

**COUNCIL MEETING
AGENDA**

**Pineville Meeting Hut
Tuesday, September 11, 2018
6:30 p.m.**



**PINEVILLE TOWN COUNCIL AGENDA
6:30 P.M. - PINEVILLE HUT MEETING FACILITY
TOWN OF PINEVILLE, NORTH CAROLINA
TUESDAY, SEPTEMBER 11, 2018**

1) Call Meeting To Order:

- a) **Pledge Allegiance to the Flag:** *(DF)*
- b) **Moment of Silence:**

2) Adoption of Agenda:

3) Approval of the Minutes from the: Regular and Closed Session Meetings of August 14, 2018 and the Work Session of August 27, 2018

4) Consent Agenda: a) *Resolution No. 2018-08 for Surplus Items;* b) *Financial Report as of August 31, 2018;* c) *Proclamation for Constitution Week and Public Power Week*

5) Public Comment:

6) Old Business:

- A. **Agreement to Exchange Property/Resolution No. 2018-09 for the Exchange of Real Property–** *(Ryan Spitzer)* The Agreement and Resolution for the Exchange of Property will be presented as a follow-up to last month's Public Hearing declaring the town's intent to exchange properties **(ACTION ITEM)**.

7) New Business:

- A. **Appointments to Boards –** *(Barbara Monticello)* To Fill Vacancies on the Planning Board, Arts and Science Council, and Mecklenburg County StormWater Advisory Board **(ACTION ITEM)**.

1. *Mr. William Chaney, currently an alternate on the Planning Board, is being recommended to fill the unexpired term of Scott Goldsmith who resigned (term exp. 12/20)*
2. *Mr. Greg Record is being recommended to fill the vacancy on the ASC Board vacated by Judy Thompson Phillips (term exp. 6/30/20)*
3. *Mr. Randy Smith is being recommended to fill the vacancy on the Charlotte-Mecklenburg Storm Water Advisory Committee (term exp. 6/30/21)*

B. Bonding Procedure Clarification (*Travis Morgan*) – Travis Morgan will provide clarification on the Town's Bonding Procedures per NCGS (**INFORMATIONAL**).

C. Staff Update:

1) Manager's Report

2) Calendar of Events

8) Closed Session - *Discussion of matters pursuant to NCGS 143-318.11(6).*

9) Adjourn:

If you require any type of reasonable accommodation as a result of physical, sensory, or mental disability in order to participate in this meeting, please contact Barbara Monticello, Clerk of Council, at 704-889-2291 or bmonticello@pinevillenc.gov. Three days' notice is required.

MINUTES

**Minutes from the Regular
and Closed Session Minutes
of August 14, 2018 and the
Council Work Session of ,
August 27, 2018.**



**MINUTES OF THE
TOWN COUNCIL MEETING OF THE
TOWN OF PINEVILLE, NORTH CAROLINA
TUESDAY, AUGUST 14, 2018**

The Town Council of the Town of Pineville met in Regular Session and Closed Session on Tuesday, August 14, 2018 at 6:30 p.m. at the Hut Meeting Facility in Pineville.

ATTENDANCE

Mayor: Jack Edwards
Mayor Pro-Tem: David Phillips
Council Members: Debbie Fowler, Melissa Davis and Joe Maxim
Town Manager: Ryan Spitzer
Planning Director: Travis Morgan
Planner: Brian Elgort
Town Clerk: Barbara Monticello

CALL TO ORDER

The meeting was called to order by Mayor Edwards at 6:34 p.m. Anyone that wished to speak on an item was asked to sign the speaker's list.

PLEDGE OF ALLEGIANCE TO THE FLAG

Council Member Melissa Davis led the group in the Pledge of Allegiance.

MOMENT OF SILENCE

Mayor Edwards called for a general moment of silence for first responders, police, fire, and military personnel. Planning and Zoning Director, Travis Morgan, introduced the new Town Planner, Brian Elgort.

ORDER OF BUSINESS:

Adoption of the Agenda:

Mayor Edwards asked that item 8A be moved up to be presented before the Splash Pad item under Old Business. Council Member Debbie Fowler moved to approve the agenda with the change, seconded by Mayor Pro Tem David Phillips. There were ayes by all and the agenda was adopted with the change.

Approval of the Minutes from the Regular Meeting of July 10, 2018 and the Regular and Closed Session from the Work Session of July 23, 2018 and the Special Called Meeting of August 1, 2018.

Hearing no changes, a motion was made by Council Member Melissa Davis and seconded by Council Member Debbie Fowler to approve all sets of minutes. There were ayes by all and all sets of minutes were approved.

Consent Agenda:

The only item on the Consent Agenda was: a) *Police Department Capital Outlay Item*. Town Manager, Ryan Spitzer explained that the police department wanted to purchase a Ford F150 to replace the one Chris Delux drives. There was already money in the budget under asset forfeiture funds to cover the cost of it. Mayor Pro Tem David Phillips moved to approve the purchase of the vehicle, seconded by Council Member Melissa Davis. There were ayes by all and the motion passed 4-0.

PUBLIC COMMENT:

Jenna Cuddeback – Ms. Cuddeback introduced herself as a senior at South Meck HS interning at Pineville Neighbors Place. She stated that Pineville Neighbors Place had their Grand Opening Ribbon Cutting on July 18th at their new building and invited anyone that hadn't been to visit yet to come and check out their new facility. She noted that Pineville Neighbor's Place had helped a total of 116 people so far and that they were getting ready to assist Sterling Elementary School with school supplies as well as partner with Pineville Police for Shop With a Cop.

PUBLIC HEARINGS:

- A. Town's Intent to Exchange Property (Ryan Spitzer).** A motion was made and seconded to open the Public Hearing. There were ayes by all. Town Manager, Ryan Spitzer, made a presentation for the public to explain the Johnston Drive realignment project and the town's intent to swap properties with Mr. Goode in connection with that realignment. He explained that the town currently owns the property that Luna occupies and Mr. Goode owns the property where Oowee BBQ is. In order for the realignment to occur, the town needs to acquire the Goode property as the street will be realigned to go through it. The NCGS requires the town to hold a public hearing to declare its intent to carry out the property exchange.

An agreement has been worked out and is being finalized for the exchange of properties between the town and Mr. Goode. Mr. Spitzer added that we won't get funding from the state for a while so the BBQ restaurant can remain until the fall of 2019. Additionally, it was Mr. Goode's intention to eventually demolish the house that Luna occupies to construct a commercial building at some point.

Council Member Melissa Davis was disappointed in losing the house because of the character it added to Main St. She asked if the home could be moved elsewhere but Mr. Spitzer indicated that structurally the building was not in the best shape so it may not survive a move. Planning Director, Travis Morgan, added that if the swap was approved, it meant the town only had to purchase two properties, not three, nor did it need to use eminent domain to take any property.

Hearing no comments from the public and no further question or comments from Council, Mayor Pro Tem David Phillips moved to close the public hearing with Council Member Debbie Fowler seconding the motion. There were ayes by all and the public hearing was closed at 6:49 p.m. Mr. Spitzer added that action would be taken at the next Regular Council Meeting in September.

NEW BUSINESS:

- A. Presentation by Angela Lee, Director of Charlotte Water.** Ms. Angela Lee, Director of Charlotte Water, was present to provide an update and present a short video. Ms. Lee prefaced the video by stating that Charlotte Water was the largest water/waste water facility in North Carolina. It had a AAA rating, no water violations and a high quality of water. Charlotte Water's goal is to rehabilitate the infrastructure which is quite old in some areas so that it can continue to provide safe water to its customers for years to come.

OLD BUSINESS:

- A. Splash Pad (Ryan Spitzer).** Town Manager Spitzer, stated that three bids had been received for the construction of the splash pad with the lowest bid by Fairwood Construction at \$400,895. This amount was actually \$82,894.60 over the previously estimated costs, identifying changing market conditions, increased construction in the area and increased costs of materials as the reasons for the difference. He added that after speaking with an engineer, all the projects he was working on had come in over budget by \$100,000 or more.

Mr. Spitzer reviewed the timeline of events that have occurred over the course of the project so far to explain why the project was not on schedule including a redesign of the bathroom, infrastructure and permitting issues and

procedural and approval delays. There was also a change in removing three metal benches and replacing them with a stone seat wall. The splash pad would not be built in time to open this year; it will open next year. He further explained that at the time the town applied for the grant to fund this project, we did not consult first with an engineer or design construction company to determine if there were any issues with the site itself and only found out about infrastructure issues when well into the project. He pointed out that the difference in the original estimate and the bid quote was only a 12% variance.

Mr. Spitzer reiterated that the price that Fairwood Construction presented was a binding figure. Additionally, they were provided with 500 pages of project manual information and a soil study. They have indicated that it would take 135 days to construct the splash pad, not including any weather delays, and the penalty for going over that limit would be \$500 per day.

Mr. Spitzer proposed using \$50,000 of the \$100,000 budgeted for concrete work out of the CIP fund (leaving \$50,000 in it), remove two of the splash pad features at \$15,000-\$20,000, remove the benches and replace with the stone seat wall at a savings of \$5,000 and the balance remaining would only be \$13,000. This could easily be absorbed by the Park and Recreation and Cultural & Tourism budgets during the next fiscal year.

Council Member Debbie Fowler pointed out that Council had opted to add two additional features from the original proposed plan so it really wasn't a matter of removing two features – it was more like going with the original plan before Council had agreed to add the two additional features. Mr. Spitzer added that Fairlawn put both a bench and seat wall in their quote and all the town was doing was removing the benches to save some money. He also stated that Benesch would be responsible for keeping track of any bad weather days and that Fairwood would start the work laying the concrete pads but Vortex would finish the project with the actual features. Vortex's share of the cost was \$295,000 with Fairwood's costs being the rest.

Discussion followed with Council Members expressing their concerns. Council Member Melissa Davis stated that there were delays with this project from the start beginning with Woolpert who held the project up twice. Benesch originally stated it would take 10 months total from start to finish but we are so far off that schedule and the budget. She stated that we should have done the splash pad before we did the dog park so we would have had more money to spend on the splash pad. Additionally, she was concerned about using the concrete money to help pay for the pad because there was also a need to redo the sidewalks. She was disappointed in the delays and overages.

Mayor Pro Tem David Phillips was also concerned about the delays and the amount of money being spent. The project had taken way too long from the time we applied for the grant to get it off the ground as well as taking on projects that continue to escalate in cost. He stated that he "guaranteed the \$18,000 contingency money will be used," adding that there would be overages both on Fairwood's end as well as Vortex's end unless both sign a contract to build it for the amount quoted and not one penny more. He did not understand the way the contract was written and wanted to see one that was straight forward stating that they would build the splash pad for the amount they said they would. Additionally, he was concerned about the recent flooding at the Belle Johnston Center and how much that would cost to repair.

Mr. Spitzer responded that Fairwood would have to provide bond money in case anything should go wrong, they go bankrupt or walk away from the project. That is what bond money was for. Additionally, if they go over the contingency amount of money, he would have to go before Council for direction. Council Member Joe Maxim was not comfortable in delaying the splash pad project anymore. The grant had a 3-year deadline that if not used by October, 2019, the money would have to be returned.

Council Member Debbie Fowler was concerned that we had an engineer that knew if everything was being done correctly. In the past we asked to have one to oversee other projects but never got one. Mr. Spitzer assured her that we did have one now.

Council Member Joe Maxim asked if Council could get regular monthly updates. Mr. Spitzer stated that we could have Benesch come in each month to provide an update. Mr. Maxim added that we were doing better than we had

in the past having a more controlled handle on projects than previously. Mayor Edwards added that if we refer to the horrors of the past, we'll never have another contractor here again. Mr. Spitzer stated that the contractor was ready to get started on the project. Council Member Fowler stated that being we had an engineer on this project, she was ready to move forward. She did not want to hold the town back from completing this project nor did she want to delay it any longer. Council Member Maxim agreed and added that the town's financial health was very strong and he was ready to vote.

Council Member Joe Maxim moved to accept and approve the splash pad bid from Fairwood Construction as presented seconded by Council Member Debbie Fowler. Council Member Melissa Davis and Mayor Pro Tem David Phillips voted against approving it. Vote was two in favor, two against with Mayor Edwards breaking the tie by voting in favor of approving the bid from Fairwood to move forward with the splash pad as presented.

- B. Resolution No. 2018-07 in Support of NCDOT Abandoning a Remnant of Land (Travis Morgan)** – Planning and Zoning Director, Travis Morgan, stated there was a small, triangular wedge of land along Old Pineville Road and Cadillac Street that was not being used. He thought it may be beneficial to the town if the NCDOT abandoned that sliver of land to the town. He added that it was usually done at low or no cost to the town.

Hearing no questions or comments on the matter, Council Member Debbie Fowler moved to approve Resolution No. 2018-07 to abandon the triangular remnant of Old Pineville Road, seconded by Council Member Melissa Davis. There were ayes by all and the resolution was adopted 4-0.

- C. Tax Collectors Settlement and Order of Collection (Richard Dixon)**—Finance Director, Richard Dixon, explained that each year Mecklenburg County sends us a settlement statement of the taxes they collected for the town, the percentage of the total amount collected and an Order of Collection to designate them as our tax collector for the coming fiscal year. The Settlement Statement is required to be accepted into the town's official records while the Order of Collection must be signed and returned to the county. Council Member Melissa Davis pointed out that 99.81% of the taxes due from Pineville were actually collected by the county; a very favorable percentage worth mentioning. All Agreed. Council Member Debbie Fowler moved to accept the Settlement Stated and approve Mecklenburg County as our tax collector for the coming year. Mayor Pro Tem David Phillips seconded the motion and there were ayes by all.

- D. Staff Update:** Mr. Spitzer provided an update on the following:

- York Development's due diligence deadline was coming due on September 9th.
- Lending Tree is moving closer toward meeting their due diligence timeframe.
- Issue with our bond procedures will need to be changed to comply with state statutes.
- Engineer determined that a turn lane from Franklin St. was doable.

Mr. Spitzer anticipated there would be a Work Session for August. At 8:23 p.m. Mayor Edwards called for a break before moving into Closed Session.

CLOSED SESSION: Upon the motion made by Council Member Debbie Fowler and seconded by Mayor Pro Tem David Phillips, and unanimously approved, Council entered Closed Session. Mr. Andrew Trump was present to provide an update on developments relating to a real estate transaction. Closed Session concluded at 9:16 p.m. Council Member Joe Maxim moved to enter back into Open Session, seconded by Mayor Pro Tem David Phillips. There were ayes by all and Council went back into Open Session.

OPEN SESSION: Once back in Open Session Council Member Joe Maxim moved to approve the town paying \$30,000 for an expedited Brownsfield Agreement. Mayor Pro Tem David Phillip seconded the motion. There were ayes by all and the motion passed unanimously.

ADJOURNMENT

At 9:18 p.m. a motion was made by Council Member Debbie Fowler and seconded by Mayor Pro Tem Phillips to

adjourn the meeting. There were ayes by all and the meeting adjourned.

David Phillips, Mayor Pro Tem

ATTEST: _____
Barbara Monticello, Town Clerk



**MINUTES OF THE
TOWN COUNCIL WORK SESSION OF
MONDAY, AUGUST 27, 2018 · 6:00 P.M.
PINEVILLE COMMUNICATIONS, 118 COLLEGE ST.**

The Town Council of the Town of Pineville met in a Work Session on Monday, August 27, 2018 at 6:00 p.m. at the Pineville Communications Bldg. at 118 College St. in Pineville.

ATTENDANCE

Mayor: Jack Edwards

Mayor Pro-Tem: David Phillips

Council Members: Melissa Davis, Joe Maxim and Debbie Fowler

Town Manager: Ryan Spitzer

Town Clerk: Barbara Monticello

CALL TO ORDER

Mayor Edwards called for a motion to open the Work Session. Mayor Pro Tem David Phillips moved to open the meeting at 5:59 p.m., seconded by Council Member Melissa Davis. There were ayes by all and the meeting was opened.

DISCUSSION ITEMS:

- A. Relocation of Electric department Storage Space** – The floor was turned over to Stuart Britt, Interim System Manager for the Electric Department. Mr. Britt informed Council that with the sale of town property and multiple construction sites in Pineville, Pineville Electric has lost the space where they currently store their poles, vehicles and other equipment. They were losing about two acres of land and were in search of property big enough to accommodate all of their items. Three potential properties had been identified:

- There was approximately ½ acre of town-owned land adjacent to the electric warehouse/Pineville Telephone Bldg.
- There was property located on Hill Street which had good space but large trucks making deliveries of poles and other equipment would have a very difficult time maneuvering the trucks at that site.
- There is a 70-acre parcel of land by the cell tower behind the mill that has plenty of room. The terrain slopes enough to drain well and away from the equipment. They would like to occupy five acres out of that site along the railroad R-O-W to store equipment and then plan, in stages, for future indoor storage and eventually an operations center.

Mr. Britt stated that five acres would be enough room to grow and the project could be done in phases, with the immediate need being a metal building to store the sensitive materials in. Brief discussion ensued regarding the possibility of moving the current building to the new site but it was decided that erecting a new metal building probably wouldn't be too much more than the cost to move it. Council Member Melissa Davis stated that she would just like to know how much it would cost to upfit the land for the Electric Department's use before any decision was made on it. All agreed that option #3 was the way to go and all agreed to move forward with it getting estimates on what it would cost to develop the site. Council Member Debbie Fowler asked if the road leading into the area would be adequate for the delivery trucks to come back and forth on without causing damage to the road. Some thought that the town had paid extra for a thicker base of asphalt but Town Manager, Ryan Spitzer, would check on that to be sure.

- B. Franklin Street Turn Lane** – Mr. Spitzer provided a hand-out to Council regarding the installation of a right-hand turning lane from Franklin St. onto Main St. Renderings were provided as well as a quote from Red Clay Industries, Inc. Three options were presented showing various widths of the right and left turning lanes. Town Manager Spitzer favored option #3 the most with each of the lanes being 10 ft. wide. He reminded the group that Meritage Homes was putting \$75K toward road improvements and \$25K toward the quiet zone project. This money could be used to pay for the additional turning lane. The townhome developer going in on the corner of Cranford and Main was doing some side walk improvements but no road improvements.

Mr. Spitzer stated that one quote had already been obtained but that two more needed to be gotten. He confirmed again that we would not be using any town money for this project – strictly the money that comes from Meritage Homes. The quote that was received from Red Clay was less than the \$75,000 the town would get from Meritage.

- C. Space Needs Analysis** – Mr. Spitzer received two proposals for a Space Needs Analysis for a new Town Hall. Fryday and Doyme provided one proposal for \$21,500 and Stewart, Cooper, Newell provided one at a cost of \$12,200. He was looking to put everything, including Pineville Telecommunications and Electric under one roof and that DFI was going to help by looking into properties where a new town hall could be built should one not be built on the old mill site. Mr. Spitzer added that this was just for a space analysis and not for architectural renderings. Council was in agreement to move forward using Stewart, Cooper, Newell.

- D. Staff Updates:** Mr. Spitzer stated that DEQ would be in town in September to do a site assessment for the Brownfields program. Council was pleased they were expediting the process. Lending Tree's CEO will be touring the mill on Tuesday, August 28th at 8:00 a.m. The Salary Study project was going to be kicked off on the 28th as well. This will be approximately a three month process to complete. Mr. Spitzer was hopeful that the findings of the study would be presented at the November Work Session. Susan Manning was currently working on one for Huntersville and Cornelius and had recently completed one for Matthews. He added that Council had approved a Salary Plan for employees in 2014.

Mr. Spitzer reminded Council about the off-site strategic planning retreat planned for October 25th and also asked them to think about where the best place would be to put the Christmas tree and hold the lighting ceremony. Mr. Spitzer polled Council on what type of device they wanted to move to – iPads, laptops or Surface Pros? After a brief discussion Council agreed that Surface Pros would be the best way to go. He was going to order them for all to use for Council Meetings, emails, etc.

Mayor Pro Tem David Phillips asked if Tasers and air cards were purchased for the police department. Mr. Spitzer stated that they were. Council Member Melissa Davis asked if GPS could be installed on the police vehicles but Mr. Spitzer stated that it was very expensive to do that. She then asked if they could be tracked by their phones which was certainly a possibility.

Council Member Joe Maxim asked Council to be mindful of the tax revaluation and any subsequent tax increases and the effect it would have on the elderly and Pineville communities in general. A brief discussion took place regarding tax exemption for the elderly. Council Member Davis pointed out that there was a tax exemption for the elderly that few people knew about.

ADJOURNMENT: A motion was made and seconded to adjourn the meeting. There were ayes by all and the meeting adjourned at 7:57 p.m.

David Phillips, Mayor Pro Tem

ATTEST:

Barbara Monticello, Town Clerk

CONSENT AGENDA ITEMS

- a) Resolution No. 2018-08 for
Surplus Items*
- b) Financial Report as of 8/31/18*
- c) Proclamations for Constitution
Week and Public Power Week*



RESOLUTION NO. 2018-08

**RESOLUTION OF THE TOWN OF PINEVILLE, NORTH
CAROLINA DECLARING SURPLUS ITEMS FOR SALE VIA
ELECTRONIC AUCTION AND/OR DISPOSAL VIA
DONATION OR RECYCLE**

WHEREAS, G.S 160A-265 authorizes the Town Council to dispose of surplus property and G. S. 160A-270 (c) authorizes the sale of surplus property by means of electronic auction; and

WHEREAS, the Town Manager, along with Department Heads, have declared surplus and unusable personal property as listed in "Exhibit A";

NOW, THEREFORE BE IT RESOLVED, that the Mayor and Town Council hereby authorize the Town Manager to dispose of the listed items by utilizing the on-line internet auction services of Public Surplus and/or Gov Deals and the Town Clerk to dispose of other surplus items via donation or recycling of such items. The Town Manager and Town Clerk shall have the right to add or delete from the properties listed and any items not sold may be disposed of by any others means available, including sale at public auction, donation to non-profit organization, or destruction, whichever is deemed to be in the best interest of the Town.

Adopted this _____ day of September, 2018.

ATTEST:

SEAL:

David Phillips, Mayor Pro Tem

Barbara Monticello, Town Clerk

EXHIBIT "A"

Surplus Property for Auction, Donation, Recycling, Destruction, Sale

Surplus Items

QTY	DEPT.	Description	SERIAL #	HOW DISPOSED OF	EFFECTIVE DATE
	PW		Production # 6259908013/Production	Online Auction	09/14/18
1		Sase FR200 Scarifier	Year - 1999		
	PW	Tecomec Type 185 Mini Chainsaw		Online Auction	09/14/18
1		Sharpener	Model #06 1996		

Memorandum



To: Mayor and Town Council
From: Barbara Monticello
Date: 9/5/2018
Re: Consent Agenda Item: Proclamations

CONSTITUTION WEEK

Constitution Week is celebrated every September and a proclamation is presented each year as a reminder to Americans of the anniversary of the drafting of the Constitution of the United States. This year our Constitution will be 231 years old and with September 17th designated as Citizenship Day, it's the perfect time to reflect upon the privilege of being an American.

PUBLIC POWER WEEK

The attached proclamation recognizes the advantages city-owned electric utility services provide to its many customers across the area. More than 70 public power communities serve more than 500,000 residential, commercial, and industrial customers in North Carolina alone. Electricities plays a key role in reminding us to recognize the hard work and effort of employees that provide reliable electricity, excellent customer service and the prompt restoration of service by promoting October 7-13, 2018 as Public Power Week. As in the past, Pineville Electric will be celebrating with promotional give-a-ways during the week as we pay tribute to those that keep the power going.



**A PROCLAMATION BY
THE MAYOR PRO TEM OF PINEVILLE, NC,
IN HONOR OF CONSTITUTION WEEK, 2018**

WHEREAS, September 17, 2018 marks the two hundred and thirty-first anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

WHEREAS, it is a privilege and a duty of the American people to commemorate the anniversary of the drafting of this magnificent document with appropriate ceremonies and activities, and;

WHEREAS, all citizens are urged to study the constitution and its historical importance to the people of this great nation, and;

WHEREAS, reflect upon that privilege of being an American with all the rights and responsibilities with which that privilege comes, and;

WHEREAS, Public Law 915 guarantees the issuance of a proclamation each year by the President of the United States of America designating September 17th through September 23rd as Constitution Week, and;

**NOW, THEREFORE, I, MAYOR PRO TEM DAVID PHILLIPS DO
NOW PROCLAIM**, September 17th through September 23rd, 2018 as

CONSTITUTION WEEK

IN WITNESS WHEREOF, I have hereunto set my hand and caused the **GREAT SEAL OF PINEVILLE** to be affixed on this 11th day of September in the year of our Lord two thousand and eighteen.

Mayor Pro Tem, David Phillips



PUBLIC POWER WEEK

October 7-13, 2018

Powering Strong Communities

TOWN OF PINEVILLE PROCLAMATION DECLARING OCTOBER 7-13, 2018 AS PUBLIC POWER WEEK IN PINEVILLE, NC

WHEREAS, the Town of Pineville provides reliable electricity to its citizens; and

WHEREAS, the citizens of Pineville are consumers and owners of their public power systems and exercise local control over utility operations and policies; and

WHEREAS, our employees are dedicated to serving the neighborhoods of Pineville; and

WHEREAS, our electric system is a community asset that contributes to the well-being of citizens by providing safe and reliable power, excellent local customer service and economic development opportunities; and

WHEREAS, our community is one of more than 70 public power cities and towns in North Carolina, and more than 2,000 public power systems in the United States;

I, THEREFORE, DO NOW HEREBY PROCLAIM the week of October 7TH through October 13TH, 2018 as "Public Power Week" in an effort to promote public power and those who work in our cities and towns to provide the best possible electric service for our citizens.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the **GREAT SEAL OF PINEVILLE** to be affixed on this 11TH day of September in the year of our Lord two thousand and eighteen.

Mayor Pro Tem David Phillips

Town of Pineville
Budget vs. Actual
8/31/2018

	<u>Budget</u>	<u>Actual</u>	<u>% of Budget</u>
Revenues			
Property Tax	\$ 6,475,000	\$ 5,859	0.09%
Prepared Food Tax	625,000	-	0.00%
Room Occupancy	590,000	110,342	18.70%
Franchise Tax	900,000	-	0.00%
Sales Tax	1,200,000	161,778	13.48%
Storm Water	405,000	66,620	16.45%
Powell Bill	201,760	-	0.00%
Other	1,204,346	399,471	33.17%
Appropriated F/B - Cultural Reserve	68,000	68,000	100.00%
Appropriated F/B - Restricted Police	166,000	166,000	100.00%
Appropriated F/B General	571,000	571,000	100.00%
Total	\$ 12,406,106	\$ 1,549,070	12.49%
Expenditures			
Governing Board	\$ 210,861	\$ 83,656	39.67%
Administration	780,074	125,387	16.07%
Zoning	304,513	46,263	15.19%
Police	5,136,461	942,363	18.35%
Fire	2,037,600	211,917	10.40%
Public Works	763,569	124,941	16.36%
Powell Bill	469,000	19,482	4.15%
Storm Water	357,924	59,833	16.72%
Sanitation	437,750	67,528	15.43%
Recreation	469,851	98,499	20.96%
Cultural/Tourism	1,334,503	290,327	21.76%
Cemetery	4,000	-	0.00%
Contingency	100,000	-	0.00%
Total	\$ 12,406,106	\$ 2,070,195	16.69%

Town of Pineville
Electric Fund
8-31-2018

	<u>Budget</u>	<u>Actual</u>	<u>% of Budget</u>
Revenues			
Electric	12,984,851	2,750,405	21.18%
Expenditures			
Administration & Billing Support	468,371	109,882	23.46%
Purchased electricity	9,146,980	2,080,333	22.74%
Operations and Maintenance	3,309,500	276,623	8.36%
Total	12,924,851	2,466,838	19.09%

Town of Pineville
ILEC Telephone Fund
8/31/2018

	<u>Budget</u>	<u>Actual</u>	<u>% of Budget</u>
Revenues			
Revenues	1,604,540	183,103	11.41%
Telephone Reserves	1,510,610	1,510,610	100.00%
Total Revenue	<u>3,115,150</u>	<u>1,693,713</u>	54.37%
Expenditures			
Operating Transfer Out	499,357	-	0.00%
Operating Expenses	1,216,043	195,191	16.05%
Plant under Construction	<u>1,399,750</u>	<u>8,415</u>	<u>0.60%</u>
Total	<u>3,115,150</u>	<u>203,606</u>	6.54%

Town of Pineville
CLEC Telephone Fund
8/31/2018

	<u>Budget</u>	<u>Actual</u>	<u>% of Budget</u>
Revenues			
Revenue	999,254	166,302	16.64%
Transfer from ILEC	499,357	499,357	100.00%
Total	<u>1,498,611</u>	<u>665,659</u>	44.42%
Expenditures			
Operating Expenses	1,347,211	152,145	11.29%
Plant under Construction	<u>151,400</u>	<u>3,120</u>	<u>2.06%</u>
Total	<u>1,498,611</u>	<u>155,265</u>	10.36%

Town Of Pineville
Johnston Road Realignment
8/31/18

	FY17	FY18	FY19	Total Project	Project Budget
<u>Road Realignment Revenue</u>					
DOT grant	-	-	-	-	
General Fund Balance				1,957,000	1,957,000
Total Road Realignment Revenue	-	-	-	1,957,000	1,957,000
<u>Road Realignment Expense</u>					
Land/Building	-	731,228		731,228	725,000
Engineering	-	74,089	12,917	87,006	307,000
Construction	-	-		-	925,000
Total Road Realignment Expense	-	805,317	12,917	818,234	1,957,000

Town Of Pineville
Splash Pad/Dog Park
8/31/18

	FY17	FY18	FY19	Total Project	Project Budget
Cultural & Tourism Reserves	-			361,460	361,460
Part F Grant	-	-	28,076	361,460	361,460
Total Part F Grant Revenue	-	-	28,076	722,920	722,920
Part F Grant Expense					
6201.7200.70	32,656	61,816	3,296	94,472	722,920
Total Part F Grant Expense	32,656	61,816	3,296	94,472	722,920

OLD BUSINESS

- A. Agreement and Resolution No. 2018-09 for the Exchange of Real Property.**

Memorandum



To: Mayor and Town Council
From: Ryan Spitzer
Date: 9/7/2018
Re: Property Swap for Road Realignment

Overview:

Town Council held a Public Hearing on August 14, 2018 to receive public comments on the potential property swap. There was no public comment on this topic and Council did not raise any concerns.

The agreement between the Town and Mr. Goode is currently in its final form except for the date at which the Town will abandon Johnston Drive. Instead of a date, I am working with the attorney to have it contingent on a construction milestone. The change noted previously is not material to the contract and approval can happen at this Council Meeting. If the agreement is not approved, the Town may have to advertise for another public hearing depending on the length of time before approval. While the construction is not anticipated to begin until late 2019 and end fall/winter 2020, NCDOT requires to the Town to amass the right-of-ways prior to acceptance and construction.

Background

The Johnston Dr. street realignment project is moving forward. Staff is presenting at the August 15, 2018 MPO meeting a revised budget scope for the project based on feedback from DOT. This step needs to happen to provide the state and federal funding. The proposed, updated, timeline for this project has the completion in winter of 2020.

As part of the process, the town needs to amass the necessary properties for the construction of the road as well as the right-of-ways. There is still one property that needs to be acquired and Mr. Goode owns it. By obtaining this property, the project can proceed to finalized plans and be put out to bid.

Town Staff is working on an agreement with Mr. Roy Goode to swap property the town owns for his property for the construction of the Johnston Dr. realignment. Both of the current parcels are 0.62 acres with the resulting acreage of the front property, after street realignment being .43 acres. Mr. Goode has said he is fine with a property swap, but with the understanding that he will want to put a commercial business where the house is located.

Attachments:

Resolution
Contract

Recommendation:

Approve the Resolution for the property swap.



**RESOLUTION NO. 2018-09
A RESOLUTION BY THE TOWN COUNCIL
OF THE TOWN OF PINEVILLE, NC,
AUTHORIZING AN AGREEMENT TO EXCAHNGE PROPERTY**

WHEREAS, the Town Council of the Town of Pineville, NC, states its intention to authorize the exchange of certain town-owned property for certain property owned by Montgomery Management, LLC , of the City of Charlotte, NC; and

WHEREAS, the real property to be exchanged involves the following tracts of land; and

WHEREAS, the Town of Pineville’s land is approximately a .43-acre tract of land located at the corner of Johnston Dr. and Main St., Pineville and also known as Parcel ID 221-064-25, Pineville Tax Maps, valued at \$410,000; and

WHEREAS, the property of Montgomery Management, LLC is approximately a 0.624-acre tract of land located at 207 Johnston Drive, Pineville and also known as Parcel ID 221-064-26, Pineville Tax Maps, valued at \$445,700; and

WHEREAS, the exchange will be an even trade and no other consideration will change hands.

WHEREAS, the Town Council of the Town of Pineville declared its intention to exchange real property at a public hearing conducted at its regular meeting held on August 14, 2018; and

WHEREAS, the Town Clerk for the Town of Pineville had published the notice required by G.S. 160A-271, 10 days prior to the date of the meeting on August 14, 2018.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Pineville, NC, that it authorizes the Town Manager of the Town of Pineville, NC, to enter into an Agreement to Exchange Property with Montgomery Management, LLC, adopted this _____ day of September, 2018.

Mayor Pro Tem, David Phillips

AGREEMENT TO EXCHANGE PROPERTY

THIS AGREEMENT TO EXCHANGE PROPERTY (“**Agreement**”) is made this _____ day of _____, 2018, (“**Effective Date**”) by and between THE TOWN OF PINEVILLE, a municipal corporation (“**the Town**”) and MONTGOMERY MANAGEMENT, LLC, a North Carolina limited liability company (“**Montgomery**”).

WITNESSETH:

WHEREAS, the Town desires to improve land use, street connectivity, and traffic for the long-term needs of the Town through development and redevelopment in the Downtown Core District; and

WHEREAS, the Town is the owner of that certain approximately 0.629 acre tract of land and improvements located at 237 Main Street, Pineville, North Carolina and being all of Mecklenburg County Tax Parcel No. 221-064-25, an approximately 0.43 acre portion of which is more particularly described or shown on Exhibit A attached hereto and incorporated herein by reference (such portion described or shown on Exhibit A being hereafter defined as the “**Main Street Property**”); and

WHEREAS, Montgomery is the owner of that certain approximately 0.624 acre tract of land and improvements located at 207 Johnston Drive, Pineville, North Carolina and being all of Mecklenburg County Tax Parcel No. 221-064-26 (“**Johnston Drive Property**”) which is more particularly described on Exhibit B attached hereto and incorporated herein by reference; and

WHEREAS, the Town desires to acquire the Johnston Drive Property to facilitate the relocation, improvement and expansion of Johnston Drive (“**New Right of Way**”) substantially as shown on the site plan attached hereto as Exhibit C and incorporated herein by reference; and

WHEREAS, Montgomery is willing to convey the Johnston Drive Property to the Town in exchange for the Town conveying to Montgomery the Main Street Property subject to certain conditions; and

WHEREAS, the Town and Montgomery wish to exchange property under the terms and conditions set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged and agreed, and in consideration of the recitals above, which are incorporated herein, and the premises and the mutual representations, covenants, undertakings and agreements hereinafter, the parties agree as follows:

1. DEFINITIONS.

(a) The Town and Montgomery are sometimes herein individually referred to as “**Party**,” and jointly referred to as the “**Parties**.”

(b) The Main Street Property and Johnston Street Property are sometimes individually referred to hereinafter as the “**Property**” or collectively as the “**Properties**” and shall include to the Grantor Party’s right, title, and interest (if any) in (i) all improvements and fixtures located on the Property, including all buildings and other structures on the Property, all parking lots, walkways and other paved areas on the Property, (ii) any easements, rights of way, and any and all other rights appurtenant to the Property, (iii) any guarantees or warranties relating to the Grantor Property, (iv) all entitlements, development rights,

permits, approvals and other tangible or intangible property related to the Grantor Property, and (v) with respect to the Main Street Property, all of the Town's interest as landlord under that certain office lease for the Main Street Property (the "Lease").

(c) A party who is intending to convey title to a Property at Closing is sometimes referred to hereinafter as "Grantor Party" and a party who is intending to accept title to a Property at Closing is sometimes referred to hereinafter as "Grantee Party."

2. VALUATION OF EXCHANGE PROPERTIES. For purposes of the exchange to be effected under this Agreement, the Parties agree the value of the Main Street Property is equal to the value of the Johnston Drive Property, provided that the Main Street Property can be re-developed in accordance with the Montgomery Intended Use as set forth in Section 3.

Neither party shall pay the other any money to settle any difference in the values of the parcels.

3. EXCHANGE TERMS. Subject to the terms and conditions set forth herein, Montgomery will convey the Johnston Drive Property to the Town and the Town will convey the Main Street Property to Montgomery. At closing, the Grantor Party will execute and deliver a Special Warranty Deed conveying marketable title to the Exchange Property to Grantee Party. Montgomery shall convey the Johnston Drive Property to the Town together with any easements or restrictions of record which do not interfere or prevent the Town from utilizing it for the relocation of Johnston Drive as Shown on Exhibit C attached hereto and to re-develop the balance thereof in accordance with the Downtown Overlay District plans, but free and clear of all liens, encumbrances, encroachments and special assessments levied or assessed. The Town shall convey the Main Street Property to Montgomery together with any easements or restrictions of record which do not interfere or prevent Montgomery from (i) continuing to lease the current building located thereon under the Lease or under any replacement lease, and (ii) re-developing the Main Street Property for commercial purposes with a minimum of 10,000 square feet of space on a one-story building thereon, with a minimum of 75% of road frontage on Main Street, and with a minimum of 25 parking spaces (collectively, the "**Montgomery Intended Use**") , but free and clear of all liens, encumbrances, encroachments and special assessments levied or assessed.

4. DEDICATIONS AND EASEMENTS. After the Effective Date, but prior to closing, Grantor Party shall not dedicate, gift, transfer, mortgage or convey any interest in Grantor Party's Exchange Property without written consent from Grantee Party, which may be withheld for any reason.

5. JOHNSTON STREET. Parties acknowledge that the relocation, improvement, and expansion of Johnston Drive is a project in process and pending final approval from the Town, the boundary lines of the Main Street Property may be required to change. If required by such governmental authorities (excluding the Town), the Town may not alter, reduce, change or relocate the New Right of Way in a way that affects the boundaries of the Main Street Property without the prior written approval of Montgomery. Parties agree that they will at all times diligently and in good faith cooperate with and assist each other in efforts to complete the New Right of Way as expeditiously as possible, which may include the execution of easements, rights of way, deeds, agreements, or other documents required to facilitate the completion of the New Right of Way.

Upon completion of the New Right of Way, The Town shall cause that certain portion of Johnston Drive that begins at or near the northern boundary of the Johnston Drive Property and extends to Main Street to be abandoned to Montgomery. Montgomery hereby agrees to accept said abandonment from the Town. The Town hereby represents and warrants to Montgomery that (i) no governmental agencies or third parties can prevent the abandonment of said portion of Johnston Drive, (ii) upon such abandonment, title to the prior right of way shall automatically vest in Montgomery, (iii) after such abandonment, the prior

right of way area may be included and used in the re-development of the Main Street Property in accordance with the Montgomery Intended Uses, subject to compliance with the Pineville downtown overlay district guidelines, (iv) the Town will not condemn and additional land owned by Montgomery in connection with the completion of the New Right of Way, and (v) the Town will complete the New Right of Way and abandon said portion of Johnston Drive on or before November 1, 2020. The foregoing representations and warranties shall survive the closing and delivery of the deed.

6. TITLE SEARCH (The Town). Commencing on the Effective Date, and for a period ending twenty (20) days thereafter at 5:00 p.m. Eastern Standard Time (the "**Inspection Period**"), the Town shall have the right to conduct a title examination of the Property and obtain a commitment or binder for issuance of an owner's title insurance policy issued by a title insurance company of the Town's choice. The Town shall have until the expiration of the Inspection Period to provide Montgomery with written notice of the Town's objections to the title of the Property, if any (the "**Title Objections**"). The Town's failure to timely provide Title Objections to Montgomery shall be deemed a waiver of the Town's right to object to any matters related to the title to the Property. If the Town raises any Title Objections, then Montgomery may, but shall have no obligation, to cure and remove such Title Objections on or before the Closing Date at Montgomery's expense. If Montgomery notifies The Town ("**Montgomery's Title Notification**"), that Montgomery is unwilling or unable to cure the Title Objections on or before the Closing Date, then the Town shall have as its sole and exclusive remedy the option to (i) terminate this Agreement by providing Montgomery with written notice of its intent to do so no later than the earlier of five (5) days after the Town's receipt of Montgomery's Title Notification or the Closing Date (failure to timely provide such notice to Montgomery shall be deemed a waiver of the Town's right to terminate under this Section 6), or (ii) waive such defects and proceed to close the transactions contemplated herein, accepting title to the Property as it then is and without setoff or reduction in the value of the Property. In the event the Town shall timely elect to terminate because of an uncured Title Objection, the parties hereto shall be relieved of all rights and obligations hereunder, except for those rights and obligations which expressly survive the termination of this Agreement.

7. TITLE SEARCH (Montgomery). Commencing on the Effective Date, and for a period ending twenty (20) days thereafter at 5:00 p.m. Eastern Standard Time [**NOTE, MAY NEED ADDITIONAL TIME TO SURVEY THE MAIN STREET PROPERTY.**] (the "**Inspection Period**"), Montgomery shall have the right to conduct a title examination of the Property and obtain a commitment or binder for issuance of an owner's title insurance policy issued by a title insurance company of Montgomery's choice. Montgomery shall have until the expiration of the Inspection Period to provide the Town with written notice of the Montgomery's objections to the title of the Property, if any (the "**Title Objections**"). Montgomery's failure to timely provide Title Objections to the Town shall be deemed a waiver of Montgomery's right to object to any matters related to the title to the Property. If Montgomery raises any Title Objections, then the Town may, but shall have no obligation, to cure and remove such Title Objections on or before the Closing Date at the Town's expense. If the Town notifies Montgomery ("**the Town's Title Notification**"), that the Town is unwilling or unable to cure the Title Objections on or before the Closing Date, then the Montgomery shall have as its sole and exclusive remedy the option to (i) terminate this Agreement by providing the Town with written notice of its intent to do so no later than the earlier of five (5) days after Montgomery's receipt of the Town's Title Notification or the Closing Date (failure to timely provide such notice to the Town shall be deemed a waiver of Montgomery's right to terminate under this Section 7), or (ii) waive such defects and proceed to close the transactions contemplated herein, accepting title to the Property as it then is and without setoff or reduction in the value of the Property. In the event Montgomery shall timely elect to terminate because of an uncured Title Objection, the parties hereto shall be relieved of all rights and obligations hereunder, except for those rights and obligations which expressly survive the termination of this Agreement.

8. CLOSING. Parties agree that the closing shall occur as follows:

(a) Place and Date of Closing. The consummation of the transaction contemplated under this Agreement (the "Closing") shall occur 30 days after the expiration of the Inspection Period (the "Closing Date"), at the offices of Montgomery's counsel or such other location agreed to by Buyer and Seller.

(b) Grantor Party's Instruments. At the Closing, Grantor Party shall deliver or cause to be delivered to Grantee Party the following items:

(i) A special warranty deed executed by Grantor Party conveying to Grantee Party fee simple title to the Property (the "Deed") subject only to (A) ad valorem real property taxes and assessments for the year of Closing and for subsequent years, (B) all easements, covenants, conditions, restrictions, and other agreements of record, (C) all matters which would be disclosed by a recent and accurate survey of the Property, and (D) municipal, zoning and subdivision laws and ordinances provided that the representations of the Town set forth in Section 5 remain true and correct. The Deed shall convey the Property by the legal description of the Property as acquired by Grantor Party.

(ii) A non-foreign status affidavit executed by Seller.

(iii) A closing statement duly executed by Grantor Party setting forth the prorations and adjustments required by this Agreement or otherwise agreed to by Grantor Party and Grantee Party.

(iv) Evidence of authority to execute Grantor Party's Instruments and enter into this Agreement reasonably satisfactory to Grantee Party's counsel.

(v) An owner's affidavit in a form reasonably satisfactory to Grantee's title insurance company.

(vi) With respect to the Main Street Property (i) an estoppel certificate from the tenant under the Lease attesting that the expiration date, rental rate and other substantive terms of the Lease are the same as the copy of the Lease provided to Montgomery by the Town, that the Lease has not been further amended, is in full force and effect, and free from default by either party, and that no legal action is threatened or pending concerning the Lease (the "**Estoppel Certificate**"), and (ii) an assignment and assumption of the Lease (the "**Lease Assignment**").

(vii) A Bill of Sale and Assignment of Intangible Property for the conveyance of the tangible and intangible personal property related to the Grantor Property.

(c) Grantee Party's Deliveries. At the Closing, Grantee shall deliver or cause to be delivered to Grantor Party (i) a closing statement duly executed by Grantee Party setting forth the prorations and adjustments required by this Agreement or otherwise agreed to by Grantor Party and Grantee Party and (ii) with respect to the Main Street Property, the Lease Assignment executed by Grantee Party.

9. CLOSING COSTS. Each Party shall pay their own closing expenses, including the following: (a) the cost of preparation of the documents to be delivered by Grantor Party and Grantee Party and review of such documents by counsel: (b) the Deed recording fee, (c) the costs of obtaining the title insurance commitment and policy, (d) its proportionate share of the expenses to be prorated as set forth in this Agreement and (e) all documentary transfer taxes levied by state or local authorities in connection with the transfer of title.

10. ADJUSTMENTS AND PRORATIONS. Ad valorem taxes and other expenses relating to the Property shall be prorated as of the Closing Date in the manner customary under the laws of the state in which the Property is located, based upon actual days involved. To the extent that the actual amounts of such charges and expenses referred to in this paragraph are unavailable at the Closing Date, the closing statement shall be based upon estimated amounts, and a readjustment of these items shall be made upon the request by either party to this Agreement within thirty (30) days after the Closing Date. In the event that ad valorem taxes for the year of Closing have not been established as of the Closing Date, the Parties agree to prorate ad valorem taxes based upon estimated taxes for the preceding year.

The Parties hereby agree that if ad valorem taxes for the Property for the year of Closing may be paid at Closing, the same shall be paid at Closing. In the event that such ad valorem taxes for the year of Closing cannot be paid at Closing, then the parties shall prorate said taxes in accordance with this Section 10, and Grantor Party shall thereafter pay said ad valorem taxes for the Property for the year of Closing before said taxes become delinquent. The Grantee Party agrees to, and hereby does, indemnify and hold Grantor Party harmless of and from any and all liabilities, claims, demands and expenses, of any kind or nature arising out of or with respect to Grantee Party's failure to timely pay said taxes in accordance with the preceding sentence. Grantee Party's obligations under this paragraph shall survive Closing.

Any rental and other revenues from the Property shall be prorated as of midnight on the Closing Date based upon actual days involved. All rental and other revenues collected by the Town up to the Closing Date which are allocable to the month in which the Closing occurs shall be allocated on a daily basis based on the number of days in such month that the Parties each own the Property.

11. DELIVERY OF POSSESSION; LEASE. Subject to the rights of Tenant under the Lease, possession of the Main Street Property will be delivered to Montgomery on the Closing Date.

12. RISK OF LOSS. Risk of loss or damage to the Property shall rest with the Grantor Party until the time of delivery of possession.

13. DEFAULT BY THE TOWN; REMEDY. If the exchange of the Property contemplated hereby is not consummated in accordance with the terms and provisions of this Agreement due to circumstances or conditions which constitute a default by the Town under this Agreement, Montgomery shall have the option, as its sole and exclusive remedy, to (a) waive such default and proceed to closing as if such default had not occurred (b) terminate this Agreement by written notice to the Town and upon such termination receive reimbursement of Montgomery's out-of-pocket costs and expenses up to a maximum amount of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) incurred by Montgomery in connection with this Agreement, or (c) bring an action against the Town seeking specific performance of the Town's obligations set forth herein. If the Town breaches any of the representations, warranties or covenants set forth in Section 5 after the Closing, then Montgomery shall have all rights and remedies available at law or equity for such breach.

14. DEFAULT BY MONTGOMERY; REMEDY. If the exchange of the Property contemplated hereby is not consummated in accordance with the terms and provisions of this Agreement due to circumstances or conditions which constitute a default by Montgomery under this Agreement, the Town shall have the option, as its sole and exclusive remedy, to (a) waive such default and proceed to closing as if such default had not occurred (b) terminate this Agreement by written notice to Montgomery and upon such termination receive reimbursement of the Town's out-of-pocket costs and expenses up to a maximum amount of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) incurred by the Town in connection with this Agreement, or (c) bring an action against Montgomery seeking specific performance of the Montgomery's obligations set forth herein.

15. MISCELLANEOUS.

(a) Brokerage. The Town represents and warrants to Montgomery that the Town has not engaged any broker or brokerage company in connection with the proposed exchange of the Property. Montgomery represents and warrants to the Town that Montgomery has not engaged any broker or brokerage company in connection with the proposed exchange of the Property. In the event of any claims for brokers', agents' or finders' fees or commissions by any person or entity in connection with the negotiation, execution or consummation of this Agreement, the party on whose alleged statement, representation or agreement such claim or liability arises shall indemnify, hold harmless and defend the other party from and against such claim, including without limitation reasonable attorneys' fees and costs.

(b) Entire Agreement Amendment. This Agreement, together with all exhibits hereto and documents referred to herein, if any, constitutes the entire understanding among the parties hereto, and supersedes any and all prior agreements, arrangements and understandings among the parties hereto. This Agreement may not be amended, modified, changed or supplemented, nor may any obligations hereunder be waived, except by a writing signed by the party to be charged or by its agent duly authorized in writing or as otherwise permitted herein.

(c) Binding Effect. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, representatives, successors and permitted assigns of the parties hereto.

(d) Environmental. The Town represents and warrants that except as disclosed in the reports on file with the Mooresville Regional Office of the North Carolina Department of Environment and Natural Resources and in that certain Notice of Residual Petroleum recorded in Book 22290, Page 847 of the Mecklenburg County Registry, it has no actual knowledge of (i) the presence or disposal, except as in accordance with applicable law, within the buildings or on the Main Street Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (40 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state, or federal law, including without limitation any material, waste or substance which is (A) petroleum, (B) Asbestos, (C) polychlorinated biphenyls, (D) designated as a Hazardous Substance pursuant to Section 311 of the Clean Water Act of 1977 (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act of 1977 (33 U.S.C. §1317), (E) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6903) or (F) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601) or (ii) any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts. As used herein, "actual knowledge" shall be deemed to mean only the actual current knowledge of the Town, without any requirement of making an inquiry or investigation.

(e) Property Sold "As Is". It is understood and agreed that, except with respect to any representation or warranty expressly provided herein, Grantor Party has not made and is not now making, and it specifically disclaims any other covenants, warranties, representations or guarantees of any kind or character, express or implied, oral or written, past, present or future, with respect to the Grantor Property and/or the Lease, including but not limited to, warranties, representations or guaranties as to (i) matters of title, (ii) geological conditions, including, without limitation, subsidence, subsurface conditions, water table, underground water, reservoirs, limitations regarding the withdrawal of water and earthquake faults and the resulting damage of past and/or future earthquakes, (iii) whether, and the extent to which the

Property or any portion thereof is affected by any stream (surface or underground), body of water, flood prone areas, flood plain, floodway or special flood hazard, (iv) drainage, (v) soil conditions, including the existence of instability, past soil repairs, soil additions or conditions of soil fill, or susceptibility to landslides, or the sufficiency of any under shoring, (vi) zoning to which the Property or any portion thereof may be subject, (vii) the availability of any utilities to the Property or any portion thereof, including, without limitation, water, sewage, gas and electric, (viii) usage of adjoining property, (ix) access to the Property or any portion thereof, (x) the value, compliance with any plans and specifications, size, location, land use, design, quality, description, suitability, structural integrity, operation, title to, or physical or financial condition of the Property or any portion thereof, (xi) compliance of the Property with any or all past, present or future federal, state or local ordinances, codes or similar laws, building, fire or zoning ordinances, codes or other similar laws, (xii) any other matter affecting the stability or integrity of the Property (xiii) the potential for further development of the Property, (xiv) the existence of vested land use, zoning or building entitlement affecting the Property, (xv) the merchantability of the Property or fitness of the Property for any particular purpose (Grantor Party affirming that Grantee Party has not relied on Grantor Party's skill or judgment to select or furnish the Property for any particular purpose, and that Grantor Party makes no warranty that the Property is fit for any particular purpose), or (xvi) tax consequences (including, but not limited to, the amount, use or provisions relating to any tax credits), The Grantor Party shall sell and convey to Grantee Party and Grantee Party shall accept the Real Property "AS IS, WHERE IS WITH ALL FAULTS AND LIMITATIONS." Grantee Party has fully reviewed the disclaimer and waivers set forth in this Agreement with its counsel and understands the significance and effect thereof. Notwithstanding the foregoing or anything else herein to the contrary, each Grantor Party hereby represents and warrants to the Grantee Party that (i) the Grantor Party has not received actual notice of any violations of laws, rules, regulations or ordinances relating to its Property and does not otherwise have actual knowledge of any such violations, (ii) all necessary approvals have been obtained by the Grantor Party to enter into this Agreement and to carry out the transaction described herein, each of which representations and warranties shall survive the closing and delivery of the deeds.

(f) Attorney's Fees. In the event that any party hereto brings an action or proceeding for a declaration of the rights of the parties under this Agreement, for injunctive relief, for an alleged breach or default of, or any other action arising out of, this Agreement or the transactions contemplated hereby, or in the event any party is in default of its obligations pursuant hereto, the non-defaulting party shall be entitled to reasonable attorneys' fees (based on actual time expended at customary hourly rates), in addition to any court costs incurred and in addition to any other damages or relief awarded.

(g) Waiver. No claim of waiver, consent, or acquiescence with respect to any provision of this Agreement shall be made against any party hereto except on the basis of a written instrument executed by or on behalf of such party. However, the party for whose unilateral benefit a condition is herein inserted shall have the right to waive such condition.

(h) Counterparts; Facsimile. This Agreement may be executed via facsimile and in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute but one and the same instrument.

(i) Governing Law. The laws of the State in which the Properties are located shall govern the interpretation, validity, performance, and enforcement of this Agreement.

(j) Notices. No notice, consent, approval, or other communication provided for herein or given in connection herewith shall be validly given, made, delivered, or served unless it is in writing and delivered personally, sent by overnight courier, sent by direct facsimile transmission, or sent by registered or certified United States mail, postage prepaid, with return receipt requested, to:

The Town at: The Town of Pineville
Attn: Ryan Spitzer
200 Dover Street
Pineville, NC 28134
rspitzer@pinevillenc.gov

with a copy to: Traci Y. Belk
Hankin & Pack, PLLC
2820 Selwyn Avenue
Suite 425
Charlotte, NC 28209
traci.belk@hankinpacklaw.com

Montgomery at: Montgomery Management, LLC
c/o Goode Properties, Inc.
1300 Baxter Street, Suite 370
Charlotte, NC 28204
Attn: Royden L. Goode II
roy@goodeproperties.com

With a copy to: William B. Kirk, Jr.
Kirk Palmer & Thigpen, PA
1300 Baxter Street
Suite 300
Charlotte, NC 28204
wbkirk@kptlaw.com

(k) Severability. If any provision contained herein shall be held to be invalid or to be unenforceable, such holding shall not affect the validity or enforceability of the remainder of this Agreement.

IN WITNESS WHEREOF the parties hereto have entered into this Agreement as of the date first set forth above.

THE TOWN OF PINEVILLE, a municipal corporation

By: _____
Ryan Spitzer, Town Manager

Date: _____

MONTGOMERY MANAGEMENT, LLC, a North Carolina limited liability company

By: _____

Date: _____

EXHIBIT A

LEGAL DESCRIPTION OF MAIN STREET PROPERTY

EXHIBIT B

LEGAL DESCRIPTION OF JOHNSTON DRIVE PROPERTY

EXHIBIT C
SITE PLAN SHOWING NEW RIGHT OF WAY

NEW BUSINESS

A. Board Appointments:

- 1. Planning Board**
- 2. Arts & Science Council**
- 3. Storm Water Advisory Committee**

B. Bonding Procedure Clarification

C. Staff Update:

- 1) Manager's Report*
- 2) Calendar of Events*

Memorandum



To: Mayor and Town Council

From: Barbara Monticello

Date: 9/6/2018

Re: New Business: Committee Appointments

Each year the Council appoints representatives to various boards and committees as required by state law, town policy or agency regulations. This is typically done at the beginning of the year but some county committees/boards operate on a fiscal, rather than a calendar, year. There are two vacancies on county committees that need to be filled and a spot on the town's Planning Board that also needs to be filled as Scott Goldsmith had to resign due to a relocation.

THE PLANNING BOARD CURRENTLY CONSISTS OF THE FOLLOWING MEMBERS:

Jim Knowles (3 years – term expires 12/19)
Amelia Stinson-Wesley (3 years—term expires 12/19)
Thomas White (3 years – term expires 12/18)
Eric Fransen (3 years – term expires 12/19)

Scott Goldsmith's term was due to expire 12/20. There are two alternates for this board: William Chaney and Bolyn McClung. The recommendation is to move Mr. Chaney into the permanent spot and leave Mr. McClung as the alternate for this board. Mr. Chaney has already expressed interest in moving to the regular spot on this board.

THE CHARLOTTE-MECKLENBURG STORM WATER ADVISORY COMMITTEE:

The town was recently contacted by the clerk to the Charlotte-Mecklenburg Storm Water Advisory Committee informing us that it was Pineville's turn to advertise and appoint someone to represent the Residential Neighborhoods of the southern towns on this committee. The vacancy has been posted on the town's website and Face Book page as well as advertised in the town newsletter but we had not received any interest until recently. Resident Randy Smith has filled out the application to volunteer on this committee and is being recommended for appointment to it with a term to expire June 30, 2021.

THE ARTS AND SCIENCE COUNCIL ADVISORY COUNCIL:

The town was also notified that Judy Thompson Phillip's term on the Arts and Science Advisory Council expired on June 30, 2018 and she did not wish to continue, leaving a vacancy to be filled by a Pineville resident. Resident Greg Record has filled out the application for this committee and is being recommended for appointment with a two year term to expire June 30, 2020.

Action Requested: *Appoint the recommendations to the boards listed above.*

Memorandum



To: Town Council

From: Travis Morgan

Date: 7/10/2018

Re: Bonding/Subdivision Ordinance Clarification to be Compliant with GS 160A-162
(Informational Item)

The North Carolina Legislature has updated the general statues to provide for more detailed specifications for municipalities regarding bond calculations and reduction/releases.

While the NC General Statues does not expressly detail bond reductions we are the only locality that does not permit bond reductions in part or whole. We have previously not given any credit for infrastructure already in place or complete prior to the whole developments completion. GVEST inquired at to compliance with the NC General Statues and provided their legal opinion letter. I contacted one of our DOT representatives (Tony Lathrop) and was recommended Johnston Allison & Hoard for our own review and opinion letter.

Attached is the full recommended update to comply with NCGS and legal opinion to safeguard the town as best possible to avoid or win and future court cases. Staff will make the recommended administrative clarifications in light the attached legal opinion. Below are the highlights:

- 1) Maximum performance guarantee (Bond) of estimated improvements to 125% (no changes needed)
- 2) At performance guarantee (Bond) placement or reevaluation the same 125% applies **but only for remaining incomplete items at time of final plat.**
- 3) 100% build out and inspected top coat of asphalt are requirements determination of completeness for road acceptance.
- 4) Maintenance bonding increased to 25% (from 15%) for one year after acceptance of the total infrastructure costs.
- 5) Performance guarantee (Bond) reduction of non-road items such as sidewalks, drains, etc, before the usual 3-year bond term is up must be approved by the Town and County and shall further inspected and pipes videoed **at the sole expense of the developer.**
- 6) Town and County will have to be extra diligent on inspections as a result. The plus side is the final coat of asphalt shall be done last and continuously at the direction and acceptance of the Town.

Staff welcomes your input and will answer any questions. Staff will further review and come back with additional text amendments in the future to update the Subdivision Ordinance as needed.

NCHS

§ 160A-372. Contents and requirements of ordinance.

(a) A subdivision control ordinance may provide for the orderly growth and development of the city; for the coordination of transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision or, alternatively, for provision of funds to be used to acquire recreation areas serving residents of the development or subdivision or more than one subdivision or development within the immediate area, and rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions that substantially promote public health, safety, and the general welfare.

(b) The ordinance may require a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that plats show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practice.

(c) The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with municipal plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required improvements at the time the plat is recorded as provided in subsection (b) of this section. For any specific development, the type of performance guarantee shall be at the election of the developer.

(d) The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the council or the planning board. In order for this authorization to become effective, before approving such plans the council or planning board and the board of education with jurisdiction over the area shall jointly determine the specific location and size of any school sites to be reserved, which information shall appear in the comprehensive land use plan. Whenever a subdivision is submitted for approval which includes part or all of a school site to be reserved under the plan, the council or planning board shall immediately notify the board of education and the board of education shall promptly decide whether it still wishes the site to be reserved. If the board of education does not wish to reserve the site, it shall so notify the council or planning board and no site shall be reserved. If the board of education does wish to reserve the site, the subdivision shall not be approved without such reservation. The board of education shall then have 18 months beginning on the date of final approval of the subdivision within which to acquire the site by purchase or by initiating condemnation proceedings. If the board of education has not purchased or begun proceedings to condemn the site within 18 months, the subdivider may treat the land as freed of the reservation.

(e) The ordinance may provide that a developer may provide funds to the city whereby the city may acquire recreational land or areas to serve the development or subdivision, including the purchase of land that may be used to serve more than one subdivision or development within the immediate area. All funds received by the city pursuant to this subsection shall be used only for the acquisition or development of recreation, park, or open space sites. Any formula enacted to determine the amount of funds that are to be provided under this subsection shall be based on the value of the development or subdivision for property tax purposes. The ordinance may allow a combination or partial payment of funds and

partial dedication of land when the governing body of the city determines that this combination is in the best interests of the citizens of the area to be served.

(f) The ordinance may provide that in lieu of required street construction, a developer may be required to provide funds that the city may use for the construction of roads to serve the occupants, residents, or invitees of the subdivision or development and these funds may be used for roads which serve more than one subdivision or development within the area. All funds received by the city pursuant to this subsection shall be used only for development of roads, including design, land acquisition, and construction. However, a city may undertake these activities in conjunction with the Department of Transportation under an agreement between the city and the Department of Transportation. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the city determines that a combination is in the best interests of the citizens of the area to be served.

(g) For purposes of this section, all of the following shall apply with respect to performance guarantees:

- (1) The term "performance guarantee" shall mean any of the following forms of guarantee:
 - a. Surety bond issued by any company authorized to do business in this State.
 - b. Letter of credit issued by any financial institution licensed to do business in this State.
 - c. Other form of guarantee that provides equivalent security to a surety bond or letter of credit.
- (2) The performance guarantee shall be returned or released, as appropriate, in a timely manner upon the acknowledgement by the city or county that the improvements for which the performance guarantee is being required are complete. If the improvements are not complete and the current performance guarantee is expiring, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period until such required improvements are complete. A developer shall demonstrate reasonable, good faith progress toward completion of the required improvements that are the subject of the performance guarantee or any extension. The form of any extension shall remain at the election of the developer.
- (3) The amount of the performance guarantee shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion at the time the performance guarantee is issued. Any extension of the performance guarantee necessary to complete required improvements shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained.
- (4) The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance after completion.
- (5) No person shall have or may claim any rights under or to any performance guarantee provided pursuant to this subsection or in the proceeds of any such performance guarantee other than the following:
 - a. The local government to whom such performance guarantee is provided.

- b. The developer at whose request or for whose benefit such performance guarantee is given.
- c. The person or entity issuing or providing such performance guarantee at the request of or for the benefit of the developer. (1955, c. 1334, s. 1; 1961, c. 1168; 1971, c. 698, s. 1; 1973, c. 426, s. 59; 1985, c. 146, ss. 1, 2; 1987, c. 747, ss. 9, 18; 1989 (Reg. Sess., 1990), c. 1024, s. 39; 2005-426, s. 2(a); 2015-187, s. 1(a); 2017-40, s. 3(a); 2017-102, ss. 31(a), (b).)



TO: Town Council for Town of Pineville
Ryan Spitzer, Town Manager, Town of Pineville
Travis Morgan Planning Director/Zoning Administrator

FROM: R. Susanne Todd, Partner *RS*

DATE: September 6, 2018

RE: Proposed Revisions to Section 8.000 of the Town of Pineville Subdivision Ordinance

The Town of Pineville Subdivision Ordinance (“Ordinance”) was originally adopted 24 years ago pursuant to the authority granted by the legislature in North Carolina Gen. Stat. Sec.160A-372. Since 2015, Sec. 160A-372 has been legislatively amended three times.

Attached please find proposed revisions to Section 8.000 of the Town of Pineville Subdivision Ordinance that sets forth the standards for completion and acceptance of certain minimum improvements that a developer is required to construct as part of a subdivision. The purpose of the proposed revisions is to address legislative changes and establish practices related to bonding requirements for minimum improvements.

Proposed amendments are focused in subsection 8.400 of the Ordinance and include:

1. Requirement for a written agreement between developer and Town to complete the required improvements.
2. Process for developer to request credit for completed improvements for purposes of calculating performance bond amounts.
3. Inspection requirements for release of performance bond;
4. Conditions that must be met prior to acceptance by Pineville of the required infrastructure improvements including,
 - (a) completion of required improvements to Town standards;
 - (b) 100% build out of the subdivision;
 - (c) inspection requirements prior to release of performance bond
 - (d) minimum 1 year maintenance bond in an amount equal to 25% of the total costs of all required improvements.
 - (e) inspection requirements prior to release of maintenance bond.
 - (f) application of final 1 “ lift of asphalt on the streets.

Please let me know if you have any questions.

8.000. REQUIRED IMPROVEMENTS

8.100. Standards and Specifications

1. Unless specifically noted, before any final plat of a subdivision is eligible for final approval, ~~and before any street is accepted for maintenance by Pineville or the State Department of Transportation.~~ all minimum improvements (including but not limited to, water, sewer, streets, sidewalks, storm drainage and, soil erosion) ~~must have been, street trees, supplemental buffer plantings, street lights, barricades~~ as shown on any approved plan must be satisfactorily completed by the developer, inspected and approved by the County Engineer and Pineville in accordance with the standards and specifications of the Land Developments Development Standards Manual or Pineville (whichever establishes the higher standard), or alternatively, bonded in accordance with the provisions of Section 8.400.8.400 and the requirements of the County.
2. The intent of the specifications set out in this ~~ordinance~~ Ordinance is to prescribe minimum requirements for storm drainage ~~and, street, and other minimum~~ improvements to be undertaken by the developer. Satisfactory completion of these improvements, attested by approval of the ~~county engineering department~~ County Engineer and Pineville, will qualify streets in Pineville to be accepted for maintenance by Pineville and streets in the county to be considered for maintenance by the ~~state.~~ State.

~~5.110.~~ 8.110. Improvement Responsibility.

In order to facilitate the provision of street rights-of-way and necessary improvements, the following sections establish responsibilities for the installation of streets and related improvements for each class of street.

Class I (Freeway-Expressway):

Right-of-way — entire width reserved for future

acquisition. **Class II (Limited Access Arterial):**

Right-of-way ~ entire width reserved for future acquisition.
Improvements - installed by the public.

Class III-C (Commercial Arterial)

Right-of-way - 100' dedicated and the remainder reserved for future acquisition. (50' each side of the centerline). Any development along a Class DI-C Street which requires specific improvements of the street to meet traffic demands of the particular development must dedicate the right-of-way necessary to accommodate those improvements.

Improvements - installed by the public in accordance with a schedule ~~of public~~ of public street improvements, except where specific improvements are required to meet the traffic demands of the

particular development in which case the developer must install the necessary improvements at the time of development. If, however, a public improvement project for the street is programmed and

funded, the developer may be relieved of the actual construction, but remains liable for the costs of the improvements for which he or she would otherwise be liable. The developer has the option, after consultation with the county engineer and the Planning Director to construct all or a portion of the street if the developer wants to make use of the street for access to the development. Development along new Class III-C or extensions of Class H[-C] streets must utilize reverse frontage with the only access points being public streets or specifically approved street type entrances.

Class III (Major Arterial)

Right-of-way - developer is responsible for the dedication of up to 100' (50' each side of the centerline). Any development along a Class III street which requires specific improvements ~~of~~ the street to meet traffic demands of the particular development must dedicate the right-of-way necessary to accommodate those improvements.

Improvements — installed by the public in accordance with a schedule ~~of public of public~~ street improvements, except on existing streets where specific improvements are required to meet the traffic demands of the particular development in which case the developer must install the necessary improvements at the time of development. If, however, a public improvement project for the street is programmed and funded, the developer may be relieved of the actual construction, but the developer remains liable for the costs of the improvements for which he or she would otherwise be liable. The developer has the option, after consultation with the County Engineer and the Planning Director to construct all or a portion of the street if the developer wants to make use of the street for access to the development. Development along new Class in streets or extensions of Class III streets must utilize reverse frontage with the only access points being public streets or specifically approved street type entrances.

Class IV (Minor Arterial)

Right-of-way - Developer is responsible for the dedication of up to 70 feet (35 feet each side of the centerline). Additional right-of-way which may be required for improvements to meet specific traffic demands of the development must be dedicated by the developer.

Improvements - installed by the public in accordance with a schedule ~~of public of public~~ street improvements, except on existing streets where specific improvements are required to meet the traffic demands of the particular development in which case the developer must install the necessary improvements at the time of development. If, however, a public improvement project for the street is programmed and funded, the developer may be relieved of the actual construction, but the developer remains liable for the costs of the improvements for which he or she would otherwise be liable. The developer has the option, after consultation with the County Engineer and the Planning Director to construct all or a portion of the street if the developer wants to make use of the street for access to the development. Development along new Class IV streets or extensions of Class IV streets must utilize reverse frontage with the only access points being public streets or specifically approved street type entrances.

Class V (Collector):

Right-of-way -- dedicated by the developer.

Improvement - constructed by the developer.

Class VI (Local):

Right-of-way - dedicated by the developer.

Improvements ~ constructed by the developer.

All streets must be constructed to comply with the minimum standards ~~effheof the~~ Charlotte-Mecklenburg Land Development Standards Manual and all appropriate applicable Town or County requirements. Public improvements will be made in accordance with adopted plans, programs, and budgets. It should not be expected that the occurrence of development will result in the immediate installation of public street improvements by the public sector unless those improvements are scheduled and funded in accordance with public policies and programs. The standards in this ordinance for the reservation and dedication of rights-of-way will apply to any development approved after the effective date of this ordinance.

No dedication or reservation of right-of-way for a street or highway within a corridor for a street or highway on a plan established and adopted pursuant to N.C.G.S. 136-66.2 for a street or highway that is included in the Department of Transportation's "Transportation Improvement Program" will be required by the provisions of this ordinance unless and until the Planning Director has determined and certified in writing (1) that the dedication or reservation does not result in the deprivation of a reasonable use of the original tract and (2) that the dedication or reservation is either reasonably related to the traffic generated by the proposed subdivision or use of the remaining land, or the impact of the dedication or reservation is mitigated by measures provided in this ordinance. For these purposes the term "original tract" will mean all contiguous land owned by the applicant.

8.120. Drainage

1. Storm drainage adequate to accommodate a 10 year storm must be provided throughout the subdivision by means of storm drainage pipe or properly graded channels or natural drainage. Where adequate storm drainage has been provided by means of approved storm drainage pipe and the necessary easements to provide access to the drainage facilities, in accordance with town or county standards, and has been dedicated and accepted or otherwise conveyed to the town or county, the Town or County will assume the responsibility for maintenance of the drainage pipe. Where adequate storm drainage has been provided by means of properly graded channels or ditches, the maintenance thereof will remain the responsibility of the property owner and must be so noted on the final plat and the deed for the affected lots.
2. In addition to the drainage improvements as required by this section, the subdivider of any land which involves or would create more than 20,000 square feet of impervious ground cover, except for land / developed or used for agricultural purposes, shall submit a drainage V plan for approval by the County Engineer. No certificate of occupancy shall be issued until the drainage plan is approved by the County Engineer. For the purposes of the subsection, the subdivision shall include the streets, sidewalks, driveways, roof tops and other impervious covers as proposed by the subdivider.

8.130. Curb and Gutter

Standard curbs and gutters must be constructed on all streets. Rolled curbs and gutters or standard curbs and gutters must be constructed on all local and collector streets. This requirement applies to all streets within the Town of Pineville and its extraterritorial jurisdiction, and to all streets where curb and gutter would be required by the State of North Carolina for a street to be acceptable for State maintenance.

8.140. Sidewalk

Sidewalks are required in all subdivisions as follows:

Five (5) foot wide sidewalks are required on both sides of new or existing streets or wider where adopted, on both sides of streets except alleys. Installation of sidewalks is the responsibility of the developer.

Location. Approval of sidewalk construction plans must be obtained from the Mecklenburg County Land Use and Environmental Services Department as part of the subdivision review process. Mecklenburg County Land Use and Environmental Services will review and comment on the location of the required facilities at the time of plan review. Except in unusual circumstances, sidewalks may not be located less than 5 feet, but preferably 7-10 feet, from the back of the curb or edge of pavement when no curb and gutter is required. If existing public street right-of-way is not available, the developer will be required to construct the sidewalk outside the street right-of-way on a permanent easement. While in most instances a sidewalk will be placed parallel to and offset from the curb line, developers are encouraged and expected to meander sidewalks to preserve existing trees of significance. Adjustments may be made in the field to accommodate such circumstances.

1. Nonresidential subdivisions. Sidewalks are required on both sides of new or existing arterial streets and extensions thereof and on one side of collector streets.
2. Residential subdivisions.
 - a. Sidewalks must be constructed on both sides of new or existing arterial streets and extensions thereof if the developer is installing the street.
 - b. Sidewalks must be constructed on both sides of the following classes of streets:
 - (1) Collector and arterial streets.
 - (2) Streets providing direct access to existing elementary schools, junior or senior high schools, colleges, and official sites for such schools; and streets that provide access to existing or proposed places of public assembly, including public or private parks, recreation facilities, and/or greenways.
 - c. Sidewalks must be constructed on one side of the following streets:
 - (1) All streets with a 50' right-of-way.

Location. Approval of sidewalk construction plans must be obtained from the County Engineering Department as part of the subdivision review process. When sidewalk facilities are required, the County Engineer will review and comment on the location of the required facilities at the time of plan review. Except in unusual circumstances, sidewalks may not be located less than 4 feet from the back of the curb or edge of pavement when no curb and gutter is required. If existing

public street right-of-way is not available, the developer will be required to construct the sidewalk outside the street right-of-way on a permanent easement. An easement may be required for the sidewalk.

8.150. Street Markers and Barricades

1. Standard street markers must be installed at one corner of all street intersections including private streets before any certificates of occupancy may be issued for buildings or residences along those streets. The design, material, location and installation of the signs must be in accordance with standards specified by the Land Development Standards Manual.
2. Barricades must be installed at the end of all dead-end streets except cul-de-sac streets which have been improved with a permanent turnaround as required by this ordinance. Design, material and installation of the barricades must be in accordance with the Land Development Standards Manual.

8.200. No Service Unless Street Accepted, or Tentatively Approved

No department, officer, or employee of the Town or County will accept for maintenance, lay out, open, improve, grade, pave or light any streets or authorize the laying of water mains, sewers, connections or other facilities or utilities in any street within the Town or County unless:

1. Such street has been accepted or opened as, or has otherwise received the legal status of a public street prior to the effective date of this ordinance.
2. Or, such street has been accepted as a public street by a vote of a majority of all the members of the Pineville Town Council or by the State of North Carolina.
3. Or, such street is a private street built in conformance with the provisions of all applicable ordinances.

The North Carolina Department of Transportation will accept subdivision streets for State maintenance purposes which meet all the requirements of this ordinance and meet the uniform State-wide standards adopted by the North Carolina Department of Transportation.

8.300. Other Public Facilities
(RESERVED)

8.400. Modification of Requirements: Bond

1. In subdivisions adjoining already established streets that have been accepted for maintenance by the Town of Pineville or the North Carolina Department of Transportation, the requirements of Section 8.000 will apply as hereinafter provided. Those requirements that would necessitate the general removal and reconstruction of established permanent pavements will not be applicable and where the adjoining established street is a part of the Town

of Pineville's or the North Carolina Department of Transportation's street system, the adjoining street must be improved in accordance with either the requirements of Section 8.000 and the requirements of the Town of Pineville or the North Carolina Department of Transportation, whichever establishes the higher standard.

2. Plats for new lots fronting on already dedicated or established streets or roads that have not been accepted for maintenance by the Town of Pineville or the North Carolina Department of Transportation or which have been accepted for maintenance by the Town of Pineville or the North Carolina Department of Transportation, but have not been improved in accordance with the requirements of Section 8.000 will be eligible for final approval when the requirements of Section 8.000 have been complied with as closely as may reasonably be required considering the existing condition of the road, the extent of area to be platted and the cost of required improvements in relation to the comparative benefits to accrue to the subdivider and the other owners of property on both sides of the street or road.
3. ~~Where the~~ All minimum improvements required by ~~this chapter have not been~~ Section 8.000 shall be completed prior to the submission of the final subdivision plat for approval. In lieu of meeting the aforementioned requirement, Pineville, in its discretion, may enter into a written agreement with the developer or its authorized designee wherein the developer shall agree to complete all required minimum improvements. Once this agreement is executed by both parties and the financial security required herein is provided, the final plat, (provided it meets all other applicable ordinance requirements), may be approved by the Planning Director.
4. Performance Guarantee. Upon execution of the aforementioned agreement for satisfactory completion of the minimum improvements, the approval of the plat will be subject to the ~~owner~~ filing of a surety bond ~~or~~ an irrevocable letter of credit or other form of equivalent security (the method of surety shall be determined by the ~~subdivider~~ developer) with the County Engineering Department, in an amount to be determined by the County Engineering Department in consultation with other affected agencies, such as the Department of Environmental Health, with sureties satisfactory to the Town guaranteeing the satisfactory installation of the required minimum improvements allowing credit for improvements completed prior to the submission of the final plat. Developer requesting credit for any completed improvements for surety purposes shall do so by written notice to County Engineering Department and Pineville and shall allow inspections and provide inspection results at its sole cost and expense as required by County or Town to demonstrate that the completed improvements have been completed in accordance with the required standards to allow for acceptance and maintenance by the Town or State as applicable. Notwithstanding anything herein to the contrary, for purposes of calculating performance guarantee amounts, no street infrastructure shall be deemed complete until the final 1" overlay of asphalt has been installed over the entire subdivision road network.
5. Upon completion of ~~the improvements and the submission of "as built" drawings, as required by the ordinance, written notice thereof must be given by the subdivider~~ all required minimum improvements (with the exception of the final 1" overlay of asphalt on the streets) and 100% build out of the subdivision, developer shall submit "as built" drawings of all required minimum improvements to the County Engineering Department. The County Engineering Department will arrange for an inspection of the ~~improvements and if found~~

~~satisfactory, will~~ required minimum improvements and may require such further inspections at the developer's sole costs and expense to demonstrate that all improvements, including those improvements previously completed, are satisfactory for acceptance and maintenance by the Town or State. Should all required minimum improvements be found satisfactory, the County Engineering Department will approval from Pineville, within 30 working days ~~of the~~ of the date of notice of satisfaction, authorize in writing the release of the security given, subject to the ~~warranty requirement~~ guarantee requirements below.

6. ~~4. Guarantee~~ Guarantees of certain improvements to protect the public interest.
~~A maintenance guarantee shall be required for a period not to exceed two years after~~

Before the applicable minimum improvements will be accepted for maintenance by the Town of Pineville, the following conditions must be met:

A. Developer shall provide a maintenance guarantee in the amount of 25% of the cost of all required minimum improvements for a minimum period of one year. Any maintenance guarantee shall be in a form satisfactory to the County Engineering Department and Pineville.

B. If the minimum improvements meet the requirements of this Ordinance, the County Engineering Department shall release the performance guarantee.

C. If the required minimum improvements do not meet the applicable standards, the developer must perform repairs which bring them up to required standards prior to release of the performance guarantee. Upon completion of repairs, the developer must request another inspection of the minimum improvements; if repairs are satisfactory, the maintenance guarantee is extended for a minimum period of one year or until the minimum improvements are accepted for maintenance and the County Engineering Department shall release the performance guarantee.

D. After the one-year waiting period has expired, and upon written notice by the developer to the County Engineering Department, the Public Works Director for Pineville and a Mecklenburg County inspector will inspect the minimum improvements. If standards are still met, the 1" final overlay will be applied and Pineville or the State (as applicable) will accept the required minimum improvements for maintenance purposes. If substandard conditions exist, repairs must be performed.

~~After final acceptance of the following improvements: streets, curbs, gutters, sidewalks, drainage facilities, and water and sewer lines. The maintenance guarantee will be in an amount of 15% of the cost of the improvements, with sureties satisfactory to the Town. Upon the two-year deadline, written notice thereof must be given by the subdivider to the County Engineering Department. The County Engineering Department will arrange for an inspection of the improvements, and if found satisfactory, will within 30 days of the date of notice authorize in writing the release of the security given.~~ aftermentioned improvements, the County and Pineville will within 30 working days authorize in writing the release of the security given.

8.500. Inspection

1. The County must be notified two days in advance of the work to be started so that an authorized representative of the County Engineering Department or other responsible agency may be assigned to make any and all necessary inspections of the work performed.
2. The inspector must be allowed access to all parts of the work, and must be furnished with every reasonable facility to ascertain whether or not the work as performed is in accordance with the specifications.
3. No material may be placed nor any work performed except in the presence ~~of the~~ of the inspector without special permission of the appropriate agency. Such inspection, however, does not relieve the contractor from any obligation to perform all of the work strictly in accordance with the specifications.
4. In case of any disputes arising as to the material furnished or the manner of performing the work, the inspector will have authority to reject materials or suspend work until the question or issue can be referred to and decided by the appropriate agency. The contractor must remove any work or material condemned as unsatisfactory by the inspector and must rebuild and replace the work or material to the standard required by the specifications, all at his or her own expense.

9.000. ENFORCEMENT

1. After the effective date of this ordinance, any plat or deed of a subdivision filed or recorded in the office of the Register of Deeds of Mecklenburg County without the approval of the Pineville Planning Board or the Pineville Town Council, as required by this ordinance, will be null and void for purposes of this ordinance.
2. Any person who, being the owner or the agent of the owner of any land located within the area of jurisdiction of this ordinance, subdivides land in violation of this ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this ordinance and recorded in the Office of the Register of Deeds of Mecklenburg County shall, upon conviction, be guilty of a misdemeanor which shall be punishable by a fine not to exceed \$500.00, or imprisonment for not more than 30 days for each and every offense. The Town of Pineville and/or Mecklenburg through their attorneys may enjoin such transfer or sale by action for injunction. All administrative actions relating to such land, including the issuance of any grading, construction, building, or occupancy permit will be suspended. This ordinance will not affect the sale or transfer of any land, a plat of which was recorded prior to the effective date of this ordinance.
3. In order to properly enforce the provisions of the subdivision regulations as stated in this ordinance prior to the beginning of any construction, reconstruction, use, or alteration of any land, building, or structure, the appropriate permit must be obtained from the Building Standards Department. No permit will be issued unless there has been a determination made that the proposed use, building, or structure complies with the requirements of this ordinance.

10.0. APPLICATION AND PROCESSING FEES

September

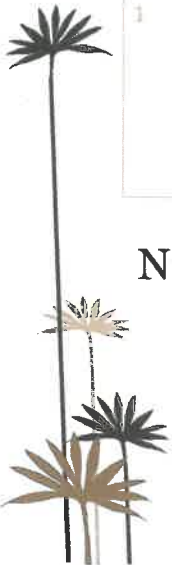
2018



Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
27	28	29	30	31	1	2
3	4 Labor Day – Offices closed.	5	6	7 Talk Saves Lives: Suicide Prevention PUM 9:00am- 10:00 am	8 Community Festival – Free @ BJCC from 1:00 pm – 5:00 pm	9 Culture Blocks/CSA Family Festival BJCC 1:00-5:00 pm
10	11 Council Meeting 6:30 p.m. @ Hut	12	13	14	15 Pineville Players 11:00am & 7:30pm	16 Pineville Players 2:30 pm
17	18	19	20	21 Pineville Players 11:00am & 7:30pm	22 Pineville Players 11:00am & 7:30pm	23 Pineville Players 2:30 pm
24 Work Session Pineville Tele/Elec. 6:00 pm Possible date for Ethics Trn	25 Livable Meck Voice of the Community @ Hut 5:00 – 7:00 p.m.	26	27	28	29 Community Yard Sale Lake Park 7:00 am – 12:00 noon	30
1	2	3	4	5	6	7

Notes:

Possible date for Ethics Training



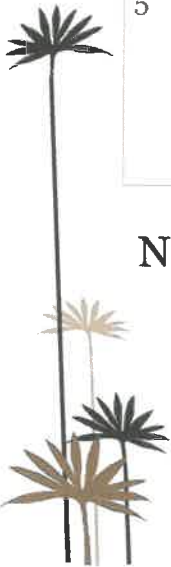
October

2018



Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
1	2	3	4	5	6 3 rd Annual Potato Drop @ 9:00 a.m.	7
8	9 Council Meeting @ Hut 6:30 p.m.	10	11	12	13	14
15	16	17	18	19 Fall Fest 6pm – 10 pm	20 Fall Fest 10am-10pm	21
22 Work Session if needed @ 6:00 p.m. @ Pineville Tele Bldg.	23	24	25	26 Halloween Bash @ JHP @ 6:00 p.m.	27 Annual Fishing Trn. 9:00am -1:00 p.m. Lake Park	28
29	30	31	1	2	3	4
5	6	7	8	9	10	11

Notes:



CLOSED SESSION

*Discussion of matters pursuant
to NCGS 143-318.11(6)*

ADJOURNMENT