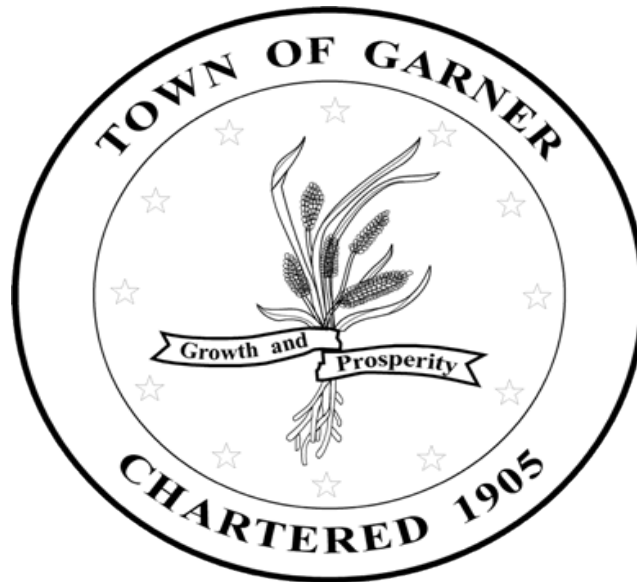


# **TOWN OF GARNER**



## **TOWN COUNCIL MEETING**

OCTOBER 2, 2017  
7:00 P.M.

Garner Town Hall  
900 7th Avenue  
Garner, NC 27529

**Town of Garner  
Town Council Agenda  
October 2, 2017**

*Dinner will be served for town officials in the Conference Room at 6:15 p.m.*

The Council will meet in regular session at 7:00 p.m. in the Garner Town Hall located at 900 7<sup>th</sup> Avenue.

- A. CALL MEETING TO ORDER/ROLL CALL: Mayor Ronnie Williams

*The Council will call for a brief recess at 9:00 p.m.*

- B. PLEDGE OF ALLEGIANCE: Mayor Pro Tem Kathy Behringer

- C. INVOCATION: Mayor Pro Tem Kathy Behringer

- D. PETITIONS AND COMMENTS

*This portion of the meeting is to receive comments from the public on items not included in this agenda. Citizens should sign up with the Town Clerk to speak prior to the start of the meeting. The Board is interested in hearing your concerns, but may not take action or deliberate on subject matter brought up during the Petitions and Comments segment. Topics requiring further investigation will be referred to the appropriate town officials or staff and may be scheduled for a future agenda.*

- E. ADOPTION OF AGENDA

- F. PRESENTATIONS

1. Presentation to Mayor Pro Tem Kathy Behringer by the League of Women Voters.....Page 5  
Presenter: Helen Cleereman
2. Recognize staff re: Town Hall Project.....Page 6  
Presenter: Rodney Dickerson, Town Manager

- G. CONSENT

*All items on the Consent Agenda are considered routine, to be enacted by one motion and without discussion. If a member of the governing body requests discussion of an item, the item will be removed from the Consent Agenda and considered separately.*

1. Council Meeting Minutes.....Page 7  
Presenter: Stella Gibson, Town Clerk

Minutes from the August 29, 2017 Work Session, September 5, 2017 Regular Meeting, and September 5, 2017 Closed Session

Action: Adopt Minutes

2. Resolution Declaring Unpaid Nuisance Abatements as Liens..... Page 17  
Presenter: Pam Wortham, Finance Director

This Resolution authorizes unpaid nuisance abatement fees to be filed with Wake County Revenue as liens to real property and added to the property owner's tax bill. The properties listed have unpaid abatements more than 30 days old.

Action: Adopt Resolution (2017) 2333

3. Duke Energy Easement for Town Hall Underground Line Installation..... Page 20  
Presenter: Tony Chalk, Town Engineer

In order to relocate their lines underground, Duke Energy is requesting easements from the Town for this purpose.

Action: Grant Easement

4. Annexation Petition ANX-17-06, Martin Marietta ..... Page 23  
Presenter: David Bamford, Planning Services Manager

Resolution to set public hearing for contiguous annexation of 5.66 acres located at 2500 Waterfield Drive (White Oak Business Park).

Action: Adopt Resolution (2017) 2334

5. Annexation Petition ANX-17-07, Bryan Road ..... Page 27  
Presenter: David Bamford, Planning Services Manager

Resolution to set public hearing for contiguous annexation of 3.7 acres located at 7974 Bryan Road.

Action: Adopt Resolution (2017) 2335

6. Addition of New Position Title (Principal Planner) ..... Page 31  
Presenter: Jeff Triezenberg, Planning Director and BD Sechler, Human Resources Director

Request to add title and position of Principal Planner to the Town's Classification Plan. The need for this level of position within the Planning Department was outlined in the May 2017 organizational memo from the Planning Director.

Action: Authorize Addition of Position Title

H. PUBLIC HEARINGS

1. Conditional Use Site Plan CUP-SP-17-11, Cheer Extreme ..... Page 36  
Presenter: Alison Jones, Planner II

Request for conditional use site plan approval for a gymnasium. The site is located at 1601 Garner Station Blvd.

Action: Approve Conditional Use Site Plan CUP-SP-17-11

2. Conditional Use Site Plan CUP-SP-17-15, Valvoline ..... Page 40  
Presenter: Alison Jones, Planner II

Request for conditional use site plan approval for an oil change facility. The site is located at 1517 US 70 West.

Action: Approve Conditional Use Site Plan CUP-SP-17-15

I. NEW/OLD BUSINESS

1. Locally Administered Project Agreement ..... Page 49  
Presenter: Jonathan Ham, Asst. Town Engineer

Agreement from NCDOT for funding of additional sidewalks and pedestrian crossings on Timber Drive. This agreement details the project and federal aid to be received by the Town.

Action: Authorize Execution of Agreement

2. Supplemental Scope of Services for Sidewalk Projects ..... Page 75  
Presenter: Tony Chalk, Town Engineer

Ramey Kemp and Associates has provided a revised scope of services for the Vandora Springs Road sidewalk project and for the Spring Drive sidewalk project to include the wider pavement designs and additional curb and gutter along Spring Drive. Cost of additional design work is \$34,364.

Action: Authorize Execution of Contracts

J. COMMITTEE REPORTS

K. MANAGER REPORTS

1. garner info

L. ATTORNEY REPORTS

M. COUNCIL REPORTS

N. ADJOURNMENT

Town of Garner  
Town Council Meeting  
Agenda Form

Meeting Date: October 2, 2017		
Subject: Presentation from League of Women Voters		
Location on Agenda: Presentations		
Department: Administrative		
Contact: Stella Gibson, Town Clerk		
Presenter: Helen Cleereman, League of Women Voters		
Brief Summary: Presentation to Mayor Pro Tem Behringer from the League of Women Voters.		
Recommended Motion and/or Requested Action: N/A		
Detailed Notes:		
Funding Source:		
Cost:	One Time: <input type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
Manager's Comments and Recommendations:  N/A		
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	SG	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		

Town of Garner  
Town Council Meeting  
Agenda Form

Meeting Date: August 22, 2017		
Subject: Recognize staff re: Town Hall Project		
Location on Agenda: Presentations		
Department: Administration		
Contact: Stella Gibson, Town Clerk		
Presenter: Rodney Dickerson, Town Manager		
Brief Summary: Recognize staff re: Town Hall Project		
Recommended Motion and/or Requested Action: N/A		
Detailed Notes:		
Funding Source:		
Cost:	One Time: <input checked="" type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
Manager's Comments and Recommendations:		
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	TC	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		

Town of Garner  
Town Council Meeting  
Agenda Form

Meeting Date: October 2, 2017		
Subject: Council Meeting Minutes		
Location on Agenda: Consent		
Department: Administration		
Contact: Stella Gibson, Town Clerk		
Presenter: Stella Gibson, Town Clerk		
Brief Summary:  Adopt minutes from the August 29, 2017 Work Session, September 5, 2017 Regular Meeting, and September 5, 2017 Closed Session.		
Recommended Motion and/or Requested Action: Adopt Minutes		
Detailed Notes:		
Funding Source:		
Cost:	One Time: <input type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
Manager's Comments and Recommendations:  N/A		
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	SG	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		



**Garner Town Council  
Council Work Session Minutes  
August 29, 2017**

The Council met in a Work Session at 6:00 p.m. on Tuesday, August 29, 2017 in the Council Chambers located at 900 7<sup>th</sup> Avenue.

**CALL MEETING TO ORDER/ROLL CALL**

Present: Mayor Ronnie Williams, Mayor Pro Tem Kathy Behringer, Council Member Jackie Johns, Council Member Buck Kennedy, Council Member Ken Marshburn, and Council Member Gra Singleton

Staff Present: Rodney Dickerson-Town Manager, John Hodges-Asst. Town Manager-Development Services, Matt Roylance-Asst. Town Manager-Operations, Pam Wortham-Finance Director, Rick Mercier-Communications Manager, Jeff Triezenberg-Planning Director, Brandon Zuidema-Police Chief, Mari Howe-Downtown Development Manager, William E. Anderson-Town Attorney, and Stella Gibson-Town Clerk.

**ADOPTION OF AGENDA**

Motion: Singleton  
Second: Johns  
Vote: Unanimous

**REPORTS/DISCUSSION**

**Depot Relocation Task Force Update**

Presenter: Mari Howe, Downtown Development Manager

Ms. Howe stated the Task Force was established to evaluate alternative sites for permanently relocating the historic train depot. The Task Force compared five sites to assess technical feasibility and impacts on Town operations. After completing the assessment, the Task Force members recommended relocating the depot to the corner of Pearl and Main Streets. Council discussed potential uses of the depot along with costs to relocate, repairs, and site development.

Mayor Pro Tem Behringer expressed concern regarding the costs to relocate the depot as the cost provided is lower than that previously provided.

Council Member Singleton reminded Council of previous discussions to develop this area as a gravel parking lot. At that time, it was estimated this improvement would cost \$185,000 and Council decided not to pursue. If the depot were to relocate to this site, a BMP would be required, which would increase the cost of site development to approximately \$300,000. Additionally, impacts to impervious surface requirements may be affected. Council Member Singleton did not feel this was a good use of tax payer dollars.

Mr. Dickerson suggested staff further analyze the site to determine what improvements would be needed. Council consensus to relocate the depot to the corner of Pearl and Main Streets. Council would also like staff to proceed with Mr. Dickerson's suggestion and report at a future meeting.

Council unanimously excused Mayor Williams from the meeting at 6:54 p.m. to attend an Eagle Scout Ceremony.

### **Nuisance/Compliance Discussion**

Presenter: John Hodges, Asst. Town Manager-Development Services and Tony Beasley, Inspections Director

Mr. Hodges advised staff, along with the Town Attorney, completed a review of the Town's Code Compliance ordinance, processes, workload and staffing as presented below.

#### Nuisance Ordinance

The Town's ordinance, allows the Town to enforce all nuisance issues that are allowable by statute. Staff works diligently to ensure that their interpretation of the ordinance is fair and that it is administered consistently throughout town. Staff notes that there may be situations that are reported as nuisances that are beyond our ability to regulate, such as storage in carports.

#### Unified Development Ordinance (UDO)

Staff identified several changes or clarifications that need to be made to the UDO. Some of these have come to light or have increased awareness since the recent expansion of the Town's extraterritorial jurisdiction or ETJ. While these updates are needed, staff believes they can be addressed in the upcoming re-write of the UDO which will begin after completion of the Comprehensive Plan. Staff has processes in place to bridge the gap until the changes are made. None of the issues identified prevent staff from enforcing basic nuisance situations.

#### Staffing

The Code Compliance division of the Inspections Department is made up of two positions – a Chief Code Compliance Officer and a supplemental (part time) Code Compliance Officer position which is currently vacant.

In 2016, the division handled 263 cases which resulted in 1,094 inspections. Zoning violation caseload was not tracked during this time due to a database issue. For the first seven months of 2017 (January through June), 346 nuisance cases were handled generating 752 inspections. 30 zoning cases were also handled during this period. The workload continues to grow for this division.

The 2017-2018 proposed budget included conversion of the supplemental code compliance position to full-time. This request was not funded due to the demand for additional hours in fire and building inspections. While we have someone temporarily filling the supplemental position, the Inspections Director has not been successful finding qualified candidates for part-time positions. If Council decides that additional resources should be added to the Code Compliance division, staff recommends revisiting the opportunity to make position full-time instead of increasing supplemental hours.

### **DOT Project Update – Raynor Road, 50 Bridge, 70/Timber Exchange**

Presenter: Jeff Triezenberg, Planning Director

Mr. Triezenberg provided the following updates:

U-5744 Timber/US 70 Interchange

Current schedule shows construction in FY 2021 and 2022.

Kick-off meeting held in May of this year.

Have developed traffic forecasts under the "no build" scenario for 2040. Traffic is not shown to increase much on Timber/Hammond due to current diversion for the Fortify project - currently between 20,000 and 21,000 VPD. However, traffic on US 70 increases from 37,000 VPD to 52,200 VPD (an increase of 41%).

B-4654 NC 50 Bridge over US 70

NCDOT contracted engineering firm is preparing preliminary designs. Once designs are completed, the Town can have a better idea of what kinds of aesthetic "gateway" improvements might be available to incorporate. NCDOT has decided to keep the existing bridge open, so the new bridge will be slightly to the west of the current location. The options will include traditional intersections on either side with a 3-lane bridge, and one that uses roundabouts with a 2-lane bridge.

Current schedule shows construction in FY 2020.

Expecting to have public meetings in early 2018 - (January or February).

B-5326 Raynor Road Bridge over White Oak Creek

NCDOT is in receipt of the Town's letter of commitment for pedestrian enhancements associated with this bridge.

A design is being pursued that will allow the road to remain open during construction.

Construction is currently scheduled for FY 2019.

B-5237 New Bethel Church Bridge over Mahler's Creek

In May of last year, the project was pushed back 2 years (the STIP was amended) to allow for more design and study time. The current schedule shows right-of-way in FY 2018 and construction in FY 2019.

U-5302 Fayetteville Road (Legend to Mechanical)

Current schedule has construction during FY 2020.

They are aware of pedestrian crossing issues at Purser Drive. Currently there is only sidewalk on the east side along Pinewinds Drive. If the Town would like to participate in receiving infrastructure on the west side, we need to indicate that desire; otherwise, they will simply add "space" for future crosswalk infrastructure.

For lighting, we should engage Duke Energy now to develop plans for NCDOT approval. If conduit is necessary, NCDOT can build that into the necessary NCDOT contract documents.

**MANAGER REPORTS**

- Reminded Council the September 5 meeting would be on Tuesday, not Monday.
- Suggested dates for the ribbon cutting of Town Hall. Council consensus for September 19. A separate event will be scheduled for the public.
- Advised there are still 12 residents at the Forest Hills Apartments who are due to vacate by noon on August 31. The name of the complex has been changed and several of the units have been renovated and leased.

**COUNCIL REPORTS**

Council Member Singleton

- Stated he was glad to see the road improvements on 5<sup>th</sup> Avenue and Aversboro Road. He also reported a large pothole on Aversboro Road where the improvements end. Staff will investigate.

Marshburn

- Attended the dedication ceremony of the shelter at Garner Rec Park. This is the Town's second largest shelter.

Behringer

- Asked for an update of the code compliance matter relating to cars parked on the road shoulder across from Mechanical Blvd. Mr. Hodges advised this is an active case.
- Also attended the dedication ceremony at Garner Rec Park. Recognized the efforts of Pam Cash in pursuing this project.

Council Member Kennedy and Johns had nothing to report.

ADJOURNMENT: 8:27 p.m.

Motion: Kennedy  
Second: Behringer  
Vote: Unanimous

**Town of Garner  
Town Council Meeting Minutes  
September 5, 2017**

The Council met in regular session at 7:00 p.m. in the Council Chambers located at 900 7<sup>th</sup> Avenue.

**CALL MEETING TO ORDER/ROLL CALL:**

Mayor Ronnie Williams, Mayor Pro Tem Kathy Behringer, Council Member Buck Kennedy, Council Member Ken Marshburn, Council Member Gra Singleton, and Council Member Jackie Johns.

Staff Present: Rodney Dickerson-Town Manager, John Hodges-Asst. Town Manager-Development Services, Matt Roylance-Asst. Town Manager-Operations, Pam Wortham-Finance Director, Rick Mercier-Communications Manager, Brandon Zuidema-Police Chief, Jeff Triezenberg-Planning Director, David Bamford-Planning Services Manager, Jenny Saldi-Senior Planner, William E. Anderson-Town Attorney, and Stella Gibson-Town Clerk.

Also Present: Sam Bridges, Town Lobbyist

**PLEDGE OF ALLEGIANCE:** Council Member Gra Singleton

**INVOCATION:** Council Member Gra Singleton

**PETITIONS AND COMMENTS**

Ms. Lisa Lyons addressed Council regarding the vacant building on Highway 50.

**ADOPTION OF AGENDA**

Council Member Kennedy asked to add a Closed Session per N.C. General Statutes Section 143-318.11(a)(5) "to discuss possible real estate acquisition and the Town's negotiating position regarding such real estate."

Motion: Johns  
Second: Marshburn  
Vote: Unanimous

**PRESENTATIONS**

City of the Year 2017 Citation  
Presenter: Terry Chatfield of Forty & Eight

Forty & Eight, an independent honor organization of veterans committed to charitable and patriotic aims, presented a Citation in recognition of the Town's Veteran's Memorial and other events celebrating veterans.

Bullying Prevention Month Proclamation  
Presenter: Council Member Buck Kennedy

Chief Zuidema accepted the Proclamation on behalf of Shelia Reich, Executive Director of the Youth Thrive organization.

Council Member Marshburn acknowledged the Garner 101 Citizens Academy students present.

## **CONSENT**

### **Council Meeting Minutes**

Presenter: Stella Gibson, Town Clerk

Adopt minutes from the August 22, 2017 Council Meeting.

Action: Adopt Minutes

### **Due Diligence Funding**

Presenter: John Hodges, Asst. Town Manager-Development Services

Staff requests authorization to expend up to \$50,000 from committed Park Development funds to perform due diligence on property that may be identified for future park and recreational use.

Action: Authorize Expenditure

### **Resolution Declaring Unpaid Nuisance Abatements as Liens**

Presenter: Pam Wortham, Finance Director

This Resolution authorizes unpaid nuisance abatement fees to be filed with Wake County Revenue as liens to real property and added to the property owner's tax bill. The property listed has an unpaid abatement more than 30 days old.

Action: Adopt Resolution (2017) 2330

Motion: Singleton  
Second: Johns  
Vote: Unanimous

## **PUBLIC HEARINGS**

### **Annexation Petition ANX-17-04, Purser Drive**

Presenter: David Bamford, Planning Services Manager

Mr. Bamford presented a request for contiguous annexation of 1.399 acres located at 902 Purser Drive. The site is vacant / undeveloped. The Council recently approved the right of way closing along this property.

Action: Adopt Ordinance (2017) 3879

Motion: Singleton  
Second: Johns  
Vote: Unanimous

**Annexation Petition ANX 17-05, Evolve Timber Creek Apartments**

Presenter: David Bamford, Planning Services Manager

Mr. Bamford presented a request for contiguous annexation of 21.954 acres located on Benson Road. The site is currently under construction.

Action: Adopt Ordinance (2017) 3880

Motion: Kennedy  
Second: Singleton  
Vote: Unanimous

**Conditional Use Site Plan CUP-SP-17-12, White Oak Business Park – Lot 12B**

Presenter: Jenny Saldi, Senior Planner

Mayor Williams stated this request was a quasi-judicial hearing to consider a conditional use site plan and asked the Town Attorney to explain the procedures to be followed during the hearing. The Clerk administered the Affirmation of Oath to the following: Jenny Saldi.

Mayor Williams asked the Council to disclose any ex parte communications regarding this project. Hearing none, he opened the public hearing and asked Ms. Saldi to provide the staff report.

Ms. Saldi stated this request was for conditional use site plan approval for an office building with a warehouse. The site is located at 105 Sigma Drive.

Hearing no further comments, Mayor Williams closed the hearing and called for a motion.

Action: Approve CUP-SP-17-12, White Oak Business Park – Lot 12B with one site specific condition: Phases 2, 3 and “possible future development” shall submit a modification to this plan for review and approval prior to issuance of a building permit.

Motion: Marshburn  
Second: Singleton  
Vote: Unanimous

**NEW/OLD BUSINESS**

**General Use Rezoning Z-17-04, 601 Tryon Road**

Presenter: David Bamford, Planning Services Manager

Mr. Bamford presented a request to change zoning of approximately 28 acres from Industrial 1 (I-1) general use to Community Retail (CR) general use.

Action: Adopt Ordinance (2017) 3882

Motion: Singleton  
Second: Behringer  
Vote: Unanimous

#### **UDO-17-01, Various Minor Text Amendments**

Presenter: Jeff Triezenberg, Planning Director

Mr. Triezenberg stated this proposed text amendment is a collection of corrections and clarifications that planning staff have collected over the past two (2) years. In many cases, there is conflicting and/or duplicate language, a change in terminology or a need to clarify long-standing interpretations. In addition, some corrections to the use table are needed to fix errors in items that were carried forward during the last UDO update process.

Action: Adopt Ordinance (2017) 3881

Motion: Kennedy  
Second: Behringer  
Vote: Unanimous

#### **COMMITTEE REPORTS**

Mr. Bridges provided updates from the recent School Board, County Commission, and CAMPO meetings, as well as legislative staffing changes. Mr. Bridges also extended an invitation for elected officials to work on a Habitat for Humanity house on September 30 from 8:00 a.m. to 12:00 p.m.

Council Member Marshburn reported the Law and Finance Committee met on August 29 to discuss the holiday bank for sworn police officers. Further discussion is required before this matter can be brought to a Work Session. Council Member Singleton asked that all of Council receive the information provided for discussion on this matter.

#### **MANAGER REPORTS**

- garner info
- Town Hall Updates – the Ribbon Cutting is scheduled for September 19 at 10:00 a.m. Staff will plan an open house to allow the public to tour the new building.

#### **ATTORNEY REPORTS**

Mr. Anderson stated acquisition of the property located at 607 E. Garner Road would be discussed during the Closed Session.



## **COUNCIL REPORTS**

### Marshburn

- Stated he had received favorable comments regarding the wood panels installed in the Council Chambers.
- Commended Ellis Williams for providing the pole numbers to utility poles that were not working properly. Mr. Dickerson advised this information had been forwarded to the Public Works Department.

### Behringer

- Expressed frustration regarding the lack of progress on the construction of the Rec Center.

### Johns

- Reported a fence on New Rand Road approaching Foley Station was falling down. Enforcement personnel will investigate.
- Asked for an update on the Bainbridge assessments.

### Singleton

- Also expressed frustration regarding the lack of progress on the construction of the Rec Center. Mr. Dickerson advised staff will provide an update at the next meeting.
- Commended Superintendent Merrill for providing information to parents regarding the recent threat of violence at the high school.

### Kennedy

- Suggested asking the Town Attorney to contact the bonding company of the contractor working on the Rec Center and advising them of past events as they may have more impact in moving this project forward.
- Stated he is looking forward to this year's Retreat.

## **CLOSED SESSION:**

Pursuant to per N.C. General Statutes Section 143-318.11(a)(5) "to discuss possible real estate acquisition and the Town's negotiating position regarding such real estate."

Motion: Marshburn  
Second: Johns  
Vote Unanimous

**RETURN TO REGULAR SESSION AND ADJOURNMENT: 9:03 p.m.**

Town of Garner  
Town Council Meeting  
Agenda Form

Meeting Date: October 2, 2017		
Subject: Nuisance Abatements		
Location on Agenda: Consent		
Department: Finance		
Contact: Pam Wortham, Finance Director		
Presenter: Pam Wortham, Finance Director		
Brief Summary:  Resolution declaring certain delinquent nuisance abatements as a lien on property. This resolution authorizes Wake County to add these abatement costs to Wake County property tax bills.		
Recommended Motion and/or Requested Action: Adopt Resolution (2017) 2333		
Detailed Notes:		
Funding Source: N/A		
Cost:	One Time: <input type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
Manager's Comments and Recommendations:  N/A		
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	PW	
Finance Director:	PW	
Town Attorney:		
Town Manager:	RD	
Town Clerk:		

Return to:  
Stella Gibson  
Town of Garner  
900 7<sup>th</sup> Avenue  
Garner, NC 27529

### **RESOLUTION NO. (2017) 2333**

#### **A RESOLUTION ASSESSING THE COST OF ABATEMENT AGAINST THE PROPERTY ON WHICH THE NUISANCE EXISTED**

WHEREAS, the Town Council of the Town of Garner, pursuant to Chapter 160A of the North Carolina General Statutes and Chapter 6, Section 23 of the Town Code of the Town of Garner Ordinances has the authority to prevent, abate and declare unlawful nuisances and to make the cost of said abatement a lien against the premises where the nuisances existed, said liens to be collected in the nature of property taxes; and,

WHEREAS, the Town of Garner has abated nuisances on the below referenced properties in accordance with the Town Code referred to and has been unable to recover the abatement costs from the stated property owners; and,

WHEREAS, pursuant to North Carolina General Statutes 160A-193 the costs of the abatement involved with the abatement as well as the expenses of the action are a lien on the premises in the nature of a tax, which pursuant to North Carolina General Statutes 105-365.1 can be collected by a tax collector using the remedies provided by law;

NOW, THEREFORE BE IT RESOLVED THAT THE TOWN COUNCIL OF THE TOWN OF GARNER hereby confirms the cost of the abatement of the nuisances set out herein, pursuant to the General Statutes above referenced, confirms the same as liens against the premises, and requests the Wake County Tax Collector to collect the same in the nature of unpaid taxes:

LOCATION	PROPERTY OWNER(S)	REAL ESTATE ID	COST
0 Center ST	Joel J. Parker Heirs	273766	\$ 259.26
805 Clifton ST	Matthew Goode	13803	257.82
1103 Edgebrook DR	John Graziano	88444	163.63
320 W. Garner RD	Willie Woods Heirs	79561	338.89
111 Johnson ST	Patsy Lowe	42846	320.89
113 Johnson ST	Patsy Lowe	42847	320.89
322 Montague ST	Russell Stanley	25862	169.63
3740 Randell RD	Victor Rumbo	58383	320.64
300 Virginia AVE	James Leach	52207	373.51
222 Weston RD	Theodor Thomas	32789	338.89

This resolution shall become effective upon adoption, recorded at the Wake County Registry and a copy thereof forwarded to the Tax Collector for Wake County.

Duly adopted this the 2<sup>nd</sup> day of October, 2017.

(Town Seal)

\_\_\_\_\_  
Ronnie S. Williams, Mayor

ATTEST:

\_\_\_\_\_  
Stella L. Gibson, Town Clerk

Town of Garner  
Town Council Meeting  
Agenda Form

Meeting Date: October 2, 2017			
Subject: Duke Energy Easement at Town Hall for underground line installation			
Location on Agenda: Consent			
Department: Engineering			
Contact: Tony Chalk, Town Engineer			
Presenter: Tony Chalk, Town Engineer			
Brief Summary:  In order to relocate their lines underground, Duke Energy is requesting easements from the Town for this purpose.			
Recommended Motion and/or Requested Action: Grant Duke Energy Progress the requested easements			
Detailed Notes:			
Funding Source:			
Cost:	One Time:	Annual:	No Cost:
Manager's Comments and Recommendations:  N/A			
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>			
Agenda Form Reviewed by:	Initials:	Comments:	
Department Head:	TC		
Finance Director:			
Town Attorney:			
Town Manager:	RD		
Town Clerk:			

EASEMENT

NORTH CAROLINA  
WAKE COUNTY

Prepared By: Sheila D. Wiggins  
Return To: Duke Energy Progress, LLC  
Attn: Sheila Wiggins  
9920 Fayetteville Rd.  
Raleigh, NC 27603

THIS EASEMENT ("Easement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
("Effective Date"), from TOWN OF GARNER, ("GRANTOR," whether one or more), to Duke Energy Progress, LLC, a  
North Carolina limited liability company ("DEP"); its successors, licensees, and assigns.

WITNESSETH:

THAT GRANTOR, for and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant unto DEP, its successors, lessees, licensees, transferees, permittees, apportionees, and assigns, the perpetual right, privilege, and easement to go in and upon the land of GRANTOR situated in St. Marys Township, described as follows: containing 6.66 acres, more or less, and being the lands to Town of Garner from: (1) The Fairfax Corporation, dated December 7, 1973, recorded in Deed Book 2208 Page 359 and being Lot 13 on a plat entitled "Map of Forest Hills Shopping Center", dated April 23, 1979, recorded in Map Book 1979 Page 331; (2) Lord of Life Lutheran Church, dated November 30, 1989, recorded in Deed Book 4611 Page 779, and being the 1.596 acre lot shown on a plat entitled "Lords of Life Lutheran Church", dated March 20, 1987, recorded in Map Book 1989 page 1391, and: (3) Memorandum of Agreement with Lord of Life Lutheran Church, dated January 4, 1990, recorded in Deed Book 4633 Page 888 for the 1.012 acre lot shown on a plat entitled "Lords of Life Lutheran Church", dated March 20, 1987, recorded in Map Book 1989 Page 1391, all of Wake County Registry (the "Property"), LESS AND EXCEPT any prior out-conveyances, and to construct, reconstruct, operate, patrol, maintain, inspect, repair, replace, relocate, add to, modify and remove electric and/or communication facilities thereon including but not limited to, supporting structures such as poles, cables, wires, underground conduits, enclosures/transformers, vaults and manholes and other appurtenant apparatus and equipment (the "Facilities") within an easement area being ten (10) feet wide, together with an area ten (10) feet wide on all sides of the foundation of any DEP enclosure/transformer, vault or manhole (the "Easement Area"), for the purpose of transmitting and distributing electrical energy and for communication purposes of DEP and Incumbent Exchange Carriers. The center line of the Facilities shall be the center line of the Easement Area.

The right, privilege and easement shall include the following rights granted to DEP: (a) ingress and egress over the Easement Area and over adjoining portions of the Property (using lanes, driveways and paved areas where practical as determined by DEP); (b) to relocate the Facilities and Easement Area on the Property to conform to any future highway or street relocation, widening or improvement; (c) to trim and keep clear from the Easement Area, now or at any time in the future, trees, limbs, undergrowth, structures or other obstructions, and to trim or clear dead, diseased, weak or leaning trees or limbs outside of the Easement Area which, in the opinion of DEP, might interfere with or fall upon the Facilities; and (d) all other rights and privileges reasonably necessary or convenient for DEP's safe, reliable and efficient installation, operation, and maintenance of the Facilities and for the enjoyment and use of the Easement Area for the purposes described herein.

Notwithstanding anything to the contrary above, it is understood and agreed that the EASEMENT herein granted is for the conversion of existing overhead facilities to underground facilities on the above-referenced lands and generally runs along with and parallel to GRANTORS eastern property line and the western right-of-way edge of Aversboro Road.

TO HAVE AND TO HOLD said rights, privilege, and easement unto DEP its successors, licensees, and assigns, forever, and GRANTOR, for itself, its heirs, executors, administrators, successors, and assigns, covenants to and with DEP that GRANTOR is the lawful owner of the Property and the Easement Area in fee and has the right to convey said rights and Easement.

IN WITNESS WHEREOF, this EASEMENT has been executed by GRANTOR and is effective as of the Effective Date herein..

TOWN of GARNER

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

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, Clerk

(Affix Official Seal)

NORTH CAROLINA, \_\_\_\_\_ COUNTY

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, North Carolina, certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that he/she is \_\_\_\_\_ Clerk of the TOWN OF GARNER, and that by authority duly given and as the act of said TOWN, the foregoing EASEMENT was signed in its name by its Mayor, sealed with its official seal, and attested by \_\_\_\_\_ self as its \_\_\_\_\_ Clerk.

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

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

My commission expires: \_\_\_\_\_

Town of Garner  
Town Council Meeting  
Agenda Form

Meeting Date: October 2, 2017		
Subject: Annexation Case # ANX-17-06, Martin Marietta		
Location on Agenda: Consent		
Department: Planning		
Contact: David Bamford, AICP; Planning Services Manager		
Presenter: David Bamford, AICP; Planning Services Manager		
Brief Summary:  This is a request for annexation of 2500 Waterfield Drive, a Martin Marietta office / warehouse development that was approved on July 6, 2017 (SUP-SP-17-06).		
Recommended Motion and/or Requested Action: Adopt Resolution (2017) 2334		
Detailed Notes:		
Funding Source:		
Cost:	One Time: <input type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
Manager's Comments and Recommendations:  N/A		
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	JT	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		



## Planning Department Memorandum

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**TO:** Mayor and Town Council

**FROM:** David Bamford, AICP; Planning Services Manager

**SUBJECT:** **ANX-17-06: Martin Marietta**

**DATE:** October 2, 2017

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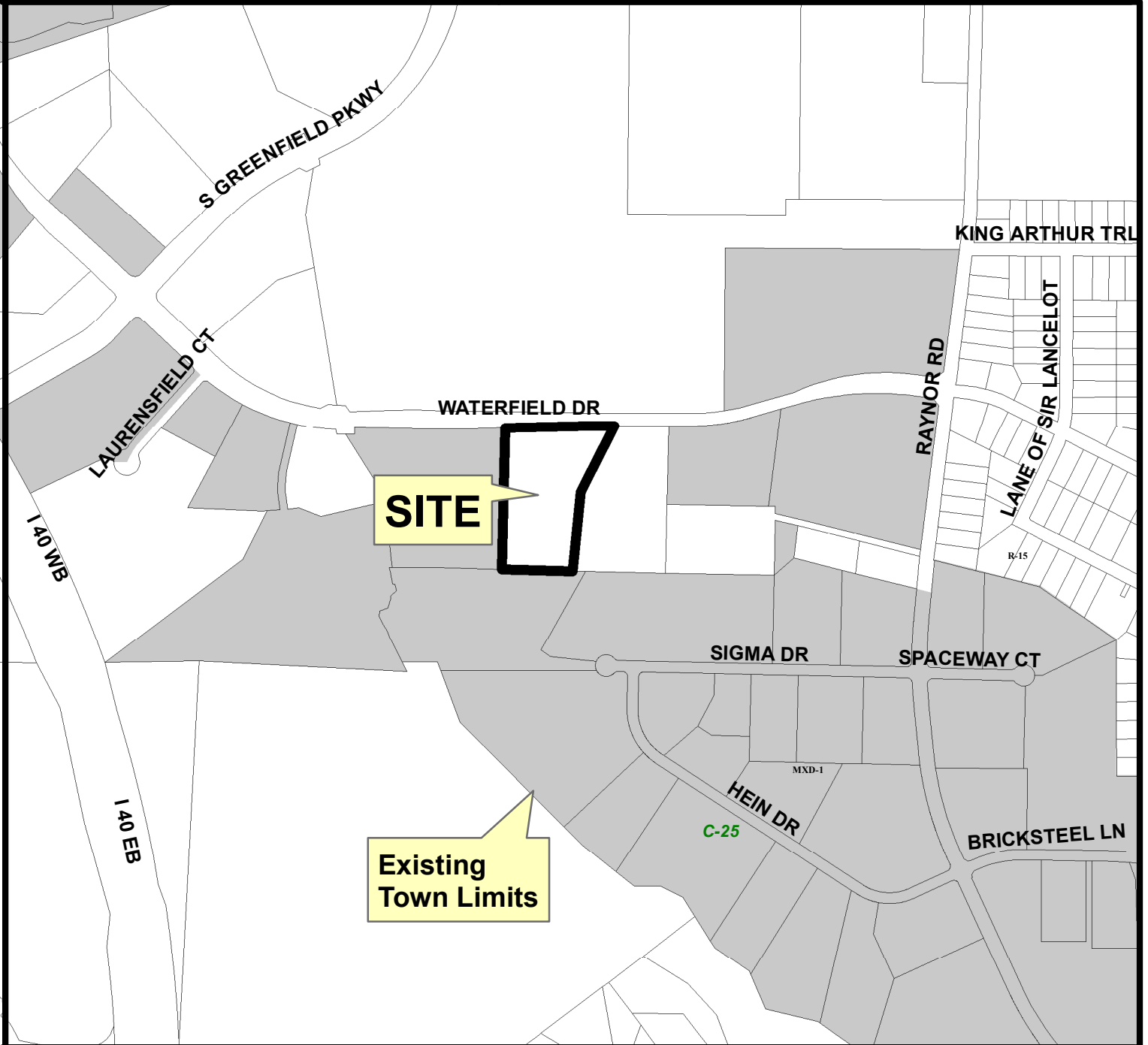
ANNEXATION APPLICATION:	ANX 17-06
OWNER:	Martin Marietta
CONTIGUOUS / SATELLITE:	Contiguous
LOCATION OF PROPERTY:	2500 Waterfield Drive (White Oak Business Park)
WAKE COUNTY PIN #:	1730125497
REAL ESTATE ID #:	0232219
AREA:	5.76 acres
ZONING:	MXD-1 C25
ASSOCIATED DEVELOPMENT PLAN:	Martin Marietta office / warehouse (SUP SP 17-02 approved July 6, 2017)
RECOMMENDATION:	Set Public Hearing for November 6, 2017

**Town of Garner  
Planning Department**

**Annexation**

**ANX 17-06**

0 400 800  
Feet



Project: Martin Marietta  
Property Location: 2500 Waterfield Drive  
Property Owner: Martin Marietta  
Area: 5.76  
Pin: 1730125497

RESOLUTION NO. (2017) 2334

**RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION  
PURSUANT TO G.S. 160A-31, AS AMENDED,**

WHEREAS, a petition requesting annexation of the area described herein has been received; and

WHEREAS, the Town Council has by resolution directed the Town Clerk to investigate the sufficiency thereof; and

WHEREAS, certification by the Town Clerk as to the sufficiency of said petition has been made;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Garner, North Carolina:

Section 1. That a public hearing on the question of annexation of the area described herein will be held at 900 7th Avenue (Garner Town Hall) 7:00 p.m. on the 6<sup>th</sup> day of November, 2017.

Section 2. The area proposed for annexation is described as follows:

(ANX-17-06) Martin Marietta – 5.76 acres  
2500 Waterfield Drive, Garner 27529

Section 3. Notice of said public hearing shall be published in the *Garner-Cleveland Record*, a newspaper having general circulation in the Town of Garner, at least ten (10) days prior to the date of said public hearing.

Duly adopted this 2<sup>nd</sup> of October, 2017.

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Ronnie S. Williams, Mayor

ATTEST: \_\_\_\_\_  
Stella L. Gibson, Town Clerk

Town of Garner  
Town Council Meeting  
Agenda Form

Meeting Date: October 2, 2017		
Subject: Annexation Case # ANX-17-07, Bryan Road		
Location on Agenda: Consent		
Department: Planning		
Contact: David Bamford, AICP; Planning Services Manager		
Presenter: David Bamford, AICP; Planning Services Manager		
Brief Summary:  This is a request for annexation of 7974 Bryan Road. The owner is requesting public water connection for a single-family house.		
Recommended Motion and/or Requested Action: Adopt Resolution (2017) 2335		
Detailed Notes:		
Funding Source:		
Cost:	One Time: <input type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
Manager's Comments and Recommendations: N/A		
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	JT	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		

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## Planning Department Staff Report

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**TO:** Mayor and Town Council

**FROM:** Alison Jones, Planner II

**SUBJECT:** *Conditional Use Site Plan Request - CUP-SP-17-11, Cheer Extreme*

**DATE:** October 2, 2017

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### I. PROJECT AT A GLANCE

**Project Number:** CUP-SP-17-11, Cheer Extreme

**Applicant:** Randall Helton

**Owner:** Cheer Extreme Raleigh, NC

**Plan Prepared by:** Blackburn Consulting Engineering

**General Description -**

**Proposed Use:** Gym/ Entertainment

**Project Location:** 1601 Garner Station Blvd. – Lincoln Park South

**Wake Count PIN(s):** 1730-18-6747

**Zoning Classification:** Service Business (SB) within the US 70/401 Overlay District Conditional Use District C-25

**Key Meeting Dates -**

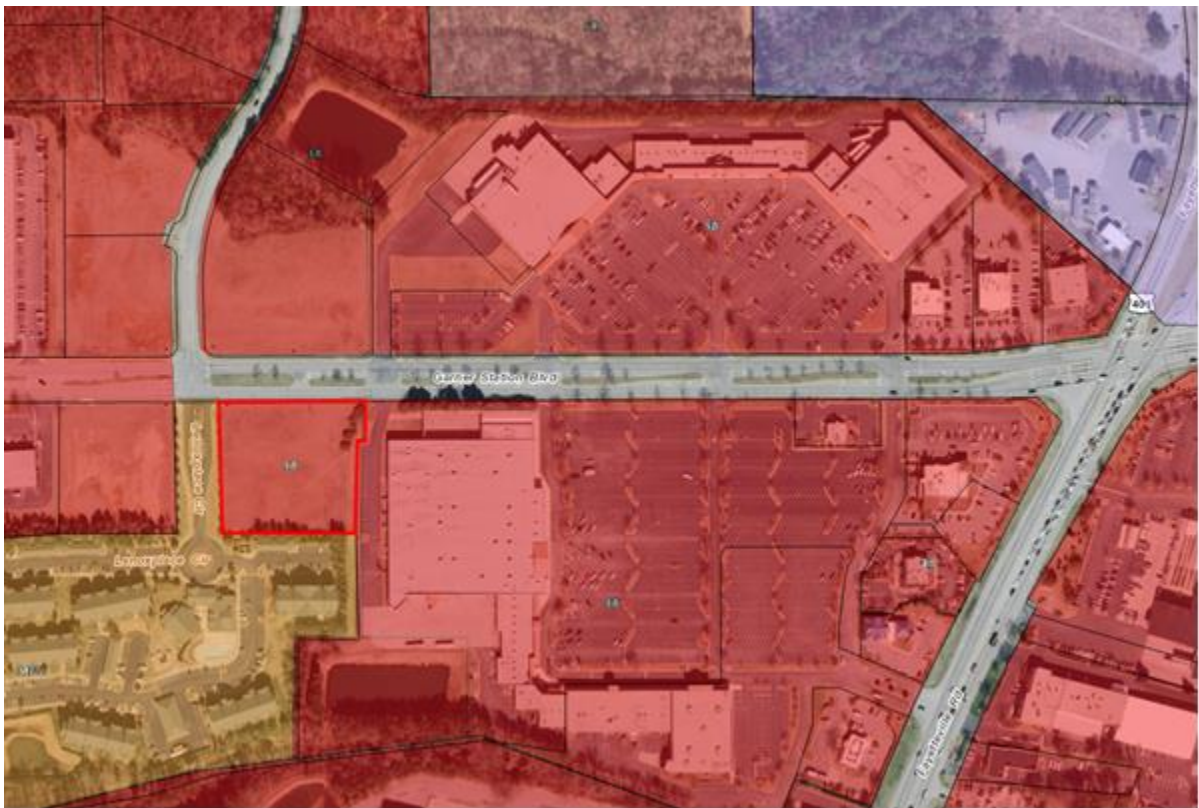
**Planning Commission:** September 11, 2017

**Town Council Public Hearing:** October 02, 2017

## II. ADJACENT ZONING AND LAND USE

<b>North:</b>	Service Business (SB)	Undeveloped
<b>South:</b>	Multi-Family 2 (MF2)	Multi-family apartment homes
<b>East:</b>	Service Business (SB)	Retail Sales
<b>West:</b>	Service Business (SB)	Undeveloped and flex office/ warehouse

**Overall Neighborhood Character:** Commercial area around the 70 and 401 split – North/  
South Station



### III. PROJECT DATA

<b>Acreage:</b>	2.05 acres
<b>Building Size:</b>	New construction of 18,480sqft one-story building for cheerleading training facility.
<b>Building Material and Color:</b>	The building will be constructed with a red-brown brick and metal awnings over the entrance doors. The building materials meet the design guidelines set forth in the unity of development plan for Lincoln Park.
<b>Landscape and Buffer Requirements:</b>	<p>The plan as proposed meets the requirements of the Landscape Ordinance.</p> <ul style="list-style-type: none"><li>• <b>Tree Cover:</b> Requirements are met with existing vegetation and proposed vegetation.</li><li>• <b>Street Buffers:</b> A 15-foot street buffer is shown as required adjacent to Garner Station Blvd.</li><li>• <b>Perimeter Buffers:</b> A 15-foot perimeter buffer is required along the east, west and south property lines. The Planning Director has granted a reduction, in the east and west perimeter buffers, to 11 feet, as permitted by Section 7.1 P.1, due to an existing utility easement on the east property line.</li></ul>
<b>Parking Spaces:</b>	<p><b>Number</b> - Parking is based on 1 space for every 3 persons that the facility is designed to accommodate when fully utilized, plus 1 space per 200 sq ft of gross floor area used in a manner not susceptible to such calculation.</p> <ul style="list-style-type: none"><li>• <u>Required</u>: 58 (3 accessible)</li><li>• <u>Proposed</u>: 76 (3 accessible)</li></ul>
<b>Floodplain:</b>	This site does not contain a FEMA designated floodplain.
<b>Fire Protection:</b>	The Inspections Department has reviewed the plan for fire protection and given their approval.
<b>Infrastructure:</b>	<b>Stormwater Management</b> This project is subject to nitrogen and water quantity requirements. The developer is proposing a storm water wetland to handle detention of the 1, 10 and 25-year storm events along with reducing nitrogen. Payment to a private mitigation bank will also be required to bring the overall project

into compliance with Neuse Rules.

**Water/Sewer** - Connections to public water and sewer proposed.

**Transportation/Access** – Direct access to the site provided with one driveway off Garner Station Blvd.

#### **IV. CONSISTENCY WITH ADOPTED TOWN PLANS AND POLICIES**

##### **2006 Comprehensive Growth Plan:**

This site falls within the Regional Center surrounding the US 70/401 split which includes recommended uses such as large-scale retail, office, and services targeting a regional population as well as high-density residential. Since cheer instruction is a specialized private gym that targets a population beyond immediate neighborhoods from across Garner, southern Wake County and southern Raleigh; staff finds that the project is consistent with the Comprehensive Growth Plan.

##### **2010 Garner Transportation Plan:**

The current transportation plan recognizes Garner Station Boulevard being a local road that serves a collector function allowing direct thoroughfare access to US 401 and indirect thoroughfare access to Tryon Road via Junction Boulevard. A sidewalk corridor is also recommended along Garner Station Boulevard from Junction Boulevard to Mechanical Boulevard and estimated to cost \$284,000 for one side. Since there are no further roadway recommendations for Garner Station Boulevard and sidewalk has been provided across the front of the property, staff finds that the project is consistent with the Garner Transportation Plan.

##### **Parks & Recreation, Open Space & Greenways Master Plan:**

A review of the Parks and Recreation, Open Space and Greenways Master Plan revealed no plan recommendations in the project area; therefore, this project, as proposed, may be considered to be consistent with the Parks & Recreation, Open Space & Greenways Master Plan.

##### **Unified Development Ordinance Regulations:**

After sufficient review and plan revisions, staff finds that this project, as now proposed, is consistent with the regulations of the Unified Development Ordinance.

#### **V. PLANNING COMMISSION RECOMMENDATION**

Having reviewed the plans at their meeting on September 11, 2017, and having accepted staff statements regarding plan consistency as their own and being detailed in Section IV of this report, the Planning Commission voted unanimously to recommend approval of CUP-SP-17-11, Cheer Extreme, with one site specific condition listed on the attached permit.



**VI. COUNCIL MOTION**

**Approve:** I move that the Council accept the staff statements regarding plan consistency in Section IV of this report as our own and find the application meets the 10 permit criteria in Section 3.14.D. and therefore approve Conditional Use Permit CUP-SP-17-11, Cheer Extreme, with one site specific condition listed on the attached permit.

**Optional (conditions – mark, fill in and read all that applies):** ...and including the following reasonable conditions necessary to address the impacts of the proposed development on:

- \_\_\_\_ adjoining property,
- \_\_\_\_ the existing natural and man-made features of the site,
- \_\_\_\_ off-site and on-site traffic flow,
- \_\_\_\_ public utilities,
- \_\_\_\_ such other public services or goals of the Comprehensive Growth Plan or the Transportation Plan that may be negatively impacted by the proposed development (*enumerate plan services/goals*):  
\_\_\_\_\_  
\_\_\_\_\_

**Condition #1:**

\_\_\_\_\_

**Condition #2:**

\_\_\_\_\_

**Condition #3, (etc.):**

\_\_\_\_\_

or

**Deny:** I move that the Council find the application does not meet one or more of the criteria in Section 3.14.D. for granting a special use permit,

***(Check and read all that apply – include stated reason/evidence)***

- \_\_\_\_ 1. The proposed use will endanger the public health or safety  
*because/as evidenced by* \_\_\_\_\_;
- \_\_\_\_ 2. The proposed use will substantially injure the value of adjoining or abutting property;  
*because/as evidenced by* \_\_\_\_\_;

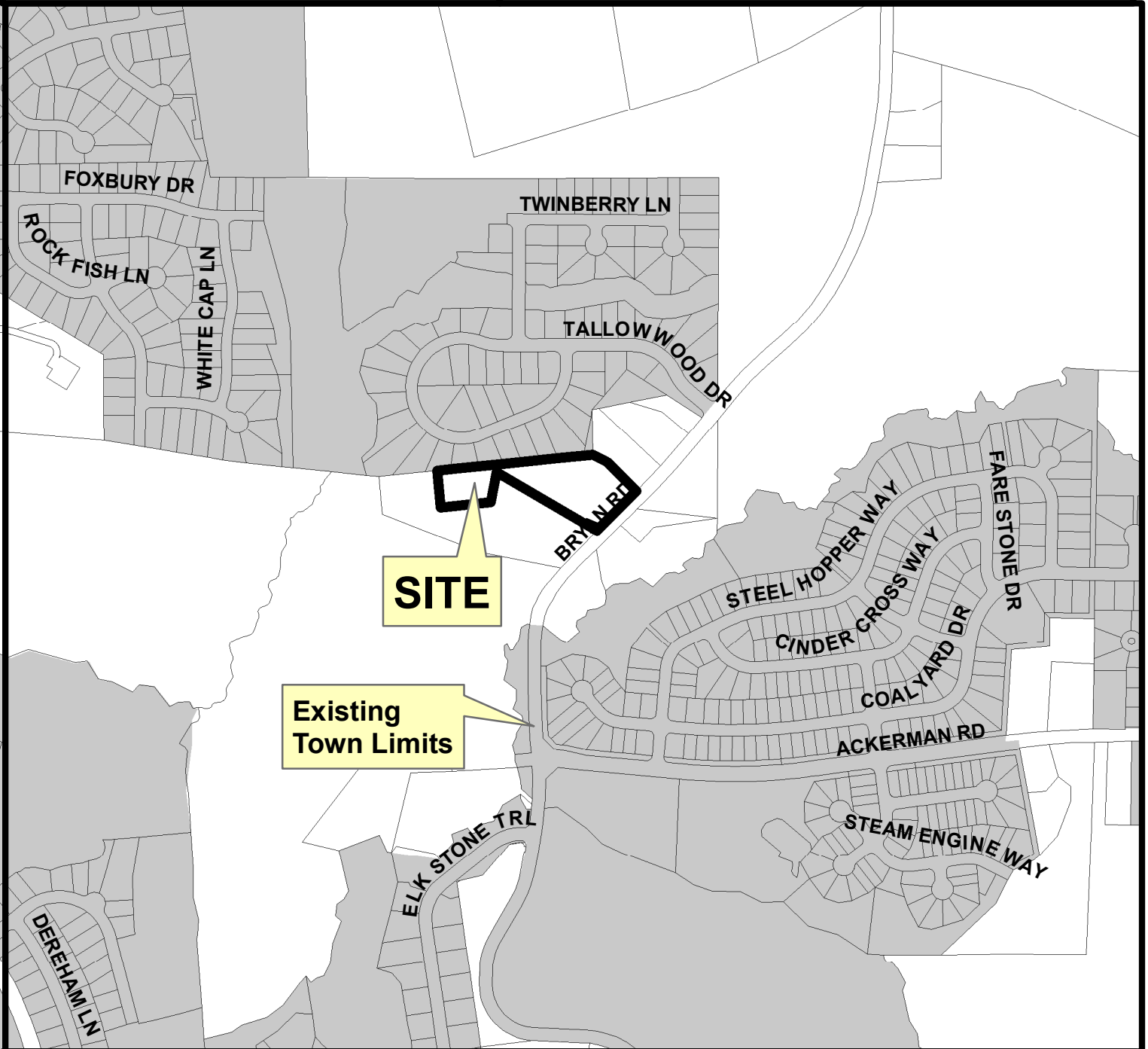
- \_\_\_ 3. The proposed use does not comply with all applicable provisions of this UDO;  
*because/as evidenced by* \_\_\_\_\_;
- \_\_\_ 4. If completed as proposed, the development will not comply with all requirements of this section;  
*because/as evidenced by* \_\_\_\_\_;
- \_\_\_ 5. The proposed use will not be compatible with the proximate area in which it is to be located;  
*because/as evidenced by* \_\_\_\_\_;
- \_\_\_ 6. The proposed use is inconsistent with the Transportation Plan, other relevant adopted plans and policies, and the stated purpose and intent of this UDO (the fact that the use is permitted under certain circumstances in the zoning district creates a rebuttable presumption that the proposed use is in harmony with the intent of the UDO as relates to the general zoning plan);  
*because/as evidenced by* \_\_\_\_\_;
- \_\_\_ 7. The proposed use is incompatible with adjacent uses in terms of building scale, site design, buffering and screening, operating characteristics (hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts);  
*because/as evidenced by* \_\_\_\_\_;
- \_\_\_ 8. Any significant adverse impacts resulting from the use will not be mitigated or offset, including impacts on the natural environment;  
*because/as evidenced by* \_\_\_\_\_;
- \_\_\_ 9. The public safety, transportation and utility facilities and services will not be available to serve the subject property while maintaining sufficient levels of service for existing development;  
*because/as evidenced by* \_\_\_\_\_;
- \_\_\_ 10. Adequate assurances of continuing maintenance have not been provided;  
*because/as evidenced by* \_\_\_\_\_;

and therefore, deny Conditional Use Permit CUP-SP-17-11, Cheer Extreme.

**Town of Garner  
Planning Department**

**Annexation  
ANX 17-07**

0 400 800  
Feet



Project: Pezza Properties LLC  
Property Location: 7974 Bryan Road  
Property Owner: Pezza Properties LLC  
Area: 3.77  
Pin: 1720008293

RESOLUTION NO. (2017) 2335

**RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION  
PURSUANT TO G.S. 160A-31, AS AMENDED,**

WHEREAS, a petition requesting annexation of the area described herein has been received; and

WHEREAS, the Town Council has by resolution directed the Town Clerk to investigate the sufficiency thereof; and

WHEREAS, certification by the Town Clerk as to the sufficiency of said petition has been made;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Garner, North Carolina:

Section 1. That a public hearing on the question of annexation of the area described herein will be held at 900 7th Avenue (Garner Town Hall) 7:00 p.m. on the 6<sup>th</sup> day of November, 2017.

Section 2. The area proposed for annexation is described as follows:

(ANX-17-07) Pezza Properties LLC – 3.7 acres  
7974 Bryan Road, Garner 27529

Section 3. Notice of said public hearing shall be published in the *Garner-Cleveland Record*, a newspaper having general circulation in the Town of Garner, at least ten (10) days prior to the date of said public hearing.

Duly adopted this 2<sup>nd</sup> of October, 2017.

---

Ronnie S. Williams, Mayor

ATTEST: \_\_\_\_\_  
Stella L. Gibson, Town Clerk

Town of Garner  
Town Council Meeting  
Agenda Form

Meeting Date: October 2, 2017		
Subject: New Position Title - Principal Planner		
Location on Agenda: Consent		
Department: Planning		
Contact: Jeff Triezenberg or BD Sechler		
Presenter: N/A		
Brief Summary:  Request to add title and position of Principal Planner to Town's classification plan. Need for this level of position within Planning outlined in May 2017 organizational memo from Planning Director.		
Recommended Motion and/or Requested Action: Approve the addition of the Principal Planner, Grade 28, to the Town's list of approved Job Titles/Roles		
Detailed Notes: During the budget process, Council reviewed the need for a Principal Planning title in the Planning Department. A memo dated May 18, 2017 was submitted to Council providing context and justification. Subsequently, the position's job description has been written and approved and the Grade level of 28 reviewed, selected and approved for the role. While this is a new position title, it is converting the existing title of senior planner and the existing, approved headcount. This request is not an add to existing headcount. The May 18, 2017 memo is attached for your review.		
Funding Source:		
Cost:	One Time: <input type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
Manager's Comments and Recommendations: Change will put us more in line with the profession and better define the position for the duties performed.		
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	JT/BDS	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		

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## MEMORANDUM

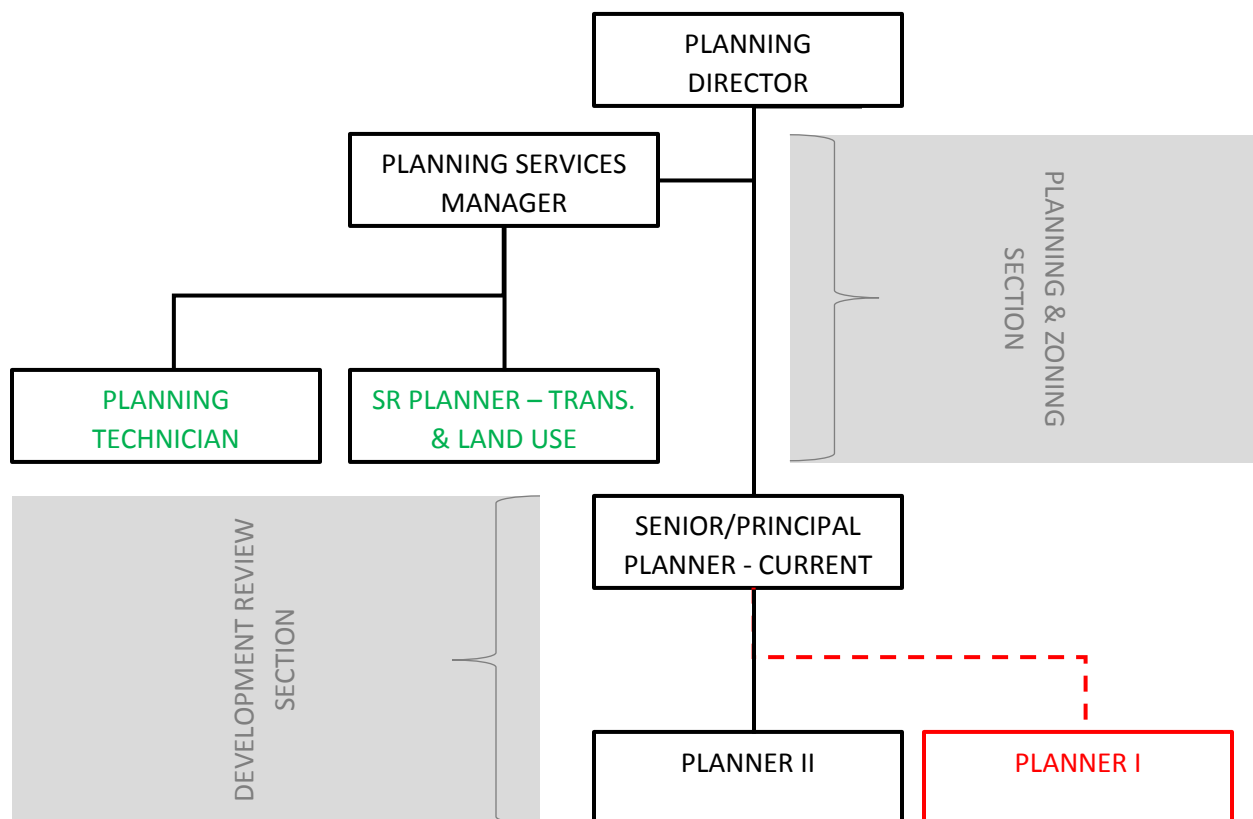
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**TO:** Town of Garner Budget Team  
**FROM:** Jeff Triezenberg, Interim Planning Director  
**RE:** *Personnel Request Decision Package – Planner I*  
**DATE:** May 18, 2017

---

The Planning Department respectfully requests consideration of the following reorganization plan that would allow for the re-assignment of existing full-time employees (FTEs, *in green*) to emerging needs within the department and the hiring of one additional FTE (*in red*) to address a growing volume of work within the department related to development review while also providing a professional career ladder within that section.



## Planning & Zoning Section

*This reorganization into new “Sections” would effectively replace the use of “Divisions” within the Planning Department and are proposed strictly for organizational purposes. This would piggyback on previous discussions regarding the elimination of separate budgeting for the current “Divisions”.*

- **Planning Services Manager (previously Assistant Planning Director):** This position would remain largely the same as the previous Assistant Planning Director position and would actively manage the two FTE positions underneath it as part of a “Planning and Zoning Section” The name change is simply a result of a recommendation from the MAPS group that is also consistent with national American Planning Association (APA) guidelines. The pay grade (**Grade 29**) and any adjustment (current recommendation is **Grade 30**) would remain the same, and emphasis will be placed on promoting from within the department. This position would also maintain the task of stepping into the Director’s roles in the Director’s absence.
- **Senior Planner – Transportation and Land Use:** This revised title represents a re-tooled Senior Planner – Long-Range position. This position would remain at **Grade 27** and will continue to provide analysis for rezoning cases, but will be re-framed to focus on the interplay and coordination of land use and transportation decisions. Emerging needs for this position include knowledgeable review and analysis of Traffic Impact Studies to ensure the Town’s transportation needs are being met and to coordinate the pursuit of transportation project funds through the Capital Area Metropolitan Planning Organization. If this position is backfilled and advertised due to promotion to Planning Services Manager, it is anticipated that this position would have an FTE in place September 1, 2017. The expected salary would be near the 30% above base allowed for approval by management in order to attract someone possessing the specific transportation planning skills and education desired.
- **Planning Technician:** This title and position would replace the current title and position of Senior Administrative Support Specialist – Planning. It has been proposed that these two positions would potentially be the same pay grade (**Grade 20**). Emphasis here would be on re-assignment of duties related to the administration and issuance of zoning permits for which the current FTE is qualified to undertake as well as serving as the intake coordinator for all plans and permits. Some administrative support duties would carry over but would be directly related to the fundamental operations of a planning department.

## Development Review Section

- **Senior Planner – Current:** This position would remain the same apart from taking on the position of Planner II and Planner I as direct reports. Without the addition of a Planner I, the Senior Planner – Current and Planner II would remain as direct reports to the Planning Director. If the Planner I position is approved, the Senior Planner (**Grade 27**)– the current position would likely need to be re-classified as a Principal Planner (likely a pay grade or two above Senior Planner, but below the Planning Services Manager – *proposed Grade 30*) to reflect the added responsibility of having positions reporting directly to them. If this position is backfilled and advertised due to promotion to Planning Services Manager, it is anticipated that this position would have an FTE in place September 1, 2017. The expected salary would be near the 30% above base allowed for approval by management in order to attract someone possessing the specific development review skills and education desired.

- **Planner II:** This position would remain as is in terms of duties and pay grade (**Grade 25**). The Department has recently filled this position after a successful hiring process.
- **Planner I:** This would be a new position with duties similar to that of the Planner II, but with an emphasis on entry level duties that someone with very limited experience would be expected to be able to successfully perform within the probationary period. The expected pay grade is **Grade 23** and the expected pay rate would be the average of the Developmental Segment for that grade. If approved, it is expected that this position would have an FTE in place October 1, 2017.

### Planning Director

Whether due to promotion or outside hire, it is anticipated that the incoming director will have a salary significantly below that of the long-time outgoing director. Director duties are expected to stay the same but will have fewer direct reports due to the reorganization. The pay grade is currently **Grade 35** with a recommendation of **Grade 36**. The expected pay rate would fall between the upper end of the Developmental Segment and the lower end of the Market Segment.

### Justification of Request

#### **New departmental tasks:**

- **Construction Document Review:** This position will allow those within the proposed Development Review Section the additional time needed to devote to the Construction Document review process (*something Planning is not currently involved in*) to better ensure that lighting, landscaping and other site plan items are not being significantly shifted due to changes being requested by the Town's Engineering Department or the City of Raleigh's Public Utilities Department. Changes to plans during construction document review often leads to difficulties and delays in the Planning Department granting Certificates of Occupancy at the closeout of a project as well as being potentially detrimental to public trust when those changes affect areas directly adjacent to adjoining properties. A current example (*one of many*) involves the new office complex on Timber Drive East. Great care was taken during the initial planning stages to get the developer in discussions with neighbors on Hillandale Lane regarding tree save areas, exact locations of property lines, etc. Subsequent discussions related to the details of providing sewer service to the property resulted in the elimination of some tree save areas and calls to the Planning Department from neighbors complaining about the loss of trees they understood to be protected and saved.
- **Traffic Impact Analysis (TIA) Review:** This position will allow for the Development Review Section to assume several duties currently being performed by the Senior Planner – Long Range and allow the transformation of that position to a Senior Planner – Transportation and Land Use. New duties for the Senior Planner – Transportation and Land Use will include the detailed review of developer submitted TIA's to ensure that the Town's interests are adequately addressed. Duties to be transferred to the Development Review Section include addressing and annexation.



**Increasing volume of major development review items:**

As evidenced by the table below, the Planning Department has seen steady and increasing growth in the numbers of major plan review items since 2013. In just three years, ***the total number of major plan review cases has increased by 100%*** with no corresponding increase in staffing levels apart from the addition of the position of Assistant Planning Director/Planning Services Manager who has assisted in said reviews, but has not been a primary focus of duty. The Planner I position will allow the Senior/Principal Planner and Planner II to devote most, if not all, of their time to these reviews. Less complex reviews for sign permits, master sign plans and building permits, along with reassigned duties previously mentioned will constitute full-time duties for the position of Planner I.

TYPE OF MAJOR PLAN REVIEW	2012	2013	2014	2015	2016
CUP/SUP SITE PLANS	20	21	27	42	49
SUBDIVISION PLANS	1	3	5	6	10
SITE PLANS	13	18	19	17	25
TOTALS	34	42	51	65	84

**Minimal increase in cost to overall department budget:**

- Based on a rough figures, the Planning Department believes that due to retirements and time periods devoted to the hiring process where FTE's are not on the Town's payroll, this re-organization and addition of a Planner I may be achieved without any or minimal impact to the current salary budget.

Town of Garner  
Town Council Meeting  
Agenda Form

Meeting Date: October 2, 2017		
Subject: Conditional Use Site Plan - CUP-SP-17-11 Cheer Extreme		
Location on Agenda: Public Hearings		
Department: Planning		
Contact: Alison Jones, Planner II		
Presenter: Alison Jones, Planner II		
Brief Summary:  Blackburn Consulting is requesting conditional use site plan approval for a gymnasium. The site is located at 1601 Garner Station Blvd. and can be further identified as Wake County PIN 1701-18-6747.		
Recommended Motion and/or Requested Action: Approve Conditional Use Site Plan CUP-17-11		
Detailed Notes: Please see Council Motion Worksheet for recommended language in meeting statutory regulations.		
Funding Source:		
Cost:	One Time: <input type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
Manager's Comments and Recommendations: N/A		
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	JT	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		

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## Planning Department Staff Report

**TO:** Mayor and Town Council  
**FROM:** Alison Jones, Planner II  
**SUBJECT:** *Conditional Use Site Plan Request - CUP-SP-17-11, Cheer Extreme*  
**DATE:** October 2, 2017

### I. PROJECT AT A GLANCE

**Project Number:** CUP-SP-17-11, Cheer Extreme  
**Applicant:** Randall Helton  
**Owner:** Cheer Extreme Raleigh, NC  
**Plan Prepared by:** Blackburn Consulting Engineering  
**General Description -**  
**Proposed Use:** Gym/ Entertainment  
**Project Location:** 1601 Garner Station Blvd. – Lincoln Park South  
**Wake Count PIN(s):** 1730-18-6747  
**Zoning Classification:** Service Business (SB) within the US 70/401 Overlay District Conditional Use District C-25  
**Key Meeting Dates -**  
**Planning Commission:** September 11, 2017  
**Town Council Public Hearing:** October 02, 2017



# Town of Garner Planning Department

## Conditional Use Permit CUP-SP-17-11

0 200 400  
Feet



NC OneMap, NC Center for Geographic Information and Analysis, NC 911 Board

Project: Lincoln Park South  
Applicant: Randall Helton  
Owner: Cheer Extreme Raleigh LLC  
Location: 1601 Garner Station  
Pin: 1701186747

Proposed Use: Entertainment / Gym  
Current Zoning: SB C20  
Acreage: 2.048  
Overlay: None

**TOWN OF GARNER  
CUP-SP-17-11 – CHEER EXTREME  
CONDITIONAL USE PERMIT**

<b>APPLICANT</b>	Cheer Extreme Raleigh, LLC. Attn: Randall Helton 839 Historian Street Raleigh, NC 27603
<b>LOCATION</b>	1601 Garner Station Blvd
<b>USE</b>	Gymnasium
<b>DATE ISSUED</b>	October 2, 2017

**I. COMPLETENESS OF APPLICATION**

The application is complete.

**II. COMPLIANCE WITH ORDINANCE REQUIREMENTS**

The application complies with all applicable requirements of the Unified Development Ordinance.

**III. GRANTING THE APPLICATION**

The application is granted, subject to the following conditions:

- 1) The applicant shall complete the development strictly in accordance with the plans submitted to and approved by this Town Council, a copy of which is filed in the Town Hall. Any deviations from or changes in these plans must be pointed out specifically to the administrator in writing and specific written approval obtained as provided in the Unified Development Ordinance.
- 2) If any of the conditions affixed hereto or any part thereof shall be held invalid or void, then this permit shall be void and of no effect.
- 3) All applicable permit approvals shall be obtained by the applicant.

**IV. SPECIFIC TO THE PROJECT**

1. A reduction in the east and west perimeter buffers from 15 feet to 11 feet has been granted in accordance with Section 7.1(P)1.

Cc: Blackburn Consulting Engineering  
Attn: Daniel Blackburn  
305 E. Main Street  
Clayton, NC 27520

Town of Garner  
Town Council Meeting  
Agenda Form

Meeting Date: October 2, 2017		
Subject: Conditional Use Site Plan - CUP-SP-17-15 Valvoline Instant Oil Change		
Location on Agenda: Public Hearings		
Department: Planning		
Contact: Alison Jones, Planner II		
Presenter: Alison Jones, Planner II		
Brief Summary:  Kimley-Horn & Associates is requesting conditional use site plan approval for an oil change facility. The site is located at 1517 US 70 West and can be further identified as Wake County PIN 1701-48-8049.		
Recommended Motion and/or Requested Action: Approve Conditional Use Site Plan CUP-SP-17-15		
Detailed Notes: Please see Council Motion Worksheet for recommended language in meeting statutory regulations.		
Funding Source:		
Cost:	One Time: <input type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
Manager's Comments and Recommendations: N/A		
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	JT	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		



## Planning Department Staff Report

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**TO:** Mayor and Town Council

**FROM:** Alison Jones, Planner II

**SUBJECT:** *Conditional Use Site Plan Request CUP-SP-17-15, Valvoline Instant Oil Change*

**DATE:** October 2, 2017

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### I. PROJECT AT A GLANCE

**Project Number:** CUP-SP-17-15, Valvoline Instant Oil Change

**Applicant:** Valvoline

**Owner:** Auto Bell Car Wash, Inc.

**Plan Prepared by:** Kimley-Horn and Associates

**General Description -**

**Proposed Use:** Oil Change

**Project Location:** 1517 US 70 Highway West

**Wake Count PIN(s):** 1701-48-8049

**Zoning Classification:** Service Business (SB) within US70/401 Overlay District

**Key Meeting Dates -**

**Planning Commission:** September 11, 2017

**Town Council Public Hearing:** October 02, 2017

**II. ADJACENT ZONING AND LAND USE**

<b>North:</b>	Community Retail (CR)	Restaurant/ Other commercial
<b>South:</b>	Community Retail (CR)	Vacant
	Single- Family Residential (R-15)	Single-family homes
<b>East:</b>	Community Retail (CR)	Hotel
	Service Business	Car wash
<b>West:</b>	Community Retail (CR)	Gas Station
	Service Business (SB)	Retail

**Overall Neighborhood Character:** Commercial corridor along US 70 between 70/401 split and Timber Drive.





### III. PROJECT DATA

<b>Acreage:</b>	1.03 acres
<b>Building Size:</b>	New construction of 2,250 sq ft one-story building to perform oil changes on vehicles.
<b>Building Material and Color:</b>	The brick used to construct Valvoline Instant Oil change will match the existing Auto Bell brick.
<b>Landscape and Buffer Requirements:</b>	<p>The plan as proposed meets the requirements of the Landscape Ordinance.</p> <ul style="list-style-type: none"><li>• <b>Tree Cover:</b> Requirements are met with existing vegetation.</li><li>• <b>Street Buffers:</b> A 15-foot street buffer is shown as required on US 70.</li><li>• <b>Perimeter Buffers:</b> A 15-foot buffer are shown as required along the South, East and West property lines. A landscape easement is required to meet the perimeter buffer requirements for the east perimeter buffer. The easement must be recorded prior to issuance of a building permit.</li></ul>
<b>Parking Spaces:</b>	<p><b>Number</b> - Parking is based on 5 spaces per bay plus 1 per employee.</p> <ul style="list-style-type: none"><li>• <u>Required</u>: 13 (1 accessible)</li><li>• <u>Proposed</u>: 13 (1 accessible)</li></ul>
<b>Floodplain:</b>	This site does not contain a FEMA designated floodplain.
<b>Fire Protection:</b>	The Inspections Department has reviewed the plan for fire protection and given their approval.
<b>Infrastructure:</b>	<p><b>Stormwater Management</b> - This project is subject to nitrogen and water quantity requirements. The proposed development is located within a previously approved storm water plan which accounted for the future development with their bmp designed to handle detention of the 1, 10 and 25-year storm events along with reducing nitrogen. Payment to a private mitigation bank will also be required to bring the overall project into compliance with the Neuse Rules.</p> <p><b>Water/Sewer</b> - Connections to public water and sewer proposed.</p>

*Transportation/Access* – Direct access to the site provided on to US 70.

#### **IV. CONSISTENCY WITH ADOPTED TOWN PLANS AND POLICIES**

##### **2006 Comprehensive Growth Plan:**

This site falls within the Regional Center surrounding US 70 which includes recommended uses such as large-scale retail, office, and services targeting a regional population as well as high-density residential. Since vehicle services are such that they target a commuting and regional population, staff finds that the project is consistent with the Comprehensive Growth Plan.

##### **2010 Garner Transportation Plan:**

The current transportation plan calls for US 70 to be upgraded to a 6-lane major thoroughfare by 2035; however, at the time of the writing of this plan, no pedestrian infrastructure was called for along the corridor. Since US 70 already meets the 6-lane cross-section at this location along with widening for turn lanes, staff finds that the project is consistent with the Garner Transportation Plan.

##### **Parks & Recreation, Open Space & Greenways Master Plan:**

A review of the Parks and Recreation, Open Space and Greenways Master Plan revealed no plan recommendations in the project area; therefore, this project, as proposed, may be considered to be consistent with the Parks & Recreation, Open Space & Greenways Master Plan.

##### **Unified Development Ordinance Regulations:**

After sufficient review and plan revisions, staff finds that this project, as now proposed, is consistent with the regulations of the Unified Development Ordinance.

#### **V. PLANNING COMMISSION RECOMMENDATION**

Having reviewed the plans at their meeting on September 11, 2017, and having accepted staff statements regarding plan consistency as their own and being detailed in Section IV of this report, the Planning Commission voted unanimously to recommend approval of CUP-SP-17-15, Valvoline Instant Oil Change, with three site specific condition listed on the attached permit.

**VI. COUNCIL MOTION WORKSHEET**

**Approve:** I move that the Council accept the staff statements regarding plan consistency in Section IV of this report as our own and find the application meets the 10 permit criteria in Section 3.14.D. and therefore approve Conditional Use Permit CUP-SP-17-15, Valvoline Instant Oil Change, with three site specific conditions listed on the attached permit.

**Optional (conditions – mark, fill in and read all that applies):** ...and including the following reasonable conditions necessary to address the impacts of the proposed development on:

- adjoining property,
- the existing natural and man-made features of the site,
- off-site and on-site traffic flow,
- public utilities,
- such other public services or goals of the Comprehensive Growth Plan or the Transportation Plan that may be negatively impacted by the proposed development (*enumerate plan services/goals*):  
\_\_\_\_\_  
\_\_\_\_\_

**Condition #1:**

\_\_\_\_\_

**Condition #2:**

\_\_\_\_\_

**Condition #3, (etc.):**

\_\_\_\_\_

or

**Deny:** I move that the Council find the application does not meet one or more of the criteria in Section 3.14.D. for granting a special use permit,

***(Check and read all that apply – include stated reason/evidence)***

- 1. The proposed use will endanger the public health or safety because/as evidenced by \_\_\_\_\_;
- 2. The proposed use will substantially injure the value of adjoining or abutting property; because/as evidenced by \_\_\_\_\_;

- \_\_\_ 3. The proposed use does not comply with all applicable provisions of this UDO;  
*because/as evidenced by* \_\_\_\_\_;
- \_\_\_ 4. If completed as proposed, the development will not comply with all requirements of this section;  
*because/as evidenced by* \_\_\_\_\_;
- \_\_\_ 5. The proposed use will not be compatible with the proximate area in which it is to be located;  
*because/as evidenced by* \_\_\_\_\_;
- \_\_\_ 6. The proposed use is inconsistent with the Transportation Plan, other relevant adopted plans and policies, and the stated purpose and intent of this UDO (the fact that the use is permitted under certain circumstances in the zoning district creates a rebuttable presumption that the proposed use is in harmony with the intent of the UDO as relates to the general zoning plan);  
*because/as evidenced by* \_\_\_\_\_;
- \_\_\_ 7. The proposed use is incompatible with adjacent uses in terms of building scale, site design, buffering and screening, operating characteristics (hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts);  
*because/as evidenced by* \_\_\_\_\_;
- \_\_\_ 8. Any significant adverse impacts resulting from the use will not be mitigated or offset, including impacts on the natural environment;  
*because/as evidenced by* \_\_\_\_\_;
- \_\_\_ 9. The public safety, transportation and utility facilities and services will not be available to serve the subject property while maintaining sufficient levels of service for existing development;  
*because/as evidenced by* \_\_\_\_\_;
- \_\_\_ 10. Adequate assurances of continuing maintenance have not been provided;  
*because/as evidenced by* \_\_\_\_\_;

and therefore, deny Conditional Use Permit CUP-SP-17-15, Valvoline Instant Oil Change.



# Town of Garner Planning Department

## Conditional Use Permit CUP-SP-17-15

0 200 400  
Feet



Project: Valvoline Oil Change  
 Applicant: Valvoline  
 Owner: Autobell Car Wash Inc  
 Location: 1517 US HWY 70 W  
 Pin: 1701488048

Proposed Use: Oil Change  
 Current Zoning: SB  
 Acreage: 1.03  
 Overlay: US 70 / 401

**TOWN OF GARNER  
CUP-SP-17-15 – VALVOLINE INSTANT OIL CHANGE  
CONDITIONAL USE PERMIT**

<b>APPLICANT</b>	Valvoline Attn: Michael Slattery 8000 Tower Pointe Drive Charlotte, NC 28277
<b>LOCATION</b>	1517 US 70 West
<b>USE</b>	Oil Change facility
<b>DATE ISSUED</b>	October 2, 2017

**I. COMPLETENESS OF APPLICATION**

The application is complete.

**II. COMPLIANCE WITH ORDINANCE REQUIREMENTS**

The application complies with all applicable requirements of the Unified Development Ordinance.

**III. GRANTING THE APPLICATION**

The application is granted, subject to the following conditions:

- 1) The applicant shall complete the development strictly in accordance with the plans submitted to and approved by this Town Council, a copy of which is filed in the Town Hall. Any deviations from or changes in these plans must be pointed out specifically to the administrator in writing and specific written approval obtained as provided in the Unified Development Ordinance.
- 2) If any of the conditions affixed hereto or any part thereof shall be held invalid or void, then this permit shall be void and of no effect.
- 3) All applicable permit approvals shall be obtained by the applicant.

**IV. SPECIFIC TO THE PROJECT**

1. Evidence of a recorded cross parking agreement and joint use of the existing dumpster agreement between Valvoline and Auto Bell shall be submitted to the Planning Department prior to issuance of a building permit.
2. Evidence of a recorded landscape easement on adjacent Auto Bell site, to achieve required perimeter buffer, shall be submitted to the Planning Department prior to issuance of a building permit.
3. Evidence of State determination regarding continuing use of existing monitoring wells shall be submitted to the Planning Department prior to issuance of a building permit.

Cc:  
Autobell Car Wash, Inc.  
Attn: Carl Howard  
1521 E. 3rd Street  
Charlotte, NC 28204

Kimley-Horn & Associates  
Attn: Chris Bostic  
421 Fayetteville Road  
Raleigh, NC 27601

Town of Garner  
Town Council Meeting  
Agenda Form

Meeting Date:			
Subject:			
Location on Agenda:			
Department:			
Contact:			
Presenter:			
Brief Summary:			
Recommended Motion and/or Requested Action:			
Detailed Notes:			
Funding Source:			
Cost:	One Time:	Annual:	No Cost:
Manager's Comments and Recommendations:			
Attachments Yes:		No:	
Agenda Form Reviewed by:	Initials:	Comments:	
Department Head:			
Finance Director:			
Town Attorney:			
Town Manager:			
Town Clerk:			

TOWN OF GARNER  
ENGINEERING DEPARTMENT  
**M E M O R A N D U M**

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TO: Town Council

FROM: Jonathan W. Ham, P.E., C.F.M.  
Assistant Town Engineer

DATE: October 2, 2017

SUBJECT: Timber Drive Sidewalk Connectors,  
NCDOT Locally Administered Project Agreement

The Town has received approval of matching funds from the NCDOT and CAMPO (Capital Area Metropolitan Planning Organization) to construct .75 miles of sidewalk along Timber Drive. This project will connect existing sidewalks from Blanton Street to Stowe Place and from Harth Drive to the Food Lion Shopping Center west of NC 50 highway. Five pedestrian signals will also be constructed as a part of this project.

NCDOT estimates this project will cost approximately \$406,690. Federal funds will cover 80% of this cost and the Town will receive up to \$325,352. The Town will be responsible for the remaining 20% match amount of \$81,338 which will be funded from the Street and Sidewalk Bond dollars.

The Engineering Department recommends moving forward with this project and consenting to execution of the agreement.

Please let me know if there are any questions.

Attachment





STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

ROY COOPER  
GOVERNOR

JAMES H. TROGDON, III  
SECRETARY

September 15, 2017

Mr. Rodney Dickerson  
Town Manager  
Town of Garner  
900 Seventh Avenue  
Garner, NC 27529

SUBJECT: Locally Administered Project Agreement  
Town of Garner, Wake County  
Project: C-5604RA; WBS Element: 43714.1.13  
Federal-Aid No: CMAQ-0508(009)  
Project Name: Sidewalks

Dear Mr. Dickerson:

Please find enclosed duplicate originals of the above-referenced Project Agreement for the Timber Drive Sidewalk in Garner, Wake County.

The Project Agreement reflects the scope of work, funding and schedule that has been programmed into the State Transportation Improvement Program (STIP) by the MPO. If you have any questions concerning the content of the agreement, please contact me.

After the Town of Garner has reviewed and executed both originals, please return them to my attention, within ninety (90) days. The Department of Transportation will execute the agreements and send one fully executed agreement back to the Town of Garner.

If you have any questions, please contact me at (919) 707-6625 or by e-mail at [sgibbs@ncdot.gov](mailto:sgibbs@ncdot.gov). Thank you.

Sincerely,

Sheila Gibbs  
Transportation Program Consultant  
Local Programs Management Office

Enclosure

cc: Jennifer Evans, PE, Division Project Manager

Mailing Address:  
NC DEPARTMENT OF TRANSPORTATION  
TRANSPORTATION PROGRAM MGMT  
1595 MAIL SERVICE CENTER  
RALEIGH, NC 27699-1595

Telephone: (919) 707-6600  
Fax: (919) 212-5711  
Customer Service: 1-877-368-4968

Website: [www.ncdot.gov](http://www.ncdot.gov)

Location:  
1020 BIRCH RIDGE DRIVE  
RALEIGH, NC 27610

# Executive Summary

The Executive Summary is a summation of this agreement and is not intended to be used as the agreement between the Department (North Carolina Department of Transportation) and the Party (Entity).

**Entity:** Town of Garner

**County:** Wake

**TIP:** C-5604RA

**Project:** Timber Drive Sidewalk Project

**Scope:** new sidewalk connecting existing sidewalks along Timber Drive with five new signalized pedestrian crossings in Garner.

**Eligible Activities:**

<b>PE</b>	43714.1.13	Design
		Environmental
<b>ROW</b>	_____	ROW Acquisition
		Utility Relocation
<b>CON</b>	43714.3.13	Construction
<b>FEDERAL-AID</b>	CMAQ-508(009)	

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match \$	Non-Federal Match Rate
Congestion Mitigation and Air Quality	\$225,352	80 %	\$56,338	20 %
STPDA	\$100,000	80 %	\$25,000	20 %
Subtotals:	\$325,352		\$81,338	
<b>Total Estimated Cost</b>			<b>\$406,690</b>	

**Responsibility:** The Town of Garner shall be responsible for all aspects of the project.

NORTH CAROLINA

**LOCALLY ADMINISTERED PROJECT -  
FEDERAL**

WAKE COUNTY

DATE: 9/12/2017

NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

TIP #: C-5604RA

AND

WBS Elements: PE 43714.1.13

ROW \_\_\_\_\_

TOWN OF GARNER

CON 43714.3.13

OTHER FUNDING: CMAQ-  
0508(009)

FEDERAL-AID NUMBER:

CFDA #: 20.205

Total Funds [NCDOT Participation] \$325,352

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department" and the Town of Garner, hereinafter referred to as the "Municipality".

**WITNESSETH:**

WHEREAS, Fixing America's Surface Transportation (FAST) Act allows for the allocation of Congestion Mitigation and Air Quality funds to be available for certain specified transportation activities; and,

WHEREAS, the Municipality has requested federal funding for Timber Drive Sidewalk Project, hereinafter referred to as the Project, in Wake County, North Carolina; and,

WHEREAS, subject to the availability of federal funds, the Municipality has been designated as a recipient to receive funds allocated to the Department by the Federal Highway Administration (FHWA) up to and not to exceed the maximum award amount of \$325,352 for the Project; and,

WHEREAS, the Department has agreed to administer the disbursement of said funds on behalf of FHWA to the Municipality for the Project in accordance with the Project scope of work and in accordance with the provisions set out in this Agreement; and,

WHEREAS, the Department has programmed funding in the approved Transportation Improvement Program for the Project; and,

WHEREAS, the governing board of the Municipality has agreed to participate in certain costs and to assume certain responsibilities in the manner and to the extent as hereinafter set out; and,

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly including, but not limited to, the following applicable legislation: General Statutes of North Carolina (NCGS) Section 136-66.1, Section 136-71.6, Section 160A-296 and 297, Section 136-18, Section 136-41.3 and Section 20-169, to participate in the planning, construction and/or implementation of the Project approved by the Board of Transportation.

NOW, THEREFORE, this Agreement states the promises and undertakings of each party as herein provided, and the parties do hereby covenant and agree, each with the other, as follows:

## **1. GENERAL PROVISIONS**

### **FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT**

All parties to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall provide reports as required by the Federal Funding Accountability and Transparency Act (FFATA) for this Project.

### **AGREEMENT MODIFICATIONS**

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all parties by means of a Supplemental Agreement.

### **LOCAL PUBLIC AGENCY TO PERFORM ALL WORK**

The Municipality shall be responsible for administering all work performed and for certifying to the Department that all terms set forth in this Agreement are met and adhered to by the Municipality and/or its contractors and agents. The Department will provide technical oversight to guide the Municipality. The Department must approve any assignment or transfer of the responsibilities of the Municipality set forth in this Agreement to other parties or entities.

### **PERSON IN RESPONSIBLE CHARGE**

The Municipality shall designate a person or persons to be in responsible charge of the Project, in accordance with Title 23 of the Code of Federal Regulations, Part 635.105. The person, or persons, shall be expected to:

- Administer governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;

- Maintain knowledge of day to day project operations and safety issues;
- Make or participate in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visit and review the project in accordance with the project scope and scale;
- Review financial processes, transactions and documentation to reduce the likelihood of fraud, waste, and abuse;
- Direct project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation; and
- Be aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

The person in responsible charge must be a full-time employee of the Municipality, but the duties may be split among several employees, if necessary.

#### **COMPLIANCE WITH STATE/FEDERAL POLICY**

The Municipality, and/or its agent, including all contractors, subcontractors, or sub-recipients shall comply with all applicable Federal and State policies and procedures, stated both in this Agreement and in the Department's guidelines and procedures, including the *Local Programs Management Handbook*.

#### **FAILURE TO COMPLY - CONSEQUENCES**

Failure on the part of the Municipality to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of any reimbursed funds.

## **2. SCOPE OF PROJECT**

The Project consists of new sidewalk connecting existing sidewalks along Timber Drive with five new signalized pedestrian crossings in Garner.

The Department's funding participation in the Project shall be restricted to the following eligible items:

- Design
- Environmental Documentation
- Construction

as further set forth in this Agreement.

### 3. FUNDING

#### REIMBURSEMENT FOR ELIGIBLE ACTIVITIES

Subject to compliance by the Municipality with the provisions set forth in this Agreement and the availability of federal funds, the Department shall reimburse 80% of eligible expenses incurred by the Municipality up to a maximum amount of Three Hundred Twenty Five Thousand Three Hundred Fifty Two Dollars (\$325,352), as detailed below. The Municipality shall provide the non-federal match, as detailed in the FUNDING TABLE below, and all costs that exceed the total estimated cost.

**FUNDING TABLE**

<b>Fund Source</b>	<b>Federal Funds Amount</b>	<b>Reimbursement Rate</b>	<b>Non-Federal Match \$</b>	<b>Non-Federal Match Rate</b>
Congestion Mitigation and Air Quality	\$225,352	80 %	\$56,338	20 %
STPDA	\$100,000	80 %	\$25,000	20 %
Subtotals:	\$325,352		\$81,338	
<b>Total Estimated Cost</b>		<b>\$406,690</b>		

#### WORK PERFORMED BY NCDOT

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, during any phase of the delivery of the Project, shall reduce the funding available to the Municipality under this Agreement. The Department will set aside ten percent (10%) of the total estimated cost, or \$40,669, to use towards the costs related to review and oversight of this Project, including, but not limited to review and approval of plans, environmental documents, contract proposals, engineering estimates, construction engineering and inspection oversight, and other items as needed to ensure the Municipality's appropriate compliance with state and federal regulations.

In the event that the Department does not utilize all the set-aside funding, then those remaining funds will be available for reimbursement to the Municipality at the above reimbursement rate. For all costs of work performed on the Project, whether incurred by the Municipality or by the Department, the Municipality shall provide the non-federal match. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Cost.

#### **4. PERIOD OF PERFORMANCE**

The Municipality has five (5) years to complete all work outlined in the Agreement from the date of authorization of Federal funds for the initial phase of work. Completion for this Agreement is defined as completion of all construction activities or implementation activities, acceptance of the project, and submission of a final reimbursement package to the Department.

If additional time is needed to complete the Project, then a supplemental agreement must be executed. The Department and/or FHWA reserves the right to revoke the funds awarded if the Municipality is unable to meet milestone dates included herein.

#### **5. PRELIMINARY ENGINEERING AUTHORIZATION**

If Preliminary Engineering is an eligible expense, then upon receipt of an executed agreement, the Department will authorize Preliminary Engineering funds and shall notify the Municipality, in writing, once funds have been authorized and can be expended. The Municipality shall not initiate any work, nor solicit for any professional services prior to receipt of written authorization from the Department to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be ineligible for reimbursement.

#### **6. PROFESSIONAL AND ENGINEERING SERVICES**

The Municipality shall comply with the policies and procedures of this provision if the Municipality is requesting reimbursement for the Preliminary Engineering contract or the Construction Contract Administration / Construction Engineering and Inspection contract.

#### **PROCUREMENT POLICY**

When procuring professional services, the Municipality must adhere to Title 2 Code of Federal Regulations Part 200; Title 23 of the Code of Federal Regulations, Part 172; Title 40 United States Code, Chapter 11, Section 1101-1104; NCGS 143-64, Parts 31 and 32; and the

Department's *Policies and Procedures for Major Professional or Specialized Services Contracts*. Said policies and standards are incorporated in this Agreement by reference at [www.fhwa.dot.gov/legsregs/legislat.html](http://www.fhwa.dot.gov/legsregs/legislat.html) and [www.ncleg.net/gascripts/Statutes/Statutes.asp](http://www.ncleg.net/gascripts/Statutes/Statutes.asp).

- The Municipality shall ensure that a qualified firm is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner and at a just and reasonable cost.
- All Professional Services Firms shall be pre-qualified by the Department in the Work Codes advertised.
- A pre-negotiation audit will be conducted by the Department's External Audit Branch. The Municipality shall not execute a consultant contract until the Department's review has been completed.

#### **SMALL PROFESSIONAL AND ENGINEERING SERVICES FIRMS REQUIREMENTS**

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Small Professional Services Firms (SPSF). This policy conforms with the SPSF Guidelines as approved by the North Carolina Board of Transportation.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

#### **WORK BY ENTITY**

If the Design, Planning, Contract Administration and/or Construction Engineering and Inspection required for this project will be undertaken by the Municipality, and the Municipality requests reimbursement, then the Municipality must submit a request and supporting documentation to the Department for review and approval, prior to any work being initiated by the Municipality.

### **7. PLANNING / ENVIRONMENTAL DOCUMENTATION**

The Municipality shall prepare the environmental and/or planning document, including any environmental permits, needed to construct the Project, in accordance with the National



Environmental Policy Act (NEPA) and all other appropriate environmental laws and regulations. All work shall be performed in accordance with Departmental procedures and guidelines. Said documentation shall be submitted to the Department for review and approval.

- The Municipality shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required to apply for those permits necessary for the construction of the desired improvements. Copies of approved permits should be forwarded to the Department.
- The Municipality shall advertise and conduct any required public hearings.
- If any permit issued requires that action be taken to mitigate impacts associated with the improvements, the Municipality shall design and implement a mitigation plan. The Department will determine if any mitigation costs are eligible for reimbursement. The Municipality shall bear all costs associated with penalties for violations and claims due to delays.
- The Municipality shall be responsible for designing an erosion control plan if required by the North Carolina Sedimentation Pollution Control Act of 1973, NCGS 113A, Article 4, incorporated in this Agreement by reference at [www.ncleg.net/gascripts/Statues/Statutes.asp](http://www.ncleg.net/gascripts/Statues/Statutes.asp) and obtaining those permits required thereby in order to construct the Project. During the construction of the improvements, the Municipality, and its contractors and agents, shall be solely responsible for compliance with the provisions of said Act and the plan adopted in compliance therewith.

## **8. DESIGN**

### **CONTENT OF PLAN PACKAGE**

The Municipality, and/or its agent, shall prepare the Project's plans, specifications, and a professional estimate of costs (PS&E package), in accordance with the Department's guidelines and procedures, and applicable Federal and State standards. All work shall be submitted to the Department for review and approval. The plans shall be completed to show the design, site plans, landscaping, drainage, easements, and utility conflicts.

## **9. RIGHT OF WAY / UTILITY AUTHORIZATION**

If the costs of right of way acquisition or utility relocation are an eligible expense, the Municipality shall submit a letter of request to the Department to authorize and set up right of way and/or utility

funding. The acquisition for right of way, construction easements, and/or utility relocation may be undertaken only after the Municipality receives written authorization from the Department to proceed.

## **10. PROJECT LIMITS AND RIGHT OF WAY (ROW)**

The Municipality shall comply with the policies and procedures of this provision regardless of whether the Municipality is requesting reimbursement for the Right of Way phase of the Project.

### **SPONSOR PROVIDES ROW**

The Municipality, at no liability whatsoever to the Department, shall be responsible for providing and/or acquiring any required ROW and/or easements for the Project.

### **ROW GUIDANCE**

The Municipality shall accomplish all ROW activities, including acquisition and relocation, in accordance with the following: Title 23 of the Code of Federal Regulations, Part 710, Subpart B and Title 49 of the Code of Federal Regulations, Part 24, [Uniform Act] incorporated by reference at [www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm](http://www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm); NCGS, Chapter 133, Article 2, Sections 133-5 through 133-18, Relocation Assistance, incorporated by reference at [www.ncleg.net/gascripts/Statutes/Statutes.asp](http://www.ncleg.net/gascripts/Statutes/Statutes.asp); and the North Carolina Department of Transportation Right of Way Manual.

### **APPRAISAL**

The Municipality shall submit the appraisal to the Department for review and approval in accordance with Departmental policies and procedures.

### **CLEARANCE OF PROJECT LIMITS / ROW**

The Municipality shall remove and dispose of all obstructions and encroachments of any kind or character (including hazardous and contaminated materials) from said ROW, with the exception that the Municipality shall secure an encroachment agreement for any utilities (which shall remain or are) to be installed within the Department's ROW, or follow other applicable approval process, for utilities within the Municipality's ROW. The Municipality shall indemnify and save harmless the Department, Federal Highway Administration, and the State of North Carolina, from any and all damages and claims for damages that might arise on account of said right of way acquisition,

drainage, and construction easements for the construction of said Project. The Municipality shall be solely responsible for any damages caused by the existence of said material now and at any time in the future and will save the Department harmless from any legal actions arising as a result of this contaminated and/or hazardous material and shall provide the Department with documentation proving the proper disposal of said material.

## **RELOCATION ASSISTANCE**

The Municipality shall provide relocation assistance services and payments for families, businesses, and non-profit organizations being displaced by the Project in full accordance with the Federal relocation requirements of Title 49 Code of Federal Regulations, Part 24 [Uniform Act], as amended. Relocation assistance services and payments may be accomplished by contract with any other municipal corporation, or State or Federal agency, rendering such services upon approval by the Department and Federal Highway Administration.

## **11. UTILITIES**

The Municipality, and/or its agent, at no liability to the Department, shall relocate, adjust, relay, change or repair all utilities in conflict with the Project, regardless of ownership. All utility work shall be performed in a manner satisfactory to and in conformance with State and Federal rules and regulations, prior to Municipality beginning construction of the project. This Agreement does not modify or supersede any existing Utility Encroachment Agreements that may be in place.

## **12. RIGHT OF WAY / UTILITY / RAILROAD CERTIFICATION**

The Municipality, upon acquisition of all right of way/property necessary for the Project, relocation of utilities, and coordination with the railroad shall provide the Department all required documentation (deeds/leases/easement/plans/agreements) to secure certification. Certification is only issued after all ROW is in public ownership or property is publicly accessible by a legal document; utilities in conflict with the project are relocated, or a plan for their relocation during construction has been approved; and coordination with the railroad (if applicable) has occurred and been documented.

## **13. CONTRACT PROPOSAL AND ENGINEER'S ESTIMATE**

### **CONTRACT PROPOSAL**

The Municipality shall develop a contract proposal that will be advertised for bids. The proposal shall comply with NCDOT Specifications and Standard Drawings as applicable to the Project. The proposal shall also contain provisions, as applicable, per Title 23 Code of Federal Regulations 633 and 635 to include, but not be limited to: FHWA 1273, Buy America, Davis-Bacon Wage Rates, Non-discrimination, DBE Assurances, Contractor Certification regarding suspension and debarment, and other provisions as required by the Department.

### **ENGINEER'S ESTIMATE**

The Municipality shall develop an itemized engineer's estimate to show items referenced to the NCDOT Standard Specifications, if applicable, along with units and unit price. The engineer's estimate will be used as the basis for comparing bids received.

## **14. CONSTRUCTION AUTHORIZATION**

The Municipality shall submit the required environmental and/or planning document, ROW certification, final construction plans, total contract proposal, and an estimate of Project costs (final PS&E package) to the Department for review and approval.

- After approval of all documentation, the Department will request construction authorization from the Federal Highway Administration.
- The Municipality shall not advertise for bids prior to receiving written construction authorization from the Department.

## **15. CONTRACTOR PROCUREMENT**

### **ADVERTISE FOR BIDS**

Upon receipt of written construction authorization from the Department, the Municipality may advertise the Project. The Municipality shall follow applicable Federal and/or State procedures pertaining to the advertisement of the Project, bid opening, and award of the contract, according to Title 2 of the Code of Federal Regulations, Part 200 and Title 23 of the Code of Federal Regulations, Part 633 and Part 635, incorporated by reference at

[www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm](http://www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm); and NCGS, Chapter 143, Article 8 (Public Contracts), incorporated by reference at [www.ncleg.net/gascrpts/Statutes/Statutes.asp](http://www.ncleg.net/gascrpts/Statutes/Statutes.asp).

## **CONSTRUCTION CONTRACTOR REQUIREMENTS**

All Contractors submitting bids on the project shall be pre-qualified by the Department. All proposed subcontractors must be pre-qualified before construction work begins. Any subcontractors who are proposed to meet the Disadvantaged Business Enterprise goal must be certified by the Department.

## **CONSTRUCTION SUBCONTRACTOR REQUIREMENTS**

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Disadvantaged Business Enterprises (DBEs), or as required and defined in Title 49 of the Code of Federal Regulations, Part 26 and the North Carolina Administrative Code. These provisions are incorporated into this Agreement by reference

<https://connect.ncdot.gov/projects/Contracts/Pages/LGA-Projects.aspx>.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

## **AWARDING CONTRACT**

After the advertisement of the Project for construction bids, the Municipality shall request concurrence from the Department to award the construction contract by submitting a letter along with tabulated bids received depicting Disadvantaged Business Enterprises (DBE) goals, and a resolution recommending award of the Project to the lowest responsible, responsive bidder. The Department will review the submitted information and provide written approval to the Municipality prior to the contract being awarded by the Municipality.

## **DELAY IN PROCUREMENT**

In the event the Project has not been let to contract within six (6) months after receiving construction authorization from the Department, the Municipality shall be responsible for

documenting to the Department justification for project delay and that the Project remains in compliance with the terms of this Agreement, the approved plans and specifications, and current codes.

## **FORCE ACCOUNT**

Force account work is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than a contract awarded by a competitive bidding process, or there is an emergency. Written approval from the Department is required prior to the use of force account by the Municipality. Federal Highway Administration regulations governing Force Account are contained in Title 23 Code of Federal Regulations, Part 635.201, Subpart B; said policy being incorporated in this Agreement by reference [www.fhwa.dot.gov/legsregs/directives/cfr23toc.htm](http://www.fhwa.dot.gov/legsregs/directives/cfr23toc.htm). North Carolina General Statutes governing the use of Force Account, Chapter 143, Article 8 (Public Contracts) can be found at [www.ncleg.net/gascripts/Statutes/Statutes.asp](http://www.ncleg.net/gascripts/Statutes/Statutes.asp).

## **16. CONSTRUCTION**

The Municipality, and/or its agents shall construct the Project in accordance with the plans and specifications of the Project as filed with, and approved by, the Department. During the construction of the Project, the procedures set out below shall be followed:

### **CONSTRUCTION CONTRACT ADMINISTRATION**

The Municipality shall comply with the NCDOT Construction Manual as referenced at <http://www.ncdot.org/doh/operations/dp%5Fchief%5Feng/constructionunit/formsmanuals/construction/>, which outlines the procedures for records and reports that must be adhered to in order to obtain uniformity of contract administration and documentation. This includes, but is not limited to, inspection reports, material test reports, materials certification, documentation of quantities, project diaries, and pay records. The Municipality, and/or its agent, shall perform the construction engineering, sampling and testing required during construction of the Project, in accordance with Departmental procedures, including the Department's Guide for Process Control and Acceptance Sampling and Testing. The Municipality shall document that said compliance was accomplished in accordance with State and Federal procedures, guidelines, standards and specifications.

### **RETAINAGE**

The Municipality shall not retain any portion of a payment due the contractor.

## **SIGNAGE**

The Municipality shall provide and maintain adequate signage and other warning devices for the protection of the public in accordance with the approved traffic control plans for the Project and the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways, or any subsequent revision of the same, published by the Federal Highway Administration and effective at the time of award of the contract.

## **SITE LAYOUT**

The Municipality shall be responsible for ensuring that all site layout, construction work, and Project documentation are in compliance with applicable city, state and federal permits, guidelines, and regulations, including American Association of State Highway and Transportation Officials (AASHTO) guidelines and Americans with Disabilities Act (ADA) Standards for Accessible Design ([www.usdoj.gov/crt/ada/stdspdf.htm](http://www.usdoj.gov/crt/ada/stdspdf.htm)).

## **RIGHT TO INSPECT**

The Department and representatives of the Federal Highway Administration shall have the right to inspect, sample or test, and approve or reject, any portion of the work being performed by the Municipality or the Municipality's contractor to ensure compliance with the provisions of this Agreement. Prior to any payment by the Department, any deficiencies inconsistent with approved plans and specifications found during an inspection must be corrected.

## **CONTRACTOR COMPLIANCE**

The Municipality will be responsible for ensuring that the contractor complies with all of the terms of the contract and any instructions issued by the Department or FHWA as a result of any review or inspection made by said representatives.

## **CHANGE ORDERS**

If any changes in the Project plans are necessary, the Department must approve such changes prior to the work being performed.

## **SHOP DRAWINGS**

Shop Drawings shall be submitted in accordance with the approved plans and specifications and may require review by the Designer.

## **17. CLOSE-OUT**

Upon completion of the Project, the Municipality shall be responsible for the following:

### **FINAL INSPECTION**

The Municipality shall arrange for a final inspection by the Department. Any deficiencies determined during the final field inspection must be corrected prior to final payment being made by the Department to the Municipality. Additional inspection by other entities may be necessary in accordance with the Department's guidelines and procedures. The Municipality shall provide the Department with written evidence of approval of completed project prior to requesting final reimbursement.

### **FINAL PROJECT CERTIFICATION**

The Municipality will provide a certification to the Department that all work performed for this Project is in accordance with all applicable standards, guidelines, and regulations.

## **18. MAINTENANCE**

The Municipality, at no expense or liability to the Department, shall assume all maintenance responsibilities for the Timber Drive Sidewalk Project, or as required by an executed encroachment agreement.

## **19. REIMBURSEMENT**

### **SCOPE OF REIMBURSEMENT**

Activities eligible for funding reimbursement for this Project shall include:

- Design
- Environmental Documentation
- Construction



## **REIMBURSEMENT GUIDANCE**

The Municipality shall adhere to applicable administrative requirements of Title 2 Code of Federal Regulations, Part 200 ([www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm](http://www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm)) "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards." Reimbursement to the Municipality shall be subject to the policies and procedures contained in Title 23 Code of Federal Regulations, Part 140 and Part 172, which is being incorporated into this Agreement by reference at [www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm](http://www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm). Reimbursement to the Municipality shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 (<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>) and Office of Management and Budget (OMB) "Federal Funding Accountability and Transparency Act" (FFATA). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the Municipality with all applicable federal policy and procedures.

## **REIMBURSEMENT LIMITS**

### **▪ WORK PERFORMED BEFORE NOTIFICATION**

Any costs incurred by the Municipality prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

### **▪ NO REIMBURSEMENT IN EXCESS OF APPROVED FUNDING**

At no time shall the Department reimburse the Municipality costs that exceed the total funding per this Agreement and any Supplemental Agreements.

### **▪ UNSUBSTANTIATED COSTS**

The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs that have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division.

### **▪ WORK PERFORMED BY NCDOT**

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, shall reduce the maximum award amount of \$325,352 available to the Municipality under this Agreement. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Cost.

- **CONSTRUCTION ADMINISTRATION**

Reimbursement for construction contract administration will be made as governed by Departmental policy that limits reimbursement for construction contract administration to no more than fifteen (15%) percent of the actual construction contract of the Project. These costs will also include any cost overruns and charges to the Project by the Department during the Construction Phase.

- **CONSTRUCTION CONTRACT UNIT PRICES**

Reimbursement for construction contract work will be made on the basis of contract unit prices in the construction contract and any approved change orders.

- **RIGHT OF WAY**

Reimbursement will be limited to the value as approved by the Department. Eligible costs for reimbursement of Right of Way Acquisition include: realty appraisals, surveys, closing costs, and the agreed upon just compensation for the property, at the reimbursement rate as shown in the FUNDING TABLE.

- **FORCE ACCOUNT**

Invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs set forth in 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." Reimbursement shall be based on actual eligible costs incurred with the exception of equipment owned by the Municipality or its Project partners. Reimbursement rates for equipment owned by the Municipality or its Project partners cannot exceed the Department's rates in effect for the time period in which the work is performed.

## **BILLING THE DEPARTMENT**

- **PROCEDURE**

The Municipality may bill the Department for eligible Project costs in accordance with the Department's guidelines and procedures. Proper supporting documentation shall accompany each invoice as may be required by the Department. By submittal of each invoice, the Municipality certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement.

Along with each invoice, the Municipality is responsible for submitting the FFATA Subrecipient Information Form, which is available at <https://connect.ncdot.gov/municipalities/Funding/Pages/default.aspx>.

- **INTERNAL APPROVALS**

Reimbursement to the Municipality shall be made upon approval of the invoice by the Department's Financial Management Division.

- **TIMELY SUBMITTAL OF INVOICES**

The Municipality may invoice the Department monthly for work accomplished, but no less than once every six (6) months to keep the Project funds active and available. If the Municipality is unable to invoice the Department, then they must provide an explanation. Failure to submit invoices or explanation may result in de-obligation of funds.

- **FINAL INVOICE**

All invoices associated with the Project must be submitted within six (6) months of the completion of construction and acceptance of the Project to be eligible for reimbursement by the Department. Any invoices submitted after this time will not be eligible for reimbursement.

## **20. REPORTING REQUIREMENTS AND RECORDS RETENTION**

### **PROJECT EVALUATION REPORTS**

The Municipality is responsible for submitting quarterly Project evaluation reports, in accordance with the Department's guidelines and procedures, that detail the progress achieved to date for the Project.

### **PROJECT RECORDS**

The Municipality and its agents shall maintain all books, documents, papers, accounting records, Project records and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office and shall require its agent to make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration, for inspection and audit by the Department's Financial

Management Section, the Federal Highway Administration, or any authorized representatives of the Federal Government.

## **21. OTHER PROVISIONS**

### **REFERENCES**

It will be the responsibility of the Municipality to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this Agreement.

### **INDEMNIFICATION OF DEPARTMENT**

The Municipality agrees to indemnify and hold harmless the Department, FHWA and the State of North Carolina, to the extent allowed by law, for any and all claim for payment, damages and/or liabilities of any nature, asserted against the Department in connection with this Project. The Department shall not be responsible for any damages or claims, which may be initiated by third parties.

### **DEBARMENT POLICY**

It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the Municipality certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

### **TITLE VI - CIVIL RIGHTS ACT OF 1964**

The Municipality shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

## **OTHER AGREEMENTS**

The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this Project. The Department is not responsible for any expenses or obligations incurred for the Project except those specifically eligible for Congestion Mitigation and Air Quality funds and obligations as approved by the Department under the terms of this Agreement.

## **AVAILABILITY OF FUNDS**

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

## **IMPROPER USE OF FUNDS**

Where either the Department or the FHWA determines that the funds paid to the Municipality for this Project are not used in accordance with the terms of this Agreement, the Department will bill the Municipality.

## **TERMINATION OF PROJECT**

If the Municipality decides to terminate the Project without the concurrence of the Department, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project.

## **AUDITS**

In accordance with 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," Subpart F – Audit Requirements, and the Federal Single Audit Act Amendments of 1996, the Municipality shall arrange for an annual independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the annual independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.

## **REIMBURSEMENT BY MUNICIPALITY**

For all monies due the Department as referenced in this Agreement, reimbursement shall be made by the Municipality to the Department within sixty (60) days of receiving an invoice. A late

payment penalty and interest shall be charged on any unpaid balance due in accordance with NCGS 147-86.23.

#### **USE OF POWELL BILL FUNDS**

If the other party to this agreement is a Municipality and fails for any reason to reimburse the Department in accordance with the provisions for payment hereinabove provided, NCGS 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to Municipality by NCGS 136-41.1, until such time as the Department has received payment in full.

#### **ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this Agreement except as expressly set forth herein.

#### **AUTHORIZATION TO EXECUTE**

The parties hereby acknowledge that the individual executing the Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, conferred with his attorney, and fully understands its contents.

#### **FACSIMILE SIGNATURES**

A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the parties agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.

#### **GIFT BAN**

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and

Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).

## **22. SUNSET PROVISION**

All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the Department is subject to the conditions of this Agreement, and that no expenditures of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

L.S. ATTEST:

TOWN OF GARNER

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

NCGS 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

Approved by the Town of Garner as attested to by the signature of \_\_\_\_\_

Clerk of the \_\_\_\_\_ (governing body) on \_\_\_\_\_

This Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

(SEAL)

\_\_\_\_\_  
(FINANCE OFFICER)

Federal Tax Identification Number

\_\_\_\_\_  
Town of Garner

Remittance Address:

\_\_\_\_\_  
\_\_\_\_\_

DEPARTMENT OF TRANSPORTATION

BY: \_\_\_\_\_  
(CHIEF ENGINEER)

DATE: \_\_\_\_\_

APPROVED BY BOARD OF TRANSPORTATION ITEM O: \_\_\_\_\_ (Date)



Town of Garner  
Town Council Meeting  
Agenda Form

Meeting Date: August 22, 2017		
Subject: Supplemental Scope of Services Contracts for Spring Drive and Vandora Springs Sidewalk Projects		
Location on Agenda: Old/New Business		
Department: Engineering		
Contact: Tony Chalk, Town Engineer		
Presenter: Tony Chalk, Town Engineer		
<p><b>Brief Summary:</b></p> <p>As discussed, Ramey Kemp and Associates has given us a revised scope of services for the Vandora Springs Road sidewalk project and for the Spring Drive sidewalk project to include the wider pavement designs and additional curb and gutter along Spring Drive.</p>		
<p><b>Recommended Motion and/or Requested Action:</b></p> <p>Approve amendments to the two contracts. Vandora Springs Rd-\$13,850, Spring Drive-\$20,514</p>		
Detailed Notes:		
Funding Source: Bond project funding		
Cost:	One Time: <input checked="" type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
<p><b>Manager's Comments and Recommendations:</b></p> <p>N/A</p>		
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	TC	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		

September 12, 2017

Mr. Tony Chalk, PE  
Town of Garner, Town Engineer  
900 7<sup>th</sup> Avenue  
Garner, NC 27529

Reference: Supplemental Agreement No. 2  
Vandora Springs Road Sidewalk Improvement Projects  
Additional Design services for roadway modifications  
Garner, North Carolina

Dear Mr. Chalk:

**I.) SCOPE OF SERVICES:**

Ramey Kemp & Associates, Inc. (RKA) is pleased to submit this supplemental scope of services and fee estimate to provide additional surveying needs for these projects. Below is a list of additional survey and design effort as a result of the roadway modifications described below. All other provisions and conditions of our original contract, dated November 9, 2016 will apply.

The following modifications to the original scope have been made:

**Vandora Springs Road**

1. Vandora Springs Road West of Timber Drive – The new typical section will consist of two 15' lanes with curb and gutter on both sides and sidewalk on one side, which will require the modification of the alignment, profile and cross sections to adjust the centerline crown of the road. The storm drainage along this section will also be modified to accommodate the new section and revise the existing work that has been completed. Additional survey is also needed.

**SUMMARY OF FEES:**

RKA will provide the above noted services based on the following fee(s).

<b>Service(s)</b>	<b>Lump Sum</b>	<b>FEE</b>
Vandora Springs Road Contract	Lump Sum	\$13,850.00

**ACCEPTANCE:**

The undersigned represents and warrants that (1) he or she is duly authorized and has legal capacity to execute/deliver this Agreement, (2) the execution/delivery of this Agreement and the performance of the Client's obligations hereunder have been duly authorized, (3) and the Agreement is a valid/legal agreement binding on the Client and enforceable in accordance with its terms.


Accepted this \_\_\_\_\_ day of \_\_\_\_\_ (month), \_\_\_\_\_ (year)

Client Name: \_\_\_\_\_  
(Print)

By: \_\_\_\_\_ Title: \_\_\_\_\_  
(Sign) (Print)

We very much appreciate you contacting us and look forward to assisting you with this project.

Sincerely,  
**Ramey Kemp & Associates, Inc.**

  
Montell W. Irvin, P.E., PTOE  
President / CEO

September 12, 2017

Mr. Tony Chalk, PE  
Town of Garner, Town Engineer  
900 7<sup>th</sup> Avenue  
Garner, NC 27529

Reference: Supplemental Agreement No. 2  
Spring Drive Sidewalk Improvement Projects  
Additional Design services for roadway modifications  
Garner, North Carolina

Dear Mr. Chalk:

**I.) SCOPE OF SERVICES:**

Ramey Kemp & Associates, Inc. (RKA) is pleased to submit this supplemental scope of services and fee estimate to provide additional surveying needs for these projects. Below is a list of additional survey and design effort as a result of the roadway modifications described below. All other provisions and conditions of our original contract, dated November 9, 2016 will apply.

The following modifications to the original scope have been made:

**Spring Drive/Vandora Springs Road**

1. Vandora Springs Road near Spring Drive – The project limits are being extended to Foxwood Drive and so curb and gutter will be added to this intersection. The new typical section will consist of two 11' thru lanes and a 12' two-way, left-turn lane. The project limits also extended south of Spring Drive due to the transition required to tie back to the existing section. This will require revisions to the alignment, profile and cross sections. Additional survey, storm drainage, erosion control and utility coordination is also needed.
2. Spring Drive – The project limits are being extended on the NE side of Spring Drive to tie the sidewalk to the apartment driveway. Additional survey is also needed.
3. Pavement marking plans were not part of the original contract and have been added for both projects due to the changes in the typical sections.

**SUMMARY OF FEES:**

RKA will provide the above noted services based on the following fee(s).

<b>Service(s)</b>	<b>Lump Sum</b>	<b>FEE</b>
Spring Drive Contract		
Roadway Design/Pavement Markings/Project Management	Lump Sum	\$8,200.00
Storm Drainage/Erosion Control	Lump Sum	\$7,554.00
Surveying	Lump Sum	\$4,760.00
	<b>Total</b>	<b>\$20,514.00</b>

**ACCEPTANCE:**

The undersigned represents and warrants that (1) he or she is duly authorized and has legal capacity to execute/deliver this Agreement, (2) the execution/delivery of this Agreement and the performance of the Client's obligations hereunder have been duly authorized, (3) and the Agreement is a valid/legal agreement binding on the Client and enforceable in accordance with its terms.

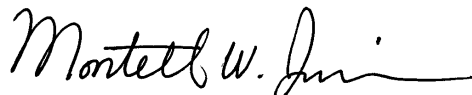
Accepted this \_\_\_\_\_ day of \_\_\_\_\_ (month), \_\_\_\_\_ (year)

Client Name: \_\_\_\_\_  
(Print)

By: \_\_\_\_\_ Title: \_\_\_\_\_  
(Sign) (Print)

We very much appreciate you contacting us and look forward to assisting you with this project.

Sincerely,  
**Ramey Kemp & Associates, Inc.**

  
Montell W. Irvin, P.E., PTOE  
President / CEO