

AGENDA
Regular Meeting of the Sawmills Town Council
Sawmills Town Hall
Tuesday, October 15, 2019
6:00 pm

1. Call To Order Mayor Johnnie Greene
2. Invocation Pastor Ashley Crouse
3. Pledge of Allegiance Mayor Johnnie Greene
4. Adopt Agenda Mayor Johnnie Greene
5. Approve Meeting Minutes
A. September 17, 2019 Regular Meeting Minutes Mayor Johnnie Greene
B. September 17, 2019 Closed Session Meeting Minutes Mayor Johnnie Green
C. October 1, 2019 Special Meeting Minutes Mayor Johnnie Greene
D. October 1, 2019 Special Closed Session Meeting Minutes Mayor Johnnie Greene
6. Public Comment Mayor Johnnie Greene
7. Recognitions:
A. Recycle Rewards Mayor Johnnie Greene
8. Public Hearing on Text Amendment for Zoning Ordinance:
A. Open Public Hearing Mayor Johnnie Greene
B. Staff Comments/Recommendations Mayor Johnnie Greene
C. Public Comment Mayor Johnnie Greene
D. Close Public Hearing Mayor Johnnie Greene
E. Council Action Mayor Johnnie Greene
9. Discussion:
A. Consideration of Appointment of Town Manager Mayor Johnnie Greene
B. Approve Employment Contract of Town Manager Mayor Johnnie Greene
C. Call for Public Hearing for Sawmills Stormwater Ordinance Mayor Johnnie Greene
D. Russell Dr/Mission Rd Waterline Replacement Todd Poteet
10. Financial Matters:
A. Presentation of Bids for AMI Mayor Johnnie Greene
B. Approve Capital Project Budget Ordinance Water Meter Replacement Project Mayor Johnnie Greene
C. Approve Contract for AMI Mayor Johnnie Greene
D. Refuse Truck Information Mayor Johnnie Greene
E. Resolution Approving Conveyance of Property to Another Unit of Government in North Carolina Mayor Johnnie Greene
11. Public Comment Mayor Johnnie Greene
12. Updates:
A. Code Enforcement Report Mayor Johnnie Greene
B. Council Comment Mayor Johnnie Greene
13. Closed Session: NCGS§ 143-318.11(a),5(a) and 6 Mayor Johnnie Greene
14. Adjourn Mayor Johnnie Greene

**TUESDAY, SEPTEMBER 17, 2019
TOWN OF SAWMILLS REGULAR COUNCIL MEETING
6:00 PM**

COUNCIL PRESENT

Mayor Johnnie Greene
Keith Warren
Clay Wilson
Rebecca Johnson

STAFF PRESENT

Terry Taylor
Julie A Good

CALL TO ORDER: Mayor Johnnie Greene called the meeting to order at approximately 6:03pm.

INVOCATION: Pastor Steve Owen gave the invocation.

PLEDGE OF ALLEGIANCE: Ashton Woodruff and Lane Rice of Sawmills Elementary School led the Pledge of Allegiance.

ADOPT AGENDA: Mayor Johnnie Greene asked for a motion to adopt the September 17, 2019 Agenda.

Clay Wilson made a motion, and Joe Norman seconded, to adopt the September 17, 2019 Agenda. All were in favor.

APPROVE AUGUST 20, 2019 REGULAR MEETING MINUTES: Mayor Johnnie Greene asked for a motion to approve the August 20, 2019 regular meeting minutes.

Joe Norman made a motion, and Clay Wilson seconded, to approve the August 20, 2019 regular meeting minutes. All were in favor.

APPROVE AUGUST 28, 2019 SPECIAL MEETING MINUTES: Mayor Johnnie Greene asked for a motion to approve the August 28, 2019 special meeting minutes.

Rebecca Johnson made a motion, and Keith Warren seconded, to approve the August 28, 2019 special meeting minutes. All were in favor.

APPROVE AUGUST 28, 2019 SPECIAL CLOSED SESSION MEETING MINUTES: Mayor Johnnie Greene asked for a motion to approve the August 28, 2019 special closed session meeting minutes.

Keith Warren made a motion, and Joe Norman seconded, to approve the August 28, 2019 special closed session meeting minutes. All were in favor.

APPROVE AUGUST 29, 2019 SPECIAL MEETING MINUTES: Mayor Johnnie Greene asked for a motion to approve the August 29, 2019 special meeting minutes.

Joe Norman made a motion, and Rebecca Johnson seconded, to approve the August 29, 2019 special meeting minutes. All were in favor.

APPROVE AUGUST 29, 2019 SPECIAL CLOSED SESSION MEETING MINUTES: Mayor Johnnie Greene asked for a motion to approve the August 29, 2019 special closed session meeting minutes.

Rebecca Johnson made a motion, and Joe Norman seconded to approve the August 29, 2019 special closed session meeting minutes. All were in favor.

PUBLIC COMMENT: Mayor Johnnie Greene asked if anyone had any questions or comments at this time.

No one wished to speak

RECOGNITIONS:

RECYCLE REWARDS WINNER: Mayor Johnnie Greene announced Mr. Joseph Phillips as the September Recycle Rewards winner. A credit of thirty-two dollars (\$32.00) will be added to his sanitation bill.

No Council action was required.

FINANCIAL MATTERS:

SAWMILLS FIRE AND RESCUE DONATION REQUEST: Mayor Johnnie Greene stated that during the May 17, 2016 Council meeting, a resolution was passed to set aside a week in September as Sawmills Volunteer Fire and Rescue Appreciation Week. As a way to continue to show the Town's support, a donation is recommended for the Sawmills Volunteer Fire and Rescue Department.

Keith Warren made a motion, and Joe Norman seconded, to give a donation in the amount of five hundred dollars (\$500.00) to the Sawmills Volunteer Fire and Rescue Department. All were in favor.

PLANNING MATTERS:

PLANNING BOARD/BOARD OF ADJUSTMENT TEXT ADMENDMENT: Town Planner Hunter Nestor stated that currently the Town of Sawmills has separate Board of Adjustments and Planning Boards. The Planning Board should consist of five (5) members; three (3) in town members and two (2) ETJ members. The Board of Adjustments consist of five (5) members and Council may appoint two (2) alternate members. However, staff is having problems finding people who would like to serve on either board. Currently, we have only four (4) members on the Planning Board and four (4) members on the Board of Adjustments.

Staff would like to combine the Planning Board and the Board of Adjustments. The proposed draft states that the Board will consist of six (6) members, four (4) in town and two (2) ETJ to remain proportional, and have two (2) alternates, one (1) in town and (1) ETJ. This will help with trying to find people to serve on the Board, as well as giving the new combined Board more duties for more frequent meetings. By combining both boards, staff recommends to having six (6) regular members instead of the current five (5) for each board. The proposed language allows for two (2) alternates to be appointed in case a regular member cannot attend a meeting. There will be one (1) alternate from in town and one (1) from ETJ.

Clay Wilson made a motion, and Rebecca Johnson seconded, to call for a public hearing during the regular Town of Sawmills Council Meeting on October 15, 2019 at 6:00pm. All were in favor.

RE-APPOINT BOARD OF ADJUSTMENTS MEMBERS: Town Planner Hunter Nestor stated that there are four (4) seats on the Board of Adjustments that expired in June of this year along with a vacant ETJ seat and a vacant alternate seat.

Clay Wilson made a motion, and Rebecca Johnson seconded, to table this matter to the October 15, 2019 regular Town of Sawmills Council Meeting. All were in favor.

RE-APPOINT PLANNING BOARD MEMBER: Town Planner Hunter Nestor stated that the term of appointment for Planning Member Kelly Price expired September 1, 2019.

Clay Wilson made a motion, and Joe Norman seconded to table this matter to the October 15, 2019 regular Town of Sawmills Council meeting. All were in favor.

PUBLIC COMMENT:

No one wished to speak

SEPTEMBER CODE ENFORCEMENT REPORT: There are seven (7) code enforcement cases open:

- Chaney Carter, owner of 4361 Sawmills School Rd. Overgrown vegetation. Town Planner Hunter Nestor stated that a letter was sent on July 19, 2018, with a deadline of August 3, 2018. Town Planner Hunter Nestor stated that the nuisance was abated by the Town on August 10, 2018. Town Planner Hunter Nestor stated that a lien will be placed on the property for the cost of the mowing. Town Planner Hunter Nestor stated that a hearing was held on September 6, 2018, and Ms. Carter did not show so Town will proceed to demolish house. Town Planner Hunter Nestor stated that an asbestos test was performed on the property on July 25, 2019, and the test did find asbestos. Town Planner Hunter Nestor stated that DARI was contacted on August 8, 2019, to give the Town an estimate for abatement. Town Planner Hunter Nestor stated that staff can proceed to demolish and abate the property;
- Carolyn Bray/Robyn Brittian, 2570 Baker Circle. Abandoned mobile home. Town Planner Hunter Nestor states that he is working with Town Attorney Terry Taylor to abate. Town Planner Hunter Nestor stated that the Town can treat this as a junk and debris case and not minimum housing, and by doing so, can proceed after thirty (30) days with abatement;
- Horror Fields, Kiser-Sawmills, Helena St. Fence/buffer. Town Planner Hunter Nestor stated that a complaint was received on April 10, 2019. Town Planner Hunter Nestor stated that the property is not in compliance with the conditions set in CUP. Town Planner Hunter Nestor stated that a NOV letter was sent out on April 11, 2019, with a deadline of May 10, 2019. Town Planner Hunter Nestor stated that he made a site visit on May 30, 2019 and owner is working to get property in compliance but there are still some other areas that need to be addressed;
- Debra Baker, 4476 Rual Dr. Overgrown vegetation/garbage and rubbish. Town Planner Hunter Nestor received a written complaint on May 22, 2019. Town Planner Hunter Nestor sent a NOV letter with a deadline of June 11, 2019. Town Planner Hunter Nestor stated that he has received no response, but the property had been mowed as of August 13, 2019. Town Planner Hunter Nestor stated that the rest of the property is still not in compliance, but no other complaints have been made;
- Timberline Lumber Co, Inc, 4221 US Highway 321A. Overgrown Vegetation/Property Maintenance. Town Planner Hunter Nestor stated that he received a complaint on July 2, 2019 and sent a NOV letter on July 16, 2019. Town Planner Hunter Nestor stated that he has had no response as of August 8, 2019. Town Planner Hunter Nestor stated that he sent a second NOV letter on August 8, 2019, with a new deadline of August 20, 2019. Town planner Hunter Nestor stated that some progress has been made;
- Paul West, 2514 Crest Ln. Overgrown Vegetation/Garbage and Rubbish. Town Planner Hunter Nestor received a complaint on July 5, 2019. Town Planner Hunter Nestor stated a NOV letter was sent on July 9, 2019 with a deadline of July 29, 2019. Town Planner Hunter Nestor stated that the letter was returned and was unable to forward. Town Planner Hunter Nestor stated that he contacted the taxing office and received a different address for the owner. Town Planner Hunter Nestor stated that he sent an additional NOV letter on August 13, 2019 with a deadline of August 26, 2019.

Town Planner Hunter Nestor stated that he spot checked the property on August 29, 2019 and the property was mowed and cleaned;

- Brian Poarch, 4166 Duff Dr. Overgrown Vegetation/Property Maintenance. Town Planner Hunter Nestor stated that he received a complaint on August 7, 2019. Town Planner Hunter Nestor stated a NOV letter was sent on August 8, 2019 with a deadline of August 27, 2019. Property was cleaned up. Property owner called to ask if there was anything else he needed to do but staff deemed the property in compliance.

No Council action was required.

COUNCIL COMMENT: Mayor Johnnie Greene asked if anyone on Council had any comments or questions at this time:

Clay Wilson thanked everyone for coming out.

Joe Norman thanked everyone for coming out and hoped everyone had a safe trip home.

Keith Warren thanked everyone for coming.

CLOSED SESSION FOR ATTORNEY CLIENT PRIVILEGE PURSUANT TO NCGS § 143-318.11 (a)(5): Mayor Johnnie Greene asked for a motion to go into closed session.

Clay Wilson made a motion, and Rebecca Johnson seconded, to go into closed session pursuant to NCGS § 143-318.11(a)(5) at approximately 6:26pm. All were in favor.

Joe Norman made a motion, and Keith Warren seconded, to come out of closed session at approximately 7:26pm. All were in favor.

COUNCIL ADJOURN: Mayor Johnnie Greene asked for a motion to adjourn.

Keith Warren made a motion, and Joe Norman seconded, to adjourn the meeting. All were in favor.

The meeting was adjourned at approximately 7:29pm.

Johnnie Greene, Mayor

Julie A. Good, Town Clerk

TUESDAY, OCTOBER 1, 2019
TOWN OF SAWMILLS SPECIAL COUNCIL MEETING
6:30 PM

COUNCIL PRESENT

Mayor Johnnie Greene
Keith Warren
Clay Wilson
Joe Norman
Rebecca Johnson

STAFF PRESENT

Terry Taylor

CALL TO ORDER: Mayor Johnnie Greene called the meeting to order at approximately 6:35 pm.

CLOSED SESSION FOR NCGS 143-318.11(a)(6) CONSIDER THE QUALIFICATIONS, COMPETENCE, PERFORMANCE, CONDITION OF APPOINTMENT OF A PUBLIC OFFICER OR EMPLOYEE OR PROSPECTIVE PUBLIC OFFICER OR EMPLOYEE: Mayor Johnnie Greene asked for a motion to go into closed session.

Joe Norman made a motion, and Rebecca Johnson seconded, for Council to go into closed session under NCGS 143-318.11(a)(6) consider the qualifications, competence, performance, condition of appointment of a public officer or employee or prospective public officer or employee. All were in favor.

Council went into closed session at approximately 6:35pm.

Joe Norman made a motion and Keith Warren seconded, to return to open session at approximately 7:30 pm. All were in favor.

Rebecca Johnson made a motion, and Keith Warren seconded, to adjourn the meeting. All were in favor.

The meeting was recessed at approximately 7:30pm.

Johnnie Greene, Mayor

Julie A Good, Town Clerk

AGENDA ITEM 7A

MEMO

DATE:

October 15, 2019

SUBJECT:

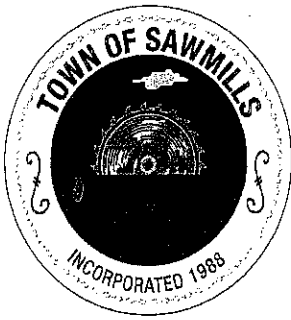
Recognition:
Recycle Rewards
Program

Discussion:

The Town of Sawmills would like to congratulate Rebecca Byrd on winning the Recycle Rewards Program for the month of October. Mayor Johnnie Greene will present her with a Certificate of Appreciation. A thirty-two dollar (\$32.00) credit will be added to the current sanitation bill.

Recommendation:

No Council action is required.



MAYOR
Johnnie Greene

TOWN ADMINISTRATOR
Karen Clontz

**TOWN
COUNCIL**

Clay Wilson, Mayor Pro-Tem
Keith Warren
Joe Norman
Rebecca Johnson

COUNCIL MEETING
October 15, 2019
6:00 PM

Agenda Item #8B

PLANNER'S STAFF REPORT

**PROPOSED PLANNING BOARD AND BOARD OF ADJUSTMENTS
COMBINATION ORDINANCE TEXT AMENDMENT**

Background: Currently, Sawmills' has separate Board of Adjustments and Planning Boards. Planning Board consist of 5 members (3 in town limits and 2 representing the ETJ) and Board of Adjustments consist of 5 members and Council may appoint 2 alternate members. However, staff is having trouble finding people who would like to serve on one of the Boards. Currently we have 4 on the Planning Board and 4 on Board of Adjustments.

The new draft language combines/enables the Planning Board to also serve as the Board of Adjustments. The current draft, states the Board will consist of 6 members (4 in town and 2 from ETJ to remain proportional) and 2 alternates. This will help trying to find people to serve on the board, as well as giving the new combined Board more duties for more frequent meetings. With having 8 people on both boards, staff has decided to have 6 full-time members instead of the current 5 for each board. The draft language also allows for 2 alternates to be appointed in case a regular member cannot attend a meeting. The alternates must just reside in either the corporate limits or within the ETJ. The highlighted text is all the new addition.

See attached proposed text, as amended, under Section 151.08 "Compensation, Qualifications, Appointments, Terms, Vacancies, and Reappointments." and Section 153.205 "Establishment of Board of Adjustments."

Summary of Changes:

Board Configuration- With having 8 people on both boards, Staff has decided to have 6 instead of the current 5 for each board. Out of the total 8 that have already committed to serve 6 are with in Town Limits and 2 are from the ETJ. The Board will consist six regular (6) members and two (2) alternate members. Out of the six (6) regular members, four (4) shall be residents of the town and shall be appointed by the Town Council and two (2) shall be residents of the extraterritorial jurisdiction (ETJ) and shall be appointed by the County Board of Commissioners. The alternates can reside within the town limits or the ETJ. Alternate members of the Planning Board shall be called on to attend only those meetings and hearings at which one or more regular members are absent or are unable to participate in hearing a case because of financial or other interest.

Compensation – After the September Council meeting, council suggested that each member gets paid \$25 per Planning Board/Board of Adjustment meeting attended. Members will have the option to defer their payment.

Term Lengths – Initial terms of office shall be as follows: two (2) members appointed for a term of one (1) year; two (2) members and one (1) alternate appointed for terms of two (2) years; and two (2) members and one (1) alternate appointed for terms of three (3) years. Upon completion of the initial term of office for each member, all additional appointments to vacancies on the Board shall be for three (3) year terms. Below is all the members that have committed to serving and their recommended initial term appointment. Every member should be reappointed to keep terms consistently staggered. These recommended terms are based of when their current term expires.

Name	Current Term Expiration
Steve Duncan	Sep-2020
Dino DiBernardi (ETJ)	June-2019
David Powell	Sep-2020
Kelley Price	Sep-2019
Adam Wilson (ETJ)	July-2021
Jack Keller	June-2019
Reed Lingerfelt	June-2019
Walter Moore(ETJ)	June- 2019

Action Needed:

“MOTION TO APPROVE because the proposed amendment is consistent with the Comprehensive Plan.”

If approved Council must reappoint all members to their terms. For the ETJ representatives we need to have the County Board of Commissioners appoint at their next meeting.

Below is all the members that need to be appointed and their term length.

Name	New Term Expiration	Term Length
Steve Duncan	Oct-20	1 year
David Powell	Oct-20	1 year
Adam Wilson (ETJ)	Oct-21	2 year
Jack Keller	Oct-21	2 year
Walter Moore(ETJ Alternate)	Oct-21	2 year
Dino DiBernardi (ETJ)	Oct-22	3 Year
Kelley Price	Oct-22	3 Year
Reed Lingerfelt (Alternate)	Oct-22	3 Year

Please feel free to contact me with any questions or concerns regarding this text amendment or any other business at hunter.nestor@wpcog.org or 828-485-4287.

151.07 PLANNING BOARD, SPECIFIC AUTHORITY POWERS.

- (A) The Planning Board shall seek to promote, enhance and preserve the character and general welfare of the town.
- (B) The Town Planning Board is authorized and empowered to undertake any action reasonably necessary to the discharge and conduct of its duties and responsibilities as outlined in this chapter and GS §160A-361, including and not limited to the following:
- (1) Make studies of the area within its jurisdiction and surrounding areas;
 - (2) Determine objectives to be sought in the development of the study area;
 - (3) Prepare and adopt plans for achieving these objectives;
 - (4) Development and recommend policies, ordinances, administrative procedures and other means of carrying out plans in a coordinated and efficient manner;
 - (5) Advise the Council concerning the use and amendment of means for carrying out plans;
 - (6) Exercise any function in the administration and enforcement of various means for carrying out plans that the Council may direct; and
 - (7) Perform any other related duties that the Council may direct.
- (1991 Code, §91.07)(Ord., passed 11-22-1988)

§151.08 COMPOSITION, QUALIFICATIONS, APPOINTMENTS, TERMS, VACANCIES AND REAPPOINTMENTS.

- (A) The Planning Board shall be composed of ~~five members~~ six (6) regular members and two (2) alternate members and shall have proportional representation from within the corporate limits and the Extraterritorial Jurisdiction (ETJ). For the six (6) regular members, ~~three~~ four (4) shall be residents of the town and shall be appointed by the Town Council and two (2) shall be residents of the extraterritorial jurisdiction and shall be appointed by the County Board of Commissioners. The two (2) alternates must either reside within the corporate limits and the Extraterritorial Jurisdiction (ETJ). The alternate members shall be appointed in the same manner as regular members and at the regular times for appointment. The alternate member, while attending any regular or special meeting of the Board and serving in the absence of any regular member, shall have and exercise all the powers and duties of such regular member so absent.
- (B) Initial terms of office shall be as follows: two (2) members appointed for a term of one (1) year; two (2) members and one (1) alternate appointed for terms of two (2) years; and two (2) members and one (1) alternate appointed for terms of three (3) years. Upon completion of the initial term of office for each member, all additional appointments to vacancies on the Board shall be for three (3) year terms. All members appointed to the Planning Board shall serve for two-year terms.

(B)(C) A vacancy occurring in the membership of the Planning Board shall be filled for the unexpired term by the Town Council or County Board of Commissioners, as it appropriate. Any member shall be eligible for reappointment.
(1991 Code, §91.08)(Ord., passed 11-22-1988; Ord. passed 6-4-1996)

§151.09 OFFICERS, COMMITTEES AND COMPENSATION.

- (A) The Planning Board shall elect from its membership a Chairperson, Vice-Chairperson and Secretary. The term of Chairperson shall be for a period of time as determined by the Planning Board, but in no event shall the term for which the member is appointed to the Planning Board.
- (B) The Planning Board may establish and the Chairperson shall appoint committees from its membership as the Board may from time to time deem best.
- (C) All members regardless of their place of residence shall have equal rights, privileges and duties regarding all matters coming before the Board.
- (D) Members of the Board shall ~~serve without compensation~~ receive twenty-five dollars (\$25) for every Planning Board meeting attended. ~~—except that M~~members shall be reimbursed from funds appropriated by the town for necessary travel expenses outside the planning area while engaged in the work of the Planning Board.
(1991 Code, §91.09)(Ord., passed 11-22-1988)

§151.10 FISCAL AFFAIRS.

- (A) Appropriation of funds for the Planning Board for its work anywhere within the planning area shall be made annually and the budget ordinance in the town in amounts as the Town Council may from time to time deem best. Funds from any source may be appropriated to the Planning Board. Any disbursement of funds to the Planning Board shall be made in the same manner as any other funds of the town that are disbursed.
- (B) The Planning Board may accept any gift, grants in aid or other funds made available to it by the federal, state, county or municipal government or from any other public or private source. All funds received by the Board shall be deposited with the Town Clerk.
- (C) The Planning Board shall not purchase any supplies, materials or equipment, enter into a new contract for service or incur any debt whatsoever unless funds for those purposes are available and have been appropriated for use by the Planning Board in accordance with this section.
(1991 Code, §91.10)(Ord., passed 11-22-1988)

§151.11 STAFF AND CONSULTANTS.

- (A) The Planning Board may recommend to the Town Council the professional and clerical staff needed to perform the work of the Planning Board. All staff authorized for the Planning Board, either part-time or full-time employees, shall be appointed by the Town Council and shall be subject to the same rules and regulations as other employees of the town.

- (B) The Planning Board may, after due consideration, enter into contracts with planning consultants, engineers or other persons for planning services, provided all the requirements of the above section are complied with.
(1991 Code §91.11)(Ord., passed 11-22-1988)

§151.12 GENERAL PLANNING AUTHORITY.

The Planning Board shall have authority to make comprehensive studies of the present and future needs of the planning area which includes the town and the one-mile extraterritorial jurisdiction. The studies may include but may be limited to studies of the physical, social, economic and governmental

conditions with trends within the planning area for the purpose of preparing a plan which will provide for the sound growth and orderly development of the planning area in a manner that will best promote the health, safety, convenience, prosperity and general welfare of its citizens.
(1991 Code, §91.12)

§151.13 COORDINATION OF PLANNING ACTIVITIES.

In the conduct of its studies and the preparation of its plans, the Planning Board shall have the duty to coordinate its planning activities with the planning activities of the counties, the municipalities and other agencies, both public and private, which are located within the planning area.
(1991 Code §91.13)

BOARD OF ADJUSTMENT

§153.205 ESTABLISHMENT OF BOARD OF ADJUSTMENT.

~~(A) A Board of Adjustment is hereby created as provided in G.S. §160A-388. The Planning Board shall function as the Board of Adjustment as provided in G.S. §160A-388. Said Board shall consist of five members to be appointed by the Town Council for the overlapping terms of three years. Initial terms of office shall be as follows: one member appointed for a term of one year; two members appointed for terms of two years; and two members appointed for terms of three years. Upon completion of the initial term of office for each member, all additional appointments to vacancies on the Board shall be for three year terms. The members of the Board of Adjustment shall be residents of the county. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the Board of Adjustment.~~

~~(B)~~

~~(C) The Town Council may, in its discretion, appoint not more than two alternate members to serve on the Board of Adjustment in the absence, for any cause, of any regular member. This alternate member or members shall be appointed in the same manner as regular members and at the regular times for appointment. The alternate member, while attending any regular or special meeting of the Board and serving in the absence of any regular member, shall have and exercise all the powers and duties of such regular member so absent.~~

~~(D) (Ord. §130A, passed 2-19-2008)~~

~~(E)(A)~~

§153.206 DECISIONS OF THE BOARD OF ADJUSTMENT.

- (A) The concurring vote of five (5)~~four~~ members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Zoning Enforcement Officer pertaining to the town or to decide in favor of the applicant any matter upon which it is required to pass under the Zoning Code or to effect any variation of such code in the town.
- (B) On all appeals, applications and other matters brought before the Board of Adjustment, the Board shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties, and shall decide the same within a reasonable time. The Board shall inform all parties involved of its decision in writing, stating the reasons therefore.
- (Ord. §130B, passed 2-19-2008)

§153.207 PROCEEDINGS OF THE BOARD OF ADJUSTMENT.

The Board of Adjustment shall elect a chairman and vice-chairman from its members, each of whom shall serve for one year or until re-elected or until their successors are elected and qualify. This year shall run from July 1 to June 30. The Board shall adopt rules and bylaws in accordance with the provisions of this chapter and G.S. Ch. 160A, Art. 19. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. All meetings of the Board shall be open to the public. The secretary shall keep a record of all proceedings of meetings but shall not have a vote unless he or she is also a regular or alternate member of the Board.

§153.208 NOTICE OF HEARING.

Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the Town of Sawmills Zoning Ordinance. In the absence of evidence to the contrary, the Town may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the Town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

§153.209 DUTIES OF THE ZONING ENFORCEMENT OFFICER, BOARD OF ADJUSTMENT, COURTS AND TOWN COUNCIL ON MATTERS OF APPEAL.

It is the intention of this chapter that all questions arising in connection with the enforcement of this chapter shall be presented to the Zoning Enforcement Officer and that such questions shall be presented to the Board of Adjustment only on appeal from the Zoning Enforcement Officer, and that from the decision of the Board of Adjustment recourse shall be had to courts as prescribed by law. It is further the intention of this chapter that the duties of the Town Council in connection with the chapter shall not include the hearing and passing upon disputed question that may arise in connection with the enforcement thereof. The duties of the Town Council in connection with this chapter shall be only the duty of considering and passing upon any proposed amendments or repeal of this chapter.

§153.210 PROVISIONS OF ORDINANCE.

The Board of Adjustment hears and decides special and conditional use permits, requests for variances, and appeals of decisions of administrative officials charged with enforcement of the ordinance. As used in this section, the term "decision" includes any final and binding order, requirement, or determination. The Board of Adjustment shall follow quasi-judicial procedures when deciding appeals and requests for variances and special and conditional use permits. The Board shall hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use or development.

§153.211 APPEALS.

The Board of Adjustment may reverse or reaffirm, wholly or in part, or may modify any order, requirements, decision or determination and to that end shall have the powers of the administrative official from whom the appeal is taken. The Board of Adjustment shall hear and decide appeals from decisions of administrative officials charged with enforcement of the zoning or other ordinance (as designated by Town Code) and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

- (A) Any person who has standing under G.S. 160A-393(d) or the Town may appeal a decision to the Board of Adjustment. An appeal is taken by filing a notice of appeal with the Town Clerk. The notice of appeal shall state the grounds for the appeal.
- (B) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
- (C) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
- (D) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.
- (E) The official who made the decision shall transmit to the Board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- (F) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a

proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

- (G) Subject to the provisions of subdivision (F) of this subsection, the Board of Adjustment shall hear and decide the appeal within a reasonable time.
- (H) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the official who made the decision.
- (I) When hearing an appeal pursuant to G.S. 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160A-393(k).
- (J) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

§153.212 CONDITIONAL USES.

- (A) The Board of Adjustment has the authority to grant in particular cases and subject to appropriate conditions and safeguards, permits for conditional uses under the various use districts. The Board of Adjustment shall not grant a conditional use permit unless and until:
 - (1) A written application for a conditional use permit is submitted indicating the section of this chapter under which the conditional use permit is sought;
 - (2) The Board of Adjustment finds that in the particular case, the use for which the Conditional Use Permit is sought will not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use, and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood. In granting such a permit, the Board of Adjustment may designate such conditions in connection therewith as will conform to the requirements and spirit of this chapter.
- (B) *Compliance with other codes.* Granting a Conditional Use Permit does not exempt the applicant from complying with all of the requirements of building codes or other ordinances.
- (C) *Revocation.* If at any time after a conditional use permit has been issued, The Board of Adjustment finds that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a Conditional Use Permit, the Permit shall be terminated and the operation of such use discontinued. If a Conditional Use Permit is terminated for any reason, it may be reinstated only after a public hearing is held.
- (D) *Expiration.*
 - (1) In any case where a Conditional Use Permit has not been exercised within the time limit set by the Board of Adjustment, or within one year if no specific time limit has been set, then without further action the permit shall be null and void.
 - (2) *Exercised* as set forth in this division shall mean that binding contracts for the construction of the main building shall have been let; or in the absence of contracts, that the main building is under construction to a substantial degree; or that prerequisite conditions involving substantial investment are contracted for, in substantial development, or completed (sewerage, drainage, and the like). When construction is not a part of the use, *exercised* shall mean that the use is in operation in compliance with the conditions set forth in the permit.

- (E) Careful record. A careful record of such application and plat, together with a record of the action taken thereon, shall be kept in the office of the zoning enforcement officer.
- (F) Conditions attached. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter and punishable under Section 153.999 of the Code of Ordinances.

§153.213 VARIANCES.

When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

- (A) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (B) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- (C) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- (D) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

§153.214 VOTING.

- (A) The concurring vote of four-fifths of the Board of Adjustment shall be necessary to grant a Variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.
- (B) A member of any Board exercising quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(C) Conduct of Meetings. The order of business at regular meetings, unless otherwise approved by the Board, shall generally be as follows:

- (i) Determination of Quorum
- (ii) Approval of Minutes of Previous Meetings
- (iii) Swearing in of Town Staff
- (iv) Hearing of Cases (Swear in Hearing Participants)
 - a) Old Business
 - b) New Business
- (v) Board/Staff Discussion
- (vi) Decision on Matters before Board of Continuance
- (vii) Adjournment

(D) Format of the Public Hearing.

- (i) The Chair will read the case from the agenda.
- (ii) The Code Enforcement Officer will explain the facts of the matter to the Board and, where appropriate, present graphic displays for the purpose of acquainting the Board with the action being requested.
- (iii) The proponents will present sworn or affirmed evidence.
- (iv) The opponents will present sworn or affirmed evidence.
- (v) The Chair shall permit rebuttal and cross-examination.
- (vi) The Board may ask questions of the proponents and opponents.
- (vii) The Board will render its decision.

(E) Continuance. The Board may continue the public hearing or delay voting on any matter to a subsequent meeting upon showing of good cause.

(F) Regulation of Speaker's Time. Witnesses giving testimony shall be allowed to speak five (5) minutes. Each side shall be allowed a total of twenty (20) minutes to present evidence. If there is only one speaker, such speaker may be allowed the full twenty (20) minutes. The Board, in its discretion, may modify this rule.

§153.215 QUASI-JUDICIAL DECISIONS AND JUDICIAL REVIEW.

(A) The Board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision with the Clerk to the Board or such other office or official as the ordinance specifies. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

(B) Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the Clerk of Superior Court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with subdivision (1) of this subsection. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

§153.216 OATHS.

The Chair of the Board or any Member acting as Chair and the Clerk to the Board, as well as any other official authorized under North Carolina law, are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.

§153.217 SUBPEONAS.

The Board of Adjustment through the Chair, or in the Chair's absence anyone acting as Chair, may subpoena witnesses and compels the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The Chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The Chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the Chair may be appealed to the full Board of Adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the Court shall have jurisdiction to issue these orders after notice to all proper parties.

The Board of Adjustment shall elect a chairman and vice chairman from its members, each of whom shall serve for one year or until re-elected or until their successors are elected and qualify. This year shall run from July 1 to June 30. The Board shall adopt rules and bylaws in accordance with the provisions of this chapter and G.S. Ch. 160A, Art. 19. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his or her absence the Vice-Chairman, may administer oaths and compel the attendance of witnesses by subpoena. All meetings of the Board shall be open to the public. The secretary shall keep a record of all proceedings of meetings but shall not have a vote unless he or she is also a regular or alternate member of the Board.
(Ord. §130C, passed 2-19-2008)

§153.208 APPEALS, HEARINGS AND NOTICE.

An appeal from the decision of the Zoning Enforcement Officer may be taken by any person aggrieved or affected by such decision to the Board of Adjustment. Such appeal shall be taken within 45 days by filing with the Zoning Enforcement Officer and with the Secretary of the Board of Adjustment a notice of appeal specifying the grounds thereof. The Zoning Enforcement Officer shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken.
(Ord. §130D, passed 2-19-2008)

§153.209 STAY OF PROCEEDINGS.

An appeal stays in all legal proceedings in furtherance of the action appealed from unless the Zoning Enforcement Officer certified to the Board of Adjustment after the notice of appeal has been filed with him or her that, by reason of facts stated in the certificate, a stay would, in his or her opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a restraining order

which may be granted by the Board of Adjustment or by a court of record, upon appropriate application, on notice to the Zoning Enforcement Officer and on due cause shown.
(Ord. §130E, passed 2-19-2008)

~~§153.210 — DECISION OF THE BOARD OF ADJUSTMENT.~~

~~The Board of Adjustment may reverse or reaffirm, wholly or in part, or may modify any order, requirements, decision or determination and to that end shall have the powers of the administrative official from whom the appeal is taken.~~

~~(Ord. §130F, passed 2-19-2008)~~

~~§153.211 — DUTIES OF THE ZONING ENFORCEMENT OFFICER, BOARD OF ADJUSTMENT, COURTS AND TOWN COUNCIL ON MATTERS OF APPEAL.~~

~~It is the intention of this chapter that all questions arising in connection with the enforcement of this chapter shall be presented to the Zoning Enforcement Officer and that such questions shall be presented to the Board of Adjustment only on appeal from the Zoning Enforcement Officer, and that from the decision of the Board of Adjustment recourse shall be had to courts as prescribed by law. It is further the intention of this chapter that the duties of the Town Council in connection with the chapter shall not include the hearing and passing upon disputed question that may arise in connection with the enforcement thereof. The duties of the Town Council in connection with this chapter shall be only the duty of considering and passing upon any proposed amendments or repeal of this chapter.~~

~~(Ord. §130I, passed 2-19-2008)~~

~~§153.212 — POWERS AND DUTIES OF THE BOARD OF ADJUSTMENT.~~

~~To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Enforcement Officer in the enforcement of this chapter.~~

~~*Conditional uses; conditions governing application.* To grant in particular cases and subject to appropriate conditions and safeguards, permits for conditional uses under the various use districts, the Board of Adjustment shall not grant a conditional use permit unless and until:~~

~~A written application for a conditional use permit is submitted indicating the section of this chapter under which the conditional use permit is sought;~~

~~A quasi-judicial public hearing is held. A notice of the public hearing shall be given once a week for two consecutive calendar weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten days nor more than 25 days before the date fixed for this hearing (G.S. §160A-364). Any petition may be withdrawn at any time by written notice to the Town Clerk. All property owners within 100 feet of the property in question shall be notified of this hearing by first-class mail; and~~

~~The Board of Adjustment finds that in the particular case, the use for which the conditional use permit is sought will not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use, and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood. In granting such a permit, the Board of Adjustment may designate such conditions in connection therewith as will conform to the requirements and spirit of this chapter.~~

~~*Compliance with other codes.* Granting a conditional use permit does not exempt the applicant from complying with all of the requirements of building codes or other ordinances.~~

Revocation. If at any time after a conditional use permit has been issued, the Board of Adjustment finds that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a conditional use permit, the permit shall be terminated and the operation of such use discontinued. If a conditional use permit is terminated for any reason, it may be reinstated only after a public hearing is held.

Expiration.

In any case where a conditional use permit has not been exercised within the time limit set by the Board of Adjustment, or within one year if no specific time limit has been set, then without further action the permit shall be null and void.

EXERCISED as set forth in this division shall mean that binding contracts for the construction of the main building shall have been let; or in the absence of contracts, that the main building is under construction to a substantial degree; or that prerequisite conditions involving substantial investment are contracted for, in substantial development, or completed (sewerage, drainage, and the like). When construction is not a part of the use, **EXERCISED** shall mean that the use is in operation in compliance with the conditions set forth in the permit.

Careful record. A careful record of such application and plat, together with a record of the action taken thereon, shall be kept in the office of the zoning enforcement officer.

Variances. Any application for a Variance shall be filed with the Town Clerk at least 20 days prior to the date on which it is to be introduced to the Board of Adjustment. The Town Clerk or designated staff member shall be responsible for presenting the application to the Board of Adjustment. Each variance application shall be accompanied by a fee (as adopted by the Town Council) to help defray the costs of advertising the public hearing required by G.S. §160A-364.19.

Variance application requirements. A Variance from the terms of this chapter shall not be granted by the Board of Adjustment unless and until a written application for a variance is submitted demonstrating that:

Special conditions and circumstances exist which are peculiar to the land, structure, or building involved, and which are not applicable to other lands, structures, or buildings in the same district;

A literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter;
The circumstances do not result from the action of the applicant;

Granting the variance requested will not confer upon the applicant any special privileges that are denied by this chapter to other lands, structures, or buildings in the same district;

No nonconforming use of neighboring land, structures or buildings in the same district and no permitted use of lands, structures or buildings in other districts will be considered grounds for the issuance of a variance.

Hearing. Notice of a public hearing shall be given as set forth in division (A)(2). At the quasi-judicial public hearing, any party may appear in person or by agent or attorney.

Findings, general. The Board of Adjustment shall make findings that the requirements of division (G) shall have been met for a variance.

~~*Findings, specific.* The Board of Adjustment shall make a finding that the reasons set forth in the application justify the granting of the variance is the minimum one that will make possible the reasonable use of the land, building or structure.~~

~~*Findings, environment.* The Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this chapter, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.~~

~~*Conditions attached.* In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter and punishable under §153.134.~~

~~*Prohibition.* Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this chapter in the district involved, or any use expressly or by implication prohibited by the terms of this chapter in the district.~~

AGENDA ITEM 9A

MEMO

DATE:

October 15, 2019

SUBJECT:

Appointment of New Town
Manager

Discussion:

Upon approval of the Town Manager's contract, Council will vote to approve the new Town Manager.

AGENDA ITEM 9B

MEMO

DATE:

October 15, 2019

SUBJECT:

Town Manager Contract

Discussion:

Attached with this memo is a contract for approval to hire a new Town Manager for the Town of Sawmills. The effective hire date will be 11/21/2019, or as soon thereafter as he is able to report for duty.

Memorandum

Date: October 4, 2019
To: Mayor and Town Council
Copy: Town Clerk
From: Alison Adams, MSL, Director of Community and Regional Planning
Subject: Phase II Stormwater Ordinance

Mayor and Town Council,

This memo is to provide an overview of the proposed Phase II Stormwater Code. In order to enforce the Stormwater NPDES permit, the Town is required to adopt a stormwater and Illicit discharge ordinance. The purpose of the code is to comply with NC General Statute requirements. The adoption of the proposed changes will enhance the overall protection of stormwater.

The next steps set forth are to establish a public hearing date, hold the public hearing and adopt the proposed Code.

Accomplishments/Progression:

Since contracting with the WPCOG, a draft of the required Stormwater Management Plan (SWMP) has been submitted to the State and we are awaiting the State's feedback. Once an acceptable SWMP and NPDES permit are granted by the State, the Town is required to adopt a Stormwater Ordinance. In order to have the ordinance in place when the permit is granted, we are requesting for the Council to set a public hearing date of November 19, 2019 and adopt the proposed ordinance.

We are very excited about this opportunity to serve you. Should you have any questions or concerns please do not hesitate to contact me. I can be reached at 704.682.2681 (cell) or alison.adams@wpcog.org.

Sincerely,

Alison Adams, MSSL
Western Piedmont Council of Governments
Director of Community and Regional Planning
Mailing: P.O. Box 9026 | Hickory, NC 28603
Location: 1880 2nd Avenue NW
Hickory, NC 28601

TOWN OF SAWMILLS
NORTH CAROLINA
Phase II Stormwater Ordinance

Phase II Stormwater Ordinance

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SECTION 1: GENERAL PROVISIONS

101 TITLE

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

102 AUTHORITY

The Town of Sawmills is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; Town of Sawmills; North Carolina General Statutes 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163; Chapter 160A, §§ 174, 185.

103 FINDINGS

It is hereby determined that:

Development and redevelopment alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge;

These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment; and

These effects can be managed and minimized by applying proper design and well-planned controls to manage stormwater runoff from *development* sites.

Further, the Federal Water Pollution Control Act of 1972 ("Clean Water Act") and federal Phase II Stormwater Rules promulgated under it, as well as rules of the North Carolina Environmental Management Commission promulgated in response to federal Phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt minimum stormwater controls such as those included in this ordinance.

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

104 PURPOSE

(A) General

The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-*development* stormwater runoff and nonpoint and point source pollution associated with new *development* and *redevelopment* [as well as illicit discharges into municipal stormwater systems]. It has been determined that proper management of construction-related and post-*development* stormwater runoff will minimize damage to public and private property

and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources.

(B) Specific

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

1. Establishing decision-making processes for *development* that protect the integrity of watersheds and preserve the health of water resources;
2. Requiring that new *development* and *redevelopment* maintain the pre-*development* hydrologic response in their post-*development* state as nearly as practicable for the applicable design storm to reduce flooding, streambank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;
3. Establishing minimum post-*development* stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
4. Establishing design and review criteria for the construction, function, and use of *structural stormwater BMPs* that may be used to meet the minimum post-*development* stormwater management standards;
5. Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of greenspace, riparian buffers and other conservation areas to the maximum extent practicable;
6. Establishing provisions for the long-term responsibility for and maintenance of *structural and nonstructural stormwater BMPs* to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;
7. Establishing administrative procedures for the submission, review, approval and disapproval of *stormwater management plans*, for the inspection of approved projects, and to assure appropriate long-term maintenance.
8. Coordinating site design plans that include open space and natural areas with the Town of Sawmills,
9. Controlling illicit discharges into the municipal separate stormwater system.

105 APPLICABILITY AND JURISDICTION

(A) General

Beginning with and subsequent to its effective date, this ordinance shall be applicable to all *development* and *redevelopment*, including, but not limited to, site plan

applications, subdivision applications, and grading applications, unless exempt pursuant to Subsection (B) of this Section, Exemptions.

(B) Exemptions

Development that cumulatively disturbs less than one acre and does not exceed 20,000 square feet or impervious area and does not include disturbances within a stream buffer, filling or excavation in excess of 1,000 cubic yards or filling and excavation that would impact an adjoining parcel through alteration or drainage paths, ponding or water or velocity of stormwater flow is not part of a *larger common plan of development or sale* is exempt from the provisions of this ordinance.

Redevelopment that cumulatively disturbs less than one acre and does not have a net increase in impervious area and is not part of a larger common plan of *development or sale* is exempt from the provisions of this ordinance.

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

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

(C) No Development or Redevelopment Until Compliance and Permit

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

(D) Map

The provisions of this ordinance shall apply within the areas designated on the map titled "Phase II Stormwater Map of Town of Sawmills, North Carolina" ("the Stormwater Map"), which is adopted simultaneously herewith. The Stormwater Map and all explanatory matter contained thereon accompanies and is hereby made a part of this ordinance.

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

106 INTERPRETATION

(A) Meaning and Intent

All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the general and specific purposes set forth in Section 104,

Purpose. If a different or more specific meaning is given for a term defined elsewhere in Town of Sawmills Code of Ordinances, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.¹

(B) Text Controls in Event of Conflict

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

(C) Authority for Interpretation

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

(D) References to Statutes, Regulations, and Documents

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

(E) Computation of Time

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

(F) Delegation of Authority

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

(G) Usage

(1) Mandatory and Discretionary Terms

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

(2) Conjunctions

Unless the context clearly indicates the contrary, conjunctions shall be interpreted as follows: The word "and" indicates that all connected items,

conditions, provisions and events apply. The word “or” indicates that one or more of the connected items, conditions, provisions or events apply.

(3) Tense, Plurals, and Gender

Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

(H) Measurement and Computation

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

107 DESIGN MANUAL

(A) Reference to Design Manual

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

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

(B) Relationship of Design Manual to Other Laws and Regulations

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

(C) Changes to Standards and Specifications

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

108 RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE AGREEMENTS

(A) Conflict of Laws

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other

provision of law. Where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control.

(B) Private Agreements

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

109 SEVERABILITY

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

110 EFFECTIVE DATE AND TRANSITIONAL PROVISIONS

(A) Effective Date

This Ordinance shall take effect on November 19, 2019.

(B) Final Approvals, Complete Applications

All *development* and *redevelopment* projects for which complete and full applications were submitted and approved by the Town of Sawmills prior to the effective date of this ordinance and which remain valid, unexpired, unrevoked and not otherwise terminated at the time of *development* or *redevelopment* shall be exempt from complying with all provisions of this ordinance dealing with the control and/or management of post-construction runoff, but shall be required to comply with all other applicable provisions, including but not limited to illicit discharge provisions.

A phased development plan shall be deemed approved prior to the effective date of this ordinance if it has been approved by all necessary government units, it remains valid, unexpired, unrevoked and not otherwise terminated, and it shows:

1. For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved.
2. For any subsequent phase of development, sufficient detail so that implementation of the requirements of this ordinance to that phase of development would require a material change in that phase of the plan.

(C) **Violations Continue**

Any violation of provisions existing on the effective date of this ordinance shall continue to be a violation under this ordinance and be subject to penalties and enforcement under this ordinance unless the use, *development*, construction, or other activity complies with the provisions of this ordinance.

SECTION 2: ADMINISTRATION AND PROCEDURES

201 REVIEW AND DECISION-MAKING ENTITIES

(A) Stormwater Administrator

(1) Designation

A Stormwater Administrator shall be designated by the Board of Alderman to administer and enforce this ordinance.

(2) Powers and Duties

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

- a. To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance.
- b. To make determinations and render interpretations of this ordinance.
- c. To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the Board of Alderman on applications for *development* or *redevelopment* approvals.
- d. To enforce the provisions of this ordinance in accordance with its enforcement provisions.
- e. To maintain records, maps, forms and other official materials as relate to the adoption, amendment, enforcement, and administration of this ordinance.
- f. To provide expertise and technical assistance to the Board of Alderman, upon request.
- g. To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.
- h. To take any other action necessary to administer the provisions of this ordinance.

202 REVIEW PROCEDURES

(A) Permit Required; Must Apply for Permit

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

(B) Effect of Permit

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

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

(C) Authority to File Applications

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

(D) Establishment of Application Requirements, Schedule, and Fees

(1) Application Contents and Form

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

(2) Submission Schedule

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

(3) Permit Review Fees

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

(4) Administrative Manual

For applications required under this Code, the Stormwater Administrator shall compile the application requirements, submission schedule, fee schedule, a copy of this ordinance, and information on how and where to obtain the Design

Manual in an Administrative Manual, which shall be made available to the public.

(E) Submittal of Complete Application

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

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

(F) Review

Within 30 working days after a complete application is submitted, the Stormwater Administrator shall review the application and determine whether the application complies with the standards of this ordinance.

(1) Approval

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

(2) Fails to Comply

If the Stormwater Administrator finds that the application fails to comply with the standards of this ordinance, the Stormwater Administrator shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.

(3) Revision and Subsequent Review

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

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

One re-submittal of a revised application may be submitted without payment of an additional permit review fee. Any re-submittal after the first re-submittal

shall be accompanied by a permit review fee additional fee, as established pursuant to this ordinance.

203 APPLICATIONS FOR APPROVAL

(A) Concept Plan and Consultation Meeting

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

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

(1) Existing Conditions / Proposed Site Plans

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

(2) Natural Resources Inventory

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

(3) Stormwater Management System Concept Plan

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

(B) Stormwater Management Permit Application

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

The submittal shall include all of the information required in the submittal checklist established by the Stormwater Administrator. Incomplete submittals shall be treated pursuant to Section 2-202(D).

(C) As-Built Plans and Final Approval

Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall submit actual "as built" plans for all stormwater management facilities or practices after final construction is completed.

The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance. A final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities.

(D) Other Permits

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

204 APPROVALS

(A) Effect of Approval

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

(B) Time Limit/Expiration

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

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

205 APPEALS

(A) Right of Appeal

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

(B) Filing of Appeal and Procedures

Appeals shall be taken within the specified time period by filing a notice of appeal and specifying the grounds for appeal on forms provided by Town of Sawmills. The Stormwater Administrator shall transmit to the Board of Adjustment all documents constituting the record on which the decision appealed from was taken.

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

(C) Review by Superior Court

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

(1) The decision of the Board of Adjustment is filed; or

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

SECTION 3: STANDARDS

301 GENERAL STANDARDS

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

302 DEVELOPMENT STANDARDS FOR LOW-DENSITY PROJECTS

Low-density projects shall comply with each of the following standards:

- (A) Stormwater runoff from the *development* shall be transported from the *development* by vegetated conveyances to the maximum extent practicable.
- (B) Stream buffers shall be maintained on all sides of perennial and intermittent surface waters. The size of the buffer for perennial surface waters shall be an undisturbed width of 30 feet, plus a vegetated setback of 20 feet. Buffers for intermittent surface waters shall be an undisturbed width of 30 feet. The buffer width is measured perpendicularly from the top of the streambank. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3) (a) or similar site-specific determination made using Division-approved methodology.
- (C) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future *development* and *redevelopment* maintains the site consistent with the approved project plans.

303 DEVELOPMENT STANDARDS FOR HIGH-DENSITY PROJECTS

High-density projects shall implement stormwater control measures that comply with each of the following standards:

- (A) The measures shall control and treat runoff from the first inch of rain, runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.
- (B) All structural stormwater treatment systems used to meet these requirements shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids (TSS);
- (C) General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the *Design Manual*,

- (D) Stream buffers shall be maintained on all sides of perennial and intermittent surface waters. The size of the buffer for perennial surface waters shall be an undisturbed width of 30 feet, plus a vegetated setback of 20 feet. Buffers for intermittent surface waters shall be an undisturbed width of 30 feet. The buffer width is measured perpendicularly from the top of the streambank. A surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3) (a) or similar site-specific determination made using Division-approved methodology.
- (E) On-site verification of intermittent and perennial streams by a qualified professional is required for all development exceeding a cumulative 5 acres and 24 percent impervious coverage, or any commercial development.
- (F) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future *development* and *redevelopment* maintains the site consistent with the approved project plans.

304 STANDARDS FOR STORMWATER CONTROL MEASURES

(A) Evaluation According to Contents of Design Manual

All stormwater control measures and stormwater treatment practices (also referred to as Best Management Practices, or BMPs) required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the *Design Manual*. The Stormwater Administrator shall determine whether proposed BMPs will be adequate to meet the requirements of this ordinance.

(B) Determination of Adequacy; Presumptions and Alternatives

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

(C) Separation from Seasonal High Water Table

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

305 DEDICATION OF BMPS, FACILITIES & IMPROVEMENTS

The Town of Sawmills may accept dedication of any existing or future stormwater management facility for maintenance, provided such facility meets all the requirements of this ordinance and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

306 VARIANCES

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

- (1) Unnecessary hardships would result from strict application of this ordinance.
- (2) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
- (3) The hardships did not result from actions taken by the petitioner.
- (4) The requested variance is consistent with the spirit, purpose, and intent of this ordinance; will secure public safety and welfare; and will preserve substantial justice.

(B) The Town of Sawmills may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

(C) Statutory exceptions

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

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

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

307 **ADDITIONAL STANDARDS FOR SPECIAL SITUATIONS**

(A) Pet waste

(1) Restrictions on Pet Waste

- (a) It shall be unlawful for the owner or custodian of any dog to take it off the owner's own property limits without the means to properly remove and dispose of the dog's feces from any public or private property.
- (b) It is the responsibility of a dog's owner or custodian to clean up the dog's feces from any public or private property outside of the dog's owner's own property limits. Such property includes, but is not limited to, parks, rights-of-way, paths, and public access areas.
- (c) "Means to properly remove and dispose of feces" shall consist of having on or near one's person a device such as a plastic bag, or other suitable plastic or paper container, that can be used to clean up and contain dog waste until it can be disposed of in an appropriate container. Such a device must be produced and shown, upon request, to anyone authorized to enforce these ordinances.
- (d) This provision shall not apply to handicapped persons assisted by trained guide or assistance dogs.
- (e) "Public nuisance" is defined to include "a dog which deposits feces on public property or on private property without the consent of the owner or person in lawful possession of the private property, and the person owning, possessing, harboring or having the care, charge, control or custody of the dog fails to remove the feces so deposited. Provided, however, this definition shall not apply to any dog assisting a handicapped person."

308 **ONSITE WASTEWATER**

(A) Operation and Maintenance Requirements

New and replaced onsite systems for domestic wastewater installed after the effective date of this ordinance shall be subject to the same requirements for operation and maintenance as *structural BMPs* for stormwater, including, at a minimum, annual inspection reports and a recorded operation and maintenance agreement, pursuant to Section 4 of this ordinance.

(B) Standards for Operation and Maintenance

Onsite systems for domestic wastewater covered by this ordinance shall be operated and maintained so as to avoid adverse effects on surface water and groundwater, including eutrophication of surface water and microbial or nitrate contamination of groundwater. Septic tank residuals shall be pumped

whenever necessary to assure the proper operation of the system to meet these standards, and the septage shall be reused or disposed of in a manner that does not present significant risks to human health, surface water or groundwater.

SECTION 4: MAINTENANCE

401 GENERAL STANDARDS FOR MAINTENANCE

(A) Function of BMPs As Intended

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

(B) Annual Maintenance Inspection and Report

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

- (1) The name and address of the land *owner*;
- (2) The recorded book and page number of the lot of each *structural BMP*;
- (3) A statement that an inspection was made of all *structural BMPs*;
- (4) The date the inspection was made;
- (5) A statement that all inspected *structural BMPs* are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and
- (6) The original signature and seal of the engineer, surveyor, or landscape architect.

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

402 OPERATION AND MAINTENANCE AGREEMENT

(A) In General

Prior to the conveyance or transfer of any lot or building site to be served by a *structural BMP* pursuant to this ordinance, and prior to issuance of any permit for *development* or *redevelopment* requiring a *structural BMP* pursuant to this ordinance, the applicant or *owner* of the site must execute an operation and maintenance agreement that shall be binding on all subsequent *owners* of the site, portions of the site, and lots or parcels served by the *structural BMP*. Until the transference of all property,

sites, or lots served by the *structural BMP*, the original *owner* or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

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

The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval.² A copy of the recorded maintenance agreement shall be given to the Stormwater Administrator within fourteen (14) days following its recordation.

(B) Special Requirement for Homeowners' and Other Associations

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

- (1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.
- (2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the *structural BMPs*. If *structural BMPs* are not performing adequately or as intended or are not properly maintained, the Town of Sawmills, in its sole discretion, may remedy the situation, and in such instances the Town of Sawmills shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the *structural BMPs*, provided that the Town of Sawmills shall first consent to the expenditure.
- (3) Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to fifteen (15) per cent of the initial construction cost of the *structural BMPs*. Two-thirds (2/3) of the total amount of sinking fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the *structural BMPs*. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow

account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

- (4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the Town of Sawmills depending on the design and materials of the stormwater control and management facility.
- (5) Granting to the Town of Sawmills a right of entry to inspect, monitor, maintain, repair, and reconstruct *structural BMPs*.
- (6) Allowing the Town of Sawmills to recover from the association and its member's any and all costs the Town of Sawmills expends to maintain or repair the *structural BMPs* or to correct any operational deficiencies. Failure to pay the Town of Sawmills all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. In case of a deficiency, the Town of Sawmills shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both (Interest, collection costs, and attorney fees shall be added to the recovery).
- (7) A statement that this agreement shall not obligate the Town of Sawmills to maintain or repair any *structural BMPs*, and the Town of Sawmills shall not be liable to any person for the condition or operation of *structural BMPs*.
- (8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the Town of Sawmills to enforce any of its ordinances as authorized by law.
- (9) A provision indemnifying and holding harmless the Town of Sawmills for any costs and injuries arising from or related to the structural BMP, unless the Town of Sawmills has agreed in writing to assume the maintenance responsibility for the BMP and has accepted dedication of any and all rights necessary to carry out that maintenance.

403 INSPECTION PROGRAM

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

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

(A) May Be Required

The Town of Sawmills may, at its discretion, require the submittal of a performance security or bond with surety or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the *structural BMPs* are

(1) Installed by the permit holder as required by the approved stormwater management plan, and/or

(2) Maintained by the *owner* as required by the operation and maintenance agreement.

(B) Amount

(1) Installation

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

(2) Maintenance

The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the BMPs approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long-term inflation.

(C) Uses of Performance Security

(1) Forfeiture Provisions

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

(2) Default

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

(3) Costs in Excess of Performance Security

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

(4) Refund

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

405 NOTICE TO OWNERS

(A) Deed Recordation and Indications On Plat

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

(B) Signage

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

406 RECORDS OF INSTALLATION AND MAINTENANCE ACTIVITIES

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

407 NUISANCE

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

408 MAINTENANCE EASEMENT

Every *structural BMP* installed pursuant to this ordinance shall be made accessible for adequate maintenance and repair by a maintenance easement. The easement shall be

recorded and its terms shall specify who may make use of the easement and for what purposes.

SECTION 5: ENFORCEMENT AND VIOLATIONS

501 GENERAL

(A) Authority to Enforce

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

(B) Violation Unlawful

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

(C) Each Day a Separate Offense

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

(D) Responsible Persons/Entities

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

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

(1) Person Maintaining Condition Resulting In or Constituting Violation

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

(2) Responsibility For Land or Use of Land

The *owner* of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person,

who has control over, or responsibility for, the use, *development* or *redevelopment* of the property.

502 REMEDIES AND PENALTIES

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

(A) Remedies

(1) Withholding of Certificate of Occupancy

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

(2) Disapproval of Subsequent Permits and Development Approvals

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

(3) Injunction, Abatements, etc.

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

(4) Correction as Public Health Nuisance, Costs as Lien, etc.

If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by North Carolina G.S. § 160A-193, the Stormwater Administrator, with the written authorization of the Town Administrator, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

(5) Stop Work Order

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

order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.

(B) Civil Penalties

Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the Stormwater Administrator. Civil penalties may be assessed up to the full amount of penalty to which Town of Sawmills is subject for violations of its Phase II Stormwater permit, or if no Phase II Stormwater permit exists for the jurisdiction, civil penalties may be assessed up to the full amount allowed by law.

(C) Criminal Penalties

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

503 PROCEDURES

(A) Initiation/Complaint

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

(B) Inspection

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

(C) Notice of Violation and Order to Correct

When the Stormwater Administrator finds that any building, structure, or land is in violation of this ordinance, the Stormwater Administrator shall notify, in writing, the property *owner* or other person violating this ordinance. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

The Stormwater Administrator may deliver the notice of violation and correction order personally, by the law enforcement or code enforcement personnel, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

If a violation is not corrected within a reasonable period of time, as provided in the notification, the Stormwater Administrator may take appropriate action under this

ordinance to correct and abate the violation and to ensure compliance with this ordinance.

(D) Extension of Time

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

(E) Enforcement After Time to Correct

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

(F) Emergency Enforcement

If delay in correcting a violation would seriously threaten the effective enforcement of this ordinance or pose an immediate danger to the public health, safety, or welfare, then the Stormwater Administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Stormwater Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

SECTION 6: DEFINITIONS

601 TERMS DEFINED

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

Built-upon area (BUA)

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

Department

The North Carolina Department of Environment Quality.

Design Manual

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

Development

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

Division

The Division of Energy, Mineral and Land Resources in the *Department*.

High-density project

Any project that exceeds the *low-density* threshold for dwelling units per acre or *built-upon area*.

Larger common plan of development or sale

Any area where multiple separate and distinct construction or land-disturbing activities will occur under one plan. A plan is any announcement or piece of documentation (including but not limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request, or computer design) or physical demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.

Low-density project

For a project that is not located within one-half mile of and draining to Shellfish Resource Waters: the project is a low-density project if it has no more than two dwelling units per acre or twenty-four percent *built-upon area* (BUA) for all residential and non-residential *development*.

A project with an overall density at or below the relevant low-density threshold, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the post-construction model practices for

low-density projects and locates the higher density in upland areas and away from surface waters and drainage ways to the maximum extent practicable.

1-year, 24-hour storm

The surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.

Owner

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

Redevelopment

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

Structural BMP

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

Substantial progress

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

SECTION 7: ILLICIT DISCHARGES

701 TITLE AND PURPOSE

(A) Title

This ordinance shall be officially known as "The Phase II Stormwater Illicit Discharge Detection and Elimination Ordinance." It is referred to herein as "this ordinance."

(B) Purpose

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the Town Sawmills through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

- (1) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by Stormwater discharges by any user
- (2) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system
- (3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance

702 AUTHORITY

The Town of Sawmills is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; North Carolina General Statutes 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163; Chapter 160A § 174, 185.

703 DEFINITIONS

For the purposes of this section, the following shall mean:

Best Management Practices (BMPs)

schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to Stormwater, receiving waters, or Stormwater conveyance systems BMPs also include treatment practices, operating procedures and practices to control site runoff, spillage or leaks sludge or water disposal, or drainage from raw materials storage.

Clean Water Act

The federal Water Pollution Control Act (33 U.S. C. 5 1251 et seq.), and any subsequent amendments thereto.

Hazardous Materials

Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported disposed of, or otherwise managed.

Illegal Discharge

Any direct or indirect non-storm water discharge to the storm drain system.

Illicit Connections

An illicit connection is defined as either of the following:

Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted or approved by an authorized enforcement agency or,

Any drain or conveyance connected from a commercial or industrial land use to the storm drain system, which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Industrial Activity

Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b) (14).

Municipal Separate Storm Sewer System (MS4)

Pursuant to 40 CFR 122.26(b)(8) means a conveyance or system of conveyances (including roads with drainage systems, municipal streets catch basins, curbs, gutters, ditches, manmade channels, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures or storm drains):

(i) Owned or operated by a town, city, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, Stormwater, or other wastes, that discharges to waters of the United States or waters of the State.

(ii) Designed or used for collecting or conveying Stormwater;

(iii) Which is not a combined sewer; and

(iv) Which is not part of a Publicly Owned Treatment Works (POTW), as defined in 40 CFR 122.2

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit

A permit issued by the North Carolina Department of Environment and Natural Resources, Division of Water Quality* that authorizes the discharge of pollutants to waters of the State, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Stormwater Discharge

Any discharge to the storm drain system that is not composed entirely of storm water.

Person

Means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting either as the owner or as the owner's agent.

Pollutant

Anything that causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Premises

Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Storm Water

Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Stormwater Pollution Prevention Plan

A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

Wastewater

Means water or other liquid, other than uncontaminated storm water, discharged from a facility.

*Ultimately the federal Environmental Protection Agency regulates the NPDES permit, but it has been delegated to the state for any non-tribal lands within North Carolina

704 ILLICIT DISCHARGES AND CONNECTIONS

(A) Illicit Discharges

No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any Stormwater conveyance, the waters of the State, or upon the land in manner and amount that the substance is likely to reach a Stormwater conveyance or the waters of the State, any liquid, solid, gas, or other substance, other than Stormwater; provided that non-Stormwater discharges associated with the following activities are allowed and provided that they do not significantly impact water quality:

- (1) Water line flushing,
 - (2) Landscape irrigation,
 - (3) Diverted stream flows,
 - (4) Rising ground waters,
 - (5) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)),
 - (6) Uncontaminated pumped ground water,
 - (7) Discharges from potable water sources,
 - (8) Foundation drains,
 - (9) Flows from emergency firefighting,
 - (10) Air conditioning condensation,
 - (11) Irrigation water,
 - (12) Springs,
 - (13) Water from crawl space pumps,
 - (14) Footing drains,
 - (15) Lawn watering,
 - (16) Individual residential car washing - Designated vehicle wash areas at multi-family residential complexes are not allowed if they connect, directly or indirectly, to the Stormwater System or surface waters. Charity Vehicle Washing performed by the same organization or at the same location on a routine basis (more than one time in a thirty-day period) is not allowed under this article.
 - (17) Flows from riparian habitats and wetlands,
 - (18) Dechlorinated swimming pool discharges - "Salt Water" swimming pools cannot be directly discharged into the storm drain due to the salinity, bromoform/bromine concentration, and chlorine generated.
 - (19) Street wash water, and
 - (20) Other non-Stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina, and if any such discharges to the municipal separate storm, The Town of Sawmills shall authorize sewer system.
 - (21) Removal of Stormwater System blockages with Unmodified Potable Water.
- Prohibited substances include but are not limited to oil, anti-freeze, chemicals, animal waste, paints, garbage, and litter.

(B) Illicit Connections

(1) Connections to a Stormwater conveyance or Stormwater conveyance system that allows the discharge of non-Stormwater, other than the exclusions described in section (a) above, are unlawful. Including but not limited to: prohibited washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and wastewater from septic systems.

(2) Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one year following the effective date of this ordinance. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.

(3) Where it is determined that said connection:

- i. May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat, or
- ii. Was made in violation of any applicable regulation or ordinance, other than this section:

The Stormwater Administrator/ Illicit Discharge Officer shall designate the time within which the connection shall be removed - in setting the time limit for compliance the Stormwater Administrator/ Illicit Discharge Officer shall take into consideration:

- i. The quantify and complexity of the work,
- iii. The consequences of delay,
- iv. The potential harm to the environment, to the public health, and to public and private property, and
- v. The cost of remedying the damage.

(C) Spills

Spills or leaks of polluting substances released, discharged to, or having the potential to be released or discharged to the Stormwater conveyance system, shall be contained, controlled, collected, and properly disposed of. All affected areas shall be restored to their pre-existing condition.

Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the Sawmills Fire Department of the release or discharge, as well as making any required notifications under state and federal law. Notification shall not relieve any person of any expenses related to the restoration, loss damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or other law.

(D) Industrial or Construction Activity Discharges

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit; Proof of compliance with said permit may be required in a form acceptable to the Town of Sawmills prior to the allowing of discharges to the MS4.

705 RIGHT OF ENTRY/POWERS AND AUTHORITY FOR INSPECTION

(A) Authority to Inspect and Monitor

The Stormwater Administrator/ Illicit Discharge Officer, bearing proper identification, may enter public or private properties at all reasonable times to inspect, investigate, or monitor activities and conditions subject to this article. Persons occupying premises to be inspected shall allow the Stormwater Administrator/ Illicit Discharge Officer ready access at all times to all parts of the premises to perform inspection, monitoring, records examination, copying, photography, video recording or other duties. Stormwater Administrator/ Illicit Discharge Officer shall have the right to set up on the Person's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. Where a Person has security measures in force that would require identification and clearance before entry into the premises, the Person shall make arrangements with security personnel so that, upon presentation of identification, personnel from Stormwater Administrator/ Illicit Discharge Officer will be permitted to enter and perform their specific responsibilities without delay. Denial of Stormwater Administrator/ Illicit Discharge Officer access to the Person's premises or portions thereof shall be a violation of this article. Denial of access may also occur if a Person fails to provide, without unreasonable delay, such facilities, equipment, or devices as are reasonably necessary to permit Stormwater Administrator/ Illicit Discharge Officer personnel to perform their duties in a safe manner. Unreasonable delays may constitute denial of access. Any delay of more than five minutes may be considered unreasonable.

(B) Search Warrants

To the extent permitted by law, Administrator/ Illicit Discharge Officer may seek the issuance of a search warrant to determine compliance with this article.

(C) Confidential Information

- (1) To the extent permitted by applicable law and except as otherwise provided in this section, information and data on a Person obtained from reports, questionnaires, permit applications, permits, monitoring programs and inspections shall be available to the public or other government agencies without restriction, unless the Person specifically requests, and is able to demonstrate to the satisfaction of Administrator/ Illicit Discharge Officer, that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the Person. Any such request must be asserted at the time of submission of the information or data.
- (2) To the extent permitted by applicable law, when requested by a Person furnishing a report, the portions of a report that might disclose trade secrets

or secret processes shall not be made available for inspection by the public, but shall be made available upon request to governmental agencies for uses related to this article provided, however, that such portions of a report shall be available for use by the State or any State agency in judicial review or enforcement proceedings involving the Person furnishing the report.

- (3) Documents that are not public records and the information set forth therein may be withheld and released only as provided by applicable law.

(D) Obstruction

No person shall obstruct, hamper, or interfere with Administrator/ Illicit Discharge Officer while carrying out official duties. Upon presentation of credentials by Administrator/ Illicit Discharge Officer, necessary arrangements shall be made to allow immediate access onto premises or into an area protected by security measures. Any obstruction to the safe and easy access to property, a facility or enclosure on property, or to monitoring devices shall immediately be removed. Unreasonable delays in providing safe and reasonable access or removing obstructions shall be a violation of this article.

706 ENFORCEMENT

(A) Notice of Violation

Whenever the Stormwater Administrator/ Illicit Discharge Officer finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the Stormwater Administrator/ Illicit Discharge Officer may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (1) The performance of monitoring analyses, and reporting,
- (2) The elimination of illicit connections or discharges,
- (3) That violating discharges, practices, or operations shall cease and desist,
- (4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property, and
- (5) Payment of a fine to cover administrative and remediation costs, and
- (6) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or the Town or a contractor designated by the Stormwater Administrator/ Illicit Discharge Officer will perform the restore, within the established deadline, the work and the expense thereof shall be charged to the violator.

(B) Violations Deemed a Public Nuisance

Illicit discharges and illicit connections which exist within the Sawmills Town Limits and

Extra-territorial Jurisdiction are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances and may be summarily abated or restored by the Town at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the Town.

AGENDA ITEM 9D

MEMO

DATE:

October 15, 2019

SUBJECT:

Discussion:
Russell Drive/Mission Road
Waterline Replacement

Discussion:

Todd Poteet, with West Consultants, will give an update on the Russell Drive and Mission Road water line replacement projects.

Recommendation:

No Council action is required.

AGENDA ITEM 10A

MEMO

DATE:

October 15, 2019

SUBJECT:

Financial Matters:
AMI Bid

Discussion:

The bid opening for the Advanced Metering Infrastructure (AMI) occurred on Friday, September 13, 2019. Three (3) bids were received from the following:

Fortiline/Waterworks/Kamstrup	Water Works/Mueller Systems	Ferguson Waterworks/Sensus
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The bid packets were reviewed and certified, in accordance with NCGS, by MeterSys. On September 24th, staff met with Andy Honeycutt and Lisa Nguyen, from MeterSys, to review the information.

The following bids have been proposed:

Vendor:	Construction:	Operational (Yr. 1)
Water Works/Mueller	\$1,135,150	\$13,712
Ferguson Waterworks/Sensus	\$1,864,968	\$19,647

On September 30th, staff met with the Public Works Committee to review the remaining two bids.

The lowest bid was received from Water Works/Mueller Systems for a total bid of \$1,135,150.00. The bid packages have been reviewed by MeterSys on behalf of the town. MeterSys does believe that Water Works/Mueller Systems is qualified to perform the project.

Attached is a bid summary of all submitted proposals.

Recommendation:

Staff recommends Council award the project to the lowest bidder, Water Works/Mueller Systems for a total amount of \$1,135,150.00.

MEMORANDUM

To: Karen Clontz, Interim Town Manager and Finance Officer

From: Andy Honeycutt, MeterSYS Managing Director

CC: Town of Sawmills AMI Selection Committee; Project File

Date: September 30, 2019

Re: Summary of Shortlisted Vendor Bid Responses

We appreciate the collaborative efforts of the Town of Sawmills Advanced Metering Infrastructure (AMI) Selection Committee, who worked diligently throughout the Request for Proposal (RFP) process to develop project goals, proposal requirements, and vendor shortlisting. After a detailed evaluation of the bid submittals, considering the technology attributes of the proposed systems, the ability to meet the Town's project goals, and to provide the best overall benefit to the Town, the Committee shortlisted Ferguson/Sensus and Water Works/Mueller Systems. The MeterSYS team then completed a detailed bid submission review individually with each shortlisted proposer. This review is summarized in the tables below with accompanying detailed explanations.

Table 1 compares the best and final offer pricing as submitted by each proposer after negotiations and are the metering solutions that are more closely align to the Town's metering infrastructure needs and goals as discussed in our bid review meetings. Ferguson/Sensus is proposing the Sensus SR11 brass body with the electronic register and LCD display. Water Works/Mueller Systems is proposing the 420 composite body with metal threads and the ME-8 electromechanical (rolling dials) register.

Table 1: Vendor Pricing Comparison Summary

	WATER WORKS/MUELLER SYSTEMS- Composite Body w/Metal Threads	FERGUSON/SENSUS AMI- Brass Body
SUBTOTAL NETWORK	\$333,855	\$458,886
SUBTOTAL METERS	\$212,958	\$302,777
SUBTOTAL METER LABOR	\$118,056	\$126,517
SUBTOTAL MISCELLANEOUS (Project Management and Bond)	\$58,889	\$38,500
PROGRAM MANAGEMENT FEE	\$67,000	\$67,000
OPERATIONAL EXPENSE YEAR 1	\$13,712	\$19,647
CONTINGENCY (10%)	\$80,447	\$101,333
TOTAL AMI SOLUTION (includes sales tax)	\$884,917	\$1,114,658

(Customer Portal not Included)

The original total estimates for full replacement of the Town's existing touch-read meters with advanced meters and an AMI network was approximately \$860,000. This figure is more closely aligned to Mueller's proposal as presented in the table above. The cost difference between our estimates and Mueller's



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844.881.8685 | info@etersys.com

proposed bid pricing is due to the new distributorship with Water Works, that increased various components of the bid as compared to if the bid was submitted directly by Mueller Systems.

Based on the updated pricing proposals, Ferguson/Sensus' best and final solution is about \$229,741 more than Water Works/Mueller System's best and final solution. A detailed explanation of the bid summary analysis after negotiations is as follows:

- Sensus' radio transmitters are priced at about \$50 more per unit than Mueller's radio transmitters
- Sensus' hosted AMI Meter Data Management System (MDMS) and installation costs for the collector is about twice as much higher than Mueller's MDMS
- Mueller's composite meter with metal threads is listed at \$84.91 in the updated pricing sheet as compared to Sensus' SR11 brass body meter that is priced higher by \$35.09 at \$120 per unit
- Mueller's project management fees are about double the fees for Sensus project management, but Mueller's bonding is lower by about \$2,500
- Operational Expenses (OpEx) include cellular backhaul for data collectors, maintenance for collectors, hosting fees for the MDMS, software support and updates (included in Mueller's OpEx costs is the maintenance fee for the handhelds)
- Mueller lowered the unit price for repeaters, unit price for the installation of the repeaters, OpEx Years 1-5, and proposed pricing for the 420 composite meter with metal threads at the lowest costs compared to their alternative options for an overall savings of about \$39,522 pre-tax for their proposed AMI solution
- Sensus lowered the unit price for the radio transmitters, training, project management, and the SR11 brass body by about \$16 (\$136 to \$120) for an overall savings of about \$44,587 pre-tax for their proposed AMI solution
- The cost-savings analysis is presented here pre-tax because Mueller did not provide sales tax in their initial bid, so analysis was completed pre-tax for the most accurate comparison of each proposers' solution

The Town expressed interest in remote disconnect functionality; thus, the table below presents the alternative option for full changeout of the 5/8 x 3/4" meters only with Remote Disconnect Meters (RDMs).

Table 2: Alternative Remote Disconnect Meter (RDM) Solution Pricing

	WATER WORKS/MUELLER SYSTEMS- RDM	FERGUSON/SENSUS- RDM
SUBTOTAL NETWORK	\$121,167	\$458,886
SUBTOTAL METERS	\$653,131	\$1,001,877
SUBTOTAL METER LABOR	\$118,056	\$126,517
SUBTOTAL MISCELLANEOUS (Project Management and Bond)	\$58,889	\$38,500



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METERSYS PROFESSIONAL SERVICES	\$67,000	\$67,000
OPERATIONAL EXPENSE YEAR 1	\$13,712	\$19,467
CONTINGENCY (10%)	\$103,195	\$169,543
TOTAL AMI SOLUTION (includes sales tax)	\$1,135,150	\$1,864,968

Due to the Town's interest in remote disconnect functionality and the Mueller solution being a more financially viable solution, Mueller has adjusted its bid pricing for RDMs by a cost-savings of \$20 per meter with the purchase of 1,000 or more RDMs. This updated pricing is reflected in Table 2 above.

A significant price difference in Table 2 is the total network costs with Mueller's being lower at about \$337,000. This is because the radio transmitter is built in the remote disconnect meter and is included in the costs of the meter as compared to Sensus' which is a separate and required component. If the Town is interested in deploying RDMs for all residential service locations, the Town would only need to purchase 30 Mueller radio transmitters that are required for the large meters. If the Town is interested in deploying Mueller's composite body meter with metal threads, the Town would need to purchase Mueller radio transmitters for all 2,250 meters in its system.

The unit price for the Sensus ally RDM is higher than the Mueller RDM by about \$150. Mueller's RDM has been on the market longer at about 5 years and has the ability to shut water off and turn water back on, in addition to sending a meter reading on hourly intervals. Although, the Sensus RDM is higher in pricing it boasts greater functionality with the ability to read meters on hourly intervals, as well as measure pressure and temperature for water quality monitoring, and remotely control the valve in 3 stages- shut water off, turn water back on, or reduce water to a low flow.

Table 3: Alternative Ferguson/Sensus accuSTREAM Pricing

	FERGUSON/SENSUS AMI- Composite Body accuSTREAM	FERGUSON/SENSUS AMI- Brass Body SRII
SUBTOTAL NETWORK	\$458,886	\$458,886
SUBTOTAL METERS	\$238,886	\$302,777
SUBTOTAL METER LABOR	\$126,517	\$126,517
SUBTOTAL MISCELLANEOUS (Project Management and Bond)	\$38,500	\$38,500
TOTAL (Includes Sales Tax)	\$862,698	\$926,679

Table 3 compares the two alternative meter options and total solution costs as proposed by Ferguson/Sensus in their updated bid pricing sheet. The total AMI solution costs including the Ferguson/Sensus SRII meter option is \$63,980 more than the total AMI solution with the accuSTREAM meters. Please note that Table 3 does not Operational Expense Year 1, Contingency, and MeterSYS Professional Services. The Table below displays the Operations Expenses to the Town for years 2-5.

Table 4: Operational Expenditures Summary Years 2-5



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**MUELLER SYSTEMS AMI OPEX
YEARS 2-5**

**FERGUSON/SENSUS
OPEX YEARS 2-5**

TOTAL NETWORK, TRAINING, SOFTWARE	\$56,772	\$82,766
-----------------------------------	----------	----------

In conclusion, the Town has several meter configurations options that can be selected. The MeterSYS team stands ready to discuss final solution selection with the Town Selection Committee. Then, supporting the Committee as directed by the Town at the October 16th council meeting in the presentation of the final solution recommendation.

AGENDA ITEM 10B

MEMO

DATE:

October 15, 2019

SUBJECT:

Financials Matters:
Capital Project
Budget Ordinance
Water Meter
Replacement Project

Discussion:

During the August 20, 2019 regularly scheduled council meeting, the Council voted to finance the AMI project as follows:

60% out of the General Fund;

40% out of the Utility Fund; and

A \$400,000.00 Installment loan.

A Capital Project Budget Ordinance Water Meter Replacement Project will need to be adopted to move forward with the AMI project. A copy of the Ordinance is attached with this memo.

Recommendation:

Staff recommends Council approve the Capital Project Budget Ordinance Water Meter Replacement Project as drafted.

**TOWN OF SAWMILLS
CAPITAL PROJECT BUDGET ORDINANCE
WATER METER REPLACEMENT PROJECT**

BE IT ORDAINED by the Sawmills Town Council that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following project ordinance is hereby adopted.

Section 1. The project authorizes funds for the Water Meter Replacement Project. The project is to be funded by a loan, a fund balance appropriation and a utility fund net asset appropriation.

Section 2. The officers of this unit are hereby directed to proceed with the project within the terms of the loan agreement and rules and regulations of the State of North Carolina, and the budget contained herein.

Section 3. The following revenues are anticipated to be available to the Town of Sawmills for this project:

Revenues:

First Citizens installment loan	\$400,000
General Fund Balance Appropriation	\$480,000
Utility Fund Net Asset Appropriation	\$320,000
Total Revenues	\$1,200,000

Section 4. The following amounts are expenditures appropriated for the project:

Expenditures:

Construction Costs	\$1,135,150
Contingency Costs	\$64,850
Total Appropriations	\$1,200,000

Section 5. The Finance Officer is hereby directed to maintain within the Capital Project Fund sufficient specific detailed accounting records to provide the accounting to Town Council required by the program procedures, loan agreement and state regulations.

Section 6. Funds may be advanced from the Utility Fund for the purpose of making payments as due. Reimbursement request should be made to the grantor Agency in an orderly and timely manner.

Section 7. The Budget Officer is directed to include a detailed analysis of past and future costs and revenues on this grant project in each budget submission made to this Board.

Section 8. Copies of this grant project ordinance shall be furnished to the Town Clerk and to the Budget Officer and to the Finance Director for direction in carrying out this project

Adopted this _____ day of _____ 2019.

Johnnie Greene, Mayor

Julie A. Good, Town Clerk

AGENDA ITEM 10C

MEMO

DATE:

October 15, 2019

SUBJECT:

Financials Matters:
AMI Contract

Discussion:

Attached to this memo is a copy of a contract between Water Works/Mueller Systems and the Town of Sawmills for the purchase and installment of the AMI meter system. A copy of this contract will be forwarded to Town Attorney Terry Taylor for her to review.

Recommendation:

Staff recommends Council approve the contract with Water Works/Mueller Systems, after approval from the Town Attorney, for the purchase and installment of the AMI meter system.

AGENDA ITEM 10D

MEMO

DATE:

October 15, 2019

SUBJECT:

Financial Matters:
Refuse Truck Information

Discussion:

During the August 20, 2019, regular council meeting, the Council voted to have staff contact interested parties for in regards to the sale of two (2) of the three (3) refuse trucks that the Town currently owns: a 2009 LE 600 Mack-Low Entry Tandem, Serial Number 7E7302994 and a 2018 LR 613 Mack-Low Entry Tandem, Serial Number 7E7306229.

Information was received by September 13, 2019, at 10:00 am, as follows:

<u>Vendor:</u>	<u>Bid Amount 2009</u> <u>Mack/Heil:</u>	<u>Bid Amount 2018</u> <u>Mack/Heil:</u>	<u>Total:</u>
Carolina Environmental Systems Kernersville, NC	\$ 26,866.00	\$190,890.00	\$217,756.00
City of Lenoir Lenoir, NC	\$ 38,000.00	\$220,000.00	\$258,000.00

Recommendation:

Staff recommends Council work with the City of Lenoir to finalize the sale of the refuse trucks.



CITY MANAGER
SCOTT E. HILDEBRAN

CITY OF LENOIR
NORTH CAROLINA

MAYOR
JOSEPH L. GIBBONS

CITY COUNCIL
J. T. BEAL
T. H. PERDUE
J. I. PERKINS
T. J. ROHR
D. F. STEVENS
C. D. THOMAS
B. K. WILLIS

October 24, 2019

Town of Sawmills
Attention: Karen Clontz
4076 US Hwy 321A
Sawmills NC 28630

RE: Sealed Bid -
Two (2) Automated Refuse Trucks
City of Lenoir, North Carolina

Dear Ms. Clontz:

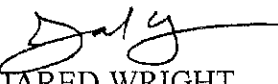
The City of Lenoir appreciates the opportunity to bid on the two (2) automated refuse trucks currently being auctioned by the Town of Sawmills. Our bids are as follows:

- 2009 LE 600 Mack – Low Entry Tandem, Serial #7E7302994: **\$38,000.00**
- 2018 LR 613 Mack – Low Entry Tandem, Serial #7E7306229: **\$220,000.00**
- **TOTAL BID for both trucks: \$258,000.00**

Additionally, we understand that the Sawmills Volunteer Fire Department, through discussions with the City of Lenoir Fire Department, has expressed interest in the forty (40) foot-length enclosed trailer currently being used for storage by the City of Lenoir Fire Department. We also understand that the Sawmills Volunteer Fire Department functions independently of the Town of Sawmills, but as a good faith effort to benefit the Town of Sawmills and larger Sawmills community, we would like to offer the trailer to the Sawmills Volunteer Fire Department for no cost (approximate \$2,500.00 value).

Again, the City of Lenoir appreciates the opportunity to submit these bids and looks forward to continuing to build upon our outstanding relationship with the Town of Sawmills. Please contact us if you have any questions regarding our bid submittal.

Sincerely,
CITY OF LENOIR
PUBLIC WORKS DEPARTMENT


JARED WRIGHT
Public Works Director

Carolina Environmental Systems, Inc.

306 Pineview Drive, Kernersville, NC 27284

2701 White Horse Road, Greenville, SC 29611

500 Lee Industrial Blvd, Austell, Ga 30168

800-239-7796

9/16/2019

**Town of Sawmills, NC
4076 US Hwy 321A
Sawmills, NC 28630
Attn: Karen Clontz**

**To whom it concerns,
Carolina Environmental Systems Inc. is pleased to make a bid on the
following 2 Mack Automated side loaders due 9/27/2019, 10AM opening.**

2009 Mack LE600 Vin # 1M2AU02C49M003002

With Heil Python automated body 7E7302994 \$ 26,866.00

2018 Mack LR613 Vin # 1M2LR06C2JM003556

With Heil Python automated body 7E7306229 \$ 190,890.00

**We at Carolina Environmental Systems, Inc. appreciate this opportunity to
bid on these two units.**

This offer is good for 45 days after opening of 9/27/2019 at 10 AM

Sincerely,



**Mark L Powell
Used equip. mgr.**

AGENDA ITEM 10E

MEMO

DATE:

October 15, 2019

SUBJECT:

Financial Matters:
Resolution Approving
Conveyance of Property to
Another Unit of Government
in North Carolina Pursuant to
G.S. 160A-274

Discussion:

In order to sale the two refuse trucks to the City of Lenoir, a Resolution Approving Conveyance of Property to Another Unit of Government in North Carolina pursuant to North Carolina General Statute 160A-274, is needed to complete the sale. A copy of the Resolution is attached to this memo.

Staff conducted the bid opening and has determined that it is in the best interest of the Town to convey the two (2) refuse trucks, a 2009 LE 600 Mack-Low Entry Tandem, Serial Number 7E7302994 and a 2018 LR 613 Mack-Low Entry Tandem, Serial Number 7E7306229, to the City of Lenoir. Said vehicles are conveyed "As Is", "Where Is" for the sum of two hundred fifty-eight thousand dollars (\$258,000.00) and the transfer from the City of Lenoir to the Town of Sawmills of a forty (40) feet-length trailer currently being used by the City of Lenoir Fire Department. Said trailer will then be donated to the Sawmills Volunteer Fire Department on behalf of the City of Lenoir Fire Department.

Recommendation:

Staff recommends Council adopt the Resolution as drafted.

Town of Sawmills
Caldwell County
Prepared by: Terry M. Taylor, Attorney at Law

**Resolution Approving Conveyance of Property to
Another Unit of Government in North Carolina
Pursuant to G.S. 160A-274**

WHEREAS, the Town of Sawmills owns a two (2) refuse trucks: a 2009 LE 600 Mack – Low Entry Tandem, Serial #7E7302994 and a 2018 LR 613 Mack – Low Entry Tandem, Serial #7E7306229; and

WHEREAS, North Carolina General Statute § 160A-274 authorizes a governmental unit in this state to exchange with, lease to, lease from, sell to, or purchase from any other governmental unit any interest in real or personal property upon such terms and conditions as the governmental unit deems wise, with or without consideration; and

WHEREAS, the Town of Sawmills has determined that it is in the best interest of the Town to convey two (2) refuse trucks to the City of Lenoir, and deems it wise to do so for the Sales Price of Two Hundred Fifty-Eight Thousand Dollars and No/100ths (\$258,000.00) and the transfer from the City of Lenoir to the Town of Sawmills of a forty (40) feet-length trailer currently being used by the City of Lenoir Fire Department.

THEREFORE, THE SAWMILLS TOWN COUNCIL RESOLVES THAT:

1. The Town of Sawmills also hereby authorize the conveyance to the City of Lenoir of the following vehicles as they are no longer needed by the Town of sawmills, that being two (2) refuse trucks: a 2009 LE 600 Mack – Low Entry Tandem, Serial #7E7302994 and a 2018 LR 613 Mack – Low Entry Tandem, Serial #7E7306229 (See copies of Titles attached as Exhibit A and B).

2. The vehicles herein described shall be conveyed “As Is”, “Where Is” for the sum of Two Hundred Fifty-Eight Thousand Dollars and No/100ths (\$258,000.00) and the transfer from the City of Lenoir to the Town of Sawmills of a forty (40) feet-length trailer currently being used by the City of Lenoir Fire Department (See the Title attached as Exhibit C) for no additional consideration.

3. The Mayor is hereby authorized to execute all documents necessary to convey the property in the manner authorized by this Resolution.

Adopted this the ____ day of October, 2019.

MAYOR:

By: _____
Johnnie Greene, Mayor

ATTEST:

Julie A. Good, Clerk

[Clerk Seal]

Approved as to Form:

Terry M. Taylor, Attorney

Karen Clontz, Finance Officer

STATE OF NORTH CAROLINA

BILL OF SALE

COUNTY OF CALDWELL

KNOW ALL MEN BY THESE PRESENTS, that CITY OF LENOIR, hereinafter referred to as "Seller," and TOWN OF SAWMILLS, hereinafter referred to as "Buyer" for and in consideration of the sum of **Two Hundred Fifty-Eight Thousand and No/100ths Dollars (\$258,000) and a forty (40) foot-length trailer currently being used by the City of Lenoir Fire Department,** paid by Buyer, the receipt of which is hereby acknowledged, has granted, bargained, sold, conveyed, transferred and delivered, and by these presents does bargain, sell, grant, convey, transfer and deliver unto the aforementioned Buyer the items set forth below:

YEAR: _____
MAKE: _____
MODEL: _____
SERIAL: _____
TITLE NO.: _____
MILEAGE: _____

Seller warrants that Seller is the legal owner of the above described property and that it is free and clear from all liens and encumbrances, that Seller will warrant and defend the title of the subject property against the claims and demands of all persons and/or entities, and that Seller will cooperate in executing any documents necessary in transferring the title (if any) to said property **"AS IS"**, with no representations or warranties as to the condition of the property, whether express or implied, except the warranty of title as set forth herein.

IN WITNESS WHEREOF, the Seller has executed this Bill of Sale as of this _____ day of _____, 2019.

SELLER:

CITY OF LENOIR:

By: _____
Name: _____
Title: _____

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public for _____ County, North Carolina, do hereby certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this _____ day of _____, 2019.

Notary Public
My Commission Expires: _____

ACCEPTED AND AGREED BY BUYER THIS _____ DAY OF _____, 2019.

BUYER:

TOWN OF SAWMILLS

By: _____
Johnnie Greene, Mayor

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public for _____ County, State of North Carolina, do hereby certify that **Johnnie Greene, Mayor of the Town of Sawmills**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this _____ day of _____, 2019.

Notary Public
My Commission Expires: _____

STATE OF NORTH CAROLINA

BILL OF SALE

COUNTY OF CALDWELL

KNOW ALL MEN BY THESE PRESENTS, that TOWN OF SAWMILLS, hereinafter referred to as "Seller," and CITY OF LENOIR, hereinafter referred to as "Buyer" for and in consideration of the sum of Two Hundred Fifty-Eight Thousand and No/100ths Dollars (\$258,000) and a forty (40) feet-length trailer currently being used by the City of Lenoir Fire Department, paid by Buyer, the receipt of which is hereby acknowledged, has granted, bargained, sold, conveyed, transferred and delivered, and by these presents does bargain, sell, grant, convey, transfer and deliver unto the aforementioned Buyer the items set forth below:

YEAR: 2009
MAKE: MACK
MODEL: LE
SERIAL: 7E7302994
TITLE NO.: _____
MILEAGE: _____

YEAR: 2018
MAKE: MACK
MODEL: LR
SERIAL: 7E7306229
TITLE NO.: _____
MILEAGE: _____

Seller warrants that Seller is the legal owner of the above described property and that it is free and clear from all liens and encumbrances, that Seller will warrant and defend the title of the subject property against the claims and demands of all persons and/or entities, and that Seller will cooperate in executing any documents necessary in transferring the title (if any) to said property "AS IS", with no representations or warranties as to the condition of the property, whether express or implied, except the warranty of title as set forth herein.

IN WITNESS WHEREOF, the Seller has executed this Bill of Sale as of this _____ day of _____, 2019.

SELLER:

TOWN OF SAWMILLS

By: _____
Johnnie Greene, Mayor

ATTEST:

Julie A. Good, Clerk

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public of _____ County, North Carolina, do hereby certify that **Julie A. Good**, personally appeared before me this day and acknowledged that she is Town Clerk of Town of Sawmills, a North Carolina Municipal Corporation, and that by authority given and as the act of the North Carolina Municipal Corporation, the foregoing instrument was signed in its name by **Johnnie Greene**, as Mayor, sealed with its corporate seal, and attested by herself as its Town Clerk.

Witness my hand and seal this _____ day of _____, 2019.

Notary Public
My Commission Expires: _____

ACCEPTED AND AGREED BY BUYER THIS _____ DAY OF _____, 2019.

BUYER:

CITY OF LENOIR

By: _____
Name: _____
Address: _____
Telephone: _____
E-Mail: _____
Tax I.D. No.: _____

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public for _____ County, State of _____, do hereby certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this _____ day of _____, 2019.

Notary Public
My Commission Expires: _____

AGENDA ITEM 12A

MEMO

DATE:

October 15, 2019

SUBJECT:

Updates:
Code Enforcement
Monthly Report

Discussion:

The attached report shows the progress that Planner Hunter Nestor continues to make throughout the town.

Recommendation:

No Council action required.

Code Enforcement Report			
Property Address	Property Owner	Issue	Notes
[REDACTED]			
[REDACTED]			
Horror Fields (4276 Helena St, Hudson	KISER-SAWMILLS INC	Fence/Buffer	Complaint made on 4/10. Property is not in compliance with conditions set but CUP. Letter sent out on 4/11. Site visit on 5/30 and owner is working to get property in compliance but still some other areas that need to be addressed. Site visit on 9/28. Property is currently in compliance with CUP. Will continue to monitor all October while Horror Fields is opened.
4200 Crotts MHP DR	Charles and Pansy Crotts	Overgrown Vegetation	Complaint made on 5/21. Deadline was 6/3. Letter came back and was resent to updated address on 5/28. A second warning letter was sent on 7/30 with new deadline of 8/9. No response and no progress as of 8/8. Call was received on 9/17 asking if this is going to be abated. Sent a final notice to all members we could identify that had a stake in property on 9/19. One of the daughters said the property was sold in 2006 and should not be in their name. Staff will research.
4476 Rural DR	Deborah Barker	Overgrown Vegetation/Garbage and Rubbish	Complaint made on 5/22. Deadline 6/11. additional letter was sent 6/20. No response and property has been mowed as of 8/13 but rest of property is still not in compliance (Garbage and Rubbish) but no other complaints have been made.
4221 US HWY 321A	Timberline Lumber CO INC	Overgrown Vegetation/Property Maintenance	Complaint Received 7/2. Original letter was sent 7/16 and no response or no progress as of 8/8. Second warning letter was sent on 8/8 with new deadline of 8/20. Some progress has been made. No other complaints have been made since original complaint.
2141 STAMEY ROAD	William and Lana Barlow	Living in RV/Camper	Complaint Received 9/27. Staff checked the property and the RV seems to be occupied. Letter was sent on 10/1. Deadline of 10/17.