



**TOWN OF DAVIDSON
BOARD OF COMMISSIONERS
2nd Tuesday Work Session
Town Hall Board Room - 216 S. Main Street
September 11, 2018**

I. 5:00 P.M. - CALL TO ORDER

II. CLOSED SESSION - Personnel NCGS 143-318.11 (a) (6)

III. 6:00 P.M. - ANNOUNCEMENTS

- (a) **Proclamation - National Constitution Week**

IV. CHANGES TO AGENDA

V. COMMISSIONER REPORTS - Each board member provides an update of the outside Board to which they have been appointed.

- (a) **Centralina Council of Governments** - Commissioner Autumn Rierson Michael
Lake Norman Chamber - Commissioner Matthew Fort
Visit Lake Norman - Commissioner Jim Fuller
Lake Norman Regional Economic Development Organization - Commissioner David Sitton
North Mecklenburg Alliance - Commissioner David Sitton
Charlotte Regional Transportation Planning Organization - Commissioner Jane Campbell
Lake Norman Transportation Commission - Commissioner Jane Campbell
Metropolitan Transit Commission - Mayor Rusty Knox

VI. PRESENTATIONS

- (a) **Presentation - Lingle Hut Restoration Project**
Kurt Naas

VII. DISCUSSION - Items for discussion are typically when the board will engage on a topic and no vote is planned.

- (a) **Sidewalk Project and Funding**
Public Works Director Doug Wright and Finance Director Pieter Swart
Summary: At the August 28, 2018 Board Meeting, the Town Board considered several options for a sidewalk project for this

fiscal year. The Board preferred option 1 which was Grey Road and Spring Street. The recommended action is to proceed with Grey Road and Spring Street Projects allocating \$357,276 of fund balance to complete the project.

- (b) **Joint Compensation Study Findings and Recommendations**
Town Manager Jamie Justice and Consultant Susan Manning
Summary: To ensure the Town of Davidson is competitive with municipalities in the Charlotte Region, a pay study was included in the FY 2018-19 budget. The last pay study was conducted in 2015 and the town's strategy, and a human resource best practice, is to complete a pay study every three years. Staying competitive allows the Town of Davidson to recruit and retain high performing employees that provide services to the citizens. A collaborative effort was made between the towns of Huntersville, Cornelius, and Davidson to collect and analyze data from 20 local communities.
- (c) **251 South Street Property Acquisition**
Assistant Town Manager Dawn Blobaum
Summary: The town has 60 days from September 5 to complete its due diligence process prior to purchasing the property at 251 South Street. The Board will be asked approve Resolution 2018-24 to affirm the purchase of 251 South Street and appropriate \$45,000 funding for deposit, legal fees, and due diligence from Public Facilities Capital Projects fund.
- (d) **Downtown Park/Davidson Farmer's Market Site Improvement Options**
Economic Development Director Kim Fleming
Summary: At the September 4, 2018 work session, the Board reviewed the proposed improvements to the Downtown Park/Davidson Farmer's Market site. The Board will consider accepting the \$100,000 grant from the Department of Agriculture and amend the FY2019 budget to reflect the grant and authorize the Manager to move forward with up to \$45,000 for construction documents phase.
- (e) **Historic Preservation Initiatives Update**
Assistant Town Manager Dawn Blobaum
Summary: Historic Preservation is one of the board's strategic plan goals. This is an update on our work on various initiatives to date and next steps. The Board may take action to determine the process for choosing a committee to vet RFP and consultant for the local historic district expansion/creation.
- (f) **Rules of Procedure - Remote Participation**
Town Attorney Cindy Reid
Summary: The Board has requested a brief analysis of whether it should allow commissioners to vote via phone. Currently, members are allowed to participate in board meetings by phoning in but are not permitted to vote.

VIII. SUMMARIZE MEETING ACTION ITEMS

IX. ADJOURN



Agenda Title: Proclamation - National Constitution Week

Summary:

ATTACHMENTS:

Description	Upload Date	Type
❏ Proclamation - Constitution Week 09.11.18	9/7/2018	Cover Memo



PROCLAMATION Constitution Week

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

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

NOW, THEREFORE, I, Rusty Knox, Mayor of Davidson, do hereby proclaim September 17-23, 2018 as **"CONSTITUTION WEEK"** and ask our citizens to reaffirm the ideals of the Framers of the constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties, remembering that lost rights may never be regained.

Proclaimed this the 11th day of September, 2018.

Rusty Knox, Mayor



Agenda Title: **Centralina Council of Governments** - Commissioner Autumn Riersen Michael
Lake Norman Chamber - Commissioner Matthew Fort
Visit Lake Norman - Commissioner Jim Fuller
Lake Norman Regional Economic Development Organization - Commissioner David Sitton
North Mecklenburg Alliance - Commissioner David Sitton
Charlotte Regional Transportation Planning Organization - Commissioner Jane Campbell
Lake Norman Transportation Commission - Commissioner Jane Campbell
Metropolitan Transit Commission - Mayor Rusty Knox

Summary:

ATTACHMENTS:

Description	Upload Date	Type
No Attachments Available		



**Agenda Title: Presentation - Lingle Hut Restoration Project
Kurt Naas**

Summary:

ATTACHMENTS:

Description		Upload Date	Type
□	Presentation - Lingle Hut Restoration Project 09.11.18	9/7/2018	Cover Memo

Lingle Hut

Davidson, NC

Davidson BOC

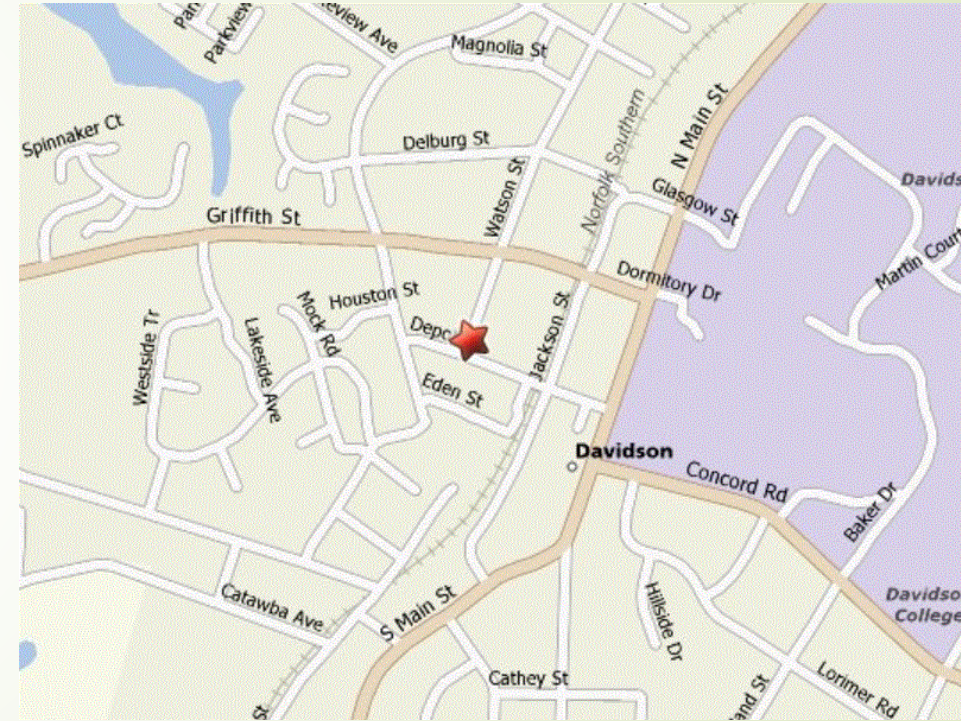
Sept 11, 2018

Lingle Hut ca 1933



History

- Part of Reeves Temple AME Zion
 - Founded over 120 years ago
 - Moved to current site in 1966
- Lingle Hut built in 1932
 - Part of "Mill Chapel" serving west side mill workers
 - Later renamed Unity Church (1932)
- Reeves Temple bought property in 1966
- Named after Walter Lingle
 - Davidson College President
 - Son donated funds to help Reeves Temple purchase the church campus on one condition: rename the Unity Cabin the Lingle Hut



➤ Part of Davidson history for nearly a century



Historical Significance

- “Rustic Revival” style construction
- Construction of this type occurred only from late 1920's-1930's
- One of **four** left in Mecklenburg County
- Communally built (vs architected)
 - “Men cut timber Saturday morning, held fish fry in the afternoon”
 - “Women cut bark from logs to ready (logs) for construction”

“The Lingle Hut represents the social history of Davidson during the Great Depression, and is one of the few buildings in Mecklenburg County to do so.”

-- Charlotte Mecklenburg Historic Landmarks Commission

In Its Heyday...



➤ Served as the social hall for Reed's Temple

The Need...

- Preserve an historically significant structure
- Serve an aging congregation
 - Limited funds (unable to repair L.H.)
 - Limited mobility
- Create opportunity for additional ministries
 - Hot meals
 - Clothes closet
 - Knitting classes
 - Christmas in Davidson



➤ **Restore an historic gathering place...that can still serve the community**

Current Situation



Settling & potential
termite damage



Significant
interior
damage



➤ A significant challenge...

Efforts & Plan

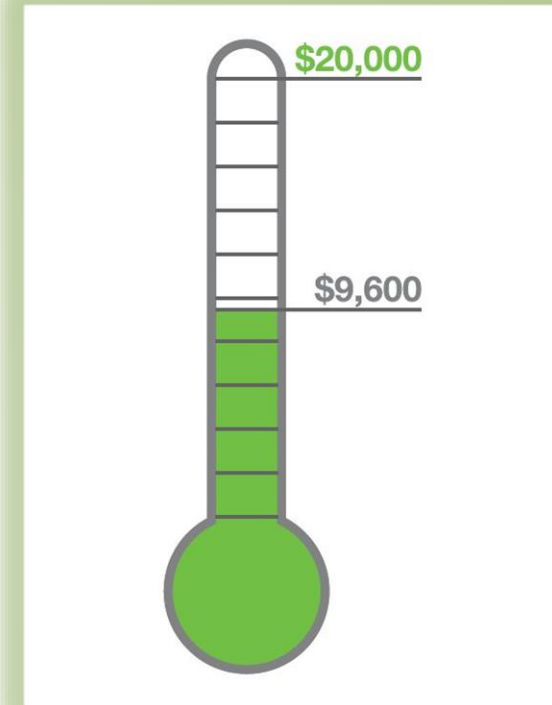
➤ Work Plan

- Stabilize & repair foundation
- Replace roof
- Interior work as trades and funds allow

➤ Fundraising Plan

- Carnival – Oct 13th
- Donate a brick effort - Fall
- Gala- Davidson College Archives

➤ Funds in place by EOY...



The Ask

- Publicity
- Sign variance
 - On Griffith St for Carnival
 - On property



➤ A significant challenge... but a unique opportunity



Contacts

- Castella Conner, Chair, Board of Trustees
 - castellaconner@gmail.com
 - 704 605 1298
 - Rev. Anthony Davis, Pastor
 - 704 891 3626
- 



Agenda Sidewalk Project and Funding

Title: Public Works Director Doug Wright and Finance Director Pieter Swart

Summary: At the August 28, 2018 Board Meeting, the Town Board considered several options for a sidewalk project for this fiscal year. The Board preferred option 1 which was Grey Road and Spring Street. The recommended action is to proceed with Grey Road and Spring Street Projects allocating \$357,276 of fund balance to complete the project.

Summary:

ATTACHMENTS:

	Description	Upload Date	Type
▣	Agenda Memo - Sidewalk Project and Funding 09.11.18	9/10/2018	Cover Memo
▣	Presentation - Sidewalk Project and Funding 09.11.18	9/10/2018	Cover Memo



2018 Sidewalk Projects

Date: September 11, 2018
To: Davidson Board of Commissioners
From: Doug Wright, Public Works Director

1. OVERVIEW

The town has three sidewalk projects that are shovel-ready, and one project that is shovel-ready, except for property acquisition.

We currently have \$150,000 in the FY2019 budget and \$150,000 earmarked for sidewalk projects in fund balance.

The estimate to complete the four projects is \$702,510.

The projects include:

- Grey Rd
- Spring St
- Delburg St
- Catawba Ave

We are seeking input on which project(s) to start, and potentially how to fund them.

2. RELATED TOWN GOALS

Core values:

Citizens need to move easily throughout the town and region, so government will provide a variety of options, such as sidewalks, bike paths, greenways, connected streets, and transit.

Strategic Plan:

Goal 7 Mobility/Transportation - The Town of Davidson will enable citizens to move freely throughout town via transit, car, bicycle, and on foot.

Constituent served:

All citizens.

3. OPTIONS/PROS & CONS

There are 3 options:

Option 1:

In addition to the FY2019 Budget, allocate fund balance to build Grey Rd and Spring St sidewalk

Option 2:

Allocate fund balance to fund Delburg & Catawba sidewalk construction

Option 3:

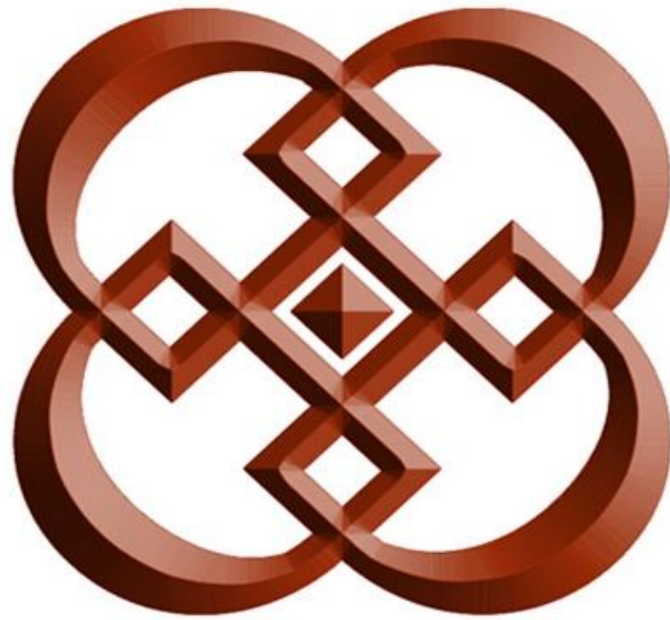
Some other combination of projects funded by FY 2019 budget and/or fund balance

4. FYI or RECOMMENDED ACTION

All the projects are worthwhile. Grey Rd has been in process longer than the others, and is a more dangerous walking environment than the others. Staff recommends Option 1, to complete Grey Road and Spring Street Projects, allocating \$357,276 of fund balance to complete the project. The Board may consider a reimbursement resolution from the 2017 Mobility GO Bonds at a later date.

5. NEXT STEPS

Determine projects to be funded and bid out.



The Town *of* Davidson

College Town. Lake Town. *Your Town.*

Sidewalk Projects

- Grey Rd (Concord RD to Wolfe St)
- Delburg St (Watson St to Beaty St)
- Catawba Ave (Potts St to town limit)
- Spring St (Walnut St to South St)



Option 1		
Project Costs		
Grey Road	Curb, Gutter, Sidewalk	\$ 487,276
Spring Street	Sidewalk	<u>\$ 20,000</u>
Total Cost		<u>\$ 507,276</u>
Sources of Revenue		
	FY2019 Budget	\$ 150,000
	Fund Balance	\$ 357,276
Note: \$150,000 of fund balance is earmarked for sidewalks		

Option 2		
Project Costs		
Delburg	Curb, Gutter, Sidewalk	\$ 135,290
Catawba	Sidewalk	<u>\$ 59,944</u>
Total Cost		<u>\$ 195,234</u>
Sources of Revenue		
	Fund Balance	\$ 195,234

Recommended Actions

- Approve option 1, to complete Grey Road and Spring Street Projects. Allocating \$357,276 of fund balance to complete the project.
- Note: This project could be considered for reimbursement from the 2017 Mobility GO Bonds at a later date.





**Agenda Title: Joint Compensation Study Findings and Recommendations
Town Manager Jamie Justice and Consultant Susan Manning**

Summary: To ensure the Town of Davidson is competitive with municipalities in the Charlotte Region, a pay study was included in the FY 2018-19 budget. The last pay study was conducted in 2015 and the town's strategy, and a human resource best practice, is to complete a pay study every three years. Staying competitive allows the Town of Davidson to recruit and retain high performing employees that provide services to the citizens. A collaborative effort was made between the towns of Huntersville, Cornelius, and Davidson to collect and analyze data from 20 local communities.

Summary:

ATTACHMENTS:

	Description	Upload Date	Type
□	Agenda Memo - Joint Compensation Study Davidson Findings and Recommendations 09.11.18	9/7/2018	Cover Memo
□	Attachment - Benchmark Communities Salary Survey 2018	9/7/2018	Cover Memo
□	Presentation - Joint Compensation Study Davidson Findings and Recommendations 09.11.18	9/7/2018	Cover Memo



Joint Compensation Study Findings and Recommendations

Date: September 11, 2018
To: Davidson Board of Commissioners
From: Jamie Justice, Town Manager

1. OVERVIEW

To ensure the Town of Davidson is competitive with municipalities in the Charlotte Region, a pay study was included in the FY 2018-19 budget. The last pay study was conducted in 2015 and the town's strategy, and a human resource best practice, is to complete a pay study every three years. Staying competitive allows the Town of Davidson to recruit and retain high performing employees that provide services to the citizens.

A collaborative effort was made between the towns of Huntersville, Cornelius, and Davidson to collect and analyze data from 20 local communities. This provided us access to more comprehensive information and reduced costs. Human Resource consultant Susan Manning was selected to conduct the study on behalf of the three towns.

Purpose:

To complete a total compensation study for the three towns to ensure that salaries, pay ranges and benefits (including incentives) are competitive with the external labor market in order to meet the current and future business needs of the towns for attracting and retaining well-qualified and high performing employees.

Methodology:

- Develop a salary survey to collect the average actual salaries being paid in the market and the salary ranges for 43 job classifications most commonly used in local government in the region;
- Calculate market rate for each job class using actual salaries being paid in the market;
 - Determine **Mean** – Mean is the average of all the actual salaries being paid in the market surveyed for that particular job class. This is the market rate and should align to the midpoint of the salary range for the job class.
 - Determine **Median** – Median is the middle point of the salaries being paid in the market surveyed; so half are being paid below and half are being paid above the Median.
- For some job classes, calculate an **adjusted market rate**; usually this means eliminating from the market calculation, data that tends not to be a good match and may skew the data (e.g. Management positions for Charlotte or Mecklenburg County);

- Compare midpoint of the Town's current salary ranges to the market rate to determine if Town's ranges are above, below or competitive with the market;
- Compare current actual salaries with market/median to determine if employees are being paid competitively.
- Compare employee benefits that the Town offers to those offered in the market to ensure that benefits are competitive and support recruiting and retaining employees.

Attached to the agenda is an overview, list of benchmark communities and presentation by Susan Manning.

2. RELATED TOWN GOALS

Strategic Plan:

Operations Goal: Davidson will maintain organizational excellence through sound financial management, training and retention of quality employees, and superior service to the community.

Tactical Priority: Sound financial management; Action step 1.5: Review staffing, pay, and benefits levels.

Partnerships Goal: The town of Davidson will build on existing relationships to strengthen partnerships with strategic organizations and institutions.

Core Value(s):

- Citizens entrust town government with the stewardship of public funds, so government will provide high quality services at a reasonable cost.
- Davidson exists in proximity to and is interdependent with other jurisdictions, so we strive for local, regional, state and federal cooperation.

Constituents served:

All Davidson Citizens

3. OPTIONS/PROS & CONS

Salary:

- Move the Pay Plan (all salary ranges) up by 5%;
- Adjust some ranges by 10% based on market data;
- Increase hourly rate for part-time Fire positions;
- Adjust Police salary ranges and provide flexibility to Police to hire at higher minimum salary for Police Officers;
- Adjust employee salaries to the minimum of the new salary ranges;
- Give up to 5% market adjustments to employees with salaries above the minimum but below market to address pay compression (mainly impacts Police positions);
- No salary increases for employees being paid at or above market;

Classification:

- PIO to Communications Director
- 1 Recreation Program Manager to Senior Program Manager
- Follow existing policy for classification changes and compensation

4. FYI or RECOMMENDED ACTION

FYI – No action needed at this time

5. NEXT STEPS

Next steps include a presentation to the board by Susan on September 25 to include costs for recommendation(s) and consider board approval

Study Overview

- Develop Salary Survey & Benefits Questionnaire
- 43 Benchmark positions – (Davidson matched to 30)
- 21 Public sector organizations in the Charlotte Region
- 19 responded to the survey
- Requested actual salaries & salary ranges
- Using survey data, calculated market rate/median
- Compiled data from 18 benefit/incentive questions

Benchmark Communities

Cornelius
Davidson
Huntersville
Matthews
Mint Hill
Pineville
Charlotte
Gastonia
Belmont
Mooresville
Statesville
Salisbury
Hickory
Lincolnton
Kannapolis
Concord
Monroe
Union County
Iredell County
Cabarrus County
Mecklenburg County
N.C. State Highway Patrol (Trooper classes)

The background features abstract, overlapping geometric shapes in various shades of blue, ranging from light sky blue to deep navy blue. These shapes are primarily located on the left and right sides of the slide, framing the central text area.

Joint Compensation Study Davidson Findings & Recommendations

Susan Manning, HR Consultant

September 11, 2018

Salary Survey Results

- ▶ Salary ranges include the minimum-midpoint-maximum salary for each classification.
- ▶ 18 salary ranges (not individual salaries) are below market:
 - ▶ Management positions
 - ▶ Most Professional positions
 - ▶ Public Works positions
 - ▶ Some Public Safety positions

Salary Survey Results

- ▶ 8 salary ranges are competitive with the market:
 - ▶ Administrative Support positions
 - ▶ Some Public Safety positions are competitive at the midpoint of the salary range, but not at the minimum
 - ▶ Firefighters
 - ▶ Police Officers
 - ▶ Police Detectives
 - ▶ Police Corporals
- ▶ 2 salary ranges are slightly above market

Police Officer Minimum Pay*

- ▶ Davidson - \$37,041
- ▶ Charlotte - \$44,362
- ▶ Huntersville - \$42,683
- ▶ Mooresville - \$39,650
- ▶ Cornelius - \$37,823 (likely moving their range)
- ▶ Market Median - \$42,444
- ▶ Davidson Average for all Police Officers - \$41,693

**Base pay, does not include incentives*

Compensation Recommendations

- ▶ Move the Pay Plan (all salary ranges) up by 5%;
- ▶ Adjust some ranges by 10% based on market data;
- ▶ Increase hourly rate for part-time Fire positions;
- ▶ Adjust Police salary ranges and provide flexibility to Police to hire at higher minimum salary for Police Officers;
- ▶ Adjust employee salaries to the minimum of the new salary ranges;
- ▶ Give up to 5% market adjustments to employees with salaries above the minimum but below market to address pay compression (mainly impacts Police positions);
- ▶ No salary increases for employees being paid at or above market;

Classification Study & Recommendations

- ▶ Reclassification Changes
 - ▶ PIO to Communications Director
 - ▶ 1 Recreation Program Manager to Senior Program Manager
- ▶ Follow existing policy for classification changes and compensation

Next Steps

- ▶ Complete costing analysis based on implementation date;
- ▶ Report back to the Board on September 25 with total cost for salary increases + related benefit cost;
- ▶ Adopt new pay plan and approve recommendations;
- ▶ Implement approved recommendations and any associated salary increases for employees.



**Agenda Title: 251 South Street Property Acquisition
Assistant Town Manager Dawn Blobaum**

Summary: The town has 60 days from September 5 to complete its due diligence process prior to purchasing the property at 251 South Street. The Board will be asked approve Resolution 2018-24 to affirm the purchase of 251 South Street and appropriate \$45,000 funding for deposit, legal fees, and due diligence from Public Facilities Capital Projects fund.

Summary:

ATTACHMENTS:

	Description	Upload Date	Type
▣	Agenda Memo - 251 South Street Property Acquisition 9.11.18	9/7/2018	Cover Memo
▣	DRAFT - Resolution 2018-24 Approval of Purchase of 251 South Street	9/7/2018	Cover Memo



251 South Street Property Acquisition

Date: September 11, 2018

To: Davidson Board of Commissioners

From: Dawn Blobaum, Assistant Town Manager

1. OVERVIEW

The Board of County Commissioners waived their right of first refusal to purchase the former IB School property at their September 5 meeting, clearing the way for our purchase. We have 60 days from that date (until November 5) for due diligence; the closing will be in early December. During the due diligence period, we will complete a survey of the property, a Phase 1 environmental study, and a lead test of the water supply. We've received proposals for the work and the engineers are ready to begin.

Legal fees include closing and title search costs.

2. RELATED TOWN GOALS

Strategic Plan: Operations, Tactical Priority 2. Capital and maintenance needs.

Core values: Citizens entrust town government with the stewardship of public funds, so government will provide high quality services at a reasonable cost.

Constituents: All Davidson residents.

3. FYI or RECOMMENDED ACTION

Requested action: Approve Resolution 2018-24 to affirm the purchase of 251 South Street and appropriate \$45,000 funding for deposit, legal fees, and due diligence from Public Facilities Capital Projects fund.

4. OPTIONS/PROS & CONS

Pros: Continue purchase process

Cons: Funding is not in current budget

5. NEXT STEPS – DRAFT SCHEDULE

September 5: BoCC approve sale – 60-day due diligence period begins

September 10: Escrow deposit due to closing attorney

September 11: Board approve funding for deposit, legal fees, and due diligence

October 2: Finance Director sends financing RFP to banks

October 23: Public hearing on financing

November 2: Finance Director receives proposals from banks

November 5: Due diligence complete

November 27: Board approves installment financing; appropriates funding for maintenance, utilities, and insurance for remainder of FY19; and considers gym stabilization funds

December 4: LGC approve financing

December 5 +/-: Close on loan and close on property



RESOLUTION 2018-24
APPROVING THE PURCHASE OF REAL ESTATE

WHEREAS, on August 7, 2018, the Board approved a motion to proceed with the purchase of 251 South Street,

WHEREAS, on August 16, 2018, the Board of Education approved the sale of 251 South Street,

WHEREAS, on September 5, 2018, the Mecklenburg County Board of County Commissioners approved the sale of 251 South Street and declined the statutory right of first refusal,

WHEREAS, the Town Board of Commissioners desires to approve the contract to purchase 251 South Street, Davidson, NC, for the purchase price of two million four hundred sixty dollars (\$2,460,000).

NOW, THEREFORE, BE IT RESOLVED, as follows:

1. The purchase of 251 South Street is approved for the price of \$2,460,000 plus closing costs associated with the purchase of the property.
2. The Town Manager is hereby authorized to execute the instruments necessary to purchase the property.

Adopted this 11th day of September, 2018.

Rusty Knox
Mayor

Elizabeth K. Shores
Town Clerk



**Agenda Title: Downtown Park/Davidson Farmer's Market Site Improvement Options
Economic Development Director Kim Fleming**

Summary: At the September 4, 2018 work session, the Board reviewed the proposed improvements to the Downtown Park/Davidson Farmer's Market site. The Board will consider accepting the \$100,000 grant from the Department of Agriculture and amend the FY2019 budget to reflect the grant and authorize the Manager to move forward with up to \$45,000 for construction documents phase.

Summary:

ATTACHMENTS:

Description		Upload Date	Type
□	Agenda Memo - Downtown Park/Davidson	9/7/2018	Cover Memo
	Farmer's Market Site Improvement Options 09.11.18		



Downtown Park/Davidson Farmer's Market Site Improvement Options

Date: September 11, 2018

To: Davidson Board of Commissioners

From: Kim Fleming

1. OVERVIEW

The Town Board reviewed potential projects to utilize G.O. Bond money in January 2018. This project was one of the top priorities for the Board as the area is used by so many citizens of Davidson. It is also an area that attracts visitors and adds to the vibrancy of the downtown. It helps our thriving business/restaurant community by functioning as overflow outdoor seating and is also home to our Farmers' Market. The Town Board worked to secure a \$100,000 grant from the Department of Agriculture that can be used for this project.

2. RELATED TOWN GOALS

Strategic Plan Item: Economic Development, Social Community Engagement

List core value(s): The physical, social and intellectual well-being of Davidson citizens is fundamental to our community so town government will provide and encourage enjoyable, safe, and affordable recreational and cultural lifelong learning opportunities.

Davidson's economic health is essential to its remaining a sustainable community so town government with judiciously encourage and guide the location of new businesses.

3. OPTIONS/PROS & CONS

Option 1:

Accept the \$100,000 NC Department of Agriculture grant, amend the budget for the grant, and authorize the Manager to enter into a contract for the construction drawings phase (up to \$45,000) for the project.

PROS:

- Utilize \$100,000 of grant money
- Enhance one of the most used community spaces in town
- Benefit to local businesses
- Accelerates the schedule as much as possible to fit the project within the farmer's market off-season

CONS:

- Have to spend town money to complete the project

Option 2:

Delay action until further information is provided.

PROS:

- Allows the board to have more information on the hardscape materials before deciding on the scope/cost of the project.

CONS:

- Time delay could affect the ability for the project to fit within the farmer's market off-season this year.
- The lack of construction drawings does not help provide the board with the additional information requested in order to make a decision on the project scope/cost.

4. FYI or RECOMMENDED ACTION

Staff recommends option 1.

5. NEXT STEPS

Staff will work with Stantec to provide the information needed to the board regarding the hardscape materials. After completion of the construction drawings, Stantec will bring back to the board more specifics on the scope, cost estimates, phasing options, and possible project schedule.



**Agenda Title: Historic Preservation Initiatives Update
Assistant Town Manager Dawn Blobaum**

Summary: Historic Preservation is one of the board's strategic plan goals. This is an update on our work on various initiatives to date and next steps. The Board may take action to determine the process for choosing a committee to vet RFP and consultant for the local historic district expansion/creation.

Summary:

ATTACHMENTS:

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▣	Agenda Memo - Historic Preservation Initiatives Update 09.11.18	9/7/2018	Cover Memo
▣	Attachment - 2018 Preservation Commission Ordinance	9/7/2018	Cover Memo
▣	Attachment - Historic Preservation Report	9/10/2018	Cover Memo
▣	Presentation - Historic Preservation Initiatives Update 09.11.18	9/7/2018	Cover Memo



Historic Preservation Initiatives Update

Date: September 11, 2018

To: Davidson Board of Commissioners

From: Dawn Blobaum, Assistant Town Manager

1. OVERVIEW

Numerous historic preservation initiatives are listed in the board's strategic plan. This is an update on those we are currently pursuing. They include:

- **New or expanded local historic district:** A group of North Main residents have asked that the town begin the process of designating the North Main Street neighborhood a local historic district (LHD). We have a draft RFP for a consultant, but need a committee to vet both the RFP and the consultant responses and bring a recommendation to the BOC.
- **Potential expansion of landmarked properties:** We partner with the Charlotte-Mecklenburg Landmarks Commission to designate historic landmarks in Davidson and its ETJ. Expanding the number of designated landmarks may help decrease the number of tear-downs in our village area. Landmark designation accrues a tax benefit to the property owner and gives the town or Charlotte-Mecklenburg Landmarks Commission 365 days to find an option to demolition. We have scheduled a meeting for property owners of potential landmarks in Davidson and the ETJ to discuss the benefits of designation.
- **Certified Local Government process:** Our CLG application was approved by the NC State Historic Preservation Office and sent on to the National Park Service for final approval. The state approval included several advisory recommendations for improving/updating our Historic Preservation Ordinance (new draft ordinance attached) and the archeology section of our Historic District Design Guidelines. A certified local government is eligible to receive state funding (as a matching grant) for surveying and planning for potential historic districts. Federal funding may be available for restoration or stabilization projects. The state also offers training for CLG jurisdiction staff and Historic Preservation Commission members.
- **Conservation districts:** Numerous jurisdictions in North Carolina have regulated the exterior appearance of residential structures, including single-family homes, in neighborhoods that are significant, but not eligible for historic district status, through the use of Conservation Districts. They employ specific design guidelines for these districts. (Many of those design guidelines were severely impacted by the "Aesthetics Bill" of 2015.) The Town of Davidson has never regulated the exterior design of single family structures unless they are in the local historic district; however, in the Village Infill planning area we regulate setbacks, height, and mass through the Village Infill Overlay Districts, which are similar to Conservation Districts. This is a vehicle we can review to be sure we have appropriate floor area ratios, setbacks, heights, etc. to ensure that new construction is complementary to existing.
- **Other:** We are discussing National Register Historic District signage with NC-DOT, and are working on additional planning department webpages to explain our historic programs and resources.

Historic Preservation economic development ongoing, Main Street grants underway with \$15k budget.

The historic preservation report, sent July 13, is attached. It explains the details of our historic districts and the variety of other historic resources in Davidson.

2. RELATED TOWN GOALS

Strategic Plan: Goal 3, Tactical priority 1: Create/expand local historic district, Tactical priority 2: Investigate historic preservation tools

Core values: Davidson's traditional character is that of a small, historic college town, so land planning will reflect its historic patterns of village-centered growth including connection of neighborhoods, preservation of our historic resources, conservation of rural area, and provision of public spaces.

Constituents: All Davidson residents.

3. FYI or RECOMMENDED ACTION

Decision requested: Determine the process for choosing a committee to vet RFP and consultant for the local historic district expansion/creation.

4. OPTIONS/PROS & CONS

There are several ways to choose a committee for the LHD initiative.

1) Appointment process: Directly request that one or two people from the following groups serve on the committee:

- Board of Commissioners
- Member(s) of Historic Preservation Commission (aka Design Review Board)
- Member of Davidson Historical Society
- North Main residents
- At-large citizens (particularly residents from other areas of National Historic District)
- Staff of Charlotte-Mecklenburg Landmarks Commission
- Davidson College representative

Pros: Can be completed relatively quickly, insures that we have direct stakeholders on committee.

Cons: Opportunity not available to all Davidson citizens.

2) Application process: Advertise for committee members through typical channels (eCrier, social media, Manager's report, etc.). Collect applications and bring to the BoC to choose members.

Pros: Transparent, provides opportunity for involvement for more citizens.

Cons: Lengthier process, less chance of getting direct stakeholders.

5. NEXT STEPS

- **Meet with HPC/DRB September 19 to review all initiatives.**
- **New or expanded local historic district:** Issue RFP, choose consultant, begin process.
- **Potential expansion of landmarked properties:** Meeting on October 22 at 6:00 p.m. for property owners of potential landmarks (plus interested public).
- **Certified Local Government process:** Updated Historic Preservation Ordinance approval process in coming months.
- **Conservation districts:** Continue investigation and discuss with BoC at later date.
- **Other:** Determine location of HP signage, develop new webpage information, FAQs, etc., discuss legislative opportunities with board at future date.

HISTORIC PRESERVATION ORDINANCE

SECTION 1 TITLE

The title of this ordinance shall be the Town of Davidson Historic Preservation Ordinance.

SECTION 2 PURPOSE

Whereas the historical heritage of the Town of Davidson is a valued and important part of the general welfare; and whereas the conservation and preservation of that heritage, through the documentation and regulation of historic districts or landmarks, or through the acquisition of historic properties, stabilizes and increases property values, and pursuant to North Carolina General Statute (NCGS 160A-400.1 to 400.14) this ordinance is enacted in order to

- a.** safeguard the heritage of the Town of Davidson by preserving districts and landmarks therein that embody important elements of its culture, history, architectural history, or prehistory; and
- b.** promote the use and conservation of such districts and landmarks for the education, pleasure, and enrichment of the residents of the Town of Davidson and of the State as a whole.

SECTION 3 HISTORIC PRESERVATION COMMISSION

3.1 Creation and Appointment

Pursuant to general statute 160A-400.7, a historic preservation commission, hereinafter referred to as the "Commission" was created by ordinance in 1989 by the Davidson Board of Commissioners. The Commission shall conform to the following:

- The Commission shall consist of a minimum of seven members who shall be appointed by the Davidson Board of Commissioners.
- Initially appointed terms shall be staggered. Thereafter, the Davidson Board of Commissioners shall appoint members to terms of three years.
- Commissioners shall serve until their successors are appointed.
- All commissioners shall reside within the territorial jurisdiction of the Town of Davidson.

3.2 Qualification of Members

Members of the commission shall have demonstrated education, experience, special interest, or a combination thereof, in historic preservation, history, architecture, architectural history, archaeology, cultural anthropology, planning, or related field.

3.3 Rules of Procedure

a. The Commission shall adopt rules of procedure necessary to the conduct of its affairs and in keeping with the provisions of this ordinance. The rules of procedure shall provide for at least the following:

- (1) selection of Commission officers
- (2) time and place of regular meetings, and calling of special meetings
- (3) procedures for conduct of public hearings
- (4) keeping of minutes and Commission records
- (5) conduct of voting
- (6) conflicts of interest policy
- (7) attendance policy
- (8) forms to be used in applying for Certificates of Appropriateness
- (9) sufficient project information to make sound determinations regarding applications for Certificates of Appropriateness
- (10) list of minor works for which Commission staff may issue Certificates of Appropriateness

b. The Commission shall meet at least quarterly. All meetings shall be conducted in accordance with the North Carolina Open Meetings Law, G.S. Chapter 143, Article 33C (NCGS 143-318.9 to 318.18).

c. The Commission shall annually present to the Davidson Board of Commissioners a report of its activities, budget, findings, recommendations, and actions, which shall be made available to the public.

3.4 Powers and Duties

The Commission is hereby empowered to undertake, or to delegate such responsibilities as they deem appropriate to the Charlotte-Mecklenburg Landmarks Commission, such actions as may be reasonably necessary to the discharge and conduct of its duties and responsibilities as set forth in this ordinance and in the North Carolina General Statutes, including, but not limited to

- a.** organizing itself and conducting its business;
- b.** receiving and spending funds appropriated by the Davidson Board of Commissioners for operating and performing its duties;
- c.** conducting an inventory of properties of historical, archaeological, architectural, and/or cultural interest;
- d.** recommending to the Davidson Board of Commissioners that individual buildings, structures, sites, areas, or objects within its zoning jurisdiction be designated as "historic landmarks" and that areas within its zoning jurisdiction be designated as "historic districts;"
- e.** recommending to the Davidson Board of Commissioners that designation of any area as a historic district, or part thereof, or of any building, structure,

site, area, or object as a historic landmark, be revoked or removed for cause;

f. reviewing and acting on proposals for

- (1) exterior alteration, relocation, or demolition of designated historic landmarks;
- (2) exterior alteration, relocation, demolition, or new construction of properties within designated historic districts;

g. negotiating with property owners who propose to demolish or relocate a designated landmark, or a building, structure, site, area, or object within a designated district, in an effort to find a means of preserving such properties, including consulting with private civic groups, interested private citizens, and other public boards or agencies;

h. instituting action, through the Davidson Code Enforcement official or Mecklenburg County Code Enforcement officials, to prevent, restrain, correct, or otherwise abate violations of this ordinance or of ordinances designating historic landmarks or districts;

i. entering, at reasonable times and with the consent of the owner or occupant, upon private lands to make examinations, conduct surveys and inventories, or other purposes in performance of its official duties. However, no member, employee, or agent of the Commission shall enter any private building or structure without the express consent of the owner or occupant thereof;

j. reviewing and acting on proposals for alterations of interior features of designated historic landmarks, as specified, and for which owner consent was given, in the ordinance establishing designation;

k. appointing advisory bodies or committees as appropriate;

l. negotiating with property owners for the acquisition or protection of significant historic properties;

m. acquiring by any lawful means, the purchase fee, or any lesser included interest, including options to purchase, properties designated as landmarks, properties located within designated districts, or land to which historic buildings or structures may be moved; holding, managing, preserving, and restoring such a property and improving the interest; and exchanging or disposing of the interest through public or private sale, lease, or other lawful means, provided the property shall be subject to covenants or other legally binding restrictions which shall secure appropriate rights of public access and the preservation of the property. All lands, buildings, structures, sites, areas, or objects acquired by funds appropriated by the local governing body shall be acquired in the name of the Town of Davidson unless otherwise provided by that body;

- n. accepting grants of funds from private individuals or organizations for preservation purposes;
- o. conducting educational programs pertaining to historic landmarks or historic districts within its jurisdiction;
- p. publishing or otherwise informing the public about any matter related to its purview, duties, responsibilities, organization, procedures, functions, or requirements;
- q. advising property owners about appropriate treatment(s) for characteristics of historic properties;
- r. cooperating with the State of North Carolina, the United States of America, local governments, public or private organizations, or their agencies, in pursuing the purposes of this ordinance, including entering into contracts, provided that such contracts are not inconsistent with state or federal law;
- s. preparing and recommending adoption of a preservation element, or elements, as part of the Town of Davidson comprehensive plan;
- t. proposing to the Davidson Board of Commissioners amendments to this or to any other ordinance, and proposing new ordinances or laws relating to historic landmarks and districts or to the protection of the historic resources of the Town of Davidson and its environs.

SECTION 4 INVENTORY

The Commission shall use as a guide to identification, assessment, and designation of historic landmarks and districts an inventory of buildings, structures, sites, areas, or objects which are of historic, prehistoric, architectural, archaeological, and/or cultural significance. The Commission shall take steps as necessary to ensure that the inventory reflects information current to within twenty (20) years.

SECTION 5 HISTORIC LANDMARKS

5.1 Adoption of Ordinance of Designation

- a. The Davidson Board of Commissioners may adopt and, from time to time, amend or repeal an ordinance designating one or more historic landmarks. The ordinance shall include information which shall
 - (1) list the name or names of the owner or owners of the property;
 - (2) describe each property designated by the ordinance, including the address, if applicable, the physical configuration and orientation of the property so designated;
 - (3) describe those elements of the property which are integral to its historic, architectural, archaeological, and/or cultural significance;

- (4) provide for each designated historic landmark a suitable sign or plaque indicating that the landmark has been so designated; and
- (5) any other information deemed necessary, within the authority of this ordinance and the general statutes, as determined by the Davidson Board of Commissioners.

b. The landmark designation process may be initiated by either the Commission (or its designee) or at the request of a property owner. No ordinance to designate any building, structure, site, area, or object shall be adopted or amended until all of the requirements of this ordinance and its subsections have been satisfied.

5.2 Criteria for Designation

To be designated as a historic landmark, a property, building, site, area, or object shall be found by the Commission (or its designee) to possess special significance in terms of its history, prehistory, architecture, archaeology, and/or cultural importance, and to retain the integrity of its design, setting, workmanship, materials, feeling, and/or association.

5.3 Procedure for Designation

- a.** The Commission or its designee, the Charlotte-Mecklenburg Landmarks Commission, shall make, or cause to be made, an investigation and designation report which includes
- (1) the name of the property to be designated, including both common and historic names if they can be determined;
 - (2) the name(s) and address(es) of the current owner(s);
 - (3) the location of the property for which designation is proposed, including the street address and Mecklenburg County tax map parcel number or parcel identification;
 - (4) the dates of original construction and of all later additions or alterations, if applicable;
 - (5) an assessment of the significance of the building or site as prescribed by this ordinance;
 - (6) an architectural or archaeological description of the area of the site or structure, including descriptions of all outbuildings and appurtenant features, for which designation is proposed;
 - (7) a historical discussion of the site or structure within its type, period, and locality;
 - (8) a photograph showing, to the fullest extent possible, the overall disposition of the property; one photograph of each façade or elevation and supplementary photographs as necessary to illustrate architectural details or ornamentation, siting, scale, proportion, and relationship of features or buildings, structures, or objects to each other; and
 - (9) a map showing the location of the property, including all outbuildings and appurtenant features.

b. Pursuant to G.S. 160A-400.6, as amended, the designation report shall be submitted to the North Carolina Department of Cultural Resources, Division of Archives and History, or its successor agency, which, acting through the State Historic Preservation Officer, shall review it and provide written comments and recommendations to the Davidson Board of Commissioners regarding the substance and effect of the proposed designation. Failure of the Department to respond within thirty (30) days following its receipt of the report shall constitute approval of the report by the Department and relieve Davidson Board of Commissioners of all responsibility to consider the Department's comments or recommendations concerning the report.

c. At the expiration of the thirty (30) day review period, the Commission shall consider the report and any comments or recommendations from the State Historic Preservation Officer, and shall accept it, amend it, reject it, or defer a decision until completion of a period of further study, not to exceed sixty (60) days. The Commission shall forward to the Davidson Board of Commissioners a copy of the report, copies of written comments received from the Department of Cultural Resources, and a recommendation either to approve or disapprove designation of the property, stating in its recommendation the extent to which the property meets the criteria for designation as set forth in this ordinance. A recommendation for approval shall be accompanied by a proposed ordinance of designation. A recommendation for disapproval shall not necessarily prevent any future consideration of a property for designation as a historic landmark.

d. The Davidson Board of Commissioners shall hold a public hearing, either jointly with the Commission, or separately, to consider the proposed ordinance. Reasonable notice of the time and place thereof shall be given.

e. Following the public hearing, the Davidson Board of Commissioners shall consider the Commission's designation report, its recommendation(s), the Department of Cultural Resources' recommendation(s), and comments made at the public hearing, and shall adopt the ordinance as proposed, adopt the ordinance with amendments, or reject the ordinance.

f. Upon adoption of the ordinance, the Commission (or its designee) staff

- (1) shall, within thirty (30) days of adoption, send the owner(s) of the landmark(s) written notice of such designation, explaining the substance of the Commission's decision, via certified mail with a return receipt requested;
- (2) shall file one copy of the ordinance, and any subsequent amendments thereto, in the office of the Register of Deeds of Mecklenburg County, which office shall index each historic landmark according to the name of the owner in the grantee and grantor indexes.
- (3) shall, if the landmark lies within the zoning jurisdiction of the Town of Davidson, file a second copy of the ordinance, and any subsequent

amendments thereto, in the office of the town clerk, where it shall be made available for public inspection at any reasonable time, and shall provide a third copy to Mecklenburg County Code Enforcement department.

(4) shall notify the tax assessor of Mecklenburg County of the landmark designation.

g. Upon notification from the Commission, the tax assessor of Mecklenburg County shall clearly indicate the designation on all appropriate tax maps for as long as the designation remains in effect.

h. In disapproving a designation report, a copy of the minutes of the meeting at which such decision to deny was made shall be mailed to the owner of the property proposed for designation, together with a letter explaining the substance of the Commission's decision.

SECTION 6 HISTORIC DISTRICTS

6.1 Adoption of Ordinance of Designation

The Davidson Board of Commissioners may adopt and, from time to time, amend or repeal an ordinance designating a historic district. The ordinance shall include information which shall describe the physical area proposed for designation, its boundaries, and general historic, architectural, archaeological, and/or cultural significance. The district designation process may be initiated by either the Commission or at the request of any number of property owners. No ordinance to designate a district shall be adopted or amended until all of the requirements of this ordinance and its subsections have been satisfied.

6.2 Criteria for Designation

To be designated as a historic district, an area shall be found by the Commission to possess special significance in terms of its history, prehistory, architecture, archaeology, and/or cultural importance, and to retain the integrity of its design, setting, workmanship, materials, feeling, and/or association.

6.3 Procedure for Designation

a. The Commission shall make, or cause to be made, an investigation and designation report which includes

- (1) an assessment of the significance of the buildings, sites, structures, features, objects, or environs to be included in a proposed district and a description of its boundaries; and
- (2) a map clearly indicating the boundaries of the district and the properties, showing their Mecklenburg County tax map parcel numbers, contained therein.

b. A district designation report shall be

- (1) referred to the Davidson Planning Department for review and comment according to procedures set forth in the Davidson Planning ordinance.
- (2) submitted to the North Carolina Department of Cultural Resources, Division of Archives and History, or its successor agency, which, acting through the State Historic Preservation Officer, shall review it and provide written comments and recommendations to the Davidson Board of Commissioners regarding the substance and effect of the proposed designation. Failure of the Department to respond within thirty (30) days following its receipt of the report shall constitute approval of the report by the Department and relieve the Davidson Board of Commissioners of all responsibility to consider the Department's comments or recommendations concerning the report.

c. At the expiration of the thirty (30) day review period, the Commission shall consider the report and any comments or recommendations from the State Historic Preservation Officer, and shall accept it, amend it, reject it, or defer a decision until completion of a period of further study, not to exceed sixty (60) days. The Commission shall forward to the Davidson Board of Commissioners a copy of the report, copies of written comments received from the Department of Cultural Resources, and a recommendation either to approve or disapprove designation of the district, stating in its recommendation the extent to which the proposed area meets the criteria for designation as set forth in this ordinance. A recommendation for approval shall be accompanied by a proposed ordinance of designation. A recommendation for disapproval shall not necessarily prevent any future consideration of an area for designation as a historic district.

d. Upon receipt of a recommendation and designation report from the Commission, the Davidson Board of Commissioners shall proceed in the same manner as would otherwise be required for the adoption or amendment of any other appropriate zoning provision.

6.4 Revisions to Districts

Changes in the boundaries of an adopted district subsequent to its initial establishment shall be effected as allowed by Sections 6.1 and 6.2 of this ordinance and as prescribed in Section 6.3.

SECTION 7 CERTIFICATES OF APPROPRIATENESS

7.1 Certificate of Appropriateness Required

a. From and after the designation of a historic landmark or district, no construction, alteration, reparation, rehabilitation, relocation, or demolition of any building, structure, site, area, or object shall be performed upon such landmark or within such district until a Certificate of Appropriateness (or "Certificate") has been granted by the Historic Preservation Commission, or its designee, the Charlotte-Mecklenburg Landmarks Commission. A Certificate shall

be required for any and all exterior work, including masonry walls, fences, light fixtures, steps and pavement, any other appurtenant features, any above ground utility structures, and any type of outdoor advertising sign.

b. A Certificate shall be required in order to obtain a building permit, or any other permit granted for the purposes of constructing, altering, moving, or demolishing structures, and shall be required whether or not a building permit or other permit is required. Any building permit or other permit not issued in conformity with this Section shall be invalid.

c. For the purposes of this ordinance, “exterior features” shall include architectural style, general design, general arrangement, kind, and texture of material, size and scale, and type and style of all windows, doors, light fixtures, signs, any other appurtenant features, historic signs, historic advertising, color, landscape, and archaeological or natural features.

d. A Certificate shall be required for specific interior features of architectural, artistic, or historic significance in publicly owned landmarks and in privately owned landmarks for which consent to review has been given in writing by the owner. Such consent shall be filed in the Mecklenburg County Register of Deeds and indexed according to the name of the property owner in the grantee and grantor indexes and shall bind future owners and/or successors in title. The ordinance establishing historic designation of the property shall specify the interior features subject to review and the specific nature of the Commission’s jurisdiction over those features.

e. In approving a Certificate, the Commission may attach reasonable conditions necessary to the proper execution of this ordinance.

f. Commission staff may issue a Certificate for minor works as defined in the Commission’s Rules of Procedure. Minor works shall include the ordinary maintenance or repair of any exterior feature of a historic landmark or property located within a historic district, provided such maintenance or repair does not involve a change in design, material, or appearance thereof.

g. No application for a minor works Certificate shall be denied without deliberation by the Commission.

h. Under this section, the Commission shall institute action, through the Davidson Code Enforcement official or the Mecklenburg County Code Enforcement department, to prevent, restrain, correct, or otherwise abate the construction, reconstruction, alteration, restoration, relocation, or demolition of buildings, structures, appurtenant features, or any other features which would be incongruous with the special character of the landmark or district.

7.2 Review Guidelines

Prior to the designation of any historic landmark or district, the Commission shall

prepare and adopt guidelines not inconsistent with G.S. 160A-400.1 – 400.14 for constructing, altering, restoring, rehabilitating, relocating, removing, or demolishing of property designated as historic, which guidelines shall ensure, insofar as possible, that changes in designated landmarks or properties located districts shall be in harmony with the reasons for designation.

7.3 Certain Changes not Prohibited

Nothing in this ordinance shall be construed to prevent

- a.** the ordinary maintenance or repair of any exterior feature of a historic landmark or property located within a historic district, provided such maintenance or repair does not involve a change in design, material, or appearance thereof;
- b.** the construction, alteration, relocation, or demolition of any such feature, building, or structure when the Mecklenburg County Director of Code Enforcement certifies to the Commission that such action is necessary to the public health or safety because of an unsafe or dangerous condition;
- c.** a property owner from making of his property any use not otherwise prohibited by statute, ordinance, or regulation; or
- d.** the maintenance of, or, in the event of an emergency, the immediate restoration of any existing above ground utility structure without approval by the Commission.

7.4 Delay of Demolition

- a.** Except as provided below, a Certificate authorizing the demolition of a designated historic landmark or property located within a designated historic district may not be denied. However, the Commission may delay the effective date of such a Certificate for a period of up to 365 calendar days from the date of approval. The Commission may reduce the period of delay where it finds that the owner would suffer extreme hardship or be deprived permanently of all beneficial use of such property as a result of the delay. During the delay period, the Commission shall negotiate with the property owner and with any other party in an effort to find a means of preserving the property as provided in Section 3.4.
- b.** The Commission may deny an application for a Certificate authorizing the demolition or destruction of any designated landmark, or of any property, building, site, object, area, or structure located within a designated district, which the State Historic Preservation Office has determined to be of Statewide Significance, as defined by the criteria of the National Register of Historic Places, unless the Commission finds that the owner would suffer extreme hardship or be deprived permanently of all beneficial use of the property as a result of the

denial.

c. In the event that the Commission has voted to recommend designation of a property as a landmark, or of an area as a district, and such designation has not yet been made by the Davidson Board of Commissioners, the demolition of any building, site, object, area, or structure located on the property of the proposed landmark or within the proposed district may be delayed by the Commission for a period of up to 180 calendar days or until the Davidson Board of Commissioners takes final action on the proposed designation, whichever occurs first. Should the Davidson Board of Commissioners approve the designation prior to the expiration of the 180-day delay period, an application for a Certificate of Appropriateness authorizing demolition must then be filed; however, the maximum delay period of 365 days shall be reduced by the number of days elapsed during the 180-day delay while designation was pending.

7.5 Demolition through Neglect

Failure of an owner to regularly, consistently, and fully maintain a designated landmark or any property located within a designated district shall constitute demolition, through neglect, without a valid Certificate of Appropriateness and a violation of this ordinance. The Commission shall institute action, through the Davidson Code Enforcement official or the Mecklenburg County Code Enforcement department, to prevent, restrain, correct, or otherwise abate such demolition, provided such action includes appropriate safeguards to protect property owners from undue economic hardship.

7.6 Applications and Required Procedures

- a. An application for a Certificate shall be obtained from Commission staff. Applications shall be completed in form and in content and filed with the staff at least ten (10) business days prior to the next regularly scheduled Commission meeting. Late applications shall be deferred until the following regularly scheduled meeting.
- b. The Commission shall have, as detailed in its Rules of Procedure, broad powers to require the submittal, with the application, of pertinent information sufficient to determine an application.
- c. Incomplete applications shall not be accepted.
- d. Before considering an application for a Certificate, the Commission shall notify by mail the owners of any adjacent property. Such notices are for the convenience of property owners and occupants and no defect or omission therein shall impair the validity of issuing a Certificate or of any subsequent action.
- e. When considering an application for a Certificate, the Commission shall give

the applicant and owners of any property likely to be materially affected by the application an opportunity to be heard.

f. When considering the application, the Commission shall apply the review guidelines required by Section 7.2 and shall, in approving, approving with conditions, disapproving, or deferring an application, make findings of fact, indicating the extent to which the application is or is not in compliance with review criteria, and shall cause these findings of facts to be entered into the minutes of its meetings. The minutes shall also contain a summary of any citation to evidence, testimony, studies, or other authority upon which the Commission based its decision.

g. The Commission shall have ninety (90) calendar days following submittal of a complete application within which to act. Failure by the Commission to take final action within such period shall constitute approval of the application as submitted. This period may be extended by mutual agreement between the Commission and the applicant.

h. A Certificate shall be valid for 180 calendar days from date of issuance, or, in the case of a Certificate for demolition, from the effective date. If the authorized work has not commenced within that period, or has been discontinued for more than 365 calendar days from the date of issuance, such Certificate shall immediately expire and the applicant shall be required to reapply.

i. If the Commission denies a Certificate, a new application affecting the same property may be submitted, provided a substantial change is proposed in the plans.

j. An appeal of a final action by the Commission may be made to the Davidson Board of Adjustment. Written notice of intent to appeal must be sent to the Commission, postmarked within twenty (20) calendar days following the Commission's decision. Appeals must be filed with the Davidson Board of Adjustment within sixty (60) calendar days following the Commission's decision and shall be in the nature of certiorari. A decision by the Davidson Board of Adjustment may be appealed to the superior court of Mecklenburg County.

k. A Certificate shall be required for designated landmarks or buildings, structures, sites, areas, or objects within designated districts which are owned by the State of North Carolina or any of its agencies, political subdivisions, or instrumentalities, subject to the regulations of this ordinance and in accordance with North Carolina General Statute 160A-400.9(f).

l. In the case of any building, structure, site, area, or object designated as a historic landmark or of any property located within a designated historic district being threatened with demolition, as the result of willful neglect or otherwise, material alteration, rehabilitation, or removal, except in compliance with this ordinance, the Commission, the Davidson Board of Commissioners, or any other party aggrieved by such action may institute any appropriate action or

proceeding to prevent, restrain, correct, or otherwise abate such violation, or to prevent any illegal act or conduct with respect to such property.

SECTION 8 CONFLICT WITH OTHER LAWS

Whenever the provisions of this ordinance are in conflict with any other statute, charter provision, ordinance, or regulation of the Davidson Board of Commissioners, the more restrictive ordinance or regulation shall govern.

DRAFT

Historic Preservation Report

July 13, 2018

Introduction

The board of commissioners included in their strategic plan a goal to “preserve our historically significant structures to retain our authenticity as a historic, small college town.”

There are a variety of tools the town can use to increase our historic preservation focus and protect our historic resources. This report explains the existing historic preservation programs we currently have, several new initiatives we are undertaking, and potential legislative fixes for issues that affect our ability to control demolitions/tear-downs and the design of new construction in our historic areas. The report is organized in three sections:

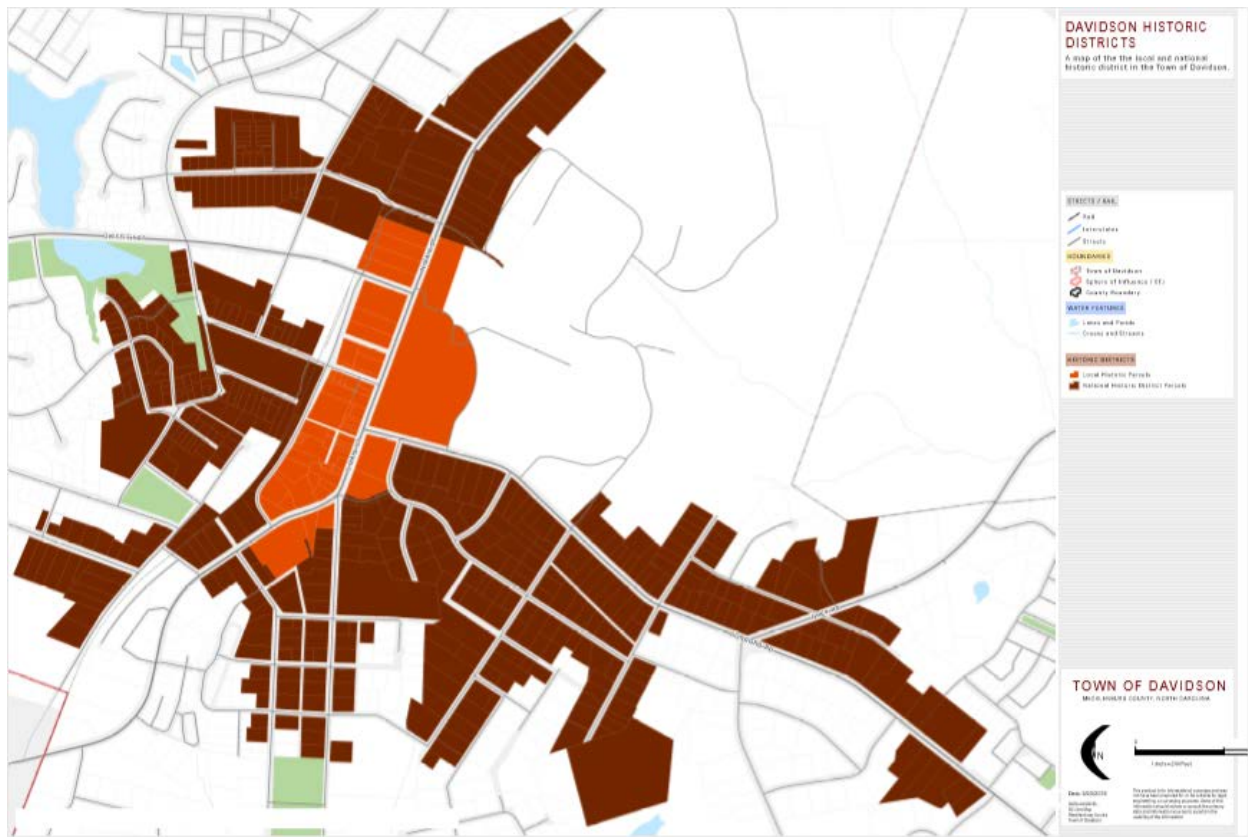
1. Davidson’s current resources/programs
 - a. National Register Historic District
 - b. Local Historic District
 - c. Designated Landmarks
2. New initiatives
 - a. Expansion of local historic district
 - b. Conservation districts
 - c. Expansion of individually landmarked structures
 - d. Additional ideas to limit tear-downs
3. Legislation that affects historic preservation and potential for changes
 - a. SB25
 - b. Demolition delay/deny legislation

1. Davidson's current historic resources/programs

a. National Register Historic District (NRHD)

The National Register of Historic Places is the nation's official list of buildings, structures, sites and districts worthy of preservation for their significance. The National Register is a federal program; however, nominations to designate a district are submitted to the State Historic Preservation Office (SHPO) for approval. Typically, structures must be 50 years old, have integrity of historic character, and significance in American history, architecture, archeology, engineering, or culture, to qualify as "contributing structures" in the NRHD. Structures within the district that don't meet that criteria are listed as "non-contributing structures."

In 2008, the Town of Davidson submitted an architectural survey, narrative, and visual documentation of structures located throughout older Davidson neighborhoods to the SHPO to request designation in the National Register of Historic Places. The designation was realized in 2009. Properties shown in brown on the map below are included in the NRHD.



Several structures in Davidson are both part of the NRHD and individually listed on the National Register of Historic Places:

Chairman Blake House: 318 Chairman Blake Lane.

Eumenean Hall and Philanthropic Hall: Davidson College campus

Beaver Dam: Davidson-Concord Road

Under Federal Law, the listing of a property in the National Register places no restrictions on what an owner may do with their property, up to and including demolition.

A 20% income tax credit is available for the rehabilitation of historic, income-producing buildings that are determined by the Secretary of the Interior, through the National Park Service, to be “certified historic structures.” The State Historic Preservation Office and the National Park Service review the rehabilitation work to ensure that it complies with the Secretary of the Interior’s Standards for Rehabilitation.

The tax legislation passed by Congress on December 22, 2017 eliminated the 20% tax credit for owner-occupied residential structures.

b. Local Historic District

The authority for jurisdictions to establish local historic districts (LHD) is granted by GS 160A-400.1 – 160A-400.15. The LHDs are typically designated as overlay zoning districts; that is, an extra layer of regulations that are applicable only to the LHD, not to the entire zoning district (or in our nomenclature, planning area).

On October 10, 1989, the Davidson Board of Commissioners approved an “Historic Preservation Ordinance” that established a local historic district, created the Historic Preservation Commission (HPC) and gave it jurisdiction over the district, and enumerated the procedures to request and criteria with which to review applications for projects within the district. (Updated rules of procedure for the HPC were adopted by the Davidson Board of Commissioners on October 12, 2010.)

At their December 12, 1989 meeting, the board of commissioners approved the map of the current local historic district, essentially rezoning the area as an overlay district. The LHD (see map) is generally the downtown area and has special significance in terms of its history and architecture. It is an overlay on portions of the current Village Center, Village commerce, and Village Edge planning areas. On the map above, the properties shown in orange constitute the LHD.

Owners of property in a local historic district are required to obtain certificates of appropriateness from the HPC before making significant changes or additions to a property, before beginning new construction, or before demolishing or relocating a property. Davidson’s HPC is synonymous with its Design Review Board (DRB). When legislating decisions regarding structures within the LHD, they act as the HPC; when legislating decisions regarding structures in the remainder of the community, they act as the DRB. An Historic Preservation Commission’s authority includes the ability to delay demolition of a structure in the LHD for up to 365 days. The HPC's review of proposed changes ensures that work on a property in a local district is appropriate to the special character of the district. The HPC adopted, and the board of commissioners approved, design guidelines as the criteria to judge what changes are appropriate.

Property owners also use the design guidelines to plan possible projects, and to discuss their applications with the HPC.

Section 4 of the Davidson Planning Ordinance includes general design standards for use by the DRB: (<http://www.ci.davidson.nc.us/DocumentCenter/View/8076/Section-4-Design-Standards-20170711?bidId=>)

Section 22 includes specific Local Historic District Guidelines that are the criteria the HPC uses for approving work in the LHD. These were written in 2009 and included in the ordinance in 2015: (http://www.ci.davidson.nc.us/DocumentCenter/View/8094/Section-22-update-HDguidelines-DRBedit-fonts_20150409?bidId=)

Historic district zoning can help to stabilize property values by maintaining the neighborhood's character and, depending on the design guidelines used by the HPC to review projects, it can benefit property owners by protecting them from inappropriate changes made by other owners that might destroy the special qualities of the neighborhood.

c. Designated Historic Landmarks

The authority for a jurisdiction to designate structures as historic landmarks is also enabled under GS 160A-400. In February, 2005 the Town of Davidson entered into a formal interlocal agreement with the Charlotte-Mecklenburg Historic Landmarks Commission to recommend structures worthy of designation as local historic landmarks. Both the Landmarks Commission and the Davidson Board of Commissioners must approve the landmark designation, with additional input from the state. The owner does not need to approve the designation. The following is a list of Davidson historic landmarks and the date they were designated:

Armour-Adams House	626 N. Main Street	2/13/2007
Beaver Dam	19600 Davidson-Concord Road	2/9/2016
Blake House, Chairman	318 Chairman Blake Lane	5/19/1980
Bradford Farm	15908 Davidson-Concord Road	11/12/2002
Bradford Store	15915 Davidson-Concord Road	6/19/2006
Cashion/Moore Cemetery	McAuley Road & Hwy 73	2/13/2007
Currie House, Violet W.	525 N. Main Street	11/19/2013
Daggy House, Tom & Mary Lu	102 Hillside Drive	5/14/2013
Davidson Colored School/Ada Jenkins	212 Gamble Street	11/13/2007
Davidson Cotton Mill	209 Delburg Street	11/9/2004
Davidson School	251 South Street	3/13/2012
Delburg Cotton Mill House	303 Delburg Street	1/13/2015
Elm Row	306 N. Main Street	7/18/1977
Eumenean Hall	214 N. Main Street	1/25/1977
Falls Store	300 Mock Road	9/14/2010
Helper Hotel (Carolina Inn)	225 and 215 N. Main Street	7/18/1977

Holt-Henderson-Copeland House	305 N. Main Street	2/13/2007
Mabonsie	312 S. Thompson Street	11/19/2013
Oak Row & Elm Row	306 and 308 Main Street	7/18/1977
Philanthropic Hall	216 N. Main Street	9/22/1975
Purcell House, James & Elizabeth	206 Lorimer Road	9/14/2010
Restormel	829 Concord Road	2/13/2007
Southern Power Co Transformer Bldg	210 Delburg Street	11/9/2004
Unity Church Cabin/Lingle Hut	213 and 219 Watson Street	12/9/2008

The landmarks designation can apply to the exterior only or to both the interior and exterior of a structure. The owner of a designated historic landmark may apply for an automatic deferral of 50% (30% if exterior only) of the Ad Valorem taxes on the structure. This deferral exists as long as the property retains its status as a historic landmark.

The owner of a historic landmark must apply to the Charlotte-Mecklenburg Historic Landmarks Commission for a Certificate of Appropriateness before any material alteration, restoration, removal, or demolition of any exterior feature of the structure may take place.

A Certificate of Appropriateness for the demolition of a landmark may not be denied except as noted below. However, the Landmarks Commission may delay the date of the demolition for a period of up to 365 days. The only instance in which the demolition of a historic landmark may be denied is if the designated landmark is determined by the State Historic Preservation Officer as having state-wide significance as defined by the criteria of the National Register of Historic Places.

2. New initiatives

a. Expansion of local historic district

Tactical priority 1 under the Historic Preservation goal in the strategic plan is to “Create/expand local historic district.”

Several residents of the North Main Street neighborhood have requested that the town expand the LHD to include their neighborhood. These properties are currently included in the National Register Historic District.

The process to expand our local district begins with the HPC – or their designee, a consultant – studying the area and writing a local designation report which documents the neighborhood's architectural and historical significance. The consultant will meet with property owners to seek their cooperation and to explain the ramifications of local designation. Throughout this process, staff can educate all residents whose properties lie within the NRHD of the importance of historic preservation and designation.

The NC Department of Cultural Resources, acting through the State Historic Preservation Officer, reviews and comments on the proposed designation. The HPC and the planning board

also review the report and recommend approval or denial to the Davidson Board of Commissioners. Since designation as a local historic district is a map amendment to the Davidson Planning Ordinance (overlay zoning), a public hearing is statutorily required prior to approval by the board of commissioners.

To start the process, we will designate a committee of citizens – from the HPC, the North Main neighborhood, commissioners, and others – to review the RFP for consultants, vet the responses, and interview/recommend/choose the consultant. The tentative timeline for the project forecasts its completion next spring.

It is anticipated that there may be some concern from residents in the proposed expansion area regarding the need for HPC approval (Certificates of Appropriateness) for all exterior modifications. In preparation for that eventuality, staff has prepared a draft version of “work lists” that differentiate between maintenance items or minor changes and new construction, major work or additions to an existing property. The intent of the lists is to allow for staff – as provided in Chapter 13 of the planning ordinance – to approve common and smaller requests in a timely manner. One key consideration is that staff will not be able to deny a project; if an item is submitted that conforms to the ordinance and guidelines, staff may approve. However, if there is question or concern, staff will forward the request to the Historic Preservation Commission.

b. Conservation districts

Tactical priority 2 under the Historic Preservation goal in the strategic plan is “Investigate historic preservation tools.”

Numerous North Carolina communities have instituted conservation districts (a zoning overlay) within their jurisdictions as a way to discourage inappropriate new construction in cohesive, historic neighborhoods which may not qualify for National Register Historic District status. (SB25 exempts structures in a NRHD.) They stabilize and enhance neighborhood character through design guidelines imposed through the overlay regulations that control the appearance of new residential construction (either new homes or additions visible from the street). NCGS 160A-382(a) authorizes overlay districts. The Town of Davidson has numerous overlay districts, including five in the Village Infill planning area that regulate height, setbacks, and floor area ratio (the size of the footprint or lot coverage) but do not have corresponding design guidelines.

The legality of design guidelines imposed on a conservation district outside of a NRHD has been called into question since the ratification of SB25 – the aesthetic bill that was approved in 2015 by the NC legislature. SB25 eliminated the authority of municipalities to regulate “building elements, such as exterior building color, type or style of exterior cladding material, style or materials of roof structures or porches, exterior nonstructural ornamentation, location or architectural styling of windows and doors, including garage doors.” With design guidelines that restrict these elements prohibited, several municipalities, including the City of Raleigh, have changed their regulations that apply to conservation districts to comply with SB25, meaning they don’t review the architectural elements of new construction or additions, just the setbacks, height, and lot coverage; exactly what our overlay districts already do.

A map and the regulations that accompany each district are here, beginning on page 2-82:
<http://www.ci.davidson.nc.us/DocumentCenter/View/8497/Section-2-Planning-Areas-20171212?bidId=>

There are several options available to us: 1) Revisit the current overlay districts in our Village Infill planning area to see if the height, setback, or lot coverage regulations need to be tightened, and/or 2) Discuss the possibility of new overlay districts in planning areas outside of the Village Infill if there is concern about inappropriate new residential construction that could be resolved by overlay districts in those planning areas. A map of the planning areas is here for your reference:

http://www.ci.davidson.nc.us/DocumentCenter/View/8041/11X17_PA_TOD_20170703?bidId=

Mooresville recently instituted a conservation district on North Main Street in their jurisdiction. The overlay only applies to commercial construction; SB25 allows municipalities to regulate the design of commercial structures. Our DRB/HPC already reviews all commercial structures, wherever they are located in town.

c. Expansion of individually landmarked structures

A goal of the board of commissioners, although not specifically stated in the strategic plan, is to limit the demolition of historic homes in Davidson. One initiative that has potential to influence that trend is the expansion of individually landmarked structures.

The Charlotte-Mecklenburg Historic Landmarks Commission staff have a list of about 60 structures in Davidson and our ETJ (a study list) that have the potential to be designated as landmarks. Many of them are located in our National Register Historic District. If these structures would be designated, the owners would receive a break on their property tax and the Landmarks Commission would have the authority to delay demolition for up to a year. This would allow the commission or the town the time to determine if there is interest and a means to save the structure. (There is no ability to delay/deny demolition simply because a structure is in the NRHD.)

Dan Morrill and Stewart Grey of the Landmarks Commission are willing to conduct an educational session for the owners of the structures on the list. The reduced tax burden may encourage owners to apply for designation. The Landmarks Commission can process three or so applications per year without cost to the owner. More than that, the owner is required to pay for a consultant to complete the necessary documentation for consideration by the Landmarks Commission. Documentation includes a survey and research report, and photographs of the property. The commission conducts a site visit and the documentation is presented at a commission meeting for approval before being presented to the Davidson Board of Commissioners.

d. Additional ideas for limiting tear-downs

At the present time, it looks like we have two options for a regulatory response to the tear-down phenomenon. The first is what is mentioned above – new size/height regulations on new residential construction in the Village Infill overlay districts. A second option is to regulate the minimum lot size in the Village Infill planning area. The concern with this option is that it would make many, if not most, of the existing lots in the area non-conforming. Owners of non-conforming lots will be limited in what they can do with their property and has implications for resale of their parcel.

These ideas will be investigated by the Planning Ordinance Committee and Planning Board Ordinance Committee and will be presented to the commissioners according to the work plan schedule.

3. Legislation that affects historic preservation and potential for changes

a. SB25 Legislation Summary and Options

In 2015, the legislature passed Session Law 2015-86 which amended NCGS 160A-381 and is commonly referred to as SB25 or the “Aesthetics Control Bill.” It is applicable to all municipalities. The bill limits the types of structures over which the town’s Design Review Board has purview. Prior to the ratification of SB25, the DRB reviewed all residential structures except single family homes. Duplexes, triplexes, quadplexes, apartments, condominiums, and townhouses were all reviewed by the DRB (in every planning area) to ensure that they complemented the neighborhood character and met the planning ordinance requirements.

SB 25 removed all of those building types from DRB purview with several exceptions:

- If the structure is in a designated local historic district,
- If the structure is in a designated national historic district,
- If the structure is a locally designated landmark,

The bill states that the town may not regulate “building design elements,” and defines those as: exterior color and cladding materials, style or materials of roof or porch structure, exterior ornamentation, location or style of windows and doors (including garage doors), and interior layout and number of rooms. The town can still regulate the size, setback, and use of these building types, but not the design.

Of greatest concern is the elimination of DRB review of townhouses. More specifically, those that may be built on our visible major thoroughfares, such as North Main, South Main, and Griffith Street. The Villages at South Main townhouses (the area where foundations are visible on the east side of South Main Street) is an example. The DRB reviewed the townhouses when they were first proposed in 2004, but the developer went out of business during the recession and the undeveloped land was sold. The current owner of the property was not required to get DRB review and approval of the townhouse design currently proposed for the property, since SB25

had been ratified. Several new townhouses were recently approved for building permits by Mecklenburg County.

Additionally, the extreme north end of North Main Street has at least one property that is outside of the NRHD, is ripe for redevelopment, and could be proposed for townhouse development.

A pro-active option is to lobby for a very narrow local bill – that may have the potential to be supported by both Cornelius and Huntersville – that would add an additional exemption to SB25 for the three towns only. The exemption could be something along the lines of: “If the structure is located on the NC-DOT highway connecting the historic downtowns of Huntersville, Cornelius, and Davidson.” If the other North Mecklenburg towns were not interested in joining this legislation, it could just refer to “town gateways” or similar language. This could be considered for part of the board’s legislative agenda for the 2019 long session.

b. Demolition Delay/Deny Legislation

NCGS160A-400.14 governs the delay of demolition of landmarks and buildings within historic districts that are legislated through zoning, i.e. local historic districts:

§ 160A-400.14. Delay in demolition of landmarks and buildings within historic district.

(a) An application for a certificate of appropriateness authorizing the relocation, demolition or destruction of a designated landmark or a building, structure or site within the district may not be denied except as provided in subsection (c). However, the effective date of such a certificate may be delayed for a period of up to 365 days from the date of approval. The maximum period of delay authorized by this section shall be reduced by the commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period the preservation commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site. If the preservation commission finds that a building or site within a district has no special significance or value toward maintaining the character of the district, it shall waive all or part of such period and authorize earlier demolition, or removal. If the commission or planning board has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not been made by the local governing board, the demolition or destruction of any building, site, or structure located on the property of the proposed landmark or in the proposed district may be delayed by the commission or planning board for a period of up to 180 days or until the local governing board takes final action on the designation, whichever occurs first.

(b) The governing board of any municipality may enact an ordinance to prevent the demolition by neglect of any designated landmark or any building or structure within

an established historic district. Such ordinance shall provide appropriate safeguards to protect property owners from undue economic hardship.

(c) An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site, or structure determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial. (1989, c. 706, s. 2; 1991, c. 514, s. 1; 2005-418, s. 13.)

This legislation gives our local Historic Preservation Commission (HPC) the power to delay demolition of a structure in our local historic district for up to one year.

Several municipalities have received special local legislation to expand the “delay” provision or to include denial of demolition in local historic districts. The following are the local bills that have been ratified by the general assembly:

2005 Statesville: No structure within a LHD may be demolished without a permit issued by the City Council. If a demolition permit is approved by the City Council, they also have the authority to approve plans for the new structure and a time frame for replacement.

2007 Salisbury: No structure within the downtown LHD may be demolished without a permit issued by the City Council.

2007 New Bern: No contributing structure within a LHD may be demolished without a permit.

2007 Cary, Wake Forest (Chapel Hill and Wilson added to the same legislation in 2008):

These municipalities may adopt ordinances to regulate the demolition of historic structures, i.e.

- 1) designated landmarks
- 2) individually listed structures in National Register
- 3) contributing structures in historic district listed in National Register
- 4) structures preliminarily determined by Secretary of the Interior as contributing structures in historic district (or potential historic district) in the National Register
- 5) structures listed in state inventory of historic places
- 6) listed in county Register of Historic Places
- 7) listed in local inventory of historic places in CLG communities

However, they still must follow the provisions of 160A-400.14. In other words, they expanded the 160A-400.14 “delay” provisions to include not only structures in the LHD, but the above-listed structures.

2010 Thomasville: Local bill to require a permit prior to demolition of a designated local historic landmark or a contributing structure within a LHD was not ratified by the legislature. It died in committee. Thomasville is a CLG, has six historic landmarks, and two LHDs.

Asking the legislature for additional “delay” provisions has more potential to be successful than requesting authority to deny. That legislation would be similar to the 2007/2008 legislation for Cary, Wake Forest, Chapel Hill, and Wilson. We would then be able to delay demolition for a year for historic structures in Davidson that are outside of the local historic district (we already have the authority to delay for a year inside the LHD) and work with the Charlotte-Mecklenburg Landmarks Commission or other non-profits to secure the building.



The Town *of* Davidson

College Town. Lake Town. *Your Town.*

Historic preservation projects

- Expansion of existing local historic district (or new local historic district)
- Landmark individual properties throughout town and ETJ
- CLG status
- Conservation districts
- Other



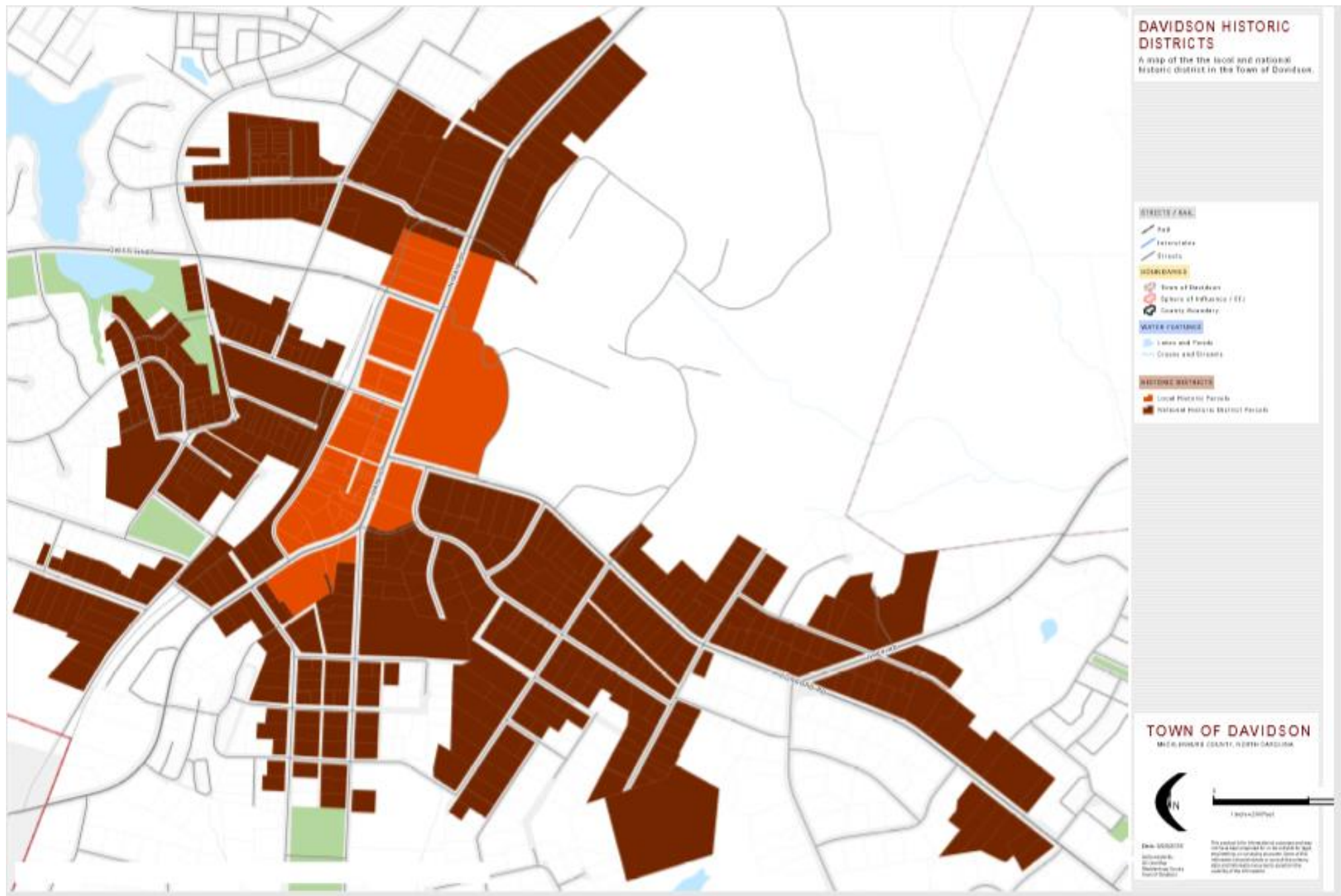
Local Historic District

Expansion of existing local historic district or new local historic district requested by citizens on North Main Street

Next steps:

- Appoint committee for RFP process
 - Decision by BoC: Town-wide applications or designated appointments
 - Issue RFP
 - Vet consultants
 - Bring recommendation to BoC
-





Landmark initiative

Landmark designation by Charlotte-Mecklenburg Landmarks Commission for individual properties/structures

- Tax benefit to property owner
- Demolition delayed by one year

Next steps:

- Meeting October 22 at 6:00 p.m.



CLG – Certified Local Government

CLG

- Application approved by SHPO and sent to NPS
 - Recommendations from SHPO:
 - Update 1989 Historic Preservation Ordinance
 - Minimal changes to Design Guidelines re: archeology
-



Conservation districts

Design Guidelines for residential construction in specific planning areas

- Have vehicle (overlay districts) in Village Infill planning area



Other

- Legislative opportunities
- HP-Based Economic Development
- Main Street grants
- Signage for NRHD
- Information for citizens on planning webpage





**Agenda Title: Rules of Procedure - Remote Participation
Town Attorney Cindy Reid**

Summary: The Board has requested a brief analysis of whether it should allow commissioners to vote via phone. Currently, members are allowed to participate in board meetings by phoning in but are not permitted to vote.

Summary:

ATTACHMENTS:

	Description	Upload Date	Type
▣	Agenda Memo - Rules of Procedure - Remote Participation 09.11.18	9/7/2018	Cover Memo
▣	Attachment - Town of Davidson Rules of Procedure	9/7/2018	Cover Memo
▣	Attachment - UNC School of Government bulletin	9/7/2018	Cover Memo



Rules of Procedure for Remote Participation

Date: September 11, 2018
To: Davidson Board of Commissioners
From: Cindy Reid, Town Attorney

1. OVERVIEW

The Board has requested a brief analysis of whether it should allow commissioners to vote via phone. Currently, members are allowed to participate in board meetings by phoning in but are not permitted to vote. The Rules of Procedure adopted by the BOC state: "A member who attends a meeting electronically (via phone, skype, etc.) may take part in debate however may neither be counted toward a quorum nor vote on any matter before the board".

The UNC School of Government has advised there is some legal risk to allowing remote participation therefore the town's rules of procedure, Part III Rule 3, have taken this into account.

Attached are the rules of procedure and a blog post from the UNC School of Government.

2. RELATED TOWN GOALS

N/A

3. OPTIONS/PROS & CONS

Option 1: Leave rules of procedure as is and not allow voting by remote participation.

Pros: No deviation from adopted rules of procedure. Follows best practice guidelines. Least likely option to result in a legal challenge. Please see the NCSOG memo attached to this analysis.

Cons: Because Commissioners have a duty to vote, a Commissioner who can participate in the discussion but not vote may feel frustrated.

Option 2: Amend rules of procedure to allow voting by remote participation.

Pros: Allows all Commissioners to vote.

Cons: Most likely to result in a legal challenge particularly if the vote is the deciding vote or if the remote participant is needed for quorum. This has not been addressed by a NC court, but my opinion is that a court would not uphold a decision that rested on a vote via phone.

Option 3: Amend rules of procedure to only allow voting by remote participation under certain circumstances such as when the vote will not be the deciding vote and there is already a quorum.

Pros: Allows remote voting under limited circumstances. Severely limits possibility of legal challenge.

Cons: If a vote is only allowed where it will not be the deciding vote, advance knowledge of how each commissioner will vote might be necessary. If the remote participant is counted for quorum, all actions taken during this particular meeting can be challenged on the grounds that there was not quorum and

therefore not a legal meeting.

4. FYI or RECOMMENDED ACTION

The Town Attorney recommends Option 1.

5. NEXT STEPS

If Option 2 or 3- Amend Rules of Procedure to allow voting via phone.



Rules of Procedure for the Town of Davidson

In order to increase the efficiency of operation of the Board of Commissioners, and to guarantee full and fair discussion, the Board of Commissioners of the Town of Davidson hereby adopt these Rules of Procedure to govern all meetings of the Board. These Rules of Procedure are based upon *Suggested Rules of Procedure for a City Council*, 4th edition, 2017, Trey Allen, UNC School of Government. Should any conflict or question arise, the Town shall utilize the most current edition of *Suggested Rules of Procedure for a City Council* as published by the UNC School of Government.

Part I. Applicability

Rule 1. Applicability of Rules

These rules apply to all meetings of the Town of Davidson. For purposes of these rules, a meeting of the board occurs whenever a majority of the board's members gather, whether in person or simultaneously by electronic means, to conduct hearings, deliberate, vote, or otherwise transact public business within the board's real or apparent jurisdiction. The term "majority" as used here and elsewhere in these rules means, unless otherwise specified, a simple majority, that is, more than half.

Part II. Quorum

Rule 2. Quorum

The presence of a quorum is necessary for the board to conduct business. A majority of the board's actual membership plus the mayor, excluding vacant seats, constitutes a quorum. A member who withdraws from a meeting without being excused by majority vote of the remaining members in attendance is deemed present for quorum purposes.

Part III. Open Meetings

Rule 3. Remote Participation in Board Meetings

A member who attends a meeting electronically (via phone, skype, etc.) may take part in debate however may neither be counted toward a quorum nor vote on any matter before the board.

Rule 4. Meetings to Be Open to the Public

Except as permitted by Rule 5, all meetings of the board shall be open to the public, and any person may attend its meetings.

Rule 5. Closed Sessions

(a) Motion to Enter Closed Session. The Town Board may enter a closed session from which the public

is excluded only upon a motion duly made and adopted in open session. The motion to enter closed session must cite one or more of the permissible bases for closed session listed in paragraph (b) of this rule. A motion to enter closed session under subparagraph (b)(1) or (b)(2) must contain the additional information specified in those provisions.

(b) Bases for Closed Session. A closed session is permissible under the following circumstances and no others:

- (1) To prevent the disclosure of information that is privileged or confidential pursuant to the law of North Carolina or of the United States or that does not constitute a public record within the meaning of Chapter 132 of the General Statutes. The motion to enter closed session must name or cite the law that renders the information confidential or privileged.
- (2) To consult with the town attorney or another attorney employed or retained by the town in order to preserve the attorney–client privilege. If the board expects to discuss a pending lawsuit with its attorney, the motion to enter closed session must include the names of the parties to the lawsuit.
- (3) To discuss matters relating to (a) the location or expansion of industries or other businesses in the area served by the town or (b) the closure or realignment of a military installation. The board may reach agreement in closed session on a tentative list of economic development incentives to be offered in negotiations, but the approval of the signing of any economic development contract or commitment and the authorization of the payment of economic development expenditures must take place in open session.
- (4) To establish or instruct staff or agents concerning the town’s position in negotiating the price or other material terms of an agreement for the acquisition of real property by purchase, exchange, or lease.
- (5) To establish or instruct staff or agents concerning the amount of compensation or other material terms of an employment contract.
- (6) To consider the qualifications, competence, performance, character, fitness, or conditions of appointment or employment of a public officer or employee or prospective public officer or employee, except when the individual in question is a member of the Town Board or other public body or is being considered to fill a vacancy on the Town Board or other public body. Final action to appoint or employ a public officer or employee must take place in open session.
- (7) To hear or investigate a charge or complaint by or against a public officer or employee. Final action discharging an employee or removing an officer must occur in open session.
- (8) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.
- (9) To view a law enforcement recording released pursuant to G.S. 132-1.4A.
- (10) On any other basis permitted by law.

(c) Closed Session Participants. Unless the board directs otherwise, the town manager, town attorney, and town clerk may attend closed sessions of the board. No other person may attend a closed session unless invited by majority vote of the board.

(d) Motion to Return to Open Session. Upon completing its closed session business, the board shall end the closed session by adopting a duly made motion to return to open session.

Rule 6. Meeting Minutes

(a) Minutes Required for All Meetings. The board must keep full and accurate minutes of all of its

meetings, including closed sessions. To be “full and accurate,” minutes must record all actions taken by the board. They should set out the precise wording of each motion and make it possible to determine the number of votes cast for and against each motion. The minutes need not record discussions of the board, though the board in its discretion may decide to incorporate such details into the minutes.

(b) Record of “Ayes” and “Noes.” At the request of any member of the board, the minutes shall list each member by name and record how each member voted on a particular matter.

(c) General Accounts of Closed Sessions. In addition to minutes, the board must keep a general account of each closed session. The general account must be sufficiently detailed to provide a person not in attendance with a reasonable understanding of what transpired. The board may combine the minutes and general account of a closed session into one document, so long as the document contains both a complete record of actions taken and the level of detail required for a general account.

(d) Sealing Closed Session Records. Minutes and general accounts of closed sessions shall be sealed until unsealed by order of the board or, if the board delegates the authority to unseal to one or more staff members, in accordance with guidelines adopted by the board. The sealed minutes and general account of any closed session may be withheld from public inspection so long as public inspection would frustrate the purpose(s) of the closed session.

Rule 7. Broadcasting and Recording Meetings

(a) Right to Broadcast and Record. Any person may photograph, film, tape-record, or otherwise reproduce any part of a board meeting that must take place in open session. Except as provided in paragraph (c) of this rule, any radio or television station may broadcast any such part of a board meeting.

(b) Advance Notice. Any radio or television station that plans to broadcast any portion of a board meeting shall so notify the Town Clerk and Public Information Officer no later than twenty-four hours before the meeting. The failure to provide notice is not, by itself, grounds for preventing the broadcast of a board meeting.

(c) Equipment Placement. The Town Manager may regulate the placement and use of camera or recording equipment in order to prevent undue interference with a board meeting, so long as he or she allows the equipment to be placed where it can carry out its intended function. If the Town Manager determines in good faith that the equipment and personnel necessary to broadcast, photograph, or record the meeting cannot be accommodated without undue interference to the meeting, and an adequate alternative meeting room is not readily available, the Town Manager may require the pooling of the equipment and the personnel operating it.

(d) Alternative Meeting Site. If the news media request an alternative meeting site to accommodate news coverage, and the board grants the request, the news media making the request shall pay the costs incurred by the town in securing an alternative meeting site.

Part IV. Organization of the Board

Rule 8. Organizational Meeting; Selection of Mayor Pro Tempore

(a) Scheduling Organizational Meeting. The board must hold an organizational meeting following each general election in which board members are elected. The organizational meeting must be held either (1) on the date and at the time of the board’s first regular meeting in December following the election or (2) at an earlier date, if any, set by the incumbent board. The organizational meeting may not be held before municipal election results are officially determined, certified, and published as required by law.

(b) Oath of Office. As the first order of business at the organizational meeting, all newly elected members of the board must take and subscribe the oath of office set out in Article VI, Section 7, of the North Carolina Constitution. Each member's oath must be filed with the town clerk. Although a member who is not present for the organizational meeting may take the oath of office at another time, every member must take, subscribe, and file the oath before he or she begins performing any of the duties of the member's office.

(c) Selection of Mayor Pro Tempore. As the second order of business at the organizational meeting, the board shall elect from among its members a mayor pro tempore using the procedures specified in Rule 38. The mayor pro tempore shall serve at the board's pleasure.

Part V. Types of Meetings

Rule 9. Regular Meetings

(a) Regular Meeting Schedule. The board shall hold a regular meeting on the second and fourth Tuesday of each month. The meeting shall be held at the Town Hall Board Room and begin at 6:00 pm. The board shall adopt a meeting schedule each year consistent with this rule. A copy of the board's current meeting schedule shall be filed with the town clerk and posted on the town's website.

(b) Change to Meeting Schedule. Notwithstanding paragraph (a) of this rule, the board may amend its regular meeting schedule to add or delete meetings or to change the date, time, or location of one or more meetings on the schedule. The amended schedule shall be filed with the town clerk at least seven (7) calendar days before the day of the first meeting held pursuant to the revised schedule and posted on the town's website.

Rule 10. Special Meetings

(a) Calling Special Meetings. A special meeting of the board may be called by the mayor, the mayor pro tempore, or any two board members. A special meeting may also be called by vote of the board in open session during a regular meeting or another duly called special meeting.

(b) Notice to the Public. At least forty-eight hours before a special meeting of the board, notice of the date, time, place, and purpose of the meeting shall be (1) posted on the board's principal bulletin board or, if the board has no such board, at the door of the board's usual meeting room and (2) delivered, e-mailed, or mailed to each newspaper, wire service, radio station, television station, and person who has filed a written request for notice with the town clerk. Furthermore, if the board has a website maintained by at least one town employee, notice of the special meeting's date, time, place, and purpose shall be posted on the website in advance of the meeting.

(c) Notice to Members.

- (1) *Meeting called by the mayor, the mayor pro tempore, or any two board members.* At least forty-eight hours before a special meeting called by the mayor, the mayor pro tempore, or any two board members, written notice of the meeting stating its date, time, and place, as well as the subjects to be considered, shall be electronically delivered to the mayor and each board member or left at his or her usual dwelling place.
- (2) *Meeting called by vote of the board in open session.* When a special meeting is called by vote of the board in open session during a regular meeting or another duly called special meeting, the motion or resolution calling the special meeting shall state the meeting's date, time, place, and purpose. Written notice of the special meeting's date, time, place, and purpose shall be mailed, delivered or

electronically delivered at least forty-eight hours before the meeting to each board member not present for the meeting at which the special meeting was called, and to the mayor if he or she was not present at that meeting.

(d) Transacting Other Business. Unless all members are present or any absent member has signed a written waiver of notice, only those items of business specified in the notice to board members may be taken up at a special meeting. Even when all members are present or any absent member has signed a waiver, the board may take up an item of business not covered by the notice only if the board first determines in good faith that the item must be discussed or acted upon immediately.

Rule 11. Emergency Meetings

(a) Grounds for Emergency Meeting. Emergency meetings of the town board may be called only to address generally unexpected circumstances demanding the board's immediate attention.

(b) Calling Emergency Meetings. There are two methods by which an emergency meeting of the board may be called.

- (1) The mayor, the mayor pro tempore, or any two members of the board may at any time call an emergency board meeting by signing a written notice stating the date, time, and place of the meeting and the subjects to be considered. The notice shall be delivered to the mayor and each board member or left at his or her usual dwelling place at least six hours before the meeting.
- (2) An emergency meeting may be held when the mayor and all members of the board are present and consent thereto, or when any absent member has signed a written waiver of notice.

(c) Notice to Media of Emergency Meetings. Notice of an emergency meeting shall be given to each local newspaper, local wire service, local radio station, and local television station that has filed a written request with the town clerk for notice of emergency meetings. To be valid, the request must include the newspaper's, wire services, or station's telephone number. Notice may be given by telephone, e-mail, or the same method used to notify board members. Notice must be provided immediately after board members have been notified and at the expense of the party notified.

(d) Transaction of Other Business Prohibited. Only business connected with the emergency may be considered at an emergency meeting.

Rule 12. Recessed Meetings

(a) Calling Recessed Meetings. When conducting a properly called regular, special, or emergency meeting, the board may recess the meeting to another date, time, or place by a procedural motion made and adopted, as provided in Rule 31, Motion 3, in open session. The motion must state the time (including the date, if the meeting will resume on a different day) and place at which the meeting will reconvene.

(b) Notice of Recessed Meetings. If the board has a website maintained by one or more town employees, notice of the recessed meeting's date, time, and place must appear on the webpage prior to the meeting. No further notice of a properly called recessed meeting is required.

Part VI. Agenda

Rule 13. Agenda

(a) Draft Agenda.

- (1) *Preparation.* The Town Manager shall prepare a draft agenda in advance of each meeting of the town board.
- (2) *Requesting placement of items on draft agenda.* For a regular meeting, a request to have an item of business placed on the draft agenda must be received by the Town Manager at least four working days before the date of the meeting. The Town Manager must place an item on the draft agenda in response to a board member's timely request.
- (3) *Supplemental information/materials.* If the board is expected to consider a proposed ordinance or ordinance amendment, a copy of the proposed ordinance or amendment shall be attached to the draft agenda. An agenda package shall be prepared that includes, for each item of business listed on the draft agenda, as much background information on the topic as is available and feasible to provide.
- (4) *Delivery to board members.* Each board member shall receive a hard or electronic copy of the draft agenda and the agenda package. Except in the case of an emergency meeting, the agenda and agenda package shall be furnished to each member at least twenty-four hours before the meeting.
- (5) *Public inspection.* The draft agenda and agenda package shall be available to the public when the documents are ready to be, or have been, circulated.

(b) Adoption of the Agenda.

- (1) *Adoption.* As its first order of business at each meeting, the board shall review the draft agenda, make whatever revisions it deems appropriate, and adopt a formal agenda for the meeting.
- (2) *Amending the agenda.* Both before and after it adopts the agenda, the board may add or subtract agenda items by majority vote of the members present and voting, except that the board may not add to the items stated in the notice of a special meeting unless the requirements in Rule 10(d) are satisfied and only business connected with the emergency may be considered at an emergency meeting.
- (3) *Designation of items "For Discussion and Possible Action."* The board may designate an agenda item "for discussion and possible action." The designation signifies that the board intends to discuss the item and may, if it so chooses, take action on the item following the discussion.

(c) Consent Agenda. The board may designate part of an agenda for a regular meeting as the *consent agenda*. Items may be placed on the consent agenda by the person(s) charged with preparing the draft agenda if the items are judged to be noncontroversial and routine. Prior to the board's adoption of the meeting agenda under subparagraph (b)(1) of this rule, the request of any member to have an item moved from the consent agenda to unfinished business must be honored by the board. All items on the consent agenda must be voted on and adopted by a single motion, with the minutes reflecting the motion and vote for each item.

(d) Informal Discussion of Agenda Items. The board may informally discuss an agenda item even when no motion regarding that item is pending.

Rule 14. Acting by Reference to Agenda or Other Document

The board shall not deliberate, vote, or otherwise take action on any matter by reference to the agenda or any other document with the intention of preventing persons in attendance from understanding what action is being considered or undertaken. The board may deliberate and vote by reference to the agenda or any

item on the agenda, including the consent agenda, provided copies of the agenda are available for public inspection at the meeting and are sufficiently worded to enable the public to understand what is being deliberated or acted upon.

Rule 15. Agenda Items from Members of the Public

If a member of the public wishes to request that the board include an item on its regular meeting agenda, he or she must submit the request to the Town Manager at least six working days before the date of the meeting. The board is not obligated to place an item on the agenda merely because such a request has been received.

Rule 16. Order of Business

Items shall be placed on a regular meeting agenda according to the order of business. The usual order of business for each regular meeting may be as follows:

- announcements
- changes/adoption of the agenda
- public comments
- public hearings
- presentations
- reports
- consent agenda
- new business
- old business

Without objection, the mayor may call agenda items in any order most convenient for the dispatch of business.

Part VII. Role of the Presiding Officer

Rule 17. The Mayor

(a) Presiding Officer. When present, the mayor shall preside at meetings of the board.

(b) Right to Vote. The mayor may vote only when an equal number of affirmative and negative votes have been cast.

(c) Recognition of Members. A member must be recognized by the mayor (or other presiding officer) in order to address the board, but recognition is not necessary for an appeal pursuant to Rule 31, Motion 1.

(d) Powers as Presiding Officer. As presiding officer, the mayor is to enforce these rules and maintain order and decorum during board meetings. To that end, the mayor may

- (1) rule on points of parliamentary procedure, to include ruling out of order any motion clearly offered for obstructive or dilatory purposes;
- (2) determine whether a member or other speaker has gone beyond reasonable standards of courtesy in his or her remarks and entertain and rule on objections from other members on this ground;
- (3) entertain and answer questions of parliamentary procedure;
- (4) call a brief recess at any time; and

(5) adjourn in an emergency.

(e) Appeals of Procedural Rulings. A member may appeal a decision made or answer given by the mayor under subparagraph (d)(1), (2), or (3) in accordance with Rule 31, Motion 1.

Rule 18. The Mayor Pro Tempore

(a) Presiding in Mayor's Absence. When present, the mayor pro tempore shall preside over board meetings in the mayor's absence with all the powers specified in Rule 17(d).

(b) Delegation of Mayor's Powers/Duties. In the mayor's absence, the board may confer on the mayor pro tempore any of the mayor's powers and duties. Likewise, if the mayor becomes physically or mentally unable to perform the duties of his or her office, the board may by unanimous vote declare the mayor incapacitated and confer any of the mayor's powers and duties on the mayor pro tempore. When the mayor announces that he or she is no longer incapacitated, and a majority of the board concurs, the mayor shall resume the exercise of his or her powers and duties.

(c) Duty to Vote. Even when presiding over a board meeting, the mayor pro tempore has the same duty as other members to vote on all questions unless he or she has been excused from voting on a matter in accordance with Rule 28.

Rule 19. Other Presiding Officer

If both the mayor and mayor pro tempore are absent, the board may elect from among its members a temporary presiding officer to chair the meeting. While serving as temporary presiding officer, a member has the powers listed in Rule 17(d). Service as a temporary presiding officer does not relieve a member of the duty to vote on all questions unless excused from voting pursuant to Rule 28.

Rule 20. When the Presiding Officer Is Active in Debate

If the mayor becomes active in debate on a particular proposal, he or she may have the mayor pro tempore preside during the board's consideration of the matter. If the mayor pro tempore is absent or is also actively debating the matter, the mayor may designate another member to preside until the matter is concluded. Similarly, if the mayor pro tempore or a temporary presiding officer is presiding and takes an active part in debating a topic, he or she may designate another board member to preside temporarily.

Part VIII. Motions and Voting

Rule 21. Action by the Board

Except as otherwise provided in these rules, the board shall act by motion. Any member may make a motion, not including the mayor.

Rule 22. Second Not Required

No second is required on any motion.

Rule 23. One Motion at a Time

A member may make only one motion at a time.

Rule 24. Withdrawal of Motion

The member who introduces a motion may withdraw the motion unless the motion has been amended or the presiding officer has put the motion to a vote.

Rule 25. Debate

The presiding officer shall state the motion and then open the floor to debate, presiding over the debate according to the principles listed below.

- The maker of the motion is entitled to speak first.
- A member who has not spoken on the issue shall be recognized before a member who has already spoken.
- To the extent practicable, the debate shall alternate between proponents and opponents of the measure.

Rule 26. Adoption by Majority Vote

A motion is adopted if supported by a simple majority of the votes cast, a quorum being present, except when a larger majority is required by these rules or state law.

Rule 27. Changing a Vote

A member may change his or her vote on a motion at any time before the presiding officer announces whether the motion has passed or failed. Once the presiding officer announces the result, a member may not change his or her vote without the unanimous consent of the remaining members present. A member's request for unanimous consent to change a vote is not in order unless made immediately following the presiding officer's announcement of the result.

Rule 28. Duty to Vote

(a) Duty to Vote. Every board member must vote except when excused from voting as provided by this rule.

(b) Grounds for Excusal. A member may be excused from voting on a matter involving the member's own financial interest or official conduct, though not if the proposal in question is one to alter the compensation or allowances paid to board members. Members may also be excused from voting when prohibited from voting under G.S. 14-234 (contract providing direct benefit to member), G.S. 160A-381(d) (legislative zoning decision likely to have a direct, substantial, and readily identifiable financial impact on member), or G.S. 160A-388(e)(2) (member's participation in quasi-judicial decision would violate affected person's right to an impartial decision maker). Questions about whether a basis for excusal exists should be directed to the town attorney.

(c) Procedure for Excusal.

- (1) *At member's request.* Upon being recognized at a duly called meeting of the board, a member who wishes to be excused from voting shall so inform the presiding officer, who must then submit the matter to a vote of the remaining members present. If a majority of the remaining members present vote to excuse the member, the member is excused from voting on the matter.
- (2) *On board's initiative.* Even when a member has not asked to be excused from voting on a matter, a majority of the remaining board members present may by motion and vote excuse the member from voting if grounds for doing so exist under paragraph (b).

(d) Consequence of Non-Excused Failure to Vote. Except as specified in paragraph (e), if a member who has not been excused from voting fails to vote on a matter, the member's failure to vote shall be recorded as an affirmative vote, provided

- (1) the member is physically present in the board chamber or
- (2) the member has physically withdrawn from the meeting without being excused by majority vote of

the remaining members present.

(e) Failure to Vote on Certain Zoning Matters. A member's unexcused failure to vote shall not be recorded as an affirmative vote if the motion concerns a proposal to amend, supplement, or repeal a zoning ordinance. Instead, the member's unexcused failure to vote shall be recorded as an abstention.

Rule 29. Voting by Written Ballot

(a) Secret Ballots Prohibited. The board may not vote by secret ballot.

(b) Rules for Written Ballots. The board may decide by majority vote or unanimous consent to vote on a motion by written ballot. Each member must sign his or her ballot, and the minutes must record how each member voted by name. The ballots must be made available for public inspection in the town clerk's office immediately following the meeting at which the vote took place and remain there until the minutes of that meeting are approved, at which time the ballots may be destroyed.

Rule 30. Substantive Motions

A substantive motion is not in order if made while another motion is pending. Once the board disposes of a substantive motion, it may not take up a motion that presents essentially the same issue at the same meeting, unless it first adopts a motion to reconsider pursuant to Rule 31, Motion 14.

Rule 31. Procedural Motions

(a) Certain Motions Allowed. The board may consider only those procedural motions listed in this rule. Unless otherwise noted, each procedural motion may be debated and amended and requires a majority of votes cast, a quorum being present, for adoption.

(b) Priority of Motions. The procedural motions set out in this paragraph are listed in order of priority. A procedural motion is not in order so long as another procedural motion of higher priority is pending, except that

- any procedural motion other than an appeal under Motion 1 is subject to amendment as provided in Motion 12, and
- a motion to call the question (end debate) may be made with regard to any procedural motion in accordance with Motion 9.

When several procedural motions are pending, voting must begin with the procedural motion highest in priority, provided that a motion to amend or end debate on the highest priority motion must be voted on first.

Motion 1. To Appeal a Ruling of the Presiding Officer. Any member may appeal the presiding officer's ruling on whether a motion is in order or on whether a speaker has violated reasonable standards of courtesy. The presiding officer's response to a question of parliamentary procedure may also be appealed by any member. An appeal is in order immediately after the disputed ruling or parliamentary response and at no other time. The member who moves to appeal need not be recognized by the presiding officer, and if timely made, the motion may not be ruled out of order.

Motion 2. To Adjourn. This motion may be used to close a meeting. It is not in order if the board is in closed session.

Motion 3. To Recess to a Time and Place Certain. This motion may be used to call a recessed meeting as permitted under Rule 12. The motion must state the time (including the date, if the meeting will reconvene on a different day) and place at which the meeting will resume. The motion is not in order if the

board is in closed session.

Motion 4. To Take a Brief Recess.

Motion 5. To Follow the Agenda. This motion must be made at the time an item of business that deviates from the agenda is proposed; otherwise, the motion is out of order as to that item.

Motion 6. To Suspend the Rules. To be adopted, a motion to suspend the rules must receive affirmative votes equal to at least two-thirds of the board's actual membership, excluding vacant seats and not counting the mayor if the mayor votes only in case of a tie. The board may not suspend provisions in these rules that are required under state law.

Motion 7. To Divide a Complex Motion. This motion is in order whenever a member wishes to consider and vote on parts of a complex motion separately. The member who makes this motion must specify how the complex motion will be divided.

Motion 8. To Defer Consideration. The board may defer its consideration of a substantive motion, and any proposed amendments thereto, to an unspecified time. A motion that has been deferred expires unless the board votes to revive it pursuant to Motion 13 within 100 days of deferral. A new motion having the same effect as a deferred motion may not be introduced until the latter has expired.

Motion 9. To End Debate (Call the Previous Question). If adopted, this motion terminates debate on a pending motion, thereby bringing it to an immediate vote. This motion is not in order until every member has had an opportunity to speak once on the pending motion.

Motion 10. To Postpone to a Certain Time. This motion may be employed to delay the board's consideration of a substantive motion, and any proposed amendments thereto, until a designated day, meeting, or hour. During the period of postponement, the board may not take up a new motion raising essentially the same issue without first suspending its rules pursuant to Motion 6.

Motion 11. To Refer a Motion to a Committee. The board may vote to refer a substantive motion to a committee for study and recommendations. While the substantive motion is pending before the committee, the board may not take up a new motion raising essentially the same issue without first suspending its rules pursuant to Motion 6. If the committee fails to report on the motion within 60 days of the referral date, the board must take up the motion if asked to do so by the member who introduced it.

Motion 12. To Amend.

(a) Germaneness. A motion to amend must concern the same subject matter as the motion it seeks to alter.

(b) Limit on Number of Motions to Amend. When a motion to amend is under consideration, a motion to amend the amendment may be made; however, no more than one motion to amend and one motion to amend the amendment may be pending at the same time.

(c) Amendments to Ordinances. Any amendment to a proposed ordinance must be reduced to writing before the vote on the amendment.

Motion 13. To Revive Consideration. The board may vote to revive consideration of any substantive motion that has been deferred pursuant to Motion 8, provided it does so within 100 days of its vote to defer consideration.

Motion 14. To Reconsider. The board may vote to reconsider its action on a matter, provided the motion to reconsider is made (a) at the same meeting during which the action to be reconsidered was taken and (b) by a member who voted with the prevailing side. For purposes of this motion, "the same meeting" includes any continuation of a meeting through a motion to recess to a certain time and place (Motion 3).

The motion is not in order if it interrupts the board's deliberation on a pending matter.

Motion 15. To Rescind. The board may vote to rescind an action taken at a prior meeting provided rescission is not forbidden by law.

Motion 16. To Prevent Reintroduction for Six Months. This motion may be used to prevent the reintroduction of a failed substantive motion for a time, but it is in order only when made immediately following the substantive motion's defeat. To be adopted, this motion must receive votes equal to at least two-thirds of the board's actual membership, excluding vacant seats and not counting the mayor, unless the mayor may vote on all questions. If this motion is adopted, the ban on reintroduction remains in effect for six months or until the board's next organizational meeting, whichever occurs first.

Part IX. Ordinances and Contracts

Rule 32. Introduction of Ordinances

For purposes of these rules, the "date of introduction" for a proposed ordinance is the date on which the board first votes on the proposed ordinance's subject matter. The board votes on the subject matter of a proposed ordinance when it votes on whether to adopt or make changes to the proposed ordinance.

Rule 33. Adoption, Amendment, and Repeal of Ordinances

(a) Adoption of Ordinances.

- (1) *Proposed ordinances to be in writing.* No proposed ordinance shall be adopted unless it has been reduced to writing and distributed to members before a vote on adoption is taken.
- (2) *Adoption on date of introduction.* To be approved on the date of introduction, a proposed ordinance or any action having the effect of an ordinance must receive affirmative votes equal to at least two-thirds of the board's actual membership, excluding vacant seats and not counting the mayor, unless the mayor has the right to vote on all questions before the board.
- (3) *Adoption after date of introduction.* To be approved after the date of introduction, a proposed ordinance or any action having the effect of an ordinance must receive affirmative votes equal to at least a majority of all board members not excused from voting on the matter. In calculating the number of affirmative votes necessary for approval, the board shall count the mayor if he or she votes on all questions. If the mayor votes only in the case of tie, the mayor's vote counts if there is an equal division.

(b) Amendment and Repeal of Ordinances. The same voting requirements that govern the adoption of proposed ordinances also apply to the amendment or repeal of an ordinance.

Rule 34. Adoption of the Budget Ordinance

(a) Special Rules for the Adoption or Amendment of the Budget Ordinance. Notwithstanding any provision in the town charter, general law, or local act,

- (1) the board may adopt or amend the budget ordinance at a regular or special meeting of the board by a simple majority of those members present and voting, a quorum being present;
- (2) no action taken with respect to the adoption or amendment of the budget ordinance need be published or is subject to any other procedural requirement governing the adoption of ordinances or resolutions by the board; and
- (3) the adoption or amendment of the budget ordinance and the levy of taxes in the budget ordinance are not subject to the provisions of any town charter or local act concerning initiative or referendum.

(b) Notice Requirements for Budget Meetings. During the period beginning with the submission of the budget to the board and ending with the adoption of the budget ordinance, the board may hold any special meetings that may be necessary to complete its work on the budget ordinance. Except for the notice requirements of the open meetings law, which continue to apply, no provision of law concerning the call of special meetings applies during that period so long as

- each member of the board has actual notice of each special meeting called for the purpose of considering the budget and
- no business other than consideration of the budget is taken up.

(c) No Authority for Closed Sessions. This rule shall not be construed to authorize the board to hold closed sessions on any basis other than the grounds set out in Rule 5.

Rule 35. Approval of Contracts and Authorization of Expenditures

(a) Contracts to be in Writing. No contract shall be approved or ratified by the town board unless it has been reduced to writing at the time of the board's vote.

(b) Approval of Contracts. To be approved or ratified, a contract must receive affirmative votes equal to at least a majority of all board members not excused from voting on the contract, including the mayor's vote in the event of a tie.

(c) Authorization of Expenditure of Public Funds. The same vote necessary to approve or ratify a contract is required for the board to authorize the expenditure of public funds, except when the expenditure is authorized pursuant to Rule 34.

Part X. Public Hearings and Comment Periods

Rule 36. Public Hearings

(a) Calling Public Hearings. In addition to holding public hearings required by law, the board may hold any public hearings it deems advisable. The board may schedule hearings or delegate that responsibility to town staff members, as appropriate, except when state law directs the board itself to call the hearing. If the board delegates scheduling authority, it must provide adequate guidance to assist staff members in exercising that authority.

(b) Public Hearing Locations. Public hearings may be held anywhere within the town or within the county where the town is located.

(c) Rules for Public Hearings. The board may adopt reasonable rules for public hearings that, among other things,

- fix the maximum time allotted to each speaker,
- provide for the designation of spokespersons for groups of persons supporting or opposing the same positions,
- provide for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall (so long as arrangements are made, in the case of a hearing subject to the open meetings law, for those excluded from the hall to listen to the hearing), and
- provide for the maintenance of order and decorum in the conduct of the hearing.

(d) Notice of Public Hearings. Any public hearing at which a majority of the board is present shall be

considered part of a regular or special meeting. Consequently, the relevant notice and related requirements of the open meetings law, as set out in Rules 9 through 12, apply to such hearings. Some statutes mandate additional notice for particular types of hearings, and such notice must be provided together with notice of the meeting during which the hearing will take place.

(e) Continuing Public Hearings. The board may continue any public hearing without further advertisement to a time and place certain, provided the time (including the date, if the hearing will resume on a different day) and place of the continued hearing are announced in open session. Except for hearings conducted pursuant to paragraph (g), if a quorum of the board is not present for a properly scheduled public hearing, the hearing must be continued until the board's next regular meeting without further advertisement.

(f) Conduct of Public Hearings. At the time appointed for the hearing, the mayor shall call the hearing to order and proceed to allow public input in accordance with any rules adopted by the board for the hearing. Unless the board extends the hearing, when the time allotted for the hearing expires, or when no one wishes to speak who has not done so, the mayor shall declare the hearing closed, and the board shall resume the regular order of business.

(g) Public Hearings by Less Than a Majority of Board Members. Nothing in this rule prevents the board from appointing a member or members to hold a public hearing on the board's behalf, except when state law requires that the board itself conduct the hearing.

Rule 37. Public Comment Periods

(a) Frequency of Public Comment Periods. The board must provide at least one opportunity for public comment each month at a regular meeting, except that the board need not offer a public comment period during any month in which it does not hold a regular meeting.

(b) Rules for Public Comment Periods. The board may adopt reasonable rules for public comment periods that, among other things,

- fix the maximum time allotted to each speaker,
- provide for the designation of spokespersons for groups supporting or opposing the same positions,
- provide for the selection of delegates from groups supporting or opposing the same positions when the number of persons wishing to attend the public comment period exceeds the capacity of the hall (so long as arrangements are made for those excluded from the hall to listen to the hearing), and
- provide for the maintenance of order and decorum in the conduct of the hearing.

(c) Content-Based Restrictions Generally Prohibited. The board may not restrict speakers based on subject matter, as long as their comments pertain to subjects within the board's real or apparent jurisdiction.

Part XI. Appointments and Appointed Bodies

Rule 38. Appointments

(a) Appointments in Open Session. The board must consider and make any appointment to another body or, in the event of a vacancy on the board, to its own membership in open session.

(b) Nomination and Voting Procedure. The board shall use the following procedure to fill a vacancy in

the board itself or in any other body over which it has the power of appointment. The nominating committee shall be called upon to make its report and recommendation(s), if any. The mayor shall then open the floor for nominations, whereupon board members may put forward and debate nominees. When debate ends, the mayor shall call the roll of the members, and each member shall cast a vote for his or her preferred nominee. The voting shall continue until a nominee receives a majority of votes cast during a single balloting.

(c) Mayor. The mayor may make nominations and vote on appointments under this rule.

(d) Multiple Appointments. If the board is filling more than one vacancy, each member shall have as many votes in each balloting as there are slots to be filled, and the votes of a majority of the total number of members voting shall be required for each appointment. No member may cast more than one vote for the same candidate for the same vacancy during a single balloting.

(e) Duty to Vote. It is the duty of each member to vote for as many appointees as there are appointments to be made, but failure to do so shall not invalidate a member's ballot.

(f) Vote by Written Ballot. The board may vote on proposed appointments by written ballot in accordance with Rule 29.

Rule 39. Committees and Boards

(a) Establishment and Appointment. The board may establish temporary and standing committees, boards, and other bodies to help carry on the work of town government. Unless otherwise provided by law or the board, the power of appointment to such bodies lies with the board.

- (1) Mayoral Appointments.** The Mayor shall make the following appointments after consultation with the Board:

Lake Norman Chamber
 Lake Norman Regional Economic Development Corporation
 Visit Lake Norman
 Charlotte Regional Transportation Planning Organization
 Centralina Carolina Council of Governments
 Lake Norman Transportation Commission
 North Mecklenburg Alliance
 Metropolitan Transportation Commission

- (2) Board Appointments.** The Board of Commissioners shall appoint members of the following boards and committees:

Planning Board
 Design Review Board/Historic Preservation Commission
 Public Art Commission
 Livability Board

(b) Advisory Board Nominating Committee Appointment Procedure. The Mayor shall convene and chair a nominating committee. The other members of the committee shall be at least the following: the Town Manager, the staff liaisons, two elected officials, and the chairs (or their designee) of the Planning Board, Design Review Board, Livability Board and Public Art Commission. This nominating committee shall solicit nominations from the public. From these nominations, the committee shall choose a number

of nominees equal to the number of vacancies on the boards, and shall make a recommendation to the Board of Commissioners.

To fill unexpired, mid-term vacancies on boards and committees: The mayor shall convene and chair an ad hoc committee consisting of the chair of the board, town manager, and the staff liaison(s) to the board. They will choose nominees from among applications previously submitted, or by soliciting nominations from the public. The committee will select the number of nominees equal to the number of vacancies, and recommend them to the Board of Commissioners.

(c) Open Meetings Law. The requirements of the open meetings law apply whenever a majority of an appointed body's members gather in person or simultaneously by electronic means to discuss or conduct official business. They do not apply to meetings solely among the town's professional staff.

(d) Procedural Rules. The board may prescribe the procedures by which the town's appointed bodies operate, subject to any statutory provisions applicable to particular bodies. In the absence of rules adopted by the board, an appointed body may promulgate its own procedural rules, so long as they are in keeping with any relevant statutory provisions and generally accepted principles of parliamentary procedure.

Part XII. Miscellaneous

Rule 40. Amendment of the Rules

These rules may be amended at any regular meeting or at any properly called special meeting for which amendment of the rules is one of the meeting's stated purposes. Any amendment to these rules must be consistent with the town charter, any relevant statutes, and generally accepted principles of parliamentary procedure. To be adopted, a motion to amend these rules must be approved by a majority of the board's members, excluding vacant seats and counting the mayor only if the mayor may vote on all questions.

Rule 41. Reference to Robert's Rules of Order Newly Revised

The board shall refer to *Robert's Rules of Order Newly Revised* for guidance when confronted with a procedural issue not covered by these rules or state law. Having consulted *Robert's*, the mayor shall make a ruling on the issue subject to appeal to the board under Rule 31, Motion 1.



Remote Participation in Local Government Board Meetings

Frayda S. Bluestein

An important vote is on the agenda for a city council meeting tonight. One council member is stuck in Chicago. May she call in and participate in the meeting and the vote by cell phone? Can a board member be considered to be “present” if she is not physically at the meeting? Governing boards of public entities increasingly face these questions as technology provides an ever-increasing array of options for electronic communication. Some North Carolina local governments currently allow members to “call in” to meetings, but no state statute specifically authorizes this.

A local government board action is valid only if taken in a legal meeting.¹ A meeting is legal if the applicable notice requirements have been met and a quorum is present.² This bulletin analyzes whether a board member can be considered to be present for purposes of a quorum if he or she participates remotely by phone, video, or other method. It also considers whether a local government has statutory authority to allow remote participation under a local policy. It concludes that until the North Carolina legislature or courts explicitly address these questions, city and county governing boards may be vulnerable to a legal challenge if a member who participates electronically casts a deciding vote or is necessary to establish a quorum.

Legal risk can be avoided if remote participation is allowed only when the member’s presence is not necessary to constitute a quorum, where the matter involves discussion only, or where the remote participant’s vote is not the deciding vote. Assuming remote participation is legal in some or all situations, the question of whether members of a particular board may participate remotely is a matter for the board to decide—an individual board member does not have an automatic right to participate if he or she is not physically present. This bulletin concludes with some practical suggestions for issues that might be addressed in a locally adopted remote participation policy.

The author is Associate Dean for Faculty Development and Professor of Public Law and Government at the School of Government. The author gratefully acknowledges research assistance provided by Christopher Tyner, School of Government Legal Research Associate.

1. *Kistler v. Bd. of Educ. Randolph Cnty.*, 233 N.C. 400, 64 S.E. 2d 403 (1951); *O’Neal v. Wake Cnty.*, 196 N.C. 184, 145 S.E. 28 (1928).

2. *Iredell Cnty. Bd. of Educ. v. Dickson*, 235 N.C. 359, 70 S.E.2d 14 (1952).

Statutory Provisions Governing Presence at Meetings

When analyzing the scope of local government authority, one typically looks for an affirmative grant of authority. The absence of a prohibition is not enough to indicate that a particular action will be legal.³ There are no statutes that specifically authorize remote participation in meetings.⁴ State statutes do, however, grant broad authority for city and county governing boards to adopt their own rules of procedure for meetings.⁵ Cities may adopt local rules “not inconsistent with the city charter, general law, or generally accepted principles of parliamentary procedure,”⁶ and county procedures must be “in keeping with the size and nature of the board and in the spirit of generally accepted principles of parliamentary procedure.”⁷ These provisions provide broad authority for boards to manage the conduct of their meetings. A local rule adopted under this authority could allow remote participation and delineate the circumstances and procedures governing such participation. Indeed, several North Carolina local governments and numerous state boards currently allow members to participate by phone.⁸

It may be argued, however, that the matter of whether a person must be physically present in order to be counted toward a quorum, to vote, and to be considered present for all other legal purposes is not a proper subject for a rule of procedure that is within the board’s discretion to adopt. This specific question has not been addressed in the North Carolina statutes or case law.

The quorum statutes that apply to city and county governing boards set out the number of members that must be present for a legally valid meeting to take place.⁹ Nothing in these statutes specifically says that members must be *physically* present to count toward a quorum. The voting statute for cities,¹⁰ however, does specifically mention physical presence. It provides that a person who fails to vote, has not been excused from voting, and yet remains “physically present” is counted as voting “yes.” This could be read to reflect a legislative intent that physical presence

3. *Lanvale Props., LLC v. Cnty. of Cabarrus*, 336 N.C. 142, 150, 731 S.E.2d 800, 807 (2012); *Jefferson Standard Life Ins. Co. v. Guilford Cnty.*, 225 N.C. 293, 34 S.E. 2d 430 (1945).

4. In 2008, the General Assembly enacted local legislation authorizing the Hyde County Board of Commissioners to conduct business using “simultaneous communication” (defined as a conference telephone call or other electronic means). S.L. 2008-111. It might be argued that the enactment of this law implies that such authority does not otherwise exist for counties or other local governments. Language in the act itself suggests that the legislature anticipated the possibility of this argument and took steps to prevent it. Section 3.2 of the act says, “Nothing in this act shall be construed to affect the validity of actions related to electronic meetings of any other public body.” This language appears to convey the legislature’s intent that the act does not imply a lack of authority for other units of government, but simply sets out the procedures for and limitations on the use of simultaneous communication for Hyde County.

5. Sections 160A-71(c), 153A-41 of the North Carolina General Statutes (hereinafter G.S.).

6. G.S. 160A-71(c).

7. G.S. 153A-41.

8. Although it might be assumed that state agencies have more flexibility in structuring their meeting procedures than do local governments, the law is otherwise. State agencies are dependent upon enabling statutes and are limited to those powers expressly granted by the constitution or legislature and those implied by those powers expressly granted. *See High Rock Lake Partners, LLC v. N.C. Dep’t of Transp. (DOT)*, 366 N.C. 315, 319, 735 S.E.2d 300, 303 (2012) (citations, internal quotation marks omitted) (“The DOT possesses only those powers expressly granted to it by our legislature or those which exist by necessary implication in a statutory grant of authority. . . . [T]he responsibility for determining the limits of statutory grants of authority to an administrative agency is a judicial function for the courts to perform. . . . In making this determination we apply the enabling legislation practically so that the agency’s powers include all those the General Assembly intended the agency to exercise.”).

9. G.S. 160A-74, 153A-43.

10. G.S. 160A-75.

is required. The provision is capable of being applied, however, to a member who participates from a remote location, since the crux of the provision is that a person must be excused from the meeting or excused from voting in order to avoid being counted as voting. A remote participant, if considered to be present for purposes of a quorum, could be excused from voting or from the meeting (by terminating the electronic connection) in order to avoid being counted as voting “yes” under the statute. Since there is no other provision in the city or county statutes that specifically requires physical presence, it is an open question as to whether a remote participant may be counted for quorum purposes.

If a person participating electronically is not necessary to establish a quorum—that is, if the number of members physically present is sufficient to establish a quorum—such participation creates no risk to the validity of the meeting. If the remote participant is necessary to establish a quorum, however, or if he or she casts a deciding vote, the action taken in the meeting may be subject to challenge. In that case, it will be up to a court to resolve the issue of whether such participation is valid in North Carolina.

Cases Addressing Electronic Participation

Cases in other states have held that a local governing board member can be considered “present” when participating electronically from a remote location. A Maryland case, for example, found that a requirement for physical presence was satisfied by a board member’s participation by telephone, holding, “we believe the term ‘present’ and ‘convene’ can encompass participation through the use of technology.”¹¹ The Maryland court relied on *Freedom Oil Co. v. Illinois Pollution Control Board*,¹² in which an Illinois appellate court found that a state agency had authority to conduct a meeting at which two out of six members participated by phone. Relying on an Illinois Attorney General’s opinion, as well as on other cases, the court found that the board’s conduct of a special meeting by telephone conference “[fell] within the Board’s specific authority to conduct meetings” and that it did not violate the state’s open meetings law.¹³

Would a North Carolina court recognize the possibility of including remote participants when determining a quorum? At least one North Carolina appellate decision supports the notion that local government authority should be interpreted in light of changes in technology. In *BellSouth Telecommunications, Inc. v. City of Laurinburg*,¹⁴ the North Carolina Court of Appeals held that the statutory authority for cities to operate cable systems included authority to operate a fiber optic network. The court reasoned that the legislature intended local

11. *Tuzeer v. Yim, LLC*, 29 A.3d 1019, 1034 (Md. Ct. Spec. App. 2011) (citing *Freedom Oil Co. v. Ill. Pollution Control Bd.*, 655 N.E.2d 1184, 1191 (Ill. App. Ct. 1995)), *cert. denied*, 35 A.3d 489 (Md. 2012) (phone participation by zoning board member did not violate open meetings law).

12. 655 N.E.2d 1184 (Ill. App. Ct. 1995).

13. *Id.* at 1189. Although this case involved a state agency, the court noted that such agencies do not have inherent authority, so the question addressed by the holding is analogous to the question of whether electronic participation is within the scope of a local government’s authority to conduct meetings (see *supra* note 8). While the *Freedom Oil* case acknowledges other cases holding that physical presence is required, those cases involved alleged violations of open meetings laws when electronic meetings were held without public notice or access. These cases are not relevant to the issue of whether such participation is lawful when conducted as part of a properly noticed meeting, with public access, under the North Carolina open meetings law, which explicitly recognizes electronic meetings.

14. 168 N.C. App. 75, 606 S.E.2d 721, *discretionary review denied*, 359 N.C. 629 (2005).

government activity to “grow in reasonable stride with technological advancements.”¹⁵ Advances in technology have improved the quality and convenience of remote participation. Indeed, many citizens regularly watch board meetings in the comfort of their own homes via live streaming to televisions and computers. As noted below, the open meetings law has for decades included procedures for conducting and providing access to electronic meetings, and the city and county quorum statutes do not create an explicit requirement for physical presence.

Until the matter is resolved by legislation or court ruling, however, boards must make their own judgments, in consultation with their attorneys, as to whether the risk of a challenge is worth the inclusion of members who cannot attend a meeting. Because there is broad authority for establishing local procedures, the risk of challenge can be minimized if electronic participation is allowed only when the number of physically present members is sufficient to establish a quorum.

Rules for Appointed Boards

This discussion has, so far, focused on city and county governing boards, since there are specific statutes that govern their quorum and voting requirements. But local governing boards, in turn, create many appointed boards, whose purposes and procedures are established in local ordinances and resolutions. These boards are rarely subject to specific statutory requirements.¹⁶ Local governments are free to establish the procedures for these boards, and these procedures could include provisions for remote participation. As noted below, special consideration should be given to the use of electronic participation in boards that function as quasi-judicial decision-makers.

North Carolina Open Meetings Law and Electronic Participation

Compliance with the state open meetings law¹⁷ is an essential component of a lawful meeting. This law requires public bodies to provide notice of and access to “official meetings.”¹⁸ Under the statute, an “official meeting” occurs when a majority of a public body meets, assembles, or gathers together at any time or place to conduct the business of the public body. “Official meeting” also specifically includes “the simultaneous communication by conference telephone or other electronic means.”¹⁹

The statute’s mention of a conference call or other electronic means of gathering is sometimes interpreted as a source of authority for electronic participation in local government and other public board meetings. After all, if a board is considered to be in an official meeting when its members gather together electronically, perhaps a partially electronic meeting is also considered an official meeting, which is authorized under the open meetings law. This interpretation is not universally accepted. Indeed, the language is open to several interpretations.

15. *Id.* at 86–87, 606 S.E.2d at 728.

16. An important exception is local boards of adjustment, which carry out specific quasi-judicial functions and are governed by statutory provisions affecting voting and conflicts of interest. *See* G.S. 160A-388; 153A-345.

17. G.S. Chapter 143, Article 33C.

18. *See* G.S. 143-318.10(a) (“each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting”).

19. G.S. 143-318.10(d).

The open meetings law is designed to make sure that the public has access whenever a majority of the members of a public body—enough to make a binding decision—gather together on public business. It would be easy to circumvent the statute if members could simply call, email, or video conference and do their work outside of the public eye. So the statutes include such electronic gatherings within the definition of “official meeting.” But does the inclusion of electronic meetings *authorize* these types of meetings for all public agencies, or does it simply make clear that (1) if these types of meetings occur and notice is not given, they are illegal, and (2) if these types of meetings are otherwise authorized, public notice and access must be provided?

The statute clearly implies that at least some types of public bodies may lawfully conduct electronic meetings. If all the statute did was to include electronic meetings in the definition of an official meeting, it could be viewed as prohibitive—designed to make clear that members of public bodies can’t avoid the requirements of the statute by meeting electronically. But the law also includes procedures for conducting electronic meetings, requiring notice and a location at which the public may listen to a meeting conducted electronically.²⁰ There would be no reason to include these provisions if no public bodies have or could ever have authority to conduct a valid electronic meeting.

School of Government faculty members who are familiar with the act’s history have long advised that the language regarding electronic and telephone conferencing was included because some public bodies, primarily some state boards, were already conducting meetings by telephone. The provisions were apparently designed to make sure that there was a guarantee of public access to such meetings. While the law does recognize the possibility of electronic meetings, the open meetings law itself neither creates nor restricts the authority of particular types of public bodies to conduct electronic meetings. It simply describes the types of meetings to which the public has access and prescribes procedures for providing access whenever electronic means are used.

It is important to note that the open meetings law provisions relate to meetings of a majority of a given board. Nothing in this law—or in any other statutory provision relating to public bodies—directly addresses the validity of electronic participation by individual members of a public body in a properly noticed meeting. Nonetheless, the recognition of and rules for electronic meetings in the open meetings law suggest that electronic participation by members of a board will not violate the open meetings law, so long as procedures for providing access are met.²¹

Board Discretion to Allow Electronic Participation

Assuming that remote participation in a board meeting is legal or does not pose a risk of legal challenge, does a local government board member have a right to participate remotely? The answer is “no.” There is no legal basis for asserting such a right. As noted above, a governing board has authority to establish the rules for its meetings. It is up to the board to decide, by majority vote, whether or not to allow such participation and, if so, under what circumstances and subject to what rules.

20. G.S. 143-318.13(a).

21. See *Tuzeer v. Yim, LLC*, 29 A.3d 1019 (Md. Ct. Spec. App. 2011), *cert. denied*, 35 A.3d 489 (Md. 2012) (phone participation by zoning board member did not violate open meetings law).

Local Policies for Remote Participation

There are both practical and legal considerations that a local government should address if it decides to allow remote participation. For example, local policies should specify when remote participation will be allowed and how the process will be managed when it occurs.

When developing local policies, a governing board should consider the purposes of meetings and the laws that govern them. Most of the legal requirements are designed to provide public access to every aspect of the deliberative and decision-making process, except when it takes place in closed session. Meetings are also for the benefit of the members of the public body themselves. The decision-making process involves interaction among the members, as well as member interaction with the public. A state remote participation policy that was reviewed for this bulletin stated that its purpose was to promote full participation of board members while ensuring access and transparency for the public.²² A balance of these considerations is a useful goal when developing procedures for remote participation.²³

Technological Considerations

Technology provides many choices for audio and video access so that remote participants can be seen and heard at the meeting's physical location. But not every jurisdiction will have that technology in place, along with the staff resources to manage and maintain it. It may require added expense and more than the usual advance planning to make sure everything works at the meeting. This may be even more challenging for emergency meetings in which electronic participation may be important due to the short notice involved. Even with a decent phone connection, a remote participant may not be able to observe the other board members or the public. This may be a technical and legal issue for quasi-judicial hearings, as discussed in more detail below. Two-way video is a possible solution, as it can improve the experience for both the board members and the public, but it is heavily dependent on high-quality video systems and adequate Internet connectivity transmission speeds (i.e., broadband) in order to minimize delays and content loss.

Guidelines promulgated by the Massachusetts Attorney General's Office specify which remote participation methods may be used during a public body's meetings:

Acceptable means of remote participation include telephone, internet, or satellite enabled audio or video conferencing, or any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another. Accommodations must be made for any public body member who requires TTY service, video relay service, or other form of adaptive telecommunications. Text messaging, instant messaging, email and web chat without audio are *not* acceptable methods of remote participation.²⁴

Technical glitches can become distracting, can disrupt the flow of a meeting, and may create legal issues about whether and at what specific times a person is considered to be present. Local

22. MASS. ATTORNEY GEN.'S REGULATIONS, 940 CMR 29.10, *Remote Participation*, www.mass.gov/ago/government-resources/open-meeting-law/940-cmr-2900.html#Remote.

23. Attorney General of Massachusetts, *Attorney General's Open Meeting Law Guide*, "May a Member of the Public Body Participate Remotely?" www.mass.gov/ago/government-resources/open-meeting-law/attorney-generals-open-meeting-law-guide.html#Remote. These guidelines provide a good example of matters that may be addressed in a remote participation policy.

24. *See id.*, "What Are the Acceptable Means of Remote Participation?"

governments that allow remote participation should create and test internal procedures so that the necessary arrangements are reliably in place for remote participation when it occurs.

When to Allow Remote Participation

Reasons for Remote Participation

A review of remote participation policies and rules currently in use (mostly from other states) reveals that the decision about when remote participation should be allowed involves core policy and board relation issues. A board member who regularly misses board meetings may be viewed as simply not placing sufficient priority on board service.²⁵ To promote regular attendance, policies typically allow remote participation only in specific circumstances when a member is unable to attend. Examples include illness or disability of the member or a close relative, military service, unexpected lack of child care, family emergency, and work or public service obligations that require the member to be away. Policies may also include a statement that remote participation will not be allowed solely for the convenience of the board member or merely to avoid attending one or more particular meetings.

Permissible Only When a Quorum Is Present

Some policies allow remote participation only when enough members are physically present to constitute a quorum. This eliminates the legal issue, discussed above, regarding whether a remote participant can be considered to be present for purposes of establishing a quorum. It also, in effect, places a limit on how many people can participate remotely at a single meeting. This promotes ease of interaction among board members and potentially reduces technological challenges that might arise if more than a few members are connected electronically from separate locations. Some policies explicitly limit the number of members who can participate remotely in a particular meeting.

Permissible Only for Certain Kinds of Meetings

A policy might designate specific kinds of meetings at which remote participation is or is not permitted. Two types of meetings involve unique challenges for remote participation: quasi-judicial hearings and closed sessions.

Quasi-Judicial hearings. Local elected and appointed boards sometimes have responsibility for making decisions and conducting procedures in a quasi-judicial capacity. This occurs, for example, in a personnel grievance or termination hearing and in several types of land use proceedings, such as consideration of conditional or special use permits or variances. Quasi-judicial proceedings place the board in the role of a judge, hearing evidence and applying a legal standard found in an ordinance or statute. North Carolina courts have held that the basic elements of due process must be met in a quasi-judicial hearing, such as sworn testimony, an opportunity for the parties to be heard, and a neutral decision-maker.²⁶ Board members must at such hearings observe and evaluate the evidence and testimony, and the parties must have an opportunity to be heard. The board must decide the matter on the evidence presented and cannot rely on *ex*

25. Although there is no authority under North Carolina law for a city or county governing board to sanction or remove a board member for too many absences, rules for optional appointed boards could include sanctions, including removal, for failure to attend. See Frayda Bluestein, "Unexcused Absences," *Coates' Canons: NC Local Government Law Blog* (UNC School of Government, Jan. 24, 2013), <http://canons.sog.unc.edu/?p=6975>.

26. *Humble Oil & Ref. Co. v. Bd. of Aldermen*, 284 N.C. 458, 470, 202 S.E.2d 129, 137 (1974).

parte communications. Both the board and the applicant or petitioner have important roles in meeting these requirements, which include being able to observe evidence and demeanor and engage in cross-examination. Remote participation by one or more members of a quasi-judicial body raises special concerns in light of these requirements. Even though members who are physically present may receive or send information during the meeting using mobile electronic devices, remote participation may make it more difficult to monitor their communications for compliance with the standards that apply to quasi-judicial proceedings.

Given the additional legal and technical requirements that may apply to quasi-judicial hearings, a governing body might want to implement a policy prohibiting remote participation in these types of meetings. If a board's policy does allow remote participation, however, it should include minimum requirements for ensuring that both remote participants and the other parties involved can participate in and observe the proceedings as necessary to meet the applicable level of due process.

Closed sessions. The open meetings law provides several reasons for public bodies to meet in closed session.²⁷ For some—but not all—of these situations, remote participation can present challenges. If the purpose of the meeting is to preserve confidentiality (such as for attorney-client communications²⁸ or personnel matters²⁹), for instance, remote participation may raise concerns about whether information is being improperly shared.

Of course, even individuals who are physically present might be difficult to monitor given how easy it is to communicate with others electronically using mobile devices. Furthermore, although many board members may assume that it is illegal to share information from closed session meetings, the open meetings law does not explicitly prohibit it. Indeed, a person who is physically present at a meeting who communicates electronically (for example, by text message) with someone outside the meeting is not necessarily violating the law. A legal issue arises only with respect to communications involving specific types of information or records that are confidential under a specific legal provision.³⁰

A local policy might prohibit remote participation in all closed sessions, or it might bar it only in those dealing with confidential information. In cases where remote participation is allowed, procedures might be developed to ensure, to the extent possible, that the non-present member is alone and can be seen and heard by all the members participating.

Procedures for Remote Participation

Approval Process

As noted above, local policies may allow remote participation only for specified reasons. Policies may also require that a person must request approval to participate remotely in advance, for example, by filing a request with the clerk at least twenty-four or forty-eight hours in advance of the meeting, with exceptions, perhaps, for emergency meetings. The policy should delineate whether the board or some designee of the board must approve the request.

It is important to consider the potential for abuse and manipulation should the board not have objective bases and procedures in place for approving or disallowing remote participation.

27. See G.S. 143-318.11.

28. G.S. 143-318.11(a)(3).

29. G.S. 143-318.11(a)(6).

30. See Frayda Bluestein, "What Happens in Closed Session, Stays in Closed Session . . . Or Does It?" *Coates' Canons: NC Local Government Blog* (UNC School of Government, Dec. 9, 2009), <http://canons.sog.unc.edu/?p=1463>.

Even without the added dimension of remote participation, board majorities can schedule meetings or agenda items, knowing when particular members will or will not be able to attend. The potential for manipulation increases if the same majorities have complete discretion in deciding whether individual members are allowed to participate remotely. This is of special concern if remote participants are allowed to vote, a matter discussed below.

Discouraging Excessive Absences

A local policy might limit the number of times an individual board member may participate remotely. Even if there is no authority to sanction members for excessive absences (as is the case for governing board members),³¹ the board has discretion to disallow remote participation in cases where board members are abusing the privilege. Board majorities must exercise this authority carefully to avoid manipulation of the process for political advantage.

Voting and Written Ballots

A local policy should address the question of whether remote participants may vote and, if so, what procedures will be used to record and verify their votes. If a remote participant is considered to be present, the presumption is that he or she would be entitled to vote. Indeed, under the voting statute for city governing boards, a person is presumed to vote “yes” if he or she is present by remote means and has not been excused from voting. For these reasons, it would be important to have specific means for determining whether a person is still participating when a vote comes up. Policies can provide for a person to explicitly notify the board when the remote participant is leaving the meeting or rejoining the meeting by terminating or restarting the electronic connection. A policy could also state that a person is not considered present if the connection is lost unintentionally, due to technical problems.

A voice vote by telephone, which can be heard and recorded, could satisfy the basic voting requirements, unless votes are being taken by written ballot. It is possible that a fax, email, or text could be considered a written ballot, if the notion of an electronic signature (generally now accepted as binding in other circumstances) is accepted in this context. The obvious concern would be whether the remote participant in fact did the voting, but a person participating by electronic means could verify the action or, if there is video, could be observed doing it.

Minutes to Reflect Remote Participation

Minutes of meetings at which remote participation occurs should reflect which members are physically present and which are not. They should also reflect when members are excused from voting or are excused to leave or rejoin the meeting, just as they would for members who are physically present.

Majority of Board in a Remote Location

In most cases, the need for remote participation arises when a majority of the board meets in its regular location and one or two members are unable to physically attend. It is possible to imagine, however, a situation where a majority of a board is away, perhaps together attending training or a meeting, and a need for a meeting arises. Consider a five-member board, with three members who are out of town. An issue arises, and the mayor calls a special meeting to take place in city hall, with the three absent members participating by conference telephone call. For cities, there is no legal requirement regarding where meetings take place, but the notice of the meeting

31. See *supra* note 25.

must identify its location. If the city follows the procedures for providing visual and audio transmission at city hall under G.S. 143-318.13(a), it would appear that a notice stating that the meeting will take place at city hall would be valid, even if a majority of the board is participating from another location. It might be prudent to also provide notice of the location at which the three members are located, if they are all in the same place.

Under state law, a county board of commissioners must hold its meetings within the county, except in certain specified cases.³² In the absence of any specific authority to the contrary, it is best to assume that a majority of the board must be physically present in the county to comply with this requirement. Although it is technically possible for citizens to attend a meeting in the county at which a majority of the board is participating and can be seen and heard by electronic transmission, this approach might not be viewed as being compliant with the in-county meeting requirement.

Conclusion

Is remote participation more trouble than it is worth? That is up to local boards to decide. Despite some uncertainty about the legality, for quorum and voting purposes, of remote participation, it is clear that there are and will continue to be times when both the board's and the public's interests are best served by accommodating one or more board members' need to participate from another location. Indeed, a remote participant seems not so different from those who are present, when you consider the extent to which technology permeates meetings. Citizens participate remotely through video streaming, and members and attendees increasingly access electronic devices during meetings. Local policies addressing the legal and practical aspects of remote participation for elected and appointed boards can balance the needs of the boards and the needs of citizens, while incorporating available technology to accommodate these interests.

This bulletin has emphasized the two biggest legal risks in allowing remote participation: the possibility of a challenge to (1) the presence of a quorum and (2) the validity of a vote cast remotely, especially if the remote participant casts the deciding vote. The first risk can be avoided by adopting a local policy that requires a quorum to be physically present. The second risk may not be one that can be avoided by local policy. As noted above, a person who participates in a meeting remotely and is considered to be present has a right to participate fully, including in voting. It may not be possible to know in advance whether the remote participant will be the deciding vote, and it would open the process to unacceptable manipulation if remote participation rights were determined based on the expected outcome of a particular vote. So this risk is one that board members may have to consider and balance against the value of full participation in deciding whether to allow remote participation.

32. G.S. 153A-40.

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