven in order to issue the Special Use Permit. He feels the project is a bad idea, no matter if it is public school or a Charter School. He said the site is not appropriate. He feels there are several questions that need to be answered concerning ownership of land, finances, and the future of the property. He asked the Board to deny the request, or delay the approval until the Board can gather more information and make a reasonable determination about the school.

Robert Kerley
390 Hawks Crest Drive
Waynesville, NC 28786

Mr. Kerley stated that he had conducted his own traffic survey. On Monday August 7, 2015 from 2:00 pm until 4:00 pm Mr. Kerley counted cars at the intersection of Raccoon Road, Highway 276, and Crymes Cove Road. He stated that during that frame, he counted 1341 cars going through the intersection. Mr. Kerley contacted the Department of Transportation and in the last year there have been four accidents in that intersection. He also encouraged the Board to deny the permit.

Tanna Timbes
14 Hugh Massie Road
Waynesville, NC 28786

Ms. Timbes said she and her husband own the property that Francis Mill sits on. She stated the vision for the residents of Francis Cove was to be rural, agricultural, and with low density housing. She stated she would like to keep that vision for Francis Cove. She also stated her concerns for traffic in the area.

Virginia Song
160 North Main St
Waynesville, NC 28786

Ms. Song stated she had concerns about the traffic and the effects it will have on Junaluska Elementary School. She asked the Board to deny the request for a Special Use Permit.

Attorney Zeb Smathers stated that when an assignment in school is rushed and incomplete it fails He asked the Board to deny the permit.

Vice Chairman Wingate closed the Public Hearing and asked the Board for their deliberations.

The Board asked Attorney Sneed questions concerning the previous approval of the Shining Rock Special Use Permit. There was much discussion about the proposed project's temporary modular buildings. Board Member Jon Feichter asked if any one of the six requirements is answered with a no answer, can the Special Use Permit be issued. Attorney Sneed said all six requirements must be agreed upon. Board Member Feichter said the major decisive factor in this process is the traffic on the road. He asked the Board if any evidence presented by Shining Rock indicates that there is a traffic plan to address the extra traffic on that road. Board Member Shell Isenberg stated there is an issue with every point on the requirements.

Mr. Bradshaw asked about the time frame that another Special Use Permit request could be brought before the Board. Ms. Teague said there are not any provisions that give guidance as to the time frame of resubmittal of a Special Use Permit.

The following Findings of Fact were determined by the Board:

1. Conforms to the character of the neighborhood, considering the location, type and height of buildings or structures and the type and extent of landscaping on the site.

The Board cannot make a definitive decision based on the information provided.

2. Adequate measures shall be taken to provide ingress and egress so designed as to minimize traffic hazards and to minimize traffic congestion on the public roads.

These findings are combined with those of Number 6. There is not adequate information on possible traffic turn lanes and how the plan could design to minimize traffic hazards and congestion caused by the school development. The application did not adequately address traffic safety concerns.

3. Adequate utilities (water, sewer, drainage, electric, etc.) are available for the proposed use.

We have been provided a statement from staff that water and sewer is available but is subject to Town of Waynesville Aldermen approval.

4. Shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas.

There is not information provided on future plans concerning noise and lights connected to athletic field. There is also no specific location of a playground shown on the plans.

5. Shall not impede the orderly development and improvement of surrounding property for permitted uses within the land development district.

There is not information provided on long term plans and development. If they are going to replace the modular buildings with other buildings there is nothing that speaks to that. There is no information on the final design.

6. The establishment, maintenance or operation of the use shall not be detrimental to or endanger the public health, safety or general welfare.

See number 2 above.

Board Member Robert Herrmann made a motion, seconded by Board Member Jon Feichter, to deny a Special Use Permit for Shining Rock Classical Academy, located at the corner of Raccoon Road (SR 1812 and Pigeon Road (Highway 276) PIN 8625-02-1571. The motion passed unanimously.

5. ADJOURN

With no further business, a motion was made by Board Member Marty Prevost, seconded by Board Member Robert Herrmann, to adjourn at 10:10 pm. The motion passed unanimously.

Danny Wingate, Vice Chairman

Eddie Ward, Deputy Clerk

ORDINANCE NO. 07-15

AN ORDINANCE AMENDING THE ZONING MAP AND TEXT OF THE TOWN OF WAYNESVILLE LAND DEVELOPMENT STANDARDS

WHEREAS, the Town of Waynesville has the authority, pursuant to Part 3 of Article 19 of Chapter 160A of the North Carolina General Statutes, to adopt zoning regulations, to establish zoning districts and to classify property within its jurisdiction according to zoning district, and may amend said regulation and district classifications from time to time in the interest of the public health, safety and welfare; and

WHEREAS, this Ordinance is consistent with the Town’s 2020 Land Development Plan; and

WHEREAS, the Town of Waynesville Planning Board has reviewed the proposed ordinance and recommends its enactment by the Board of Aldermen; and

WHEREAS, after notice duly given, a public hearing was held on September 8, 2015;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE TOWN OF WAYNESVILLE, MEETING IN REGULAR SESSION AND WITH A MAJORITY OF THE BOARD MEMBERS VOTING IN THE AFFIRMATIVE, THE FOLLOWING:

Section One. The existing zoning map of the Town of Waynesville be amended:

- A. The Haywood County Tax Parcel identified with PIN 8605-72-8509, and addressed as 75 Giles Place, shall be rezoned from Commercial-Industrial (CI) to Commercial Industrial-Conditional District (CI-CD).

Section Two. The following provisions of the Code of Ordinances be amended to apply within the Commercial-Industrial – Conditional District as follows:

- A. District name in **Table 2.2** be added as “Commercial-Industrial-Conditional District.”
- B. In **Chapter 2.4.3d** – Pervious Surface of a “minimum of 20%,” be reduced to a “minimum of 5%.”
- C. In **Chapter 4.3.1** – “All lots front on a public street, civic space, or approved driveway,” be removed.
- D. In **Chapter 5.11.1-3** –Remove industrial building design standards from the requirements for façade materials, façade articulation and the screening of rooftop equipment..
- E. In **Chapter 6.8** – Remove requirements for pedestrian facilities except for those facilities as shown on the Master Plan.
- F. In **Chapter 8.4.2A** – Buffer Yard Types, amend by:
 - 1. Remove the “wall or berm” to replace with “planting density to be doubled;”

2. Remove requirement to provide screen along property boundary within the railroad right-of-way;
 3. Remove requirement to provide screen along the property boundary of those lots zoned as the Hazelwood Business District with the exception of the parcel known as PIN 8605-72-5769.
- G. In **Chapter 8.6** – Parking Lot Landscaping, Remove the specificity of location of plantings in relationship to parking spaces, but maintain the same requirements for the number of plantings.
- H. In **Chapter 8.7** – Screening of Dumpsters, Remove all screening requirements with the exception of those areas covered by 8.4.2A buffer yard areas.
- I. In **Chapter 9.4.3** – Remove parking lot connectivity requirements to adjacent lots.
- J. In **Chapter 9.4.4** – Remove requirements for pedestrian corridors within parking lots.

Section Three. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance.

Section Four. All ordinances or portions thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section Five. This ordinance shall be in full force and effect from and after the date of adoption.

ADOPTED this 8th Day of September, 2015.

TOWN OF WAYNESVILLE

Gavin A. Brown, Mayor

ATTEST:

Amanda Owens, Town Clerk

APPROVED AS TO FORM:

Woodrow H. Griffin, Town Attorney

**TOWN OF WAYNESVILLE BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION**

Meeting Date:

SUBJECT: Wholesale Power Contract Negotiations Update

- 1) 10-year Power Supply Agreement with Santee Cooper
- 2) 1-Year Power Supply Agreement with Duke Energy
- 3) 10-year Transmission Agreement With Duke Energy
- 4) Authorization to Engage Outside Legal Counsel

AGENDA INFORMATION:

Agenda Location: Unfinished Business
Item Number: 5-C
Department: Administrative Services
Contact: Marcy Onieal, Town Manager/Louis Davis, UTEC
Presenter: Marcy Onieal, Town Manager
Louis Davis & Ted Orrell/Utility Technology Engineers-Consultants (UTECH)
Mike Brown/Vice President, Wholesale & Industrial Services, Santee Cooper
Mike Cool/Manager, Wholesale Markets, Santee Cooper
Jennifer Wadford/Director, Wholesale Power Contract Admin., Santee Cooper

BRIEF SUMMARY:

After receiving proposals from Duke Energy, Santee Cooper and Southern Company, on March 27, 2015 the Board of Aldermen voted to accept Santee Cooper's proposal and authorized the manager and consultants from Utility Technology Engineers-Consultants to begin negotiating a 10-year power supply agreement.

Even before completing the RFP process with the Town, Santee Cooper applied for transmission reservations from Duke Energy in order to be in position to provide power to the town of Waynesville. That application was made on February 24, 2015. After a rather lengthy evaluation by Duke Energy engineers, on July 2, 2015, Duke informed Santee Cooper there would be transmission capacity issues associated with Santee Cooper taking over as power supplier to the town of Waynesville,, which would require that system improvements be made to the transmission grid *prior* to Santee Cooper providing power supply to Waynesville. The improvements Duke is claiming are necessary will entail the construction of a 27 MVAR 115kV capacitor bank at the Duke Energy Enka 230 kV Substation at an approximate cost of \$2 million and cannot be completed before August of 2016. While Santee Cooper has agreed to pay for these system improvements at no cost to the Town of Waynesville, the delay would push the Town beyond the expiration date of our current power supply agreement with Duke Energy.

When asked about extending the Town's existing power supply agreement to accommodate the required transmission grid system improvements, Duke Energy indicated a willingness to do so, but at a significant premium (approximately 12.5% increase over the current contract price, which would be the equivalent of increasing the Town's costs by over \$1/2 million on an annualized basis).

As an alternative, UTEC asked Duke Energy if they could assign some of their transmission capacity to Santee Cooper so that Santee Cooper could start serving Waynesville on 1/1/2016 as originally proposed. Duke Energy indicated that this would be possible, but that it would come at significant cost to the Town of Waynesville. The issues of how these costs are determined and who pays for these costs are currently in question. The Town could file a complaint against Duke Energy at the Federal Energy Regulatory Commission (FERC), asking for a determination. The problem is, without knowing with certainty how FERC would rule on this matter, the cost risk to the Town could be significant. Duke Energy has indicated that the costs could exceed \$1 million.

Rather than risk incurring that kind of cost, and because Duke Energy would also like to avoid a situation in which the Town files a FERC complaint against them, Duke has offered the Town a new one-year power supply agreement, representing an approximate 2% increase from their current rate. The current rates are well below the market, so a 2% increase for a one year deal seems reasonable. Santee Cooper has agreed to go ahead and sign their ten-year contract with the Town of Waynesville, guaranteeing the same rates as originally proposed, but with a one-year delay in effective start date (beginning 1/1/17 instead of 1/1/16).

It is anticipated that final contracts will be returned for board approval in October.

MOTION FOR CONSIDERATION: *To authorize the manager to engage the services of outside legal counsel to assist in reviewing and finalizing the 10-year wholesale power purchase agreement with Santee Cooper as drafted, in accordance with the previously adopted proposal by Santee Cooper of March 27, 2015, with an effective date of 1/1/17, and a one-year power purchase extension agreement with and a ten-year transmission agreement with Duke Energy, in accordance with the negotiated proposals as presented .*

ATTACHMENTS: Legal Counsel Bios

MANAGER'S COMMENTS AND RECOMMENDATIONS: Approve as presented.

Negotiations among the parties are complete; draft contracts are in the final stages of preparation and will be presented to the Board for final approval following review by legal counsel.

All legal counsel, whose bios have been presented here, have solid credentials with regard to working on electric utility contracts. All maintain a substantial number of clients in the electric utility business and have done successful work on their behalf. The manager has direct prior experience working with two of these firms: 1) Cauley, Pridgen (Raleigh/Wilson/Kinston) and 2) Poyner & Spruill (Raleigh/Rocky Mount/Charlotte). The other three firms based in Washington, DC & Virginia were recommended to UTEC consultants and/or the manager as having done work for public and municipal utilities in NC, including Duke Energy and the Public Staff of the NC Utilities Commission. I am confident that any of these five firms can serve the Town's interests well in the final stages of our contract drafting and execution.

Legal fees for these firms vary from approximately \$300/hour - \$900/hour. The manager is prepared to interview all five firms immediately. If the board does not have a strong preference for one firm over another, I would suggest that the Town engage the services of whichever firm is in best position to address our interests most expediently and with consideration for which firm can offer the best fee on a total budgetary (or not to exceed) basis.

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- [Industries](#)
- [News](#)
- [Resources](#)

Our Firm



Our Firm

Cauley Pridgen, P.A. is an entrepreneurial law firm with a statewide presence. We focus our practice exclusively on issues related to business, government and land. More specifically, these practices areas include legal services for local governments and public officials, business and corporate representation, employment and workers' compensation law, land condemnation and development and all litigation services associated with these practice areas. We maintain modern offices in Wilson, Kinston and Raleigh connected by high-speed internet and data access. Our Eastern North Carolina clients enjoy the benefits of the expertise of an urban law firm located at the hub of state government while receiving the personalized attention their legal matters deserve. In turn, our Raleigh area and regional clients have access to important local, civic, and governmental contacts in one of the State's most desired regions—Eastern North Carolina. Our lawyers have enjoyed longstanding relationships with both public and private clients. This experience has made us effective as problem solvers, negotiators, facilitators and litigators.

Cauley Pridgen, P.A. was previously known as Rose Rand Attorneys, P.A., the decades-old firm that merged with Wallace, Morris, Barwick, Landis, & Stroud, P.A. in 2009. The resulting firm of Rose Rand Wallace Attorneys, P.A., was a full-service law firm until 2012 with offices in Eastern North Carolina and the Triangle area. In 2012, Jim Cauley and Brian Pridgen, along with a core group of seasoned associate attorneys and paralegals, decided to focus their law practice exclusively on legal issues related to business, government and land, practice areas for which they had enjoyed a long history and good reputation.

Over the years, our predecessor firms have produced Justices of the North Carolina Supreme Court and North Carolina Court of Appeals. Our attorneys have served as President of the local bar associations as well as President of the North Carolina Bar Association. We have also had attorneys inducted into the North Carolina Bar Association's General Practice Hall of Fame. As we look ahead to the future we feel it is important to remember the deep roots that the firm has in the area and honor those attorneys who built the foundation of legal excellence which has become synonymous with our firm.

The Wilson office of our firm began in 1944, when William A. Lucas and Oliver G. Rand joined their law practices to form Lucas & Rand. Z. Hardy Rose joined the firm in 1948 and actively practiced law with the firm until 1993. William R. Rand practiced with the firm for over 40 years before retiring in 2003. He was inducted in the N.C. Bar Association's General Practice Hall of Fame in 2004. Jim Cauley joined the firm in 1987. Brian Pridgen joined the firm in 2003.

The firm's lawyers have consistently participated in a variety of civic and professional endeavors and, over the years, the firm has produced members of the State's highest courts. Louis B. Meyer was a member of the firm before his service on the North Carolina Supreme Court. Naomi E. Morris received her first legal training with the firm and returned to Wilson to practice with the firm, before she was appointed to serve as a Chief Justice on the North Carolina Court of Appeals.

Cauley Pridgen, P.A. is proud of its history in Eastern North Carolina and is excited about the future as it refines the scope of its practice to serve a more focused clientele with legal services related exclusively to business, government and land.



James P. Cauley, III

jcauley@cauleypridgen.com

Mr. Cauley represents local governments and public officials as well as local, regional and international businesses. He has extensive experience in land condemnation cases and the representation of public utilities. He has served as a legal instructor at Campbell University School of Law, Barton College and Wilson Technical College. He was a charter member of the Council for the NC Bar Association's Government & Public Sector Section and is also a past chair of that Section. Mr. Cauley's practice focuses on business, government and land issues and any related litigation. He is also a certified mediator and lobbyist. Mr. Cauley also serves as President of Cauley Pridgen, P.A.



Practice Areas

Civil Litigation, Condemnation/Eminent Domain, Contracts & Commercial Transactions, Lobbying & Legislative Affairs, Local Government, Alternative Dispute Resolution

Professional Activities

North Carolina State Bar, North Carolina Bar Association, Wilson County Bar Association, Seventh Judicial District Bar Association, Law Society of England and Wales, Eastern North Carolina Inn of Court (1994 to present), Board of Directors for the North Carolina Association of Municipal Attorneys (1994 to 1996), North Carolina League of Municipalities' Energy, Environment and Natural Resources Committee (1993 to 1997; reappointed in 2005), Environment and Transportation Committee of the Global TransPark Development Commission (1994-1997), International Municipal Lawyers' Association (1991 to present), North Carolina Association of Defense Attorneys (2000 to present, Chairman of Local Government Committee (2004-2006), Defense Research Institute (2000-present), American Bar Association, Condemnation, Zoning and Land Use Litigation Committee, Alternative Dispute Resolution Committee, Torts and Insurance Practice Section, Governmental Liability Committee

Education

Campbell University – B.A. / Campbell University School of Law – J.D.

Bar Admissions

North Carolina / England and Wales



Energy and Utility

Duncan, Weinberg, Genzer & Pembroke has represented clients in energy and utility matters since its founding in 1971. DWGP's experience enables it to provide prompt, accurate and in-depth analysis of state and federal energy and utility laws and regulations. The Firm develops creative strategies and options for clients, provides advice on business decisions, drafts and reviews contracts and agreements, and serves as transactional counsel.

Duncan, Weinberg, Genzer & Pembroke's experience particularly includes trial and appellate litigation before state and federal administrative agencies and courts and legislative representation at the state and federal levels. The Firm's energy and public utility services include:

- advise municipal electric utilities, rural electric cooperatives, irrigation districts and joint action agencies on all areas of energy and utility law

- consultation in compliance with and development of mandatory electric reliability standard, including advice in developing on-going compliance plans and defense and negotiated settlement of alleged violations of standards
- negotiation and litigation on wholesale and retail rates
- business advice and litigation in both electric and natural gas transmission access and pricing proceedings
- advise and represent local natural gas distribution companies, gatherers, marketers, producers, processors and intrastate and interstate natural gas pipelines on regulatory, tariff, rate, certificate, and contract matters
- advise clients on standards of conduct and anti-market manipulation matters
- consultation in the development of bulk power supply plans, demand-side management, and acquiring federal and non-federal hydroelectric power
- consultation on matters, and drafting documents, pertaining to utility power supply acquisition, pooling, and operational agreements
- formation of new public power entities, agencies, and associations
- consultation and litigation in state and federal licensing proceedings
- litigation in utility merger proceedings

Duncan, Weinberg, Genzer & Pembroke's attorneys have conducted extensive and complex state and federal public utility litigation. DWGP attorneys have advised both individual public utilities and large, diverse groups of utilities in generation, transmission, and demand-side management projects. The Firm draws upon the experience of numerous attorneys for responding to each client's energy and utility concerns.

Washington, D.C.

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Washington / NewYork / Sacramento



Ms. Gast is a Senior Principal of the Firm, having become associated with the Firm upon her graduation from law school in May of 1997, and becoming a shareholder of the Firm in the Fall of 2002. She serves clients in both litigation and consultation capacities in energy law and public utility regulation. Her focus is primarily on matters before the Federal Energy Regulatory Commission (FERC) and the U.S. Courts of Appeals. Ms. Gast routinely advises clients on the consumer-side of the industry, including municipal electric utilities and state public utility commissions, on matters before FERC pertaining to regulatory compliance, Order No. 1000 planning, rate case litigation, proceedings involving transmission rate protocols, return on equity complaints, enforcement matters, standards of conduct, standards of conduct, municipal law, energy contracts and, more generally, energy law and policy.

Ms. Gast focuses on compliance issues related to the North American Electricity Reliability Council (NERC) and the Regional Entities, such as the Western Electricity Coordinating Council (WECC). Ms. Gast advises numerous municipal electric utilities on all aspects of NERC Electric Reliability Compliance for both Operational (FERC Order 693) and Critical Infrastructure Protection (CIP) Reliability Standards, including: internal compliance programs, compliance training, self-certification, self-reporting, mock audits, Regional Entity data submittals, RSAWs, compliance audits, NOAVs, settlement negotiations and mitigation plans. Ms. Gast also advises clients on cyber security and physical security risk vulnerabilities.

To keep up with emerging issues, Ms. Gast actively participates in industry associations and attends industry conferences, including the American Public Power Association and the

National Rural Electric Cooperative Association. Ms. Gast is also an active member of the Energy Bar Association, who currently serves on the Federal Energy Law Journal Board as the Vice President, and who formerly acted as Secretary, and then Treasurer, of the Energy Bar Association.

Prior to joining the Firm, Ms. Gast was employed in 1995 as a law clerk with Preston Gates Ellis & Rouvelas Meeds (now K&L Gates) in Washington, D.C. She worked with senior attorneys on matters in antitrust, copyright infringement, and various lobbying efforts on Capitol Hill. She also assisted in the drafting of several bills that received bipartisan support by the U.S. Congress.

Education

- Rutgers University School of Law-Camden, J.D. 1997
- The Pennsylvania State University, Smeal College of Business Administration, B.S. 1992

Bar Admissions

- Maryland
- District of Columbia
- United States Supreme Court
- United States Court of Appeals for the District of Columbia Circuit
- United States Court of Appeals for the Ninth Circuit
- Court of Appeals for Maryland
- Court of Appeals for the District of Columbia

Contact

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lsg@dwgp.com



Overview

Poyner Spruill has offices in Charlotte, Raleigh, Rocky Mount, and Southern Pines, North Carolina, giving it a statewide presence. The firm's size enables it to foster individual attorney excellence in such diverse practice areas as bankruptcy, workouts, creditors' rights, employment law, immigration, commercial real estate, employee benefits, banking law, privacy and information security, venture capital, public utilities, health care law, governmental relations, environmental law, securities law, municipal law, construction law, white collar criminal defense, as well as trials and appeals in all state, federal and administrative courts and tribunals and alternative dispute resolution. The firm brings to bear the resources, talent and experience of all its offices to serve the needs of its clients. In addition, its reputation, size, and client base enable Poyner Spruill to effectively represent the national and regional interests of its clients.

The firm is the North Carolina law firm member of [SCG Legal](#), an association of fifty independent law firms located in the fifty state capitals and several foreign countries. Poyner Spruill clients have immediate access to legal representation in every state and in countries such as Mexico, Canada and Great Britain. Member firms of SCG Legal practice independently and not in a relationship for the joint practice of law.

The firm is also a member of the [USLAW NETWORK](#), an affiliation of more than 60 independent firms and over 3,500 litigators across the United States. USLAW NETWORK member firms provide high quality legal representation to major corporations, captive insurance companies, insurance carriers, and large and small businesses across the United States. Member firms of USLAW NETWORK practice independently and not in a relationship for the joint practice of law.

History

Poyner Spruill was formed January 1, 1986

The firm was formed by the merger of two of North Carolina's oldest and most respected law firms: Poyner, Geraghty, Hartsfield & Townsend of Raleigh and Spruill & Spruill of Rocky Mount and Raleigh.



The Poyner firm was established in Raleigh in 1946

James M. Poyner, Marshall B. Hartsfield and John J. Geraghty founded the Poyner firm. Newman A. Townsend, Jr. later became associated with the firm. It steadily expanded its civil practice in Raleigh, becoming the city's largest and most established corporate practice and achieving a significant reputation for expertise in tax law. *Pictured from left to right: Nat Townsend, John Geraghty, Cornelia Trott with Lawyers Title, Marshall Hartsfield, NC Lawyers Title employee, and Jim Poyner.*

Spruill & Spruill traced its beginning to 1883

Frank S. Spruill established the firm in Henderson. Spruill moved the firm to Rocky Mount in 1907.

In 1988, Mark B. Edwards and Richard E. Thigpen, Jr., then president of the North Carolina Bar Association, joined the firm and opened its office in Charlotte.

In 2005, the Broughton & Broughton firm merged into Poyner Spruill, giving the firm an office in Southern Pines. And most recently, the firm changed its name from Poyner & Spruill LLP to Poyner Spruill LLP, effective October 10, 2008.



MIKE COLO

Mike has more than 40 years of experience helping a broad spectrum of clients with complex mergers and acquisition transactions. He has extensive expertise in a wide variety of corporate and transactional matters, contract drafting and interpretation, mergers and acquisitions, corporate finance securities regulation and compliance under state and federal laws and municipal law. In addition, Mike represents the two joint municipal power agencies located in North Carolina, North Carolina Eastern Municipal Power Agency and North Carolina Power Agency Number 1, and Electricities of North Carolina, Inc., a joint municipal assistance agency in North Carolina. He serves as the primary attorney for these public power clients, acts as counsel to their Board of Directors and their respective Boards of Commissioners and has extensive involvement with all facets of their operations.

Representative Experience

Corporate and Business

- Organization and Financing
- Mergers & Acquisitions
- Franchising
- Contract Negotiation and Drafting

Securities Regulation and Registration

- Initial and Secondary Public Offerings
- Proxy Statements, Solicitations and Contests
- National Securities Exchanges Compliance

Firm Management Responsibilities

Mike is a member of the firm's Management Committee

Michael S. Colo

Partner

Areas of Experience

Services

Business Law
Mergers & Acquisitions
Municipal
Securities
Sustainability and Renewable Energy
Utilities Law

Industries

Banking
Government
Manufacturing

Education

Washington & Lee University, JD, 1970
University of North Carolina, BA, 1967

Recent Publications

IPO: Is it Appropriate?
What is a Security?

Notable Accomplishments

Ranked among Law & Politics magazine's North Carolina "Super Lawyers" (Securities and Corporate Finance), 2006
Recognized in Business North Carolina Magazine's "Legal Elite" (Corporate Law), 2004 and 2005
Recognized in *The Best Lawyers in America*® (Mergers & Acquisitions Law) 2014-2016

Jurisdictions Licensed

North Carolina
Virginia

Welcome to Spilman

Charleston, WV / Winston-Salem, NC / Pittsburgh, PA / Roanoke, VA

Spilman Thomas & Battle, PLLC is a full-service, regional law firm serving local, regional, national and international businesses. The firm has seven offices located in North Carolina, Pennsylvania, Virginia and West Virginia. Throughout our 150+ years, our focus has been on providing excellent legal services and innovative, client-driven solutions at an exceptional value.

Spilman clients include *Fortune* 500™ companies with thousands of employees, entrepreneurial start-ups and everything in between. Our attorneys serve as an extension of the client's management team, working to prevent problems and to provide careful, efficient guidance through the legal process.

Spilman Thomas & Battle has a broad general practice, covering virtually all substantive areas of the law. Our practice is organized into two major departments: corporate and litigation. Attorneys and professional support staff typically work in one or two areas of law, allowing them to cultivate and polish the skills and knowledge needed to operate effectively within highly specialized, niche practice areas. - See more at: <http://www.spilmanlaw.com/about/welcome#sthash.1fa7jcQY.dpuf>

The Utility, Energy & Communications Law Group of Spilman Thomas & Battle provides litigation, regulatory compliance, and counseling in every energy and utility area, including electricity, natural gas, communications, cable television, water, wastewater and renewable energy. Our skilled team of utility and energy attorneys serve clients throughout the region from offices in Pennsylvania, West Virginia, North Carolina, and Virginia.

Our team of attorneys and support staff has many years of litigation experience in the regulatory arena and beyond; we provide aggressive representation before state public service/utility commissions, state legislatures, arbitration panels, circuit courts, and state courts of appeal in Pennsylvania, West Virginia, North Carolina and Virginia, and federal trial and appellate courts, including the United States Supreme Court.

Services provided by the Utility, Energy & Communications Law Group include:

- Representing industrial, manufacturing, institutional and commercial end-users of electricity, natural gas and other utility services in regulatory litigation (including Rate-making, General Investigation and Rulemaking proceedings) before state public utility/service commissions and appellate courts
- Providing legislative assistance and input related to federal and state energy laws and regulations on an as-needed basis for large end-user and utility clients
- Providing advice and counsel to individual large users in contract or service agreement negotiation and quality of service disputes involving the utility providers of such services

- Representing and counseling large users with respect to energy efficiency, demand-response, and on-site generation issues
- Representing developers of generation projects, including individual on-site generation projects as well as large-scale renewable (wind) energy projects
- Representing utilities and competitive providers of energy and communications services before state commissions, focusing on due diligence and regulatory compliance and, as necessary, litigation, including acquisitions, transfers of permits and complaint defense
- Representing municipal and public service district clients in water and wastewater regulatory matters

The goal of the Utility Law Group is to assist our clients in anticipating and meeting their business needs as they are affected by utility services and regulation. We provide advice and counsel informed by the current regulatory landscape, and we offer our clients accurate and timely assessments of emerging national and state energy developments and trends. As necessary, we will vigorously represent our clients' interests in litigation.

Williamson, Derrick Price

Member in Charge of Harrisburg Office Co-Chair, Utility, Energy & Communications Law Group
Harrisburg, Pa. 717.795.2741 - office 717.254.9499 - mobile dwilliamson@spilmanlaw.com Education
University of Maryland, B.A., summa cum laude, Phi Beta Kappa Duke University School of Law, J.D.,
Research Editor, Duke Environmental Law & Policy Forum Admissions Pennsylvania United States Court
of Appeals, District of Columbia Circuit United States District Court for the Middle District of Pennsylvania

Mr. Williamson's primary areas of practice are [public utility](#) and [energy](#) law. He is Co-Chair of the firm's Utility, Energy & Communications Law Group.

Representative Experience

- Regularly represents clients before state public service/utility commissions and appellate courts
- Counsels manufacturing, institutional, industrial, and large commercial clients regarding the procurement of energy services, including the analysis and negotiation of natural gas and electricity supply contracts
- Substantial experience in legislative development, implementation, and regulation associated with electric industry restructuring and telecommunications competition in Pennsylvania and West Virginia
- Counsel for nearly 20 years to the West Virginia Energy Users Group, a state-wide group of large industrial and manufacturing interests that collectively consume 4 billion kWh of electricity annually in West Virginia
- Extensive experience in litigating electric and natural gas rate cases and merger cases
- Extensive experience representing end-users with respect to energy efficiency, demand-response, and on-site generation issues
- Represents competitive suppliers and producers of electricity and natural gas in regard to regulatory compliance, complaint defense, and rulemakings

Awards and Distinctions

- Recognized by *The Best Lawyers in America* as "Lawyer of the Year" 2016 (Harrisburg, Pa.) in Energy Law
- Nominated by his peers for inclusion in *The Best Lawyers in America*® for Energy Law

Other

- Member, American Bar Association, Public Utility, Communications and Transportation Law Section
- Member, Pennsylvania Bar Association, past Chair, Public Utility Law Section
- Member, Dauphin County Bar Association, Equal Professional Opportunity Committee
- Adjunct Professor, Duquesne University, School of Leadership & Professional Advancement, 2006 - 2014
- Board Member and Past President, Cumberland Valley Eagle Foundation
- Head Coach, HMMS Youth Soccer Association, past Board Member
- Veteran, United States Army

Feinberg, Lee F.

Member Charleston, W.Va. 304.340.3831 - office 304.881.1827 - mobile lfeinberg@spilmanlaw.com
Education University of Virginia, B.A., 1969 University of Virginia School of Law, J.D., 1973 Admissions
West Virginia State Bar West Virginia Supreme Court of Appeals United States District Courts for the
Northern and Southern Districts of West Virginia United States Courts of Appeals for the Fourth and
District of Columbia Circuits United States Supreme Court

Mr. Feinberg's primary areas of practice are [energy law](#) and [public utility law](#) matters.

Representative Experience

- Preparing and litigating certificates for coal-fired and natural gas power plants and wind power projects
- Assisting industry in preparation for electricity deregulation and the resulting energy markets
- Negotiation of and preparation of all types of energy contracts – purchase, transportation, production and fuel management
- Representation before the West Virginia Public Service Commission on behalf of industrial and commercial consumers, utilities, pipelines, and energy development companies
- Electricity, natural gas, fuel oil, water, landfill, telecommunications and wind power
- Representation before government agencies, arbitration panels, circuit courts, West Virginia Supreme Court of Appeals, numerous federal trial and appellate courts, including United States Supreme Court, on all types of energy matters
- Representation of groups or associations before the Legislature and government agencies on energy and other matters
- Negotiated and drafted much of West Virginia's electric deregulation plan
- Drafted most of the changes to natural gas sections of the West Virginia Code
- Negotiated the first natural gas self-help contracts in West Virginia
- Planned and litigated the first LDC bypasses in West Virginia
- Many experiences as the third (neutral) arbitrator in energy disputes

Affiliations West Virginia Bar Association/American Bar Association

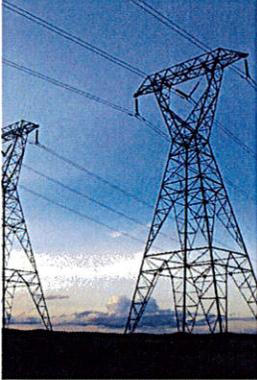
Awards and Distinctions

- Nominated by his peers for inclusion in *The Best Lawyers in America* for Energy Law

Other

- West Virginia House of Delegates, Member, 1983 – 1986
- West Virginia Governmental Ethics Commission, Member and Chairman, 1989 – 1997
- Alliance for Civil Justice Reform, Co-Chairman
- Public Service Commission Task Force on Electricity Restructuring
- Public Service Commission Task Force on Pooling and Balancing of Interruptible Natural Gas
- Public Service Commission Task Force on Rules and Regulations of Practice and Procedure

- West Virginia Chamber of Commerce, Board of Directors, Member; Executive Committee, Member; Chairman, Civil Justice Reform Committee



PRACTICE CONTACTS

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Partner

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ENERGY

ELECTRIC

Van Ness Feldman's nationally regarded electric practice provides strategic counsel to all sectors of the electric industry including generators, power marketers, utilities, municipalities, and transmission providers.

We help clients effectively navigate complex legal, regulatory, policy, transactional and litigation issues, while placing an emphasis on optimizing strategic planning, operations, and revenues. In an increasingly competitive marketplace, our attorneys facilitate early identification of risks and opportunities and translate those assessments into decisive commercial advantages for our clients.

The depth of the firm's knowledge and experience enables us to keep clients well informed about current and anticipated issues fundamental to the transformation occurring in the electric utility industry. Complementing our traditional regulatory and compliance capabilities, our attorneys are experienced with renewable power development and integration, NERC reliability requirements, new transmission infrastructure, smart grid deployment, demand response, as well as audits and investigations, and the development of compliance plans and training.

FERC REGULATION, COMPLIANCE & ENFORCEMENT

Van Ness Feldman's Electric Practice has significant experience representing utilities, power marketers, generators, developers, and investors in understanding and complying with FERC regulations as they apply to each client's unique interests. We also look beyond counseling clients on the immediate impact of rules to the potential effect of FERC policy initiatives and proceedings on their operations and businesses.

Van Ness Feldman helps electricity sellers obtain and retain market-based rate authority, report changes in status, file triennial updates, prepare Electric Quarterly Reports (EQRs), and comply with FERC's market behavior rules and price reporting regulations. Our attorneys also advise clients on Open Access Transmission Tariff (OATT) and Open Access Same-Time Information System (OASIS) administration, implementation, and compliance; Standards of Conduct requirements; restrictions on affiliate transactions and cross-subsidization; and prohibition against market manipulation. Additionally, Van Ness Feldman helps officers and directors of public utilities navigate FERC's interlocking directorate requirements. Going beyond "pure representation", we design and conduct employee training programs, participate in internal reviews and audits, and assist clients in developing compliance programs and procedures.

ISO/RTO Participation. Participation in organized markets requires an understanding of the specific rules of each Independent System Operator (ISO) or Regional Transmission Organization (RTO). Van Ness Feldman advises clients operating in ISO-NE, NYISO, PJM, MISO, SPP, and CAISO. Our attorneys counsel clients on the development of new market rules and tariff provisions, as well as the requirements for participation in energy capacity, ancillary service markets, and demand response programs. We have significant experience with the development of interconnection and energy management agreements and other complex transactions unique to the regulatory environment of ISO/RTO organized markets.

Policy Initiatives. Van Ness Feldman attorneys have participated in virtually every major FERC rulemaking over the past two decades. We help clients develop policy positions, build industry coalitions, create effective comments, participate in public conferences and meetings, and meet with FERC Commissioners

and staff.

Administrative Litigation and Appellate Review. Van Ness Feldman represents clients in trial-type hearings before FERC and in cases before arbitral panels, state courts, federal district courts, U.S. Courts of Appeals, and the U.S. Supreme Court. Our attorneys have extensive experience litigating complaint proceedings, including complex FERC multi-party litigation regarding market-wide remedies and technical rate cases, as well as unique power contract and related issues before state and federal trial courts. Van Ness Feldman also is known for our ability to draft successful settlements.

FERC Enforcement. Utilities are subject to FERC enforcement and investigations of compliance with applicable energy statutes, FERC rules, regulations, and tariff provisions. Such investigations may include allegations of fraud and market manipulation, anticompetitive conduct, conduct threatening the transparency of regulated markets, or serious violations of electric reliability standards.

Van Ness Feldman attorneys, including those working for FERC-regulated natural gas entities, bring their litigation and negotiation skills to bear for clients in all phases of non-public investigations, from initial responses to data requests, through meetings with FERC staff, to settlement discussions, and in the development of mitigation plans. If settlement is not achieved, we defend clients against allegations of violations or wrongful conduct in publicly litigated proceedings.

NERC RELIABILITY & ENFORCEMENT

Van Ness Feldman's Electric practice assists utilities, generators and other entities of all sizes to understand their obligations to register with the North American Electric Reliability Corporation (NERC) and comply with its mandatory reliability standards, including development of compliance plans and procedures. We provide compliance training, counsel clients on preparing mitigation plans, plan for audits and investigations, assist in the self-reporting of potential violations, and when necessary, participate in settlement negotiation. Our electric practice also counsels clients in FERC enforcement proceedings, audits and investigations of compliance with applicable energy statutes, FERC rules, regulations, and tariff provisions.

Reliability Compliance. Van Ness Feldman assists clients with a broad array of reliability compliance matters. We negotiate contracts that allocate compliance responsibilities among joint owners of facilities, assist clients in understanding mandatory reliability standard requirements, conduct mock audits, assist in responding to NERC audits and investigations, and help clients file self-reports and mitigation plans with regional entities. Our attorneys also help clients develop compliance plans and procedures that demonstrate their cultures of compliance. Van Ness Feldman provides training to registered entities and Regional Entities to understand NERC requirements, hearing procedures, and FERC penalty guidelines. As part of our services, we regularly alert clients to new developments involving FERC and NERC compliance initiatives.

DISTRIBUTED ENERGY & SMART GRID

Van Ness Feldman attorneys counsel clients on energy [efficiency](#) and emerging smart grid policy and the development of interoperability standards by FERC and the National Institute of Standards & Technology (NIST) under the Energy Independence and Security Act (EISA). Among our clients are distribution utilities, smart meter manufacturers, demand response providers, developers of new smart grid technologies, smart grid and demand response coalitions, and nongovernmental organizations. We advise clients on corporate planning and investment decisions, strategic development of policy positions, and participation in organized markets. We also provide legislative counsel, assistance with applications for federal financial assistance, and related negotiations with the DOE.



Firm Overview

Van Ness Feldman is a leading law firm providing legal counsel, thought leadership, and policy strategy to help clients navigate the complex intersection between business and government. With over 100 professionals in Washington D.C. and Seattle, Van Ness Feldman is renowned for representing clients in energy, environment, land use, real estate, and government relations matters.

As experienced strategists and client advocates, Van Ness Feldman takes the time to truly understand clients' needs, collaborates to solve complex issues, and finds innovative, practical, and efficient solutions. The firm's deep experience in a broad range of complementary disciplines, knowledge of clients' businesses and industries, and relationships with federal, state, and local agencies and governments allows the firm to craft creative yet practical solutions.

History

Van Ness Feldman has been serving clients for over three decades. Founded in Washington, D.C. in 1977 by four former Congressional and Executive branch legal counsel, Van Ness Feldman has grown to include over 100 lawyers and policy professionals in our Washington, D.C. and Seattle offices. Our bipartisan professionals have been involved in every major energy and environmental policy legislative or regulatory initiative, from the creation of the Department of Energy in 1977, to the policy debates affecting our nation today.

In February 2012, Van Ness Feldman combined practices with preeminent Seattle real estate and land use firm GordonDerr, further strengthening our capabilities in serving our clients' needs in the Pacific Northwest.

Washington D.C.

Located in the historic Georgetown neighborhood, Van Ness Feldman's Washington D.C. office is home to the firm's substantive and wide-ranging federal regulatory and policy practices. More than 100 lawyers and government relations professionals focus on resolving a range of energy, environmental, and natural resources challenges for corporate, municipal, and association clients from a number of industry sectors.