



**TOWN OF DAVIDSON  
BOARD OF COMMISSIONERS  
2nd Tuesday Work Session  
Town Hall Board Room - 216 S. Main Street  
July 9, 2019  
6:00 PM**

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

**II. CLOSED SESSION**

- (a) **NCGS §143-318.11. (a) (5) for land acquisition**  
202 Mock Road  
144 Mock Circle  
145 Mock Road  
211 Lakeside Avenue
- 

**III. ANNOUNCEMENTS - 6:00 P.M.**

**IV. CHANGES TO AGENDA**

**V. QUARTERLY COMMISSIONER REPORTS**

- (a) **Centralina Council of Governments**  
Commissioner Autumn Rierson Michael  
**Lake Norman Chamber of Commerce**  
Commissioner Matthew Fort  
**Visit Lake Norman**  
Commissioner Jim Fuller  
**Lake Norman Regional Economic Development Corporation**  
Commissioner David Sitton  
**North Mecklenburg Alliance**  
Commissioner David Sitton  
**Charlotte Regional Transportation Planning Organization**  
Commissioner Jane Campbell  
**Lake Norman Transportation Commission**  
Commissioner Jane Campbell  
**2020 Census**  
Commissioner Jane Campbell  
**Metropolitan Transit Commission**  
Mayor Rusty Knox

## **VI. DISCUSSION**

- (a) **Park at Beaty Update - recommendation for naming of park and conservation easement**  
**Parks & Recreation Director Kathryn Spatz and Park at Beaty Task Force Member Dave Cable**

**Summary:**

**(1) Recommendation for naming of Park at Beaty**

In April, the Park at Beaty Task Force Leadership Committee recommended the following list of four park names for consideration by the public via Open Town Hall:

- **Beaty Park:** The property is well-known with the Beaty name and some folks call it by this name already. It signifies geographic location.
- **Heron Park:** Herons visit this park on a regular basis, particularly when the pond (the park's primary water feature) is full.
- **Perennial Park:** Refers to the perennial plants, perennial streams and everlasting nature of the park.
- **Preservation Park:** Refers to the park being preserved in perpetuity.

The overwhelming choice, receiving 78.5% of the votes, on Open Town Hall was Beaty Park. Write-in ideas were permitted and several citizens expressed a desire for the park to be named Clontz Park, in honor of the family who sold the town land to the town. The Task Force Leadership Committee and the Livability Board recommend to the board of commissioners that the park officially be named Beaty Park and be dedicated to the Clontz Family. We recommend the board of commissioners consider approval of the name proposed by the Park at Beaty Task Force Leadership Committee and Livability Board at the July 23 meeting.

**(2) Park at Beaty Conservation Easement**

At the March 26, 2019 meeting, the board of commissioners voted unanimously to adopt the recommendations of the Park at Beaty Task Force, including permanently protecting all 6 parcels (20+ acres) that make up the Beaty property with a conservation easement. Park at Beaty Task Force member Dave Cable will present information on the proposed conservation easement. If the board of commissioners agrees with the terms of the easement language, the next step is to approve the conservation easement as presented and approve the budget amendment at the July 23 meeting.

- (b) **Tree Ordinance Text Amendments**  
**Planning Director Jason Burdette, Senior Planner Trey Akers, and Planning Board Ordinance Committee members Dave Cable, Shawn Copeland, and Ellen Donaldson.**  
**Summary:** Staff and Planning Board Ordinance Committee members will present the draft text amendments to Davidson Planning Ordinance re: tree canopy. Discussion will include work completed, violations and fees, and next steps.

- (c) **Targeted Conditional Zoning Growth Management Tool**  
**Planning Director Jason Burdette**  
**Summary:** The Board of Commissioners directed staff to explore strategies to better control the pace of development, specifically concurrency and targeted conditional zoning. After working with a consultant who specializes in growth management strategies and is familiar with North Carolina statutes, targeted conditional zoning is the preferred tactic to pursue. This is for discussion purposes only.
- (d) **Consider Approval of next steps in process for General Obligation Bonds for Public Facilities**  
**Town Manager Jamie Justice and Finance Director Pieter Swart**  
**Summary:** The board of commissioners will consider approval of next steps in process for General Obligation (GO) Bonds for Public Facilities and Resolution 2019-31 to set the date of the Public Hearing for Tuesday, July 23, 2019 at 6:00 p.m.
- (e) **Consider Approval of Charlotte Regional Transportation Planning Organization (CRTPO) Grant Applications**  
**Town Manager Jamie Justice**  
**Summary:** The town board has discussed several potential projects for roadways, greenways, and parks. The Charlotte Regional Transportation Planning Organization (CRTPO) provides grants to local governments for transportation-related projects. Their next grant cycle for discretionary grant funding begins in August and closes in October. The grants are typically an 80% grant with a 20% local match. This source of funding is one of the primary grant options for Davidson for transportation projects. To make applications, staff would work with an engineer to refine the cost estimates for the applications as well as work with CRTPO staff to best position these projects for grant funding.
- Staff has reviewed the potential projects and determined the ones that are the most likely to be eligible for CRTPO grant funding:
- Highway 115 and Beaty Street intersection improvements.
  - Potts Sloan Beaty phase 2 - Beaty Street multiuse path from Griffith Street to Highway 115.
  - Grey Road multiuse path from Wolfe Street to Abersham Park.
  - River Run to Summers Walk Greenway - engineering study phase.
- The board is asked to authorize staff to proceed with making applications for these projects. The 20% local match could come from the 2017 general obligation (GO) bonds.
- (f) **Miscellaneous/Open Discussion**  
**Summary:** This is an opportunity for Commissioners to present or discuss any topics not previously listed on the agenda.

## **VII. SUMMARIZE MEETING ACTION ITEMS**

## **VIII. ADJOURN**



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**Agenda Title: NCGS §143-318.11. (a) (5) for land acquisition**

202 Mock Road  
144 Mock Circle  
145 Mock Road  
211 Lakeside Avenue

**Summary:**

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**ATTACHMENTS:**

**Description**

**Upload Date**

**Type**

No Attachments Available



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**Agenda Title: Centralina Council of Governments**  
Commissioner Autumn Rierson Michael  
**Lake Norman Chamber of Commerce**  
Commissioner Matthew Fort  
**Visit Lake Norman**  
Commissioner Jim Fuller  
**Lake Norman Regional Economic Development Corporation**  
Commissioner David Sitton  
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Commissioner Jane Campbell  
**Lake Norman Transportation Commission**  
Commissioner Jane Campbell  
**2020 Census**  
Commissioner Jane Campbell  
**Metropolitan Transit Commission**  
Mayor Rusty Knox

**Summary:**

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**ATTACHMENTS:**

Description	Upload Date	Type
No Attachments Available		



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**Agenda Title: Park at Beaty Update - recommendation for naming of park and conservation easement**

**Parks & Recreation Director Kathryn Spatz and Park at Beaty Task Force Member Dave Cable**

**Summary:**

**(1) Recommendation for naming of Park at Beaty**

In April, the Park at Beaty Task Force Leadership Committee recommended the following list of four park names for consideration by the public via Open Town Hall:

- Beaty Park: The property is well-known with the Beaty name and some folks call it by this name already. It signifies geographic location.
- Heron Park: Herons visit this park on a regular basis, particularly when the pond (the park's primary water feature) is full.
- Perennial Park: Refers to the perennial plants, perennial streams and everlasting nature of the park.
- Preservation Park: Refers to the park being preserved in perpetuity.

The overwhelming choice, receiving 78.5% of the votes, on Open Town Hall was Beaty Park. Write-in ideas were permitted and several citizens expressed a desire for the park to be named Clontz Park, in honor of the family who sold the town land to the town. The Task Force Leadership Committee and the Livability Board recommend to the board of commissioners that the park officially be named Beaty Park and be dedicated to the Clontz Family. We recommend the board of commissioners consider approval of the name proposed by the Park at Beaty Task Force Leadership Committee and Livability Board at the July 23 meeting.

**(2) Park at Beaty Conservation Easement**

At the March 26, 2019 meeting, the board of commissioners voted unanimously to adopt the recommendations of the Park at Beaty Task Force, including permanently protecting all 6 parcels (20+ acres) that make up the Beaty property with a conservation easement. Park at Beaty Task Force member Dave Cable will present information on the proposed conservation easement. If the board of commissioners agrees with the terms of the easement language, the next step is to approve the conservation easement as presented and approve the budget amendment at the July 23 meeting.

**Summary:**

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**ATTACHMENTS:**

Description	Upload Date	Type
▣ Agenda Memo - Naming of Park at Beaty 07.09.19	7/5/2019	Cover Memo

▣	Attachment - Recommendation Memo from Park at Beaty Task Force Leadership Committee 07.09.19	7/5/2019	Backup Material
▣	Attachment - Recommendation Memo from Livability Board 07.09.19	7/5/2019	Backup Material
▣	Agenda Memo - Park at Beaty Conversation Easement 07.09.19	7/5/2019	Cover Memo
▣	Presentation - Conservation Easement of Park at Beaty 07.09.19	7/5/2019	Presentation
▣	Attachment - DRAFT DLC Park at Beaty Conservation Easement Agreement 07.09.19	7/9/2019	Backup Material



## Recommendation for Naming of Park at Beaty

To: Davidson Board of Commissioners  
From: Kathryn Spatz, Parks & Recreation Director  
Date: July 9, 2019  
Re: Recommendation for Naming of Park at Beaty

### 1. OVERVIEW

On September 4, 2018, the Davidson Board of Commissioners voted unanimously to follow the process below in naming of future parks:

Livability Board's Parks Subcommittee or designee group develop 3-5 potential names based on natural features and history of park land.

- Seek public input on those potential names from citizen on Open Town Hall.
- Livability Board make recommendation to Board of Commissioners, considering citizens input.
- Board of Commissioners consider Livability Board recommendation for approval by resolution.

In April, the Park at Beaty Task Force Leadership Committee recommended the following list of four park names for consideration by the public via Open Town Hall:

- **Beaty Park:** The property is well-known with the Beaty name and some folks call it by this name already. It signifies geographic location.
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The overwhelming choice, receiving 78.5% of the votes, on Open Town Hall was Beaty Park. Write-in ideas were permitted and several citizens expressed a desire for the park to be named Clontz Park, in honor of the family who sold the town land to the town.

The Task Force Leadership Committee and the Livability Board recommend to the board of commissioners that the park officially be named Beaty Park and be dedicated to the Clontz Family.



## **2. RELATED TOWN GOALS**

Greenways, Open Space, and Parks Goal: The Town of Davidson will increase physical and mental health of Davidson citizens. Preserve open space. Provide ample opportunities for play and discovery (active and passive).

Community Engagement Goal: Davidson will have inclusive engagement with the community to encourage substantive, respectful, and open dialogue, increase participation, and foster a sense of belonging.

Operations Goal: Davidson will maintain organizational excellence through sound financial management, training, and retention of quality employees, in superior service to the community. Action item: Develop Beaty Street property plan.

## **3. OPTIONS/PROS & CONS**

Options:

- 1) Choose one of the names recommended by the Park at Beaty Task Force Leadership Committee and Livability Board
- 2) Select another name for the Park at Beaty

## **4. FYI or RECOMMENDED ACTION**

FYI. We recommend the board of commissioners consider approval of the name proposed by the Park at Beaty Task Force Leadership Committee and Livability Board at the July 23 meeting.

## **5. NEXT STEPS**

The board of commissioners will consider approval of the recommended name at the July 23 meeting. Following approval of the name, staff would begin using the adopted name in press for the October 5 dedication ceremony and order park signage.



## Recommendation for Naming of Park at Beaty

To: Davidson Board of Commissioners  
From: Park at Beaty Task Force Leadership Committee  
Date: July 9, 2019  
Re: Recommendation for Naming of Park at Beaty

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Based on the town's guidelines when naming parks to consider historic features, natural features, or geographic location, the Beaty Task Force Leadership Committee (Denise Beall, Dave Cable, Leah Chester-Davis, and Alice Sudduth) recommended the following list of four park names for consideration by the public via Open Town Hall. (To date the Beaty Street Property has been referred to as the Park at Beaty in keeping with the town's practice until the park is officially named by the Board of Commissioners.) The options presented on Open Town Hall were:

- **Beaty Park:** The property is well-known with the Beaty name and some folks call it by this name already. It signifies geographic location.
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- **Perennial Park:** Refers to the perennial plants, perennial streams and everlasting nature of the park.
- **Preservation Park:** Refers to the park being preserved in perpetuity.

The overwhelming choice on Open Town Hall was Beaty Park. However, multiple citizens expressed a desire for the park to be named Clontz Park, in honor of the family who sold the town land to the town.

The Task Force Leadership Committee recommends to the Board of Commissioners that the park officially be named Beaty Park and be dedicated to the Clontz Family.

We are thankful and proud to continue a leadership role in making this park a reality and stand prepared to assist board and staff in any way needed.



## Recommendation for Naming of Park on Beaty Street

To: Davidson Board of Commissioners  
From: Steedman Lyles, Chair, Livability Board  
Date: July 9, 2019  
Re: Recommendation for Naming of Park on Beaty Street

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Based on the town's guidelines when naming parks to consider historic features, natural features, or geographic location, the Beaty Task Force Leadership Committee (Denise Beall, Dave Cable, Leah Chester-Davis, and Alice Sudduth) recommended the following list of four park names for consideration by the public via Open Town Hall. (To date the Beaty Street Property has been referred to as the Park at Beaty in keeping with the town's practice until the park is officially named by the Board of Commissioners.) The options presented on Open Town Hall were:

- **Beaty Park:** The property is well-known with the Beaty name and some folks call it by this name already. It signifies geographic location.
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The overwhelming choice on Open Town Hall was Beaty Park, with over 78% of the vote. Some citizens expressed a desire for the park to be named Clontz Park, in honor of the family who sold the town land to the town.

At its June 18, 2019 meeting, the Livability Board voted unanimously to recommend to the Board of Commissioners that the park officially be named Beaty Park and be dedicated to the Clontz Family.



## **Park at Beaty Conservation Easement**

To: Davidson Board of Commissioners  
From: Kathryn Spatz, Parks & Recreation Director  
Date: July 9, 2019  
Re: Park at Beaty Conservation Easement

### **1. OVERVIEW**

At its March 26, 2019 meeting, the board of commissioners voted unanimously to adopt the recommendations of the Park at Beaty Task Force, including permanently protecting all 6 parcels (20+acres) that make up the Beaty Property with a conservation easement. Permanent conservation is the only way to ensure the land is kept open, undeveloped, and in the public realm, forever. The Park at Beaty Leadership Committee, primarily Dave Cable, and staff have been working to develop easement language that addresses town, neighbor, and Davidson Land Conservancy (DLC) interests. The Task Force Leadership Committee and staff met with neighbors May 30 to present information on the proposed conservation easement and respond to any questions or concerns. The information was positively received.

### **2. RELATED TOWN GOALS**

Greenways, Open Space, and Parks Goal: The Town of Davidson will increase physical and mental health of Davidson citizens. Preserve open space. Provide ample opportunities for play and discovery (active and passive).

Community Engagement Goal: Davidson will have inclusive engagement with the community to encourage substantive, respectful, and open dialogue, increase participation, and foster a sense of belonging.

Operations Goal: Davidson will maintain organizational excellence through sound financial management, training, and retention of quality employees, in superior service to the community. Action item: Develop Beaty Street property plan.

### **3. OPTIONS/PROS & CONS**

Pros: conservation easements (CE) vs. deed restrictions vs. fee simple; easements are permanent, irrevocable, very difficult to amend; can only be undone by judicial action; 55 million U.S. acres preserved by CE; terms of the CE will be specific to Beaty Park, its conservation values, and park use; stewardship endowment fund & monitoring; legal defense fund & enforcement

Con: \$30,000 for stewardship could be used for something else

#### **4. FYI or RECOMMENDED ACTION**

FYI. We recommend the board of commissioners approve the conservation easement as presented and approve budget amendment at the July 23 meeting.

#### **5. NEXT STEPS**

If the board of commissioners agrees with the terms of the easement language, the next step is to approve the conservation easement as presented and approve the budget amendment at the July 23 meeting.



# **Conserving the Park at Beaty Presentation to Board of Commissioners July 9, 2019**



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# Endorsements for Conserving the Park at Beaty

- Public comment (in concept)
- Beaty Park Task Force (in detail)
- Livability Board (in detail)
- Board of Commissioners & Mayor (in concept)
- DLC Board & organization (in detail)

# Shaping the Park at Beaty Conservation Easement

1. DLC drafted conservation easement & exhibits
2. Review & approval by DLC legal counsel
3. Review & approval by Beaty Park Task Force
4. Review & approval by DLC Land Acquisition Committee
5. Review & approval by DLC Board of Directors
6. Review & approval by Cindy Reid (& Town staff)
7. Review & approval by TOD outside counsel
8. Distribution to, and review by, Town Board



# Timeline for Conserving the Park at Beaty

1. Community meeting or nearby residents – May 30
2. Town Board presentation – July 9
3. Town Board vote – July 23 (or August)
4. Complete survey, baseline & title work – July & August
5. Execute conservation easement – August or early Sept
6. Celebration & unveiling – October 5

## Other

- Invasive eradication – Phase I – late August
- Geo-tech evaluation – on-going
- Search for dam funding – on-going

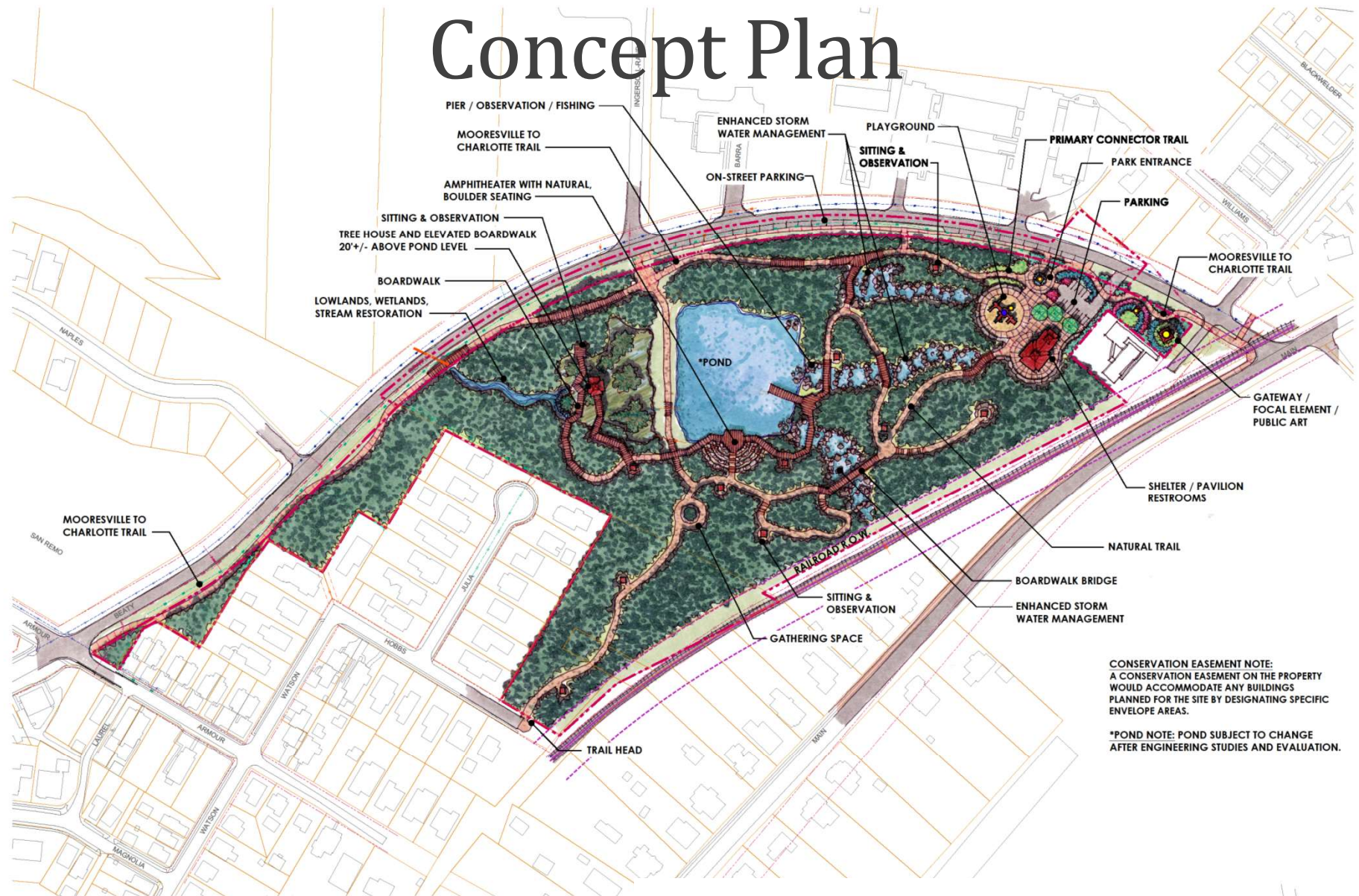




*Existing Site - Aerial*  
**Beaty Street Property**  
 June 6, 2018



# Concept Plan



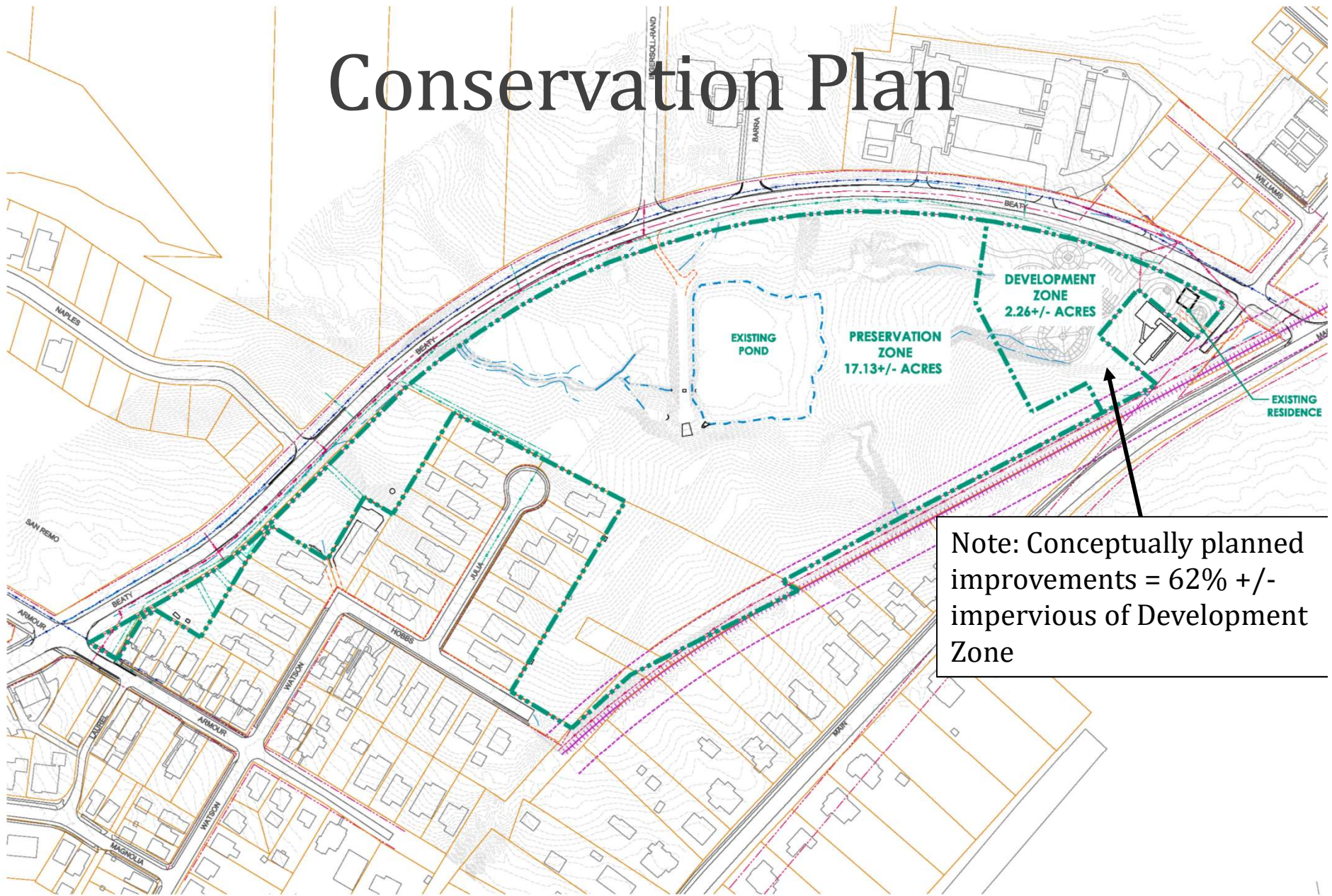
*Schematic Master Plan*  
**Park at Beaty**  
February 19, 2019



**VIZ**  
VIZ, PLLC  
Urban Design • Land Planning • Landscape Architecture  
300 West 7th  
Columbia, SC 29201  
803.799.0111  
viz@viz.com



# Conservation Plan



*Conservation Easement Zones*  
**Park at Beaty**  
June 24, 2019

# Conservation Easement Terms

## Overview

- Property will be permanently protected by conservation easement
- Easement is a permanent legal agreement, recorded in Land Records
- Easement can only be extinguished by judicial process
- Amendments to easement are possible under special conditions
- Property to be used as a public park
- Easement restrictions consistent with Concept Plan
- Acknowledges that water features are not optimized at present, and that “substantial alterations” to the water features, yet to be defined, are anticipated
- DLC will permanently monitor, steward & defend the easement
- If ever condemned, 100% of proceeds to Town

# Conservation Easement Terms

## Prohibited Uses

- Subdivision of the property
- Commercial uses other than those ancillary to park use\*, and all residential uses.
- Cell towers or towers for any purpose except for park use
- Surface alteration except associated with: utility services and buildings and site improvements permissible under the easement; water feature establishment, enhancement or maintenance; trails and other permitted park related features\*
- Mining, mineral extraction, alteration of water courses, erosion, or pollution\*
- Installation of utilities, except as needed to support permitted structures and for park use
- Billboards and signage except for entry signs, boundary conservancy signs, educational and directional signage
- Motorized vehicles except on appropriate trails for maintenance and emergency access, for construction of permissible improvements or enhancements, or in the Development Zone
- Equestrian activities
- Disposal of hazardous substances, and unlawful use of hazardous substances
- Removal of vegetation and timbering, except for eradication of invasive plants, safety and health of the forest, proper forestry management, or park development.

\* See addenda for detail



# Conservation Easement Terms

## **Preservation Zone – 17.1+/- acres**

Designed to limit use and development to passive recreation uses, except for sidewalks or multipurpose paths

Development is limited to unenclosed structures such as tree houses, amphitheaters, docks and foot bridges, public art installations, shelters, and decks, picnic areas, benches, trails, multi-purpose paths, and the establishment or enhancement of water features including erosion control installations, dams and ponds, and wetlands and stream alteration installations.

Roads, driveways, and utility lines and utility facilities are prohibited except as required for public safety or for permitted uses.

Prohibited are active recreational uses (other than multi-use paths) such as ball fields, disc golf, playfields, playgrounds, tennis courts, volleyball courts, basketball courts, shuffleboard courts, bocce courts, horseshoe areas, swimming pools, mountain bike trails, enclosed structures, parking areas, or driveways.

# Conservation Easement Terms

## **Development Zone – 2.3+/- acres**

Designed for the development of active recreational park facilities including play structures, active recreation improvements, structures, utilities lines and services, public art installations, patios, walkways, landscaping, parking and driveway areas, and other improvements supporting public park use of the property.

The extent of development of impervious area in the Development Zone is limited to local, state, or federal land use regulations and is also not to exceed 70% (concept plan at 62%+/-) of the land area in this Zone. Building height is limited to 30 feet.



# Conserving the Park at Beaty – Estimated Transaction Costs

## Transaction Costs

◦ Legal – title search, title insurance, recording	\$5,000 – DLC
◦ Boundary Survey – perimeter and zone line	\$5,500 – Town
◦ Appraisal	N/A
◦ Environmental – Phase I & clean up	Complete - Town
◦ Baseline Inventory	<u>\$1,000</u> – DLC
◦ <b>Total Transaction Costs</b>	<b>\$11,500 (\$5,500 Town, \$6,000 DLC)</b>

# Park at Beaty – Stewardship

## Stewardship and Legal Defense

- **One-time** Fund Contribution Request to Town     \$30,000

The contribution creates an asset offsetting DLC's perpetual (for all time) obligation to monitor, steward, & defend the conservation easement. Funds will be used to steward & protect Park at Beaty conservation values; none of the funding to be used for DLC operations. Stewardship endowment donations are normal and typical for conservation projects.

Unique factors enhancing stewardship risk and potentially threatening conservation values:

- 25 abutting property owners, with some history of encroachments
- Public park use of property; substantial reserved rights
- Potential for reactivation of abutting railroad and associated risks
- Pending park development and site disruption, over multiple phases and years
- Location in urbanizing area



## **Addenda**

1. DLC obligations
2. Commercial uses defined
3. Amendments to draft easement



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# Conservation Easement Terms

## **DLC's Obligations**

- To monitor and steward the land to prevent activity or use of the property inconsistent with, or damaging to, the conservation values, and to fully enforce the terms of the easement against any violations.

# Conservation Easement Terms

## **Commercial Uses – Permitted by Reserved Right**

“Grantor shall be permitted to conduct commercial uses only to the extent uses are ancillary and contributory to public park use of the Property and provide public benefit. Examples include concession stands, small vendor carts and operations, office uses by the Town’s Park and Recreation staff, farmers’ markets, and limited not-for-profit office and retail uses”.

# Conservation Easement – Amendments to Draft

## Issues raised by Town Attorney and outside counsel

1. Affirmative right that Grantor (Town) “...***must*** permit others to engage in public park and recreational uses of the Park....”.
2. Do CE provisions limit removal or re-establishment of water features?  
“The Property’s water features existing as of the date of this Agreement, including a dam, pond, spring and perennial and ephemeral streams, do not maximize water quality, Conservation Values, and public enjoyment and benefit. Substantial alterations of the water features, of undetermined scope and extent, are anticipated following execution of this Agreement. ***Nothing in this Agreement is intended to restrict the enhancement, alteration, removal, establishment, or re-establishment of water features to maximize the Property’s Conservation Values and public benefit***”.
3. What is basis for 75% valuation of Conservation Easement? ***Changed to reflect 100% of proceeds go to town for any act of condemnation.***
4. Miscellaneous wording changes for “remedies” and adjustments to Exhibit.

**STATE OF NORTH CAROLINA**

**DEED OF CONSERVATION EASEMENT;  
OPTION TO PURCHASE REAL ESTATE  
AND RIGHT OF FIRST REFUSAL**

**COUNTY OF MECKLENBURG**

**THIS DEED OF CONSERVATION EASEMENT** (the “**Agreement**”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by the **TOWN OF DAVIDSON**, a North Carolina municipal corporation, (“**Grantor**”) in favor of **DAVIDSON LANDS CONSERVANCY**, a North Carolina nonprofit corporation (hereinafter referred to as “**Grantee**”).

**BACKGROUND STATEMENT**

A. Grantor is the sole owner in fee simple of that certain parcel of land containing approximately 20 acres and located on the south side of Beaty Street in the Town of Davidson, Mecklenburg County, North Carolina, and more particularly described in **Exhibit A** attached hereto and by reference incorporated herein (the “**Property**”).

B. The Property is to be a public park and possesses natural, scenic, open space, wildlife habitat, historical, educational, recreational, water quality, water quantity, and watershed protection values (hereinafter referred to collectively as “**Conservation Values**”) of great importance to the Grantor, Grantee, the people of the Town of Davidson, Mecklenburg County, and the State of North Carolina.

C. The Property, if preserved in accordance with this Agreement, will provide an important habitat for a diversity of plant communities and wildlife in the Piedmont area of North Carolina, including white-tailed deer, migratory songbirds, wildflowers, ferns, and mature hardwood trees.

D. Because of its location in the Catawba River watershed, the Property, preservation of the Property will contribute to the maintenance of surface water and ground water quality of the Catawba River watershed, including Lake Davidson.

Drawn by and mail to:

Law Offices of Tilman Thomas Gates PLLC  
602 East Morehead Street  
Charlotte, NC 28202  
Attn: T. Thomas Gates

E. The Property, if preserved in accordance with this Agreement, will provide for public access and use, and the public's scenic enjoyment of water features, open undeveloped land, natural features, and forests.

F. Conservation of the Property will provide a significant and substantial public benefit in the form of relief from urban closeness as Davidson and its surrounding communities, including the Charlotte metropolitan area, continue to expand and increase in population.

G. Preservation of the Property pursuant to federal, state, and local governmental conservation policy will yield a significant public benefit. The conservation purposes of this Agreement are recognized by the following governmental conservation policies:

I. N.C. GEN. STAT. §143B-135.230 et seq. The Clean Water Management Trust Fund recognizes the importance of protecting riparian buffers in protecting and conserving clean surface water.

II. Article XIV, Section 5 of the Constitution of the State of North Carolina. "It shall be the policy of the State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivision to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this state its forests, wetlands, estuaries, beaches, historical sites, open lands, and places of beauty."

H. Grantor and Grantee have the common purpose of conserving the Conservation Values of the Property in perpetuity, and the State of North Carolina has authorized the creation of conservation easements pursuant to the terms of the North Carolina Historic Preservation and Conservation Agreements Act, N.C. GEN. STAT. §121-34 et seq. (the "**Act**"), and N.C. GEN. STAT. §§160A-266 through 279 and §105-317, which provide for the enforceability of restrictions, easements, covenants or conditions "appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, horticultural, farming, or forest uses," and Grantor and Grantee wish to avail themselves of the provision of that law.

I. The Board of Directors of Grantee, at its meeting on May 20, 2019, approved acceptance of the conservation easement contained in this Agreement, which shall be known as the "Park at Beaty Conservation Easement," because it fulfills the requirements of the Conservancy's adopted project selection criteria.

J. The specific Conservation Values of the Property are documented in a Baseline Documentation Report outlining relevant features of the Property, dated \_\_\_\_\_, 2019, on file at the offices of Grantee, said Baseline Documentation Report consisting of reports, maps, photographs, and other documentation (collectively, the "**Baseline Report**"), which the parties agree provides an accurate representation of the Property at the time of this conveyance and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Agreement.

K. Grantor intends that the Property be used as a public park and that the Conservation Values of the Property be preserved and maintained by and through this Agreement.



L. The Property's water features existing as of the date of this Agreement, including a dam, pond, spring and perennial and ephemeral streams, do not maximize water quality, Conservation Values, and public enjoyment and benefit. Substantial alterations of the water features, of undetermined scope and extent, are anticipated following execution of this Agreement. Nothing in this Agreement is intended to restrict the enhancement, alteration, removal, establishment, or re-establishment of water features to maximize the Property's Conservation Values and public benefit.

M. Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity.

N. Grantee is (i) a publicly supported, tax-exempt non-profit organization, qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986 (as amended, the "**Code**"), whose primary purpose is the preservation, protection and enhancement of land in its natural, scenic or open space condition, and is authorized by the laws of the State of North Carolina to accept, hold and administer interests in land including conservation easements, (ii) a "qualified organization" and an "eligible donee" within the meaning of Section 170(h)(3) of the Code and the Treasury Regulations thereunder, and (iii) willing to accept this Agreement under the terms and conditions hereinafter described.

O. Grantee agrees by accepting this conveyance to honor the intentions of Grantor stated herein and to use its best reasonable efforts to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and generations to come.

### **STATEMENT OF AGREEMENT**

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of North Carolina and in particular the Act, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth.

1. Purpose. As set forth in the recitals above, which recitals are incorporated herein by reference, it is the purpose of this Agreement to assure that the Property will be retained forever in its natural, largely undeveloped, scenic and open space condition and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property, subject to the development provisions specified in this Agreement. Grantor intends that this Agreement will confine the use of the Property to such activities as are consistent with the purpose of this Agreement, including without limitation public park use, education, public recreation, public gathering, and park ancillary uses, as specified in this agreement.

The Property will consist of two (2) distinct zones, shown as the "Development Zone" and the "Preservation Zone" on Exhibit B and more particularly defined in Exhibit C, which exhibits are attached hereto and by reference incorporated herein. The Development Zone will be the area in which active recreational park facilities are developed and used on the Property. The balance of the Property, the Preservation Zone, will be limited to passive recreational use except as otherwise expressly permitted in Exhibit C and this Agreement.

2. Rights of Grantee. To accomplish the purposes of this Agreement the following rights are conveyed to Grantee:

(a) All present and future development rights for the Property, except as otherwise reserved and provided in Paragraphs 3 and 4 below and in **Exhibit C**. The parties agree that such rights are terminated and extinguished, and may not be used on or transmitted to any portion of the Property or to any other property.

(b) To preserve and protect the Conservation Values of the Property; provided, however, that Grantor shall have reasonable discretion with respect to its use of the Property and management practices so long as those uses and practices are consistent with the terms and conditions of this Agreement.

(c) To enter upon the Property in accordance with the provisions of Paragraphs 6 and 11 of this Agreement.

(d) To prevent any activity on or use of the Property that is inconsistent with the purposes of this Agreement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, all pursuant to Paragraphs 6 and 11 below.

3. Prohibited Uses. Any activity on or use of the Property inconsistent with the purposes of this Agreement is prohibited by Grantor and Grantee. Without limiting the generality of the foregoing, the following activities on and uses of the Property are expressly prohibited:

(a) *Subdivision.* The legal or de facto subdivision of the Property.

(b) *Business, Residential or Commercial Use.* Any commercial, residential, or industrial use of, or activity on, the Property other than (i) those relating to and ancillary to public park use as permitted under Paragraph 4 and **Exhibit C**, and (ii) the residential use permitted under Paragraph 4(n). Permanently established commercial offices, residences (except as expressly permitted under Paragraph 4(n)), hospitality or business uses of the property are prohibited.

(c) *Structures.* The placement or construction of any buildings, structures, or other improvements of any kind other than those permitted in Paragraph 4 and **Exhibit C**.

(d) *Surface Alteration.* Any alteration of the surface of the land, including without limitation the excavation or removal of soil, sand, gravel, rock or sod except (i) as permitted in Paragraph 4 and **Exhibit C**, (ii) for the purposes of combating erosion, or (iii) incidental to conservation management activities otherwise permitted in this Agreement.

(e) *Erosion; Pollution.* Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or sub-surface waters.

(f) *Alteration of Water Courses.* Natural water courses, wetlands, ponds, or other bodies of water may not be further diverted or altered, except to restore or enhance

the hydrology of the Property, improve water quality, maintain or enhance the existing water features, or for the protection of native plant and animal species on the Property. Any such restoration, enhancement or habitat protection or alteration of water features shall be conducted in accordance with a plan prepared by qualified engineering or conservation professional, and designed to protect the Conservation Values of the Property including, without limitation, water quality, scenic and wildlife habitat values, and shall be approved in writing by Grantee.

Notwithstanding the foregoing, damming, diking, draining, filling or alteration of the landscape, springs, streams, or ponds shall be permitted as necessary to maintain, dredge, enhance, establish or remove the existing or legally approved and permitted ponds, springs, or streams on the Property only as necessary to improve the public enjoyment of the property or protect wildlife habitat or water quality.

(g) *Utilities.* The installation of new utility systems or extensions of existing systems, including without limitation, water, sewer, power, fuel and communication lines and related facilities (such as cell towers, telephone relay towers, and other stand-alone tower structures), except as permitted in Paragraph 4 and **Exhibit C**.

(h) *Signage.* Placement of any signs, billboards, or outdoor advertising of any kind on the Property. Notwithstanding the above, (i) Grantor may erect and maintain informational signage, including without limitation signs indicating the name of the Property and its ownership and function, boundary markers, directional signs, memorial or recognition plaques, informational and interpretive signs, and signs limiting access or use, and (ii) Grantee may erect and maintain signs designating the Property as land under the protection of Grantee; provided in each case that the placement, number, and design of such signs do not significantly diminish the scenic character of the Property.

(h) *Mining.* The exploration for, or development and extraction of, minerals and hydrocarbons by any surface mining method or any other method.

(i) *Motorized Vehicles.* Motorized vehicles, including without limitation recreational off-road vehicles, are prohibited on the Property, except as they are used for (i) management, maintenance, construction of permitted alterations or improvements, or stewardship purposes, or (ii) on permitted roads and driveways providing access to structures, or (iii) for emergency access, public safety or to provide access to the Property by any disabled persons.

(j) *Hazardous Substances.* The storage, dumping, or other disposal of toxic and/or hazardous materials or non-compostable refuse, except for use of fertilizers, treated lumber, and legal chemicals as permitted by this Agreement. All materials shall be applied in accordance with all applicable laws and regulations, and in a manner which (i) prevents spillage, leakage, and dumping, (ii) prevents soil and surface water or groundwater contamination, and (iii) is otherwise consistent with the preservation of the Conservation Values of the Property. Notwithstanding anything in this Agreement to the contrary, this prohibition does not make Grantee an owner of the Property, nor does it permit Grantee to control any use of the Property by Grantor which may result in the storage, dumping, or

disposal of hazardous or toxic materials; provided, however, that Grantee may bring an action to protect the Conservation Values of the property, as described in this Agreement. This prohibition does not impose liability on Grantee, nor shall Grantee be construed as having liability as a “responsible party” under the Comprehensive Environmental Response, Compensation, and Liability Act or similar federal or state statutes. Recycling and application of chemicals for control of invasive species shall be permitted in accordance with the terms of Paragraph 4.

(k) *Recycling, Refuse and Composting.* Recycling, refuse or garbage handling operations beyond those associated with park use of the Property are prohibited. Small scale composting associated with a community garden use at the Property is permissible.

(l) *Removal of Vegetation.* Cutting, removing, or otherwise destroying trees, grasses, or other vegetation, except as specifically permitted in Paragraph 4 and **Exhibit C**.

(m) *Timbering.* No timbering is permitted except as set forth in Paragraph 4 and **Exhibit C**.

4. **Reserved Rights.** Grantor reserves to itself, and to its successors, and assigns, all rights accruing from ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the public park use purposes of this Agreement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

(a) *Recreational Use.* Grantor shall be permitted to engage in and must permit others to engage in public park and recreational uses of the Property, including without limitation walking, hiking, fishing, other active and passive recreational uses, animal or plant observation, and other uses consistent with public park use and public enjoyment.

(b) *Business or Commercial Use.* Grantor shall be permitted to conduct commercial uses only to the extent such uses are ancillary and contributory to public park use of the Property and provide public benefit, and are in compliance with the provisions of **Exhibit C**. Examples include concession stands, small vendor carts and operations, office uses by the Town’s Park and Recreation staff and/or by nonprofit organizations complementary to the public park use of the Property, and farmers markets. Permanently established commercial offices, hospitality or business use of the property is prohibited.

(c) *Utilities.* Grantor may install, alter, expand or replace utility lines and services required to support the permitted uses specified in **Exhibit C**.

(d) *Alteration of Water Courses.* Grantor may establish, alter, remove or enhance the Property’s water features including dams, ponds, springs, streams and drainage areas as necessary to restore or enhance the hydrology of the Property, improve water quality, improve the public’s enjoyment of the property or maximize the Conservation Values, including water quality and quantity and the protection of native plant and animal species on the Property. Any such restoration, enhancement or habitat protection activity shall be conducted in accordance with a plan prepared by qualified engineering or

conservation professional, and designed to protect the long-term Conservation Values of the Property including, without limitation, water quality, scenic and wildlife habitat values, and shall be approved in writing by Grantee.

(e) *Transfer of Property.* Subject to the terms of Paragraph 17 below, Grantor shall be permitted to sell, gift, mortgage, lease, or otherwise convey the Property. Grantor agrees that any mortgage of the Property shall be subordinate to the terms of this Agreement.

(f) *Landscaping and Maintenance.* Provided and on the condition that such use is in full compliance with applicable law, and does not have an otherwise detrimental effect on the Conservation Values of the Property, Grantor may install landscaping features required to support the permitted building and site improvements specified in **Exhibit C**. Also permissible is performance of routine grounds keeping and landscape maintenance on the Property, and management of invasive species, including without limitation (i) trimming and removal of grass and bushes, (ii) irrigation for landscaping purposes, (iii) application of chemical and non-chemical based fertilizers, herbicides, pesticides and fungicides as required to properly manage the Property, and (iv) maintenance of landscaping improvements.

(g) *Recycling.* Grantor shall be permitted to recycle and reuse garbage, waste and debris for composting purposes, so long as such composting operation is directly associated with the Property and is not detrimental to the Conservation Values, including water quality.

(h) *Trails and Recreation Areas.* Grantor shall be permitted to develop and construct pedestrian trails and associated nature viewing blinds, picnic tables, unenclosed structures, and benches for passive recreational use on the Property as specified in **Exhibit C**. Motorized vehicles are prohibited on the trails except as set forth in Paragraph 3(i) above. Equestrian trails and activities are prohibited.

(i) *Timbering.* Grantor shall be permitted to prune, cut down, or otherwise harvest trees in the Preservation Zone only as necessary (i) to prevent hazard, disease, or fire on the property, (ii) for the purposes of best forestry management practices, (iii) to restore or enhance the hydrology or water features, and protection of native plant species on the Property, or (iv) as minimally required for permissible building and site improvements as specified in **Exhibit C**. All timber harvesting, with the exception of tree pruning to prevent hazard, shall be done in accordance with a plan prepared in consultation with a registered professional forester or other conservation professional that is designed to protect the Conservation Values of the Property, including without limitation scenic and wildlife habitat values, which plan must be approved in writing by Grantee.

(j) *Access.* Grantor may control public access to the Property as required to manage the Property and park use, and to maintain public safety, subject to Paragraph 6 below.

(k) *Agriculture.* Agricultural uses are limited to community gardens, bee keeping, and similar low intensity activities. Under no circumstances, (i) shall there be any increase in the size or scope of permitted activities on the Property to the level of industrial or factory type livestock operations (i.e., operations characterized by the continuous confinement of livestock in tightly confined environments for the purpose of raising, feeding and fattening for market), (ii) shall any slaughtering facilities or hog operations be allowed, (iii) shall grazing areas be permitted except as required to support efforts to control invasive species, or (iv) shall areas predominantly forested in hardwoods as of the date of this Agreement be cleared to allow for any agricultural use.

(l) *Roads and Driveways.* Grantor shall be permitted to establish, use, improve, replace, and maintain the roads and driveways specified in Exhibit C. All driveway and road design, improvement, construction and maintenance shall be conducted in a manner that minimizes the impact on the natural and hydrologic features of the land consistent with maintaining the Conservation Values of the Property. Grantor must obtain Grantee's prior written consent to any new driveway construction or to any improvements to existing driveways that involve replacing, widening, extending, or significantly altering the surface of the road.

(m) *Replacement of Improvements.* In the event of destruction, deterioration or obsolescence of any permitted structures, housing, fences, roads or other improvements and facilities, whether existing at the date hereof or constructed subsequently pursuant to the provisions of this Agreement, Grantor may replace the same with structures, fences, roads, or other improvements and facilities of similar size, function, capacity, appearance, and location.

(n) *Existing Residence.* Grantor shall be permitted to use, maintain and repair the existing single-family residential dwelling located at 825 Shearer Street and indicated on Exhibit B as "Existing Residence" until the earlier of (i) the date that the Development Zone is developed, or (ii) the date five (5) years from the date of this Agreement.

5. Notice of Intention to Undertake Certain Permitted Actions. Grantor shall obtain Grantee's prior written approval before undertaking or permitting any use of the Property as described under subparagraphs 4(c), (d), (e), (h), (k), and (l). The purpose of requiring Grantee approval prior to undertaking certain permitted activities is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purposes of this Agreement. Whenever Grantee approval is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purposes of this Agreement.

5.1 Grantee's Approval. Where Grantee approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request therefor. Except as otherwise expressly provided herein, Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purposes of this Agreement.

6. Access. Grantee shall have the right to enter the Property at reasonable times, and upon prior reasonable notice to Grantor (except that such notice is not required when Grantee believes in good faith that the Conservation Values of the Property are at imminent and substantial risk), in order to (i) exercise its rights granted hereunder, including without limitation the preservation and maintenance of the Property; (ii) to monitor Grantor's compliance with and otherwise enforce the terms of this Agreement; (iii) to conduct scientific studies, monitoring and management of species populations and their habitat, or (iv) to conduct educational and conservation projects. Grantee shall indemnify, defend and hold Grantor harmless from and against any claims, damages or liability (including reasonable attorneys' fees) resulting from Grantee's exercise of its right of entry, except to the extent that such claims, damages or liability arise from the negligence or intentional acts of Grantor. Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property as long as such use does not interfere with the Conservation Values.

7. Costs and Liabilities. Grantor retains all responsibility and shall bear all costs related to the ownership, use, operation, upkeep, and maintenance of the Property (excluding improvements made by Grantee at its own cost and expense), including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall provide Grantee with evidence of such coverage upon request. Grantor shall keep the Property free of any and all liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor, unless such lien is subordinate to this Agreement.

8. Taxes. Grantor shall pay before delinquency all property or other taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent governmental authority (hereinafter referred to collectively as "**Taxes**"), including any Taxes imposed upon, or incurred as a result of, this Agreement, and shall furnish Grantee with satisfactory evidence of payment upon request.

9. Representations and Warranties. Grantor represents and warrants that, to the best of its knowledge:

(a) Grantor is the sole owner, is seized of the Property in fee simple, and has good right to grant and convey the conservation easement in accordance with the terms of this Agreement.

(b) There is legal access to the Property.

(c) Any mortgages or liens on the Property are and shall remain subordinate to the terms of this Agreement.

(d) The Property is free and clear of any and all encumbrances, except easements of record, none of which would nullify, impair or limit in any way the terms or effect of this Agreement.

(e) No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment (collectively, "**Hazardous Materials**") exists or has been

released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property.

(f) There are not any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulation, and requirements.

(g) Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use (collectively, “**Applicable Law**”).

(h) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property.

(i) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violations of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its uses, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claim, demands, or orders.

(j) Neither the Property, nor any portion thereof, is or shall be used to satisfy mitigation requirements under 33 U.S.C. §1344 or N.C. Gen. Stat. §143-214-11.

To the extent permitted by North Carolina law, Grantor agrees to indemnify, defend and hold harmless Grantee, its officers, directors, shareholders, employees, agents, successors and assigns, from and against all claims, damages, actions, proceedings, costs, liens, requirements, judgments, losses, penalties, fines, settlements and liabilities of any kind (including without limitation attorneys’ fees and court costs, and consultant and expert witness fees) arising in any manner, directly or indirectly, out of or by reason of (i) any breach of any representation or covenant of Grantor in this Agreement, (ii) any violation or alleged violation of Applicable Law by Grantor with respect to the Property, and/or (iii) any presence, generation, treatment, storage, disposal, transport, release, threatened release or suspected release of any Hazardous Material brought on, in, under, about, to or from the Property.

10. Title Warranty; Quiet Enjoyment. Grantor shall defend its title against the claims of all persons whomsoever, and Grantor covenants that Grantee shall have the use of and enjoy all of the benefits derived from and arising out of this Agreement.

11. Remedies.

(a) If Grantee determines that Grantor is in violation of the terms of this Agreement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purposes of this Agreement, to restore the portion of the Property so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from



Grantee, or if the violation cannot reasonably be cured within said period, fails to commence to cure such violation within the thirty (30) day period, and thereafter to diligently prosecute the cure to completion, Grantee may bring an action at law or in equity to enforce the terms of this Agreement, to enjoin the violation by temporary and/or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Agreement or injury to any Conservation Values protected by this Agreement, including damages for the loss of scenic, aesthetic or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. Grantee shall also be entitled to recover all reasonable attorney fees, court costs, and other expenses incident to enforcement of this Agreement.

(b) If Grantee defaults under this Agreement and fails to cure the default within thirty (30) days after receipt of notice thereof from Grantor, or if the default cannot reasonably be cured within said period, fails to commence to cure such default within the thirty (30) day period, and thereafter to diligently prosecute the cure to completion, Grantor may exercise its remedies at law or in equity. Any forbearance by Grantor to exercise its rights hereunder in the event of any breach of any term set forth herein by Grantee shall not be deemed or construed to be a waiver by Grantor of such term or of any subsequent breach of the same or any other term of this Agreement or of any of Grantor's rights. No delay or omission by Grantor in the exercise of any right or remedy upon any breach by Grantee shall impair such right or remedy or be construed as a waiver.

11.2 Costs of Enforcement. Any costs incurred by Grantee in successfully enforcing the terms of this Agreement against Grantor, its successors or assigns, including without limitation reasonable costs of court and attorney's fees, and any reasonable costs of restoration necessitated by Grantor's violation of the terms of this Agreement, shall be borne by Grantor.

11.3 Grantee's Discretion. Enforcement of the terms of this Agreement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Agreement or of any of Grantee's rights. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

11.4 Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel or prescription.

11.5 Acts Beyond Grantor's Control. Nothing contained in this Agreement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; and nothing in this Agreement shall require Grantor to take any action to restore the condition of the Property after any act or event over which Grantor has no control.

12. Mediation. If a dispute arises between the parties concerning the consistency of any proposed use or activity with this Agreement, Grantor agrees not to proceed with the use or activity pending resolution of the dispute, and either party may refer the dispute to mediation before, and as a condition to, any right of either to institute litigation. Either party may invoke the mediation requirement under this Paragraph 12 by furnishing written notice to the other of its intent to mediate. The notice shall specify the issue(s) for mediation, including the amount, if any, of monetary or other relief at issue. Upon receipt of such notice, the recipient may within five (5) business days deliver to the other a notice of other issue(s) or relief for mediation. The parties shall work together in good faith to conclude mediation regarding the indicated issue(s) no later than sixty (60) days from the date of the initial notice of intent to mediate. Mediation shall occur in Charlotte, North Carolina. The parties may either agree on a mediator within ten (10) days of the date of the initial notice of intent to mediate or, if the parties have not or cannot so agree, the mediator shall be named by JAMS/Endispute, with the party issuing the initial notice of intent to mediate bearing the obligation to arrange for mediator services through this organization (or any other mediation organization on which the parties may agree in writing) no later than five (5) days from the expiration of the ten (10) day period for appointment of a mediator by agreement of the parties. The parties shall bear equally all costs and expenses of mediation, including mediator compensation and expenses, subject to any other agreement regarding allocation of such costs and expenses the parties may achieve in context of a particular dispute.

If either party refuses to participate in good faith in the mediation process required under this Paragraph 12, the party shall have failed to fulfill an absolute condition precedent to its right to pursue litigation or any other means of resolving any issue to be mediated. Any statute or other period of limitations shall be tolled during the time the parties are in good faith fulfilling their obligations of mediation under this Paragraph 12, but such tolling shall not apply to any claim or issue sought to be resolved by a party that shall have failed to participate in good faith in the mediation process.

13. Extinguishment. If circumstances arise in the future that render the purposes of this Agreement impossible to accomplish, this Agreement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by North Carolina law at the time, in accordance with Paragraph 14 below. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant.

14. Proceeds. Grantor and Grantee acknowledge that the Easement constitutes a real property interest immediately vested in Grantee, but have agreed that Grantor shall be entitled to one hundred percent of any proceeds (less the reasonable and documented expenses of Grantee in connection with such proceedings) related to extinguishment pursuant to Paragraph 13 above or condemnation of the Property pursuant to Paragraph 15 below.

15. Condemnation. If all or any of the Property is taken under the power of eminent domain by a public, corporate, or other entity, or otherwise acquired by such entity through a purchase or settlement in lieu of condemnation, Grantor and Grantee, at Grantor's sole expense, shall join in appropriate proceedings at the time of such condemnation to recover the full fair

market value (without regard to any diminution in value attributable to the Agreement) of the interests in the Property subject to the condemnation and all incidental or direct damages resulting therefrom. After payment of any expenses reasonably incurred by Grantee in connection with such condemnation, Grantor shall be entitled to all recovered proceeds related to the Property in conformity with the provisions of Paragraph 14. The respective rights of Grantor and Grantee set forth in this Paragraph 15 shall be in addition to, and not in limitation of, any rights they may have at common law.

16. Assignment. This Agreement and other rights and interests hereunder are transferable, but Grantee may assign its rights and obligations hereunder only to an organization that is a qualified organization at the time of the transfer under Section 170(h) of the Code, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder and authorized to acquire and hold conservation easements under the Act, or any successor provision thereto. As a condition of such transfer, Grantee shall require that the conservation purposes of this Agreement continue to be carried out.

17. Subsequent Transfers. Grantor agrees to incorporate the terms of this Agreement in any deed or other legal instrument by which any interest, including without limitation a leasehold interest, in all or a portion of the Property is transferred. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. The failure to perform any act required by this provision shall not impair the validity of this Agreement or limit its enforceability in any way.

18. Right of First Offer. If Grantor intends to offer the Property (or any portion of the Property) for sale to a party other than a Related Party, as defined below, Grantor shall first give Grantee written notice of the primary terms of the offer Grantor intends to make (the "Offer"). Grantee shall have until the date thirty (30) days after receipt of notice to accept the Offer. If Grantee rejects the Offer, or fails to respond to the Offer in writing within said thirty (30) day period, Grantor shall be free to sell the Property at substantially the same sales price as contained in the Offer. A reduction in such sales price of five percent (5%) or less shall not be deemed a substantial change.

If Grantor substantially changes the terms of the Offer, Grantor shall resubmit the Offer to Grantee with all changes made to the Offer, and Grantee shall have fifteen (15) days in which to accept any such new offer ("Revised Offer").

If Grantee accepts the Offer or any Revised Offer, a contract shall be deemed to exist between the Grantor and Grantee for the purchase of the property under the terms set forth in the Offer or Revised Offer, as applicable. The closing of such purchase transaction shall occur on or before the applicable date for closing set forth in the Offer or Revised Offer, or if no date for closing is specified, the date sixty (60) days after the date of Grantee's notice of acceptance, at a location reasonably specified by Grantor. The rights granted in this Paragraph 18 shall not apply to a transfer by Grantor to a Related Party of Grantor. For purposes of this Paragraph 18, "Related Party" shall mean, in respect of an individual Grantor, an ancestor of the Grantor, a trust for the sole benefit of any such Related Party or Parties, or a corporation, partnership, limited-liability company or other entity owned entirely by the Grantor and Related Parties of the Grantor.

19. Estoppel Certificate. Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any reasonable document, including an estoppel certificate, which certifies, to the knowledge of Grantee, Grantor's compliance with any obligation of Grantor contained herein and otherwise evidences the status of the Agreement as may be reasonably requested by Grantor.

20. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: Town of Davidson  
Attn: Town Manager  
P.O. Box 579  
Davidson, NC 28036

To Grantee: DAVIDSON LANDS CONSERVANCY  
Attn: Executive Director  
P.O. Box 1952  
Davidson, NC 28036

or to such other address as either party from time to time shall designate by written notice to the other.

21. Recordation. Grantee shall record this instrument in the office of the Register of Deeds for Mecklenburg County, North Carolina, and may re-record it at any time as may be required to preserve its rights in the Easement.

22. General Provisions.

(a) Controlling Law. The interpretation and performance of this Agreement shall be governed by the laws of the State of North Carolina.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Agreement shall be liberally construed to effect the purposes of this Agreement and the policy and purpose of the statutes referenced herein. If any provision in this instrument is found to be ambiguous, an interpretation consistent with such purposes that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Agreement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Agreement, all of which are merged herein.

(e) Amendment. If circumstances arise under which an amendment to or modification of this Agreement would be appropriate, Grantor and Grantee may amend this Agreement provided that no amendment shall be allowed that will affect the qualification of this Agreement or the status of Grantee under any applicable laws, including N.C. GEN. STAT. §121-34 or any successor statute, or Section 170(h) of the Code, and any amendment shall be consistent with (i) Grantee's policies pertaining to easement amendments and (ii) the purposes of this Agreement, and shall not affect its perpetual duration. Any such amendment or modification must be executed by both Grantor and Grantee and shall be recorded in the public registry of Mecklenburg County. If an amendment is made at Grantor's request, Grantor shall be solely responsible for all costs incurred by Grantee in connection with its evaluation of such amendment and Grantor, as a precondition to Grantee's execution of such amendment, shall reimburse Grantee for any expenses incurred as a result of Grantee's evaluation of such proposed amendment, including without limitation compensation for Grantee's staff time, transaction-related costs and fees such as fees charged to Grantee by third-party experts or consultants, and reasonable attorney fees.

(f) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(g) Successors. The covenants, terms, conditions and restrictions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Property.

(h) Termination of Rights and Obligations. A party's rights and obligations under this Agreement shall terminate upon the transfer of the party's interest in the Easement or Property to a party assuming its obligations hereunder, except that liability for acts or omissions occurring prior to transfer shall survive transfer, but this Agreement shall not be affected by such transfer, the transferee having the rights and obligations of the transferring party.

(i) Successor Limitation. If Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Code, or to be authorized to acquire and hold conservation easements under N.C. GEN. STAT. §121-34, and a prior assignment is not made pursuant to Paragraph 16 above, then Grantee's rights and obligations under this Agreement shall become immediately vested in such organization as a Court of competent jurisdiction shall direct pursuant to North Carolina law and with due regard to the requirements for an assignment pursuant to said Paragraph 16.

(j) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

(k) Counterparts. The parties may execute this instrument in two or more counterparts, which shall in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of

any disparity between the counterparts produced, the recorded counterpart shall be controlling.

(l) Merger. The parties agree that the terms of this Agreement shall survive any merger of the fee and easement interest in the Property.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns forever.

**[Signatures begin on following page.]**

**IN WITNESS WHEREOF**, Grantor and Grantee have caused this Agreement to be executed as of the day and year first above written.

**GRANTOR:**

\_\_\_\_\_  
**TOWN OF DAVIDSON**, a North Carolina  
municipal corporation

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**STATE OF NORTH CAROLINA**

**COUNTY OF** \_\_\_\_\_

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

WITNESS my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

[NOTARIAL SEAL]

**GRANTEE:**

**DAVIDSON LANDS CONSERVANCY**, a  
North Carolina nonprofit corporation

Attest:

\_\_\_\_\_  
Betsy Shores, Town Clerk

By: \_\_\_\_\_  
Yancey Fouche, Board Chair

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the County and State  
aforesaid, certify that \_\_\_\_\_ personally came before me this day and  
acknowledged that she is \_\_\_\_\_ Chair of the Board of Directors of **DAVIDSON LANDS  
CONSERVANCY**, a North Carolina nonprofit corporation, and that she, as Board Chair, being  
authorized to do so, executed the foregoing on behalf of the corporation. And the said Board Chair  
acknowledged the said writing to be the act and deed of said corporation.

Witness my hand and official stamp or seal, this the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_.

My Commission Expires:

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
[NOTARY SEAL]



**EXHIBIT A**

**Legal Description**

**EXHIBIT B**

**Site Plan showing Development and Preservation Zones and Existing Residence**

## **EXHIBIT C**

### **Development and Preservation Zones**

The Property is divided into two use zones: Preservation Zone and Development Zone.

#### **Preservation Zone**

The Preservation Zone encompasses the majority of the Property's land area and includes \_\_\_\_ acres, as shown on **Exhibit B**. The purpose of the Preservation Zone is to limit use and development to passive recreation uses, except for sidewalks or multi-purpose paths which are permissible. Development is limited to unenclosed structures such as tree houses, amphitheaters, docks and foot bridges, public art installations, shelters, and decks, picnic areas, benches, trails, multi-purpose paths, and the establishment or enhancement of water features including erosion control installations, dams and ponds, and wetlands and stream alteration installations. Roads, driveways, cell or transmission towers, and utility lines and facilities are prohibited except as required for public safety or to support permitted uses. Active recreational uses, other than multi-purpose paths, such as disc golf, ball fields, playfields, playgrounds, tennis courts, volleyball courts, basketball courts, shuffleboard courts, bocce courts, horseshoe areas, swimming pools, mountain bike trails, enclosed structures, parking areas, or driveways, are prohibited.

#### **Development Zone**

The Development Zone encompasses the easterly sections of the property adjacent to Main Street, consisting of \_\_\_\_ acres, as shown on **Exhibit B**. Development of active recreational park facilities is permitted in this zone, including play structures, active recreation improvements, structures, utilities lines and services, public art installations, patios, walkways, landscaping, parking and driveway areas, and other improvements supporting public park use of the property. The extent of development of impervious area in the Development Zone shall comply with local, state, and federal land use regulations, and the total amount of impervious ground surface coverage, including driveways, access roads, and associated parking areas, shall be limited to seventy percent (70%) of the Development Zone area. No building or other structure may be constructed within the Development Zone that exceeds thirty feet (30') in height.



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**Agenda Title:** **Tree Ordinance Text Amendments**  
**Planning Director Jason Burdette, Senior Planner Trey Akers, and Planning Board Ordinance Committee members Dave Cable, Shawn Copeland, and Ellen Donaldson.**

**Summary:** Staff and Planning Board Ordinance Committee members will present the draft text amendments to Davidson Planning Ordinance re: tree canopy. Discussion will include work completed, violations and fees, and next steps.

**Summary:**

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**ATTACHMENTS:**

	<b>Description</b>	<b>Upload Date</b>	<b>Type</b>
▣	Agenda Memo - DPO Section 9 Updates: Tree Ordinance Draft Text Amendments 07.09.19	7/1/2019	Cover Memo
▣	Presentation - DPO Section 9 Updates: Tree Ordinance Draft Text Amendments	7/9/2019	Presentation
▣	Attachment - DPO Section 9 Updates: Tree Ordinance Draft Text Amendments 07.09.19	7/1/2019	Backup Material
▣	Attachment - DPO Section 9 - Schedule of Changes 07.09.19	7/1/2019	Backup Material
▣	Attachment - DPO Section 9 Landscaping Violations 07.09.19	7/1/2019	Backup Material



## MEMO: TREE ORDINANCE DRAFT TEXT AMENDMENTS

Date: July 9, 2019  
To: Board of Commissioners  
From: Planning Board Ordinance Committee Members; Trey Akers, Senior Planner  
Re: DPO Section 9 (Trees/Landscaping Ordinance) – Draft Text Amendments

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*The following sections highlight the proposed text amendments history, alignment with town aims, public engagement, pros/cons, and anticipated schedule/potential action.*

### 1. OVERVIEW

#### BACKGROUND

- **Purpose:** The standards promote the creation of a healthy tree canopy and landscape by establishing rules to regulate the establishment, preservation, and maintenance of natural features at the lot and site/master plan level.
- **Background:** In December 2016 the Livability Board suggested revising the standards to institute best practices, make adjustments, and clarify administration procedures. Updating the tree ordinance is listed as a high priority on the planning department workplan.

#### ATTACHMENTS

- **Presentation:** Provides an overview of the progress thus far, including: Work completed, remaining work, and next steps.

### 2. RELATED TOWN GOALS

#### STRATEGIC PLAN ALIGNMENT

- **Land Use Strategy:** The proposed standards consider the revision of development processes to more effectively guide the approval of landscape plans and tree permits.
- **Historic Preservation Strategy:** The proposed standards contemplate how to increase incentives for the preservation of healthy, mature trees that contribute to the town's authenticity as a historic, small college town.
- **Operations:** The standards would clarify the administrative and approval processes for DPO 9.
- **Partnerships:** The town's advisory boards have been and will continue to be involved throughout the process. Additionally, guidance has been sought from arborists with the City of Charlotte. Lastly, the proposed amendments contemplate partnering with local organizations that could help incentivize tree canopy establishment and preservation.

#### CORE VALUES

- **Open Communication:** Advisory board members have and will continue to play an instrumental role in reviewing/revising standards and engaging citizens.
- **Traditional Character:** The proposed standards would indirectly reinforce the historic character of existing streets throughout town while ensuring new streets are built in the same manner.
- **Healthy Environment:** The standards help to protect and enhance the town's tree canopy.

#### COMPREHENSIVE PLAN

- **Enable Faithful Stewardship, Goal 2 - Preserve Natural Habitats, the Lakeshore, and the Tree Canopy:** This goal recommends a variety of approaches being contemplated by the proposed policies and amendments, including:
  - » Promote healthy pruning techniques;
  - » Set measurable goals to increase and sustain forest cover;
  - » Create incentives and/or funds to assist landowners in mitigating tree removal through care practices or replanting;
  - » Create a tree canopy replanting and management plan;
  - » Revise requirements to better preserve existing tree canopy.

#### CONSTITUENTS SERVED

- **All Residents:** Residents across town experience the beauty of trees on our streets and in our public spaces and are positively impacted by the improved air quality that trees provide.
- **Administration/Government:** The proposed amendments increase administrative clarity, including application of standards and processes, compared to the current standards. This benefits landowners, too, who will have a better idea of steps needed to obtain approval.

### 3. OPTIONS/PROS & CONS

#### RECAP. – HIGH-LEVEL TOPICS

At the November 13, 2018 board of commissioners meeting the following topics were discussed and policy direction sought/confirmed. Below is a status update on each:

- **Arborist Involvement:** Established in 9.2.2.B and referenced throughout Section 9.
- **Tree Fund:** Identified in 9.2.2.B; requires Board of Commissioners resolution.
- **Landscape Bonds/Warranty:** Established in 9.2.2.D-E.
- **Canopy Preservation & Establishment:** Tree canopy study completed Spring 2019; results shared at the March 12, 2019 and May 24, 2019 board of commissioner meetings and commissioners supported the use of this data to inform Table 9-1 and Table 9-2 changes and supporting criteria (i.e. calibrated approach pursued).
- **Permitting/Removal Criteria:** Clarified and increased in rigor in 9.3.
- **Remediation Provisions:** To be further explored as part of Cross-Reference/Fee Schedule work.

#### OVERVIEW OF COMPLETED WORK

All sections have been completed; miscellaneous topics require further refinement. The current status of work on the proposed amendments is as follows:

- **Section 9 Tree Canopy, Landscaping, & Screening:**
  - » **9.1 Purpose & Intention:** This section has been reordered to address overarching goals first, then impacts addressed through the ordinance, then issues of property and aesthetics.

- » **9.2 Applicability & Administration:** This section has been revised to designate an Arborist as a key figure in the approval of plans and permits. And, various changes have been made to clarify the documentation requirements for landscape plans as well as the criteria governing landscape bonds, inspections, and the replacement of damaged vegetation.
- » **9.3 Tree Coverage & Preservation:** This section includes the following revisions:
  - 9.3.1, Table 9-1 Minimum Canopy Coverage:
    - An establishment requirement has been added and a limit on the amount of coverage that can come from preserved areas is proposed (meaning that new trees are required in each development);
    - the coverage requirements have been made prescriptive (rather than non-binding as in the current DPO) and, as a result, many coverages have increased;
    - the coverage requirements have been revised to be based on project area, which results in greater canopy coverage;
    - the coverage requirements have been informed by local data (tree canopy study); caliper planting sizes have been increased;
    - a minimum height requirement has been added;
    - and, a payment-in-lieu option has been proposed (which acknowledges growth in built-up areas and directs resources to areas intended for preservation. Street tree and parking lot planting requirements must still be met). The proposed value is \$8/square foot and is derived from local data in the Street Tree Inventory. This is based on a mid-point between a pure environmental services value of a tree (\$4-\$5/square foot) and the average asset value of a large maturing tree (\$10-12/square foot).
  - 9.3.2, Table 9-2 Preservation: Preservation requirements ranging from 10%-40% have been calibrated based on Planning Area, rather than a generic requirement that currently exists in the current ordinance (20%). Additionally, a payment-in-lieu option has been proposed as described above.
  - 9.3.3, Permitting: A clearer, more rigorous permitting process has been established and requires involvement by a professional arborist to facilitate tree care and preservation. The area covered by permitting has increased from setback areas only to the entire lot, while the minimum size of a tree requiring a permit for removal has increased from eight inches to twelve inches. Note: The permitting process does not prohibit the removal of trees.
- » **9.4 Street Tree Plantings:** This section has been revised in a few minor but important ways – namely, instituting standards to ensure robust plantings along streets but with flexibility accorded to the arborist in making sure the intent of the requirements are met. References to third-party standards are included as a best practice.
- » **9.5 Site Landscaping:** Minimal adjustments have been made to this section, which establishes clear standards for depicting landscape/vegetation on site plans and minimum planting standards for areas around buildings.
- » **9.6 Parking Area Landscaping:** This section covers planting and design requirements for existing as well as new parking lots. Minimal adjustments to this section were needed.
- » **9.7 Screening:** This section covers special use circumstances. Minimal adjustments to this section were needed; redundancies with Section 4.3.1.E of the ordinance were eliminated.
- » **9.8 Installation & Maintenance Standards:** This section covers miscellaneous topics ranging from soil compaction to fencing to encroachments. Minimal adjustments to this section were needed.
- » **9.9 Alt. Methods of Compliance:** This is a new section that includes text relocated from earlier in the ordinance. Titles and documentation references have been added for clarity,

and relocating this section from the beginning to the end reinforces the notion that the meeting ordinance's requirements is the first priority – with alternative compliance reserved for select cases.

- » **9.10 Planting Specifications & Appendices:** This is a new section that contains various reference documents such as what types of trees/vegetation to plant, the appropriate mix of species, and third-party guidance on landscape practices.
- **Section 15.3.1 Landscaping Violations:**
  - » **A. Applicability:** This section has been revised to be more clearly organized.
  - » **B. Replacement:** This section has been revised to be more clearly organized. Additionally, replanting requirements specific to specimen trees have been added, along with more flexibility on when replantings can occur (i.e. a mutually-agreed-to timeframe based on planting season).
  - » **C. Penalties:** This section has been reorganized and features a number of changes:
    - each responsible party can be subject to a civil penalty (i.e. not just the landowner but the entity performing the work);
    - failing to plant original or replacement trees may be subject to a penalty;
    - penalties have been calibrated based on total or partial loss as well as whether the affected tree/area is a specimen tree, part of an approved plan, or in the right-of-way;
    - non-monetary penalties have been introduced to allow for flexibility in assessing violations where financial hardship exists or unintentional/not grossly negligent actions result in a violation; and
    - the process for issuing a violation has been clarified.
  - » **D. Appeals & Variances:** This section has been added to make the process for disputing violations clear, fair, and linked to existing ordinance procedures (i.e. the Board of Adjustment proceedings).

#### 4. FYI/RECOMMENDED ACTION

- **Feedback:** The July 9, 2019 meeting is an opportunity for commissioners to understand the proposed revisions as well as to provide guidance concerning the high-level policy approach to the fee schedule.

#### 5. NEXT STEPS

- **July 2019:**
  - » Board of Commissioners Work Session
  - » Board of Commissioners Hearing
  - » Planning Board Recommendation
- **August 2019:**
  - » Livability Board Recommendation
  - » Commissioner Consideration of Approval





TEXT AMENDMENTS UPDATE  
DPO 9: TREE CANOPY, LANDSCAPING & SCREENING  
JULY 9, 2019



# OVERVIEW OF CHANGES

- **Highlights**

- » Informed by Local Canopy Data & Science
- » Integrates Education & Regulation
- » Adds Features: Arborist, Tree Fund
- » Adds Rigor & Prescriptive Requirements
- » Retains Flexibility
- » Reorganized/Reformatted for Clarity
- » **Results = Greater Tree Canopy Coverage**

# DISCUSSION

- 9.1 Purpose & Intention: Aspirations, Goals
- 9.2 Applicability & Administration: Doc. Reqs., Processes
- **9.3 Tree Coverage & Preservation: Coverage Requirements, Processes**
- 9.4 Street Tree Plantings: Flexibility, Planting Strip Width
- 9.5 Site Landscaping: Reformatted
- 9.6 Parking Area Landscaping: Reformatted
- 9.7 Screening: Discrepancies Reconciled
- 9.8 Installation & Maintenance Standards: Third-Party References
- 9.9 Alt. Methods of Compliance: Relocated/Reformatted
- 9.10 Planting Specifications & Appendices: Consolidated Info.
- **15.3 Landscaping Violations, Civil Penalties: Violation Types, Procedures**

# PROPOSED CHANGES SUMMARY

## ■ Master Plans/Permits:

- » **Arborist Involvement\***
- » Increases Coverage & Preservation
- » Payment-In-Lieu Option
- » Enhances Street Trees: Wider Planting Strips; Count Towards Coverage
- » Larger Planted Trees
- » Increases Penalties

## ■ Individual Lots:

- » **Arborist Involvement\***
- » Retains No Fee for Tree Removal
- » Regulates Entire Lot
- » Increases Penalties with Flexible Application

***\*Education is Foundational  
Principle of Amendments***

# 9.3 TREE COVERAGE

- **Tree Canopy Requirements (Minimum):**
  - » Must Preserve and/or Plant
  - » Specific Planning Area Thresholds
    - Based on Canopy Study [Planning Areas]
    - Max. Preservation Contribution [50%]
  - » Min. Tree Size for Plantings
- **Flexibility:**
  - » New Trees
  - » PIL Select Areas (\$8/SF) [Street/Parking Trees Still Req'd.]

# 9.3 COVERAGE COMPARISON

## ■ Current Ordinance:

- » Targets/Not Binding
- » Unclear, Inconsistent

Table 9-1: Tree Planting Requirement		
Planning Area	Tree Planting Requirement	Approx. Canopy Coverage**
Rural	2 large maturing trees per 5,000 square feet of parcel area, OR 1 large maturing tree and 1 small maturing tree per 3,000 square feet of parcel area	30% - 50%
NE/NG/VI/ EC1/EC2/CC	2 large maturing trees per 7,000 square feet of parcel area, OR 1 large maturing tree and 1 small maturing tree per 4,500 square feet of parcel area	20% - 40 %
LK/VC/VE/ VCom/NC1/ NC2/CBD/ NS	2 Large maturing trees per 9,000 square feet of parcel area, OR 1 large maturing tree and 1 small maturing tree per 6,000 square feet of parcel area	15%

## ■ Proposed Ordinance:

- » Prescriptive/Binding
- » Simplified

TABLE 9-1: TREE COVERAGE REQUIREMENT	
PLANNING AREA	MINIMUM PROJECT CANOPY COVERAGE
RPA	60%
NE	50%
EC1/EC2/CC	40%
NG	30%
VI	20%
LK/VC/VE/ VCOM/NC1/ NC2/CBD/NS	15% *

*\*Payment-in-lieu permitted in select areas.*

*\*\*Note: The Min. Project Canopy Coverage is the coverage at maturity.*

# 9.3 COVERAGE COMPARISON

TABLE 9-1 CANOPY COVERAGE COMPARISON					
1. Planning Area	2. Current Coverage Req.	3. Area Covered (Ac.)	4. Proposed Coverage Req.	5. Area Covered (Ac.)	6. Difference
RPA	30%	566	60%	1,132	566
NE	20%	279	50%	697	418
EC1/EC2/CC	20%	180	40%	361	180
NG	20%	159	30%	239	80
VI	20%	203	20%	203	0
LK/VC/VE/ VCOM/NC1/ NC2/CBD/NS	15%	56	15%	56	0
<b>Total Canopy Difference (Acres of Canopy)</b>					<b>+ 1,245 Ac.</b>
<b>Total Canopy (% Increase)</b>					<b>+ 18%</b>

# 9.3 PRESERVATION COMPARISON

**TABLE 9-2 PRESERVATION COMPARISON**

1. Planning Area	2. Current DPO Pres. Req.	3. Area Preserved (Ac.)	4. Future DPO Pres. Req.	5. Area Preserved (Ac.)	6. Difference (Ac.)
RPA/NE	20%	656	40%	1,313	657
EC1/EC2/CC	20%	181	30%	270	89
NG/VI	20%	362	20%	362	0
LK/VC/VE/ VCOM/NC1/ NC2/CBD/NS	20%	75	10%	37	-38
<b>Total Preserved Difference (Acres of Canopy)</b>					<b>+ 708 Ac.</b>
<b>Total Preserved Canopy (% Increase)</b>					<b>+ 10%</b>



# FEES & PENALTIES

- **Permit Fees:**
  - » Master Plans & Building Permits: Covered in Base Fee
  - » Individual Lots: No Fee (Permit Triggers Arborist Consultation)
- **15.3.1 Landscaping Violations & Civil Penalties**
  - » Reorganized: Clarity of Process, Standards
  - » Responsible Parties: Each Potentially Liable
  - » Replacement Criteria: Updated, Contextualized
  - » Total/Partial Loss: Calibrated Penalties
    - Appeals + Non-Monetary Penalties Included

# FEES & PENALTIES

	Approved Plans/Permits	Individual Lots
Total Loss	<ul style="list-style-type: none"> <li>▪ <b>Tree:</b> \$500/Caliper Inch</li> <li>▪ <b>Specimen Tree:</b> \$500/Caliper Inch up to 24 Inches; \$800/Caliper Inch over 24 Inches (\$25,000 Max.)</li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>Tree:</b> \$500/Tree</li> <li>▪ <b>Specimen Tree:</b> \$1,000/Tree</li> </ul>
Partial Loss	<ul style="list-style-type: none"> <li>▪ <b>Tree:</b> \$500/Tree</li> <li>▪ <b>Specimen Tree:</b> \$1,000/Tree</li> </ul>	N/A

*\*Additional shrub and vegetative cover penalties may apply.*

*\*\*Alternative non-monetary penalties or replanting strategies may be pursued in select cases.*

# NEXT STEPS

Process Feedback, Make Adjustments

Public Hearing

Planning Board Recommendation

Livability Board Recommendation

Additional Modifications

BOC Consideration of Approval

## TREE CANOPY, LANDSCAPING & SCREENING

### 9.1 PURPOSE & INTENTION

The purpose and intent of this ordinance<sup>1</sup> is to establish minimum standards for the preservation of existing and the planting of new trees and shrubbery in order to:

- Protect and improve the existing tree canopy in order to enhance the health and quality of life of citizens;
- Maintain or increase the tree cover in all areas of the planning jurisdiction;
- Preserve and enhance the natural environment;
- Increase species and age diversity of the urban forest;
- Protect specimen trees;
- Provide habitat resources to native plants and animals;
- Promote use of non-invasive and native plant materials;
- Ensure compatibility between vegetation and adjacent infrastructure or utility systems;
- Better control soil erosion;
- Reduce the hazards of flooding;
- Stabilize ground water tables;
- Capture, treat, or store carbon dioxide, particulate matter, and other pollutants;
- Provide shade for cooling;
- Screen noise, dust, and glare;
- Provide architectural interest and human scale;
- Maintain and/or improve aesthetic values;
- Enhance property values.

### 9.2 APPLICABILITY & ADMINISTRATION

#### 9.2.1 APPLICABILITY

Except as set forth in exemptions specified in this ordinance, the provisions of this ordinance shall apply to all land within the town's zoning jurisdiction, both public and private, according to the following:

- A. New Development:** All provisions of this ordinance shall apply.
- B. Existing Development:** All provisions of this ordinance shall apply to changes of use and/or expansions of existing conforming and non-conforming development.

<sup>1</sup> As used herein, "ordinance" shall refer to Section 9, including all subsections thereof, of the Davidson Planning Ordinance, unless specifically noted otherwise.

**Commented [TA1]:** This section includes minor revisions to remove duplicate text, remove terms not defined in the DPO (i.e. "heritage" tree), reorder items in a logical sequence, and add/refine some explanations to be more descriptive/accurate.

**Commented [TA2]:** This section clarifies to what types of projects the standards apply.

### 9.2.2 ADMINISTRATION

- A. Administration:** The Public Works Department shall assist the Planning Director and Board of Commissioners in the above Purposes & Intention. Additionally, an advisory board(s) shall assist in the periodic review and update of the standards in this section. As needed, the Planning Director may allocate responsibilities to town staff, authorized representatives, and/or the Arborist (as defined below) in order to administer this ordinance.
- B. Arborist:** The town shall retain one or more certified arborists (“Arborist”) to assist with maintaining a town-wide tree inventory, developing and approving plans for the development of property (both public and private) consistent with the provisions of this ordinance, conducting inspections, and such other matters related to the administration of this ordinance as the Planning Director may request. The fees and expense of the Arborist may be paid by the town from amounts available in the **Tree Fund**.
- C. Documents & Approvals:**
- 1. Permits and Inspections:** Permits and inspections shall be required for the activities as set forth in this ordinance.
  - 2. Landscape Plans:** Site work proposed as part of a Conditional Planning Area, Master Plan, or Individual Building process requires approval of plans and participation in activities as described in this ordinance.
    - a. Plan:** All plans shall meet the documentation standards set forth in this ordinance and, to the extent required by Section 14, the criteria for Landscape Schematic Design or Landscape Construction Documents set forth in Section 14. Depending on site conditions or characteristics, the documents may require additional site or building information to be displayed.
    - b. Specimen Tree Preservation:** In addition to the required landscape plan, any specimen trees as defined in this ordinance shall require a specific **care plan** developed in concert with the Arborist. The care plan shall be consistent with the practices set forth by the International Society of Arboriculture.
  - 3. Revisions to Approved Landscape Plans:** Revisions may be requested by a property owner or required by the Town of Davidson prior to release of landscape bonds. All revisions to landscape plans must be approved by the Planning Director, who may consult with the Arborist.

All revisions should ensure that:

    - There is no significant change in quantity, size, or location of plant

**Commented [TA3]:** This section clarifies the parties responsible for administering the ordinance. Note: Tree permits are currently handled by the Public Works Department. It is recommended that an Arborist assume responsibilities for administering many parts of this ordinance.

**Commented [TA4]:** The proposed amendments recommend the use of this professional to assist in reviewing building permits, master plans, and managing tasks related to the Street Tree Inventory and other activities.

**Commented [TA5]:** This needs to be set up in coordination with the Finance Department. It will require a resolution by the Board of Commissioners establishing the fund and outlining its purposes. It is intended that the fund receive proceeds from permits, civil penalties, and related fees outlined in this ordinance. These proceeds would then be used to further tree care, protection, and management throughout town under the direction of the Arborist.

**Commented [TA6]:** Three types of processes are introduced because they are the three types of “plans” that would be required to produce site documentation as part of the approval process. All other work (i.e. to individual lots) would be handled via permit.

**Commented [TA7]:** This clarifies what documentation standards must be met and where those requirements are located.

**Commented [TA8]:** This introduces enhanced requirements for specimen trees based on professional insight and a third-party standard.

materials, as determined in the discretion of the Planning Director or the Arborist; and

- The new plants are of the same general category (i.e., shade tree, ornamental tree, evergreen, or shrub) and have the same general features (mature height, crown spread) as the materials being replaced.

1. **Major Revisions:** Include but are not limited to: grading changes, buffer alterations, and/or changes to more than 20% of the approved plant quantities, types, or species. These changes may require approval by Mecklenburg County in addition to approval by the Town of Davidson.
2. **Minor Revisions:** Include but are not limited to: seasonal planting problems, lack of plant availability, and/or any identified site issues (i.e., dead and/or diseased trees, constrained/inadequate planting conditions).

- D. **Final Plat:** Final Plat documents shall reflect all relevant site details pertaining to trees and vegetation in according with DPO 14, including: Designated tree save and/or open space areas; buffers; and, easements.

E. **Landscape Maintenance Bond:**

1. **Bond:** Prior to the Initial Inspection for Certificate of Occupancy, a landscape maintenance bond shall be posted to ensure timely and proper completion of improvements identified in the approved landscape plan.
2. **Requirements:** The bond shall meet all applicable bonding requirements of Mecklenburg County, as well as the following criteria:
  - The bond shall be obtained from a surety bonding company authorized to do business in North Carolina and approved by the Planning Director or their designee; and
  - The bond shall be payable to the town or its designee and shall be in an amount equal to 125% of the estimated cost to complete the improvements identified in the approved landscape plan.

F. **Inspections:**

1. **Site Visits:** Both before and after occupancy the Planning Director, the Arborist or authorized representatives of the town may periodically inspect sites subject to the provisions of this ordinance to confirm compliance therewith.

**Commented [TA9]:** This clarifies what constitutes a major revision and the process for approval. The current ordinance references minor revisions but not major revisions.

**Commented [TA10]:** This section ensures that all documentation – including plats reviewed when buyers purchase homes – reflect all pertinent information related to required trees and preservation areas.

**Commented [TA11]:** • Landscape bonds are monies that the applicant secures in the event that the approved work is not completed (i.e. it makes sure the required plantings get installed even if the project or property owner does not complete them).  
• The revision formally recognizes this important safeguard, which heretofore has been utilized only for Conditional Planning Area (CPA) projects and violations. The standards are derived from conditions used to execute recent legal contracts related to landscaping for CPAs and violations in the Town of Davidson; the standards are also derived from best practices put forth by Trees Charlotte.

**Commented [TA12]:** As referenced above, these standards are derived from current conditions that govern CPAs and violations in Davidson. The Warranty standards (see E.3.Warranty Period) are based on best practices employed by the City of Charlotte.

2. **Initial Inspection for Certificate of Occupancy:** After initial improvements required by the approved plans are complete, the Arborist shall inspect the tree and vegetative installations to confirm compliance with this ordinance and, as applicable, the American Standard for Nursery Stock, published by the American Association of Nurserymen. A Certificate of Occupancy for the building(s) or final plat for the development shall not be issued unless:
  - a. The landscaping required under this section is installed in accordance with these standards and in accordance with the approved permit, landscape plan or preliminary plat, as certified by the Arborist; and,
  - b. A Landscape Maintenance Bond is posted as required by section 9.2.2.D, above.
3. **Warranty Period:** After installation of all required plantings, a twenty-four (24) month warranty period for trees and eighteen (18) month warranty period for all other plantings shall commence from the date of notification to the town that installation is complete.
4. **Second Inspection & Release of Bond:** At the end of the warranty period, the Arborist shall re-inspect the required improvements for continued compliance with the approved landscape plan and to ensure that the landscaping is properly maintained. If any installations or areas require remedy, the town shall notify the owner in writing of (i) the necessary remedies, and (ii) a reasonable time period within which such remedies shall be completed by the owner (such time period to be determined by the Arborist or Planning Director or designee, but it shall in no event be less than 30 days or a timeline agreed to by all parties). If no remedies are required, the bond may be released to the owner.
5. **Remedies:** If the owner fails to complete the requested remedies within the time period determined by the Arborist or Planning Director in accordance with section 9.2.2.E.4, above, the town may obtain and use such portion of the bond funds as necessary to complete the remedies based on actual costs. The town shall return any bond funds not spent in completing such work. Prior to using any bond funds, the town shall notify the owner, in writing, of its intention to do so if the owner fails to complete the required remedies within ten (10) days. If the owner has not completed the required remedies (or, in the case that the required remedies reasonably cannot be completed within such time, has commenced and is diligently continuing work toward completing them) within ten (10) days of such notice, the town may obtain and use bond funds for the required remedies.

**Commented [TA13]:** These are rigorous periods that go beyond the periods that many other communities require. They ensure that plantings are well-established and in good condition prior to the landscape bond being released.

**Commented [TA14]:** This is a best practice that's being incorporated into the ordinance. With the addition of an Arborist familiar with Davidson requirements and processes, the Town can ensure that the plantings meet the specific criteria outlined in this ordinance – rather than relying on Mecklenburg County to understand and enforce the nuances of our requirements.

- G. Replacement of Disturbed, Removed or Damaged Vegetation (Post-Warranty):** Any landscape areas and vegetation preserved or planted as part of an approved landscape plan or permit shall be continually maintained in good condition by the property owner. Failure to adequately maintain approved vegetation, including trees, or to comply with the replacement provisions of this ordinance may result in a civil penalty. Replacement requirements, processes, and civil penalties are listed in Section 15.3 Landscaping Violations.

## 9.3 TREE COVERAGE & PRESERVATION

### 9.3.1 TREE COVERAGE

- A. Minimum Tree Coverage:** All Conditional Planning Area, Master Plan, or Individual Building projects shall maintain or establish a minimum tree coverage according to their planning area classification as listed in Table 9-1. The minimum project canopy coverage can be met through a combination of preserved areas, planting requirements, and street trees (where applicable). For the purposes of this requirement, project area refers to the entire area within the project scope that is not encumbered by easements, uses, or other features that prohibit tree plantings.

TABLE 9-1: TREE COVERAGE REQUIREMENT	
PLANNING AREA	MINIMUM PROJECT CANOPY COVERAGE
RPA	60%
NE	50%
EC1/EC2/CC	40%
NG	30%
VI	20%
LK/VC/VE/ VCOM/NC1/ NC2/CBD/NS	15%

**B. Requirements:**

- 1. Applicability:** The tree coverage standards apply to all Conditional Planning Area, Master Plan, and Individual Building development proposals. Permitted work related to single-family detached and duplex houses, Recreation Facility - Outdoor, and Agriculture uses are exempt from coverage requirements; however, the standards serve as a guide for each Planning Area.

**Commented [TA15]:** • This table and the following standards have been to achieve greater rigor and clarity of application (i.e. describing how the standards can be met). The coverage requirements are now also prescriptive rather than the non-prescriptive targets/ranges listed in the current ordinance.  
 • Compared to the existing ordinance they have been calibrated to a finer degree in order to reflect the context of various Planning Areas; they also reflect the varying levels of existing canopy coverage identified in the Tree Canopy Study.  
 • The requirements apply to properties to be developed; they do not apply to existing properties.

**Commented [TA16]:** This revision proposes an “establishment” requirement to further the growth of tree canopy throughout town. The requirements apply to properties to be developed; they do not apply to existing properties.

**Commented [TA17]:** • Minimum: Using this term establishes a prescriptive requirement for canopy coverage on each project. It represents a clearer, more definitive approach than the current ordinance.  
 • Project: Using this term clarifies that the standards apply to the entire project area and not just individual lots; this results in increased coverage compared to the current ordinance standard.

**Commented [TA18]:** The list identifies uses wherein coverage may conflict with the intended land use.



2. **Measurement:** The table assumes an average canopy area of: 1,000 square feet for large maturing trees; 800 square feet for medium maturing trees; and, 200 square feet for small maturing trees. Proposals must utilize these values unless alternative values are approved by the Arborist. For a description of each tree type, see 16.3 Definitions under Tree.
3. **Caliper & Height:** Trees planted to satisfy the Tree Coverage Requirement must have a minimum caliper of at least 2.5-3 inches and a minimum height of eight feet at the time of planting.
4. **Canopy Coverage:** For canopy preservation requirements see 9.3.2.
  - a. **Minimum:** No more than 50% of the minimum project canopy coverage in Table 9-1 may come from required preservation areas listed in 9.3.2. This requirement does not apply in the following planning areas: VI/LK/VC/VE/VCOM/NC1/NC2/CBD/NS.
  - b. **Payment-in-Lieu:** For projects located in the VI/LK/VC/VE/VCOM/NC1/NC2/CBD/NS Planning Areas, the minimum project canopy coverage may be met through payment-in-lieu so long as all applicable street tree and parking lot planting requirements are met and the payment-in-lieu option is approved by the Planning Director based on existing and proposed site features and the provisions of this ordinance. For payment-in-lieu values, see the Town of Davidson Fee Schedule.
- C. **Credit Toward Coverage Requirement:** All trees preserved or planted to satisfy the requirements of this ordinance may count toward the minimum project canopy coverage requirements established above. This means that the requirements may be met through the preservation of existing tree vegetation, new tree plantings, or a combination of both; however, every reasonable effort shall be made to meet the coverage requirement through the preservation of existing trees.

### 9.3.2 PRESERVATION OF EXISTING VEGETATION FOR CONDITIONAL PLANNING AREA, MASTER PLAN, AND INDIVIDUAL BUILDING DEVELOPMENT PROPOSALS

#### A. Required Preservation Areas: The following shall be preserved:

1. Trees and undergrowth (excluding invasive species and/or other vegetation that compromises the health of the surrounding ecosystem) in designated open space and primary conservation areas in an approved plan (see DPO 7.5), except for permitted pathways or site features as approved by the Planning Director in consultation with the Arborist.

**Commented [TA19]:** This section helps to clarify values so that all parties are working with the same assumptions, while allowing professional discretion by the Arborist based on site-specific circumstances, species availability, etc.

**Commented [TA20]:** The standard of 2.5 inches is consistent with best practices/City of Charlotte standards; a minimum height requirement has been added per that City's standards.

**Commented [TA21]:** This new requirement ensures that new canopy is added in every project, which helps to put required plantings near places where people will be (i.e. residential lots, common open spaces, etc.) rather than solely in periphery areas.

**Commented [TA22]:** Permitting this option in areas where growth is designated to occur balances the need for economic development in built-up areas with the ability – through PIL funds received – to further increase the canopy in areas where growth is not designated to occur (or in built-up areas where additional plantings may be warranted).

**Commented [TA23]:** The proposed value is \$8/square foot and is derived from local data in the Street Tree Inventory. This is based on a mid-point between a pure environmental services value of a tree (\$4-\$5/square foot) and the average asset value of a large maturing tree (\$10-12/square foot). For example, if a medium maturing tree (i.e. with a canopy area of 800 square feet) is proposed for removal instead of preservation, the payment-in-lieu value for that tree would be  $8 \times 800 = \$6,400$ . Assuming a cost of \$250 for a new maturing tree of 2.5 inch caliper at a nursery,  $\$6,400 / \$250 = 25$  new trees could be purchased with this payment.

**Commented [TA24]:** It's possible that certain types of undergrowth are not healthy or desirable, such as invasive species or vegetation that is compromising the health of other vegetation, larger trees, etcetera. So, the proposed text acknowledges invasive species and allows the Arborist flexibility to determine the right approach for each plan.

**Commented [TA25]:** This phrase was relocated from the preceding section and reduced in its language to simply reference 7.5, which describes the different types of open spaces – including primary conservation areas.

2. Mature trees as defined by this ordinance within the right-of-way or shading the street. If the preservation of mature trees is in conflict with setback requirements, exceptions may be granted on a case-by-case basis by the Planning Director in consultation with the Arborist.
3. Specimen trees as defined by this ordinance and approved by the Planning Director in consultation with the Arborist.
4. A minimum percent of the existing mature tree canopy shall be preserved as specified in Table 9-2.

TABLE 9-2: TREE PRESERVATION REQUIREMENT	
PLANNING AREA	MINIMUM PRESERVATION AREA
NE/RPA	40%
EC1/EC2/CC	30%
NG/VI	20%
LK/VC/VE/ VCOM/NC1/ NC2/CBD/NS	10%*

\***Payment-in-Lieu:** For projects located in the VI, LK, VC, VE, VCOM, NC1, NC2, CBD, NS Planning Areas, the minimum preservation area requirement may be met through payment-in-lieu if approved by the Planning Director based on existing and proposed site features and the provisions of this ordinance. For **payment-in-lieu values**, see the Town of Davidson Fee Schedule.

- B. Other Preservation Areas:** Existing vegetation in other areas shall be preserved whenever feasible according to the following standards:
1. The decision to preserve trees shown on the Environmental Inventory shall be made jointly by the Planning Director, the Arborist, the developer, and design team during the project approval process.
  2. When selecting which trees to preserve, the following shall be considered: Existing grading; age, condition and type of tree; whether the tree is invasive; and, location of site improvements and utility connections.
  3. Properties in the Local Historic District are subject to the Historic District Design Guideline's tree preservation requirements.

**Commented [TA26]:** This table has been created to clarify the preservation requirements, which have also been calibrated specific to each set of planning areas based on the Tree Canopy Study. It works in conjunction with Table 9-1, which sets the overall Minimum Tree Canopy Coverage requirements for a project and includes both preserved areas required by Table 9-2 and new plantings.

**Commented [TA27]:** Permitting this option in areas where growth is designated to occur balances the need for economic development in built-up areas with the ability – through PIL funds received – to further increase the canopy in areas where growth is not designated to occur (or in built-up areas where additional plantings may be warranted).

**Commented [TA28]:** For more information, see the comment for 9.3.1.B.8 above.

- C. Prohibited Locations:** No tree save area may be located within a utility right-of-way or easement without written permission from the utility agency.
- D. Credit Toward Required Plantings:** Existing vegetation which is designated for preservation may be applied toward the requirements of this ordinance.
- E. Construction Standards:**

**Commented [TA29]:** This section has been reorganized for clarity of presentation.

- 1. Access:** Construction access to a site should occur where an existing or proposed entrance/exit is located. Except for driveway access points, sidewalks and curb and gutter, land disturbance within a tree dripline is prohibited as outlined below.
- 2. Prohibited Activity:**
  - Trenching, placing backfill in the critical root zone (CRZ), driving or parking equipment in the CRZ, and dumping of trash, oil, paint or other materials detrimental to plant health in close proximity of the trees to be preserved is prohibited.
  - Construction traffic, storage of vehicles and materials, grading, and unapproved site disturbance shall not take place within the CRZ of the existing trees. The areas shall remain free of all building materials, stockpiled soil or other construction debris.
- 3. Protection Requirements:**
  - a. Location:** Protective barricades shall be placed around all trees designated to be saved prior to the start of development activities or grading. Such barricades shall be erected at a radial recommended minimum distance of 1.5 feet for every inch of trunk diameter at breast height (DBH) or the dripline, whichever is greater and outside the CRZ as approved by the Arborist, unless the Arborist approves a different distance based on the approved development plan or site circumstances. For example, a 12-inch diameter tree trunk at breast height should have a minimal radial protection zone of 18 feet. The circular diameter of protection around the trunk would be 36 feet from the base of the tree. Prior to approval of construction beginning, the Arborist must approve and inspect the barricade designs and installation.
  - b. Materials:** Protective barricades shall consist of 2" x 4" posts with 1" x 4" rails or orange safety fence.
  - c. Duration:** Protective barricades shall remain in place until development activities are complete.

d. **Grading Protocol:** Where grading within a tree dripline cannot be avoided and is approved by the Planning Director and/or Arborist, cut and fill shall be limited to 1/4 to 1/3 of the area within the dripline. Tree roots must be pruned with clean cuts at the edge of the disturbed area, and no fill shall be placed within the dripline of a tree without venting to allow air and water to reach the roots. In the case of an approved construction or grading permit within the CRZ, the Arborist shall provide and ensure recommendations to protect the affected trees are implemented.

F. **Replacement of Preserved or Planted Trees:** The proper care and protection of trees throughout and beyond the development process is critical. Penalties for violations range from \$500.00 to \$ 1,000.00 or more per tree or \$ 5.00 to \$10.00 per square foot disturbed and, depending on the penalty, may be enforced on landowners as well as parties executing work. For information on replacement plantings and civil penalties, see Section 15.3 Landscaping Violations.

**Commented [TA30]:** This clarifies that trees required to be planted as part of this ordinance must be maintained in good condition.

**Commented [TA31]:** These values are calibrated based on local data available in the Street Tree Inventory.

### 9.3.3 TREE REMOVAL FOR LOTS NOT SUBJECT TO AN APPROVED PLAN

A. **Applicability:** The following standards apply to lots (whether existing or created subsequent to this ordinance's effective date) within the town's incorporated limits that are not subject to an approved Conditional Planning Area, Master Plan, or Individual Building development proposal.

1. **General/Purpose:** No tree larger than twelve inches in diameter at breast height (DBH) may be removed without a permit from the town. A removal permit may be issued by the Planning Director only after an applicant has met with the Arborist and received site-specific information on tree protection, care, and removal.
2. **Historic District:** Removal of a mature tree(s) located within in a locally designated historic district requires a Certificate of Appropriateness in addition to a tree permit. Mature trees shall be replaced by a tree of similar species, type, and must meet the requirements of Section 9.8.

**Commented [TA32]:** This represents an existing but reorganized and revised section that details the process for securing a permit for tree removal on an individual lot (processes such as master plans are dealt with in 9.3.4). The section focuses on creating a clear set of steps and decision criteria, with the aim of having property owners meet with an arborist as part of the process to better understand issues related to the site and/or building design. The permitting process does not prohibit the removal of trees; it requires a process for removal to be followed.

**Commented [TA33]:** This value is clearly-tied to a DPO definition (Tree, Large Maturing) and represents substantial trees. The revised text applies to a tree on any part of a property, whereas the current text regulates removal only in setback areas. As noted above, the permitting process does not prohibit the removal of trees; it requires a process for removal to be followed.

B. **Approval Process:**

1. **Permit Required:** An approved permit, including fee payment, shall be required for the removal or destruction of a tree(s) larger than twelve inches on any property, whether publicly or privately owned, as described above.
2. **Fee:** Permit fees shall be determined by the Arborist based on considerations listed in the Arborist Report section below. See the Town of Davidson Fee Schedule for further information. Note: An initial permit fee

**Commented [TA34]:** The proposed fee is \$40.00, the same fee as for a building permit.

shall be remitted prior to permit acceptance by the Town of Davidson. Any additional fees shall be paid prior to permit approval.

3. **Site Information:** The permit shall include a site plan illustrating the lot area, building and development footprints, and subject tree(s) intended for removal or that may be impacted by work. Work impacting the critical root zone (CRZ) of any tree over twelve inches must be described and/or shown on the plan. Based on site conditions the Arborist may require dimensions/measurements, an official survey, and/or other relevant information such as existing conditions, topography, easement location, etcetera.
4. **Site Visit:** The permit approval may require an on-site consultation between the applicant and Arborist in order to identify existing conditions and exploration of best practices for preservation and/or removal.
5. **Arborist Findings:** The Arborist shall prepare a written report describing the applicant's intended work, site and tree characteristics, and recommended practices or potential alternatives to the proposed scope of work (if applicable). Factors that may be considered in the Arborist's findings include but are not limited to whether the tree(s):
  - a. Health/Endangerment:
    - Is dead, diseased, irreparably damaged, or the tree imminently endangers the health or safety of the general public or structures on the property or adjacent properties;
    - Has not been appropriately maintained such that its current condition is compromised and cannot be corrected through reasonable care practices;
  - b. Characteristics
    - Is not a specimen tree, as defined by this ordinance;
    - Has officially-documented historic or cultural value and requires approval by the Historic Preservation Commission.
  - c. Location:
    - Is within a designated conservation area, such as common open space or property protected by conservation easement;
    - Is located within the permitted building envelope;
    - If removed will negate the lot's ability to meet the minimum tree canopy coverage listed in Table 9-1;
    - Is part of a greater development plan for which an approved landscape plan has been issued pursuant to this section; an approved development plan for which an approved grading and landscape plan has been issued shall serve as the tree removal permit.

**Commented [TA35]:** In addition to the site visit, this report affords the opportunity for the Arborist to offer clear guidance and/or useful tips about tree care.

**Commented [TA36]:** This list provides applicants a sense of topics that may be addressed in the report.

6. **Permit Issued:** The permit shall be issued when the Planning Director, in consultation with the Arborist, has determined that the process requirements set forth in Section 9.3.3.B have been satisfied.

**Commented [TA37]:** The permitting process does not prohibit the removal of trees; it requires a process for removal to be followed.

7. **Prohibitions:**

- a. **Tree-Topping:** The topping of trees and similar practices is strictly prohibited. Topping is the practice of reducing a tree's size using heading cuts that shorten limbs or branches back to a predetermined crown limit (ANSI A300 Part 1 Pruning, Tree Care Industry Association).
- b. **Root Zone Disturbance:** No activity affecting the critical root zone of a tree(s) in a conservation easement or dedicated open space areas may proceed without a tree permit.
- c. **Unapproved Tree Removal:** The removal of a tree larger than twelve inches without an approved tree permit is strictly prohibited. See Section 15 Violations for further information.

C. **Violations:** See Section 15.3 Violations.

**9.3.4 TREE REMOVAL FOR LOTS OR OPEN SPACE SUBJECT TO AN APPROVED PLAN**

**Commented [TA38]:** This section establishes standards for the removal of trees on lots not considered to be existing lots (i.e. they are part of an approved plan). It provides clear guidance for common open spaces and other areas required to be maintained as part of a master plan.

- A. **Applicability:** The following standards apply to lots (whether existing or created subsequent to this ordinance's effective date), common areas, and/or open spaces subject to an approved Conditional Planning Area, Master Plan, or Individual Building development proposal (or any site plan requiring approval by the Town of Davidson).

1. **General/Purpose:**

- a. **Lots:** Lots created pursuant to an approved plan are subject to the conditions of that plan approval until the lot is sold (i.e. after Final Plat approval), at which point a lot becomes subject to the provisions of Section 9.3.3.

Note: Unless otherwise specified, lots created pursuant to an approved plan as noted above are subject to any enduring conditions and/or easements associated with that development and recorded on the plat that pertain to tree and vegetation preservation/removal.

- b. **Open Space/Common Areas:** Vegetation and trees within areas designated as open space and/or common areas are required to be maintained continually per the approved plan and/or applicable easements. Such areas and plantings must meet the post-warranty provisions of this ordinance, maintain approved buffers and easements, and are subject to Section 15.3 Violations.

2. **Historic District:** Lots within a historic district are subject to the approved plan standards and the applicable historic district criteria as described in 9.3.3.A.2 above.

**B. Approval Process:**

1. **Permit Required:** Designated common areas/open spaces and lots created pursuant to an approved plan are subject to the permit approval process outlined in Section 9.3.3. above.

**C. Violations:** See Section 15.3 Violations.

## 9.4 STREET TREE PLANTINGS

### 9.4.1 STREET TREE REQUIREMENTS

- A. Location:** Except along a rural road, alley, or the park side of a parkway (See Section 6 - Town Street Classifications), trees shall be planted wherever a new street right-of-way is constructed, or where new construction occurs along an existing street right-of-way. For certain street types, as specified in the Town Street Classifications in Section 6, street trees must be planted in tree wells in the sidewalk.
- B. Minimum Number:**
1. Where at least an eight-foot planting strip has been permitted and no overhead power lines are located within 15 feet of the on-center planting location, a minimum of one large maturing tree shall be planted every 40-50 feet on average linear feet, or as otherwise approved by the Arborist. With Arborist approval, existing trees may be applied toward this requirement.
  2. For planting strips four to less than eight feet wide or those on-center planting locations within 15 feet of an overhead power line, trees shall consist of one small maturing tree per 25-30 feet on average, or as otherwise approved by the Arborist.
  3. Large maturing trees may be planted on the back side of sidewalk when the planting strip is less than eight feet.
- C. Planting Strip:** In general, the minimum planting strip width for street trees shall be the width indicated for the applicable street type in Section 6. However, large canopy trees including but not limited to willow oaks and red maples shall require a minimum planting strip width of eight feet unless otherwise approved by the Planning Director in consultation with the Arborist.
- D. Planting Specifications:** Street trees shall be installed in accordance with Section 9.8 Installation and Maintenance Standards, Section 9.10 Tree

**Commented [TA39]:** Based on recent experiences with projects, site designers will default to the 6' min. illustrated in Section 6 Street Classifications. Therefore, this sentence has been rewritten to require 8' min. for certain species but allows the Arborist/Planning Director flexibility to approve alternate widths based on specific conditions.

Specification List, and the American Standard for Nursery Stock, published by the American Association of Nurserymen. Additionally, street trees shall be planted in amended soils and, where determined necessary by the Arborist, in tree pits. Large and medium maturing trees shall have a minimum caliper of three inches; small maturing trees shall have a minimum caliper of two inches. The Arborist may approve or require varying caliper sizes as appropriate.

- E. Species:** Street tree species shall be selected from the Tree Specification List in consultation with the Arborist as follows:
1. Streets in commercial areas shall have trees which complement the face of the buildings and which shade the sidewalk.
  2. Streets in residential areas shall provide for an appropriate canopy, which shades both the street and sidewalk.
  3. High canopy trees are preferred for emergency vehicle maneuvering.
  4. A diversity of tree species shall be utilized to prevent the spread of pests and disease.

## 9.5 SITE LANDSCAPING

### 9.5.1 APPLICABILITY

The following standards apply to Conditional Planning Area, Master Plan, or Individual Building development proposals. These provisions for site landscaping shall apply to all buildings with a setback less than five feet as defined in Section 2, except where such buildings have a zero-foot setback from the public sidewalk.

### 9.5.2 MINIMUM REQUIREMENTS

- A. Documentation Standards:** New landscape materials and preserved vegetation shall be noted on the Landscape Schematic Design as part of the Preliminary Plat and shall include at a minimum the following information:
1. **Scale:** Landscape plan shall be drawn to scale no smaller than 1 inch equals 100 feet and include a north arrow and necessary interpretive legends.
  2. **Existing Vegetation:**
    - a. Location: General location, type and quantity of existing plant materials.
    - b. Undisturbed & Protected Areas: Existing plant materials, areas to be left undisturbed, and areas that will be protected.
    - c. Protection Requirements: Methods and details for protecting the critical root zone (CRZ) of existing plant materials and areas to be left undisturbed.

**Commented [TA40]:** This section is not new but has been reformatted and includes new titles organizing the information.



- 3. Proposed Vegetation:**
- a. Identification: Locations, size and labels for all proposed plant materials.
  - b. Table/Schedule: Plant lists with common name, botanical name, quantity, and spacing and size of all proposed landscape material at the time of planting.
  - c. Planting and installation details as necessary to ensure conformance with all required standards.
- 4. Other Landscape Improvements:** Location and description of all other landscape improvements, including but not limited to earth berms, walls, fences, screens, sculptures, fountains, lights, courtyards, walks or paved areas.
- 5. Other Site Improvements/Features:**
- a. Connections & Limits: Connections to existing and future properties, along with property boundaries.
  - b. Site Features: Location of any proposed buildings, driveways, parking areas, required parking spaces, roads and other hard surface elements; location of signage; and, location of overhead and underground utilities.
- 6. Certification:** Notes indicating compliance with the ordinance.
- B. Minimum Required Area:** A minimum five-foot wide area, measured perpendicular from the building, shall be provided for landscaping along any side of the building facing a public right-of-way way or park. This does not apply to portions of buildings featuring a zero-foot setback from the public sidewalk as listed in Section 2. Buildings with frontage along a street or park may, at the discretion of the Planning Director, be exempt from this requirement in order to provide entrance walkways and/or plazas.
- C. Minimum Required Landscaping:** The minimum required landscaping shall consist of one of the following every 40 linear feet along the property boundary where a buffer is not required:
- 1. Two small maturing trees;
  - 2. 10 shrubs; or
  - 3. Any equivalent combination thereof, subject to Planning Director or Arborist approval.
- D. Location of Plantings:** In locating the minimum required landscaping care shall be taken to ensure that adequate space is provided for the width of tree spread, height and root system requirements.

- E. **Preferred Species:** Native plants and wildlife supporting species are generally preferred in all landscape settings; however, at the discretion of the Arborist, alternative species may be planted. See the Tree Specification List and Shrub Specification List for approved species.

## 9.6 PARKING AREA LANDSCAPING

Parking lots are necessary features of the built environment. However, they shall be designed to integrate natural features within parking areas in order to mitigate environmental impacts and create welcoming places for vehicles and pedestrians.

### 9.6.1 APPLICABILITY

The parking area landscaping standards of this section shall apply according to the following standards. For a list of tree specifications, approved tree species and prohibited vegetation, see the Tree & Shrub Specification Lists.

- A. **Existing Parking Lots:** All expansions of impervious surfaces in existing parking lots with five or more spaces shall comply with this ordinance.
- B. **New Parking Lots:** All new parking lots shall comply with this ordinance.
- C. **Small Parking Lots:** For small lots (36 spaces or less), landscaping shall be required at the perimeter only, according to the standards of Section 9.6.2.
- D. **Large Parking Lots:** For large lots (more than 36 spaces), landscaping shall be at the perimeter and the interior, according to the standards of Sections 9.6.2 and 9.6.3. In large lots, the landscaping shall be placed to break the lot into parking modules of not more than 36 spaces.
- E. **Other Areas:** All other components of parking lot areas not specifically dedicated to vehicular parking or circulation shall be landscaped in accordance with this ordinance.

**Commented [TA41]:** These changes clarify which site areas (i.e. within the parking area) are subject to the standards. The current language is not clear.

### 9.6.2 PARKING LOTS - PERIMETER LANDSCAPING & SCREENING

- A. **Minimum Width:** Perimeter landscape areas shall be a minimum of eight feet in width adjacent to all parking spaces and travel areas.
- B. **Required Trees:** Large maturing canopy trees shall be planted not more than 40 feet on center. Any deviation from this standard, including the use of alternative planting intervals and/or small maturing trees if necessitated by site conditions, must be approved by the Planning Director in consultation with the Arborist.
- C. **Required Shrubs:** A continuous row or staggered row of evergreen shrubs, with a minimum expected height at maturity of three feet, shall be installed at

not more than six feet on center. If used in addition to a wall or fence, the evergreen shrubs shall be planted on the exterior side of such features. See wall and fence requirements below.

- D. Additional Requirements for Parking Lots Adjacent to Street Frontage:** A masonry wall or garden hedge (minimum three feet in height) shall be installed along any street frontage adjacent to parking areas and the finished side of the wall or fence shall face the exterior right-of-way or neighboring property. At sidewalks with extensive pedestrian use, the masonry wall installed at the back of the sidewalk, is required but an alternate location may be approved based on site conditions.
- E. Additional Requirements for Parking Lots Adjacent to Detached and Attached Houses:** Off-street parking areas adjacent to Detached and Attached Houses, shall be screened from such uses by one of the following:
1. A garden wall, fence or hedge (minimum six feet in height); or
  2. Evergreen shrubs planted at no more than of six feet on center and a minimum of three feet in height at the time of planting with an expected maturity height of at least six feet; or
  3. A combination of the above options.
- F. Natural Buffers:** Where a natural buffer exists adjacent to parking areas, it is to remain undisturbed. Generally, only dead wood is allowed to be removed. The removal of undergrowth and limbing up of trees is prohibited unless approved by the Planning Director in consultation with the Arborist. All buffers required by the watershed protection regulations in Section 17 and the stream buffer overlay standards in Section 21 shall remain completely undisturbed, except as provided for in those sections.
- G. Existing Vegetation:** Existing vegetation located in the perimeter landscape area which is designated for preservation may be applied toward the requirements of this section.

**Commented [TA42]:** As the existing text indicates, this is the preferred arrangement; so, the text has been modified to require this as the default design, with adjustments permitted based on-site circumstances.

**Commented [TA43]:** This insertion recognizes that there may be circumstances in which undesirable undergrowth (i.e. invasive species, improperly developed/unsafe vegetation) may need to be removed, or trees appropriately pruned, in order to benefit site users.

**Commented [TA44]:** DPO 17 and 21 allow certain improvement practices that are consistent with maintaining natural, undisturbed buffers. Therefore, the text has been revised to be consistent with the standards listed in those sections.

### 9.6.3 PARKING LOTS - INTERIOR LANDSCAPING

#### A. Landscape Islands

1. Landscape islands within parking lots shall be located so as to define and direct vehicular movement.
2. When located adjacent to parking spaces on both sides, landscape islands shall have a minimum width of eight feet.
3. Landscape islands with large maturing trees shall include a minimum of 200 square feet of pervious space per tree.

4. In large lots, the landscaping shall be placed to break the lot into parking modules of not more than 36 spaces.
- B. **Minimum Spacing:** Large maturing trees shall be planted within the interior landscape islands of parking lots so that no part of any parking space is more than 40 feet from a tree.
- C. **Other Landscaping Areas:** All other components of parking lot areas not specifically dedicated to vehicular parking or circulation shall be landscaped in accordance with this ordinance.

**Commented [TA45]:** For consistency and clarity, this text was modified to use the same text proposed in 9.6.1.E.

## 9.7 SCREENING

The following requirements apply to landscape screens. See [Section 4 Site & Building Design Standards](#) for non-landscape screening requirements.

**Commented [TA46]:** Cross-references have been added to Sections 9 and 4.3.1.E to clarify that screening standards related to natural materials (i.e. landscaping, trees, etc.) are on contained in both places.

### 9.7.1 LANDSCAPE SCREENS

- A. **Applicability:** Landscape screens shall be required anywhere Section 3 - Uses with Additional Requirements specify a requirement for a landscape screen. Where landscape screens are required, they shall be installed in accordance with the provisions below.
- B. **Minimum Width:** For a landscape screen, a minimum 15-foot wide pervious space shall be provided, unless based on site conditions another width is deemed appropriate by the Planning Director in consultation with the Arborist.
- C. **Minimum Required Landscaping:**
  1. A minimum of six large maturing trees and 40 shrubs shall be planted for each 100 linear feet of landscape screen area to provide continuous coverage.
  2. Trees shall be a minimum 50 percent evergreen.
  3. Shrubs shall be a minimum 75 percent evergreen.
- D. **Existing Vegetation:** Existing vegetation located in the required landscape screen area may be counted toward the minimum required landscaping for landscape screens provided it is:
  1. Designated for preservation; and,
  2. Approved by the Planning Director in consultation with the Arborist.

#### 9.7.2 MECHANICAL EQUIPMENT SCREENING

### 9.8 INSTALLATION & MAINTENANCE STANDARDS

All trees and shrubs required by this ordinance shall meet the planting specifications provided below.

#### 9.8.1 GENERAL STANDARDS

- A. Quality of Plantings:** All new plant material shall be of good quality, installed in a sound, workmanlike manner and meet the standards set forth in the American Standard for Nursery Stock by AmericanHort.
- B. Contractor Warranty:** The contractor shall warrant all new plant material for two years from time of installation.
- C. Soil Compaction:** Installation and construction practices shall be utilized which preserve existing topsoil or amend the soil to reduce compaction.
- D. Staking and Groundcover:** All trees shall be properly guyed or staked and mulched (3-4 inch layer) in accordance with accepted practices in the landscape industry, to prevent winds from loosening the roots.
- E. Chain Link Fencing:** Chain link and similar fencing materials, if used, shall be landscaped on their exterior side with evergreen shrubs minimum three feet in height and six feet on center at installation.
- F. Sight Distance Triangles:** No plants shall be planted within the sight distance triangle at an intersection, or driveway access points unless an unobstructed view between 30 inches and 72 inches in height is maintained.
- G. Overhead Utility Lines:** Public and private utilities which install overhead and underground utilities shall be subject to this ordinance and the industry's best pruning and trenching specifications. Where large maturing trees are required and overhead utility lines exist, small maturing trees planted one per 30 linear feet shall be substituted with the approval of the Planning Director.
- H. Encroachment Agreement:** No irrigation lines may be installed within the planting strip, or other portions of the public right-of-way, without an encroachment agreement executed by the town or NCDOT as appropriate.

**Commented [TA47]:** This is not the appropriate location in the ordinance for these standards since no landscaping is referenced and similar information appears in 4.3.1.E. Therefore, the text in 9.7.2 and 4.3.1.E has been reconciled and redundancies have been removed.

## 9.9 ALTERNATE METHODS OF COMPLIANCE

### 9.9.1 ADMINISTRATION

Select circumstances may warrant alternative approaches to meeting the intent and purpose set forth in this ordinance. In such cases, the following shall apply:

- A. Alternate Compliance Conditions:** Alternate landscaping plans, plant materials, or planting methods may be used where the strict application of landscaping requirements set forth in this ordinance would be unreasonable or impractical, or where it is necessary to protect existing vegetation. Such situations may result from streams, natural rock formations, topography, or other physical conditions; or from lot configuration, utility easements, unified development design, or unusual site conditions.
- B. Plan Standards:**
- 1. Intent:** All proposed alternate landscaping plans shall be evaluated by the Planning Director, in consultation with the Arborist, to determine if the alternate plan meets the intent and purpose of this ordinance. This determination shall take into account the land use classification of adjacent property, number of plantings, species, arrangement and coverage, location of plantings on the lots, and the level of screening height, spread, and canopy of the planting(s) at maturity.
  - 2. Equivalency:** The Planning Director, in consultation with the Arborist, may approve an alternate plan that proposes different plant materials or methods provided that quality, effectiveness, durability, and performance are equivalent to those required by this ordinance.
  - 3. Administration & Documentation:** All administration, documentation, and other pertinent standards of this section shall be met through the approval process unless determined acceptable via the Conditions, Intent, and Equivalency provisions above.

## 9.10 PLANTING SPECIFICATIONS & APPENDICES

### 9.10.1 APPLICABILITY

The following documents inform this ordinance's standards and shall apply to all proposals unless otherwise determined by the Planning Director in consultation with the Arborist.

**Commented [TA48]:** In the current ordinance this does not appear as its own section and it appears very early in the ordinance (it's currently the first topic under 9.2.2 Administration). As a result, the current arrangement suggests that alternate compliance is prioritized over or equal to the ordinance requirements. Therefore, this has been moved to the end of the ordinance, reorganized for clarity, and given its own section, which is consistent with pre-2015 DPO.

**Commented [TA49]:** This entire sub-section C. provides a catch-all to clarify that all relevant parts of this ordinance apply, even when pursuing an alt. compliance pathway.

**Commented [TA50]:** This is a new section consolidating in one place the list of approved trees, shrubs, and other vegetation that may be used. Additionally, other relevant documents can be stored here under "Appendices." By including these items within this section as referenced documents they can be updated routinely and as needed based on best practices, appropriate species substitutions (i.e. due to disease or blight), and other considerations.

### 9.10.2 PLANTING SPECIFICATIONS

- A. **Tree Specification List:** This document contains a list of approved species, including growth characteristics and features, permitted to be considered for proposals.
- B. **Shrub Specification List:** This document contains a list of approved species, including growth characteristics and features, permitted to be considered for proposals.
- C. **DPO Tree Planting & Mix Guidelines:** This document contains guidance on the appropriate distribution of trees, shrubs, and vegetation based on canopy coverage, square footage, and other factors.

**Commented [TA51]:** These documents are were developed by the Livability Board, adapting Huntersville's and Charlotte's ordinances to fit Davidson's needs.

### 9.10.3 APPENDICES

- A. **Tree Care Guidelines:** This document contains a list of terms, methodologies, and best practices related to tree establishment, maintenance, and preservation.
- B. **American Standard for Nursery Stock:** Produced by AmericanHort, this document establishes common techniques for managing the cultivation, sale, and installation of plants. Among other things, this includes standards for: Measuring plants; specifying and stating the size of plants; and determining the proper relationship between height and caliper, or height and width.  
<https://www.americanhort.org/page/standards>

**Commented [TA52]:** These documents provided additional guidance from third-party sources that can be used in decision-making.



## MEMO

Date: July 9, 2019  
 To: Board of Commissioners  
 From: Planning Board Ordinance Committee; Trey Akers, Senior Planner  
 Re: Davidson Planning Ordinance Section 9 + Related Draft Text Amendments, Schedule of Changes

### 1. TEXT AMENDMENTS

#### TEXT CHANGES – PROPOSED AMENDMENTS

The following is a list of proposed text changes to the Town of Davidson Planning Ordinance (DPO). The listed changes are being undertaken to improve the establishment and maintenance of tree canopy as well as clarify the processes/administration related to plan and permit approvals . Proposals are organized by page number.

PROPOSED TEXT CHANGES				
PAGE	SECTION	TITLE	ISSUE	PROPOSED ACTION
SECTION 4 – SITE & BUILDING DESIGN STANDARDS				
4-4	4.3.1.E	Loading/Areas, Mechanical Equipment and Utilities	Section 4 deals with screening using non-natural materials only. Section 9 includes standards for screening requirements with natural materials.	Include a reference within Section 4 to direct ordinance users to Section 9.
TEXT CHANGES			<p>Old Text: 2. Mechanical equipment (except small items such as fans and vents), utility meters, storage areas, solid waste containers (including dumpsters, compactors, recycling containers, and solid waste and recycling handling areas), transformers, generators, HVAC units and similar features, or other utility hardware on the building, roof, or ground shall be screened from public view with materials similar to the structure; OR they shall be so located as not to be visible from a primary fronting public street.</p> <p>New Text: 2. Mechanical equipment (except small items such as fans and vents), utility meters, storage areas, solid waste containers (including dumpsters, compactors, recycling containers, and solid waste and recycling handling areas), transformers, generators, HVAC units and similar features, or other utility hardware on the building, roof, or ground shall be screened from public view with materials similar to the structure; OR they shall be so located as not to be visible from a primary fronting public street. In certain</p>	



			cases, screening using natural materials may be preferable. See Section 9 for landscape screening requirements. Note: Natural screening alternatives must be approved by the Planning Director in consultation with the Arborist.	
SECTION 9 – TREE PRESERVATION, LANDSCAPING, & SCREENING				
9-1	9.1-9.10	ALL SECTIONS	Section 9 requires a number of revisions to clarify the processes and requirements by which plans and permits are approved.	See Section 9 proposed changes in the related attachment.
TEXT CHANGES			Old Text: See attachment. New Text: See attachment.	
SECTION 15 – VIOLATIONS & PENALTIES				
15-4	15.3.1	LANDSCAPING VIOLATIONS	Section 15 requires a number of revisions to clarify the processes and requirements by which violations and penalties are administered.	See Section 15 proposed changes in the related attachment.
TEXT CHANGES			Old Text: See attachment. New Text: See attachment.	
SECTION 16 – DEFINITIONS				
16-27	16.3	Tree, Large Maturing	Section 16 requires revision because a new tree type – Medium Maturing – has been referenced in Section 9.	Revise the definition to indicate a different range of height, etc. due to the new definition for Tree, Medium Maturing.
TEXT CHANGES			Old Text: A tree, usually deciduous, whose height is greater than 35 feet at maturity and meets the specification of “American Standards for Nursery Stock” published by the American Association of Nurserymen, that is planted to provide canopy cover shade. In the case of tree removal permits, the minimum size is 12” DBH. See also canopy tree.  New Text: A tree, usually deciduous, whose height is greater than 40 feet at maturity and meets the specification of “American Standards for Nursery Stock” published by the American Association of Nurserymen, that is planted to provide canopy cover shade. In the case of tree removal permits, the minimum size is 12” DBH. See also canopy tree.	
16-27	16.3	Tree, Medium Maturing	Section 16 requires revision because a new tree type – Medium Maturing – has been referenced in Section 9.	Update Section 16 to include the new definition of Tree, Medium Maturing
TEXT CHANGES			Old Text: N/A – Does not exist.	

			New Text: A tree, usually deciduous, whose height is between 25 to 40 feet at maturity and meets the specification of “American Standards for Nursery Stock” published by the American Association of Nurserymen, that is planted to provide canopy cover shade. In the case of tree removal permits, the minimum size is 12” DBH. See also canopy tree.	
16-27	16.3	Tree, Small Maturing	Section 16 requires revision because the minimum DBH for permitting now starts at 12”.	Revise the definition to reference 12” as the minimum DBH requiring a permit for removal.
TEXT CHANGES			<p>Old Text: A small to medium tree, growing up to 25 feet in height at maturity, that is planted for aesthetic purposes such as colorful flowers, interesting bark, or fall foliage. In the case of tree removal permits, the minimum size is 8” DBH.</p> <p>New Text: A small to medium tree, growing 15 feet to 40 feet in height at maturity, that is planted for aesthetic purposes such as colorful flowers, interesting bark, or fall foliage. In the case of tree removal permits, the minimum size is 12” DBH.</p>	
16-27	16.3	Tree, Specimen	The current definition of Tree, Specimen is vague and refers only to a singular tree.	Revise the definition to account for a variety of characteristics to assist the Arborist in determining whether a tree is a specimen tree; and, include reference to groups of trees for cases in which several trees contribute to a significant landscape element.
TEXT CHANGES			<p>Old Text: A tree that is unusually large or well-shaped or provides a focal point or point of interest.</p> <p>New Text: Tree, Specimen: A tree or group of trees considered to be an important community asset due to its unique or noteworthy characteristics or values. A tree may be considered a specimen tree based on its size, age, rarity or special historical or ecological significance as determined by the Arborist. Examples include large hardwoods (e.g., oaks, poplars, maples, etc.) and softwoods (e.g., pine species) in good or better condition with a DBH of 24” or greater, and smaller understory trees (e.g., dogwoods, redbuds, sourwoods, persimmons, etc.) in good or better condition with a DBH of 10” or greater.</p>	

## **2. PUBLIC PLANS AND POLICIES**

The proposed text changes are consistent with the existing policy and ordinance frameworks adopted by the town. Specifically, the changes reflect the 2010 Town of Davidson Comprehensive Plan's guidance for Goal 2: Preserve Natural Habitats, the Lakeshore, and the Tree Canopy: Revise open space or tree preservation requirements to better preserve existing tree canopy in all planning areas (Pg. 60).

All proposed changes meet the requirements set forth in Davidson Planning Ordinance 1.5.1 Implementation of Adopted Plans & Policies: "Any amendments to, or actions pursuant to, this ordinance should be consistent with these adopted plans and policies, as amended."

## **3. PLANNING BOARD RECOMMENDATION**

This section will be completed once the Planning Board makes a recommendation.

## **4. STAFF RECOMMENDATION**

This section will be completed later in the process.

### 15.2.6 CIVIL PENALTY

In addition to the other remedies cited in this ordinance for the enforcement of its provisions, and pursuant to NCGS 160A-175, the regulations and standards in this ordinance may be enforced through the issuance of civil penalties by the Planning Director.

- A. **Procedures for Civil Citations:** Subsequent citations for the same violation may be issued by the Planning Director if the offender does not pay the citation (except as otherwise provided in a Warning Situation) after it has been issued, unless the offender has sought an appeal to the actions of the Planning Director through the Board of Adjustment. Once the ten-day warning period has expired, each day which the violation continues shall subject the violator to additional citations to be issued by the Planning Director.
- B. **Schedule of Civil Penalties:** Unless otherwise provided in this ordinance, the following penalties are hereby established:
  - 1. **Warning Citation:** Correct Violation Within 10 Days
  - 2. **First Citation:** \$50.00
  - 3. **Second Citation For Same Offense:** \$100.00
  - 4. **Third And Subsequent Citations For Same Offense:** \$500.00
- C. **Recovery of Penalties:** If the offender fails to pay the civil penalties within fifteen days after having been cited, the Town may recover the penalties in a civil action in the nature of debt.

## 15.3 SPECIFIC TYPES OF VIOLATIONS

### 15.3.1 LANDSCAPING VIOLATIONS & PENALTIES

#### 15.3.1.A APPLICABILITY

- A. **General:** Violations of Section 9 Tree Preservation, Landscaping & Screening shall be subject to penalties, enforcement, and the procedures relating thereto set forth in Section 15.3. Any landscape areas, trees and vegetation preserved or planted as part of an approved landscape plan or permit shall be continually maintained in good condition by the property owner.
- B. **Violations:**
  - 1. **Damage:** Failure to comply with the landscaping and maintenance requirements of Section 9 of this ordinance, or the disturbance, damage or removal of any trees or vegetation prohibited by this ordinance, shall constitute a violation. This includes the intentional material damage to, or the intentional material alteration of, any landscaped area, tree, or vegetation required to be planted and/or maintained as part of an approved plan or permit. All violations shall be reported by the property owner to the Planning Director

**Commented [TA1]:** Section 15 has been reorganized and revised to clarify the replacement process, calibrate penalties, afford non-monetary penalty relief, and link appeals to existing ordinance processes.

immediately, prior to any corrective action.

2. **Failure to Remedy:** It shall likewise constitute a violation of this ordinance for a property owner to fail, within a reasonable period of time or as specified by this ordinance, to remedy any material damage to, or alteration of, any landscaped area, tree, or vegetation required to be planted and/or maintained as part of an approved plan or permit, irrespective of whether such damage or alteration was the result of causes beyond the property owner's control, including but not limited to natural forces.
- C. **Enforceability:** Where a landscaping violation is found to have occurred, the remedies specified in this ordinance shall be enforced and any civil penalties shall be punishable in accordance with the provisions of this ordinance. Note: Violations pursuant to this section are not enforceable under N.C.G.S. 14-4.

#### 15.3.1.B **REPLACEMENT**

- A. **Extent:** All landscaped areas, trees, and vegetation required by this ordinance which are disturbed or damaged shall be replanted to meet the standards of this ordinance as well as the approved site/master plan or permit. This includes any tree designated for preservation or installation as part of the approved landscape plan or permit that is removed or dies as a result of negligence or natural forces.
- B. **Replanting:**
  1. **New Vegetation:** New trees or vegetation required as part of an approved plan that are damaged or die shall be removed and replaced with new vegetation of equal or greater size according to the standards of this ordinance. Note: In some cases, this will extend beyond the Warranty Period(s) identified in 9.2.2.F.3.
  2. **Existing Vegetation:** Where the trees or vegetation that have been disturbed or damaged existed on the site at the time the development application was filed, all replacement trees and vegetation shall meet the standards set forth in this ordinance and take into account any unique site conditions as well as significant vegetation remaining within the landscaped area.
    - i. **Location:** Replantings shall be located within the vicinity of the violation. If the area is too small for sufficient growth, a more suitable location on the site may be selected as permitted by the Planning Director in consultation with the Arborist.
    - ii. **Vegetation:** Damaged or destroyed vegetation in both perimeter and/or interior landscaped/vegetated areas shall be replaced with an equal amount of new vegetation according to the size of vegetation removed. For buffer areas, understory plantings may also be required to restore the disturbed area to meet ordinance requirements.
    - iii. **Trees:** Any tree with a caliper of at least twelve inches that is damaged or removed shall be replaced with one or more trees, as determined by the Arborist, that have a caliper of at least 2.5

**Commented [TA2]:** The section clarifies the processes and standards governing replacement of disturbed or damaged plantings. It largely includes text already existing in the DPO that has been reorganized.

inches and a cumulative caliper equal to or greater than the original tree. Trees less than twelve inches in diameter in developments subject to an approved plan and damaged or destroyed shall be replaced to meet ordinance requirements.

Specimen Trees: Any Specimen Tree removed or damaged such that removal is required, as determined by the Arborist, shall be replaced by one 5-inch caliper tree or three 2.5-inch caliper trees at the discretion of the Arborist.

**Commented [TA3]:** This standard comes from CLT and has been adapted to require 2.5-inch replantings (rather than 2-inch), consistent with the DPO's minimum caliper requirement.

**C. Approval:**

1. **Plan:** All new trees and vegetation must be approved by the Planning Director, in consultation with the Arborist. A replanting plan denoting the proposed installation(s) shall be submitted to the Planning Director for approval in consultation with the Arborist. The plan shall take into consideration the development condition of the site, significant vegetation remaining within landscaped areas, and the required replacement of plant materials.
2. **Board of Adjustment:** The Planning Director may elect to present the replanting plan to the Board of Adjustment for final approval, as necessary.

- D. **Timeframe:** The responsible party shall replace the required vegetation within the current planting season, next planting season, or as approved by the Arborist. If such replacement does not occur within the specified time period, the Landscape Maintenance Bond may be drawn upon in order to pay for the cost of replacement. In such case, the replacement tree(s) and vegetation shall be installed by or at the direction of the Arborist.

**Commented [TA4]:** This provision affords flexibility in determining what timeframe works best for the site based on planting conditions, availability of plants, etc.

**15.3.1.C PENALTIES**

**A. General:**

1. **Responsible Parties:** Any person or entity who violates any of the sections of this ordinance, or rules or orders adopted or issued pursuant to these sections, shall be subject to civil penalties as prescribed by this section. The person performing the work, the property owner and the person contracting for the performance shall be jointly and severally liable for any penalty or other enforcement action imposed pursuant to this chapter or other provisions of law on account of work performed in violation of this ordinance.
2. **Scope:** Penalties assessed under this chapter are in addition to and not in lieu of compliance with the requirements of this ordinance.

**Commented [TA5]:** This section lays out the monetary and non-monetary options for assessing a landscaping violation(s).

- B. Penalties:** Civil penalties for violations of this chapter shall be assessed pursuant to the following:

1. **Required Installations:** Failure to plant original or replacement trees and vegetation in accordance with this chapter shall be \$100.00 for each tree and \$50.00 for each shrub/other vegetation not planted. No civil penalty shall be assessed until the person alleged to be in violation has been notified of the violation as provided in Section 15.1. In the event of a failure to comply with the Replacement provisions, the failure to plant each individual tree and/or shrub/vegetation shall

**Commented [TA6]:** This enables the penalty amount to be levied on both the property owner and the party that executes the work order.

constitute a separate, daily and continuing violation from the day the notice of violation is received.

**Commented [TA7]:** This is intended to take effect only if the violator does not go through with the Replacement process.

2. **Total Loss:** The intentional or grossly negligent injury or damage to, or destruction of, trees and shrubs/vegetation protected by this ordinance that result in the total loss of the tree or shrub/vegetation shall be assessed according to the following:

Penalties for losses in areas regulated by approved plans (Master Plans, Conditional Master Plans, Individual Building or other site plans); in designated tree save or preservation areas; or, within the public right-of-way:

**Commented [TA8]:** These penalties apply in areas that were required to be preserved as part of an approved plan but were not executed correctly (i.e. work was incorrectly done in these areas resulting in tree/shrub loss). The values are derived from data available in the Davidson Street Tree Inventory completed in 2018.

- Tree: \$500 per Caliper Inch
- Shrub: \$100 per Shrub
- Vegetated Cover: \$10 per SF of Disturbed Area
- Specimen Tree: \$500 Caliper Inch up to 24 inches; \$800 per Caliper Inch over 24 inches.

**Commented [TA9]:** Example: A 36-inch tree is removed; the Arborist determines it was a specimen tree (per the Environmental Inventory). The violator pays \$500 x 24 for the first 24 inches (\$12,000) and \$800 x 12 for the next 12 inches (\$9,600) for a total of \$19,600.

Note: The maximum civil penalty for each tree injured, damaged or destroyed shall not exceed \$25,000. No notice of violation is needed prior to the assessment of a civil penalty issued pursuant to this subsection.

**Commented [TA10]:** Other communities also employ maximum amounts and their values are likewise within this range.

Penalties for losses in areas not regulated by an approved plan, including permits (i.e., permits filed after cutting or permits incorrectly executed):

**Commented [TA11]:** These penalties apply in areas that were not subject to an approved plan (i.e. a building permit for which a tree permit was not also filed as required, or when a tree permit's approved scope of work is not executed correctly). The values are derived from data available in the Davidson Street Tree Inventory completed in 2018.

- Tree: \$500 per Tree
- Specimen Tree: \$1,000 per Tree.

3. **Partial Damage:** The intentional or grossly negligent injury or damage to, or destruction of, trees and shrubs/vegetation protected by this ordinance that do not result in the total loss of the trees or shrub/vegetation shall be assessed according to the following:

Penalties for partial damage in areas regulated by approved plans (Master Plans, Conditional Master Plans, Individual Building or other site plans); in designated tree save or preservation areas; or, within the public right-of-way:

**Commented [TA12]:** These values mirror the preceding values but are calibrated to be based on each tree - not caliper - due to the Partial Damage nature of this penalty; the Vegetated Cover was reduced to \$5.00/SF. The Specimen Tree values were unchanged based on the value of these trees.

- Tree: \$500 per Tree
- Shrub: \$50 per Shrub
- Vegetated Cover: \$5 per SF of Disturbed Area
- Specimen Tree: \$1,000 per Tree

No notice of violation is needed prior to the assessment of a civil penalty issued pursuant to this subsection.

4. **Insufficient Replanting Area:** If the tree violation occurred in a preservation area in which it is determined that the required replacement tree(s) cannot be adequately replanted due to insufficient area, a replacement fee equal to \$100 per caliper inch of each replacement tree shall be paid to the Tree Fund.

**Commented [TA13]:** This concept comes from Raleigh. This would be in addition to any other applicable violation penalty.

5. **Tree Protection Measures:** Failure to install or maintain required tree

protection measures in accordance with Section 9 shall be punishable up to \$1,000 per violation. No civil penalty shall be assessed until the person has been notified of the violation as provided in Section 9. If the site is not brought into compliance within the time specified in the notice of violation, a civil penalty may be assessed from the date the notice of violation is received until it is adequately corrected, as confirmed by inspection. The failure to install the required tree protection measures shall constitute a separate, daily and continuing violation. Injury or damage to, or destruction of, trees in the tree protection zone and tree save area resulting from the failure to install or maintain required tree protection measures in accordance with Section 9 constitutes a separate violation which may subject the violator to any other applicable penalty set forth in this section.

6. **Miscellaneous Violations:** Any other action that constitutes a violation of this chapter may subject the violator to a civil penalty of \$50, and each day of continuing violation shall constitute a separate violation. However, the maximum amount of the penalty shall not exceed \$1,000.
7. **Non-Monetary Penalties:** At the discretion of the Planning Director in consultation with the Arborist, alternative non-monetary penalties or replanting strategies may be assessed in addition to or in lieu of any monetary penalties prescribed under this section. Plantings shall be approved in accordance with the Replacement provisions of this ordinance.
8. **Penalties Cumulative:** The civil penalties provided for in this Section 9.10 may be assessed cumulatively. By way of example only, if a Specimen Tree and the vegetated cover surrounding it are damaged due to inadequate tree protection measures, a total of at least three separate penalties may be assessed: (i) one for partial loss of the Specimen Tree; (ii) one for partial loss of the vegetative cover; and (iii) one for the failure to install or maintain required tree protection measures.
- C. **Assessment, Notice of Violation, & Payment:** The Planning Director, in consultation with the Arborist, shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of violation shall be served as provided in Section 15.1 and shall direct the violator to either pay the assessment or contest the assessment as specified in this ordinance. If payment of assessed penalties is not received within thirty (30) days after it is due, or if no request for a hearing has been made as provided in this ordinance, the assessment shall be considered a debt due and owing to the Town, and the matter shall be referred to the town attorney for institution of a civil action to recover the amount of the debt. The civil action may be brought in the Mecklenburg County Superior Court or in any other court of competent jurisdiction.
- D. **Civil Action for Unpaid Assessment:** A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of violation. A violation that is contested is due at the conclusion of the administrative

**Commented [TA14]:** This provision is new and affords flexibility in levying a penalty wherein financial hardship exists or unintentional/not grossly negligent actions result in a violation; it allows alternative approaches to replacement and payment.

**Commented [TA15]:** This section makes clear the process for issuing and resolving a violation.



and judicial review of the assessment.

- E. **Use of Civil Penalties Collected:** Civil penalties collected pursuant to this section shall be credited to the Tree Fund as a nontax revenue and shall be used to further the purposes, intent and requirements of this ordinance as prescribed by the Board of Commissioners resolution establishing the Tree Fund.
- F. **Criminal Penalties:** Any person who knowingly or willfully violates any section of this chapter shall be guilty of a class 2 misdemeanor and may, upon conviction thereof, be subject to punishment as provided in section 2-21. This remedy is in addition to any civil penalties that may be assessed.

#### 15.3.1.D **APPEALS & VARIANCES**

- A. **General:** Any party dissatisfied with a decision of the Town adversely affecting such party in the application or enforcement of this ordinance, including notices of violations and assessments of civil penalties, may request a public hearing before the Board of Adjustment.
- B. **Request:** The issuance of a decision, including a notice of violation or assessment of a civil penalty by the Town, shall entitle the party subject to the decision or responsible for the violation (petitioner) to a hearing before the Board of Adjustment if such party submits a written request for a hearing to the Planning Director within thirty (30) days of the receipt of a decision, notice of violation or assessment of a civil penalty.
- C. **Procedure:** Appeals and variances shall follow the rules and procedures set out in NCGS Section 160 A-388, as amended, and Section 14.18 of the Davidson Planning Ordinance.

**Commented [TA16]:** This section clarifies the process for seeking relief from the assessed violation. It links to existing processes in the DPO, namely Board of Adjustment procedures.



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**Agenda Title: Targeted Conditional Zoning Growth Management Tool  
Planning Director Jason Burdette**

**Summary:** The Board of Commissioners directed staff to explore strategies to better control the pace of development, specifically concurrency and targeted conditional zoning. After working with a consultant who specializes in growth management strategies and is familiar with North Carolina statutes, targeted conditional zoning is the preferred tactic to pursue. This is for discussion purposes only.

**Summary:**

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**ATTACHMENTS:**

	<b>Description</b>	<b>Upload Date</b>	<b>Type</b>
▣	Agenda Memo - Targeted Conditional Zoning Growth Management Tool 07.09.19	7/1/2019	Cover Memo
▣	Presentation - Targeted Conditional Zoning Growth Management Tool 07.09.19	7/5/2019	Presentation



## Targeted Conditional Zoning Growth Management Tool

To: Davidson Board of Commissioners  
From: Jason Burdette, Planning Director  
Date: July 9, 2019  
Re: Targeted Conditional Zoning

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### 1. OVERVIEW

The Board of Commissioners directed staff to explore strategies to better control the pace of development—specifically concurrency and targeted conditional zoning. After working with a consultant who specializes in growth management strategies and is familiar with North Carolina statutes, targeted conditional zoning is the preferred tactic to pursue.

#### **Background**

Davidson is not immune to growth pressures, which seem to have amplified in recent years. The regional economy is strong and Davidson is an attractive place to live—the college, historic buildings, and intentional design/regulations contribute largely to this. Davidson has had success in determining what type of development should go where; Davidson has not had much success in controlling the timing of development. Implementing a targeted conditional zoning mechanism could improve the town's ability to better control the pace of development, while simultaneously providing opportunities to secure specific town goals—such as affordable housing units constructed or green building practices.

North Carolina statutes permit two categories of conditional zoning:

- 1) *Conditional Use Zoning*: This is a two-step process that requires a) a rezoning to a conditional district, followed by b) a quasi-judicial action to grant a conditional use-permit. *Note: quasi-judicial actions limit ex parte conversations and require both evidence and findings of fact.*
- 2) *Conditional Zoning (CPA)*: This is a legislative action that combines the two-step process into one proceeding where the rezoning decision occurs concurrent with approval of the site-specific standards or site plan.

Davidson's existing conditional zoning process (CPA) is an example of conditional zoning. Communities may set thresholds that trigger CPAs. Those thresholds could include location, units, density (units/acre), vehicle trips generated/day, for example. Most communities do not set explicit thresholds for conditional zoning; instead, an applicant must elect to seek a CPA at the time of the application.

Regionally, communities utilize conditional zoning in a variety of ways. Below are several examples culled from the consultant's analysis:

Asheville: De facto CPAs are required for certain development thresholds (i.e. commercial development greater than 100,000 sf gfa or residential developments greater than 50 units).

Chapel Hill: Uses the quasi-judicial conditional use permit for specific zoning districts; often used to secure affordable housing.

Charlotte: Employs the CPA legislative process in specific zoning districts.

Cornelius: Uses the CPA process for specific uses (micro-breweries, commercial) and specific development processes (major subdivisions or conservation subdivisions).

Kannapolis: Conditional treated as an overlay. Base restrictions + site plan.

The CPA provides the town with the broadest degree of discretion in making zoning decisions. Enabling legislation expressly states that CPA may include conditions that ties the development to “an officially adopted plan or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.” However, if the applicant fails to agree to conditions (such as phasing that address infrastructure), the town could simply deny the CPA application.

Also, conditional zoning appears to be highly defensible. It relies on well-established authority in North Carolina (along with express authority to consider public facility adequacy).

## 2. RELATED TOWN GOALS

**Strategic Plan Goal:** Change land use regulations including tools available to slow growth.

**Planning Department Workplan:** (Other Growth Management Tools). “Research APFO (Adequate Public Facilities Requirements)” and “Explore Conditional Development Options” were both listed as secondary priorities on the Planning Department Workplan. They were both accelerated at the board’s direction with assistance from an outside consultant.

**Comprehensive Plan:**

- Continue to Provide Effective and Efficient Public Services—Growth should not place significant additional burdens on public services or infrastructure.
- Maintain Quality Design and Sound Planning Principles—ongoing initiatives: consider rezoning in the Growth Reserve to better regulate the timing and type of development.

**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.

**Planning Principle #6:** We must manage growth so the town can provide public facilities and services apace with development.

**Constituents Served:** All citizens.

## 3. OPTIONS/PROS & CONS

**Options:** Based upon the consultant’s research of both concurrency and targeted conditional zoning, it seems that conditional thresholds would be the quicker, more direct, and most defensible strategy to better control the pace of development.

**Strategy**

Staff will explore various targeted conditional zoning threshold metrics that could better serve Davidson using the legislative CPA tool. These could include specific unit counts, targeted density thresholds, a tiered approach based upon planning area, or a combination of all of the above, among others.

For example, any development above “x” units would trigger the conditional process; or, any density above “X” dwelling units/acre in Planning Area “A,” or any density above “Y” dwelling units in Planning Area “B” would trigger the conditional process. It’s important to note that Davidson’s existing planning areas already uniquely identify the type of development permitted in each respective zone. These existing planning areas should be recognized as baseline criteria as part of any new targeted conditional zoning process. After gathering data and researching these specific strategies more rigorously, staff will bring options back to the Board of Commissioners for feedback at an upcoming work session.

**Pros:**

- 1) Could better control the timing of development
- 2) Could provide opportunities to achieve specific town goals such as affordable housing or green building capacity
- 3) Could allow additional opportunities for public input
- 4) Provides the Board of Commissioners a direct say in the type and scale of development they would like to see
- 5) Could allow additional flexibility for creative/innovative development

**Cons:**

- 1) Reduces the predictability of the process for land owners, developers, citizens, planners
- 2) Could significantly lengthen approval process;
- 3) Would require additional staffing to accommodate lengthened and focused process
- 4) Would likely lead to a highly politicized process
- 5) Could negate previous community-wide planning efforts/initiatives/plans
- 6) Targeted threshold could result in the underutilization of land (i.e. not the highest and best use)

#### **4. FYI or RECOMMENDED ACTION**

This is for discussion purposes. However, if supportive, staff will do additional research regarding targeted conditional zoning and bring information back to the board.

#### **5. NEXT STEPS**

Staff will conduct extra research, seek feedback from the board, then begin the text amendment process.

# TARGETED CONDITIONAL ZONING



College Town. Lake Town. *Your Town.*

Board of Commissioners Meeting  
Jason Burdette, Planning Director  
Targeted Conditional Zoning  
July 9, 2019

# TARGETED CONDITIONAL ZONING – OVERVIEW

## TOPICS COVERED

1. Purpose & Background
2. Strategic Plan/Core Value/Comp. Plan Alignment
3. Benchmark Communities
4. Options/Strategy
5. Pros & Cons
6. Next Steps

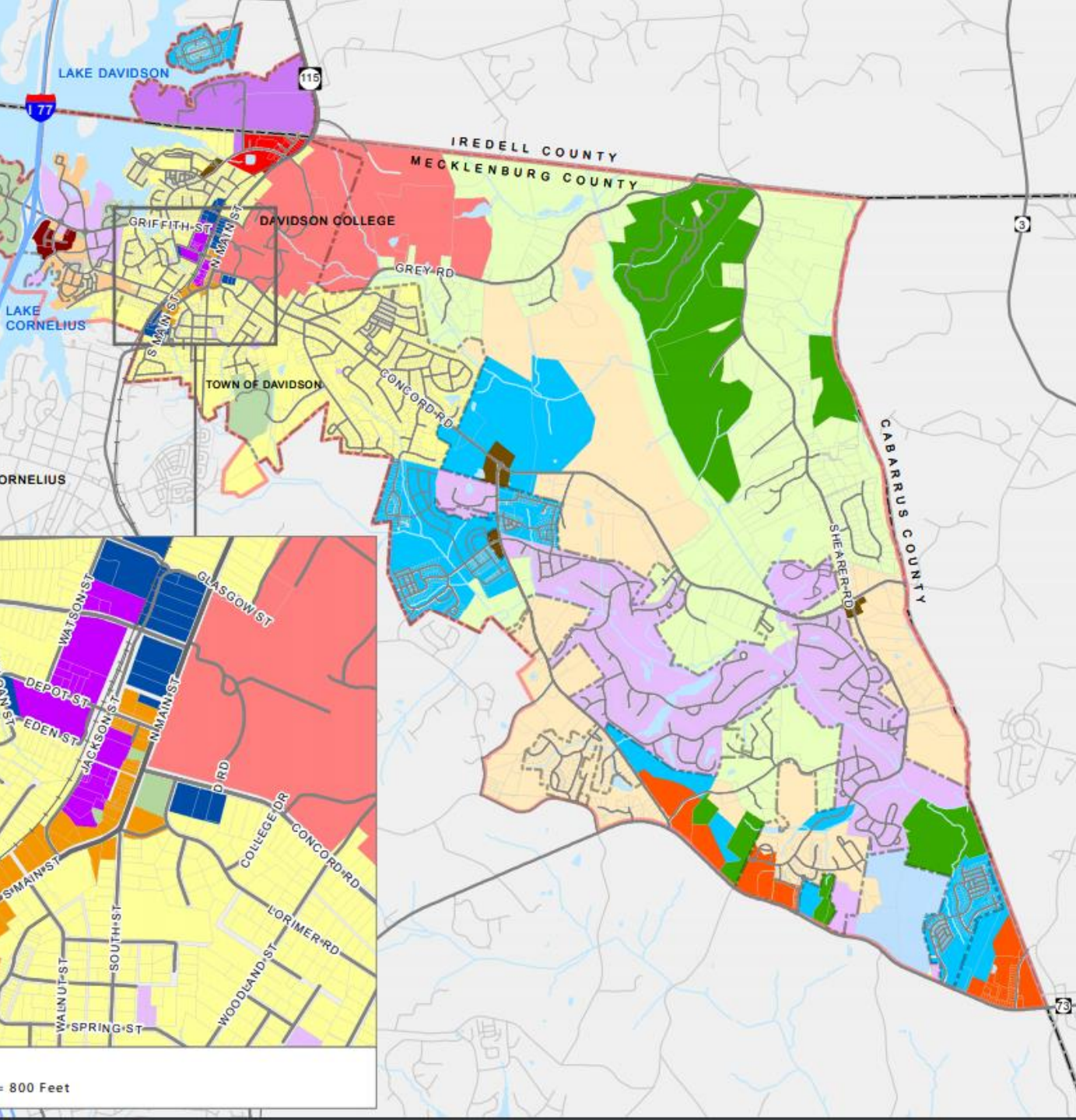
# TARGETED CONDITIONAL ZONING

## PURPOSE & BACKGROUND

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- **BOC DIRECTIVE:** Explore strategies to better control the pace of development
- **CONCERNS:**
  - As Currently Exists: Difficult to control the timing of development
- **STRATEGY:**
  - Respond to BoC directive and citizen citizens' concerns to better manage growth
  - Research strategies that could be implemented
- **SUMMARY:**
  - Develop a targeted conditional zoning mechanism





## PLANNING AREAS

A map of the Town of Davidson's Planning Areas as of July 2018.

### PLANNING AREAS

- Central Business District
- College Campus
- Conditional
- Employment Campus I
- Employment Campus II
- Lakeshore
- Neighborhood Center I
- Neighborhood Center II
- Neighborhood Edge
- Neighborhood General
- Neighborhood Services
- Rural
- Rural Reserve
- Special Use
- Village Center
- Village Commerce
- Village Edge
- Village Infill

### STREETS / RAIL

- Rail
- Interstates
- Streets

### WATER FEATURES

- Lakes, Rivers, and Ponds
- Creeks and Streams

### LAND USE

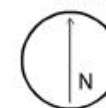
- Parcels

### BOUNDARIES

- Town of Davidson
- Sphere of Influence / ETJ
- County Boundary

## TOWN OF DAVIDSON

MECKLENBURG COUNTY, NORTH CAROLINA



0 3,000  
Feet

1 inch = 3,000 Feet

Date: 7/30/2018

DATA SOURCES:  
NC One Map  
Mecklenburg County  
Town of Davidson

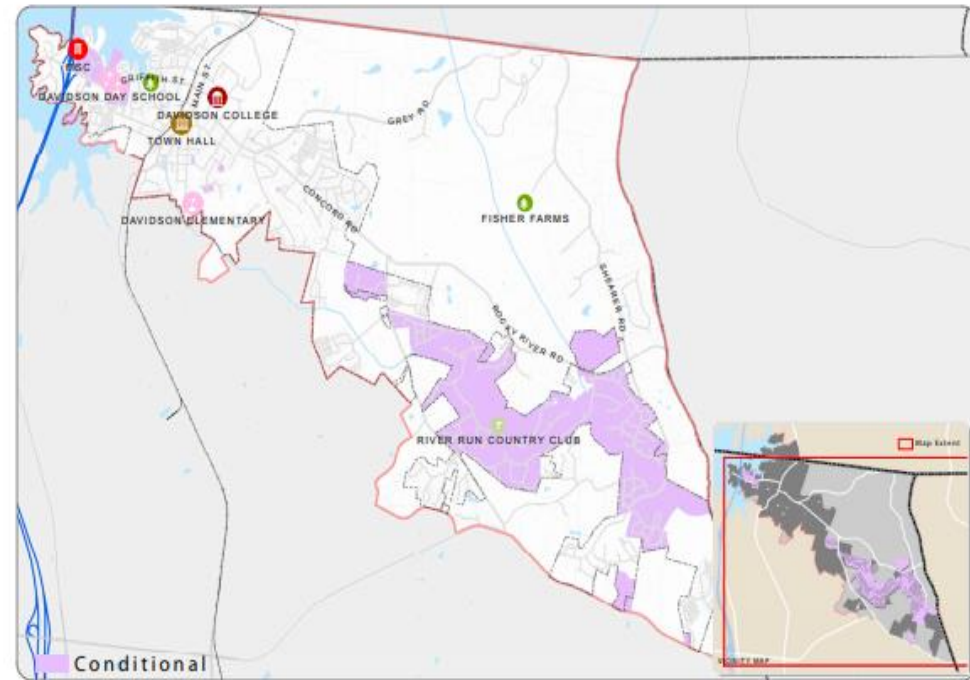
This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

# TARGETED CONDITIONAL ZONING

## PURPOSE AND BACKGROUND

### Existing Conditional Planning Area (CPA):

Allows for flexible and innovative development that may fall outside the rigid parameters of the ordinance



### 2.2.17 CONDITIONAL PLANNING AREA

#### A. DESCRIPTION

Because of the nature, scale, or location, or particular impacts on the immediate areas, as well as the community as a whole, a Conditional Planning Area is established to add flexibility to the planning and development process, but at the same time create additional controls which can establish specific development standards to insure quality development.

#### B. PURPOSE

Conditional Planning Areas may be established for the purpose of allowing innovative planning or design ideas for development in any planning area.

In some instances, such development proposals may not be adequately accommodated by the base planning areas. In accordance with NCGS 160A-382, 384 and 385 the provisions set forth in Section 14 establish a legislative, conditional rezoning process for property within the town's planning jurisdiction.

# TARGETED CONDITIONAL ZONING

## PURPOSE AND BACKGROUND

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- **Strategic Plan:**
  - Change land use regulations to slow growth
- **Planning Department Workplan:**
  - Research APFO and explore conditional development options
- **Core Values:**
  - Land planning will reflect historic patterns of village-centered growth
- **Planning Principle #6**
  - We must manage growth so that the town can provide public facilities and services apace with development
- **Comprehensive Plan:**
  - Continue to provide effective and efficient public services
  - Maintain quality design and sound planning principles



# TARGETED CONDITIONAL ZONING

## BENCHMARK COMMUNITIES

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- **Asheville:** Uses CPAs with development thresholds
- **Chapel Hill:** Use Conditional-Use Permit (Q-J) to achieve specific goals
- **Charlotte:** Uses CPAs in specific zoning districts
- **Cornelius:** Uses CPAs for specific uses and specific development processes
- **Huntersville:** Uses Special Use Permits (Q-J) for major subdivision
- **Kannapolis:** CPAs are treated as an overlay
- **Mooreville:** Uses CPAs for specific uses

# TARGETED CONDITIONAL ZONING

## OPTIONS / STRATEGY

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- **Options:** Targeted conditional zoning is a viable option. It offers a quicker, more direct, and defensible strategy to better control the pace of development.

*Options: Residential & Commercial Development; Just Residential*

- **Strategy:** Staff will explore a menu of options pertaining to threshold metrics.
  - Unit count options
  - Targeted density thresholds
  - Tiered approach based upon planning area
  - Commercial square footage
  - Combination of the above

# TARGETED CONDITIONAL

## PROS & CONS

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### PROS

1. Aligns with strategic plan initiative to control the timing of development
2. Could provide opportunities to achieve specific town goals such as affordable housing (i.e. Chapel Hill) or green building capacity
3. Could allow additional opportunities for public input
4. Provides the Board of Commissioners a direct say in the type and scale of development they would like to see
5. Could allow additional flexibility for creative/innovative development

# TARGETED CONDITIONAL

## PROS & CONS

---

### CONS

1. Reduces the predictability of the process for land owners, developers, citizens, planners
2. Could significantly lengthen approval process
3. Would require additional staffing to accommodate lengthened and focused process
4. Would likely lead to a highly politicized process
5. Could negate previous community-wide planning efforts/initiatives/plans
6. Targeted threshold could result in the underutilization of land (i.e. not the highest and best use)

# TARGETED CONDITIONAL ZONING

## NEXT STEPS

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- **Planning Staff:** Additional Research
- **Planning + BOC:** Solicit additional feedback (ongoing)
- **Planning + Planning Board:** Solicit feedback (beginning July)
- **BOC Action (Potential):** TBD





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**Agenda Title: Consider Approval of next steps in process for General Obligation Bonds for Public Facilities**

**Town Manager Jamie Justice and Finance Director Pieter Swart**

**Summary:** The board of commissioners will consider approval of next steps in process for General Obligation (GO) Bonds for Public Facilities and Resolution 2019-31 to set the date of the Public Hearing for Tuesday, July 23, 2019 at 6:00 p.m.

**Summary:**

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**ATTACHMENTS:**

<b>Description</b>	<b>Upload Date</b>	<b>Type</b>
□ Agenda Memo - next steps in process for General Obligation Bonds for Public Facilities 07.09.19	7/5/2019	Cover Memo
□ Presentation - next steps in process for General Obligation Bonds for Public Facilities 07.09.19	7/5/2019	Presentation
□ Attachment - Introduction of Bond Order 07.09.19	7/5/2019	Backup Material
□ Attachment - Draft Resolution 2019-31 Setting the Date of the Public Hearing 07.09.19	7/5/2019	Resolution Letter
□ Attachment - Draft Notice of Public Hearing 07.23.2019	7/5/2019	Backup Material



## 2019 General Obligation Bond Referendum

To: Davidson Board of Commissioners  
From: Pieter Swart, Finance Director  
Date: July 9, 2019  
Re: 2019 General Obligation Bond Referendum

### 1. OVERVIEW

The board of commissioners will consider approval of next steps in process for General Obligation (GO) Bonds for Public Facilities. The board will consider approval of Resolution 2019-31 to set the date of the Public Hearing for Tuesday, July 23, 2019 at 6:00 p.m.

### 2. RELATED TOWN GOALS

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

Action item: Address facility needs of police, fire, public works, and parks and recreation, including community space.

### 3. OPTIONS/PROS & CONS

GO Bonds are cost efficient and require the approval of the voters

### 4. FYI or RECOMMENDED ACTION

As directed by the Board, Town Staff has submitted the required GO Bond application to the local government commission.

To move forward with the GO Bond Referendum, process the Board must:

1. Introduce the G.O. Bond Order
2. Consider approval of resolution 2019-31 which sets the date of the required public hearing on the G.O. Bond order for July 23, 2019.

### 5. NEXT STEPS

A GO Bond Schedule and a GO Bond Process Sheet follows as prepared by our bond attorneys:

**TOWN OF DAVIDSON  
SCHEDULE FOR GENERAL OBLIGATION BOND REFERENDUM  
NOVEMBER 2019**

- 6/11/19 Board adopts (1) Resolution directing publication of notice of intent to apply to the Local Government Commission (the “LGC”); (2) Resolution authorizing the Finance Officer to apply to the LGC; and (3) Resolution making certain findings of fact
- 6/14/19 Publish Notice of Intent in *Newspaper of General Circulation* [have to wait 10 days after publication of Notice of Intent before applying to the LGC]
- 6/24/19 File Application with LGC and prepare Sworn Statement of Debt [receive letter from LGC confirming receipt of Application which must occur before the Bond Order is introduced]
- 7/9/19 File Statement of Estimated Interest
- 7/9/19 Board (1) Introduces the Bond Order at the Board Meeting; (2) adopts the Resolution setting a public hearing on the Bond Order on 7/23/19
- 7/16/19 File Notice with Joint Legislative Commission
- 7/16/19 Publish Notice of Public Hearing on the Bond Order in *Newspaper of General Circulation* [at least 6 days before public hearing]
- 7/16/19 File Sworn Statement of Debt with the City Clerk [before public hearing]
- 7/23/19 Board holds public hearings on adoption of the Bond Order
- 8/13/19 Board (1) adopts the Bond Order and (2) adopts the Resolution setting a Special Bond Referendum
- 8/14/19 City Clerk delivers certified copy of the Resolution setting a Special Bond Referendum to the County Board of Elections (Mecklenburg and Iredell)
- 8/16/19 Town publishes Bond Order as adopted in *Newspaper of General Circulation*
- by 9/27/19 Publish first Notice of Special Bond Referendum in *Newspaper of General Circulation* [Not less than fourteen days before last day to register to vote for Bond Referendum]
- by 10/04/19 Publish second Notice of Special Bond Referendum in *Newspaper of General Circulation* [Not less than seven days before last day to register to vote for Bond Referendum]
- 11/05/19 Referendum
- After  
11/05/19 Adoption of Certificate of Canvass by the County Board of Elections (Mecklenburg and Iredell)  
  
Board adopts Resolution Certifying and Declaring Results of Special Bond Referendum  
  
Publish Statement of Result in *Newspaper of General Circulation*

Prepared by:  
Scott Leo, Esq.  
Partner  
Parker Poe Adams & Bernstein LLP

## **GENERAL OBLIGATION BOND REFERENDUM INSTRUCTIONS (NORTH CAROLINA)**

### **Before 1<sup>st</sup> action by Governing Board**

If School Bonds, need resolution from School Board requesting referendum be held. (Counties only)

Bond Counsel needs to know how much the bond referendum will be for and for what purposes. Each purpose, per categories listed in NCGS 159-48, will need to be a separate ballot question (unless the purposes are “not unrelated” in which case they can be combined). Bond Counsel will draft all of the required actions based on this information.

Contact LGC and Board of Elections to let them know intention to go through referendum process. Let Bond Counsel know if jurisdiction is in two counties.

### **1<sup>st</sup> actions by Governing Board**

The following 3 items need to be adopted:

- 1) Resolution Directing the Publication of Notice of Intention to Apply to the Local Government Commission for Approval of Bonds
- 2) Resolution Authorizing the Finance Officer to Apply to the Local Government Commission for Approval of the Proposed General Obligation Bonds and to Submit Such Application to the Local Government Commission
- 3) Resolution Making Certain Statements of Fact Concerning Proposed Bond Issue

*Explanation of board actions:* These 3 items collectively are intended to direct staff to take the actions necessary to get the process started to put the bond question(s) on the ballot. The first item that the NC Statutes require is the publication of the notice of intention to apply to the LGC for approval of the bonds to be put on the ballot. These actions direct staff to do that and also directs the finance officer to make application to the LGC. The final item is intended to have the Board make the same findings that the LGC has to make in order to approve the bonds and, per LGC policy is being done to support the application that is being made to the LGC.

### **Between 1<sup>st</sup> actions and 2<sup>nd</sup> actions by Governing Board**

Notice of Intent to Apply to the LGC needs to be published in newspaper

Prepare LGC application; Submit LGC application 10 days after the Notice of Intent to Apply is published in newspaper – the application needs to be submitted and accepted by the LGC before the next set of actions can be taken by the governing board

Prepare Statement of Estimated Interest Amount; Statement of Estimated Interest Amount should be put on file with the Clerk on the day of the 2<sup>nd</sup> actions to be taken by the Governing Board and also sent to the LGC as part of the application

## **2nd actions by Governing Board**

The following 2 actions need to be taken by the Governing Board:

- 1) Introduction of the Bond Order(s) – note that the bond order(s) are only introduced and should be done so by a board member and reflected in the minutes that way. Usually they get read by title by the board member introducing them, but however that makes sense for your way of doing things.
- 2) Adopt the Resolution calling the public hearing

*Explanation of board actions:* The first action is to simply introduce the bond order or bond orders that will be submitted to a vote. The contents of the bond order are as required by the NC General Statutes. It sets forth what the governing board will hold a public hearing on and, presumably, approve at the next meeting after the public hearing is held. The second action is to call the public hearing and direct that the notice of the public hearing be advertised in the newspaper.

## **Between 2nd actions and 3rd actions by Governing Board**

You would have filled out the Sworn Statement of Debt as part of the LGC application – that needs to get filed with the Clerk and certified that it was filed by the Clerk.

Publish the Notice(s) of Public Hearing at least 6 days before the date for the public hearing; there is a public hearing notice for each bond order; there is information from the Sworn Statement of Debt and the Statement of Estimated Interest that needs to be filled in to the bottom paragraph of the notice

Send in the Notice to the Joint Legislative Commission. Bond Counsel prepares that for you. Needs to be signed and sent to the 3 addressees. Keep a copy for you and scan one to us. This needs to be done 45 days before the LGC will approve the application for the bonds.

## **3rd actions by Governing Board**

The following actions need to be taken by the Governing Board:

- 1) Hold public hearing(s), one for each bond order
- 2) Adopt both order(s);
- 3) Adopt the resolution setting the bond referendum.

*Explanation of board actions:* Holding a public hearing on each bond order is required by NC Statutes. After the public hearings are held, the governing board will be asked to adopt each bond order, without change, as introduced at the prior meeting. The governing board can reduce the amount of bonds or insubstantially change the purpose, but other than that any change will require restarting the process. After the bond order(s) are adopted, they adopt the resolution which directs the Board of Elections to put the bond order(s) on the ballot. The bond questions that are being requested are not in exactly the same form as the bond order(s), but instead are in the form that is set forth in the NC Statutes which incorporates the amount and the purpose of the bonds as set forth in the bond order(s).

Bond Counsel will provide you with an Extract of Minutes which basically lays out the script for holding the public hearing(s) and adopting the bond order(s). The Clerk completing these minutes and certifying them becomes our documentation that those actions were taken. We are not wed to the format of this, so if the Clerk has something else in mind, that is fine but we just need evidence that those actions were taken. .

### **After the 3rd actions by Governing Board**

1) The day after, the Clerk should send a certified copy of the Resolution setting the bond referendum to the County Board of Elections. You should coordinate beforehand who that should go to so that you can confirm receipt and that they have what they need to get you on the ballot. Request that they send you a Sample Ballot when it is available so that you can check to make sure it is on there and done correctly.

2) Publish the Notice of Adoption of the Bond Order(s). Note that the date of publication is in the bottom paragraph of the notices, so needs to be filled in for that date. This is important because this notice starts the 30 day clock ticking for anyone to challenge the validity of the proceedings to get the referendum on the ballot.

3) Publish the Notice of Referendum. The same notice needs to be published twice, once at least 14 days before the last day to register to vote and once at least 7 days before the last day to register to vote. The last day to register to vote is 25 days before the election, so the notices need to be published two weeks ahead of that and one week ahead of that.

That will be the end of the formal legal process leading up to the vote.

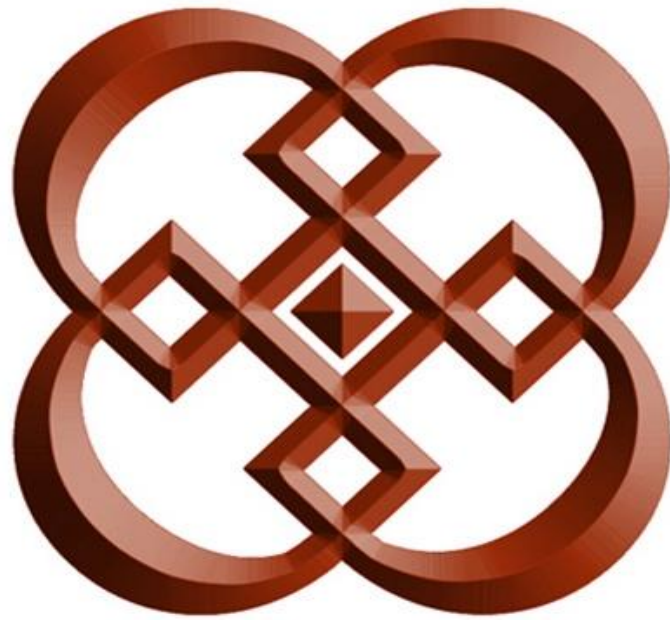
### **After the Referendum**

1) The Board of Elections has to canvass the vote. They certify to that 10 days after the election. We will provide you with a Certificate of Canvass to have the Board of Elections give to us that shows will our official notice of the results.

2) At the next meeting after you receive that Certificate of Canvass, the governing board will adopt a Resolution that certifies the results of the election and directs the publication of notice(s) in the newspaper that declares the results.

3) Publish the notice(s) of the results of the election. Note that the date of publication is in the bottom paragraph of the notices, so needs to be filled in for that date. This is important because this notice starts the 30 day clock ticking for anyone to challenge the validity of the referendum.

If the voters authorized the bonds, once that 30 day period runs after the final publication, the bonds are eligible to be issued!



# *The* Town *of* Davidson

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College Town. Lake Town. *Your Town.*

# 2019 GO Bond Public Facilities



College Town. Lake Town. *Your Town.*

2019 GO Bond  
Piet Swart, Finance Director  
July 9, 2019



# Presentation Overview

- Project Overview
- GO Bond Calendar
- Education V. Advocacy
- Action Items:
  - Introduction of Bond Order
  - Set Public Hearing



# Project Overview

- Town community center at 251 South Street
  - Half community space/half town administrative offices
  - Preserves historic structure for the community to use
- Public safety renovation of current town hall
  - Provides adequate space for current and future police operations
  - Adds forensic evidence storage and secure exterior space
  - Improves living quarters, restrooms, and kitchen in Fire Station 1



# G.O. Bond Calendar

- 7/9/19 Board (1) Introduces the Bond Order at the Board Meeting; (2) adopts the Resolution setting a public hearing on the Bond Order on 7/23/18
- 7/15/19 File Notice with Joint Legislative Commission
- 7/15/19 Publish Notice of Public Hearing on the Bond Order in *Newspaper of General Circulation* [at least 6 days before public hearing]
- 7/15/19 File Sworn Statement of Debt with the City Clerk [before public hearing]
- 7/23/19 Board holds public hearings on adoption of the Bond Order
- 8/13/19 Board (1) adopts the Bond Order and (2) adopts the Resolution setting a Special Bond Referendum



# Education vs. Advocacy

- Town funds may only be spent to provide voters with information on bond orders
- Elected officials may advocate for bond orders at non-Town sponsored events, activities or meetings



# Action Items

- Introduce bond order - The bond order title will be read by a commissioner
- Consider resolution 2019-31, setting the public hearing on the G.O. Bond Referendum for July 23, 2019, and directing the publication of the related notice



Commissioner \_\_\_\_\_ introduced the following bond order, a summary of which had been provided to each Commissioner, a copy of which was available with the Town Clerk and which was read by title:

**BOND ORDER AUTHORIZING THE ISSUANCE OF \$14,000,000 GENERAL OBLIGATION PUBLIC FACILITIES BONDS OF THE TOWN OF DAVIDSON, NORTH CAROLINA**

**WHEREAS**, the Board of Commissioners of the Town of Davidson, North Carolina (the “*Board of Commissioners*”) has ascertained and hereby determines that it is necessary to pay the capital costs of acquiring, constructing, expanding, renovating, equipping and furnishing public facilities to be used for municipal services, including town hall that incorporates community meeting space; police; firefighting; and other administrative services; and the acquisition of land, rights-of-way and easements therefor; and

**WHEREAS**, an application has been filed with the Secretary of the Local Government Commission of North Carolina requesting Commission approval of the General Obligation Public Facilities Bonds hereinafter described as required by the Local Government Bond Act, and the Town Clerk has notified the Board of Commissioners that the application has been accepted for submission to the Local Government Commission.

**NOW, THEREFORE, BE IT ORDERED** by the Board of Commissioners of the Town of Davidson, North Carolina, as follows:

Section 1. In order to raise the money required for the purposes described above, in addition to any funds which may be made available for such purpose from any other source, General Obligation Public Facilities Bonds of the Town are hereby authorized and will be issued pursuant to the Local Government Finance Act of North Carolina. The maximum aggregate principal amount of such General Obligation Public Facilities Bonds authorized by this order will be \$14,000,000.

Section 2. Taxes will be levied in an amount sufficient to pay the principal and interest on said General Obligation Public Facilities Bonds.

Section 3. A sworn statement of the Town’s debt has been filed with the Town Clerk and is open to public inspection.

Section 4. This bond order will take effect when approved by the voters of the Town at a referendum scheduled for November 5, 2019.

STATE OF NORTH CAROLINA                   )  
   )  
TOWN OF DAVIDSON                          )

I, Elizabeth K. Shores, Town Clerk of the Town of Davidson, North Carolina, *DO HEREBY CERTIFY* the attached to be a true and correct copy of the introduction of the bond order entitled “**BOND ORDER AUTHORIZING THE ISSUANCE OF \$14,000,000 GENERAL OBLIGATION PUBLIC FACILITIES BONDS OF THE TOWN OF DAVIDSON, NORTH CAROLINA,**” by the Board of Commissioners of the Town of Davidson, North Carolina, at the meeting held on July 9, 2019.

**WITNESS** my hand and the corporate seal of the Town of Davidson, North Carolina, this the \_\_\_\_ day of \_\_\_\_\_, 2019.

(SEAL)

Elizabeth K. Shores  
Town Clerk  
Town of Davidson, North Carolina



## RESOLUTION 2019-31

**RESOLUTION OF THE TOWN OF DAVIDSON, NORTH CAROLINA REGARDING A BOND ORDER AUTHORIZING THE ISSUANCE OF \$14,000,000 GENERAL OBLIGATION PUBLIC FACILITIES BONDS OF THE TOWN OF DAVIDSON, NORTH CAROLINA, SETTING A PUBLIC HEARING THEREON AND DIRECTING PUBLICATION OF A NOTICE OF SAID PUBLIC HEARING**

**WHEREAS**, a bond order entitled:

“BOND ORDER AUTHORIZING THE ISSUANCE OF \$14,000,000 GENERAL OBLIGATION PUBLIC FACILITIES BONDS OF THE TOWN OF DAVIDSON, NORTH CAROLINA;”

has been introduced at a meeting of the Board of Commissioners (the “*Board of Commissioners*”) of the Town of Davidson, North Carolina this 9th day of July, 2019; and

**WHEREAS**, the Board of Commissioners desires to provide for the holding of a public hearing thereon on July 23, 2019 and the submission of a statement of debt in connection therewith as required by The Local Government Bond Act.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF DAVIDSON, NORTH CAROLINA** that the public hearing on said bond order will be held on the 23rd day of July, 2019 at 6:00 p.m. at 216 South Main Street, Davidson, North Carolina.

**BE IT FURTHER RESOLVED** that the Town Clerk is hereby directed to cause a copy of said bond order to be published with a notice of such hearing in the form prescribed by law in a newspaper of general circulation in the Town on or before the 15th day of July, 2019.

**BE IT FURTHER RESOLVED** that the finance officer is hereby directed to file with the Town Clerk, prior to publication of the bond order, along with the notice of such public hearing, a statement setting forth the debt incurred or to be incurred, the net debt of the Town, the assessed value of property subject to taxation by the Town and the percentage that net debt of the Town bears to the assessed value of property subject to taxation.

**BE IT FURTHER RESOLVED** that this Resolution will become effective on the date of its adoption.

Read, approved and adopted this 9th day of July, 2019.

By: \_\_\_\_\_  
Mayor



I, Elizabeth K. Shores, Town Clerk of the Town of Davidson, North Carolina, ***DO HEREBY CERTIFY*** that the foregoing is a true and exact copy of a resolution entitled “**RESOLUTION OF THE TOWN OF DAVIDSON, NORTH CAROLINA REGARDING A BOND ORDER AUTHORIZING THE ISSUANCE OF \$14,000,000 GENERAL OBLIGATION PUBLIC FACILITIES BONDS OF THE TOWN OF DAVIDSON, NORTH CAROLINA, SETTING A PUBLIC HEARING THEREON AND DIRECTING PUBLICATION OF A NOTICE OF SAID PUBLIC HEARING**” adopted by the Board of Commissioners of the Town of Davidson, North Carolina, at a meeting held on the 9th day of July, 2019.

ELIZABETH K. SHORES  
Town Clerk  
Town of Davidson, North Carolina

## NOTICE OF PUBLIC HEARING

### **BOND ORDER AUTHORIZING THE ISSUANCE OF \$14,000,000 GENERAL OBLIGATION PUBLIC FACILITIES BONDS OF THE TOWN OF DAVIDSON, NORTH CAROLINA**

**WHEREAS**, the Board of Commissioners of the Town of Davidson, North Carolina (the “*Board of Commissioners*”) has ascertained and hereby determines that it is necessary to pay the capital costs of acquiring, constructing, expanding, renovating, equipping and furnishing public facilities to be used for municipal services, including town hall that incorporates community meeting space; police; firefighting; and other administrative services; and the acquisition of land, rights-of-way and easements therefor; and

**WHEREAS**, an application has been filed with the Secretary of the Local Government Commission of North Carolina requesting Commission approval of the General Obligation Public Facilities Bonds hereinafter described as required by the Local Government Bond Act, and the Town Clerk has notified the Board of Commissioners that the application has been accepted for submission to the Local Government Commission.

**NOW, THEREFORE, BE IT ORDERED** by the Board of Commissioners of the Town of Davidson, North Carolina, as follows:

Section 1. In order to raise the money required for the purposes described above, in addition to any funds which may be made available for such purpose from any other source, General Obligation Public Facilities Bonds of the Town are hereby authorized and will be issued pursuant to the Local Government Finance Act of North Carolina. The maximum aggregate principal amount of such General Obligation Public Facilities Bonds authorized by this order will be \$14,000,000.

Section 2. Taxes will be levied in an amount sufficient to pay the principal and interest on said General Obligation Public Facilities Bonds.

Section 3. A sworn statement of the Town’s debt has been filed with the Town Clerk and is open to public inspection.

Section 4. This bond order will take effect when approved by the voters of the Town at a referendum scheduled for November 5, 2019.

The foregoing bond order has been introduced and a sworn statement of debt has been filed under the Local Government Bond Act showing the appraised value of the Town of Davidson, North Carolina to be \$2,032,268,210 and the net debt thereof, including the proposed bonds, to be \$35,610,525. The finance officer of the Town has filed a statement estimating that the total amount of interest that will be paid on the bonds over the expected term of the bonds, if issued, is \$6,161,070. The estimate is preliminary, is for general informational purposes only, and may differ from the actual interest paid on the bonds. A tax will be levied to pay the principal of and interest on the bonds if they are issued. Anyone who wishes to be heard on the questions of the validity of the bond order and the advisability of issuing the bonds may appear at a public hearing or an adjournment thereof to be held at 216 South Main Street, Davidson, North Carolina, at 6 p.m. on the 23rd day of July, 2019.

**TOWN OF DAVIDSON, NORTH CAROLINA**

/s/ Elizabeth K. Shores

Town Clerk

Town of Davidson, North Carolina



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**Agenda Title: Consider Approval of Charlotte Regional Transportation Planning Organization (CRTPO) Grant Applications**  
**Town Manager Jamie Justice**

**Summary:** The town board has discussed several potential projects for roadways, greenways, and parks. The Charlotte Regional Transportation Planning Organization (CRTPO) provides grants to local governments for transportation-related projects. Their next grant cycle for discretionary grant funding begins in August and closes in October. The grants are typically an 80% grant with a 20% local match. This source of funding is one of the primary grant options for Davidson for transportation projects. To make applications, staff would work with an engineer to refine the cost estimates for the applications as well as work with CRTPO staff to best position these projects for grant funding.

Staff has reviewed the potential projects and determined the ones that are the most likely to be eligible for CRTPO grant funding:

- Highway 115 and Beaty Street intersection improvements.
- Potts Sloan Beaty phase 2 - Beaty Street multiuse path from Griffith Street to Highway 115.
- Grey Road multiuse path from Wolfe Street to Abersham Park.
- River Run to Summers Walk Greenway - engineering study phase.

The board is asked to authorize staff to proceed with making applications for these projects. The 20% local match could come from the 2017 general obligation (GO) bonds.

**Summary:**

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**ATTACHMENTS:**

Description	Upload Date	Type
□ Agenda Memo - Charlotte Regional Transportation Planning Organization (CRTPO) Grant Applications 07.09.19	7/5/2019	Cover Memo



## Charlotte Regional Transportation Planning Organization (CRTPO) Grant Applications

To: Davidson Board of Commissioners

From: Jamie Justice, Town Manager

Date: July 9, 2019

Re: Charlotte Regional Transportation Planning Organization (CRTPO) Grant Applications

### 1. OVERVIEW

The town board has discussed several potential projects for roadways, greenways, and parks. The Charlotte Regional Transportation Planning Organization (CRTPO) provides grants to local governments for transportation-related projects. Their next grant cycle for discretionary grant funding begins in August and closes in October. The grants are typically an 80% grant with a 20% local match. This source of funding is one of the primary grant options for Davidson for transportation projects. To make applications, staff would work with an engineer to refine the cost estimates for the applications as well as work with CRTPO staff to best position these projects for grant funding.

Staff has reviewed the potential projects and determined the ones that are the most likely to be eligible for CRTPO grant funding:

- Highway 115 and Beaty Street intersection improvements.
- Potts Sloan Beaty phase 2 - Beaty Street multiuse path from Griffith Street to Highway 115.
- Grey Road multiuse path from Wolfe Street to Abersham Park.
- River Run to Summers Walk Greenway - engineering study phase.

Project Name	Total Cost Estimate	Potential Grant	Potential Local Match
Intersection - Highway 115 and Beaty St.	\$ 1,265,000	\$ 1,012,000	\$ 253,000
Potts Sloan Beaty - Phase 2 - Beaty St. Multi-use Path	\$ 1,525,000	\$ 1,200,000	\$ 325,000
Grey Road Multiuse Path - Wolfe to Abersham Park	\$ 4,000,000	\$ 3,200,000	\$ 800,000
River Run to Summers Walk*	\$ 525,000	\$ 420,000	\$ 105,000
* engineering study phase only			

The board is asked to authorize staff to proceed with making applications for these projects. The 20% local match could come from the 2017 general obligation (GO) bonds.

## 2. RELATED TOWN GOALS

### **Strategic plan:**

- Mobility/Transportation Goal: The town of Davidson will enable citizens to move freely throughout the town via transit, car, bicycle, and on foot.
- Greenways, Open Space, and Parks Goal: The town of Davidson will increase physical and mental health of Davidson citizens. Preserve open space and promote Greenway connectivity. Provide ample opportunities for play and discovery (active and passive).
- Operations Goal: The town of Davidson will maintain organizational excellence through sound financial management, training and retention of quality employees, and superior service to the community.
- Partnerships Goal: The town of Davidson will build on existing relationships to strengthen partnerships with strategic organizations and institutions.

### **Core value(s):**

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

### **Constituents served:**

All citizens.

## 3. OPTIONS/PROS & CONS

### **Option 1: Authorize the proposed grant applications.**

#### **Pros:**

Takes advantage of the window of opportunity for grant funding.

Takes advantage of the possibility of getting projects done at a rate of \$.20 on the dollar for Davidson.

#### **Cons:**

If successful, the Town is committing 20% of the project costs for the local match.

### **Option 2: Not authorize the proposed grant applications.**

#### **Pros:**

Would not commit the 20% of the project costs for local match and those funds could be used elsewhere.

#### **Cons:**

Would miss out on this window of opportunity for grant funding.

Would miss out on the possibility of getting projects done at a rate of \$.20 on the dollar for Davidson.

#### **4. FYI or RECOMMENDED ACTION**

Recommend authorizing staff to make grant applications for the proposed projects.

#### **5. NEXT STEPS**

If approved by the board, staff will make applications for the next funding cycle that closes in October. Grant awards are expected to be made in early 2020.



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**Agenda      Miscellaneous/Open Discussion**

**Title:**      **Summary:** This is an opportunity for Commissioners to present or discuss any topics not previously listed on the agenda.

**Summary:**

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**ATTACHMENTS:**

<b>Description</b>	<b>Upload Date</b>	<b>Type</b>
No Attachments Available		