



Mayor

M. Andy Moore

Mayor Pro-Tem

Travis Scott

Council Members

Marlon Lee

David Stevens

David Barbour

Emery Ashley

John A. Dunn

Stephen Rabil

Town Attorney

Robert Spence, Jr.

Town Manager

Michael L. Scott

Finance Director

Greg Siler

Town Clerk

Shannan Parrish

# Town Council Agenda Packet

Meeting Date: Tuesday, August 7, 2018

Meeting Time: 7:00 p.m.

Meeting Place: Town Hall Council Chambers

350 East Market Street

Smithfield, NC 27577





**TOWN OF SMITHFIELD  
TOWN COUNCIL AGENDA  
REGULAR MEETING AUGUST 7, 2018  
7:00 PM**

**Call to Order**

**Invocation**

**Pledge of Allegiance**

**Approval of Agenda**

**Page**

**Presentation**

- 1. Appearance Commission's Annual Report**  
(Chairperson – Peggy Scott) See attached information.....1

**Business Items**

- 1. Consideration and Approval to enter into an agreement with Buffalo Road LLC for residential reimbursements.**  
(Town Manager – Michael L. Scott) See attached information.....9
- 2. Consideration and Approval to Sell property located at 916 Third Avenue by Upset Bid.**  
(Town Manager – Michael L. Scott) See attached information.....37
- 3. Consideration and Approval to amend the FY 2018 – 2019 Fee Schedule for SRAC rates for Town of Smithfield Employees.**  
(Parks and Recreation Director – Gary Johnson & Aquatic Center Director – Dale Ham)  
See attached information.....41
- 4. Consideration and Approval to adopt Resolution #619 (06-2018) to Close a Portion of Second Street.**  
(Public Utilities Director – Ted Credle) See attached information.....77
- 5. Bid Award and Contract Approval for the Riverbank Refurbishment Project.**  
(Public Utilities Director – Ted Credle) See attached information.....85

**Public Hearings**

- 1. ZA-18-04 LifeSpring Church:** The applicant is requesting an ordinance amendment to the Town of Smithfield Unified Development Ordinance, Article 7, Section 7.32 Churches / Places of Worship to allow for churches and places of worship within retail shopping centers that are located in B-3 (Business) zoning districts.  
(Planning Director – Stephen Wensman) See attached information.....105
- 2. SUP-18-08 LifeSpring Church:** The applicant is requesting a special use permit to allow for a church / place of worship on property located within a B-3 (Highway Entrance Business) zoning district. The property considered for approval is an unnamed shopping center within the 1200 block of North Brightleaf Boulevard. The land locked parcel is further identified as Johnston County Tax ID# 14074013J.  
(Planning Director – Stephen Wensman) See attached information.....141
- 3. ZA-18-05 Town of Smithfield:** The Planning Department is requesting an ordinance amendment to the Town of Smithfield Unified Development ordinance, Article 10, Part III, Regulations for Signs, to allow for on-site highrise identification signs on properties located within the B-3 zoning district and that are within 660 feet on the Interstate 95 right-of-way.  
(Planning Director – Stephen Wensman) See attached information.....171
- 4. SUP-18-09 Market Street Automotive:** The applicant is requesting a special use permit to expand an automotive repair shop located on a .242 acre tract of land and within a B-2 (Business) zoning district. The property considered for approval is located on the southwest side of the intersection on East Market Street and South Fifth Street. The property is further identified as Johnston County Tax ID# 15025063.  
(Planning Director – Stephen Wensman) See attached information.....181
- 5. USDA Financing Application:** The purpose of the public hearing is to allow citizen input on an application to the USDA for the financing of a 100 foot aerial platform ladder fire truck.  
(Finance Director – Greg Siler and Fire Chief – John Blanton)  
See attached information.....197

**Citizens Comments**

**Consent Agenda Items**

- 1. Approval of Minutes:**

  - a.** July 10, 2018 – Regular Meeting.....201
- 2. Special Event – Annual Martin Luther King, Jr. Parade:** The petitioner is requesting the annual parade be permanently moved to the third Saturday in February. As required by NCDOT, Ordinance # 495 will also need to be adopted.  
(Town Clerk – Shannan Parrish) See attached information.....217

**3. Special Event – Halloween Event:** The Department of Social Services has requested to close Seventh Street, between Hancock and North Street, on October 31<sup>st</sup>, 2018 from 2:00-5:30 pm to hold a children’s Halloween Event. (Planning Director – Stephen Wensman) See attached information.....225

**4. Consideration and Approval to allow the Smithfield Police Department to retire its K-9 Argo to his handler MPO Kenneth Hundley in accordance with NCGS 20-187.14**  
(Chief of Police – R. Keith Powell) See attached information.....229

**5. Bid Award and purchase approval of a 2018 Scag Zero Turn Mower in the amount of \$12,157.92 for the Appearance Division of the Public Works Department**  
(Public Works Director – Lenny Branch) See attached information.....233

**6. Bid Award and purchase approval of a 2019 Ford F250 in the amount of \$ 29,051.00 for the Public Utilities – Water/Sewer Department**  
(Public Utilities Director – Ted Credle) See attached information.....247

**7. Bid Award and Contract approval in the amount of \$ 49,972 for a water line tie in on Old Goldsboro Road**  
(Public Utilities Director – Ted Credle) See attached information.....253

**8. Bid Award and purchase approval in the amount of \$203,923 for a Bucket Truck for the Public Utilities – Electric Department**  
(Public Utilities Director – Ted Credle) See attached information.....257

**9. Consideration and Approval to purchase 1,000 automatic electric meters from Nexgrid in the amount of \$166,187.90**  
(Public Utilities Director – Ted Credle) See attached information.....263

**10. Consideration and Approval to promote a Police Officer to the rank of Police Sergeant**  
(Chief of Police – R. Keith Powell) See attached information.....267

**11. Consideration and approval of Resolution # 622 (09-2018) approving amendments to the Triangle J. Council of Governments Charter**  
(Town Clerk – Shannan Parrish) See attached information.....269

**12. Advisory Board Appointments**

- a. Art Andrews has submitted an application for consideration to be reappointed to a second term on the Historic Properties Commission
- b. Mary Nell Ferguson has submitted an application for consideration to be reappointed to a second term on the Historic Properties Commission  
(Town Clerk – Shannan Parrish) See attached information.....293

**13. New Hire Report**  
(Human Resources Director/PIO – Tim Kerigan) See attached information.....299

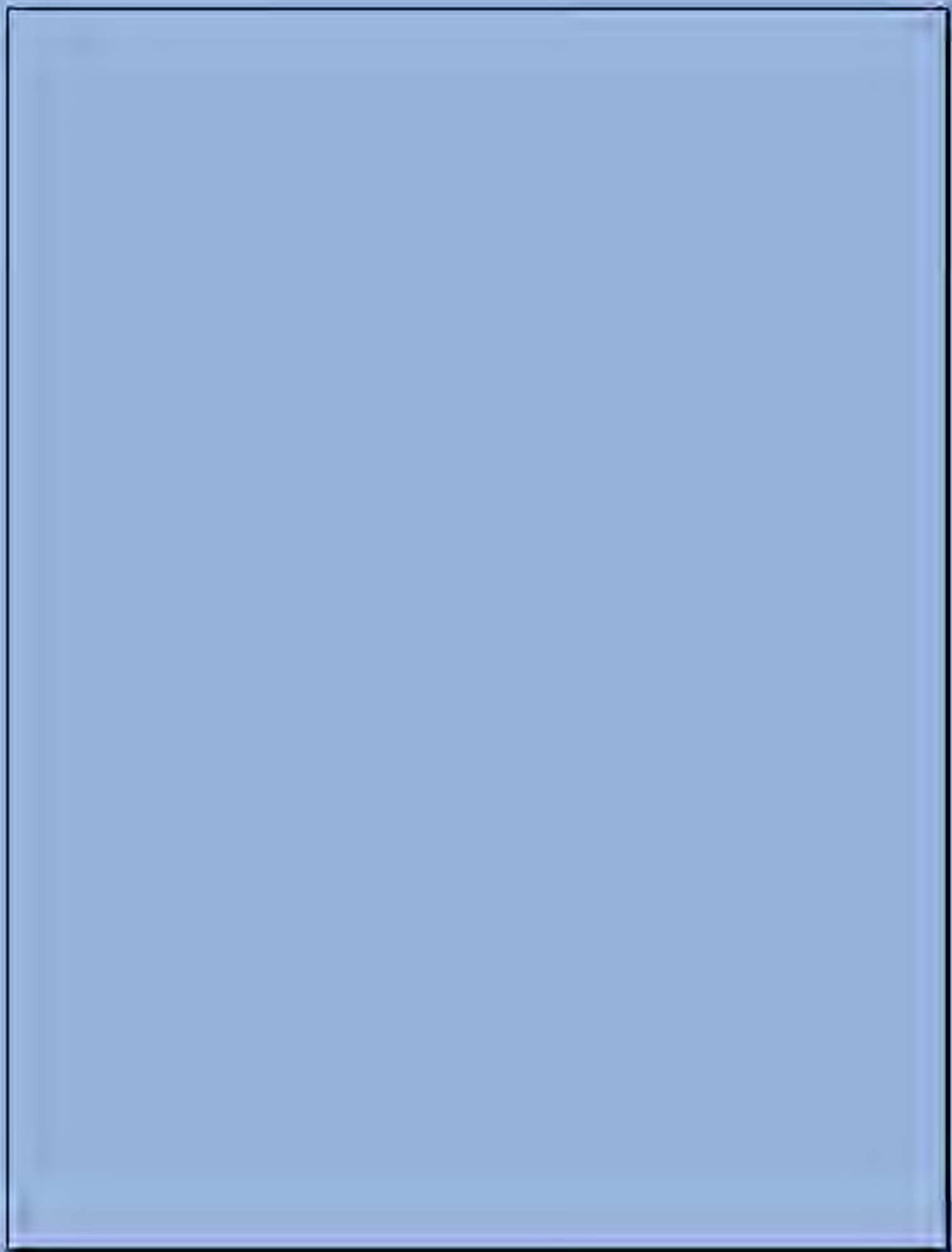
**Councilmember's Comments**

**Town Manager's Report**

- Financial Report (See attached information).....301
- Department Reports (See attached information).....303
- **Manager's Report** (Will be provided at the meeting)

**Adjourn**

# Presentation







**2017- 2018**

*Smithfield Appearance Commission  
Annual Report*

To: Town Council and the Town Manager

From: Peggy Scott, Chairperson  
Alice Harris, Vice Chairperson

Subject: Annual Report and Detailed Summary of the J.B. & J.P. George Endowment

Date: August 1, 2018

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1. Comprehensive report of activities of the Town of Smithfield Appearance Commission for the year ending June 30, 2018.
2. Our Plan of work for the 2018-2019 year
3. The J.B. & J.P. George Endowment Annual- Financial Reports

Date:

To: Mr. Andy Moore, Mayor  
Mr. Michael Scott, Town Manager  
Mr. Stephen Wensman , Planning Director

Mrs. Shannan Parrish, Town Clerk

Councilman Emery Ashley Councilman  
Marlon Lee Councilman David Stevens  
Councilman Stephen Rabil

Councilman Dr David Barbour  
Councilman Travis Scott  
Councilman John A. Dunn

JB & JP George Endowment Reports will be delivered to Mr. George.

# J.B. & J.P. George Beautification Endowment Fund Annual Reports

*JB and JP Endowment agreements can be viewed thru Town Hall.*

## **J.B. George Beautification Fund Annual Report**

The Town has advertised in the Herald once during the month of April 2018 about the availability of the beautification funds. We also published the ad in our Town Newsletter and Website also on Appearance Commission Social media sites. There were no applications submitted to the Appearance Commission for fund requests.

**Beginning Endowment Balance** on June 30, 2017 was. \$105,000.00

### **Annual Earned Income**

Interest	\$1250.08
From last year	<u>\$ 761.60</u>
Total	\$2011.68

### **Expenditures**

• Paper Bark Maple Trees & Plants at the Memorial Monument	\$1,200.00
• Advertising News and Observer	<u>\$ 63.08</u>
<b>Totaled</b>	<b>\$1,263.08</b>

We will encumber \$748.60 to next years projects

**Ending Endowment Balance** on June 30, 2018 was \$105,000

## **J.P. George Beautification Fund Annual Report**

The Beginning **Endowment Balance** on June 30, 2017 was \$25,330.

### **Annual Earned Income**

Interest	\$ 241.82
From Last year	<u>\$ 256.84</u>
Total	\$ 498.66

### **Expenditures**

• Paper Bark Maple Trees	
<b>Totaled</b>	<b>\$146.00</b>

We will encumber \$352.66 to next year's projects

**Ending Endowment Balance** on June 30, 2018 was \$25,330

This Annual Report will be posted on the Appearance Commission page of the Town of Smithfield Website. If there are any questions, please contact me.

*Sincerely Submitted by*  
*Peggy Scott, Chairperson*  
*Alice Harris, Vice Chairperson*

## Appearance Commission General Fund Expenditures

A total of \$8,313.93 was spent on the projects detailed on the following pages.

We will encumber \$6686.00 for fall projects

Fall Projects are as follows:

Parks & Rec. Dept. has replaced the entrance signs for all of our parks  
MLK Sign & 11 Park Signs we will finish the project with  
Plants, Mulch, Edging, & Dirt Estimated \$2400.00-\$3600.00

9 New Trees (Donate a Tree) Estimated \$1600.00

New Trees along Johnson Street Downtown

Boat Ramp Beautification

4 Wayfinding Entrance Signs: Plants, Mulch, Dirt

### Projects for 2018-2019:

Update Town Hall Park  
Boat Ramp Area  
Continue looking at Streets that need Beautification  
Continue developing a Tree plan for the Town

### Points of Interest:

We would like to thank Regina Sanders for her 11 years of service on the commission.  
She has stepped down this year.

We currently have 3 opening

### Donate-A-Tree Program

9 Tree's this year for a **Total of 155 Trees since 2010.**

# *Smithfield Appearance Commission*

## *Projects for 2017- 2018*

### **Library Renovations in the Back Court Yard \$886.00**

Power Washed Front side and back court yards and the statue  
Old bushes were removed new dirt and new plants, sod & mulch

**Before**



**After**

## African American Monument

Steel edging, new plants, mulch and we added a granite marker with the story behind the memorial \$930.00

**Before**



**After** more plants will be added this fall to fill in



**Miracle Park Baseball Diamond \$905.00**

Landscaping 9 Red Maples, 4 large areas with plants & mulch

**10 New Paper Bark Maple Trees along Market Street \$2900.00**

**Replaced American Flags and Poles along Market Street \$2805.60**

**New Banners** were chosen 2 sets one holidays and one everyday



# Thank You

*The Appearance Commission would not be able to do the work we do without the tireless efforts of the Town Staff.*

## *Special Thank you to:*

**Lenny Branch and his entire Department of Public Works.**

For always getting the many projects finished, installed, and looking great!  
Keeping our Beautiful Town clean and well maintained.

**Shannan Parrish**

For keeping us on track and taking care of our minutes and book work.  
Her knowledge is endless and she is always so positive and helpful.

**Stephen Wensman** our Planning Director always available to answer our questions and knowledge about areas we would like to work on.

**Councilman David Stevens**

For his Support, for the Appearance Commission.

**Mayor, Andy Moore**

**Town Manager, Michael Scott**

**Town Council**

For their support of the Appearance Commission

**Mr. Jim George-**

For his continued support of the Appearance Commission and the beautification of our Town.

*Respectfully Submitted by  
Chairperson Peggy Scott  
Vice Chairperson Alice Harris*





# Business Items





# Request for Town Council Action

**Business  
Agenda  
Item:** Reimbursement  
Agreement  
**Date:** 08/07/2018

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**Subject:** Reimbursement Agreement with Buffalo Road, LLC

**Department:** General Government

**Presented by:** Mike Scott, Town Manager

**Presentation:** Business

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## Issue Statement

The Town is being asked to consider entering into a contract with Buffalo Road, LLC to reimburse a portion of certain infrastructure costs for a residential subdivision located at 1899 Buffalo Road, north of Durwood Stevenson Highway.

## Financial Impact

\$1,131,938 over the build out of 9 phases of the residential development.

## Action Needed

Approve the contract as provided.

## Recommendation

Staff recommends the approval of the contract as provided.

Approved:  Town Manager  Special Retained Council; Ernest Pearson, Nexsen-Pruett

Attachments:

1. Staff Report
2. Residential Development Plan
3. Draft Contract



# Staff Report

**Business  
Agenda  
Item:** **Reimbursement  
Agreement**

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The Town is being asked to enter into an agreement with Buffalo Road, LLC to reimburse a portion of certain infrastructure improvements needed to build a Planned Unit Development previously approved by the Town Council as RZ-18-04 and SUP-18-02 in March of 2018. The plan includes the building of a 298 – 315 lot residential subdivision at 1899 Buffalo Road. The reimbursements would be paid to the developer in a prorated amount once certificates of occupancy are obtained by the developer. Page five (5) of the attached draft contract contains the maximum amounts the Town would be responsible for regarding each phase. The maximum amount reimbursable to the developer per fiscal year would be equal to one and one-half phases of the residential project. The parameters set forth with **the draft contract are consistent with the Town’s adopted residential reimbursement policy** also attached to this action form.

# **RESIDENTIAL INFRASTRUCTURE COST PARTIAL REIMBURSEMENT POLICY**

**AMENDED & EFFECTIVE 02/20/2018**

## **Objective of the Policy**

The Town Council wishes to encourage the development of infrastructure improvements in connection with housing developments with a goal of 1 %per year growth in the housing stock within the Town limits.

This policy is designed to encourage residential land developers to build infrastructure improvements in connection with both single family and multi-unit developments and require construction of some of the housing units as a condition for reimbursement of the Town's share of the infrastructure development costs.

The Town is willing to make a reasonable investment in developing proper and sustained growth. The Town Council recognizes that there are many advantages to the Town from residential development in addition to the financial benefits. Due to these immeasurable benefits of development and growth, the Town Council is willing to participate in new residential infrastructure development costs. The timing of such reimbursements are subject to negotiation on a project by project basis.

This policy only provides guidelines for this program. The Town Council will determine whether to enter into this infrastructure cost reimbursement arrangement for any specific project or with any specific developer on a case by case basis. These policy guidelines in no way bind the Town Council to agree to an infrastructure cost reimbursement arrangement with any developer for any specific project.

## **Policy Conditions**

The Town of Smithfield may participate in a negotiated portion of the actual cost of eligible development infrastructure items, described below. Participation may be approved under the following stipulations:

- The application of this policy and the decision of the Town Council to enter into this infrastructure cost reimbursement arrangement with any specific developer for any specific project is intended to be utilized for a project which will have a significant beneficial impact on the Town's growth and development; and therefore projects must meet the below criteria to be considered for this program:
  - Will involve at least 100 residential units;
  - The development will not qualify for tax credits for low to

- moderate cost housing;
    - No portion of the developed project is within a 100 year flood plain
- The developer will pay required infrastructure development costs including water, sewer, street, curb & gutter, storm drainage, and associated engineering costs;
- The Town may make reimbursements of a portion of qualified infrastructure development costs on a pro rata basis for each house or cluster of housing units under the same roof structure (multi-unit development) upon completion and receipt of certificate(s) of occupancy. The payments will be an amount equal to the agreed upon percentage of the total actual cost of required infrastructure development for the entire project to be reimbursed by the Town which will be the same percentage as that house or cluster of housing units constitutes in relation to the total housing units in the project;
- The eligible development infrastructure shall be designed and constructed in accordance to the Town's specifications, to be determined in the Town's sole discretion;
- The property involved with the proposed development or the particular phase of the development must be located within the Town limits or has received approval of a petition to annex said property, but and, the **Town Council reserves the right to exclude this policy for satellite annexation;**
- The reimbursement payments for each approved participation will be limited to an agreed upon period of years from the date of the agreement entered into between the Town and the developer;
- The developer understands that the Town funding for the above-mentioned payments is subject to the amount which is available in the annual budget at any time during each fiscal year.
- The developer will dedicate the infrastructure improvements to the Town, at no cost to the Town, if the Town accepts such dedication; and
- The infrastructure improvements must be in a public right of way, or the right of way required by the Town must be dedicated to the Town, at no cost to the Town.
- In addition to other infrastructure improvements which will be dedicated to the Town, the Town may negotiate to purchase, in return for a part of its reimbursement, one or more of the following real property interests in a proposed residential subdivision from a developer when the purchase would benefit Town services, enterprise systems or design criteria of the Town. The

real property interests may be one or more of the following:

1. Fee title to the streets;
2. Enhanced storm water facilities that exceed subdivision dedication requirements;
3. Landscape easements for trees or other plantings;
4. Easements for parks, trails or greenways; and
5. Enhanced street design and extensions that exceed subdivision dedication requirements.

The Town may require the subdivision to provide approved planned community development agreements so that any such easements as set forth in subparagraphs 3 and 4 above are maintained by the subdivision residents subject to enforcement by the Town.

### **Eligible Development Infrastructure Items**

The Town of Smithfield may participate by reimbursing the developer an agreed upon percentage of the actual eligible infrastructure development costs; engineering and other related costs, as outlined below:

- Water lines within or adjacent to the development street right-of-way and/or utility easements;
- Sewer mains, lines and pumpstations within or adjacent to the development street right-of-way and/or utility easements;
- Any street construction within the development or street improvements adjacent to the development in accordance with Town's Subdivision Regulations standards;
- Grading, soil testing, curb & gutter, sidewalks, and storm drainage within or adjacent to the development street right-of-way and/or drainage easements as required by the Town's Subdivision Regulations standards; and
- Non-eligible costs include but are not limited to the following: property surveys, additional cost of non-standard streetlights, and annexation maps.

***Note: If the development is a phased process, the Town will only approve participation for that phase being considered for construction at that time.***

### **Procedures**

A developer may apply for Town's participation in the cost of infrastructure improvements in accordance with the following procedures:

1. The application for Town participation in residential infrastructure development costs would include a sketch residential development plan and a professional

engineer's estimate of costs related to street improvements, water, sidewalks, sewer, soil testing, grading, curb and gutter and drainage directly related to infrastructure improvements, in accordance with the Town's regulations and specifications;

2. Once the sketch plan has been reviewed and approved by the Town of Smithfield Planning Board, the application for participation in the development cost will then be forwarded to the Town Council for consideration;

The Town Council will consider the application and may request the Town Engineer to verify the estimates prior to their consideration. The Town Engineer will report to the Town Council if the developer's estimate is reasonable in his professional opinion and the Town Council will adopt a resolution percentage of participation, if funds allocated for residential development participation are available; and

3. The Town Council in adopting a resolution to participate in no way circumvents or overrides any Planning Board deliberations and decisions in the process of approving preliminary plats for residential development. The Town Council recognizes that a developer may wish to secure a commitment from the participation prior to the preliminary plats of residential development being completed.

### **Funding**

In preparation for each fiscal year, the Town Council will review and evaluate its current Strategic Plan with regards to residential development growth objectives and its investment for this purpose. The Council may allocate revenues to fund this line item in the Town's budget.

Prospective residential developers, who are applicants for participation, may be informed that the funding of the reimbursement payments will be on a first-come-first-served basis until the funding for that fiscal year is depleted. This approach allows more than one residential developer to participate and allows for varying pace of construction of housing units.

The Town Council recognizes that the objective of this policy may not be met by the specifics included in the policy at the time of its initial adoption; therefore, the Council reserves the right, as well as encourages future Councils, to amend this policy as it deems necessary in order to encourage residential growth for the betterment of the Town of Smithfield. Thus, the Council recommends that each Council review the amount of funding and the procedure details for this policy each year during its budget preparation and approval process.



STATE OF NORTH CAROLINA  
COUNTY OF JOHNSTON



**AGREEMENT REGARDING  
INFRASTRUCTURE CONSTRUCTION COST REIMBURSEMENT**

**by and between**

**BUFFALO ROAD, LLC**

**and**

**THE TOWN OF SMITHFIELD, NORTH CAROLINA**

**THIS AGREEMENT (the “Agreement”)**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the TOWN OF SMITHFIELD, a North Carolina municipal corporation, hereafter referred to as the “**Town**” and BUFFALO ROAD, LLC, a North Carolina limited liability company, hereafter referred to as the “**Developer**,” with each being referred to singly as a “**Party**” and being referred to cumulatively as the “**Parties**”.

**WITNESSETH:**

**WHEREAS**, the Developer is the contract purchaser of those certain tracts or parcels of land described on Exhibit A attached hereto and incorporated herein by reference (“**Property**”) which are subject to this Agreement;

**WHEREAS**, upon the Developer’s acquisition of the Property, the Developer plans to develop the Property for residential purposes, containing up to 263 detached single family residences and up to 52 townhouse residences as shown on a plan submitted to the Town’s Department of Planning and Zoning and approved by the Town Council on April 3, 2018 (“**Residential Project**”) which plans are as shown on Exhibit B attached hereto and incorporated herein by reference;

**WHEREAS**, the Developer is required to construct certain infrastructure improvements relative to the Residential Project to allow for the proper provision and planning for the residences in the Residential Project;

**WHEREAS**, the parties of this Agreement desire to enter into this Agreement in order to fully set forth the terms and conditions as to the infrastructure improvements to be required of the Developer, the cost participation agreed to by the Town, and other commitments of the Developer;

**WHEREAS**, the Town requires, pursuant to N.C.G.S. § 160A-372, the dedication and construction of utility infrastructures, and for the coordinated provision of utilities that will create conditions essential to public health, safety, and the general welfare;

**WHEREAS**, the parties wish to agree to provide a mechanism for compensating the Developer by reimbursing a portion of the costs with respect to the infrastructure improvements;

**WHEREAS**, the Town is authorized pursuant to N.C.G.S § 160A-311 et. seq. to operate and does in fact operate water treatment and distribution and wastewater collection enterprises and requires, pursuant to N.C.G.S. § 160A-317, the connection to the system by owners of developed lands located within the Town, for a cost set forth in the Town's annual budget;

**WHEREAS**, the Town is authorized to enter into this contract pursuant to N.C.G.S. § 160A-16, and may contract with the Developer to carry out the public purposes set forth herein pursuant to N.C.G.S. § 160A-20.1 and the Town Council of Smithfield has determined that it is in the best interests of its citizens to do so;

**WHEREAS**, the Residential Project is located in an area that will be voluntarily annexed by the Town at the request of the Developer in anticipation of the Residential Project, and (i) prior to an annexation ordinance the Town was under no legal obligation to provide municipal services to the Residential Project; (ii) as a condition of annexation and development for the Residential Project and the other considerations in this Agreement the Town enters into this Agreement; and (iii) the Town requires all fees listed in the Town's annual budget to be paid; and

**WHEREAS** the Developer, in consideration of the foregoing benefits enjoyed by this Agreement and the annexation ordinance hereby agrees that it (i) is familiar with the fees as currently required by the Town; (ii) does not dispute the reasonableness of these fees as currently listed; and (iii) notwithstanding any Infrastructure Cost Reimbursements discussed below, hereby agrees to timely pay all normal and customary fees as listed in the Town's annual budget, to the extent applicable to the Developer in connection with its development of the Residential Project at such time as the applicable fee becomes due to the Town in the ordinary course of development.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein the Town and the Developer agree as follows:

## **ARTICLE 1 GENERAL TERMS/DEFINITIONS**

**1.1. General Terms:** All terms of this Agreement shall become enforceable upon signing of the Agreement by the Developer and ratification by the Town Council.

## 1.2. Definitions:

- a. **“Actual Construction Cost(s)”**: The amount of costs incurred by the Developer for construction of Reimbursable Project described herein upon final completion and upon being approved by the Town, exclusive of easement acquisition costs, unless otherwise consented to in writing by the Town, and exclusive of any of the following costs: legal fees, administrative costs (including but not limited to profit and overhead) of the Developer, or any unused contingency reserves.
- b. **“Construction Documentation”**: The following documentation as to any Reimbursable Project that is required to be supplied to the Town by the Developer under this Agreement as a condition of being reimbursed by the Town for a portion of its infrastructure improvement costs: all bids, construction plans, as-built drawings (surveys, plats, or any other documentation or electronic file required by the Planning Director), operation and maintenance manuals (if any), invoices, payment confirmations, lien waivers of subcontractors, and engineer certifications as to the suitability and compliance with required construction standards.
- c. **“Infrastructure Cost Reimbursement” or “Reimbursement”**: The amount that is reimbursable under this Agreement due to the Developer’s performance of the Reimbursable Project. Under no circumstance shall the sum of all Reimbursements exceed the total amount of Reimbursements agreed to under this Agreement.
- d. **“Lot”**: A residential building lot as shown on any plans submitted for the Residential Project, whether or not such lot is actually platted or conveyed.
- e. **“Reimbursable Project”**: As defined herein and as shown on the plans at Exhibit B (as such plans may be revised, if such revisions are approved by the Town staff), all of the following on-site infrastructure required to be constructed for the Residential Project: (i) water lines within or adjacent to the development street right-of-way and/or utility easements; (ii) sewer mains, lines and pumpstations within or adjacent to the development street right-of-way and/or utility easements.; and (iii) curb and gutter and storm drainage within or adjacent to the development street right-of-way and/or drainage easements as required by the Town’s Subdivision Regulations standards.
- f. **“Residential Project”**: The Developer’s plan to subdivide and construct detached and attached single family residential lots and townhouse residences, in phases according to the plans submitted and approved as referenced above, as shown on Exhibit B.

- g. **“Townhouse Building”**: Each building within the Residential Project containing two or more townhouse residences.

## **ARTICLE 2**

### **REIMBURSEMENT PROCESS**

- 2.1. Initiation of Reimbursement Arrangement.** The Developer shall execute this Agreement within seven (7) days after this Agreement is approved by the Town Council. Prior to commencing the development of the Residential Project, the Developer shall provide to the Town a schedule of build out of the Residential Project, updating it annually as may be applicable. In the event that the Developer does not purchase the Property or any portion thereof or has not completed the annexation of the property into the Town within eighteen (18) months of the date of this Agreement, this Agreement shall terminate and the parties shall have no further obligation under this Agreement.
- 2.2. Process.** The Developer shall construct at its expense all infrastructure comprising the Reimbursable Project in a manner consistent with reasonable and customary practices, according to plans and specifications approved by the Town, and in accordance with the Town’s development standards. As the Developer progresses through the process of constructing all infrastructure comprising the Reimbursable Project, the Developer will provide to the Town, all of the Construction Documentation. Each item of Construction Documentation shall be provided to the Town no later than fifteen (15) days after it becomes available to or is generated by the Developer. All such Construction Documentation shall be provided to the Town’s Planning Director. Within fifteen (15) days following the receipt of each item of Construction Documentation, the Town will inform the Developer whether any additional Construction Documentation is needed or amendments to the Construction Documentation will be required. The Developer shall promptly, but no later than ten (10) days following notice by the Town, provide to the Town any additional Construction Documentation or amendments to the Construction Documentation, as required by the Town. It is understood and agreed to by the Parties that no Infrastructure Cost Reimbursement for a phase of the Residential Project will be paid by the Town to the Developer until such time as all Construction Documentation for that phase has been provided by the Developer to the Town, in a form and substance acceptable to the Town in its sole discretion, and certificates of occupancy are issued on the units for which a Reimbursement is being requested.
- 2.3. Infrastructure Cost Reimbursement.**
  - a. Infrastructure Cost Reimbursements will be paid by the Town to the Developer, provided that: (i) the Developer is in compliance with all terms of this Agreement; (ii) all Construction Documents have been provided by the Developer in accordance with Section 2.2; (iii) all water and wastewater infrastructure for such phase and all prior phases

has been fully constructed and passed inspection by the Town; (iv) all water, wastewater and road infrastructure for such phase and all prior phases has been dedicated to and conveyed to the Town at no cost to the Town; and (v) certificates of occupancy have been issued for any Lot or Townhouse Building for which a Reimbursement is sought. Such Reimbursements will be paid in the amounts and at the times indicated below, for the relevant phase.

b. The estimated cost of the construction for each phase of the Reimbursable Project and the maximum amount of the Infrastructure Cost Reimbursements to be paid by the Town to the Developer for each phase are as follows, delineated by each phase of the Residential Project:

<u>Phase #</u>	<u>Estimated Construction Cost</u>	<u>Maximum Amount of Reimbursements</u>
1	\$389,090	\$155,636
2	\$386,170	\$154,468
3	\$390,915	\$156,366
4	\$386,535	\$154,614
5	\$313,900	\$125,560
6	\$333,245	\$133,298
7	\$392,740	\$157,096
8	\$174,105	\$69,642
9	\$63,145	\$25,258
<b>TOTAL</b>	<b>\$2,829,845</b>	<b>\$1,131,938</b>

If the Actual Construction Costs are less than as stated above for any phase, the maximum amount of Reimbursements for that phase shall be reduced by a pro rata amount. If the Actual Construction Costs are more than as stated above for any phase, the maximum amount of Reimbursements for that phase shall not be increased.

c. After one or more Lots or Townhouse Buildings within a phase receives a certificate of occupancy, and all required Construction Documentation for the relevant phase has been received by the Town, the Developer shall submit to the Town a copy of

the certificate(s) of occupancy and a request for reimbursement on the Reimbursement Form, as shown at Exhibit C which is attached hereto and made a part hereof by reference. Within thirty (30) days of the submission of the above-referenced documentation the Town shall pay to the Developer a Reimbursement payment equal to:

Number of Lots or Townhouse Buildings for which a Reimbursement payment is sought, divided by the number of Lots or Townhouse Buildings within the relevant phase(s), times the Maximum Amount of Reimbursements allowed for the relevant phase(s).

d. The above provisions notwithstanding, the maximum amount of all Reimbursements which will be paid by the Town to the Developer within any fiscal year of the Town (July 1 to June 30) will be limited in the amount budgeted for that year by the Town Council, which is based generally upon an estimate of the number of Lots or Townhouse Buildings within no more than one and one-half phases of the Residential Project.

### **ARTICLE 3 OTHER REQUIREMENTS**

- 3.1. Greenways.** The Developer will construct all greenways as shown on the Residential Project Plans, as shown at Exhibit B. The homeowners association of the Residential Project will maintain all such greenways.
- 3.2. Stormwater Retention Pond(s).** The Developer will construct all storm water retention ponds as shown on the final Residential Project Plans that must be approved by the Town Staff as a revision of what is at Exhibit B, before Developer's construction can begin. The home owners association of the Residential Project will maintain all such storm water retention ponds.
- 3.3. Memberships in Smithfield Recreation and Aquatic Center.** The Developer shall include in a declaration of covenants encumbering the Property a provision requiring the homeowners association for the Residential Project to procure for each owner of a Lot or a unit within a Townhouse Building, and their immediate family members residing with them in the Residential Project, a membership in the Smithfield Recreation and Aquatic Center (the "Center"), subject to the rules and regulations of the Center. The homeowners association for the Residential Project shall be responsible for paying the monthly membership fees for all such members of the Center. The monthly membership fees for the Center shall be in the amount as determined and set each year by the Town's Council. All membership fees shall be paid in the time frame and as required by the Center.

- 3.4. DOT Required Roads.** Nothing in this Agreement shall be construed as placing upon the Town responsibility for the cost of and constructing any off-site road improvements that may be required by the N.C. Department of Transportation. The costs of these improvements will not be a part of the Infrastructure Costs Reimbursements.
- 3.5. Public Bidding.** The Developer shall submit construction drawings for the Reimbursable Project through the normal course of business and nothing herein shall serve as a pre-approval of any type of development plans. All design and construction shall be in accordance with Town standards, and the submittal of construction drawings will be made to the Town's Planning Director for review and comment. The Developer's engineer will address all comments from the Town Engineer and secure the Planning Director's approval of the construction before advertising for bids for the installation of any infrastructure subject to Reimbursements. To the extent required by N.C.G.S. § 160A-499(d), the Developer shall comply with applicable public bidding laws for the installation of any infrastructure for the Reimbursable Project that is subject to Reimbursements under N.C.G.S. § 143-129, et. seq., and shall provide to the Town's Planning Director copies of all bid proposals received, a copy of the executed contract between the Developer and the lowest, responsible bidder, and a unit price bid tabulation which is signed and sealed by a professional engineer registered in the State of North Carolina certifying the bids received and the award of the contract are in conformance with N.C.G.S. § 143-129, et. seq. The Developer shall secure approval of the contractor who will be installing the Reimbursable Project from the Town's Planning Director prior to the time the bid for the installation of the Reimbursable Project is awarded by the Developer. The Developer shall provide and secure approval from the Town's Planning Director of all design and construction changes made to the approved construction drawings for the Reimbursable Project, including any changes made during the construction of the Reimbursable Project, before implementation of such changes. The Developer shall notify the Town's Planning Director in writing (which may be by e-mail) in advance (and, to the extent reasonably possible, at least one (1) week in advance) of the dates for any of the following with respect to the installation of the Reimbursable Project: (a) pre-bid conference, (b) bid opening, (c) commencement of construction, (d) manufacturers' inspections, (e) major component inspections, (f) construction progress or project meetings, and (g) any other significant related meetings on the Reimbursable Project. The Developer shall provide the Town's Planning Director with monthly inspection reports from the Developer's engineering firm for the Reimbursable Project, delivering them on a monthly basis at minimum. The Town may hire, at Town's expense, an outside consultant to represent and handle approvals and interim inspections of the Reimbursable Project on its behalf.
- 3.6. Developer Constructed Infrastructure.** The infrastructure constructed by the Developer as part of the Residential Project shall be subject to the Town's usual and customary

policies and procedures regarding acceptance (including a one year warranty to be provided by Developer after acceptance by the Town).

- 3.7. Design.** It shall be the responsibility of the Developer to fully design the Residential Project and the Reimbursable Project, and provide to the Town construction drawings for the Residential Project and the Reimbursable Project, and to ensure that all regulatory approvals for the Residential Project and Reimbursable Project are in place before beginning construction. The Developer shall keep the Developer's design engineer on retainer to respond promptly to the Town in the event that the Town needs the designer to provide clarification, explanation, oversight, etc. of any issue that arises during construction of the Residential Project and Reimbursable Project that was designed under the engineer's oversight. The Developer shall bear all expenses associated with same.
- 3.8. Right of Way and/or Easement Acquisition.** The Developer shall secure all necessary easements for the Town infrastructure projects that are the subject of this Agreement prior to commencement of construction of the Residential Project. Should the Developer be unable to obtain required easements after documented attempts to do so, the Town may utilize its eminent domain authority to obtain the necessary easements for the installation of such projects with all costs to be borne by the Developer associated with this legal process, including all amounts paid for the acquisition. The Developer shall substantiate its attempts to obtain the property through voluntary sale in the following manner within a reasonable period of time after the execution of this Agreement:
- a. Developer shall use commercially reasonable efforts to provide to the Town a letter from property owners stating that he/she rejects all offers to purchase the easement. If available, said letter shall be signed by the landowner.
  - b. An affidavit, signed under oath by penalty of perjury, from the Developer's agent or designee describing in detail the conversation that took place with the landowner, and the result of said conversation.
- 3.9. Condemnation.** In the event of a condemnation action to acquire property for a public purpose, the Developer shall also submit to the Town sufficient funds to be escrowed by the Town for a deposit with the court as necessary under the applicable condemnation statute. The Town Attorney shall inform the Developer thirty (30) days prior to filing the amount of said deposit, and the Developer shall pay said deposit to the Town prior to commencement of the action. Upon payment of the deposit, the Town will proceed with condemnation action subsequent to the Town Council, in its sole discretion, passing a resolution of condemnation for each property as soon as practicable after the receipt of the deposit. The timeframe discussed herein is set forth with the goal of allowing access to the condemned properties within forty-five (45) to sixty (60) days. In the event that the funds initially deposited by the Developer are not sufficient to cover the entire cost of the



acquisition of the easements by the Town, the Town shall invoice the Developer and Developer shall pay the invoiced amount within thirty (30) days. The Developer understands that the full costs of this acquisition may not be realized until several years after the initiation of the condemnation action. In the event that the costs expended by the Town for the acquisition (through condemnation or otherwise) are less than those held in escrow by the Town, the Developer shall be entitled to a reimbursement of any amount of escrow funds held by the Town paid by the Developer with respect to land acquisition. At all times during this judicial process, the Town retains all legal authority with respect to settlement, negotiation trial strategy, and opinions as to value.

- 3.10. Dedication.** It is anticipated that upon completion, following any necessary holding periods, insurable title to the land upon which each of the improvements constructed pursuant to this Agreement shall be conveyed by Special Warranty Deed (in the event of a pump station) or by recorded easement (in the event of an underground utility line) to the Town (or such other applicable government entity), and upon dedication, conveyance or assignment of such easements/improvements to the proper governmental entity, the obligations of the Developer with respect thereto shall terminate, and such applicable governmental entity shall have the continuing and ongoing obligation to maintain and repair the same.
- 3.11. Approval.** This Agreement does not guarantee any specific approvals of any proposed development plan; *provided, however*, that all approvals granted prior to the date of this Agreement shall continue to be valid and in full force and effect.

#### **ARTICLE 4 OTHER TERMS**

- 4.1. Acquisition of Property.** Notwithstanding anything to the contrary in this Agreement, the Developer's obligations under this Agreement shall only become effective upon the Developer's acquisition of the Property or any portion thereof, failing which the Developer shall provide prompt written notice to the Town, and such notice shall serve as notice of termination of this Agreement, whereupon this Agreement shall automatically terminate and be null and void and of no further force or effect, and the parties hereto shall have no further rights, recourse or obligations to each other hereunder.
- 4.2. Expiration.** If the Developer does not commence construction of the Residential Project within eighteen (18) months of the date of this Agreement absent delays outside of Developer's control, this Agreement shall terminate and the parties shall have no further obligations under this Agreement. Otherwise, this Agreement shall remain in effect ten (10) years from the date of this Agreement. Any Infrastructure Cost Reimbursements earned but not requested by the Developer at the expiration of this ten (10) year period shall expire and no longer be available to the Developer or any other party.

- 4.3. Authority.** The Town and the Developer each warrant and represent to the other that it has full right and authority to enter into this Agreement, and that the person signing on behalf of each party is authorized to do so.
- 4.4. Default.** The terms and conditions of this Agreement shall be enforceable by the parties by actions for specific performance or injunction in addition to any other remedies available at law or in equity, subject to any defenses that may be asserted, provided that any damages shall be limited to actual and direct damages (and neither party shall be liable hereunder for special, consequential, lost profit or punitive damages) and the non-defaulting party provides due notice and an opportunity to cure to the defaulting party and the defaulting party fails to cure the breach within fifteen (15) days after receipt of such notice. Any failure or omission of the non-defaulting party to exercise any right or remedy provided herein shall not be deemed a waiver of such party's right to enforce strictly the defaulting party's obligations in any other instance.
- 4.5. Indemnification.** The Developer agrees to protect, defend, indemnify and hold the Town and its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind in character and arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of actions of every kind and character made by third parties in connection with or arising from (a) the injury to (including death of) persons or physical damage to property arising out of the performance of Developer's obligations under this Agreement by Developer, its agents, employees and contractors, or (b) a claim that the Town's entry into this Agreement is beyond the statutory authority of the Town (collectively, "**Claims**"), except to the extent any such Claims arise out of the negligence or willful misconduct of the Town or its agents, employees or contractors. The Developer further agrees to investigate, handle, provide defense for and respond to, any such Claims at its sole expense and agrees to bear all other costs and expenses related to such Claims, even if such Claims are groundless, false, or fraudulent. The Developer's indemnity obligations under this Section 4.5 shall terminate on the date that is two (2) years after completion of the Reimbursable Project.
- 4.6. Notices.** All notices, reports, and other communications given pursuant to this Agreement shall be in writing and shall either be mailed by first class mail, postage prepaid, certified or registered with return receipt requested, or delivered in person to the intended addressee. Notice sent by certified or registered mail shall be effective upon the date of delivery indicated on the return receipt. Notice given in any other manner shall be effective upon actual receipt by the addressee.

4.7. Notices under this Agreement shall be to the following:

FOR THE TOWN:

Town of Smithfield  
Attn.: Stephan Wensman  
Planning Director  
PO Box 761  
Smithfield, NC 27577  
Reference: RZ-18-04

FOR THE DEVELOPER:

Buffalo Road, LLC  
Attn.: Manager  
114 West Main Street, Suite 102  
Clayton, NC 27520

4.8. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. The parties consent to the jurisdiction of the courts of competent jurisdiction located in Johnston County. Furthermore, this Agreement is entered under the authority of N.C. General Statutes § 160A-499, and any provision hereof in conflict with that authority shall be null and void.

4.9. **Relationship of the Parties.** This Agreement shall not be considered to create a joint venture, partnership or other legal relationship between the parties or as giving the right of either party to legally bind the other party in any manner or to be able to incur debts or liabilities on behalf of the other party or create a condition in which either party shall share or be responsible for the debts or liabilities of the other party. This Agreement shall not be considered to constitute the appointment of either party as a representative of the other party.

4.10. **Severability/Full Invalidity or Unenforceability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect. Furthermore, in lieu of such invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be reasonably possible. Provided however, if this Agreement and the terms set forth by this Agreement are determined by a court of competent jurisdiction to be wholly invalid and unenforceable, and thereby the court determines that the Reimbursements previously paid or to be paid by the Town are not permissible appropriations of public funds, then the Town's obligations as to any future Reimbursements shall cease, and the Developer will reimburse the Town for any Reimbursements previously paid.

4.11. **Amendment.** This Agreement may not be amended or terminated except by written instrument signed by both parties.

4.12. **Assignment.** This Agreement may not be assigned without the written consent of the Town, which consent shall not be unreasonably withheld, conditioned or delayed;

*provided, however*, that the Developer may assign this Agreement as collateral security for one or more loans the proceeds of which will be used in part to finance construction of the infrastructure comprising the Reimbursable Project, and the Town's consent shall not be required with respect to any such assignment; *provided, further*, that nothing in this Agreement shall be construed as obligating the Town to enter into any sort of additional or separate agreement with any third party to which this Agreement has been collaterally assigned. The obligations under this Agreement are binding on the successors and/or assigns of the Developer regardless of whether or not the Town consented to such assignment.

**4.13. Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and there are no representations, warranties, covenants or obligations except as set forth in this Agreement. This Agreement supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions relating to the subject matter hereof, written or oral, of the parties. The rights, obligations, limitations and duties of this Agreement inure to the benefit of the successors and/or assigns of the parties.

**4.14. Exhibit List.** The following exhibits are hereby incorporated by reference:

- EXHIBIT A: Property
- EXHIBIT B: Residential Project Plans
- EXHIBIT C: Reimbursement Request Form

**IN WITNESS WHEREOF** the parties have executed this Agreement the day and year first above written.

**TOWN OF SMITHFIELD**

*(Town Seal)*

By: \_\_\_\_\_  
M. Andy Moore, Mayor

*ATTEST:*

\_\_\_\_\_  
Shannan Parrish, Town Clerk

**BUFFALO ROAD, LLC**

By: \_\_\_\_\_  
Reid M. Smith  
Manager

\_\_\_\_\_  
This document is legally sufficient as to form.

\_\_\_\_\_  
Ernest C. Pearson, Special Town Legal Counsel

This instrument has been pre-audited in the manner proscribed by the Local Government Finance Act.

\_\_\_\_\_  
Greg Siler  
Finance Director

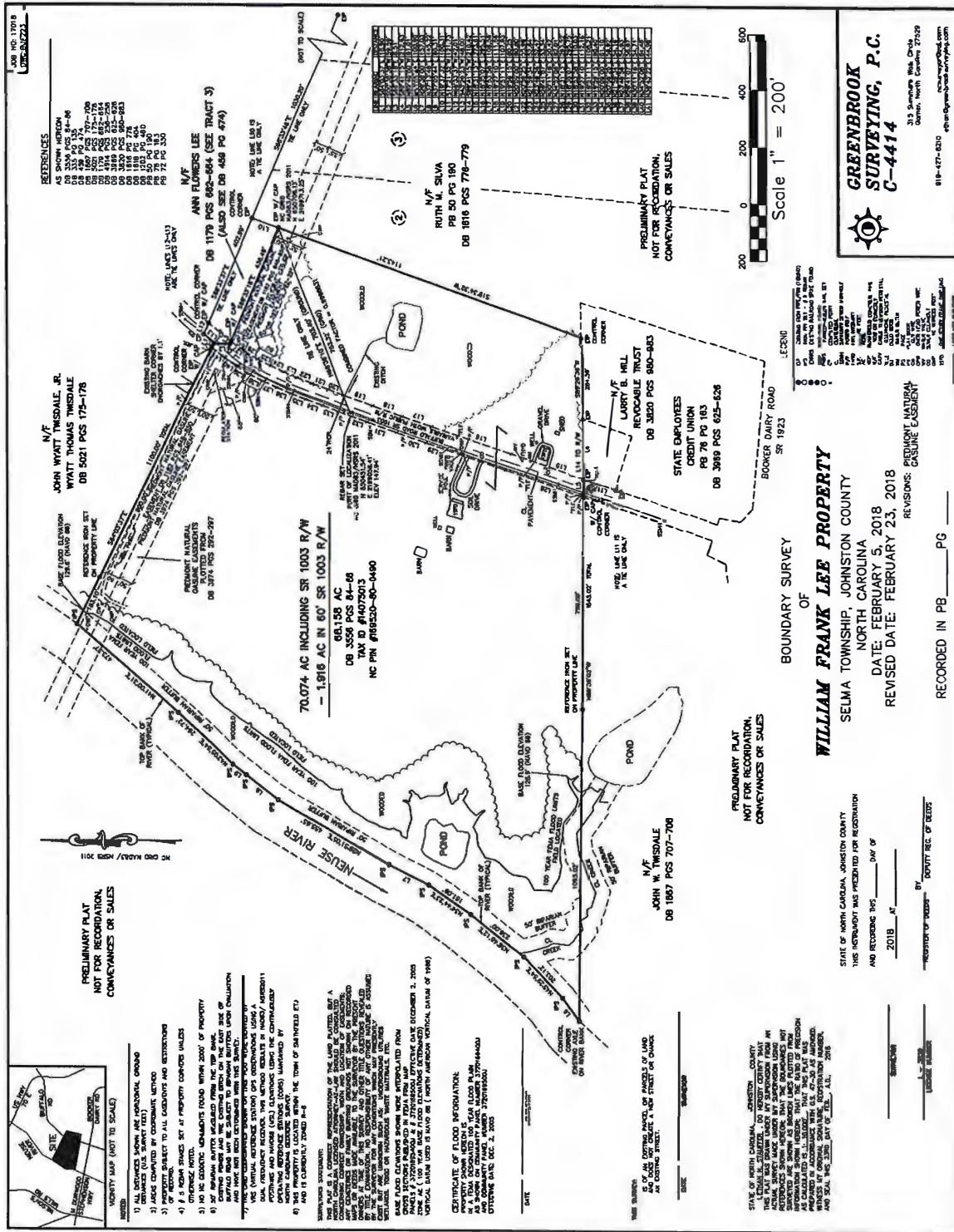
EXHIBIT A

PROPERTY

Being all that certain tract or parcel of land located in Selma Township, Johnston County, North Carolina and being more particularly described as follows:

BEGINNING at a stake, Eason's corner on the Neuse River and runs as said line South 61 degrees East 1100 feet to a stake in the center of the Old Selma road; thence North 46 degrees 30 minutes East 48 feet to a stake, Eason's corner; thence as said Eason's line South 63 degrees 30 minutes East 445 feet to a stake; thence South 22 degrees 30 minutes West 1228 feet to a stake R P. Holding, Trustee, formerly Ford's Farm; thence as said Holding's and E. F. Boyette's line North 86 degrees West 2366 feet to a stake on the bank of Neuse River; thence up the various meanders of said river in a northeasterly direction to a stake, the BEGINNING, containing 69.03 acres, more or less according to a survey made by E. P. Lore, C.E. January, 1924.

LESS AND EXCEPT from the above-described tract or parcel of land that certain one (1) acre tract or parcel of land conveyed by Clarence E. Stephenson and wife, Eatha K. Stephenson to Olivia J. Flowers by Deed recorded in Book 459, Page 474, in the office of the Johnston County, North Carolina Register of Deeds, which Deed is referenced for a more particular description.



- REFERENCES
- AS SHOWN HEREON
  - DB 233 PGS 43-44
  - DB 233 PGS 45-46
  - DB 233 PGS 47-48
  - DB 233 PGS 49-50
  - DB 233 PGS 51-52
  - DB 233 PGS 53-54
  - DB 233 PGS 55-56
  - DB 233 PGS 57-58
  - DB 233 PGS 59-60
  - DB 233 PGS 61-62
  - DB 233 PGS 63-64
  - DB 233 PGS 65-66
  - DB 233 PGS 67-68
  - DB 233 PGS 69-70
  - DB 233 PGS 71-72
  - DB 233 PGS 73-74
  - DB 233 PGS 75-76
  - DB 233 PGS 77-78
  - DB 233 PGS 79-80
  - DB 233 PGS 81-82
  - DB 233 PGS 83-84
  - DB 233 PGS 85-86
  - DB 233 PGS 87-88
  - DB 233 PGS 89-90
  - DB 233 PGS 91-92
  - DB 233 PGS 93-94
  - DB 233 PGS 95-96
  - DB 233 PGS 97-98
  - DB 233 PGS 99-100
  - DB 233 PGS 101-102
  - DB 233 PGS 103-104
  - DB 233 PGS 105-106
  - DB 233 PGS 107-108
  - DB 233 PGS 109-110
  - DB 233 PGS 111-112
  - DB 233 PGS 113-114
  - DB 233 PGS 115-116
  - DB 233 PGS 117-118
  - DB 233 PGS 119-120
  - DB 233 PGS 121-122
  - DB 233 PGS 123-124
  - DB 233 PGS 125-126
  - DB 233 PGS 127-128
  - DB 233 PGS 129-130
  - DB 233 PGS 131-132
  - DB 233 PGS 133-134
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  - DB 233 PGS 181-182
  - DB 233 PGS 183-184
  - DB 233 PGS 185-186
  - DB 233 PGS 187-188
  - DB 233 PGS 189-190
  - DB 233 PGS 191-192
  - DB 233 PGS 193-194
  - DB 233 PGS 195-196
  - DB 233 PGS 197-198
  - DB 233 PGS 199-200

**N/F**  
 JOHN WATTS THSDALE, JR.  
 WYATT THOMAS THSDALE  
 DB 5021 PGS 173-176

**N/F**  
 ANN FLOWERS LEE  
 DB 1179 PGS 662-664 (SEE TRACT 3)  
 (ALSO SEE DB 458 PG 474)

**N/F**  
 RUTH W. SILVA  
 PG 50 PGS 180  
 DB 1016 PGS 776-779

**N/F**  
 LARRY L. HELL  
 REVOCABLE TRUST  
 DB 3520 PGS 800-803

**N/F**  
 STATE EMPLOYEES  
 CREDIT UNION  
 PG 76 PG 183  
 DB 3089 PGS 623-628

**N/F**  
 JOHN W. THSDALE  
 DB 1807 PGS 707-708

70.074 AC INCLUDING SR 1003 R/W  
 — 1.916 AC IN 60' SR 1003 R/W  
 66.158 AC  
 DB 3556 PGS 64-68  
 TAX ID #4075013  
 NC PIN #R6333-00-0490

PRELIMINARY PLAT  
 NOT FOR RECORDATION,  
 CONVEYANCES OR SALES

**BOUNDARY SURVEY**  
 OF  
**WILLIAM FRANK LEE PROPERTY**  
 SELMA TOWNSHIP, JOHNSTON COUNTY  
 NORTH CAROLINA  
 DATE: FEBRUARY 5, 2018  
 REVISED DATE: FEBRUARY 23, 2018  
 REVISIONS: CUSTOMER MATERIAL  
 CORRECTED BY: CASIMIR CASIMIR

Scale 1" = 200'

LEGEND

PRELIMINARY PLAT  
 NOT FOR RECORDATION,  
 CONVEYANCES OR SALES

NEUSE RIVER

BOOMER DAIRY ROAD  
 SR 1923

STATE OF NORTH CAROLINA, JOHNSTON COUNTY

THIS INSTRUMENT WAS PREPARED FOR RECORDATION  
 AND RECORDING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_  
 2018, AT \_\_\_\_\_

RECORDED IN PG \_\_\_\_\_

**GENERAL NOTES:**

- 1) THIS SURVEY IS BASED UPON THE ORIGINAL SURVEY RECORDS OF THE PROPERTY AS SHOWN ON THE SURVEY MAPS AND RECORDS OF THE REGISTRAR OF DEEDS.
- 2) ALL DISTANCES AND BEARINGS WERE MEASURED AND CALCULATED BY THE SURVEYOR.
- 3) ALL DISTANCES AND BEARINGS WERE MEASURED AND CALCULATED BY THE SURVEYOR.
- 4) ALL DISTANCES AND BEARINGS WERE MEASURED AND CALCULATED BY THE SURVEYOR.
- 5) ALL DISTANCES AND BEARINGS WERE MEASURED AND CALCULATED BY THE SURVEYOR.
- 6) ALL DISTANCES AND BEARINGS WERE MEASURED AND CALCULATED BY THE SURVEYOR.
- 7) ALL DISTANCES AND BEARINGS WERE MEASURED AND CALCULATED BY THE SURVEYOR.
- 8) ALL DISTANCES AND BEARINGS WERE MEASURED AND CALCULATED BY THE SURVEYOR.
- 9) ALL DISTANCES AND BEARINGS WERE MEASURED AND CALCULATED BY THE SURVEYOR.
- 10) ALL DISTANCES AND BEARINGS WERE MEASURED AND CALCULATED BY THE SURVEYOR.

**STATE OF NORTH CAROLINA, JOHNSTON COUNTY**  
 THIS INSTRUMENT WAS PREPARED FOR RECORDATION  
 AND RECORDING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_  
 2018, AT \_\_\_\_\_  
 RECORDED IN PG \_\_\_\_\_

**STATE OF NORTH CAROLINA, JOHNSTON COUNTY**  
 THIS INSTRUMENT WAS PREPARED FOR RECORDATION  
 AND RECORDING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_  
 2018, AT \_\_\_\_\_  
 RECORDED IN PG \_\_\_\_\_

**STATE OF NORTH CAROLINA, JOHNSTON COUNTY**  
 THIS INSTRUMENT WAS PREPARED FOR RECORDATION  
 AND RECORDING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_  
 2018, AT \_\_\_\_\_  
 RECORDED IN PG \_\_\_\_\_

**STATE OF NORTH CAROLINA, JOHNSTON COUNTY**  
 THIS INSTRUMENT WAS PREPARED FOR RECORDATION  
 AND RECORDING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_  
 2018, AT \_\_\_\_\_  
 RECORDED IN PG \_\_\_\_\_

EXHIBIT B

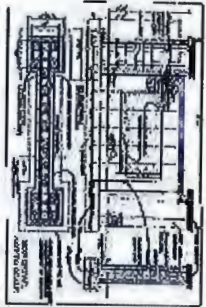
RESIDENTIAL PROJECT PLANS

(To be inserted)

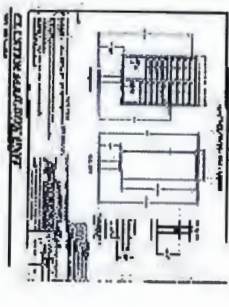
DRAFT



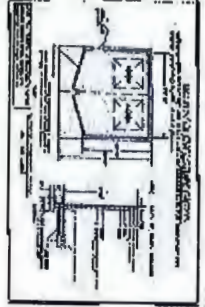





**ELECTRICAL WIRING**




**ELECTRICAL SCHEMATIC**




**FLOOR PLAN WITH ELECTRICAL SYMBOLS**




**ARCHITECTURAL RENDERING**



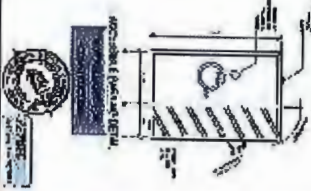
**TOPOGRAPHIC SITE MAP**




**ARCHITECTURAL RENDERING**




**PROPOSED BUILDING FOOTPRINTS**



**FOUNDATION AND WALL SECTION**




**PROPOSED BUILDING FOOTPRINTS**



**PROPOSED BUILDING SITE**

SCALE

ADAMS & HODGE ENGINEERING, P.C.



**ADAMS & HODGE**  
ENGINEERING, P.C.

10/11/11

10/11/11



**PLANNING DEPARTMENT**  
Stephen Wensman, AICP, RLA  
Planning Director

---

April 4, 2018

Donnie Adams  
Adams and Hodge Engineering, PC  
314 E Main Street  
Clayton, NC 27520

RE: Rezoning Approval for Buffalo Road Tract Subdivision.

Dear Mr. Adams:

The Town Council approved your request for rezoning of the property located at 1899 Buffalo Road with the Tax ID 169520-80-0490 to Planned Unit Development (PUD). Along with the approval, the Town Council approved the PUD Master plan with the following conditions:

- 1) That a Traffic Impact Study be conducted and the PUD Master Plan be updated to reflect any recommended internal circulation design, site access location and design, external roadway and intersection design and improvements, traffic signal installation and operation including signal timing, and transit service improvements.
- 2) That the applicant submit a request for voluntary annexation prior to subdivision application if connection to Town water, sewer and electricity are to be requested with the subdivision.
- 3) That the developer obtains a NCDOT Right-of-Way Permit for the street accesses onto Buffalo Road.
- 4) That there be no single-family attached units located in the first or second phases of the development.
- 5) That any area to be dedicated for public parks or trails be identified on the PUD master plan.
- 6) That all changes resulting from Town review of the required subdivision and construction plan review process, including, but not limited to utility, tree preservation, landscaping, lighting,

350 E. Market Street P.O. Box 761 Smithfield, NC 27577  
919-934-2116 Fax 919-934-1134

stormwater management, grading and erosion control plans will be incorporated into the PUD master plan and resubmitted for final approval by Town staff.

- 7) Any material change to the plan such as moving roads and lots deemed a material changes as result of the subdivision process will require a new PUD rezoning with an amended master plan.

Additionally, the Town Council waived the Unified Development Ordinance (UDO) requirements for street connectivity found in Article 10, Section 10.109.

I look forward to working with you in the next steps of the development process to revise the master plan and subdivision submittal, and to create a successful project and neighborhood in the Town of Smithfield.

Sincerely,



Stephen Wensman.

350 E. Market Street P.O. Box 761 Smithfield, NC 27577  
919-934-2116 Fax 919-934-1134

EXHIBIT C

REIMBURSEMENT FORM

Date of Request: \_\_\_\_\_

Developer: Buffalo Road, LLC \_\_\_\_\_

Project: \_\_\_\_\_

Phase: \_\_\_\_\_

Number of units or buildings in Phase: \_\_\_\_\_

1. Total Eligible reimbursement for relevant Phase under this Agreement: \$ \_\_\_\_\_
2. Total Reimbursements earned to-date for relevant Phase: \$ \_\_\_\_\_
3. Sum of Reimbursements Requested for this request (lots or building named below)  
\$ \_\_\_\_\_

\*Based upon final Town approved amount of reimbursement based upon documentation submitted by Developer to (Title of Town Official)

This reimbursement request is being made for the following lots/buildings:

Lot or Building Number	Permit Number	Amount of Payment

Use additional Sheets if necessary

CERTIFICATION OF DEVELOPER

The undersigned certifies that the above described permits are eligible for reimbursement under the Reimbursement Agreement, and have not been previously reimbursed by the Town. All other information on this form is true and accurate to the best of my knowledge.

Buffalo Road, LLC

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

Reid M. Smith, Manager

Approval for payment by (Title of Town Official)

\_\_\_\_\_  
sign and date





# Request for Town Council Action

**Business**   **Request to**  
**Agenda**   **sell real**  
**Item:**   **property**  
Date: 08/07/2018

---

**Subject:** Requests to sell real property

**Department:** General Government

**Presented by:** Mike Scott, Town Manager

**Presentation:** Business

---

## Issue Statement

The Town Manager has been approached by a realtor to ascertain if the Town was interested in selling a lot it owns at 916 Third Avenue in Smithfield. The lot is available to sell should the Council so desire.

## Financial Impact

Income received from the sale of the lot.

## Action Needed

Approve the sale of 916 Third Avenue, Smithfield NC by upset bid.

## Recommendation

Sell the property

Approved:  Town Manager  Town Attorney

Attachments:

1. Staff Report
2. GS 160A-269 Upset Bid



# Staff Report

**Business  
Agenda  
Item:** **Sale of Real  
Property**

---

The Town is being asked to sell the empty lot at 916 Third Avenue. The Town acquired the lot several years ago following what appears to be a condemnation. The house that originally was located on the property has been removed and the lot is currently empty and requires normal maintenance from town staff such as mowing. Under NC G.S. 160A-268, 269, & 270, the Town can sell real property through the method of sealed bids, upset bids, or public auction. The lot currently provides no service to the Town of Smithfield and appears it would be better used if owned by a private citizen. Staff is recommending the Council approval an upset bid process to sell the lot.



**§ 160A-269. Negotiated offer, advertisement, and upset bids.**

A city may receive, solicit, or negotiate an offer to purchase property and advertise it for upset bids. When an offer is made and the council proposes to accept it, the council shall require the offeror to deposit five percent (5%) of his bid with the city clerk, and shall publish a notice of the offer. The notice shall contain a general description of the property, the amount and terms of the offer, and a notice that within 10 days any person may raise the bid by not less than ten percent (10%) of the first one thousand dollars (\$1,000) and five percent (5%) of the remainder. When a bid is raised, the bidder shall deposit with the city clerk five percent (5%) of the increased bid, and the clerk shall readvertise the offer at the increased bid. This procedure shall be repeated until no further qualifying upset bids are received, at which time the council may accept the offer and sell the property to the highest bidder. The council may at any time reject any and all offers. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 25.)





# Request for Town Council Action

**Business  
Agenda  
Item:** Fringe  
Benefits  
Subject to  
Taxation  
Date: 08/07/2018

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**Subject:** Fringe Benefits Subject to Taxation  
**Department:** Finance  
**Presented by:** Mike Scott, Town Manager  
**Presentation:** Business

---

**Issue Statement** – To Follow Up on the July 10, 2018, Council Meeting - During the discussion of Business Item 3 (Consideration and Approval to Amend the 2018-2019 Fee Schedule for Smithfield Recreation and Aquatics Center (SRAC) Rates for Town Employees and Johnston County School Employees), Councilman Scott and Mayor Moore brought forward the idea of not charging Town employees for membership at the SRAC. Councilman Barbour then questioned whether the benefit would be taxable.

**Financial Impact** – Losses of revenue for existing memberships; \$6,000 for the remainder of the FY 2019 year.

**Action Needed** – N/A

**Recommendation** – N/A

Approved:  Town Manager  Town Attorney

1. Staff Report
2. IRS Publication 15-B is attached for reference.



# Staff Report

**Fringe  
Business Benefits  
Agenda Subject  
Item: to  
Taxation**

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The Department of Treasury, Internal Revenue Service Division, Publication 15-B (Employer's Tax Guide to Fringe Benefits) states: "Any fringe benefit an employer provides is taxable and must be included in the recipient's pay unless the law specifically excludes it." Section 2 of publication 15-B discusses exclusions (see attachment, pages 5-24). Any benefit not excluded under the rules in section 2 is taxable. An examination of the exclusions seems to indicate that page 19, "No Additional Cost Services" would allow the Town to offer a no cost benefit for SRAC use to its employees without the employees being taxed. While the matter remains gray, our current benefit services provider, MARK III, has advised the benefit would not be taxable and is being done in other communities in North Carolina.



## Publication 15-B

Cat. No. 29744N

# Employer's Tax Guide to Fringe Benefits

For use in **2018**



Get forms and other information faster and easier at:

- [IRS.gov](https://www.irs.gov) (English)
- [IRS.gov/Korean](https://www.irs.gov/korean) (한국어)
- [IRS.gov/Spanish](https://www.irs.gov/spanish) (Español)
- [IRS.gov/Russian](https://www.irs.gov/russian) (Русский)
- [IRS.gov/Chinese](https://www.irs.gov/chinese) (中文)
- [IRS.gov/Vietnamese](https://www.irs.gov/vietnamese) (Tiếng Việt)

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## Future Developments

For the latest information about developments related to Pub. 15-B, such as legislation enacted after it was published, go to [IRS.gov/Pub15b](https://www.irs.gov/pub15b).

## What's New

**New tax legislation (P.L. 115-97).** P.L. 115-97 contains significant revisions to the Internal Revenue Code. This

publication has been updated to include the following changes from P.L. 115-97.

- Section 11047 suspends the exclusion of qualified bicycle commuting reimbursements from your employee's income for any tax year beginning after December 31, 2017, and before January 1, 2026. See [Transportation \(Commuting\) Benefits](#) in section 2.
- Section 11048 suspends the exclusion for qualified moving expense reimbursements from your employee's income for tax years beginning after December 31, 2017, and before January 1, 2026. However, the exclusion is still available in the case of a member of the U.S. Armed Forces on active duty who moves because of a permanent change of station. The exclusion applies only to reimbursement of moving expenses that the member could deduct if he or she had paid or incurred them without reimbursement. See *Moving Expenses* in Pub. 3, *Armed Forces' Tax Guide*, for the definition of what constitutes a permanent change of station and to learn which moving expenses are deductible. We removed the discussion of moving expense reimbursements from this publication.
- Section 13304 limits the deduction by employers of expenses for certain fringe benefits. See [Meals](#) and [Transportation \(Commuting\) Benefits](#) in section 2 for more information.
- Section 13310 defines items that aren't tangible personal property for purposes of employee achievement awards. Tangible personal property doesn't include cash, gift cards, and other nontangible personal property. See [Achievement Awards](#) in section 2.
- Section 13603 added new section 83(i) to the Internal Revenue Code. Under section 83(i), qualified employees who are granted stock options or restricted stock units (RSUs) and who later receive stock upon exercise of the option or upon settlement of the RSU may elect to defer the recognition of income for up to 5 years if certain requirements are met. See [Employee Stock Options](#) in section 2 for more information.
- P.L. 115-97 lowered the federal income tax withholding rates on supplemental wages. See [Withholding and depositing taxes](#) in section 4 for the new rates.

**Qualified small employer health reimbursement arrangements.** The 21st Century Cures Act, enacted on December 13, 2016, allows an eligible employer to provide to its eligible employees a qualified small employer health reimbursement arrangement (QSEHRA), which isn't a group health plan, and, therefore, isn't subject to the requirements that apply to group health plans. See [Qualified small employer health reimbursement arrangements \(QSEHRAs\)](#) in *Accident and Health Benefits* in section 2 for more information.

**Cents-per-mile rule.** The business mileage rate for 2018 is 54.5 cents per mile. You may use this rate to reimburse an employee for business use of a personal vehicle, and under certain conditions, you may use the rate under the cents-per-mile rule to value the personal use of a vehicle

you provide to an employee. See [Cents-Per-Mile Rule](#) in section 3.

**Qualified parking exclusion and commuter transportation benefit.** For 2018, the monthly exclusion for qualified parking is \$260 and the monthly exclusion for commuter highway vehicle transportation and transit passes is \$260. See [Qualified Transportation Benefits](#) in section 2.

**Contribution limit on a health flexible spending arrangement (FSA).** For plan years beginning after December 31, 2017, a cafeteria plan may not allow an employee to request salary reduction contributions for a health FSA in excess of \$2,650. For more information, see [Cafeteria Plans](#) in section 1.

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## Reminders

**Additional permitted election changes for health coverage under a cafeteria plan.** Notice 2014-55, 2014-41 I.R.B. 672, available at [IRS.gov/irb/2014-41\\_IRB/ar12.html](#), expands the application of the permitted change rules for health coverage under a cafeteria plan and discusses two specific situations in which a cafeteria plan participant is permitted to revoke his or her election under a cafeteria plan during a period of coverage.

**Definition of marriage.** A marriage of two individuals is recognized for federal tax purposes if the marriage is recognized by the state, possession, or territory of the United States in which the marriage is entered into, regardless of legal residence. Two individuals who enter into a relationship that is denominated as a marriage under the laws of a foreign jurisdiction are recognized as married for federal tax purposes if the relationship would be recognized as marriage under the laws of at least one state, possession, or territory of the United States, regardless of legal residence. Individuals who have entered into a registered domestic partnership, civil union, or other similar relationship that isn't denominated as a marriage under the law of the state, possession, or territory of the United States where such relationship was entered into aren't lawfully married for federal tax purposes, regardless of legal residence.

Notice 2014-1 discusses how certain rules for cafeteria plans, including health and dependent care FSAs, and health savings accounts (HSAs) apply to same-sex spouses participating in employee benefit plans. Notice 2014-1, 2014-2 I.R.B. 270, is available at [IRS.gov/irb/2014-2\\_IRB/ar13.html](#).

**Ordering forms and publications.** Go to [IRS.gov/Forms](#) to download forms and publications. Otherwise, you can go to [IRS.gov/OrderForms](#) to order current- and prior-year forms and instructions. Your order should arrive within 10 business days.

**Tax questions.** If you have a tax question not answered by this publication, check IRS.gov and [How To Get Tax Help](#) at the end of this publication.

**Photographs of missing children.** The IRS is a proud partner with the [National Center for Missing & Exploited Children® \(NCMEC\)](#). Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring

these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

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## Introduction

This publication supplements Pub. 15, Employer's Tax Guide, and Pub. 15-A, Employer's Supplemental Tax Guide. It contains information for employers on the employment tax treatment of fringe benefits.

**Comments and suggestions.** We welcome your comments about this publication and your suggestions for future editions.

You can send us comments from [IRS.gov/FormComments](https://www.irs.gov/FormComments).

Or you can write to:

Internal Revenue Service  
Tax Forms and Publications  
1111 Constitution Ave. NW, IR-6526  
Washington, DC 20224

Although we can't respond individually to each comment received, we do appreciate your feedback and will consider your comments as we revise our tax forms, instructions, and publications. We can't answer tax questions sent to the above address.

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## 1. Fringe Benefit Overview

A fringe benefit is a form of pay for the performance of services. For example, you provide an employee with a fringe benefit when you allow the employee to use a business vehicle to commute to and from work.

**Performance of services.** A person who performs services for you doesn't have to be your employee. A person may perform services for you as an independent contractor, partner, or director. Also, for fringe benefit purposes, treat a person who agrees not to perform services (such as under a covenant not to compete) as performing services.

**Provider of benefit.** You're the provider of a fringe benefit if it is provided for services performed for you. You're considered the provider of a fringe benefit even if a third party, such as your client or customer, provides the benefit to your employee for services the employee performs for you. For example, if, in exchange for goods or services, your customer provides day care services as a fringe benefit to your employees for services they provide for you as their employer, then you're the provider of this fringe benefit even though the customer is actually providing the day care.

**Recipient of benefit.** The person who performs services for you is considered the recipient of a fringe benefit provided for those services. That person may be considered

the recipient even if the benefit is provided to someone who didn't perform services for you. For example, your employee may be the recipient of a fringe benefit you provide to a member of the employee's family.

## Are Fringe Benefits Taxable?

Any fringe benefit you provide is taxable and must be included in the recipient's pay unless the law specifically excludes it. [Section 2](#) discusses the exclusions that apply to certain fringe benefits. Any benefit not excluded under the rules discussed in section 2 is taxable.

**Including taxable benefits in pay.** You must include in a recipient's pay the amount by which the value of a fringe benefit is more than the sum of the following amounts.

- Any amount the law excludes from pay.
- Any amount the recipient paid for the benefit.

The rules used to determine the value of a fringe benefit are discussed in [section 3](#).

If the recipient of a taxable fringe benefit is your employee, the benefit is subject to employment taxes and must be reported on Form W-2, Wage and Tax Statement. However, you can use special rules to withhold, deposit, and report the employment taxes. These rules are discussed in [section 4](#).

If the recipient of a taxable fringe benefit isn't your employee, the benefit isn't subject to employment taxes. However, you may have to report the benefit on one of the following information returns.

If the recipient receives the benefit as:	Use:
An independent contractor	Form 1099-MISC, Miscellaneous Income
A partner	Schedule K-1 (Form 1065), Partner's Share of Income, Deductions, Credits, etc.

For more information, see the instructions for the forms listed above.

## Cafeteria Plans

A cafeteria plan, including an FSA, provides participants an opportunity to receive qualified benefits on a pre-tax basis. It is a written plan that allows your employees to choose between receiving cash or taxable benefits, instead of certain qualified benefits for which the law provides an exclusion from wages. If an employee chooses to receive a qualified benefit under the plan, the fact that the employee could have received cash or a taxable benefit instead won't make the qualified benefit taxable.

Generally, a cafeteria plan doesn't include any plan that offers a benefit that defers pay. However, a cafeteria plan

can include a qualified 401(k) plan as a benefit. Also, certain life insurance plans maintained by educational institutions can be offered as a benefit even though they defer pay.

**Qualified benefits.** A cafeteria plan can include the following benefits discussed in [section 2](#).

- Accident and health benefits (but not Archer medical savings accounts (Archer MSAs) or long-term care insurance).
- Adoption assistance.
- Dependent care assistance.
- Group-term life insurance coverage (including costs that can't be excluded from wages).
- Health savings accounts (HSAs). Distributions from an HSA may be used to pay eligible long-term care insurance premiums or qualified long-term care services.

**Benefits not allowed.** A cafeteria plan can't include the following benefits discussed in [section 2](#).

- Archer MSAs. See [Accident and Health Benefits](#) in section 2.
- Athletic facilities.
- De minimis (minimal) benefits.
- Educational assistance.
- Employee discounts.
- Employer-provided cell phones.
- Lodging on your business premises.
- Meals.
- No-additional-cost services.
- Retirement planning services.
- Transportation (commuting) benefits.
- Tuition reduction.
- Working condition benefits.

It also can't include scholarships or fellowships (discussed in Pub. 970).

**Contribution limit on a health FSA.** For plan years beginning after December 31, 2017, a cafeteria plan may not allow an employee to request salary reduction contributions for a health FSA in excess of \$2,650.

A cafeteria plan that doesn't limit health FSA contributions to the dollar limit isn't a cafeteria plan and all benefits offered under the plan are includible in the employee's gross income.

For more information, see Notice 2012-40, 2012-26 I.R.B. 1046, available at [IRS.gov/irb/2012-26 IRB/ar09.html](#).

**"Use-or-lose" rule for health FSAs.** Instead of a grace period, you may, at your option, amend your cafeteria plan to allow up to \$500 of an employee's unused contributions to carry over to the immediately following plan year. For

more information, see Notice 2013-71, 2013-47 I.R.B. 532, available at [IRS.gov/irb/2013-47 IRB/ar10.html](#).

**Employee.** For these plans, treat the following individuals as employees.

- A current common-law employee. See section 2 in Pub. 15.
- A full-time life insurance agent who is a current statutory employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

**Exception for S corporation shareholders.** Don't treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder for this purpose is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder.

**Plans that favor highly compensated employees.** If your plan favors highly compensated employees as to eligibility to participate, contributions, or benefits, you must include in their wages the value of taxable benefits they could have selected. A plan you maintain under a collective bargaining agreement doesn't favor highly compensated employees.

A highly compensated employee for this purpose is any of the following employees.

1. An officer.
2. A shareholder who owns more than 5% of the voting power or value of all classes of the employer's stock.
3. An employee who is highly compensated based on the facts and circumstances.
4. A spouse or dependent of a person described in (1), (2), or (3).

**Plans that favor key employees.** If your plan favors key employees, you must include in their wages the value of taxable benefits they could have selected. A plan favors key employees if more than 25% of the total of the nontaxable benefits you provide for all employees under the plan go to key employees. However, a plan you maintain under a collective bargaining agreement doesn't favor key employees.

A key employee during 2018 is generally an employee who is either of the following.

1. An officer having annual pay of more than \$175,000.
2. An employee who for 2018 is either of the following.
  - a. A 5% owner of your business.
  - b. A 1% owner of your business whose annual pay is more than \$150,000.



## Simple Cafeteria Plans for Small Businesses

Eligible employers meeting contribution requirements and eligibility and participation requirements can establish a simple cafeteria plan. Simple cafeteria plans are treated as meeting the nondiscrimination requirements of a cafeteria plan and certain benefits under a cafeteria plan.

**Eligible employer.** You're an eligible employer if you employed an average of 100 or fewer employees during either of the 2 preceding years. If your business wasn't in existence throughout the preceding year, you're eligible if you reasonably expect to employ an average of 100 or fewer employees in the current year. If you establish a simple cafeteria plan in a year that you employ an average of 100 or fewer employees, you're considered an eligible employer for any subsequent year until the year after you employ an average of 200 or more employees.

**Eligibility and participation requirements.** These requirements are met if all employees who had at least 1,000 hours of service for the preceding plan year are eligible to participate and each employee eligible to participate in the plan may elect any benefit available under the plan. You may elect to exclude from the plan employees who:

1. Are under age 21 before the close of the plan year,
2. Have less than 1 year of service with you as of any day during the plan year,
3. Are covered under a collective bargaining agreement, or
4. Are nonresident aliens working outside the United States whose income didn't come from a U.S. source.

**Contribution requirements.** You must make a contribution to provide qualified benefits on behalf of each qualified employee in an amount equal to:

1. A uniform percentage (not less than 2%) of the employee's compensation for the plan year; or
2. An amount which is at least 6% of the employee's compensation for the plan year or twice the amount of the salary reduction contributions of each qualified employee, whichever is less.

If the contribution requirements are met using option (2), the rate of contribution to any salary reduction contribution of a highly compensated or key employee can't be greater than the rate of contribution to any other employee.

**More information.** For more information about cafeteria plans, see section 125 of the Internal Revenue Code and its regulations.

---

## 2. Fringe Benefit Exclusion Rules

This section discusses the exclusion rules that apply to fringe benefits. These rules exclude all or part of the value of certain benefits from the recipient's pay.

In most cases, the excluded benefits aren't subject to federal income tax withholding, social security, Medicare, federal unemployment (FUTA) tax, or Railroad Retirement Tax Act (RRTA) taxes and aren't reported on Form W-2.

This section discusses the exclusion rules for the following fringe benefits.

- Accident and health benefits.
- Achievement awards.
- Adoption assistance.
- Athletic facilities.
- De minimis (minimal) benefits.
- Dependent care assistance.
- Educational assistance.
- Employee discounts.
- Employee stock options.
- Employer-provided cell phones.
- Group-term life insurance coverage.
- Health savings accounts (HSAs).
- Lodging on your business premises.
- Meals.
- No-additional-cost services.
- Retirement planning services.
- Transportation (commuting) benefits.
- Tuition reduction.
- Working condition benefits.

See [Table 2-1](#) for an overview of the employment tax treatment of these benefits.

### Accident and Health Benefits

This exclusion applies to contributions you make to an accident or health plan for an employee, including the following.

- Contributions to the cost of accident or health insurance including qualified long-term care insurance.
- Contributions to a separate trust or fund that directly or through insurance provides accident or health benefits.
- Contributions to Archer MSAs or health savings accounts (discussed in Pub. 969).

**Table 2-1. Special Rules for Various Types of Fringe Benefits**  
(For more information, see the full discussion in this section.)

Treatment Under Employment Taxes			
Type of Fringe Benefit	Income Tax Withholding	Social Security and Medicare (including Additional Medicare Tax when wages are paid in excess of \$200,000)	Federal Unemployment (FUTA)
Accident and health benefits	Exempt <sup>1,2</sup> , except for long-term care benefits provided through a flexible spending or similar arrangement.	Exempt, except for certain payments to S corporation employees who are 2% shareholders.	Exempt
Achievement awards	Exempt <sup>1</sup> up to \$1,600 for qualified plan awards (\$400 for nonqualified awards).		
Adoption assistance	Exempt <sup>1,3</sup>	Taxable	Taxable
Athletic facilities	Exempt if substantially all use during the calendar year is by employees, their spouses, and their dependent children, and the facility is operated by the employer on premises owned or leased by the employer.		
De minimis (minimal) benefits	Exempt	Exempt	Exempt
Dependent care assistance	Exempt <sup>3</sup> up to certain limits, \$5,000 (\$2,500 for married employee filing separate return).		
Educational assistance	Exempt up to \$5,250 of benefits each year. (See <a href="#">Educational Assistance</a> , later in this section.)		
Employee discounts	Exempt <sup>3</sup> up to certain limits. (See <a href="#">Employee Discounts</a> , later in this section.)		
Employee stock options	See <a href="#">Employee Stock Options</a> , later in this section.		
Employer-provided cell phones	Exempt if provided primarily for noncompensatory business purposes.		
Group-term life insurance coverage	Exempt	Exempt <sup>1,4,6</sup> up to cost of \$50,000 of coverage. (Special rules apply to former employees.)	Exempt
Health savings accounts (HSAs)	Exempt for qualified individuals up to the HSA contribution limits. (See <a href="#">Health Savings Accounts</a> , later in this section.)		
Lodging on your business premises	Exempt <sup>1</sup> if furnished on your business premises, for your convenience, and as a condition of employment.		
Meals	Exempt <sup>1</sup> if furnished on your business premises for your convenience.		
	Exempt if de minimis.		
No-additional-cost services	Exempt <sup>3</sup>	Exempt <sup>3</sup>	Exempt <sup>3</sup>
Retirement planning services	Exempt <sup>5</sup>	Exempt <sup>5</sup>	Exempt <sup>5</sup>
Transportation (commuting) benefits	Exempt <sup>1</sup> up to certain limits if for rides in a commuter highway vehicle and/or transit passes (\$260) or qualified parking (\$260). (See <a href="#">Transportation (Commuting) Benefits</a> , later in this section.)		
	Exempt if de minimis.		
Tuition reduction	Exempt <sup>3</sup> if for undergraduate education (or graduate education if the employee performs teaching or research activities).		
Working condition benefits	Exempt	Exempt	Exempt

<sup>1</sup> Exemption doesn't apply to S corporation employees who are 2% shareholders.

<sup>2</sup> Exemption doesn't apply to certain highly compensated employees under a self-insured plan that favors those employees.

<sup>3</sup> Exemption doesn't apply to certain highly compensated employees under a program that favors those employees.

<sup>4</sup> Exemption doesn't apply to certain key employees under a plan that favors those employees.

<sup>5</sup> Exemption doesn't apply to services for tax preparation, accounting, legal, or brokerage services.

<sup>6</sup> You must include in your employee's wages the cost of group-term life insurance beyond \$50,000 worth of coverage, reduced by the amount the employee paid toward the insurance. Report it as wages in boxes 1, 3, and 5 of the employee's Form W-2. Also, show it in box 12 with code "C." The amount is subject to social security and Medicare taxes, and you may, at your option, withhold federal income tax.

This exclusion also applies to payments you directly or indirectly make to an employee under an accident or health plan for employees that are either of the following.

- Payments or reimbursements of medical expenses.
- Payments for specific permanent injuries (such as the loss of the use of an arm or leg). The payments must be figured without regard to the period the employee is absent from work.

**Accident or health plan.** This is an arrangement that provides benefits for your employees, their spouses, their dependents, and their children (under age 27 at the end of the tax year) in the event of personal injury or sickness. The plan may be insured or noninsured and doesn't need to be in writing.

**Employee.** For this exclusion, treat the following individuals as employees.

- A current common-law employee.
- A full-time life insurance agent who is a current statutory employee.
- A retired employee.
- A former employee you maintain coverage for based on the employment relationship.
- A widow or widower of an individual who died while an employee.
- A widow or widower of a retired employee.

- For the exclusion of contributions to an accident or health plan, a leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

**Special rule for certain government plans.** For certain government accident and health plans, payments to a deceased employee's beneficiary may qualify for the exclusion from gross income if the other requirements for exclusion are met. See section 105(j) for details.

**Exception for S corporation shareholders.** Don't treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder.

**Exclusion from wages.** You can generally exclude the value of accident or health benefits you provide to an employee from the employee's wages.

**Exception for certain long-term care benefits.** You can't exclude contributions to the cost of long-term care insurance from an employee's wages subject to federal income tax withholding if the coverage is provided through a flexible spending or similar arrangement. This is a benefit program that reimburses specified expenses up to a maximum amount that is reasonably available to the employee and is less than five times the total cost of the insurance. However, you can exclude these contributions from the employee's wages subject to social security, Medicare, and FUTA taxes.

**S corporation shareholders.** Because you can't treat a 2% shareholder of an S corporation as an employee for this exclusion, you must include the value of accident or health benefits you provide to the employee in the employee's wages subject to federal income tax withholding. However, you can exclude the value of these benefits (other than payments for specific injuries or illnesses) from the employee's wages subject to social security, Medicare, and FUTA taxes. See Announcement 92-16 for more information. You can find Announcement 92-16 on page 53 of Internal Revenue Bulletin 1992-5.

**Exception for highly compensated employees.** If your plan is a self-insured medical reimbursement plan that favors highly compensated employees, you must include all or part of the amounts you pay to these employees in their wages subject to federal income tax withholding. However, you can exclude these amounts (other than payments for specific injuries or illnesses) from the employee's wages subject to social security, Medicare, and FUTA taxes.

A self-insured plan is a plan that reimburses your employees for medical expenses not covered by an accident or health insurance policy.

A highly compensated employee for this exception is any of the following individuals.

- One of the five highest paid officers.
- An employee who owns (directly or indirectly) more than 10% in value of the employer's stock.
- An employee who is among the highest paid 25% of all employees (other than those who can be excluded from the plan).

For more information on this exception, see section 105(h) of the Internal Revenue Code and its regulations.

**COBRA premiums.** The exclusion for accident and health benefits applies to amounts you pay to maintain medical coverage for a current or former employee under the Combined Omnibus Budget Reconciliation Act of 1986 (COBRA). The exclusion applies regardless of the length of employment, whether you directly pay the premiums or reimburse the former employee for premiums paid, and whether the employee's separation is permanent or temporary.

**Qualified small employer health reimbursement arrangements (QSEHRAs).** QSEHRAs allow eligible small employers to pay or reimburse medical care expenses, including health insurance premiums, of eligible employees and their family members. A QSEHRA isn't a group health plan, and, therefore, isn't subject to group health plan requirements. Generally, payments from a QSEHRA to reimburse an eligible employee's medical expenses aren't includible in the employee's gross income if the employee has coverage that provides minimum essential coverage as defined in section 5000A(f) of the Internal Revenue Code. See the Instructions for Form 8965 for the types of plans and arrangements that are minimum essential coverage.

A QSEHRA is an arrangement that meets all the following requirements.

1. The arrangement is funded solely by you, and no salary reduction contributions may be made under the arrangement.
2. The arrangement provides, after the eligible employee provides proof of coverage, for the payment or reimbursement of the medical expenses incurred by the employee or the employee's family members.
3. The amount of payments and reimbursements don't exceed \$5,050 (\$10,250 for family coverage) for 2018.
4. The arrangement is generally provided on the same terms to all your eligible employees. However, your QSEHRA may exclude employees who haven't completed 90 days of service, employees who haven't attained age 25 before the beginning of the plan year, part-time or seasonal employees, employees covered by a collective bargaining agreement if health benefits were the subject of good faith bargaining, and employees who are nonresident aliens with no earned income from sources within the United States.

**Eligible employer.** To be an eligible employer, you must not be an applicable large employer, which is defined as an employer that, generally, employed at least 50 full-time employees, including full-time equivalent employees, in the prior calendar year. You must also not offer a group health plan (including a health reimbursement arrangement (HRA) or a health flexible spending arrangement (FSA)) to any of your employees. For more information about the Affordable Care Act and group health plan requirements, go to [IRS.gov/ACA](https://www.irs.gov/ACA). For more information about QSEHRAs, including information about the requirement to give a written notice to each eligible employee, see Notice 2017-67, 2017-47 I.R.B. 517, available at [IRS.gov/irb/2017-47\\_IRB#NOT-2017-67](https://www.irs.gov/irb/2017-47_IRB#NOT-2017-67).

**Reporting requirements.** You must report in box 12 of Form W-2 using code "FF" the amount of payments and reimbursements that your employee is entitled to receive from the QSEHRA for the calendar year without regard to the amount of payments or reimbursements actually received. For example, if your QSEHRA provides a permitted benefit of \$3,000 and your employee receives reimbursements of \$2,000, on Form W-2, you would report a permitted benefit of \$3,000 in box 12 using code "FF."

## Achievement Awards

This exclusion applies to the value of any tangible personal property you give to an employee as an award for either length of service or safety achievement. The exclusion doesn't apply to awards of cash, cash equivalents, gift cards, gift coupons, or gift certificates (other than arrangements granting only the right to select and receive tangible personal property from a limited assortment of items preselected or preapproved by you). The exclusion also doesn't apply to vacations, meals, lodging, tickets to theater or sporting events, stocks, bonds, other securities, and other similar items. The award must meet the requirements for employee achievement awards discussed in chapter 2 of Pub. 535.

**Employee.** For this exclusion, treat the following individuals as employees.

- A current employee.
- A former common-law employee you maintain coverage for in consideration of or based on an agreement relating to prior service as an employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

**Exception for S corporation shareholders.** Don't treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder.

**Exclusion from wages.** You can generally exclude the value of achievement awards you give to an employee from the employee's wages if their cost isn't more than the amount you can deduct as a business expense for the year. The excludable annual amount is \$1,600 (\$400 for awards that aren't "qualified plan awards"). See chapter 2 of Pub. 535 for more information about the limit on deductions for employee achievement awards.



To determine for 2018 whether an achievement award is a "qualified plan award" under the deduction rules described in Pub. 535, treat any employee who received more than \$120,000 in pay for 2017 as a highly compensated employee.

If the cost of awards given to an employee is more than your allowable deduction, include in the employee's wages the larger of the following amounts.

- The part of the cost that is more than your allowable deduction (up to the value of the awards).
- The amount by which the value of the awards exceeds your allowable deduction.

Exclude the remaining value of the awards from the employee's wages.

## Adoption Assistance

An adoption assistance program is a separate written plan of an employer that meets all of the following requirements.

1. It benefits employees who qualify under rules set up by you, which don't favor highly compensated employees or their dependents. To determine whether your plan meets this test, don't consider employees excluded from your plan who are covered by a collective bargaining agreement, if there is evidence that adoption assistance was a subject of good-faith bargaining.
2. It doesn't pay more than 5% of its payments during the year for shareholders or owners (or their spouses or dependents). A shareholder or owner is someone who owns (on any day of the year) more than 5% of the stock or of the capital or profits interest of your business.
3. You give reasonable notice of the plan to eligible employees.
4. Employees provide reasonable substantiation that payments or reimbursements are for qualifying expenses.

For this exclusion, a highly compensated employee for 2018 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than \$120,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

You must exclude all payments or reimbursements you make under an adoption assistance program for an employee's qualified adoption expenses from the employee's wages subject to federal income tax withholding. However, you can't exclude these payments from wages subject to social security, Medicare, and FUTA taxes. For more information, see the Instructions for Form 8839.

You must report all qualifying adoption expenses you paid or reimbursed under your adoption assistance program for each employee for the year in box 12 of the employee's Form W-2. Use code "T" to identify this amount.

**Exception for S corporation shareholders.** For this exclusion, don't treat a 2% shareholder of an S corporation as an employee of the corporation. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder.

## Athletic Facilities

You can exclude the value of an employee's use of an on-premises gym or other athletic facility you operate from an employee's wages if substantially all use of the facility during the calendar year is by your employees, their spouses, and their dependent children. For this purpose, an employee's dependent child is a child or stepchild who is the employee's dependent or who, if both parents are deceased, hasn't attained the age of 25.

**On-premises facility.** The athletic facility must be located on premises you own or lease and must be operated by you. It doesn't have to be located on your business premises. However, the exclusion doesn't apply to an athletic facility that is a facility for residential use, such as athletic facilities that are part of a resort.

**Employee.** For this exclusion, treat the following individuals as employees.

- A current employee.
- A former employee who retired or left on disability.
- A widow or widower of an individual who died while an employee.
- A widow or widower of a former employee who retired or left on disability.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
- A partner who performs services for a partnership.

## De Minimis (Minimal) Benefits

You can exclude the value of a de minimis benefit you provide to an employee from the employee's wages. A de minimis benefit is any property or service you provide to an employee that has so little value (taking into account how frequently you provide similar benefits to your employees) that accounting for it would be unreasonable or administratively impracticable. Cash and cash equivalent fringe benefits (for example, gift certificates, gift cards, and the use of a charge card or credit card), no matter how little, are never excludable as a de minimis benefit. However, meal money and local transportation fare, if provided on an occasional basis and because of overtime work, may be excluded as discussed later.

Examples of de minimis benefits include the following.

- Personal use of an employer-provided cell phone provided primarily for noncompensatory business purposes. See [Employer-Provided Cell Phones](#), later in this section, for details.
- Occasional personal use of a company copying machine if you sufficiently control its use so that at least 85% of its use is for business purposes.
- Holiday or birthday gifts, other than cash, with a low fair market value. Also, flowers or fruit or similar items provided to employees under special circumstances (for example, on account of illness, a family crisis, or outstanding performance).
- Group-term life insurance payable on the death of an employee's spouse or dependent if the face amount isn't more than \$2,000.
- Certain meals. See [Meals](#), later in this section, for details.
- Occasional parties or picnics for employees and their guests.
- Occasional tickets for theater or sporting events.
- Certain transportation fare. See [Transportation \(Commuting\) Benefits](#), later in this section, for details.

Some examples of benefits that aren't excludable as de minimis fringe benefits are season tickets to sporting or theatrical events; the commuting use of an employer-provided automobile or other vehicle more than one day a month; membership in a private country club or athletic facility, regardless of the frequency with which the employee uses the facility; and use of employer-owned or leased facilities (such as an apartment, hunting lodge, boat, etc.) for a weekend. If a benefit provided to an employee doesn't qualify as de minimis (for example, the frequency exceeds a limit described earlier), then generally the entire benefit must be included in income.

**Employee.** For this exclusion, treat any recipient of a de minimis benefit as an employee.

## Dependent Care Assistance

This exclusion applies to household and dependent care services you directly or indirectly pay for or provide to an employee under a written dependent care assistance program that covers only your employees. The services must be for a qualifying person's care and must be provided to allow the employee to work. These requirements are basically the same as the tests the employee would have to meet to claim the dependent care credit if the employee paid for the services. For more information, see *Can You Claim the Credit?* in Pub. 503.

**Employee.** For this exclusion, treat the following individuals as employees.

- A current employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
- Yourself (if you're a sole proprietor).
- A partner who performs services for a partnership.

**Exclusion from wages.** You can exclude the value of benefits you provide to an employee under a dependent care assistance program from the employee's wages if you reasonably believe that the employee can exclude the benefits from gross income.

An employee can generally exclude from gross income up to \$5,000 of benefits received under a dependent care assistance program each year. This limit is reduced to \$2,500 for married employees filing separate returns.

However, the exclusion can't be more than the smaller of the earned income of either the employee or employee's spouse. Special rules apply to determine the earned income of a spouse who is either a student or not able to care for himself or herself. For more information on the earned income limit, see Pub. 503.

**Exception for highly compensated employees.** You can't exclude dependent care assistance from the wages of a highly compensated employee unless the benefits provided under the program don't favor highly compensated employees and the program meets the requirements described in section 129(d) of the Internal Revenue Code.

For this exclusion, a highly compensated employee for 2018 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than \$120,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

**Form W-2.** Report the value of all dependent care assistance you provide to an employee under a dependent

care assistance program in box 10 of the employee's Form W-2. Include any amounts you can't exclude from the employee's wages in boxes 1, 3, and 5. Report in box 10 both the nontaxable portion of assistance (up to \$5,000) and any assistance above that amount that is taxable to the employee.

**Example.** Oak Co. provides a dependent care assistance FSA to its employees through a cafeteria plan. In addition, it provides occasional on-site dependent care to its employees at no cost. Emily, an employee of Oak Co., had \$4,500 deducted from her pay for the dependent care FSA. In addition, Emily used the on-site dependent care several times. The fair market value of the on-site care was \$700. Emily's Form W-2 should report \$5,200 of dependent care assistance in box 10 (\$4,500 FSA plus \$700 on-site dependent care). Boxes 1, 3, and 5 should include \$200 (the amount in excess of the nontaxable assistance), and applicable taxes should be withheld on that amount.

## Educational Assistance

This exclusion applies to educational assistance you provide to employees under an educational assistance program. The exclusion also applies to graduate level courses.

Educational assistance means amounts you pay or incur for your employees' education expenses. These expenses generally include the cost of books, equipment, fees, supplies, and tuition. However, these expenses don't include the cost of a course or other education involving sports, games, or hobbies, unless the education:

- Has a reasonable relationship to your business, or
- Is required as part of a degree program.

Education expenses don't include the cost of tools or supplies (other than textbooks) your employee is allowed to keep at the end of the course. Nor do they include the cost of lodging, meals, or transportation. Your employee must be able to provide substantiation to you that the educational assistance provided was used for qualifying education expenses.

**Educational assistance program.** An educational assistance program is a separate written plan that provides educational assistance only to your employees. The program qualifies only if all of the following tests are met.

- The program benefits employees who qualify under rules set up by you that don't favor highly compensated employees. To determine whether your program meets this test, don't consider employees excluded from your program who are covered by a collective bargaining agreement if there is evidence that educational assistance was a subject of good-faith bargaining.
- The program doesn't provide more than 5% of its benefits during the year for shareholders or owners (or their spouses or dependents). A shareholder or owner is someone who owns (on any day of the year) more

than 5% of the stock or of the capital or profits interest of your business.

- The program doesn't allow employees to choose to receive cash or other benefits that must be included in gross income instead of educational assistance.
- You give reasonable notice of the program to eligible employees.

Your program can cover former employees if their employment is the reason for the coverage.

For this exclusion, a highly compensated employee for 2018 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than \$120,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

**Employee.** For this exclusion, treat the following individuals as employees.

- A current employee.
- A former employee who retired, left on disability, or was laid off.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
- Yourself (if you're a sole proprietor).
- A partner who performs services for a partnership.

**Exclusion from wages.** You can exclude up to \$5,250 of educational assistance you provide to an employee under an educational assistance program from the employee's wages each year.

**Assistance over \$5,250.** If you don't have an educational assistance plan, or you provide an employee with assistance exceeding \$5,250, you must include the value of these benefits as wages, unless the benefits are working condition benefits. Working condition benefits may be excluded from wages. Property or a service provided is a working condition benefit to the extent that if the employee paid for it, the amount paid would have been allowable as a business or depreciation expense. See [Working Condition Benefits](#), later in this section.

## Employee Discounts

This exclusion applies to a price reduction you give your employee on property or services you offer to customers in the ordinary course of the line of business in which the employee performs substantial services. However, it doesn't apply to discounts on real property or discounts on personal property of a kind commonly held for investment (such as stocks or bonds).

Employee discounts also don't include discounts on a line of business of the employer for which the employee doesn't provide substantial services, or discounts on property or services of a kind that aren't offered for sale to customers. Therefore, discounts on items sold in an employee store that aren't sold to customers, aren't excluded from employee income. Also, employee discounts provided by another employer through a reciprocal agreement aren't excluded.

**Employee.** For this exclusion, treat the following individuals as employees.

- A current employee.
- A former employee who retired or left on disability.
- A widow or widower of an individual who died while an employee.
- A widow or widower of an employee who retired or left on disability.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
- A partner who performs services for a partnership.

Treat discounts you provide to the spouse or dependent child of an employee as provided to the employee. For this fringe benefit, dependent child means any son, stepson, daughter, stepdaughter, or eligible foster child who is a dependent of the employee, or both of whose parents have died and who hasn't reached age 25. Treat a child of divorced parents as a dependent of both parents.

**Exclusion from wages.** You can generally exclude the value of an employee discount you provide an employee from the employee's wages, up to the following limits.

- For a discount on services, 20% of the price you charge nonemployee customers for the service.
- For a discount on merchandise or other property, your gross profit percentage times the price you charge nonemployee customers for the property.

Generally, determine your gross profit percentage in the line of business based on all property you offer to customers (including employee customers) and your experience during the tax year immediately before the tax year in which the discount is available. To figure your gross profit percentage, subtract the total cost of the property from the total sales price of the property and divide the result by the total sales price of the property. Employers that are in their first year of existence may estimate their gross profit percentage based on its mark-up from cost or refer to an appropriate industry average. If substantial changes in an employer's business indicate at any time that it is inappropriate for the prior year's gross profit percentage to be used for the current year, the employer must, within a reasonable period, redetermine the gross profit percentage for the remaining portion of the current year as if such portion of the year were the first year of the employer's existence.

### **Exception for highly compensated employees.**

You can't exclude from the wages of a highly compensated employee any part of the value of a discount that isn't available on the same terms to one of the following groups.

- All of your employees.
- A group of employees defined under a reasonable classification you set up that doesn't favor highly compensated employees.

For this exclusion, a highly compensated employee for 2018 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than \$120,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

## **Employee Stock Options**

There are three kinds of stock options—incentive stock options, employee stock purchase plan options, and non-statutory (nonqualified) stock options.

Wages for social security, Medicare, and FUTA taxes don't include remuneration resulting from the exercise of an incentive stock option or an employee stock purchase plan option, or from any disposition of stock acquired by exercising such an option.

Additionally, federal income tax withholding isn't required on the income resulting from a disqualifying disposition of stock acquired by the exercise of an incentive stock option or an employee stock purchase plan option, or on income equal to the discount portion of stock acquired by the exercise of an employee stock purchase plan option resulting from any qualifying disposition of the stock. The employer must report as income in box 1 of Form W-2 (a) the discount portion of stock acquired by the exercise of an employee stock purchase plan option upon a qualifying disposition of the stock, and (b) the spread (between the exercise price and the fair market value of the stock at the time of exercise) upon a disqualifying disposition of stock acquired by the exercise of an incentive stock option or an employee stock purchase plan option.

An employer must report the excess of the fair market value of stock received upon exercise of a nonstatutory stock option over the amount paid for the stock option on Form W-2 in boxes 1, 3 (up to the social security wage base), 5, and in box 12 using the code "V." See Regulations section 1.83-7.

An employee who transfers his or her interest in non-statutory stock options to the employee's former spouse incident to a divorce isn't required to include an amount in gross income upon the transfer. The former spouse, rather than the employee, is required to include an

amount in gross income when the former spouse exercises the stock options. See Revenue Ruling 2002-22 and Revenue Ruling 2004-60 for details. You can find Revenue Ruling 2002-22 on page 849 of Internal Revenue Bulletin 2002-19 at [IRS.gov/pub/irs-irbs/irb02-19.pdf](https://www.irs.gov/pub/irs-irbs/irb02-19.pdf). Revenue Ruling 2004-60, 2004-24 I.R.B. 1051, is available at [IRS.gov/irb/2004-24\\_IRB/ar13.html](https://www.irs.gov/irb/2004-24_IRB/ar13.html).

### **Section 83(i) election to defer income on equity grants.**

Under section 83(i) of the Internal Revenue Code, qualified employees who are granted stock options or restricted stock units (RSUs) and who later receive stock upon exercise of the option or upon settlement of the RSU (qualified stock) may elect to defer the recognition of income for up to 5 years if the corporation's stock wasn't readily tradable on an established securities market during any prior calendar year, if the corporation has a written plan under which not less than 80% of all U.S. employees are granted options or RSUs with the same rights and privileges to receive qualified stock, and if certain other requirements are met. An election under section 83(i) applies only for federal income tax purposes. The election has no effect on the application of social security, Medicare, and unemployment taxes. For federal income tax purposes, the employer must withhold federal income tax at 37% in the tax year that the amount deferred is included in the employee's income. If a section 83(i) election is made for an option exercise, that option will not be considered an incentive stock option or an option granted pursuant to an employee stock purchase plan. These rules apply to stock attributable to options exercised, or RSUs settled, after December 31, 2017. For more information, including information about the year the income is included, the definition of a qualified employee, the time for making the election, and employee notice requirements, see section 83(i).

**Reporting requirements.** For each employee, you must report in box 12 of Form W-2 using code "GG" the amount included in income in the calendar year from qualified equity grants under section 83(i). You must also report in box 12 using code "HH" the total amount of income deferred under section 83(i) determined as of the close of the calendar year.

For more information about employee stock options, see sections 83, 421, 422, and 423 of the Internal Revenue Code and their related regulations.

## **Employer-Provided Cell Phones**

The value of the business use of an employer-provided cell phone, provided primarily for noncompensatory business reasons, is excludable from an employee's income as a working condition fringe benefit. Personal use of an employer-provided cell phone, provided primarily for non-compensatory business reasons, is excludable from an employee's income as a de minimis fringe benefit. The term "cell phone" also includes other similar telecommunications equipment. For the rules relating to these types of benefits, see [De Minimis \(Minimal\) Benefits](#), earlier in this



section, and [Working Condition Benefits](#), later in this section.

**Noncompensatory business purposes.** You provide a cell phone primarily for noncompensatory business purposes if there are substantial business reasons for providing the cell phone. Examples of substantial business reasons include the employer's:

- Need to contact the employee at all times for work-related emergencies,
- Requirement that the employee be available to speak with clients at times when the employee is away from the office, and
- Need to speak with clients located in other time zones at times outside the employee's normal workday.

**Cell phones provided to promote goodwill, boost morale, or attract prospective employees.** You can't exclude from an employee's wages the value of a cell phone provided to promote goodwill of an employee, to attract a prospective employee, or as a means of providing additional compensation to an employee.

**Additional information.** For additional information on the tax treatment of employer-provided cell phones, see Notice 2011-72, 2011-38 I.R.B. 407, available at [IRS.gov/irb/2011-38\\_IRB/ar07.html](http://IRS.gov/irb/2011-38_IRB/ar07.html).

## Group-Term Life Insurance Coverage

This exclusion applies to life insurance coverage that meets all the following conditions.

- It provides a general death benefit that isn't included in income.
- You provide it to a group of employees. See [The 10-employee rule](#), later.
- It provides an amount of insurance to each employee based on a formula that prevents individual selection. This formula must use factors such as the employee's age, years of service, pay, or position.
- You provide it under a policy you directly or indirectly carry. Even if you don't pay any of the policy's cost, you're considered to carry it if you arrange for payment of its cost by your employees and charge at least one employee less than, and at least one other employee more than, the cost of his or her insurance. Determine the cost of the insurance, for this purpose, as explained under [Coverage over the limit](#), later.

Group-term life insurance doesn't include the following insurance.

- Insurance that doesn't provide general death benefits, such as travel insurance or a policy providing only accidental death benefits.
- Life insurance on the life of your employee's spouse or dependent. However, you may be able to exclude the cost of this insurance from the employee's wages as a de minimis benefit. See [De Minimis \(Minimal\) Benefits](#), earlier in this section.

- Insurance provided under a policy that provides a permanent benefit (an economic value that extends beyond 1 policy year, such as paid-up or cash-surrender value), unless certain requirements are met. See Regulations section 1.79-1 for details.

**Employee.** For this exclusion, treat the following individuals as employees.

1. A current common-law employee.
2. A full-time life insurance agent who is a current statutory employee.
3. An individual who was formerly your employee under (1) or (2).
4. A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction and control.

**Exception for S corporation shareholders.** Don't treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder.

**The 10-employee rule.** Generally, life insurance isn't group-term life insurance unless you provide it to at least 10 full-time employees at some time during the year.

For this rule and the first exception discussed next, count employees who choose not to receive the insurance as if they do receive insurance, unless, to receive it, they must contribute to the cost of benefits other than the group-term life insurance. For example, count an employee who could receive insurance by paying part of the cost, even if that employee chooses not to receive it. However, don't count an employee who chooses not to receive insurance, if the employee must pay part or all of the cost of permanent benefits in order to obtain group-term life insurance. A permanent benefit is an economic value extending beyond 1 policy year (for example, a paid-up or cash-surrender value) that is provided under a life insurance policy.

**Exceptions.** Even if you don't meet the 10-employee rule, two exceptions allow you to treat insurance as group-term life insurance.

Under the first exception, you don't have to meet the 10-employee rule if all the following conditions are met.

1. If evidence that the employee is insurable is required, it is limited to a medical questionnaire (completed by the employee) that doesn't require a physical.
2. You provide the insurance to all your full-time employees or, if the insurer requires the evidence mentioned in (1), to all full-time employees who provide evidence the insurer accepts.

- You figure the coverage based on either a uniform percentage of pay or the insurer's coverage brackets that meet certain requirements. See Regulations section 1.79-1 for details.

Under the second exception, you don't have to meet the 10-employee rule if all the following conditions are met.

- You provide the insurance under a common plan covering your employees and the employees of at least one other employer who isn't related to you.
- The insurance is restricted to, but mandatory for, all your employees who belong to, or are represented by, an organization (such as a union) that carries on substantial activities besides obtaining insurance.
- Evidence of whether an employee is insurable doesn't affect an employee's eligibility for insurance or the amount of insurance that employee gets.

To apply either exception, don't consider employees who were denied insurance for any of the following reasons.

- They were 65 or older.
- They customarily work 20 hours or less a week or 5 months or less in a calendar year.
- They haven't been employed for the waiting period given in the policy. This waiting period can't be more than 6 months.

**Exclusion from wages.** You can generally exclude the cost of up to \$50,000 of group-term life insurance from the wages of an insured employee. You can exclude the same amount from the employee's wages when figuring social security and Medicare taxes. In addition, you don't have to withhold federal income tax or pay FUTA tax on any group-term life insurance you provide to an employee.

**Coverage over the limit.** You must include in your employee's wages the cost of group-term life insurance beyond \$50,000 worth of coverage, reduced by the amount the employee paid toward the insurance. Report it as wages in boxes 1, 3, and 5 of the employee's Form W-2. Also, show it in box 12 with code "C." The amount is subject to social security and Medicare taxes, and you may, at your option, withhold federal income tax.

Figure the monthly cost of the insurance to include in the employee's wages by multiplying the number of thousands of dollars of all insurance coverage over \$50,000 (figured to the nearest \$100) by the cost shown in Table 2-2. For all coverage provided within the calendar year, use the employee's age on the last day of the employee's tax year. You must prorate the cost from the table if less than a full month of coverage is involved.

**Table 2-2. Cost Per \$1,000 of Protection for 1 Month**

Age	Cost
Under 25	\$ 0.05
25 through 29	0.06
30 through 34	0.08
35 through 39	0.09
40 through 44	0.10
45 through 49	0.15
50 through 54	0.23
55 through 59	0.43
60 through 64	0.66
65 through 69	1.27
70 and older	2.06

You figure the total cost to include in the employee's wages by multiplying the monthly cost by the number of full months' coverage at that cost.

**Example.** Tom's employer provides him with group-term life insurance coverage of \$200,000. Tom is 45 years old, isn't a key employee, and pays \$100 per year toward the cost of the insurance. Tom's employer must include \$170 in his wages. The \$200,000 of insurance coverage is reduced by \$50,000. The yearly cost of \$150,000 of coverage is \$270 ( $\$0.15 \times 150 \times 12$ ), and is reduced by the \$100 Tom pays for the insurance. The employer includes \$170 in boxes 1, 3, and 5 of Tom's Form W-2. The employer also enters \$170 in box 12 with code "C."

**Coverage for dependents.** Group-term life insurance coverage paid by the employer for the spouse or dependents of an employee may be excludable from income as a de minimis fringe benefit if the face amount isn't more than \$2,000. If the face amount is greater than \$2,000, the dependent coverage may be excludable from income as a de minimis fringe benefit if the excess (if any) of the cost of insurance over the amount the employee paid for it on an after-tax basis is so small that accounting for it is unreasonable or administratively impracticable.

**Former employees.** When group-term life insurance over \$50,000 is provided to an employee (including retirees) after his or her termination, the employee share of social security and Medicare taxes on that period of coverage is paid by the former employee with his or her tax return and isn't collected by the employer. You're not required to collect those taxes. Use the table above to determine the amount of social security and Medicare taxes owed by the former employee for coverage provided after separation from service. Report those uncollected amounts separately in box 12 of Form W-2 using codes "M" and "N." See the General Instructions for Forms W-2 and W-3 and the Instructions for Form 941.

**Exception for key employees.** Generally, if your group-term life insurance plan favors key employees as to participation or benefits, you must include the entire cost of the insurance in your key employees' wages. This exception generally doesn't apply to church plans. When figuring social security and Medicare taxes, you must also include the entire cost in the employees' wages. Include

the cost in boxes 1, 3, and 5 of Form W-2. However, you don't have to withhold federal income tax or pay FUTA tax on the cost of any group-term life insurance you provide to an employee.

For this purpose, the cost of the insurance is the greater of the following amounts.

- The premiums you pay for the employee's insurance. See Regulations section 1.79-4T(Q&A 6) for more information.
- The cost you figure using Table 2-2.

For this exclusion, a key employee during 2018 is an employee or former employee who is one of the following individuals. See section 416(i) of the Internal Revenue Code for more information.

1. An officer having annual pay of more than \$175,000.
2. An individual who for 2018 is either of the following.
  - a. A 5% owner of your business.
  - b. A 1% owner of your business whose annual pay is more than \$150,000.

A former employee who was a key employee upon retirement or separation from service is also a key employee.

Your plan doesn't favor key employees as to participation if at least one of the following is true.

- It benefits at least 70% of your employees.
- At least 85% of the participating employees aren't key employees.
- It benefits employees who qualify under a set of rules you set up that don't favor key employees.

Your plan meets this participation test if it is part of a [cafeteria plan](#) (discussed earlier in section 1) and it meets the participation test for those plans.

When applying this test, don't consider employees who:

- Have not completed 3 years of service;
- Are part time or seasonal;
- Are nonresident aliens who receive no U.S. source earned income from you; or
- Aren't included in the plan but are in a unit of employees covered by a collective bargaining agreement, if the benefits provided under the plan were the subject of good-faith bargaining between you and employee representatives.

Your plan doesn't favor key employees as to benefits if all benefits available to participating key employees are also available to all other participating employees. Your plan doesn't favor key employees just because the amount of insurance you provide to your employees is uniformly related to their pay.

**S corporation shareholders.** Because you can't treat a 2% shareholder of an S corporation as an employee for this exclusion, you must include the cost of all group-term life insurance coverage you provide the 2%

shareholder in his or her wages. When figuring social security and Medicare taxes, you must also include the cost of this coverage in the 2% shareholder's wages. Include the cost in boxes 1, 3, and 5 of Form W-2. However, you don't have to withhold federal income tax or pay FUTA tax on the cost of any group-term life insurance coverage you provide to the 2% shareholder.

## Health Savings Accounts

A Health Savings Account (HSA) is an account owned by a qualified individual who is generally your employee or former employee. Any contributions that you make to an HSA become the employee's property and can't be withdrawn by you. Contributions to the account are used to pay current or future medical expenses of the account owner, his or her spouse, and any qualified dependent. The medical expenses must not be reimbursable by insurance or other sources and their payment from HSA funds (distribution) won't give rise to a medical expense deduction on the individual's federal income tax return.

**Eligibility.** A qualified individual must be covered by a High Deductible Health Plan (HDHP) and not be covered by other health insurance except for permitted insurance listed under section 223(c)(3) or insurance for accidents, disability, dental care, vision care, or long-term care. For calendar year 2018, a qualifying HDHP must have a deductible of at least \$1,350 for self-only coverage or \$2,700 for family coverage and must limit annual out-of-pocket expenses of the beneficiary to \$6,650 for self-only coverage and \$13,300 for family coverage.

There are no income limits that restrict an individual's eligibility to contribute to an HSA nor is there a requirement that the account owner have earned income to make a contribution.

**Exceptions.** An individual isn't a qualified individual if he or she can be claimed as a dependent on another person's tax return. Also, an employee's participation in a health FSA or health reimbursement arrangement (HRA) generally disqualifies the individual (and employer) from making contributions to his or her HSA. However, an individual may qualify to participate in an HSA if he or she is participating in only a limited-purpose FSA or HRA or a post-deductible FSA. For more information, see *Other employee health plans* in Pub. 969.

**Employer contributions.** Up to specified dollar limits, cash contributions to the HSA of a qualified individual (determined monthly) are exempt from federal income tax withholding, social security tax, Medicare tax, and FUTA tax, if you reasonably believe that the employee can exclude the benefits from gross income. For 2018, you can contribute up to \$3,450 for self-only coverage under an HDHP or \$6,850 for family coverage under an HDHP to a qualified individual's HSA.

The contribution amounts listed above are increased by \$1,000 for a qualified individual who is age 55 or older at any time during the year. For two qualified individuals who are married to each other and who each are age 55 or older at any time during the year, each spouse's

contribution limit is increased by \$1,000 provided each spouse has a separate HSA. No contributions can be made to an individual's HSA after he or she becomes enrolled in Medicare Part A or Part B.

**Nondiscrimination rules.** Your contribution amount to an employee's HSA must be comparable for all employees who have comparable coverage during the same period. Otherwise, there will be an excise tax equal to 35% of the amount you contributed to all employees' HSAs.

For guidance on employer comparable contributions to HSAs under section 4980G in instances where an employee hasn't established an HSA by December 31 and in instances where an employer accelerates contributions for the calendar year for employees who have incurred qualified medical expenses, see Regulations section 54.4980G-4.

**Exception.** The Tax Relief and Health Care Act of 2006 allows employers to make larger HSA contributions for a nonhighly compensated employee than for a highly compensated employee. A highly compensated employee for 2018 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than \$120,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

**Partnerships and S corporations.** Partners and 2% shareholders of an S corporation aren't eligible for salary reduction (pre-tax) contributions to an HSA. Employer contributions to the HSA of a bona fide partner or 2% shareholder are treated as distributions or guaranteed payments as determined by the facts and circumstances.

**Cafeteria plans.** You may contribute to an employee's HSA using a cafeteria plan and your contributions aren't subject to the statutory comparability rules. However, cafeteria plan nondiscrimination rules still apply. For example, contributions under a cafeteria plan to employee HSAs can't be greater for higher-paid employees than they are for lower-paid employees. Contributions that favor lower-paid employees aren't prohibited.

**Reporting requirements.** You must report your contributions to an employee's HSA in box 12 of Form W-2 using code "W." The trustee or custodian of the HSA, generally a bank or insurance company, reports distributions from the HSA using Form 1099-SA.

## Lodging on Your Business Premises

You can exclude the value of lodging you furnish to an employee from the employee's wages if it meets the following tests.

- It is furnished on your business premises.

- It is furnished for your convenience.
- The employee must accept it as a condition of employment.

Different tests may apply to lodging furnished by educational institutions. See section 119(d) of the Internal Revenue Code for details.

If you allow your employee to choose to receive additional pay instead of lodging, then the lodging, if chosen, isn't excluded. The exclusion also doesn't apply to cash allowances for lodging.

**On your business premises.** For this exclusion, your business premises is generally your employee's place of work. For example, if you're a household employer, then lodging furnished in your home to a household employee would be considered lodging furnished on your business premises. For special rules that apply to lodging furnished in a camp located in a foreign country, see section 119(c) of the Internal Revenue Code and its regulations.

**For your convenience.** Whether or not you furnish lodging for your convenience as an employer depends on all the facts and circumstances. You furnish the lodging to your employee for your convenience if you do this for a substantial business reason other than to provide the employee with additional pay. This is true even if a law or an employment contract provides that the lodging is furnished as pay. However, a written statement that the lodging is furnished for your convenience isn't sufficient.

**Condition of employment.** Lodging meets this test if you require your employees to accept the lodging because they need to live on your business premises to be able to properly perform their duties. Examples include employees who must be available at all times and employees who couldn't perform their required duties without being furnished the lodging.

It doesn't matter whether you must furnish the lodging as pay under the terms of an employment contract or a law fixing the terms of employment.

**Example of qualifying lodging.** You employ Sam at a construction project at a remote job site in Alaska. Due to the inaccessibility of facilities for the employees who are working at the job site to obtain lodging and the prevailing weather conditions, you furnish lodging to your employees at the construction site in order to carry on the construction project. You require that your employees accept the lodging as a condition of their employment. You may exclude the lodging that you provide from Sam's wages. Additionally, since sufficient eating facilities aren't available near your place of employment, you may also exclude meals you provide to Sam from his wages, as discussed in [Proper meals not otherwise available](#) under [Meals on Your Business Premises](#), later in this section.

**Example of nonqualifying lodging.** A hospital gives Joan, an employee of the hospital, the choice of living at the hospital free of charge or living elsewhere and receiving a cash allowance in addition to her regular salary. If Joan chooses to live at the hospital, the hospital can't

exclude the value of the lodging from her wages because she isn't required to live at the hospital to properly perform the duties of her employment.

**S corporation shareholders.** For this exclusion, don't treat a 2% shareholder of an S corporation as an employee of the corporation. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder.

## Meals

This section discusses the exclusion rules that apply to de minimis meals and meals on your business premises.

### De Minimis Meals

You can exclude any occasional meal you provide to an employee if it has so little value (taking into account how frequently you provide meals to your employees) that accounting for it would be unreasonable or administratively impracticable. The exclusion applies, for example, to the following items.

- Coffee, doughnuts, or soft drinks.
- Occasional meals or meal money provided to enable an employee to work overtime. However, the exclusion doesn't apply to meal money figured on the basis of hours worked, or meals or meal money provided on a regular or routine basis.
- Occasional parties or picnics for employees and their guests.

**Employee.** For this exclusion, treat any recipient of a de minimis meal as an employee.

### Employer-operated eating facility for employees.

The de minimis meals exclusion also applies to meals you provide at an employer-operated eating facility for employees if the annual revenue from the facility equals or exceeds the direct operating costs of the facility. Direct operating costs include the cost of food, beverages, and labor costs (including employment taxes) of employees whose services relating to the facility are performed primarily on the premises of the eating facility. Therefore, for example, the labor costs attributable to cooks, waiters, and waitresses are included in direct operating costs, but the labor cost attributable to a manager of an eating facility whose services aren't primarily performed on the premises of the eating facility aren't included in direct operating costs.

For this purpose, your revenue from providing a meal is considered equal to the facility's direct operating costs to provide that meal if its value can be excluded from an employee's wages as explained under [Meals on Your Business Premises](#), later. If you provide free or discounted meals to volunteers at a hospital and you can reasonably

determine the number of meals you provide, then you may disregard these costs and revenues. If you charge non-employees a greater amount than employees, then you must disregard all costs and revenues attributable to these nonemployees.

An employer-operated eating facility for employees is an eating facility that meets all the following conditions.

- You own or lease the facility.
- You operate the facility. You're considered to operate the eating facility if you have a contract with another to operate it.
- The facility is on or near your business premises.
- You provide meals (food, drinks, and related services) at the facility during, or immediately before or after, the employee's workday.

**Exclusion from wages.** You can generally exclude the value of de minimis meals you provide to an employee from the employee's wages.

### **Exception for highly compensated employees.**

You can't exclude from the wages of a highly compensated employee the value of a meal provided at an employer-operated eating facility that isn't available on the same terms to one of the following groups.

- All of your employees.
- A group of employees defined under a reasonable classification you set up that doesn't favor highly compensated employees.

For this exclusion, a highly compensated employee for 2018 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than \$120,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

**TIP** *Section 13304 of P.L. 115-97 changes the rules for the deduction of food or beverage expenses that are excludable from employee income as a de minimis fringe benefit. For amounts incurred or paid after December 31, 2017, the 50% limit on deductions for food or beverage expenses also applies to food or beverage expenses excludable from employee income as a de minimis fringe benefit. However, food or beverage expenses related to employee recreation, such as holiday parties or annual picnics, aren't subject to the 50% limit on deductions when made primarily for the benefit of your employees other than employees who are officers, shareholders or other owners who own a 10% or greater interest in your business, or other highly compensated employees.*

## Meals on Your Business Premises

You can exclude the value of meals you furnish to an employee from the employee's wages if they meet the following tests.

- They are furnished on your business premises.
- They are furnished for your convenience.

If you allow your employee to choose to receive additional pay instead of meals, then the meals, if chosen, aren't excluded. The exclusion also doesn't apply to cash allowances for meals.

**On your business premises.** Generally, for this exclusion, the employee's place of work is your business premises.

**For your convenience.** Whether you furnish meals for your convenience as an employer depends on all the facts and circumstances. You furnish the meals to your employee for your convenience if you do this for a substantial business reason other than to provide the employee with additional pay. This is true even if a law or an employment contract provides that the meals are furnished as pay. However, a written statement that the meals are furnished for your convenience isn't sufficient.

**Meals excluded for all employees if excluded for more than half.** If more than half of your employees who are furnished meals on your business premises are furnished the meals for your convenience, you can treat all meals you furnish to employees on your business premises as furnished for your convenience.

**Food service employees.** Meals you furnish to a restaurant or other food service employee during, or immediately before or after, the employee's working hours are furnished for your convenience. For example, if a waitress works through the breakfast and lunch periods, you can exclude from her wages the value of the breakfast and lunch you furnish in your restaurant for each day she works.

**Example.** You operate a restaurant business. You furnish your employee, Carol, who is a waitress working 7 a.m. to 4 p.m., two meals during each workday. You encourage but don't require Carol to have her breakfast on the business premises before starting work. She must have her lunch on the premises. Since Carol is a food service employee and works during the normal breakfast and lunch periods, you can exclude from her wages the value of her breakfast and lunch.

If you also allow Carol to have meals on your business premises without charge on her days off, you can't exclude the value of those meals from her wages.

**Employees available for emergency calls.** Meals you furnish during working hours so an employee will be available for emergency calls during the meal period are furnished for your convenience. You must be able to show these emergency calls have occurred or can reasonably be expected to occur, and that the calls have resulted, or

will result, in you calling on your employees to perform their jobs during their meal period.

**Example.** A hospital maintains a cafeteria on its premises where all of its 230 employees may get meals at no charge during their working hours. The hospital must have 120 of its employees available for emergencies. Each of these 120 employees is, at times, called upon to perform services during the meal period. Although the hospital doesn't require these employees to remain on the premises, they rarely leave the hospital during their meal period. Since the hospital furnishes meals on its premises to its employees so that more than half of them are available for emergency calls during meal periods, the hospital can exclude the value of these meals from the wages of all of its employees.

**Short meal periods.** Meals you furnish during working hours are furnished for your convenience if the nature of your business (not merely a preference) restricts an employee to a short meal period (such as 30 or 45 minutes) and the employee can't be expected to eat elsewhere in such a short time. For example, meals can qualify for this treatment if your peak workload occurs during the normal lunch hour. However, they don't qualify if the reason for the short meal period is to allow the employee to leave earlier in the day.

**Example.** Frank is a bank teller who works from 9 a.m. to 5 p.m. The bank furnishes his lunch without charge in a cafeteria the bank maintains on its premises. The bank furnishes these meals to Frank to limit his lunch period to 30 minutes, since the bank's peak workload occurs during the normal lunch period. If Frank got his lunch elsewhere, it would take him much longer than 30 minutes and the bank strictly enforces the time limit. The bank can exclude the value of these meals from Frank's wages.

**Proper meals not otherwise available.** Meals you furnish during working hours are furnished for your convenience if the employee couldn't otherwise get proper meals within a reasonable period of time. For example, meals can qualify for this treatment if there are insufficient eating facilities near the place of employment. For an example of this, see [Example of qualifying lodging](#), earlier in this section.

**Meals after work hours.** Generally, meals furnished before or after the working hours of an employee aren't considered as furnished for your convenience. However, meals you furnish to an employee immediately after working hours are furnished for your convenience if you would have furnished them during working hours for a substantial nonpay business reason but, because of the work duties, they weren't obtained during working hours.

**Meals you furnish to promote goodwill, boost morale, or attract prospective employees.** Meals you furnish to promote goodwill, boost morale, or attract prospective employees aren't considered furnished for your convenience. However, you may be able to exclude their value as discussed under [De Minimis Meals](#), earlier.

### **Meals furnished on nonworkdays or with lodging.**

You generally can't exclude from an employee's wages the value of meals you furnish on a day when the employee isn't working. However, you can exclude these meals if they are furnished with lodging that is excluded from the employee's wages as discussed under [Lodging on Your Business Premises](#), earlier in this section.

**Meals with a charge.** The fact that you charge for the meals and that your employees may accept or decline the meals isn't taken into account in determining whether or not meals are furnished for your convenience.

**S corporation shareholder-employee.** For this exclusion, don't treat a 2% shareholder of an S corporation as an employee of the corporation. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder.

## **No-Additional-Cost Services**

This exclusion applies to a service you provide to an employee if it doesn't cause you to incur any substantial additional costs. The service must be offered to customers in the ordinary course of the line of business in which the employee performs substantial services.

No-additional-cost services are excess capacity services, such as airline, bus, or train tickets; hotel rooms; or telephone services provided free, at a reduced price, or through a cash rebate to employees working in those lines of business. Services that aren't eligible for treatment as no-additional-cost services are non-excess capacity services, such as the facilitation by a stock brokerage firm of the purchase of stock by employees. These services may however be eligible for a qualified employee discount of up to 20% of the value of the service provided as discussed in [Employee Discounts](#), earlier.

**Substantial additional costs.** To determine whether you incur substantial additional costs to provide a service to an employee, count any lost revenue as a cost. Don't reduce the costs you incur by any amount the employee pays for the service. You're considered to incur substantial additional costs if you or your employees spend a substantial amount of time in providing the service, even if the time spent would otherwise be idle or if the services are provided outside normal business hours.

**Example.** A commercial airline allows its employees to take personal flights on the airline at no charge and receive reserved seating. Because the employer gives up potential revenue by allowing the employees to reserve seats, employees receiving such free flights aren't eligible for the no-additional-cost exclusion.

**Reciprocal agreements.** A no-additional-cost service provided to your employee by an unrelated employer may

qualify as a no-additional-cost service if all the following tests are met.

- The service is the same type of service generally provided to customers in both the line of business in which the employee works and the line of business in which the service is provided.
- You and the employer providing the service have a written reciprocal agreement under which a group of employees of each employer, all of whom perform substantial services in the same line of business, may receive no-additional-cost services from the other employer.
- Neither you nor the other employer incurs any substantial additional cost either in providing the service or because of the written agreement.

**Employee.** For this exclusion, treat the following individuals as employees.

1. A current employee.
2. A former employee who retired or left on disability.
3. A widow or widower of an individual who died while an employee.
4. A widow or widower of a former employee who retired or left on disability.
5. A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
6. A partner who performs services for a partnership.

Treat services you provide to the spouse or dependent child of an employee as provided to the employee. For this fringe benefit, dependent child means any son, stepson, daughter, stepdaughter, or eligible foster child who is a dependent of the employee, or both of whose parents have died and who hasn't reached age 25. Treat a child of divorced parents as a dependent of both parents.

Treat any use of air transportation by the parent of an employee as use by the employee. This rule doesn't apply to use by the parent of a person considered an employee because of item (3) or (4) above.

**Exclusion from wages.** You can generally exclude the value of a no-additional-cost service you provide to an employee from the employee's wages.

**Exception for highly compensated employees.** You can't exclude from the wages of a highly compensated employee the value of a no-additional-cost service that isn't available on the same terms to one of the following groups.

- All of your employees.
- A group of employees defined under a reasonable classification you set up that doesn't favor highly compensated employees.

For this exclusion, a highly compensated employee for 2018 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than \$120,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

## Retirement Planning Services

You may exclude from an employee's wages the value of any retirement planning advice or information you provide to your employee or his or her spouse if you maintain a qualified retirement plan. A qualified retirement plan includes a plan, contract, pension, or account described in section 219(g)(5) of the Internal Revenue Code. In addition to employer plan advice and information, the services provided may include general advice and information on retirement. However, the exclusion doesn't apply to services for tax preparation, accounting, legal, or brokerage services. You can't exclude from the wages of a highly compensated employee retirement planning services that aren't available on the same terms to each member of a group of employees normally provided education and information about the employer's qualified retirement plan.

## Transportation (Commuting) Benefits

This section discusses exclusion rules that apply to benefits you provide to your employees for their personal transportation, such as commuting to and from work. These rules apply to the following transportation benefits.

- De minimis transportation benefits.
- Qualified transportation benefits.

Special rules that apply to [demonstrator cars](#) and [qualified nonpersonal use vehicles](#) are discussed under *Working Condition Benefits*, later in this section.

### De Minimis Transportation Benefits

You can exclude the value of any de minimis transportation benefit you provide to an employee from the employee's wages. A de minimis transportation benefit is any local transportation benefit you provide to an employee if it has so little value (taking into account how frequently you provide transportation to your employees) that accounting for it would be unreasonable or administratively impracticable. For example, it applies to occasional local transportation fare you give an employee because the employee is working overtime if the benefit is reasonable and isn't based on hours worked. Local transportation fare provided on a regular or routine basis doesn't qualify for this exclusion.

**Employee.** For this exclusion, treat any recipient of a de minimis transportation benefit as an employee.

## Qualified Transportation Benefits

This exclusion applies to the following benefits.

- A ride in a commuter highway vehicle between the employee's home and work place.
- A transit pass.
- Qualified parking.

You may provide an employee with any one or more of these benefits at the same time.

Qualified transportation benefits can be provided directly by you or through a bona fide reimbursement arrangement. A bona fide reimbursement arrangement requires that the employee incur and substantiate expenses for qualified transportation benefits before reimbursement. However, cash reimbursements for transit passes qualify only if a voucher or a similar item that the employee can exchange only for a transit pass isn't readily available for direct distribution by you to your employee. A voucher is readily available for direct distribution only if an employer can obtain it from a voucher provider that doesn't impose fare media charges or other restrictions that effectively prevent the employer from obtaining vouchers. See Regulations section 1.132-9(b)(Q&A 16–19) for more information.

**Compensation reduction agreements.** A compensation reduction agreement is a way to provide qualified transportation benefits on a pre-tax basis by offering your employees a choice between cash compensation and any qualified transportation benefit. A compensation reduction arrangement can be used with a bona fide reimbursement arrangement. For each month, the amount of the compensation reduction can't exceed the monthly limits for transportation benefits described in [Exclusion from wages](#), later. For more information about providing qualified transportation fringe benefits under a compensation reduction agreement, see Regulations section 1.132-9(b)(Q&A 11–15).

**Commuter highway vehicle.** A commuter highway vehicle is any highway vehicle that seats at least 6 adults (not including the driver). In addition, you must reasonably expect that at least 80% of the vehicle mileage will be for transporting employees between their homes and work place with employees occupying at least one-half the vehicle's seats (not including the driver's).

**Transit pass.** A transit pass is any pass, token, farecard, voucher, or similar item entitling a person to ride, free of charge or at a reduced rate, on one of the following.

- On mass transit.
- In a vehicle that seats at least 6 adults (not including the driver) if a person in the business of transporting persons for pay or hire operates it.



Mass transit may be publicly or privately operated and includes bus, rail, or ferry. For guidance on the use of smart cards and debit cards to provide qualified transportation fringes, see Revenue Ruling 2014-32, 2014-50 I.R.B. 917, available at [IRS.gov/irb/2014-50\\_IRB/ar06.html](http://IRS.gov/irb/2014-50_IRB/ar06.html).

**Qualified parking.** Qualified parking is parking you provide to your employees on or near your business premises. It includes parking on or near the location from which your employees commute to work using mass transit, commuter highway vehicles, or carpools. It doesn't include parking at or near your employee's home.



**Qualified bicycle commuting reimbursement suspended.** Section 11047 of P.L. 115-97 suspends the exclusion of qualified bicycle commuting reimbursements from your employee's income for any tax year beginning after December 31, 2017, and before January 1, 2026.

**Employee.** For this exclusion, treat the following individuals as employees.

- A current employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

A self-employed individual isn't an employee for qualified transportation benefit purposes.

**Exception for S corporation shareholders.** Don't treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder.

**Relation to other fringe benefits.** You can't exclude a qualified transportation benefit you provide to an employee under the de minimis or working condition benefit rules. However, if you provide a local transportation benefit other than by transit pass or commuter highway vehicle, or to a person other than an employee, you may be able to exclude all or part of the benefit under other fringe benefit rules (de minimis, working condition, etc.).

**Exclusion from wages.** You can generally exclude the value of transportation benefits that you provide to an employee during 2018 from the employee's wages up to the following limits.

- \$260 per month for combined commuter highway vehicle transportation and transit passes.
- \$260 per month for qualified parking.

**Benefits more than the limit.** If the value of a benefit for any month is more than its limit, include in the employee's wages the amount over the limit minus any amount the employee paid for the benefit. You can't exclude the

excess from the employee's wages as a de minimis transportation benefit.



**Qualified transportation benefits aren't deductible.** Section 13304 of P.L. 115-97 provides that no deduction is allowed for qualified transportation benefits (whether provided directly by you, through a bona fide reimbursement arrangement, or through a compensation reduction agreement) incurred or paid after December 31, 2017. Also, no deduction is allowed for any expense incurred for providing any transportation, or any payment or reimbursement to your employee, in connection with travel between your employee's residence and place of employment, except as necessary for ensuring the safety of your employee, or for qualified bicycle commuting reimbursements as described in section 132(f)(5) (F) (even though the exclusion for qualified bicycle commuting reimbursements is suspended, as discussed earlier). While you may no longer deduct payments for qualified transportation benefits, the fringe benefit exclusion rules still apply and the payments may be excluded from your employee's wages as discussed earlier.

**More information.** For more information on qualified transportation benefits, including van pools, and how to determine the value of parking, see Regulations section 1.132-9.

## Tuition Reduction

An educational organization can exclude the value of a qualified tuition reduction it provides to an employee from the employee's wages.

A tuition reduction for undergraduate education generally qualifies for this exclusion if it is for the education of one of the following individuals.

1. A current employee.
2. A former employee who retired or left on disability.
3. A widow or widower of an individual who died while an employee.
4. A widow or widower of a former employee who retired or left on disability.
5. A dependent child or spouse of any individual listed in (1) through (4) above.

A tuition reduction for graduate education qualifies for this exclusion only if it is for the education of a graduate student who performs teaching or research activities for the educational organization.

For more information on this exclusion, see *Qualified Tuition Reduction* under *Other Types of Educational Assistance* in chapter 1 of Pub. 970.

## Working Condition Benefits

This exclusion applies to property and services you provide to an employee so that the employee can perform his or her job. It applies to the extent the cost of the property

or services would be allowable as a business expense or depreciation expense deduction to the employee if he or she had paid for it. The employee must meet any substantiation requirements that apply to the deduction. Examples of working condition benefits include an employee's use of a company car for business, an [employer-provided cell phone](#) provided primarily for noncompensatory business purposes (discussed earlier), and job-related education provided to an employee.

This exclusion also applies to a cash payment you provide for an employee's expenses for a specific or prearranged business activity if such expenses would otherwise be allowable as a business expense or depreciation expense deduction to the employee. You must require the employee to verify that the payment is actually used for those expenses and to return any unused part of the payment.

The exclusion doesn't apply to the following items.

- A service or property provided under a flexible spending account in which you agree to provide the employee, over a time period, a certain level of unspecified noncash benefits with a predetermined cash value.
- A physical examination program you provide, even if mandatory.
- Any item to the extent the payment would be allowable as a deduction to the employee as an expense for a trade or business other than your trade or business.

**Employee.** For this exclusion, treat the following individuals as employees.

- A current employee.
- A partner who performs services for a partnership.
- A director of your company.
- An independent contractor who performs services for you.

**Vehicle allocation rules.** If you provide a car for an employee's use, the amount you can exclude as a working condition benefit is the amount that would be allowable as a deductible business expense if the employee paid for its use. If the employee uses the car for both business and personal use, the value of the working condition benefit is the part determined to be for business use of the vehicle. See *Business use of your car* under *Personal Versus Business Expenses* in chapter 1 of Pub. 535. Also, see the special rules for certain [demonstrator cars](#) and [qualified nonpersonal use vehicles](#) discussed later.

**Demonstrator cars.** Generally, all of the use of a demonstrator car by your full-time auto salesperson in the sales area in which your sales office is located qualifies as a working condition benefit if the use is primarily to facilitate the services the salesperson provides for you and there are substantial restrictions on personal use. For more information and the definition of "full-time auto salesperson," see Regulations section 1.132-5(o). For optional, simplified methods used to determine if full, partial, or no

exclusion of income to the employee for personal use of a demonstrator car applies, see Revenue Procedure 2001-56. You can find Revenue Procedure 2001-56 on page 590 of Internal Revenue Bulletin 2001-51 at [IRS.gov/pub/irs-irbs/irb01-51.pdf](https://www.irs.gov/pub/irs-irbs/irb01-51.pdf).

**Qualified nonpersonal use vehicles.** All of an employee's use of a qualified nonpersonal use vehicle is a working condition benefit. A qualified nonpersonal use vehicle is any vehicle the employee isn't likely to use more than minimally for personal purposes because of its design. Qualified nonpersonal use vehicles generally include all of the following vehicles.

- Clearly marked, through painted insignia or words, police, fire, and public safety vehicles.
- Unmarked vehicles used by law enforcement officers if the use is officially authorized.
- An ambulance or hearse used for its specific purpose.
- Any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 pounds.
- Delivery trucks with seating for the driver only, or the driver plus a folding jump seat.
- A passenger bus with a capacity of at least 20 passengers used for its specific purpose.
- School buses.
- Tractors and other special-purpose farm vehicles.
- Bucket trucks, cement mixers, combines, cranes and derricks, dump trucks (including garbage trucks), flat-bed trucks, forklifts, qualified moving vans, qualified specialized utility repair trucks, and refrigerated trucks.

See Regulations section 1.274-5(k) for the definition of qualified moving van and qualified specialized utility repair truck.

**Pickup trucks.** A pickup truck with a loaded gross vehicle weight of 14,000 pounds or less is a qualified nonpersonal use vehicle if it has been specially modified so it isn't likely to be used more than minimally for personal purposes. For example, a pickup truck qualifies if it is clearly marked with permanently affixed decals, special painting, or other advertising associated with your trade, business, or function and meets either of the following requirements.

1. It is equipped with at least one of the following items.
  - a. A hydraulic lift gate.
  - b. Permanent tanks or drums.
  - c. Permanent side boards or panels that materially raise the level of the sides of the truck bed.
  - d. Other heavy equipment (such as an electric generator, welder, boom, or crane used to tow automobiles and other vehicles).
2. It is used primarily to transport a particular type of load (other than over the public highways) in a construction, manufacturing, processing, farming,

mining, drilling, timbering, or other similar operation for which it was specially designed or significantly modified.

**Vans.** A van with a loaded gross vehicle weight of 14,000 pounds or less is a qualified nonpersonal use vehicle if it has been specially modified so it isn't likely to be used more than minimally for personal purposes. For example, a van qualifies if it is clearly marked with permanently affixed decals, special painting, or other advertising associated with your trade, business, or function and has a seat for the driver only (or the driver and one other person) and either of the following items.

- Permanent shelving that fills most of the cargo area.
- An open cargo area and the van always carries merchandise, material, or equipment used in your trade, business, or function.

**Education.** Certain job-related education you provide to an employee may qualify for exclusion as a working condition benefit. To qualify, the education must meet the same requirements that would apply for determining whether the employee could deduct the expenses had the employee paid the expenses. Degree programs as a whole don't necessarily qualify as a working condition benefit. Each course in the program must be evaluated individually for qualification as a working condition benefit. The education must meet at least one of the following tests.

- The education is required by the employer or by law for the employee to keep his or her present salary, status, or job. The required education must serve a bona fide business purpose of the employer.
- The education maintains or improves skills needed in the job.

However, even if the education meets one or both of the above tests, it isn't qualifying education if it:

- Is needed to meet the minimum educational requirements of the employee's present trade or business, or
- Is part of a program of study that will qualify the employee for a new trade or business.

**Outplacement services.** An employee's use of outplacement services qualifies as a working condition benefit if you provide the services to the employee on the basis of need, you get a substantial business benefit from the services distinct from the benefit you would get from the payment of additional wages, and the employee is seeking new employment in the same kind of trade or business in which the employee is presently working. Substantial business benefits include promoting a positive business image, maintaining employee morale, and avoiding wrongful termination suits.

Outplacement services don't qualify as a working condition benefit if the employee can choose to receive cash or taxable benefits in place of the services. If you maintain a severance plan and permit employees to get outplacement services with reduced severance pay, include in the employee's wages the difference between the unreduced severance and the reduced severance payments.

**Product testing.** The fair market value of the use of consumer goods, which are manufactured for sale to nonemployees, for product testing and evaluation by your employee outside your workplace, qualifies as a working condition benefit, if all of the following conditions are met.

- Consumer testing and evaluation of the product is an ordinary and necessary business expense for you.
- Business reasons necessitate that the testing and evaluation must be performed off your business premises. For example, the testing and evaluation can't be carried out adequately in your office or in laboratory testing facilities.
- You provide the product to your employee for purposes of testing and evaluation.
- You provide the product to your employee for no longer than necessary to test and evaluate its performance, and (to the extent not finished) the product must be returned to you at completion of the testing and evaluation period.
- You impose limitations on your employee's use of the product that significantly reduce the value of any personal benefit to your employee. This includes limiting your employee's ability to select among different models or varieties of the consumer product, and prohibiting the use of the product by persons other than your employee.
- Your employee submits detailed reports to you on the testing and evaluation.

The program won't qualify if you don't use and examine the results of the detailed reports submitted by employees within a reasonable period of time after expiration of the testing period. Additionally, existence of one or more of the following factors may also establish that the program isn't a bona fide product-testing program.

- The program is in essence a leasing program under which employees lease the consumer goods from you for a fee.
- The nature of the product and other considerations are insufficient to justify the testing program.
- The expense of the program outweighs the benefits to be gained from testing and evaluation.

The program must also not be limited to only certain classes of employees (such as highly compensated employees), unless you can show a business reason for providing the products only to specific employees. For example, an automobile manufacturer may limit providing automobiles for testing and evaluation to only their design engineers and supervisory mechanics, as they can properly evaluate the automobiles.

**Exclusion from wages.** You can generally exclude the value of a working condition benefit you provide to an employee from the employee's wages.

**Exception for independent contractors who perform services for you.** You can't exclude the use of consumer goods you provide in a product-testing program

from the compensation you pay to an independent contractor. You can't exclude the value of parking as a working condition benefit, but you may be able to exclude it as a de minimis fringe benefit. Transit passes provided to independent contractors may be excluded as a working condition benefit if they meet the requirements of a working condition benefit described earlier. However, personal commuting expenses are not deductible as a business expense. Transit passes may also be excluded as a de minimis fringe benefit. For more information on de minimis transportation benefits, see [De Minimis Transportation Benefits](#), earlier in this section.

**Exception for company directors.** You can't exclude the value of the use of consumer goods you provide in a product-testing program from the compensation you pay to a director.

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## 3. Fringe Benefit Valuation Rules

This section discusses the rules you must use to determine the value of a fringe benefit you provide to an employee. You must determine the value of any benefit you can't exclude under the rules in [section 2](#) or for which the amount you can exclude is limited. See [Including taxable benefits in pay](#) in section 1.

In most cases, you must use the general valuation rule to value a fringe benefit. However, you may be able to use a special valuation rule to determine the value of certain benefits.

This section doesn't discuss the special valuation rule used to value meals provided at an employer-operated eating facility for employees. For that rule, see Regulations section 1.61-21(j). This section also doesn't discuss the special valuation rules used to value the use of aircraft. For those rules, see Regulations sections 1.61-21(g) and (h). The aircraft fringe benefit valuation formulas are published in the Internal Revenue Bulletin as Revenue Rulings twice during the year. The formula applicable for the first half of the year is usually available at the end of March. The formula applicable for the second half of the year is usually available at the end of September.

### General Valuation Rule

You must use the general valuation rule to determine the value of most fringe benefits. Under this rule, the value of a fringe benefit is its fair market value.

**Fair market value (FMV).** The FMV of a fringe benefit is the amount an employee would have to pay a third party in an arm's-length transaction to buy or lease the benefit. Determine this amount on the basis of all the facts and circumstances.

Neither the amount the employee considers to be the value of the fringe benefit nor the cost you incur to provide the benefit determines its FMV.

**Employer-provided vehicles.** In general, the FMV of an employer-provided vehicle is the amount the employee would have to pay a third party to lease the same or similar vehicle on the same or comparable terms in the geographic area where the employee uses the vehicle. A comparable lease term would be the amount of time the vehicle is available for the employee's use, such as a 1-year period.

Don't determine the FMV by multiplying a cents-per-mile rate times the number of miles driven unless the employee can prove the vehicle could have been leased on a cents-per-mile basis.

### Cents-Per-Mile Rule

Under this rule, you determine the value of a vehicle you provide to an employee for personal use by multiplying the standard mileage rate by the total miles the employee drives the vehicle for personal purposes. Personal use is any use of the vehicle other than use in your trade or business. This amount must be included in the employee's wages or reimbursed by the employee. For 2018, the standard mileage rate is 54.5 cents per mile.

You can use the cents-per-mile rule if either of the following requirements is met.

- You reasonably expect the vehicle to be regularly used in your trade or business throughout the calendar year (or for a shorter period during which you own or lease it).
- The vehicle meets the mileage test.



**Maximum automobile value.** You can't use the cents-per-mile rule for an automobile (any four-wheeled vehicle, such as a car, pickup truck, or van) if its value when you first make it available to any employee for personal use is more than an amount determined by the IRS as the maximum automobile value for the year. The maximum automobile value for 2018 will be published in a notice in the Internal Revenue Bulletin in 2018. If you and the employee own or lease the automobile together, see Regulations sections 1.61-21(e)(1)(iii)(B) and (C).

**Vehicle.** For the cents-per-mile rule, a vehicle is any motorized wheeled vehicle, including an automobile, manufactured primarily for use on public streets, roads, and highways.

**Regular use in your trade or business.** A vehicle is regularly used in your trade or business if at least one of the following conditions is met.

- At least 50% of the vehicle's total annual mileage is for your trade or business.
- You sponsor a commuting pool that generally uses the vehicle each workday to drive at least three employees to and from work.
- The vehicle is regularly used in your trade or business on the basis of all of the facts and circumstances. Infrequent business use of the vehicle, such as for

occasional trips to the airport or between your multiple business premises, isn't regular use of the vehicle in your trade or business.

**Mileage test.** A vehicle meets the mileage test for a calendar year if both of the following requirements are met.

- The vehicle is actually driven at least 10,000 miles during the year. If you own or lease the vehicle only part of the year, reduce the 10,000-mile requirement proportionately.
- The vehicle is used during the year primarily by employees. Consider the vehicle used primarily by employees if they use it consistently for commuting. Don't treat the use of the vehicle by another individual whose use would be taxed to the employee as use by the employee.

For example, if only one employee uses a vehicle during the calendar year and that employee drives the vehicle at least 10,000 miles in that year, the vehicle meets the mileage test even if all miles driven by the employee are personal.

**Consistency requirements.** If you use the cents-per-mile rule, the following requirements apply.

- You must begin using the cents-per-mile rule on the first day you make the vehicle available to any employee for personal use. However, if you use the [commuting rule](#) (discussed later) when you first make the vehicle available to any employee for personal use, you can change to the cents-per-mile rule on the first day for which you don't use the commuting rule.
- You must use the cents-per-mile rule for all later years in which you make the vehicle available to any employee and the vehicle qualifies, except that you can use the commuting rule for any year during which use of the vehicle qualifies under the commuting rules. However, if the vehicle doesn't qualify for the cents-per-mile rule during a later year, you can use for that year and thereafter any other rule for which the vehicle then qualifies.
- You must continue to use the cents-per-mile rule if you provide a replacement vehicle to the employee (and the vehicle qualifies for the use of this rule) and your primary reason for the replacement is to reduce federal taxes.

**Items included in cents-per-mile rate.** The cents-per-mile rate includes the value of maintenance and insurance for the vehicle. Don't reduce the rate by the value of any service included in the rate that you didn't provide. You can take into account the services actually provided for the vehicle by using the [General Valuation Rule](#), earlier.

For miles driven in the United States, its territories and possessions, Canada, and Mexico, the cents-per-mile rate includes the value of fuel you provide. If you don't provide fuel, you can reduce the rate by no more than 5.5 cents.

For special rules that apply to fuel you provide for miles driven outside the United States, Canada, and Mexico, see Regulations section 1.61-21(e)(3)(ii)(B).

The value of any other service you provide for a vehicle isn't included in the cents-per-mile rate. Use the general valuation rule to value these services.

## Commuting Rule

Under this rule, you determine the value of a vehicle you provide to an employee for commuting use by multiplying each one-way commute (that is, from home to work or from work to home) by \$1.50. If more than one employee commutes in the vehicle, this value applies to each employee. This amount must be included in the employee's wages or reimbursed by the employee.

You can use the commuting rule if all the following requirements are met.

- You provide the vehicle to an employee for use in your trade or business and, for bona fide noncompensatory business reasons, you require the employee to commute in the vehicle. You will be treated as if you had met this requirement if the vehicle is generally used each workday to carry at least three employees to and from work in an employer-sponsored commuting pool.
- You establish a written policy under which you don't allow the employee to use the vehicle for personal purposes other than for commuting or de minimis personal use (such as a stop for a personal errand on the way between a business delivery and the employee's home). Personal use of a vehicle is all use that isn't for your trade or business.
- The employee doesn't use the vehicle for personal purposes other than commuting and de minimis personal use.
- If this vehicle is an automobile (any four-wheeled vehicle, such as a car, pickup truck, or van), the employee who uses it for commuting isn't a control employee. See [Control employee](#), later.

**Vehicle.** For this rule, a vehicle is any motorized wheeled vehicle, including an automobile manufactured primarily for use on public streets, roads, and highways.

**Control employee.** A control employee of a nongovernment employer for 2018 is generally any of the following employees.

- A board or shareholder-appointed, confirmed, or elected officer whose pay is \$110,000 or more.
- A director.
- An employee whose pay is \$220,000 or more.
- An employee who owns a 1% or more equity, capital, or profits interest in your business.

A control employee for a government employer for 2018 is either of the following.

- A government employee whose compensation is equal to or exceeds Federal Government Executive

Level V. See the Office of Personnel Management website at [opm.gov/policy-data-oversight/pay-leave/salaries-wages](http://opm.gov/policy-data-oversight/pay-leave/salaries-wages) for 2018 compensation information.

- An elected official.

**Highly compensated employee alternative.** Instead of using the preceding definition, you can choose to define a control employee as any highly compensated employee. A highly compensated employee for 2018 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than \$120,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

## Lease Value Rule

Under this rule, you determine the value of an automobile you provide to an employee by using its annual lease value. For an automobile provided only part of the year, use either its prorated annual lease value or its daily lease value.

If the automobile is used by the employee in your business, you generally reduce the lease value by the amount that is excluded from the employee's wages as a working condition benefit. In order to do this, the employee must account to the employer for the business use. This is done by substantiating the usage (mileage, for example), the time and place of the travel, and the business purpose of the travel. Written records made at the time of each business use are the best evidence. Any use of a company-provided vehicle that isn't substantiated as business use is included in income. The working condition benefit is the amount that would be an allowable business expense deduction for the employee if the employee paid for the use of the vehicle.

**Automobile.** For this rule, an automobile is any four-wheeled vehicle (such as a car, pickup truck, or van) manufactured primarily for use on public streets, roads, and highways.

**Consistency requirements.** If you use the lease value rule, the following requirements apply.

1. You must begin using this rule on the first day you make the automobile available to any employee for personal use. However, the following exceptions apply.
  - a. If you use the [commuting rule](#) (discussed earlier in this section) when you first make the automobile available to any employee for personal use, you can change to the lease value rule on the first day for which you don't use the commuting rule.
  - b. If you use the [cents-per-mile rule](#) (discussed earlier in this section) when you first make the auto-

mobile available to any employee for personal use, you can change to the lease value rule on the first day on which the automobile no longer qualifies for the cents-per-mile rule.

2. You must use this rule for all later years in which you make the automobile available to any employee, except that you can use the commuting rule for any year during which use of the automobile qualifies.
3. You must continue to use this rule if you provide a replacement automobile to the employee and your primary reason for the replacement is to reduce federal taxes.

## Annual Lease Value

Generally, you figure the annual lease value of an automobile as follows.

1. Determine the FMV of the automobile on the first date it is available to any employee for personal use.
2. Using Table 3-1, read down column (1) until you come to the dollar range within which the FMV of the automobile falls. Then read across to column (2) to find the annual lease value.
3. Multiply the annual lease value by the percentage of personal miles out of total miles driven by the employee.

**Table 3-1. Annual Lease Value Table**

(1) Automobile FMV	(2) Annual Lease
\$ 0 to 999	\$ 600
1,000 to 1,999	850
2,000 to 2,999	1,100
3,000 to 3,999	1,350
4,000 to 4,999	1,600
5,000 to 5,999	1,850
6,000 to 6,999	2,100
7,000 to 7,999	2,350
8,000 to 8,999	2,600
9,000 to 9,999	2,850
10,000 to 10,999	3,100
11,000 to 11,999	3,350
12,000 to 12,999	3,600
13,000 to 13,999	3,850
14,000 to 14,999	4,100
15,000 to 15,999	4,350
16,000 to 16,999	4,600
17,000 to 17,999	4,850
18,000 to 18,999	5,100
19,000 to 19,999	5,350
20,000 to 20,999	5,600
21,000 to 21,999	5,850
22,000 to 22,999	6,100
23,000 to 23,999	6,350
24,000 to 24,999	6,600
25,000 to 25,999	6,850
26,000 to 27,999	7,250
28,000 to 29,999	7,750
30,000 to 31,999	8,250
32,000 to 33,999	8,750
34,000 to 35,999	9,250
36,000 to 37,999	9,750
38,000 to 39,999	10,250
40,000 to 41,999	10,750
42,000 to 43,999	11,250
44,000 to 45,999	11,750
46,000 to 47,999	12,250
48,000 to 49,999	12,750
50,000 to 51,999	13,250
52,000 to 53,999	13,750
54,000 to 55,999	14,250
56,000 to 57,999	14,750
58,000 to 59,999	15,250

For automobiles with an FMV of more than \$59,999, the annual lease value equals  $(0.25 \times \text{the FMV of the automobile}) + \$500$ .

**FMV.** The FMV of an automobile is the amount a person would pay to buy it from a third party in an arm's-length transaction in the area in which the automobile is bought or leased. That amount includes all purchase expenses, such as sales tax and title fees.

If you have 20 or more automobiles, see Regulations section 1.61-21(d)(5)(v). If you and the employee own or lease the automobile together, see Regulations section 1.61-21(d)(2)(ii).

You don't have to include the value of a telephone or any specialized equipment added to, or carried in, the automobile if the equipment is necessary for your business. However, include the value of specialized equipment if the employee to whom the automobile is available uses the specialized equipment in a trade or business other than yours.

Neither the amount the employee considers to be the value of the benefit nor your cost for either buying or leasing the automobile determines its FMV. However, see *Safe-harbor value* next.

**Safe-harbor value.** You may be able to use a safe-harbor value as the FMV.

For an automobile you bought at arm's length, the safe-harbor value is your cost, including sales tax, title, and other purchase expenses. This method isn't available for an automobile you manufactured.

For an automobile you lease, you can use any of the following as the safe-harbor value.

- The manufacturer's invoice price (including options) plus 4%.
- The manufacturer's suggested retail price minus 8% (including sales tax, title, and other expenses of purchase).
- The retail value of the automobile reported by a nationally recognized pricing source if that retail value is reasonable for the automobile.

**Items included in annual lease value table.** Each annual lease value in the table includes the value of maintenance and insurance for the automobile. Don't reduce the annual lease value by the value of any of these services that you didn't provide. For example, don't reduce the annual lease value by the value of a maintenance service contract or insurance you didn't provide. You can take into account the services actually provided for the automobile by using the [general valuation rule](#) discussed earlier.

**Items not included.** The annual lease value doesn't include the value of fuel you provide to an employee for personal use, regardless of whether you provide it, reimburse its cost, or have it charged to you. You must include the value of the fuel separately in the employee's wages. You can value fuel you provided at FMV or at 5.5 cents per mile for all miles driven by the employee. However, you can't value at 5.5 cents per mile fuel you provide for miles driven outside the United States (including its possessions and territories), Canada, and Mexico.

If you reimburse an employee for the cost of fuel, or have it charged to you, you generally value the fuel at the amount you reimburse, or the amount charged to you if it was bought at arm's length.

If you have 20 or more automobiles, see Regulations section 1.61-21(d)(3)(ii)(D).

If you provide any service other than maintenance and insurance for an automobile, you must add the FMV of that service to the annual lease value of the automobile to figure the value of the benefit.

**4-year lease term.** The annual lease values in the table are based on a 4-year lease term. These values will generally stay the same for the period that begins with the first date you use this rule for the automobile and ends on December 31 of the fourth full calendar year following that date.

Figure the annual lease value for each later 4-year period by determining the FMV of the automobile on January

1 of the first year of the later 4-year period and selecting the amount in column (2) of the table that corresponds to the appropriate dollar range in column (1).

**Using the special accounting rule.** If you use the [special accounting rule](#) for fringe benefits discussed in section 4, you can figure the annual lease value for each later 4-year period at the beginning of the special accounting period that starts immediately before the January 1 date described in the previous paragraph.

For example, assume that you use the special accounting rule and that, beginning on November 1, 2017, the special accounting period is November 1 to October 31. You elected to use the lease value rule as of January 1, 2018. You can refigure the annual lease value on November 1, 2021, rather than on January 1, 2022.

**Transferring an automobile from one employee to another.** Unless the primary purpose of the transfer is to reduce federal taxes, you can refigure the annual lease value based on the FMV of the automobile on January 1 of the calendar year of transfer.

However, if you use the [special accounting rule](#) for fringe benefits discussed in section 4, you can refigure the annual lease value (based on the FMV of the automobile) at the beginning of the special accounting period in which the transfer occurs.

## Prorated Annual Lease Value

If you provide an automobile to an employee for a continuous period of 30 or more days but less than an entire calendar year, you can prorate the annual lease value. Figure the prorated annual lease value by multiplying the annual lease value by a fraction, using the number of days of availability as the numerator and 365 as the denominator.

If you provide an automobile continuously for at least 30 days, but the period covers 2 calendar years (or 2 special accounting periods if you're using the [special accounting rule](#) for fringe benefits discussed in section 4), you can use the prorated annual lease value or the daily lease value.

If you have 20 or more automobiles, see Regulations section 1.61-21(d)(6).

If an automobile is unavailable to the employee because of his or her personal reasons (for example, if the employee is on vacation), you can't take into account the periods of unavailability when you use a prorated annual lease value.



*You can't use a prorated annual lease value if the reduction of federal tax is the main reason the automobile is unavailable.*

## Daily Lease Value

If you provide an automobile to an employee for a continuous period of less than 30 days, use the daily lease value to figure its value. Figure the daily lease value by

multiplying the annual lease value by a fraction, using four times the number of days of availability as the numerator and 365 as the denominator.

However, you can apply a prorated annual lease value for a period of continuous availability of less than 30 days by treating the automobile as if it had been available for 30 days. Use a prorated annual lease value if it would result in a lower valuation than applying the daily lease value to the shorter period of availability.

## Unsafe Conditions Commuting Rule

Under this rule, the value of commuting transportation you provide to a qualified employee solely because of unsafe conditions is \$1.50 for a one-way commute (that is, from home to work or from work to home). This amount must be included in the employee's wages or reimbursed by the employee.

You can use the unsafe conditions commuting rule for qualified employees if all of the following requirements are met.

- The employee would ordinarily walk or use public transportation for commuting.
- You have a written policy under which you don't provide the transportation for personal purposes other than commuting because of unsafe conditions.
- The employee doesn't use the transportation for personal purposes other than commuting because of unsafe conditions.

These requirements must be met on a trip-by-trip basis.

**Commuting transportation.** This is transportation to or from work using any motorized wheeled vehicle (including an automobile) manufactured for use on public streets, roads, and highways. You or the employee must buy the transportation from a party that isn't related to you. If the employee buys it, you must reimburse the employee for its cost (for example, cab fare) under a bona fide reimbursement arrangement.

**Qualified employee.** A qualified employee for 2018 is one who:

- Performs services during the year;
- Is paid on an hourly basis;
- Isn't claimed under section 213(a)(1) of the Fair Labor Standards Act (FLSA) of 1938 (as amended) to be exempt from the minimum wage and maximum hour provisions;
- Is within a classification for which you actually pay, or have specified in writing that you will pay, overtime pay of at least one and one-half times the regular rate provided in section 207 of FLSA; and
- Received pay of not more than \$120,000 during 2017.

However, an employee isn't considered a qualified employee if you don't comply with the recordkeeping requirements concerning the employee's wages, hours, and



other conditions and practices of employment under section 211(c) of FLSA and the related regulations.

**Unsafe conditions.** Unsafe conditions exist if, under the facts and circumstances, a reasonable person would consider it unsafe for the employee to walk or use public transportation at the time of day the employee must commute. One factor indicating whether it is unsafe is the history of crime in the geographic area surrounding the employee's workplace or home at the time of day the employee commutes.

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## 4. Rules for Withholding, Depositing, and Reporting

Use the following guidelines for withholding, depositing, and reporting taxable noncash fringe benefits. For additional information on how to withhold on taxable fringe benefits, see section 5 in Pub. 15.

**Valuation of taxable fringe benefits.** Generally, you must determine the value of taxable noncash fringe benefits no later than January 31 of the next year. Before January 31, you may reasonably estimate the value of the fringe benefits for purposes of withholding and depositing on time.

**Choice of period for withholding, depositing, and reporting.** For employment tax and withholding purposes, you can treat taxable noncash fringe benefits (including personal use of employer-provided highway motor vehicles) as paid on a pay period, quarter, semiannual, annual, or other basis. But the benefits must be treated as paid no less frequently than annually. You don't have to choose the same period for all employees. You can withhold more frequently for some employees than for others.

You can change the period as often as you like as long as you treat all of the benefits provided in a calendar year as paid no later than December 31 of the calendar year.

You can also treat the value of a single fringe benefit as paid on one or more dates in the same calendar year, even if the employee receives the entire benefit at one time. For example, if your employee receives a fringe benefit valued at \$1,000 in one pay period during 2018, you can treat it as made in four payments of \$250, each in a different pay period of 2018. You don't have to notify the IRS of the use of the periods discussed above.

**Transfer of property.** The above choice for reporting and withholding doesn't apply to a cash fringe benefit or a fringe benefit that is a transfer of tangible or intangible personal property of a kind normally held for investment or a transfer of real property. For these kinds of fringe benefits, you must use the actual date the property was transferred to the employee.

**Withholding and depositing taxes.** You can add the value of taxable fringe benefits to regular wages for a payroll period and figure income tax withholding on the total. Or you can withhold federal income tax on the value of

fringe benefits at the flat 22% rate that applies to supplemental wages. See section 7 in Pub.15 for the flat rate (37%) when supplemental wage payments to an individual exceed \$1 million during the year.

You must withhold the applicable income, social security, and Medicare taxes on the date or dates you chose to treat the benefits as paid. Deposit the amounts withheld as discussed in section 11 of Pub.15.

**Additional Medicare Tax withholding.** In addition to withholding Medicare tax at 1.45%, you must withhold a 0.9% Additional Medicare Tax from wages you pay to an employee in excess of \$200,000 in a calendar year. You're required to begin withholding Additional Medicare Tax in the pay period in which you pay wages in excess of \$200,000 to an employee and continue to withhold it each pay period until the end of the calendar year. Additional Medicare Tax is only imposed on the employee. There is no employer share of Additional Medicare Tax. All wages that are subject to Medicare tax are subject to Additional Medicare Tax withholding if paid in excess of the \$200,000 withholding threshold.

For more information on what wages are subject to Medicare tax, see [Table 2-1](#), earlier, and the chart, *Special Rules for Various Types of Services and Payments*, in section 15 of Pub. 15. For more information on Additional Medicare Tax, go to [IRS.gov/ADMT](https://www.irs.gov/ADMT).

**Amount of deposit.** To estimate the amount of income tax withholding and employment taxes and to deposit them on time, make a reasonable estimate of the value of the taxable fringe benefits provided on the date or dates you chose to treat the benefits as paid. Determine the estimated deposit by figuring the amount you would have had to deposit if you had paid cash wages equal to the estimated value of the fringe benefits and withheld taxes from those cash wages. Even if you don't know which employee will receive the fringe benefit on the date the deposit is due, you should follow this procedure.

If you underestimate the value of the fringe benefits and deposit less than the amount you would have had to deposit if the applicable taxes had been withheld, you may be subject to a penalty.

If you overestimate the value of the fringe benefit and overdeposit, you can either claim a refund or have the overpayment applied to your next Form 941, Employer's QUARTERLY Federal Tax Return. See the Instructions for Form 941.

If you paid the required amount of taxes but withheld a lesser amount from the employee, you can recover from the employee the social security, Medicare, or income taxes you deposited on the employee's behalf and included on the employee's Form W-2. However, you must recover the income taxes before April 1 of the following year.

**Paying your employee's share of social security and Medicare taxes.** If you choose to pay your employee's social security and Medicare taxes on taxable fringe benefits without deducting them from his or her pay, you must include the amount of the payments in the employee's income. Also, if your employee leaves your employment

and you have unpaid and uncollected taxes for noncash benefits, you're still liable for those taxes. You must add the uncollected employee share of social security and Medicare tax to the employee's wages. Follow the procedure discussed under *Employee's Portion of Taxes Paid by Employer* in section 7 of Pub. 15-A. Don't use withheld federal income tax to pay the social security and Medicare tax.

**Special accounting rule.** You can treat the value of taxable noncash benefits as paid on a pay period, quarter, semiannual, annual, or other basis, provided that the benefits are treated as paid no less frequently than annually. You can treat the value of taxable noncash fringe benefits provided during the last 2 months of the calendar year, or any shorter period within the last 2 months, as paid in the next year. Thus, the value of taxable noncash benefits actually provided in the last 2 months of 2017 could be treated as provided in 2018 together with the value of benefits provided in the first 10 months of 2018. This doesn't mean that all benefits treated as paid during the last 2 months of a calendar year can be deferred until the next year. Only the value of benefits actually provided during the last 2 months of the calendar year can be treated as paid in the next calendar year.

**Limitation.** The special accounting rule can't be used, however, for a fringe benefit that is a transfer of tangible or intangible personal property of a kind normally held for investment or a transfer of real property.

**Conformity rules.** Use of the special accounting rule is optional. You can use the rule for some fringe benefits but not others. The period of use need not be the same for each fringe benefit. However, if you use the rule for a particular fringe benefit, you must use it for all employees who receive that benefit.

If you use the special accounting rule, your employee also must use it for the same period you use it. But your employee can't use the special accounting rule unless you do.

You don't have to notify the IRS if you use the special accounting rule. You may also, for appropriate reasons, change the period for which you use the rule without notifying the IRS. But you must report the income and deposit the withheld taxes as required for the changed period.

**Special rules for highway motor vehicles.** If an employee uses the employer's vehicle for personal purposes, the value of that use must be determined by the employer and included in the employee's wages. The value of the personal use must be based on fair market value or determined by using one of the following three special valuation rules previously discussed in [section 3](#).

- The lease value rule.
- The cents-per-mile rule.
- The commuting rule (for commuting use only).

**Election not to withhold income tax.** You can choose not to withhold income tax on the value of an employee's personal use of a highway motor vehicle you provided. You don't have to make this choice for all

employees. You can withhold income tax from the wages of some employees but not others. You must, however, withhold the applicable social security and Medicare taxes on such benefits.

You can choose not to withhold income tax on an employee's personal use of a highway motor vehicle by:

- Notifying the employee as described below that you choose not to withhold; and
- Including the value of the benefits in boxes 1, 3, 5, and 14 on a timely furnished Form W-2. For use of a separate statement in lieu of using box 14, see the General Instructions for Forms W-2 and W-3.

The notice must be in writing and must be provided to the employee by January 31 of the election year or within 30 days after a vehicle is first provided to the employee, whichever is later. This notice must be provided in a manner reasonably expected to come to the attention of the affected employee. For example, the notice may be mailed to the employee, included with a paycheck, or posted where the employee could reasonably be expected to see it. You can also change your election not to withhold at any time by notifying the employee in the same manner.

**Amount to report on Forms 941 (or Form 944) and W-2.** The actual value of fringe benefits provided during a calendar year (or other period as explained under [Special accounting rule](#), earlier in this section) must be determined by January 31 of the following year. You must report the actual value on Forms 941 (or Form 944) and W-2. If you choose, you can use a separate Form W-2 for fringe benefits and any other benefit information.

Include the value of the fringe benefit in box 1 of Form W-2. Also include it in boxes 3 and 5, if applicable. You may show the total value of the fringe benefits provided in the calendar year or other period in box 14 of Form W-2. For additional information about reporting of fringe benefits on Form W-2, see the General Instructions for Forms W-2 and W-3.

If you use the special accounting rule, you must notify the affected employees of the period in which you used it. You must give this notice at or near the date you give the Form W-2, but not earlier than with the employee's last paycheck of the calendar year.

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## How To Get Tax Help

If you have questions about a tax issue, need help preparing your tax return, or want to download free publications, forms, or instructions, go to [IRS.gov](http://IRS.gov) and find resources that can help you right away.

**Preparing and filing your tax return.** Go to [IRS.gov/Efile](http://IRS.gov/Efile) for more information on filing your employment tax returns electronically.



**Getting answers to your tax questions.** On IRS.gov, get answers to your tax questions any time, anywhere.

- Go to [IRS.gov/Help](https://www.irs.gov/Help) or [IRS.gov/LetUsHelp](https://www.irs.gov/LetUsHelp) pages for a variety of tools that will help you get answers to some of the most common tax questions.
- You may also be able to access tax law information in your electronic filing software.

**Getting tax forms and publications.** Go to [IRS.gov/Forms](https://www.irs.gov/Forms) to view, download, or print most of the forms and publications you may need. You can also download and view popular tax publications and instructions (including Pub. 15-B) on mobile devices as an eBook at no charge. Or, you can go to [IRS.gov/OrderForms](https://www.irs.gov/OrderForms) to place an order and have forms mailed to you within 10 business days.

**Getting a transcript or copy of a return.** You can get a copy of your tax transcript or a copy of your return by calling 800-829-4933 or by mailing Form 4506-T (transcript request) or Form 4506 (copy of return) to the IRS.

#### **Resolving tax-related identity theft issues.**

- The IRS doesn't initiate contact with taxpayers by email or telephone to request personal or financial information. This includes any type of electronic communication, such as text messages and social media channels.
- Go to [IRS.gov/IDProtection](https://www.irs.gov/IDProtection) for information and videos.
- If your EIN has been lost or stolen or you suspect you're a victim of tax-related identity theft, visit [IRS.gov/ID](https://www.irs.gov/ID) to learn what steps you should take.

**Making a tax payment.** The IRS uses the latest encryption technology to ensure your electronic payments are safe and secure. You can make electronic payments online, by phone, and from a mobile device using the IRS2Go app. Paying electronically is quick, easy, and faster than mailing in a check or money order. Go to [IRS.gov/Payments](https://www.irs.gov/Payments) to make a payment using any of the following options.

- **Debit or credit card:** Choose an approved payment processor to pay online, by phone, and by mobile device.
- **Electronic Funds Withdrawal:** Offered only when filing your federal taxes using tax preparation software or through a tax professional.
- **Electronic Federal Tax Payment System:** Best option for businesses. Enrollment is required.
- **Check or money order:** Mail your payment to the address listed on the notice or instructions.
- **Cash:** You may be able to pay your taxes with cash at a participating retail store.

**What if I can't pay now?** Go to [IRS.gov/Payments](https://www.irs.gov/Payments) for more information about your options.

- Apply for an [online payment agreement \(IRS.gov/OPA\)](https://www.irs.gov/OPA) to meet your tax obligation in monthly installments if you can't pay your taxes in full today. Once you complete the online process, you will receive immediate notification of whether your agreement has been approved.
- Use the [Offer in Compromise Pre-Qualifier \(IRS.gov/OIC\)](https://www.irs.gov/OIC) to see if you can settle your tax debt for less than the full amount you owe.

**Understanding an IRS notice or letter.** Go to [IRS.gov/Notices](https://www.irs.gov/Notices) to find additional information about responding to an IRS notice or letter.

**Contacting your local IRS office.** Keep in mind, many questions can be answered on IRS.gov without visiting an IRS Tax Assistance Center (TAC). Go to [IRS.gov/LetUsHelp](https://www.irs.gov/LetUsHelp) for the topics people ask about most. If you still need help, IRS TACs provide tax help when a tax issue can't be handled online or by phone. All TACs now provide service by appointment so you'll know in advance that you can get the service you need without long wait times. Before you visit, go to [IRS.gov/TACLocator](https://www.irs.gov/TACLocator) to find the nearest TAC, check hours, available services, and appointment options. Or, on the IRS2Go app, under the Stay Connected tab, choose the Contact Us option and click on "Local Offices."

**Watching IRS videos.** The IRS Video portal ([IRSvideos.gov](https://www.irs.gov/IRSvideos)) contains video and audio presentations for individuals, small businesses, and tax professionals.

**Getting tax information in other languages.** For taxpayers whose native language isn't English, we have the following resources available. Taxpayers can find information on IRS.gov in the following languages.

- [Spanish \(IRS.gov/Spanish\)](https://www.irs.gov/Spanish).
- [Chinese \(IRS.gov/Chinese\)](https://www.irs.gov/Chinese).
- [Vietnamese \(IRS.gov/Vietnamese\)](https://www.irs.gov/Vietnamese).
- [Korean \(IRS.gov/Korean\)](https://www.irs.gov/Korean).
- [Russian \(IRS.gov/Russian\)](https://www.irs.gov/Russian).

The IRS TACs provide over-the-phone interpreter service in over 170 languages, and the service is available free to taxpayers.

## **The Taxpayer Advocate Service Is Here To Help You**

### **What is the Taxpayer Advocate Service?**

The Taxpayer Advocate Service (TAS) is an *independent* organization within the IRS that helps taxpayers and protects taxpayer rights. Our job is to ensure that every taxpayer is treated fairly and that you know and understand your rights under the [Taxpayer Bill of Rights](https://www.irs.gov/TaxpayerBillOfRights).

## What Can the Taxpayer Advocate Service Do For You?

We can help you resolve problems that you can't resolve with the IRS. And our service is free. If you qualify for our assistance, you will be assigned to one advocate who will work with you throughout the process and will do everything possible to resolve your issue. TAS can help you if:

- Your problem is causing financial difficulty for you, your family, or your business,
- You face (or your business is facing) an immediate threat of adverse action, or
- You've tried repeatedly to contact the IRS but no one has responded, or the IRS hasn't responded by the date promised.

## How Can You Reach Us?

We have offices [in every state, the District of Columbia, and Puerto Rico](#). Your local advocate's number is in your

local directory and at [TaxpayerAdvocate.IRS.gov/Contact-Us](https://www.irs.gov/taxpayeradvocate). You can also call us at 877-777-4778.

## How Can You Learn About Your Taxpayer Rights?

The Taxpayer Bill of Rights describes 10 basic rights that all taxpayers have when dealing with the IRS. Our Tax Toolkit at [TaxpayerAdvocate.IRS.gov](https://www.irs.gov/taxpayeradvocate) can help you understand [what these rights mean to you](#) and how they apply. These are **your** rights. Know them. Use them.

## How Else Does the Taxpayer Advocate Service Help Taxpayers?

TAS works to resolve large-scale problems that affect many taxpayers. If you know of one of these broad issues, please report it to us at [IRS.gov/SAMS](https://www.irs.gov/SAMS).

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# Request for Town Council Action

**Business  
Agenda  
Item:** Resolution  
**619 (06-  
2018)  
Closing a  
Portion of  
N 2<sup>nd</sup> St.**  
Date: 08/07/2018

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**Subject:** Resolution to Close a Portion of 2<sup>ND</sup> Street  
**Department:** Public Utilities & Planning  
**Presented by:** Ted Credle & Stephen Wensman  
**Presentation:** Business Item

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### Issue Statement

The approval of the attached resolution is required as part of the process to close a portion of North 2nd Street.

### Financial Impact

None – This resolution does not cost the Town any funds

### Action Needed

Approve the attached Resolution 619 (06-2018)

### Recommendation

Staff recommends the approval of the attached Resolution 619 (06-2018) to close a portion of 2nd Street.

Approved:  Town Manager  Town Attorney

Attachments:

1. Resolution 619 (06-2018) to be approved
2. Copy of NC Statute outlining road closure procedure



# Staff Report

**Business  
Agenda  
Item**

**Resolution  
619 (06-  
2018)  
Closing a  
Portion of  
N 2<sup>nd</sup> St.**

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On April 26, 2018, the Town Council adopted Resolution 616 (03-2018) which outlined the **Town's intent to close a portion of North Second Street. In accordance with NC G.S. 160A-299**, the Town is directed to hold a public hearing to allow all persons the complete opportunity to appear and be heard on the question of whether or not the closing would be detrimental to the public or the property rights of any individual.

The Town is seeking to close North 2nd Street from the intersection of North Street and 2nd Street in a northeast direction until the roadway intersects with Hospital Road, which is an owned by the NCDOT road. The reason for the road closure is that this road closure is **needed to facilitate the expansion of the Town's Water Plant. The Water Plant expansion** will be an active work zone during construction and **during this time**, ingress & egress will be physically impossible. **Following construction**, due to the presence of newly constructed basins & tanks, **the roadway will be narrowed to one lane to only allow for maintenance access to the plant. Access will remain open to the cemetery that borders North and North Second Streets.**

If the resolution is approved, a surveyor will be hired to create the required plat. This plat will be recorded with the Johnston County Register of Deeds. It is the goal of the Town to close the road by September 1, 2018.



**TOWN OF SMITHFIELD  
RESOLUTION 619 (06-2018)  
ORDERING THE CLOSING OF THAT PORTION OF  
SECOND STREET BETWEEN THE INTERSECTION OF SECOND STREET AND NORTH STREET TO THE  
INTERSECTION OF SECOND STREET AND HOSPITAL ROAD**

WHEREAS, on the 26<sup>th</sup> day of April, 2018, the Town Council adopted a resolution entitled "Resolution Declaring the Intent of the Town Council of the Town of Smithfield to Consider the Closing of a portion of North Second Street in Smithfield, North Carolina; and

WHEREAS, pursuant to the Resolution the Town Clerk was directed to publish the Resolution in the News and Observer once each week for four successive weeks; and

WHEREAS, the Town Clerk has advised the Town Council that the Resolution was published in the News and Observer as directed; and

WHEREAS, pursuant to the Resolution the Town Clerk was directed to notify all persons owning property abutting on that portion of North Second Street between North Second Street and Hospital Road, as shown on the county tax records; and

WHEREAS, all property abutting the proposed street closure are owned by the Town of Smithfield; and

WHEREAS, pursuant to the Resolution the Town Clerk was directed to cause adequate notices of the proposed closing and of the public hearing to be posted as required by G.S. 160A-299; and

WHEREAS, the Town Clerk has advised the Town Council that adequate notices were posted on the applicable street(s) as required by G.S. 160A-299; and

WHEREAS, pursuant to the Resolution, a public hearing was held on the 10<sup>th</sup> day of July, 2018, at which time all persons were granted full and complete opportunity to appear and be heard on the question of whether or not the closing would be detrimental to the public or the property rights of any individual; and,

WHEREAS, after said public hearing and full and complete consideration of the matter, it now appears to the satisfaction of the Town Council that the closing of said street is not contrary to the public interest, and that no individual owning property, either abutting the street or in the vicinity of the street or in the subdivision in which the street is located, will as a result of the closing be thereby deprived of a reasonable means of ingress and egress to his or her property;

NOW, THEREFORE, the portion of Second Street between North Street and State Road 1921 (Hospital Road) is hereby ordered closed, and all right, title, and interest that may be vested in the public to said area for street purposes is hereby released and quitclaimed to the abutting property owners in accordance with the provisions of G.S. 160A-299.

The Mayor and the Town Clerk are hereby authorized to execute quitclaim deeds or other necessary documents in order to evidence vesting of all right, title and interest in those persons owning lots or parcels of land adjacent to the street or alley, such title, for the width of the abutting land owned by them, to extend to the centerline of the herein closed street with provision for reservation of easements to the Town of Smithfield for utility purposes in accordance with the provision of G.S. 160A- 299.

The Town Clerk is hereby ordered and directed to file in the Office of the Register of Deeds of Johnston County a certified copy of this resolution and order.

This the 7th day of August, 2018, at \_\_\_ o'clock p.m.

---

M. Andy Moore, Mayor

ATTEST:

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Shannan L. Parrish, Town Clerk

Johnston County  
North Carolina

I hereby certify that the foregoing is a true and accurate copy of a resolution duly adopted by the Town Council of the Town of Smithfield, North Carolina, at a meeting held August 7, 2018, at 7 o'clock p.m. at the Town Hall in the Town of Smithfield.

IN WITNESS WHEREOF, I have hereunto set my hand and have caused the official corporate seal of said Town of Smithfield to be affixed, this the 7th day of August, 2018

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Shannan L. Parrish, Town Clerk

NORTH CAROLINA  
JOHNSTON COUNTY

I, Melissa Rodriguez, a Notary Public, do hereby certify that Shannan L. Parrish, Town Clerk, personally appeared before me this day and acknowledged the due execution of the foregoing certification, for the purposes therein expressed.

WITNESS my hand and notarial seal this \_\_\_ day of \_\_\_\_\_, 2018

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Melissa Rodriguez, Notary Public

My Commission Expires: December 19, 2020

**§ 160A-299. Procedure for permanently closing streets and alleys.**

(a) When a city proposes to permanently close any street or public alley, the council shall first adopt a resolution declaring its intent to close the street or alley and calling a public hearing on the question. The resolution shall be published once a week for four successive weeks prior to the hearing, a copy thereof shall be sent by registered or certified mail to all owners of property adjoining the street or alley as shown on the county tax records, and a notice of the closing and public hearing shall be prominently posted in at least two places along the street or alley. If the street or alley is under the authority and control of the Department of Transportation, a copy of the resolution shall be mailed to the Department of Transportation. At the hearing, any person may be heard on the question of whether or not the closing would be detrimental to the public interest, or the property rights of any individual. If it appears to the satisfaction of the council after the hearing that closing the street or alley is not contrary to the public interest, and that no individual owning property in the vicinity of the street or alley or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the council may adopt an order closing the street or alley. A certified copy of the order (or judgment of the court) shall be filed in the office of the register of deeds of the county in which the street, or any portion thereof, is located.

(b) Any person aggrieved by the closing of any street or alley including the Department of Transportation if the street or alley is under its authority and control, may appeal the council's order to the General Court of Justice within 30 days after its adoption. In appeals of streets closed under this section, all facts and issues shall be heard and decided by a judge sitting without a jury. In addition to determining whether procedural requirements were complied with, the court shall determine whether, on the record as presented to the city council, the council's decision to close the street was in accordance with the statutory standards of subsection (a) of this section and any other applicable requirements of local law or ordinance.

No cause of action or defense founded upon the invalidity of any proceedings taken in closing any street or alley may be asserted, nor shall the validity of the order be open to question in any court upon any ground whatever, except in an action or proceeding begun within 30 days after the order is adopted. The failure to send notice by registered or certified mail shall not invalidate any ordinance adopted prior to January 1, 1989.

(c) Upon the closing of a street or alley in accordance with this section, subject to the provisions of subsection (f) of this section, all right, title, and interest in the right-of-way shall be conclusively presumed to be vested in those persons owning lots or parcels of land adjacent to the street or alley, and the title of such adjoining landowners, for the width of the abutting land owned by them, shall extend to the centerline of the street or alley.

The provisions of this subsection regarding division of right-of-way in street or alley closings may be altered as to a particular street or alley closing by the assent of all property owners taking title to a closed street or alley by the filing of a plat which shows the street or alley closing and the portion of the closed street or alley to be taken by each such owner. The plat shall be signed by each property owner who, under this section, has an ownership right in the closed street or alley.

(d) This section shall apply to any street or public alley within a city or its extraterritorial jurisdiction that has been irrevocably dedicated to the public, without regard to whether it has actually been opened. This section also applies to unopened streets or public alleys that are shown on plats but that have not been accepted or maintained by the city, provided that this section shall not abrogate the rights of a dedicator, or those claiming under a dedicator, pursuant to G.S. 136-96.

(e) No street or alley under the control of the Department of Transportation may be closed unless the Department of Transportation consents thereto.

(f) A city may reserve a right, title, and interest in any improvements or easements within a street closed pursuant to this section. An easement under this subsection shall include utility, drainage,

pedestrian, landscaping, conservation, or other easements considered by the city to be in the public interest. The reservation of an easement under this subsection shall be stated in the order of closing. The reservation also extends to utility improvements or easements owned by private utilities which at the time of the street closing have a utility agreement or franchise with the city.

(g) The city may retain utility easements, both public and private, in cases of streets withdrawn under G.S. 136-96. To retain such easements, the city council shall, after public hearing, approve a "declaration of retention of utility easements" specifically describing such easements. Notice by certified or registered mail shall be provided to the party withdrawing the street from dedication under G.S. 136-96 at least five days prior to the hearing. The declaration must be passed prior to filing of any plat or map or declaration of withdrawal with the register of deeds. Any property owner filing such plats, maps, or declarations shall include the city declaration with the declaration of withdrawal and shall show the utilities retained on any map or plat showing the withdrawal. (1971, c. 698, s. 1; 1973, c. 426, s. 47; c. 507, s. 5; 1977, c. 464, s. 34, 1981, c. 401; c. 402, ss. 1, 2; 1989, c. 254; 1993, c. 149, s. 1; 2015-103, s. 1.)





# Request for Town Council Action

**Business  
Agenda  
Item:**  
Date: 08/07/2018

**Award of  
Contract**

---

**Subject:** Award of Contract for The River Bank Refurbishment at the Water Plant

**Department:** Public Utilities

**Presented by:** Ted Credle

**Presentation:** Business Item

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## Issue Statement

The river bank; through natural weathering events, has eroded to the point that it is becoming impossible to dredge the river. This project is designed to refurbish the river bank back to its original design and allow for easy access for dredging operations.

## Financial Impact

This project was approved in FY 2018-2019 budget for an amount of \$200,000. The low bid was for \$317,000; which leaves a shortfall of \$117,000. The request is to use **\$117,000 from the "Contingency" line item** to cover the shortfall and fully fund the project.

## Action Needed

Approve the award of Contract to the low bidder

## Recommendation

Staff recommends the approval of the proposed low-bid Contractor (Central Builders)

Approved:  Town Manager  Town Attorney

Attachments:

1. Staff Report
2. Certified Bid Tab
3. Bid from Central Builders



# Staff Report

**Business  
Agenda  
Item:** **Award of  
Contract**

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The water intake structure in the Neuse River regularly is subject to silt and sand deposits. In order to clear the sand, the Town contracts with a company to dredge the river around the intake structure. Over the course of many years, the river bank; through natural weathering events, has eroded to the point that it is becoming impossible to dredge the river. This project is designed to refurbish the river bank back to its original design and allow for easy access for dredging operations.

A consultant was hired to design and obtain permits for the river bank refurbishment. The project was publically bid and bids were received on July 17, 218. There were only 2 bidders. The lowest bid was submitted by Central Builders of Rocky Mount, NC.

Staff is asking the Council to approve the low bid and move forward with the refurbishment.



TOWN OF SMITHFIELD  
 BANK STABILIZATION SMITHFIELD WATER TREATMENT PLANT  
 TWC PROJECT NO.: 2698-BR



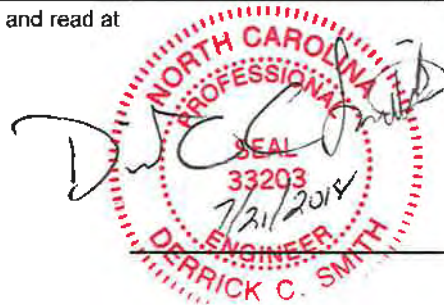
**THE WOOTEN COMPANY**

301 W. 14th Street, Greenville, NC 27834

252.757-1096 Fax: 252.757.3221

	CONTRACTORS	LIC. NO.	CLASS	BID BOND	DBE Aff. A or B	TOTAL BASE BID	REMARKS
1	Anderson & Company, Inc. Attention: Dawn Anderson 197 Thornhill Lane Tarboro, NC 27886	35624	U/U	5%	A	\$409,714.00	
2	Central Builders 1120 Atlantic Ave. Rocky Mount, NC 27802	3680	U/B/PU	5%	A	\$317,000.00	low bidder

This is to certify that the bids received herein were publicly opened and read at 2:00 p.m. on July 17, 2018 in the Town of Smithfield Water Plant.



Derrick C. Smith, P. E.

**BIDDER'S CHECKLIST**

**This checklist shall be included as the first page of the submitted bidding documents. As outlined in article 7 of the Bid Form the following items shall be included with the submitted bidding documents:**

	-	Properly Executed Bid Form (Including the acknowledgement of all Addenda)
	A.	Required Bid security in the form of a Bid Bond (EJCDC No. C-430) or Certified Check (circle type of security provided); Bid Bond shall include an executed Power of Attorney.
	B1.	Identification of Minority Business Participation
	B2.	Affidavit A, Listing of Good Faith Efforts; or Affidavit B, Intent to Perform Contract with Own Workforce
	B3.	Guidelines for Recruitment and Selection of Minority Business for State Funded Projects Administered Through the Construction Grants and Loan Section
	C.	E-Verify Affidavit

BID FORM

PROJECT: Smithfield Bank Stabilization at Water Treatment Plant

BID FROM: Central Builders, Inc.

TABLE OF ARTICLES

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Article 5 – Basis of Bid	3
Article 6 – Time of Completion	5
Article 7 – Attachments to this Bid	5
Article 8 – Defined Terms	7
Article 9 – Bid Submittal	7

ARTICLE 1 BID RECIPIENT

1.01 This Bid is Submitted To:

Town of Smithfield  
350 East Market Street  
P.O. Box 761  
Smithfield, NC 27577

1.02 Undersigned bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with the Owner in the form included in the Bidding Documents to perform the Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in the Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 BIDDER'S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 BIDDER'S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged.

Addenda:

- B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may ~~affect cost, progress, and performance~~ of the Work.
- C. Bidder is familiar with and is satisfied as to federal, state and local Laws and Regulations that may affect cost, progress, and performance, of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in SC-4.02, and (2) reports and drawings of Hazardous Environmental Conditions that have been identified in SC-4.06.
- E. Bidder has obtained and carefully studied (or accepts the consequences for not doing so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.
- F. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.
- I. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- J. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- K. Bidder will submit written evidence of its authority to do business in the state where the Project is located not later than the date of its execution of the Agreement.

#### ARTICLE 4 FURTHER REPRESENTATIONS

##### 4.01 Bidder further represents that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation;

- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

**ARTICLE 5 BASIS OF BID**

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

- A. For all Work a Lump Sum of: \_\_\_\_\_  
 Three Hundred Seventeen Thousand Dollars and no cents \_\_\_\_\_ Dollars (\$ <sup>317,000.00</sup> )

**ARTICLE 6 TIME OF COMPLETION**

6.01 Bidder agrees that the Work will be substantially completed and ready for final payment in accordance with paragraph 14.07.B of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

6.02 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the Contract Times.

6.03 Milestone Dates

- A. The following principal events shall be completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within days indicated below after the date when the Contract Time commences to run. In accordance with paragraph 3.2 above as liquidated damages for delay (but not as penalty) Contractor shall pay Owner the amounts indicated below for each day that expires after the time specified below for completion and readiness for final payment.

Milestone Event	Calendar Days	Liquidated Damages
1. Substantial Completion	60	\$ 750.00
1. Final Completion	90	\$ 750.00

**ARTICLE 7 ATTACHMENTS TO THIS BID**

7.01 The following documents are attached to and made a condition of this Bid. Failure to provide the documentation with the bid may be grounds for rejection of the bid.

- A. Required Bid security in the form of a Bid Bond (EJCDC No. C-430) or Certified Check (circle type of security provided).
- B. In accordance with GS 143-128.2(c), Bidder shall identify on its bid the minority businesses that it will use on the project and the total dollar value of the bid that will be performed by the minority businesses and list the good faith efforts (Affidavit A) made to solicit participation. A Bidder that will perform all of the work with its own

workforce may submit an Affidavit (B) to that effect in lieu of the affidavit (A) required above.

1. Identification of Minority Business Participation
2. Affidavit A, Listing of Good Faith Efforts
3. Affidavit B, Intent to Perform Contract with Own Workforce.

7.02 After the bid opening the Owner will consider all bids and alternates and determine the lowest responsible, responsive bidder. Upon notification of being the apparent low Bidder, the Bidder shall then file within 72 hours of the notification of being the apparent lowest bidder, the following:

- A. An Affidavit (C) that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the goal established by the Owner and indicated in the Instruction to Bidders, paragraph Minority Participation Goals. This affidavit shall give rise to the presumption that the bidder has made the required good faith effort; or
- B. Affidavit (D) of its good faith effort to meet the goal. The document must include evidence of all good faith efforts that were implemented, including any advertisements, solicitations and other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract.

7.03 In accordance with GS 143-128 the Single Prime Contractor must identify the Contractors, if any, selected for the following subdivision of work:

A. General Construction

Name: Central Builders, Inc.  
Address: P.O. Drawer 1679  
Rocky Mount, NC 27802-1679  
N.C. License No.: 3680

7.04 Bidder understands that if this Bid is accepted by the Owner, Bidder shall not substitute for the subcontractors named in the Bid Documents except as allowed in the Supplementary Conditions.

ARTICLE 8 DEFINED TERMS

8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 9 BID SUBMITTAL

9.01 Contractor's License

- A. Number: 3680
- B. Classification: Building and Public Utilities
- C. Limitation: unlimited

Employer's Tax ID No.: 56-0691149

Business Address

PO Box 1679 - Rocky Mount, NC 27802

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

**Phone No.:** 252-442-8047 \_\_\_\_\_

**Fax No.:** 252-446-4793 \_\_\_\_\_

**E-Mail Address:** brent@centralbuilders.com \_\_\_\_\_

9.02 This Bid Submitted by:

An Individual

Name: \_\_\_\_\_  
(Type or print)

By: \_\_\_\_\_  
(Individual's Signature)

Doing Business As: \_\_\_\_\_  
(Type or print)

A Partnership

Partnership Name: \_\_\_\_\_

The Organization and Internal Affairs of the Partnership are governed by the laws of the State of: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature of general partner, attach evidence of authority to sign)

Name: \_\_\_\_\_  
(Type or print)

Title: \_\_\_\_\_  
(Type or print)

Attest: \_\_\_\_\_  
(Signature of Corporate Secretary)

A Corporation

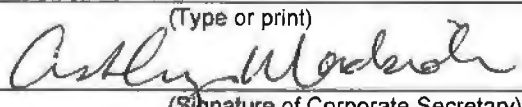
Corporation Name: Central Builders, nē.

State of Incorporation: North Carolina

By:   
(Signature, attach evidence of authority to sign)

Name: Brent Phillips  
(Type or print)

Title: Vice President  
(Type or print)

Attest:   
(Signature of Corporate Secretary)  
Ashley Woodside

Corporate Seal



# BID BOND

Any singular reference to Bidder, Surety, Owner, or other party shall be considered plural where applicable.

**BIDDER (Name and Address):**  
Central Builders Inc  
P O Drawer 1679  
Rocky Mount, NC 27802

**SURETY (Name and Address of Principal Place of Business):** Developers Surety and Indemnity Company  
Irvine, CA 92923

**OWNER (Name and Address):** Town of Smithfield  
P O Box 761  
Smithfield, NC 27577

**BID**  
**Bid Due Date:** July 17, 2018  
**Project (Brief Description Including Location):** Bank Satbilization Smithfield Water Treatment Plant

**BOND**  
**Bond Number:**  
**Date (Not later than Bid due date):** July 17, 2018  
**Penal sum** Five Percent of Bid Amount 5%  
**(Words)** **(Figures)**

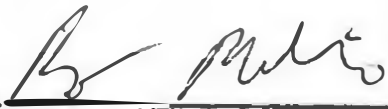
Surety and Bidder, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.


**BIDDER**


**SURETY**


Central Builders, Inc. (Seal)  
**Bidder's Name and Corporate Seal**

Developers Surety and Indmnty Co. (Seal)  
**Surety's Name and Corporate Seal**

By:   
**Signature and Title**  
Brent Phillips - Vice President

By:   
**Signature and Title** Samuel T Rhodes, Attorney-in-fact  
**(Attach Power of Attorney)**

Attest:   
**Signature and Title**  
Ashley Woodside - Corporate Secretary

Attest:   
**Signature and Title**  
Debra B Calhoun, Attorney-in-fact

**Note: Above addresses are to be used for giving required notice.**

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assign to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Surety's liability.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
  - 3.1. Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
  - 3.2. All Bids are rejected by Owner, or
  - 3.3. Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default by Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

**POWER OF ATTORNEY FOR  
DEVELOPERS SURETY AND INDEMNITY COMPANY  
PO Box 19725, IRVINE, CA 92623 (949) 263-3300**

KNOW ALL BY THESE PRESENTS that except as expressly limited, DEVELOPERS SURETY AND INDEMNITY COMPANY, does hereby make, constitute and appoint:  
**\*\*\*Reid J. Rhodes, Debra B. Calhoun, Cynthia C. Batchelor, Paul A. Bauer, Samuel T. Rhodes, jointly or severally\*\*\***

as its true and lawful Attorney(s)-in-Fact, to make, execute, deliver and acknowledge, for and on behalf of said corporation, as surety, bonds, undertakings and contracts of suretyship giving and granting unto said Attorney(s)-in-Fact full power and authority to do and to perform every act necessary, requisite or proper to be done in connection therewith as each of said corporation could do, but reserving to each of said corporation full power of substitution and revocation, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

This Power of Attorney is granted and is signed by facsimile under and by authority of the following resolution adopted by the Board of Directors of DEVELOPERS SURETY AND INDEMNITY COMPANY, effective as of January 1st, 2008.

RESOLVED, that a combination of any two of the Chairman of the Board, the President, any Executive Vice-President, Senior Vice-President or Vice-President of the corporation be, and that each of them hereby is, authorized to execute this Power of Attorney, qualifying the attorney(s) named in the Power of Attorney to execute, on behalf of the corporation, bonds, undertakings and contracts of suretyship; and that the Secretary or any Assistant Secretary of the corporation be, and each of them hereby is, authorized to attest the execution of any such Power of Attorney.

RESOLVED, FURTHER, that the signatures of such officers may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures shall be valid and binding upon the corporation when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.

IN WITNESS WHEREOF, DEVELOPERS SURETY AND INDEMNITY COMPANY has caused these presents to be signed by its officers and attested by its Secretary or Assistant Secretary this 6th day of February, 2017.

By: *Daniel Young*  
 Daniel Young, Senior Vice-President  
 By: *Mark Lansdon*  
 Mark Lansdon, Vice-President



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
 County of Orange

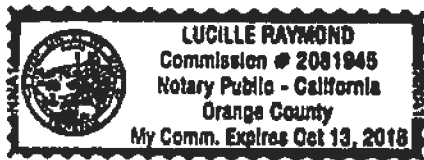
On February 6, 2017 before me, Lucille Raymond, Notary Public  
Date Here Insert Name and Title of the Officer  
 personally appeared Daniel Young and Mark Lansdon  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Lucille Raymond*  
Lucille Raymond, Notary Public



Place Notary Seal Above

**CERTIFICATE**

The undersigned, as Secretary or Assistant Secretary of DEVELOPERS SURETY AND INDEMNITY COMPANY or INDEMNITY COMPANY OF CALIFORNIA, does hereby certify that the foregoing Power of Attorney remains in full force and has not been revoked and, furthermore, that the provisions of the resolutions of the respective Boards of Directors of said corporations set forth in the Power of Attorney are in force as of the date of this Certificate.

This Certificate is executed in the City of Irvine, California, this 17th day of July, 2018

By: *Cassie J. Burdick*  
 Cassie J. Burdick, Assistant Secretary



## Identification of Minority Business Participation

Central Builders, Inc.

(Name of Bidder)

do hereby certify that on this project, we will use the following minority business enterprises as construction subcontractors, vendors, suppliers or providers of professional services.

Firm Name, Address and Phone #	Work type	*Minority Category
Lakeside Utilities	Utilities	WMBE
770 Webb Mill Road		
Four Oaks, NC 27524		
919-963-3420		

\*Minority categories: Black, African American (B), Hispanic (H), Asian American (A), American Indian (I), Female (F) Socially and Economically Disadvantaged (D)

The total value of minority business contracting will be (\$) 50,000.00.

# State of North Carolina AFFIDAVIT A - Listing of Good Faith Efforts

County of Edgecombe

(Name of Bidder)

Affidavit of Central Builders, Inc.

I have made a good faith effort to comply under the following areas checked:

**Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive.** (1 NC Administrative Code 30 I.0101)

- 1 - (10 pts) Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- 2 --(10 pts) Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.
- 3 - (15 pts) Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- 4 - (10 pts) Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- 5 - (10 pts) Attended prebid meetings scheduled by the public owner.
- 6 - (20 pts) Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- 7 - (15 pts) Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- 8 - (25 pts) Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
- 9 - (20 pts) Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- 10 - (20 pts) Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of the minority business commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: 7/17/18 Name of Authorized Officer: Brent Phillips  
 Signature: *Brent Phillips*  
 Title: Vice President



State of North Carolina, County of Edgecombe  
 Subscribed and sworn to before me this 17 day of July 2018  
 Notary Public *Ashley Woodside* Ashley Woodside  
 My commission expires 4/1/2022

STATE OF NORTH CAROLINA

AFFIDAVIT

Edgecombe

COUNTY OR MUNICIPALITY

\*\*\*\*\*

I, Brent Phillips (the individual attesting below), being duly authorized by and on behalf of Central Builders, Inc. (the entity bidding on project hereinafter "Employer") after first being duly sworn hereby swears or affirms as follows:

- 1. Employer understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with NCGS §64-25(5).
2. Employer understands that Employers Must Use E-Verify. Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS§64-26(a).
3. Employer is a person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State. (mark Yes or No)
a. YES x, or
b. NO
4. Employer's subcontractors comply with E-Verify, and if Employer is the winning bidder on this project Employer will ensure compliance with E-Verify by any subcontractors subsequently hired by Employer.

This 17 day of July, 2018.

[Signature]
Signature of Affiant

Print or Type Name: Brent Phillips

State of North Carolina County of Edgecombe

Signed and sworn to (or affirmed) before me, this the 17 day of July, 2018.

My Commission Expires:

4/11/2022

[Signature]
Notary Public
Ashley Woodside

(Affix Official / Notarial Seal)


Town of Smithfield  
350 East Market Street  
Smithfield, NC 27577

Name of Vendor or Bidder: Central Builders, Inc.

**IRAN DIVESTMENT ACT CERTIFICATION  
REQUIRED BY N.C.G.S. 143C-6A-5(a)**

As of the date listed below, the vendor or bidder listed above is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 143-6A-4.

The undersigned hereby certifies that he or she is authorized by the vendor or bidder listed above to make the foregoing statement.

	July 17, 2018
Signature	Date
Brent Phillips	Vice President
Printed Name	Title

Notes to persons signing this form:

N.C.G.S. 143C-6A-5(a) requires this certification for bids or contracts with the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina. The certification is required at the following times:

- When a bid is submitted
- When a contract is entered into (if the certification was not already made when the vendor made its bid)
- When a contract is renewed or assigned

N.C.G.S. 143C-6A-5(b) requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List.

The State Treasurer's Final Divestment List can be found on the State Treasurer's website at the address [www.nctreasurer.com/iran](http://www.nctreasurer.com/iran) and will be updated every 180 days.

**CENTRAL BUILDERS, Inc.**

P.O. DRAWER 1679  
ROCKY MOUNT, N.C. 27802-1679  
(252) 442-8047  
FAX (252) 446-4793

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, Ashley Woodside . certify that I am the Corporate Secretary  
of the Corporation named as Principal in the within bid; that Brent Phillips  
who signed this Bid on behalf of the Contractor, was then Vice President  
of said corporation; that said Bid was duly signed for and in behalf of said corporation  
by authority of its governing body, and is within the scope of its corporate powers.

  
(Corporate Seal)

Ashley Woodside

July 17, 2018



# North Carolina

## Licensing Board for General Contractors

This is to Certify That:

Central Builders Inc.  
Rocky Mount, NC

is duly registered and entitled to practice

### General Contracting

Limitation: unlimited

Classification: Building; Public Utilities

December 31, 2018

when this Certificate expires.

Witness our hands and seal of the Board.

Dated, Raleigh, N.C.

January 1, 2018

This certificate may not be altered.



Chairman

*C. Grant Wilson*  
Secretary-Treasurer



# Public Hearings





# Request for Town Council Action

**Public Hearing: 04**  
Date: 08/07/2018

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**Subject:** Zoning Text Amendment  
**Department:** Planning  
**Presented by:** Stephen Wensman, Planning Director  
**Presentation:** Public Hearing

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## Issue Statement

Lifespring Church is requesting an amendment to the UDO Article 7, Section 7.32

## Financial Impact

Potential loss of tax base if properties are owned by places of worship.

## Action Needed

The Town Council is respectfully requested to review the request for the zoning text amendment and to make a decision whether to approve, deny or amend the amendment to the UDO.

## Recommendation

Planning Staff and the Planning Board recommend approval of the zoning text amendment ZA-18-04 with a statement declaring the request consistent with the Town of Smithfield Comprehensive Growth Management Plan and that the request is reasonable and in the public interest.

Approved:  Town Manager  Town Attorney

Attachments:

1. Staff report
2. Draft Zoning Text Amendment
2. Consistency Statement
3. Application and submittals



# Staff Report

**Public Hearing: ZA-18-04**

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## REQUEST:

Lifespring Church is requesting a zoning text amendment to Article 7, Section 7.32 of the Town of Smithfield Unified Development Ordinance (UDO) to bring it into conformance with Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). The request is to strike Section 7.32 which is a prohibition of churches/places of worship in major or minor shopping malls and a requirement that they be the principal use on a single parcel of property in the B-2 and B-3 districts.

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## ANALYSIS:

The applicant's attorney, Armstrong Law Firm, P.A., makes the argument that the Town's current Article 7, Section 7.32 is in violation of the RLUIPA. The Armstrong Law Firm argues that RLUIPA is being violated because the Town is not treating similar uses equally.

Article 6, Section 6.5, Table of Uses and Activities lists "Churches and Places of Worship" as special uses in the B-2 and B-3 subject to Section 7.32. Similar uses, such as "Clubs and Private Lodge meeting halls" as special uses, but with no supplementary standards. Both uses are assembly uses and under RLUIPA, should be treated equally.

## History.

- Prior to the adoption of the current UDO, churches/religious groups were not permitted in any commercial zones (B-1, B-2, or B-3).
- In 2016 and 2017, the Smithfield UDO committee considered updates and revisions to its outdated UDO including the RLUIPA issue.
- The UDO adopted in October, 2017 included supplementary standards (7.32) which appear to be in violation of RLUIPA.

**Pros and Cons of Churches in Shopping Malls.** There have been numerous arguments identified for allowing or disallowing churches in shopping centers. Here is a summary of some pros and cons:

### Pros:

- Adequate parking infrastructure may exist with no traffic or noise nuisance for adjacent land uses.

- When church is in session (mostly on Sundays), there is little competition for space because there are relatively few shoppers on Sunday mornings.
- Vacant retail space being leased.
- There is an over-abundance of commercial zoning in the Town of Smithfield and churches are likely to seek out the lower rent in marginal commercial areas.
- In many cities, churches are becoming mixed use centers. Some churches function more as community centers. According to a Wall Street Journal analysis of August 2017 data from the Directory of Major Malls that tracks about 8,200 retail centers in the country, at least 111 malls and open-air centers have a church in them. Some have two or more.

Cons:

- Religious organizations may not be a good match for the standard mall business model. A mall's tenant mix is supposed to be self-supporting. What goes into one space must be a positive for what goes into the other spaces. Shopping center owners typically prefer tenants that draw foot traffic on a daily basis and often consider churches to be second-tier tenants because they aren't typically open all week.
- If an entire strip mall were purchased by a church, there would be subsequent loss of tax base, though no different than if an individual retail building were converted to a church – already allowed by the UDO.
- A church will impact the ability of surrounding business within 50 feet to hold an ABC Permit.
- Allowing churches in shopping malls might postpone or make difficult the ability to redevelop or regenerate a shopping area.
- If Churches were in shopping malls and if rents aren't paid, landlords might find it harder to evict a church than another tenant.

**Town Attorney Review.** The Town Attorney has reviewed the application and has made the determination that the current Article 7, Section 7.32 is in violation of RLUIPA. Rather than striking the supplementary standard, Staff and the Town Attorney have drafted an alternative supplementary standard to replace the current 7.32 that the Town Attorney believes will be in compliance with RLUIPA.

**Planning Board Review.** The Planning Board reviewed the draft supplementary standard 7.32 and the subsequent changes to 6.15 and Appendix A-Definitions and after public discussion with the applicant's attorney and the Town Attorney, the Planning Board recommended approval of staff's recommendations.

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## **RECOMMENDED TEXT AMENDMENT:**

Staff and the Planning Board recommend the following amendments to the Unified Development Ordinance:

1) Amend Section 7.32:

### **7.32 Churches/Places of Worship, Club or Private Lodge Meeting Halls, and Indoor Storage Facilities.**

7.32.1 Churches/Places of Worship and Club or Private Lodge Meeting Halls shall have adequate parking meeting Article 10, Section 10.3.

7.32.2 The land use will not significantly increase traffic on local roadways within a residential neighborhood.

7.32.3 In B-2 and B-3 zoning districts, the land use should not substantially decrease vehicular and/or pedestrian traffic or inhibit business activity for adjacent commercial businesses particularly during normal business hours. The Town recognizes that businesses in these zoning districts need active adjacent business space to attract customers to B-2 and B-2 zoning districts. The town intends for planning policies to encourage business traffic in these zoning districts. If a special use, due to inactivity during business hours or otherwise, substantially decreases commercial traffic then that special use is likely not to be in harmony with the existing development and uses with the area in which it is to be located.

7.32.4 The land use will not impede the normal and orderly development of the surrounding property for uses permitted in the district. If a substantial portion of a commercial center is closed or not attracting traffic during normal business hours then that absence of activity would likely impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

2) Amend Article 6, Section 6.5 Table of Uses and Activities:

- deleting "Fraternal and Civic Meeting Halls" and replacing it with the defined term "Club or Private Lodge Meeting Halls"
- deleting "Warehousing uses, including mini-storage" and replacing it with "Warehousing uses and Indoor Storage Facilities".
- adding a references for Supplementary Standards 7.32 (SS) in table 6.5 for both uses described above.

3) Amend Appendix A - Definitions:

- Delete: "Storage, self-service" and replaces it with "Storage Facilities, Indoor" that incorporates the definition of mini-storage.



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**RECOMMENDATION:**

Planning Staff and the Planning Board recommend approval of the zoning text amendment ZA-18-04 with a statement declaring the request consistent with the Town of Smithfield Comprehensive Growth Management Plan and that the request is reasonable and in the public interest.

**DRAFT ORDINANCE # ZA-18-04**  
**AN ORDINANCE TO AMEND THE TOWN OF SMITHFIELD**  
**UNIFIED DEVELOPMENT ORDINANCE ARTICLE 7, SECTION**  
**7.3 CHURCHES / PLACE OF WORSHIP, AMEND ARTICLE 6**  
**ZONING DISTRICTS, SECTION 6.5 TABLE OF USES AND**  
**ACTIVITIES, AND AMEND APPENDIX A-DEFINITIONS**

**WHEREAS**, the Smithfield Town Council wishes to amend certain provisions in the Unified Development Ordinance by making changes to the Town of Smithfield Unified Development Ordinance to allow for churches/places of worship and clubs or private lodges meeting halls within shopping centers providing additional supplemental standards can be met.

**WHEREAS**, it is the objective of the Smithfield Town Council to have the UDO promote regulatory efficiency and consistency and the health, safety, and general welfare of the community;

**NOW, THEREFORE**, be it ordained that the following Articles are amended to make the following changes set forth in the deletions (strikethroughs) and additions (double underlining) below:

**PART 1**

[Revise Article 7.32, to create supplemental standards for churches /places of worship and clubs or private lodge meeting halls.]

**SECTION 7.32 CHURCHES /PLACES OF WORSHIP AND CLUB OR PRIVATE LODGE MEETING HALLS AND INDOOR STORAGE FACILITIES.**

~~When located in the B-2 and B-3 zoning districts, churches/places of worship shall be the principal use on a single parcel of property. Churches/places of worship shall not be located in a major or minor shopping center.~~

**7.32.1 Churches/Places of Worship and Club or Private Lodge Meeting Halls shall have adequate parking meeting Article 10, Section 10.3.**

**7.32.2 The land use will not significantly increase traffic on local roadways within a residential neighborhood.**

**7.32.3 In B-2 and B-3 zoning districts, the land use should not substantially decrease vehicular and/or pedestrian traffic or inhibit business activity for adjacent commercial businesses particularly during normal business hours. Obviously some businesses have more traffic than others. The Town recognizes that businesses in these zoning districts need active adjacent business space to attract customers to B-2 and B-2 zoning districts. The town intends for planning policies to encourage business traffic in these zoning districts while not prohibiting uses with less traffic. If a special use, due to inactivity during business hours or otherwise, substantially decreases commercial traffic then that special use is likely not to be in harmony with the existing development and uses with the area in which it is to be located.**

**7.32.4 The land use will not impede the normal and orderly development of the surrounding property for uses permitted in the district. If a substantial portion of a commercial center is closed or not attracting traffic during normal business hours then that absence of activity would likely**

impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

**AND**, be it ordained that the following Articles are amended to make the following changes set forth in the deletions (strikethroughs) and additions (double underlining) below:

[Revise Article 6, Zoning Districts, Section 6.5 Table of Uses and Activities that reference the supplemental standards found in Section 7.32 to which clubs or private lodge meeting halls shall adhere to.]

Excerpt of Article 6, Zoning Districts, Section 6.5 Table of Uses and Activities to be amended as follows.

Uses	B-1	B-2	B-3	Supplemental Regulations
<del>Civic Club</del> or <del>Fraternal Private</del> Lodge meeting halls		<u>SS</u>	<u>SS</u>	Section 7.32
Warehousing uses, <del>including mini-storage and indoor storage facilities</del>		<u>SS</u>	<u>SS</u>	<u>Section 7.32</u>

**AND**, be it ordained that the following Articles are amended to make the following changes set forth in the deletions (strikethroughs) and additions (double underlining) below:

[Revise Appendix A. Definitions, definition of Storage, self-service.]

**Storage Facility, Indoor Storage, self-service**

A building or part of a building where the principal use is for storage of goods, wares, or equipment, including mini-storage, which consists of ~~—consisting of~~ individual, small, self-contained units that are leased or owned for the storage of goods and wares.

**PART 2**

That the Unified Development Ordinance shall be page numbered and revision dated as necessary to accommodate these changes.

**PART 3**

That these amendments of the Unified Development Ordinance shall become effective upon adoption.

Duly adopted this the \_\_\_ day of \_\_\_\_\_, 20\_\_.

---

M. Andy Moore, Mayor

ATTEST

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Shannan L. Parrish, Town Clerk

DRAFT

**THE TOWN OF SMITHFIELD  
UNIFIED DEVELOPMENT ORDINANCE  
AMENDMENT CONSISTENCY STATEMENT  
BY THE SMITHFIELD TOWN COUNCIL  
ZA-18-04**

**Whereas** the Smithfield Town Council, upon acting on a zoning ordinance amendment to the *Unified Development Ordinance* and pursuant to NCGS §160A-383, is required to approve a statement describing how the action is consistent with the Town of Smithfield *Comprehensive Growth Management Plan*; and

**Whereas** the Smithfield Town Council, upon acting on a zoning ordinance amendment to the *Unified Development Ordinance* and pursuant to NCGS §160A-383, is required to provide a brief statement indicating how the action is reasonable and in the public interest.

**NOW THEREFORE, BE IT ADOPTED BY THE SMITHFIELD TOWN COUNCIL AS APPROPRIATE:**

**IN THE EVENT THAT THE MOTION TO RECOMMEND APPROVAL OF THE ORDINANCE AMENDMENT,**

That the final action regarding zoning ordinance amendment ZA-18-04 is based upon review of and consistency with, the Town of Smithfield *Comprehensive Growth Management Plan* and any other officially adopted plan that is applicable, along with additional agenda information provided to the Town Council and information provided at the regularly scheduled meeting of Town Council; and

It is the objective of the Town of Smithfield Town Council to have the *Unified Development Ordinance* promote regulatory efficiency and consistency and the health, safety, and general welfare of the community. The zoning ordinance amendment promotes this by offering fair and reasonable regulations for the citizens and business community of the Town of Smithfield as supported by the staff report and attachments provided to the Town Council at their regularly scheduled meeting. Therefore, the ordinance amendment is reasonable and in the public interest.

**IN THE EVENT THAT THE MOTION TO RECOMMEND APPROVAL OF THE ORDINANCE FAILS,**

That the final action regarding zoning ordinance amendment ZA-18-04 is based upon review of, and consistency, the Town of Smithfield *Comprehensive Growth Management Plan* and other officially adopted plans that are applicable; and

It is the objective of the Town Council to have the *Unified Development Ordinance* promote regulatory efficiency and consistency and the health, safety, and general welfare of the community. The zoning ordinance amendment does not promote this and therefore is neither reasonable nor in the public interest.



Town of Smithfield  
 Planning Department  
 350 E. Market St Smithfield, NC 27577  
 P.O. Box 761, Smithfield, NC 27577  
 Phone: 919-934-2116  
 Fax: 919-934-1134

**Petition for Amendment to the Unified Development Ordinance**

*Pursuant to Article 4 of the Town of Smithfield Unified Development Ordinance, Proposed amendments may be initiated by the Town Council, Planning Board, Board of Adjustment, members of the public, or by one or more interested parties. The application for any amendment shall contain a description of the proposed zoning regulation.* SEE ENCLOSED LETTER AND "STA

**APPLICANT INFORMATION:**

<b>Lifespring Church</b>	<b>P.O. Box 2859</b>
Petitioner's Name	Address or PO Box
<b>Smithfield, NC 27577</b>	<b>919-222-6275</b>
City, State, Zip Code	Telephone

Proposed amendment to the Town of Smithfield Unified Development Ordinance:  
**delete "Section 7.32 - Churches / Places of Worship"**

(Attach additional sheets as necessary)

This application must be accompanied by a Statement of Justification which addresses the following:

1. How the amendment proposed would serve the public interest or correct an obvious error in the existing ordinance.
2. How the amendment proposed will enhance or promote the purposes and goals of the adopted plans and policies of the governing body.

The undersigned hereby authorizes the filing of this petition and certifies that the information contained herein stands alone based on the merits of this request and is accurate to the best of their knowledge and belief.

  
 \_\_\_\_\_  
 Signature of Petitioner

**1 June 2018**  
 \_\_\_\_\_  
 Date

**FOR OFFICE USE ONLY**

File Number: _____	Date Received: _____	Amount Paid: _____
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Marcia High Armstrong  
Board Certified Specialist in Family Law  
American Academy of Matrimonial Lawyers

L. Lamar Armstrong, Jr.  
American Board of Trial Advocates



The Armstrong Law Firm, P.A.  
Trial Attorneys

L. Lamar Armstrong, III  
Eason Armstrong Keeney  
Daniel K. Keeney

Friday, June 01, 2018

Town of Smithfield  
Planning Department

*Via Hand-Delivery to:*  
350 E. Market St.  
Smithfield, NC 27577

*Via U.S. Mail to:*  
P.O. Box 761  
Smithfield, NC 27577

Re: *Petition for Modification of the Smithfield UDO*

To Whom it May Concern:

I represent Lifespring Church (Lifespring) in its efforts to find a suitable, permanent location within Smithfield City Limits. Please allow this letter as Lifespring's "Statement of Justification" requested in the enclosed petition for amendment to Smithfield's Unified Development Ordinance (UDO).

Lifespring has reached an agreement in principal to lease available space within the \_\_\_\_\_ ' shopping center located at \_\_\_\_\_ in Smithfield. This \_\_\_\_\_ shopping center is zoned B-3.

Lifespring's ability to lease this space should not depend on the content of its speech and purpose. Our founding fathers decided hundreds of years ago that the government cannot arbitrarily deprive its citizens of fundamental freedoms of speech, religion, and assembly.

Yet Section 7.32 of the UDO currently does exactly that by arbitrarily singling out "churches" and "places of worship" in certain areas, including location:

## SECTION 7.32 CHURCHES /PLACES OF WORSHIP.

When located in the B-2 and B-3 zoning districts, churches/places of worship shall be the principal use on a single parcel of property. Churches/places of worship shall not be located in a major or minor shopping center.

(“Section 7.32”).

Smithfield’s Planning Director recently encouraged Lifespring to submit applications for a special use permit and to amend the UDO. Lifespring is not obligated to submit any applications. Smithfield can change the UDO anytime it wants, so long as it follows applicable procedures. Smithfield does not need its residents to prompt it to comply with the law.

Furthermore, the UDO does not provide any exceptions (special use, conditional use, or otherwise) to Section 7.32. As long as Section 7.32 exists, religious groups cannot exist in any shopping centers or as the principal use on a single parcel. If Section 7.32 is removed, then religious groups can so exist. Either way, any special use permit application Lifespring submits is superfluous.

Having said the above, and though Lifespring would be justified in immediately filing a lawsuit, Lifespring has carefully deliberated and decided to go above and beyond and submit the requested applications before filing a lawsuit. Lifespring risks losing this important opportunity if Smithfield delays or denies the enclosed petition, but Lifespring has made the difficult decision to nonetheless trust that Smithfield will timely correct this problem.

Lifespring’s trust in Smithfield is also especially difficult considering Smithfield’s long history of unwillingness to follow religious freedom laws. Although this history is far too long to comprehensively summarize, a brief summary may be helpful for anyone reading this who are not aware of it:

- Until last October, Smithfield’s Land Use Code banned all churches/religious groups from all commercial zones (B-1, B-2, and B-3). No exceptions, other than churches grandfathered in before this rule was enacted decades ago. This clearly violated religious freedom laws (including the Federal 1<sup>st</sup> Amendment and the RLUIPA<sup>1</sup>).

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<sup>1</sup> Religious Land Use and Institutionalized Persons Act, full copy enclosed.



- In 2016 and 2017, Smithfield (through a committee) considered updates and revisions to its outdated Land Use Code, including adoption of the UDO.
- Lifespring attended most of this committee's monthly public meetings and respectfully urged it to make necessary changes to cease religious discrimination, in particular by treating religious groups equally with non-religious groups.
- Lifespring provided the committee members my letter (enclosed) explaining religious freedom laws and how Smithfield's Land Use Code clearly violated those laws.
- Instead of fully complying with these laws, the committee chose a "compromise" solution that included Section 7.32.

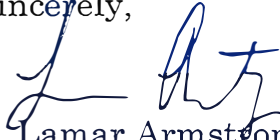
Section 7.32 still violates the 1<sup>st</sup> Amendment and RLUIPA. Enclosed is a letter that the U.S. Department of Justice sends to municipalities like Smithfield who violate RLUIPA. Smithfield cannot justify a per se ban of all religious groups from all shopping centers. Smithfield cannot justify allowing non-religious non-profits (for example, Rotary Club) but not religious non-profits (for example, Lifespring) to occupy space in shopping centers. There simply is no compelling reason for excluding all religious groups from all shopping centers, or otherwise treating religious groups differently than non-religious groups.

Smithfield must comply with the Constitution, regardless of whether Smithfield believes doing so will "serve the public interest" or "enhance or promote the purposes and goals of adopted plans and policies". Nevertheless, to address these questions raised in the enclosed petition for amendment, please see the enclosed "statement of justification". Lifespring takes its commitment to serve the Smithfield community seriously and believes it can best accomplish that mission at and through the above location.

If Smithfield refuses or unreasonably delays, Lifespring is prepared, as a last resort, to file a lawsuit pursuant to the RLUIPA and 42 U.S.C. § 1983. Lifespring implores Smithfield to fix this problem by deleting Section 7.32 so

that Lifespring can focus its resources on continuing to make a difference in this community.

Sincerely,



L. Lamar Armstrong, III

*Attorney for Lifespring Church*

Enclosures



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 15, 2016

Re: The Religious Land Use and Institutionalized Persons Act

Dear State, County, and Municipal Officials:

I am writing to you today to highlight the obligation of public officials to comply with the various provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA), and to inform you about documents previously issued by the Department of Justice (Department) that may be of assistance to you in understanding and applying this important Federal civil rights law.

The freedom to practice religion according to the dictates of one's conscience is among our most fundamental rights, written into our Constitution and protected by our laws. In our increasingly diverse nation, the Department continues to steadfastly defend this basic freedom and ensure that all people may live according to their beliefs, free of discrimination, harassment, or persecution.

Over the years Congress has passed a number of laws that protect the religious liberties of those who live in America, including the landmark Civil Rights Act of 1964 and the 1996 Church Arson Prevention Act. In 2000 Congress, by unanimous consent, and with the support of a broad range of civil rights and religious organizations, enacted the Religious Land Use and Institutionalized Persons Act. 42 U.S.C. § 2000cc et seq. In enacting RLUIPA, Congress determined that there was a need for Federal legislation to protect religious individuals and institutions from unduly burdensome, unreasonable or discriminatory zoning, landmarking, and other land use regulations.<sup>1</sup> Congress heard testimony that houses of worship, particularly those of minority religions and start-up churches, were disproportionately affected, and in fact often were actively discriminated against, by local land use decisions. Congress also found that, as a whole, religious institutions were treated worse than secular places of assembly like community centers, fraternal organizations, and movie theaters, and that zoning authorities frequently violated the United States Constitution by placing excessive burdens on the ability of congregations to exercise their faiths.

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<sup>1</sup> RLUIPA also contains provisions that prohibit regulations that impose a "substantial burden" on the religious exercise of persons residing or confined in an "institution," unless the government can show that the regulation serves a "compelling government interest" and is the least restrictive way for the government to further that interest. 42 U.S.C § 2000cc-1.

RLUIPA includes a private right of action, which allows private individuals to enforce its provisions. Congress also gave the U.S. Attorney General the authority to enforce RLUIPA, and the Department of Justice has been active in enforcing this important civil rights law since its enactment. To date, the Department has opened nearly 100 formal investigations and filed nearly 20 lawsuits related to RLUIPA's land use provisions.<sup>2</sup> Through these efforts, as well as those by private parties, RLUIPA has helped secure the ability of thousands of individuals and institutions to practice their faiths freely and without discrimination.

Yet, sixteen years after RLUIPA's enactment, far too many people and communities remain unaware of the law, or do not fully understand the scope of its provisions. Earlier this year, the Department's Civil Rights Division launched *Combating Religious Discrimination Today*, an initiative bringing together community leaders around the country to discuss challenges regarding religious discrimination, religion-based hate crimes, and religious freedom, and to discuss possible solutions. One of the issues raised repeatedly from participants was that municipal, county, and other state and local officials are insufficiently familiar with the land use provisions of RLUIPA and their obligations under this Federal civil rights law. Participants also reported that houses of worship, particularly those from less familiar religious traditions, often face unlawful barriers in the zoning and building process. Additionally, participants explained that, in their experience, litigation frequently was avoided when the communities informed local officials of their obligations under RLUIPA early in the process. Participants recommended that the Department take proactive measures to ensure that state and local officials are properly educated about RLUIPA's land use provisions.<sup>3</sup>

In light of this, we are sending this letter to you and other officials throughout the country to remind you about the key provisions of RLUIPA. Ensuring that our constitutional protections of religious freedom are protected requires that Federal, state, and local officials work together, and to that end, we encourage you to share this letter with your colleagues. We hope that you will continue to work with the Department of Justice going forward and view us as a partner and ally in ensuring that no individuals in this country suffer discrimination or unlawful treatment simply because of their faiths.

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<sup>2</sup> This work is detailed in reports on enforcement issued in September 2010 (available at [https://www.justice.gov/crt/rluipa\\_report\\_092210.pdf](https://www.justice.gov/crt/rluipa_report_092210.pdf)) and July 2016 (available at <https://www.justice.gov/crt/file/877931/download>).

<sup>3</sup> The *Combating Religious Discrimination Today* report is available at [https://www.justice.gov/Combating\\_Religious\\_Discrimination](https://www.justice.gov/Combating_Religious_Discrimination).

## 1. RLUIPA provides broad protections for religious individuals and institutions.

RLUIPA's land use provisions provide a number of protections for places of worship, faith-based social service providers and religious schools, and individuals using land for religious purposes. Specifically, RLUIPA provides for:

- *Protection against substantial burdens on religious exercise:* Section 2(a) of RLUIPA prohibits the implementation of any land use regulation that imposes a “substantial burden” on the religious exercise of a person or institution except where justified by a “compelling government interest” that the government pursues using the least restrictive means.<sup>4</sup>
- *Protection against unequal treatment for religious assemblies and institutions:* Section 2(b)(1) of RLUIPA provides that religious assemblies and institutions must be treated at least as well as nonreligious assemblies and institutions.
- *Protection against religious or denominational discrimination:* Section 2(b)(2) of RLUIPA prohibits discrimination “against any assembly or institution on the basis of religion or religious denomination.”
- *Protection against total exclusion of religious assemblies:* Section 2(b)(3)(A) of RLUIPA provides that government must not totally exclude religious assemblies from a jurisdiction.
- *Protection against unreasonable limitation of religious assemblies:* Section 2(b)(3)(B) of RLUIPA provides that government must not unreasonably limit “religious assemblies, institutions, or structures within a jurisdiction.”

While the majority of RLUIPA cases involve places of worship such as churches, synagogues, mosques, and temples, the law is written broadly to cover a wide range of religious uses. The “substantial burden” provision in Section 2(a) of the statute applies to burdens on “a person, including a religious assembly or institution.” The remaining provisions apply to any religious “assembly or institution.” Thus, RLUIPA applies widely not only to diverse places of worship, but also to religious schools, religious camps, religious retreat centers, and religious social service facilities such as group homes, homeless shelters, and soup kitchens, as well as to individuals exercising their religion through use of property, such as home prayer gatherings or Bible studies.

To be clear, RLUIPA does not provide a blanket exemption from local zoning or landmarking laws. Rather, it contains a number of safeguards to prevent discriminatory, unreasonable, or unjustifiably burdensome regulations from hindering religious exercise. Ordinarily, before seeking recourse from RLUIPA, those seeking approval for a religious land

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<sup>4</sup> Section 2 of RLUIPA is codified at 42 U.S.C § 2000cc.

use will have to apply for permits or zoning relief according to the regular procedures set forth in the applicable ordinances, unless doing so would be futile, or the regular procedures are discriminatory or create an unjustifiable burden. While zoning is primarily a local matter, where it conflicts with Federal civil rights laws such as the Fair Housing Act or RLUIPA, Federal law takes precedence.

Each of the aforementioned protections in RLUIPA are discussed in greater detail below.<sup>5</sup>

## **2. RLUIPA protects against unjustified burdens on religious exercise.**

Land use regulations frequently can impede the ability of religious institutions to carry out their mission of serving the religious needs of their members. Section 2(a) of RLUIPA bars imposition of land use regulations that create a “substantial burden” on the religious exercise of a person or institution, unless the government can show that it has a “compelling interest” for imposing the regulation and that the regulation is the least restrictive way for the government to further that interest. A mere inconvenience to the person or religious institution is not sufficient, but a burden that is substantial may violate RLUIPA. For example, in a case in which the United States filed a friend-of-the-court brief in support of a Maryland church’s challenge to a rezoning denial, a Federal appeals court ruled that the church had “presented considerable evidence that its current facilities inadequately serve its needs,” and that the “delay, uncertainty and expense” in looking for a different property may create a substantial burden on the church’s religious exercise in violation of RLUIPA.<sup>6</sup> The court relied on facts including that the church had to hold multiple services, turn away worshipers, and curtail a number of important activities at its current location, and that it had a reasonable expectation that it could develop its new property. Similarly, the Department of Justice filed suit in a California Federal district court alleging that a city’s denial of zoning approval for a mosque to take down the aging and inadequate structures in which it had been worshipping and construct a new facility imposed a substantial burden on the congregation.<sup>7</sup> The mosque, which was grandfathered for its current use, consisted of a group of repurposed buildings for its various activities and a large tent for overflow from the prayer hall. However, the city prohibited the mosque from replacing the buildings and tent with a single building. The case was resolved by a consent decree in Federal court.

If imposition of a zoning or landmarking law creates a substantial burden on religious exercise, such imposition is invalid unless it is supported by a compelling governmental interest pursued through the least restrictive means. RLUIPA does not define “compelling interest,” but

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<sup>5</sup> Further information may be found in the *Statement of the Department of Justice on Land Use Provisions of the Religious Land Use and Institutionalized Persons Act* (available at [https://www.justice.gov/crt/rluipa\\_q\\_a\\_9-22-10.pdf](https://www.justice.gov/crt/rluipa_q_a_9-22-10.pdf)), and at the Department of Justice Civil Rights Division RLUIPA information page (<https://www.justice.gov/crt/religious-land-use-and-institutionalized-persons-act>).

<sup>6</sup> *Bethel World Outreach v. Montgomery Cnty. Council*, 706 F.3d 548, 557-558 (4th Cir. 2013).

<sup>7</sup> *United States v. Lomita*, No. 2:13-CV-00707 (E.D. Cal. filed March 3, 2013).

the U.S. Supreme Court has previously explained that compelling interests are “interests of the highest order.”<sup>8</sup>

### **3. RLUIPA protects equal access for religious institutions and assemblies.**

Section 2(b)(1) of RLUIPA – known as the “equal terms” provision – mandates that religious assemblies and institutions be treated at least as well as nonreligious assemblies and institutions. For example, a Federal appeals court ruled that zoning restrictions that a city applied to places of worship but not to lodges, union halls, nightclubs, and other assemblies, violated the equal terms provision.<sup>9</sup> This included a requirement that places of worship, but not other assembly uses, obtain the permission of 60% of neighbors in a 1,300-foot radius. The Department of Justice filed a friend-of-the-court brief arguing that the distinction violated RLUIPA. Similarly, the Department brought suit under RLUIPA’s equal terms provision against a town in Illinois that permitted clubs, lodges, meeting halls, and theaters in its business districts, but excluded places of worship.<sup>10</sup> The case was prompted after the town served notice of violation on four small churches operating in locations where these nonreligious assembly uses were permitted. The case was resolved by consent decree.

### **4. RLUIPA protects against religious discrimination in land use.**

Section 2(b)(2) of RLUIPA bars discrimination “against any assembly or institution on the basis of religion or religious denomination.” Thus if an applicant is treated differently in a zoning or landmarking process because of the religion represented (e.g., Christian, Jewish, Muslim), or because of the particular denomination or sect to which the applicant belongs (e.g., Catholic, Orthodox Jewish, or Shia Muslim), then RLUIPA will be violated. The Department of Justice filed suit alleging that a mosque in Georgia was discriminated against in violation of Section 2(b)(2), based on statements by city officials indicating bias, evidence that the city sought to appease citizens who had expressed bias, and evidence that the city had previously approved numerous similarly sized and located places of worship of other faiths.<sup>11</sup> The case was resolved by consent decree. Similarly, the Department filed suit in order to challenge a zoning change enacted by a New York municipality that prevented the construction of a Hasidic Jewish boarding school.<sup>12</sup> The case was resolved by consent decree.

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<sup>8</sup> *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993).

<sup>9</sup> *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279 (5th Cir. 2012).

<sup>10</sup> *United States v. Waukegan*, No. 08-C-1013 (N.D. Ill. filed February 19, 2008).

<sup>11</sup> *United States v. City of Lilburn* 1:11-CV-2871 (N.D. Ga. filed August 29, 2011).

<sup>12</sup> *United States v. Village of Airmont*, 05 Civ. 5520 (S.D.N.Y. filed June 10, 2005).

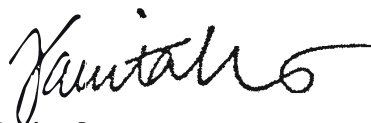
5. **RLUIPA protects against the total or unreasonable exclusion of religious assemblies from a jurisdiction.**

Under section 2(b)(3) of RLUIPA, a zoning code may not completely, or unreasonably, limit religious assemblies in a jurisdiction. Thus, if there is no place where houses of worship are permitted to locate, or the zoning regulations looked at as a whole deprive religious institutions of reasonable opportunities to build or locate in the jurisdiction, this provision will be violated. For example, a Federal district court in Florida granted summary judgment to a synagogue on its unreasonable limitations claim, holding that RLUIPA was violated where “there was limited availability of property for the location of religious assemblies, religious assemblies were subject to inflated costs in order to locate in the City, and religious assemblies were subject to more stringent requirements than other similar uses.”<sup>13</sup>

\* \* \* \*

The Department of Justice is committed to carrying out Congress’s mandate and ensuring that religious assemblies and institutions do not suffer from discriminatory or unduly burdensome land use regulations. We look forward to working collaboratively with you and all other stakeholders on these important issues. Should you have questions about the contents of this letter, or other issues related to RLUIPA, I encourage you to contact Eric Treene, Special Counsel for Religious Discrimination, at 202.514.2228 or [Eric.Treene@USDOJ.gov](mailto:Eric.Treene@USDOJ.gov).

Sincerely,



Vanita Gupta  
Principal Deputy Assistant Attorney General  
Civil Rights Division

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<sup>13</sup> *Chabad of Novak, Inc. v. City of Cooper City*, 575 F. Supp. 2d 1280, 1290 (S.D. Fla. 2008).



42 USCS § 2000cc

Current through PL 115-108, approved 1/8/18, with gaps of PL's 115-91 and 115-97.

*United States Code Service - Titles 1 through 54 > TITLE 42. THE PUBLIC HEALTH AND WELFARE > CHAPTER 21C. PROTECTION OF RELIGIOUS EXERCISE IN LAND USE AND BY INSTITUTIONALIZED PERSONS*

**§ 2000cc. Protection of land use as religious exercise**

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**(a) Substantial burdens.**

**(1) General rule.** No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution--

**(A)** is in furtherance of a compelling governmental interest; and

**(B)** is the least restrictive means of furthering that compelling governmental interest.

**(2) Scope of application.** This subsection applies in any case in which--

**(A)** the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

**(B)** the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

**(C)** the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

**(b) Discrimination and exclusion.**

**(1) Equal terms.** No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

**(2) Nondiscrimination.** No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

**(3) Exclusions and limits.** No government shall impose or implement a land use regulation that--

**(A)** totally excludes religious assemblies from a jurisdiction; or

**(B)** unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

## **History**

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(Sept. 22, 2000, *P.L. 106-274*, § 2, *114 Stat. 803*.)

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**42 USCS § 2000cc-1**

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*United States Code Service - Titles 1 through 54 > TITLE 42. THE PUBLIC HEALTH AND WELFARE > CHAPTER 21C. PROTECTION OF RELIGIOUS EXERCISE IN LAND USE AND BY INSTITUTIONALIZED PERSONS*

**§ 2000cc-1. Protection of religious exercise of institutionalized persons**

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(a)General rule. No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 2 of the Civil Rights of Institutionalized Persons Act (*42 U.S.C. 1997*), even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person--

- (1)is in furtherance of a compelling governmental interest; and
- (2)is the least restrictive means of furthering that compelling governmental interest.

(b)Scope of application. This section applies in any case in which--

- (1)the substantial burden is imposed in a program or activity that receives Federal financial assistance; or
- (2)the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

**History**

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(Sept. 22, 2000,*P.L. 106-274*, § 3, *114 Stat. 804*.)

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## 42 USCS § 2000cc-2

Current through PL 115-108, approved 1/8/18, with gaps of PL's 115-91 and 115-97.

*United States Code Service - Titles 1 through 54 > TITLE 42. THE PUBLIC HEALTH AND WELFARE > CHAPTER 21C. PROTECTION OF RELIGIOUS EXERCISE IN LAND USE AND BY INSTITUTIONALIZED PERSONS*

### **§ 2000cc-2. Judicial relief**

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(a)Cause of action. A person may assert a violation of this Act as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(b)Burden of persuasion. If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2 [42 USCS § 2000cc], the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff's exercise of religion.

(c)Full faith and credit. Adjudication of a claim of a violation of section 2 [42 USCS § 2000cc] in a non-Federal forum shall not be entitled to full faith and credit in a Federal court unless the claimant had a full and fair adjudication of that claim in the non-Federal forum.

(d)[Omitted]

(e)Prisoners. Nothing in this Act shall be construed to amend or repeal the Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).

(f)Authority of United States to enforce this Act. The United States may bring an action for injunctive or declaratory relief to enforce compliance with this Act. Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the United States, or any agency, officer, or employee of the United States, acting under any law other than this subsection, to institute or intervene in any proceeding.

(g)Limitation. If the only jurisdictional basis for applying a provision of this Act is a claim that a substantial burden by a government on religious exercise affects, or that removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, the provision shall not apply if the government demonstrates that all substantial burdens on, or the removal of all substantial burdens from, similar religious exercise throughout the Nation would not lead in the aggregate to a substantial effect on commerce with foreign nations, among the several States, or with Indian tribes.

### **History**

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(Sept. 22, 2000, P.L. 106-274, § 4, 114 Stat. 804.)

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42 USCS § 2000cc-3

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*United States Code Service - Titles 1 through 54 > TITLE 42. THE PUBLIC HEALTH AND WELFARE > CHAPTER 21C. PROTECTION OF RELIGIOUS EXERCISE IN LAND USE AND BY INSTITUTIONALIZED PERSONS*

**§ 2000cc-3. Rules of construction**

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- (a)Religious belief unaffected. Nothing in this Act shall be construed to authorize any government to burden any religious belief.
- (b)Religious exercise not regulated. Nothing in this Act shall create any basis for restricting or burdening religious exercise or for claims against a religious organization including any religiously affiliated school or university, not acting under color of law.
- (c)Claims to funding unaffected. Nothing in this Act shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this Act may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.
- (d)Other authority to impose conditions on funding unaffected. Nothing in this Act shall--
- (1)authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other assistance; or
  - (2)restrict any authority that may exist under other law to so regulate or affect, except as provided in this Act.
- (e)Governmental discretion in alleviating burdens on religious exercise. A government may avoid the preemptive force of any provision of this Act by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.
- (f)Effect on other law. With respect to a claim brought under this Act, proof that a substantial burden on a person's religious exercise affects, or removal of that burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, shall not establish any inference or presumption that Congress intends that any religious exercise is, or is not, subject to any law other than this Act.
- (g)Broad construction. This Act shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution.
- (h)No preemption or repeal. Nothing in this Act shall be construed to preempt State law, or repeal Federal law, that is equally as protective of religious exercise as, or more protective of religious exercise than, this Act.

(i)Severability. If any provision of this Act or of an amendment made by this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provision to any other person or circumstance shall not be affected.

## History

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(Sept. 22, 2000, P.L. 106-274, § 5,114 Stat. 805.)

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**42 USCS § 2000cc-4**

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*United States Code Service - Titles 1 through 54 > TITLE 42. THE PUBLIC HEALTH AND WELFARE > CHAPTER 21C. PROTECTION OF RELIGIOUS EXERCISE IN LAND USE AND BY INSTITUTIONALIZED PERSONS*

**§ 2000cc-4. Establishment Clause unaffected**

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Nothing in this Act shall be construed to affect, interpret, or in any way address that portion of the first amendment to the Constitution prohibiting laws respecting an establishment of religion (referred to in this section as the "Establishment Clause"). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this Act. In this section, the term "granting", used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

**History**

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(Sept. 22, 2000, *P.L. 106-274*, § 6, *114 Stat. 806*.)

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## 42 USCS § 2000cc-5

Current through PL 115-108, approved 1/8/18, with gaps of PL's 115-91 and 115-97.

*United States Code Service - Titles 1 through 54 > TITLE 42. THE PUBLIC HEALTH AND WELFARE > CHAPTER 21C. PROTECTION OF RELIGIOUS EXERCISE IN LAND USE AND BY INSTITUTIONALIZED PERSONS*

### § 2000cc-5. Definitions

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In this Act:

- (1) **Claimant.** The term "claimant" means a person raising a claim or defense under this Act.
- (2) **Demonstrates.** The term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion.
- (3) **Free Exercise Clause.** The term "Free Exercise Clause" means that portion of the first amendment to the Constitution that proscribes laws prohibiting the free exercise of religion.
- (4) **Government.** The term "government"--
  - (A) means--
    - (i) a State, county, municipality, or other governmental entity created under the authority of a State;
    - (ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and
    - (iii) any other person acting under color of State law; and
  - (B) for the purposes of sections 4(b) and 5 [*42 USCS §§ 2000cc-2(b) and 2000cc-3*], includes the United States, a branch, department, agency, instrumentality, or official of the United States, and any other person acting under color of Federal law.
- (5) **Land use regulation.** The term "land use regulation" means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.
- (6) **Program or activity.** The term "program or activity" means all of the operations of any entity as described in paragraph (1) or (2) of section 606 of the Civil Rights Act of 1964 (*42 U.S.C. 2000d-4a*).
- (7) **Religious exercise.**
  - (A) **In general.** The term "religious exercise" includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

**(B)Rule.** The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.

## **History**

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(Sept. 22, 2000,*P.L. 106-274*, § 8, *114 Stat. 806*.)

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Trial Attorneys

L. Lamar Armstrong, III  
Eason Armstrong Keeney  
Daniel K. Keeney

Tuesday, October 04, 2016

**Delivered via US Mail and hand delivery at 11 Oct. 2016 committee meeting**  
*To all Members of the UDO Planning Committee*

Re: Reasonable zoning accommodations for religious organizations

Dear Committee Member:

I write you as a partner of LifeSpring Church and as a concerned citizen. We appreciate your thoughtful deliberation and willingness to consider our concern that Smithfield's current zoning code (and future code as proposed in your materials) does not reasonably accommodate religious organizations.

In prior meetings, I and others have raised practical concerns about this issue. The purpose of this letter is to supplement those practical concerns with a summary of the law on this issue. We hope that you will use this information to assist in your decisions. We respectfully request that the official minutes of the 11 October 2016 committee meeting reflect that a copy of this letter was provided to all present committee members, and that a copy of this letter is attached to the official minutes of this meeting.

The Supreme Court of the United States, as well as other courts around the Country, have uniformly and consistently ruled that local governments shall provide reasonable accommodations to religious organizations, treat them fairly along with non-religious organizations, and the failure to do so violates the freedoms of assembly and religion provided by the First Amendment to the Constitution.

These Constitutional protections are encapsulated and enforced by the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), which provides the following rules:

(a) Substantial burdens.

(1) General rule. No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution--

- (A) is in furtherance of a compelling governmental interest; and
- (B) is the least restrictive means of furthering that compelling governmental interest.

\* \* \*

(b) Discrimination and exclusion.

(1) Equal terms. No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) Nondiscrimination. No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

(3) Exclusions and limits. No government shall impose or implement a land use regulation that--

(A) totally excludes religious assemblies from a jurisdiction; or

(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

42 U.S.C.S. § 2000cc.

Federal Courts and the RLUIPA have made clear that local governments must do everything in their power to accommodate churches under the Constitution and the RLUIPA:

- "The least-restrictive-means standard [of the RLUIPA] is exceptionally demanding,' and it requires the government to 'sho[w] that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting part[y].'" Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751, 2780 (2014).
- "[I]f a less restrictive means is available for the Government to achieve its goals, the Government must use it." Holt v. Hobbs, 135 S. Ct. 853, 864 (2015).
- "[The RLUIPA] shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution." 42 U.S.C. § 2000cc-3(g).

- An ordinance that expressly differentiates religious land uses from nonreligious land uses establishes a claim for violating the equal terms provision of the RLUIPA (paragraph (b)(1) above); and the government must prove that its unequal treatment is the least restrictive means to accomplish legitimate goals. Opulent Life Church v. City of Holly Springs Miss., 697 F.3d 279, 291 (5th Cir. 2012).

In applying these rules and standards, Courts across the Country have determined that adverse treatment of churches or religious organizations under local ordinance codes violates the RLUIPA and is unconstitutional:

- An ordinance excluding churches from the commercial district was unlawful because other noncommercial, non tax-generating uses were permitted in the commercial district. The ordinance permitted libraries, museums, art galleries, exhibitions, and "similar facilities" in the commercial district. Opulent Life Church v. City of Holly Springs Miss., 697 F.3d 279, 293-94 (5th Cir. 2012).
- A city's "retail corridor" justification where the ordinance excluded churches but permitted "many nonreligious, *nonretail* buildings" including private lodges and clubs was ruled unlawful. Elijah Grp., Inc. v. City of Leon Valley, 643 F.3d 419 (5th Cir. 2011).
- "[S]hould a municipality create what purports to be a pure commercial district and then allow other uses, a church would have an easy victory if the municipality kept it out." River of Life Kingdom Ministries v. Vill. of Hazel Crest, 611 F.3d 367, 374 (7th Cir. 2010).
- "[I]ncluding private clubs and lodges as permitted business district uses while excluding religious assemblies violated RLUIPA's principles of neutrality and general applicability because private clubs and lodges endangered the city's retail synergy interest as much or more than churches and synagogues. The city's improper targeting of religious assemblies violated RLUIPA..." Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214, 1218 (11th Cir. 2004).
- A city's zoning ordinance was over-inclusive with respect to the city's objectives of promoting retail activity and synergy because synagogues contributed to retail and commercial activity of the business district, but was also under-inclusive because the stated goal of retail synergy was pursued only against religious assemblies, but not other non-commercial assemblies, thus devaluing religious reasons for assembling. Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214, 1234 (11th Cir. 2004).

- A city ordinance, which allowed a range of different uses in a downtown area, including a restaurant, a variety store, and an assembly hall, but prohibited a church, violated the equal terms provision of the RLUIPA, because it was not apparent from the allowed uses why a church would cause greater harm to regulatory objectives than an assembly hall. Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch, 510 F.3d 253 (3d Cir. 2007).
- "[E]ven where the government has declared a policy of promoting aesthetics and traffic safety . . . restrictions intended to accomplish those interests have failed to pass strict scrutiny and have been struck down." Murphy v. Zoning Comm'n, 148 F. Supp. 2d 173, 190 (D. Conn. 2001), citing City of Ladue v. Gilleo, 512 U.S. 43, 114 S. Ct. 2038 (1994).
- In ruling that a city's justification in controlling the volume of traffic and parking did not pass the RLUIPA's strict scrutiny standard, the Court reasoned: "In passing RLUIPA, Congress required local governments to be sensitive to the values of religious freedom and expression. It directed that substantial burdens be placed on the exercise of religion only to the extent necessary to accomplish compelling governmental interests. Even absent a federal statute, one would expect that, before banning an ongoing private religious gathering, public officials in a free and tolerant society would enter into a dialogue with the participants to determine if the legitimate safety concerns of the neighbors could be voluntarily allayed. Particularly where the participants are enjoined by religious teachings to "do unto others" as they would have done unto them, it is not unreasonable to expect the parties to be able to agree on means of reducing the impact of weekly prayer meetings on this small cul-de-sac without undermining the benefit that participants seek to derive from the practice of their faith." Murphy v. Zoning Comm'n, 148 F. Supp. 2d 173, 191 (D. Conn. 2001).
- A preliminary injunction was issued against a city to enjoin it from enforcing its zoning ordinance against a religious temple because the city's zoning ordinance discriminated between religious assemblies and nonreligious assemblies in violation of the First Amendment and the RLUIPA, and the city failed to articulate a compelling interest that required it to treat churches and religious assemblies differently than private clubs. Vietnamese Buddhism Study Temple in Am. v. City of Garden Grove, 460 F. Supp. 2d 1165 (C.D. Cal. 2006).
- In violation of the RLUIPA, a city's land use code prohibited religious assembly in all business districts, but permitted numerous non-religious assembly uses within business districts. Chabad of Nova, Inc. v. City of Cooper City, 533 F. Supp. 2d 1220 (S.D. Fla. 2008).

- Evidence was sufficient under the RLUIPA's "unreasonable limitations provision" (section (b)(3)(b) above) to support a jury's determination that churches other than plaintiff church faced a county's site plan review and special permitting process which unreasonably limited opportunity of churches to find a suitable location and thus practice their religion in violation of the RLUIPA. Rocky Mt. Christian Church v. Bd. of Cty. Comm'rs, 612 F. Supp. 2d 1163, 1177 (D. Colo. 2009).

In light of the above law, it is apparent that Smithfield's current (and proposed) ban on all religious organizations in commercial districts violates our citizens' First Amendment freedoms of assembly and religion, as well as the RLUIPA.


More than anything, it is our desire as a local church to be helpful to the town and the people which we serve. We believe that as the growth from the greater Raleigh area comes this way, and along with it greater religious diversity, the ordinance as written and as proposed may, in the long run, be harmful to the town, especially considering the following:

- An affected person may file a lawsuit against a government that violates the RLUIPA. See 42 U.S.C. § 2000cc-3(g).
- Money damages are available under RLUIPA against political subdivisions of states, such as municipalities and counties. Centro Familiar Cristiano Buenas Nuevas v. Citv of Yuma, 651 F.3d 1163, 1168-69 (9th Cir. 2011).
- A government who unsuccessfully defends a lawsuit under the RLUIPA may be required to pay the affected person's attorney's fees. Layman Lessons, Inc. v. City of Millersville, 550 F. Supp. 2d 754 (M.D. Tenn. 2008).

Given these facts under the law, we sincerely hope and urge the committee to fix this problem and allow reasonable accommodation for religious organizations at this time.

Thank you again for your consideration.

Best Regards,



Lamar Armstrong, III

LLA:la







# Request for Town Council Action

**Public Hearing: 08**  
**SUP-18-**  
**Date: 08/07/2018**

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**Subject:** Special Use Permit for a Church  
**Department:** Planning  
**Presented by:** Stephen Wensman  
**Presentation:** Public Hearing

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## Issue Statement

LifeSpring Church is requesting a special use permit to operate a church within a B-3 Highway Entrance Business zoning district.

## Financial Impact

None

## Action Needed

The Smithfield Town Council is requested to review the petition for a church within a B-3 Highway Entrance Business zoning district, hold a public hearing and make a decision in accordance with the finding of fact for a special use permit.

## Recommendation

The Planning Department recommends approval of the request for a special use permit SUP-18-08 to allow the church in the B-3 zoning district with the following condition:

1. That the sanctuary be limited to no more than 176 seats.

Approved:  Town Manager  Town Attorney

Attachments:

1. Staff Report
2. Findings of Fact
3. Application



# Staff Report

**Agenda SUP-  
Item: 18-08**

**Application Number:** SUP-18-08  
**Project Name:** LifeSpring Church  
**TAX ID number:** 14074013J  
**Town Limits/ETJ:** City  
**Applicant:** LifeSpring Church  
**Owner:** Tribek Properties, Inc. (Scott C. Bortz)  
**Agents:** none

**REQUEST:**

LifeSpring Church is requesting a special use permit to operate a church within a B-3 Highway Entrance Business zoning district.

**PROJECT LOCATION:** 1258 N. Brightleaf Boulevard

**SITE DATA:**

**Acreage:** 2.15 acres  
**Present Zoning:** B-3 (Highway Entrance Business)  
**Proposed Zoning:** N/A  
**Existing Use:** Shopping Mall  
**Proposed Use:** Church in Shopping Mall  
**Water Service:** Town of Smithfield  
**Sewer Service:** Town of Smithfield  
**Electrical Service:** Town of Smithfield

**ADJACENT ZONING AND LAND USES:**

North:	Zoning	Existing Use
	B-3 Highway Entrance Business	Appleby's and Hardees Restaurants
South:	HI-Heavy Industrial	Railroad and Vacant Heavy Industrial Land
West:	B-3 Highway Entrance Business	Office Max and Lowes Home Improvement
East:	R-8 Residential	Single Family Residential

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**ENVIRONMENTAL:** There does not appear to be any environmentally sensitive areas on the property considered for a special use permit to include flood plains, designated wetlands or watershed protected areas.

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**STAFF ANALYSIS AND COMMENTARY:**

Life Spring Church is requesting a special use permit to operate a church in a shopping mall in the B-3 zoning district. Within the B-3 zoning district Churches require a special use permit and are subject to supplementary standards:

**SECTION 7.32 CHURCHES /PLACES OF WORSHIP.**

When located in the B-2 and B-3 zoning districts, churches/places of worship shall be the principal use on a single parcel of property. Churches/places of worship shall not be located in a major or minor shopping center.

**Zoning Text Amendment ZA-18-04.** Prior to submittal of the special use permit, the applicant submitted a zoning text amendment to delete Article 7, Section 7.32, claiming that the regulation violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The Town Attorney reviewed Section 7.32 and agrees with the applicant's assessment. Rather than delete Article 7, Section 7.32, Staff (including the Town Attorney) recommends amending the supplementary standards to provide some discretion over the land use, while bringing the regulations into compliance with RLUIPA. This review is based on the supplementary standard recommended for the zoning text amendment, ZA-18-04:

**7.32 Churches/Places of Worship, Club or Private Lodge Meeting Halls, and Indoor Storage Facilities.**

7.32.1 Churches/Places of Worship and Club or Private Lodge Meeting Halls shall have adequate parking meeting Article 10, Section 10.3.

7.32.2 The land use will not significantly increase traffic on local roadways within a residential neighborhood.

7.32.3 In B-2 and B-3 zoning districts, the land use should not substantially decrease vehicular and/or pedestrian traffic or inhibit business activity for adjacent commercial businesses particularly during normal business hours. The Town recognizes that businesses in these zoning districts need active adjacent business space to attract customers to B-2 and B-2 zoning districts. The town intends for planning policies to encourage business traffic in these zoning districts. If a special use, due to inactivity during business hours or otherwise, substantially decreases commercial traffic then that special use is likely not to be in harmony with the existing development and uses within the area in which it is to be located.

7.32.4 The land use will not impede the normal and orderly development of the surrounding property for uses permitted in the district. If a substantial portion of a

commercial center is closed or not attracting traffic during normal business hours then that absence of activity would likely impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

**Based on the recommended 7.32 standard, Staff's analysis is as follows:**

**Parking.** The shopping strip mall consists of two lots, the 6-unit 8,400 sq. ft. shopping strip mall and the 23,000 sq. ft. Office Max site. The church is planning on leasing 4 of the 6 units in the strip mall. The required parking for the combined shopping center is 157 parking stalls. The combined strip mall with Office Max site has 174 parking stalls. The 6-unit 8,400 sq. ft shopping mall lot has 73 of the parking stalls and Office max lot has 101 parking stalls. The two lots share parking. The church sanctuary is planned for occupancy of 176 (176 seats). The required parking for such a space is 1 parking space per 3 seats, or 59 parking stalls. The total parking required for a 176 seat church and 2,800 sq. ft. of retail is 73 parking stalls. The Office Max space requires 115 parking stalls. All combined the required parking for the church as adjacent retail is 188 parking stalls. Currently, Office Max does not utilize all its available parking. Papa Johns is a current tenant in one of the 1,400 sq. ft. spaces and generates very little parking demand. Regardless of the future use of the remaining 1,400 sq. ft. unit, there is adequate parking. Furthermore, the church will utilize the parking primarily on Sunday mornings when Office Max is closed. Therefore, staff has concluded that there is adequate parking in the shopping mall for the proposed church and the adjacent retail.

**Traffic Impacts on Local Roads.** The church will not significantly increase traffic on local roadways in a residential district. The parking lot for the shopping mall has access to North Brightleaf Boulevard which is a NCDOT highway.

**Vehicular and Pedestrian Impact on Adjacent Commercial.** The shopping mall was intended for retail purposes with each leasable space attracting traffic, both pedestrian and vehicular from one use to another. The existing retail uses, Papa Johns and Office Max, are generally low traffic uses; not generating high volumes of vehicular or pedestrian traffic. The shopping mall has had vacancies for quite a lot period of time. The church will bring to life 4 of the 6 retail spaces, but mostly on Sunday mornings when retail is closed or not busy. Therefore, locating the church in the shopping mall will not be a detriment to existing retail. Locating a church in the shopping mall may discourage other businesses to locate in the shopping mall. Overall, there will not be a substantial decrease to commercial traffic within the area.

**Orderly Development of the Surrounding Property.** The commercial area is fully developed and has had vacancies for many years. The location of a church in the shopping mall will not impede the normal and orderly development of the area.

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### **FINDINGS OF FACT (*Staff findings in Bold Italic*)**

1. The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, or general welfare. ***The church use will not***

***be a detriment to public health, safety, or general welfare in any way.***

2. The special use will be in harmony with the existing development and uses within the area in which it is to be located. ***The shopping mall was intended for retail purposes with each leasable space attracting traffic, both pedestrian and vehicular from one use to another. The existing retail uses, Papa Johns and Office Max, are generally low traffic uses; not generating high volumes of vehicular or pedestrian traffic. The shopping mall has had vacancies for quite a lot period of time. The church will bring to life 4 of the 6 retail spaces, but mostly on Sunday mornings when retail is closed or not busy. Therefore, locating the church in the shopping mall will not be a detriment to existing retail. Locating a church in the shopping mall may discourage other businesses to locate in the shopping mall. Overall, there will not be a substantial decrease to commercial traffic within the area and is therefore, in harmony with the area.***
3. The establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district. ***The commercial area is fully developed and has had vacancies for many years. The location of a church in the shopping mall will not impede the normal and orderly development of the area.***
4. Adequate utilities, access roads, drainage, parking, or necessary facilities have been or are being provided. ***Adequate utilities and parking exist on the property and for the proposed uses.***
5. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets. ***There are adequate means of ingress and egress onto the NCDOT highway.***
6. The special use shall, in all other respects, conform to all the applicable regulations of the district in which it is located. ***Yes, all regulations have been conformed with including the supplementary standards of 7.32 as recommended by staff in ZA-18-04.***
7. Public access shall be provided in accordance with the recommendations of the Town's land use plan and access plan or the present amount of public access and public parking as exists within the Town now. If any recommendations are found to conflict, the system requiring the greatest quantity and quality of public access, including parking, shall govern. ***The access conforms to plans.***
8. The proposed use will be in conformity with the land use plan, thoroughfare plan, or other plan officially adopted by the Town Council. ***The access conforms to plans.***

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**PLANNING DEPARTMENT RECOMMENDATIONS:**

The Planning Department recommends approval of the special use permit SUP-18-08 with the following conditions:

1. That the sanctuary be limited to no more than 176 seats.
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**TOWN COUNCIL ACTION REQUESTED:**

The Smithfield Town Council is requested to review the petition for a church within a B-3 Highway Entrance Business zoning district, hold a public hearing and make a decision in accordance with the finding of fact for a special use permit.

**Town of Smithfield  
Special Use Permit Application  
Finding of Fact / Approval Criteria**

**Application Number:** SUP-18-08    **Name:** LifeSping Church

**Request:** Applicant seeks a special use permit to operate a church on the property.

In approving an application for a special use permit in accordance with the principles, conditions, safeguards, and procedures specified herein, the Town Council may impose reasonable and appropriate conditions and safeguards upon the approval. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the Town Council. The Town Council shall include in its comments a statement as to the consistency of the application with the Town's currently adopted Comprehensive Plan. The applicant has the burden of producing competent, substantial evidence tending to establish the facts and conditions which the below requires.

The Town Council shall issue a special use permit if it has evaluated an application through a quasi-judicial process and determined that:

1. The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, or general welfare.
2. The special use will be in harmony with the existing development and uses within the area in which it is to be located.
3. The establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
4. Adequate utilities, access roads, drainage, parking, or necessary facilities have been or are being provided.
5. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
6. The special use shall, in all other respects, conform to all the applicable regulations of the district in which it is located.
7. Public access shall be provided in accordance with the recommendations of the Town's land use plan and access plan or the present amount of public access and public parking as exists within the Town now. If any recommendations are found to conflict, the system requiring the greatest quantity and quality of public access, including parking, shall govern.
8. The proposed use will be in conformity with the land use plan, thoroughfare plan, or other plan officially adopted by the Town Council.

**Once all findings have been decided one of the two following motions must be made:**

SUP-18-08

**Motion to Approve:** *Based upon satisfactory compliance with the above stated findings and fully contingent upon acceptance and compliance with all conditions as previously noted herein and with full incorporation of all statements and agreements entered into the record by the testimony of the applicant and applicant's representative, I move to approve Special Use Permit Application # SUP-18-08 with the following condition:*

1. That the sanctuary be limited to no more than 176 seats.

**Motion to Deny:** *Based upon failure to meet all of the above stated findings and for reasons stated therein, I move to deny Special Use Permit Application # SUP-18-08 for the following stated reason:*

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**Record of Decision:**

**Based on a motion and majority vote of the Town of Smithfield Town Council for the Special Use Permit Application Number SUP-18-08 is hereby:**

\_\_\_\_\_ approved upon acceptance and conformity with the following conditions:

1. *That the sanctuary be limited to no more than 176 seats.*

\_\_\_\_\_ denied for the noted reasons.

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**Decision made this 7<sup>th</sup> day of August, 2018 while in regular session.**

\_\_\_\_\_  
**M. Andy Moore, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Shannan L. Parrish, Town Clerk**





Town of Smithfield  
Planning Department  
350 E. Market St Smithfield, NC 27577  
P.O. Box 761, Smithfield, NC 27577  
Phone: 919-934-2116  
Fax: 919-934-1134

## SPECIAL USE PERMIT APPLICATION

*Pursuant to Article 4, of the Town of Smithfield Unified Development Ordinance, an owner of land within the jurisdiction of the Town (or a duly authorized agent) may petition the Town Council to allow a Special Use. Special Uses are uses that may be appropriate in a particular district, but has the potential to create incompatibilities with adjacent uses.*

*Special Use Permit applications must be accompanied by nine (9) sets of the application, nine (9) sets of required plans and one (1) digital copy of all required documents, an Owner's Consent Form (attached) and the application fee. The application fee is \$300.00. All fees are due when the application is submitted.*

### SITE INFORMATION:

Name of Project: LifeSpring Church Acreage of Property: 2.15 acres  
Parcel ID Number: 14074013J Tax ID: 14074013J  
Deed Book: 03463 Deed Page(s): 0977  
Address: 1258 N. Brightleaf Blvd. Smithfield, North Carolina 27577  
Location: Same

Existing Use: Vacant Proposed Use: Church  
Existing Zoning District: B3

Is project within a Planned Development: Yes No  
Planned Development District (if applicable): NO  
Is project within an Overlay District: Yes No  
Overlay District (if applicable): NO

### FOR OFFICE USE ONLY

File Number: \_\_\_\_\_ Date Submitted: \_\_\_\_\_ Date Received: \_\_\_\_\_ Amount Paid: \_\_\_\_\_



**REQUIRED FINDING OF FACT**

*Article 4 of the Town of Smithfield Unified Development Ordinance requires applications for a Special Use Permit to address the following findings. The applicant has the burden of producing competent, substantial evidence tending to establish the facts and conditions which this section requires. The Town Council shall issue a special use permit if it has evaluated an application through a quasi-judicial process and determined that:*

- 1) The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, or general welfare.  
 The building that will be leased by LifeSpring Church is an existing building and existing parking lot.  
 \_\_\_\_\_  
 \_\_\_\_\_
- 2) The special use will be in harmony with the existing development and uses within the area in which it is to be located.  
 Yes, the existence of LifeSpring Church will occupy a current building that has been vacant for years.  
 The existence of a Church would not hinder in current business operations nearby, and should help drive revenue to local businesses because of the increased foot traffic to the area who will want to eat nearby.  
 \_\_\_\_\_  
 \_\_\_\_\_
- 3) The establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.  
 No, this special use will only enhance the likelihood of future development in the nearby areas because investors like seeing diverse representations in a community, and they do not like seeing vacant buildings.  
 \_\_\_\_\_  
 \_\_\_\_\_
- 4) Adequate utilities, access roads, drainage, parking, or necessary facilities have been or are being provided.  
 These amenities are already in place and adequate for LifeSpring Church's usage.  
 \_\_\_\_\_  
 \_\_\_\_\_
- 5) Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.  
 Already established when structure was designed and built.  
 \_\_\_\_\_  
 \_\_\_\_\_
- 6) The special use shall, in all other respects, conform to all the applicable regulations of the district in which it is located.  
 Yes  
 \_\_\_\_\_  
 \_\_\_\_\_
- 7) Public access shall be provided in accordance with the recommendations of the Town's land use plan and access plan or the present amount of public access and public parking as exists within the Town now. If any recommendations are found to conflict, the system requiring the greatest quantity and quality of public access, including parking, shall govern.  
 Understood  
 \_\_\_\_\_  
 \_\_\_\_\_
- 8) The proposed use will be in conformity with the land use plan, thoroughfare plan, or other plan officially adopted by the Town Council.  
 Yes, no conflicts that have been brought to our concern.  
 \_\_\_\_\_  
 \_\_\_\_\_

\* See Current site plan for site on file already with the town of Smithfield

## REQUIRED SITE PLAN INFORMATION

*Article 5 of the Town of Smithfield Unified Development Ordinance requires a site plan be prepared by a professional engineer, registered land surveyor, or licensed architect and shall be drawn to scale of not less than one inch equals 30 feet. The site plan shall be based on the latest tax map information and shall be of a size as required by each individual site plan. The site plan shall contain the following information, if applicable as determined by the UDO Administrator:*

- 1) A key map of the site with reference to surrounding areas and existing street locations.
- 2) The name and address of the owner and site plan applicant, together with the names of the owners of all contiguous land and of property directly across the street as shown by the most recent tax records.
- 3) Parcel Identification Numbers (PIN) for site and adjacent properties.
- 4) Deed book and page reference demonstrating ownership of property.
- 5) Location of all existing and proposed structures, including their outside dimensions and elevations, streets, entrances, and exits on the site, on contiguous property, and on property directly across the street.
- 6) Building setback, side line, and rear yard distances.
- 7) Location of watercourses, ponds, flood zones, water supply watershed areas, and riparian buffers.
- 8) All existing physical features, including existing trees greater than eight (8) inches in diameter measured four and one-half (4.5) feet above ground level, and significant soil conditions.
- 9) Topography showing existing and proposed contours at no greater than ten (10) foot intervals. All reference benchmarks shall be clearly designated.
- 10) The zoning of the property, including zoning district lines where applicable.
- 11) Lot line dimensions and property lines of the tract to be developed (with dimensions identified), adjacent property lines (including corporate limits, Town boundaries, and county lines).
- 12) Parking, loading, and unloading areas shall be indicated with dimensions, traffic patterns, access aisles, and curb radii per the requirements of Article 10, Part I.
- 13) Types of surfaces for drives, sidewalks, and parking areas.
- 14) Location and design of existing and proposed sanitary waste disposal systems, water mains and appurtenances (including fire hydrants) on or adjacent to the parcel.
- 15) Other utility lines both under- and above-ground, including electric power, telephone, gas, cable television.
- 16) Location of all US Clean Water Act Section 404 wetland areas, located of detention/retention ponds (Best Management Practices), riparian buffers and impervious surface areas with area dimensions, and ratios of impervious surface to the total size of the lot.
- 17) The location of all common areas.
- 18) The location and dimensions of all areas intended as usable open space, including all recreational areas. The plans shall clearly indicate whether such open space areas are intended to be offered for dedication to public use or to remain privately owned.
- 19) Landscaping and buffering plan showing what will remain and what will be planted, indicating names of plants, trees, and dimensions, approximate time of planting, and maintenance plans per the requirements of Article 10, Part II. The plan shall include the tree line of wooded areas and individual trees eight (8) inches in diameter or more, identified by common or scientific name.
- 20) Proposed site lighting.

**APPLICANT AFFIDAVIT**

*I/We, the undersigned, do hereby make application and petition to the Town Council of the Town of Smithfield to approve the subject Special Use Permit. I hereby certify that I have full legal right to request such action and that the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the Planning Department of the Town of Smithfield, North Carolina, and will not be returned.*

**Mark Stevens**



5/31/2018  
5-31-18

*Print Name*

*Signature of Applicant*

*Date*

# OWNER'S CONSENT FORM

Name of Project: LifeSpring Church Submittal Date: 6-1-18

## OWNERS AUTHORIZATION

I hereby give CONSENT to LifeSpring Church (type, stamp or print clearly full name of agent) to act on my behalf, to submit or have submitted this application and all required material and documents, and to attend and represent me at all meetings and public hearings pertaining to the application(s) indicated above. Furthermore, I hereby give consent to the party designated above to agree to all terms and conditions which may arise as part of the approval of this application.

I hereby certify I have full knowledge the property I have an ownership interest in the subject of this application. I understand that any false, inaccurate or incomplete information provided by me or my agent will result in the denial, revocation or administrative withdrawal of this application, request, approval or permits. I acknowledge that additional information may be required to process this application. I further consent to the Town of Smithfield to publish, copy or reproduce any copyrighted document submitted as a part of this application for any third party. I further agree to all terms and conditions, which may be imposed as part of the approval of this application.

Scott C Birtz  
Signature of Owner

Scott C Birtz  
Print Name

5/31/18  
Date

## CERTIFICATION OF APPLICANT AND/OR PROPERTY OWNER

I hereby certify the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the Planning Department of the Town of Smithfield, North Carolina, and will not be returned.

[Signature]  
Signature of Owner/Applicant

Mark Stevas  
Print Name

6-1-18  
Date

## FOR OFFICE USE ONLY

File Number: \_\_\_\_\_ Date submitted: \_\_\_\_\_ Date received: \_\_\_\_\_

### **Statement of Justification**

Our proposal is for a special use permit for LifeSpring Church to be able to lease and be located at 1258 N BrightLeaf Blvd., Smithfield, NC 27577 granted by the Town of Smithfield in North Carolina. The building is currently broken down into 6 individual units, and LifeSpring Church would occupy 4 of those 6 units, with Papa John's Pizza occupying 1 unit, and 1 unit would be left vacant. See the attached pictures and diagrams for reference.

LifeSpring Church exists to make a lasting difference in the lives of the people of Smithfield and beyond. Our church started about 2 years ago with a passion to see our community radically impacted by the love of a group of people passionate about offering hope to this community. From a group of 25 adults in 2016 that has grown to around 125 regularly involved adults and kids today, we have been able to mobilize many of people in the Greater Smithfield area to serve our community. By partnering and serving regularly with other community organizations, we have been able to make a significant impact already in our first two years of existence.

#### **Some examples of our community involvement include but are not limited to:**

- We have been able to provide over 30 free caps and gowns for graduating seniors in need of financial assistance at Smithfield Selma High School over the past 2 years
- We have served Smithfield Selma High School teachers and students a meal, once every 2-3 months on average, to encourage them and thank them for what they do.
- We were able to organize over 350 volunteers from the community in December of 2017 in a partnership with Johnston County Schools to pay for, pack and deliver 10,000 meals to children that attend the Smithfield/Selma feeder schools and are on free/reduced school lunch. These children often do not have sufficient food in their homes. We did this in an event called Generosity Feeds Smithfield!
- We plan to double our meals this year and get more of the community involved to package 20,000 meals in December.
- We mobilized volunteers to provide more than 100 man hours and financially helped to start a Smithfield Rescue Mission house for women as they renovated their new property.
- We have developed a strong partnership with In His Hands Women's Pregnancy Center to provide many volunteers and financial support to help them serve the community.
- We have worked alongside of Councilman Marlon Lee to serve and bless the community of East Smithfield with huge block parties located at the Smith Collins Park and provided free food, fun and engaging activities to help increase community involvement.
- We are in the process of working with the Sarah Yard Community Center in partnership with Johnston County Schools to execute a plan that will offer free tutoring one day per week for 3<sup>rd</sup> – 5<sup>th</sup> grade children that attend West Smithfield Elementary in the Fall of 2018.

- This will also help to increase the impact of the Smithfield Parks and Recreations goals to serve this community through the Sarah Yard Community Center.

There are many more areas that we have been able to serve; hopefully these brief descriptions will help you to see that our heart truly is FOR SMITHFIELD and we exist to serve this community.

**In regards to the proposed permit for use for usage of the property referred to as Smithfield Commons on Brightleaf Blvd. in Smithfield:**

We have been meeting weekly at Johnston Community College since we have started, and we meet the rest of the week in homes throughout the county. We believe a move to a building that we can call “home” would be strategic and beneficial for LifeSpring and the community for the following reasons:

**For the Community:**

1. This location would position us in a central location to serve Smithfield Selma High and Smithfield Middle effectively. This distance is short enough for our people and the people of these schools to commute effectively without undue travel burdens. We believe being at this location would help us increase our activity in volunteer hours at these 2 schools and hopefully extend to South Smithfield Elementary in the near future.
2. This location also would put us just a short distance from the East Smithfield Community and the Sarah Yard Center at which we want to continue to increase our service and love for this community by tutoring, large events, support classes and mentoring opportunities.
3. This location would put us closer to the In His Hands Pregnancy Center and would allow us to be a much more readily available resource to serve them.
4. This location would also allow us to be in great location to help serve with Smithfield Rescue Mission, and provide a safe place for those seeking spiritual guidance from both the men’s and women’s facilities to belong to and grow at.
5. This location would be a central location to help connect with new people all over Smithfield as the majority of residents travel Brightleaf Blvd. every day.
6. This location would provide a great central location if we decide to proceed with starting a music academy to offer as a service to draw in clients not only from Smithfield but surrounding towns to received top notch musical training.
7. This location also helps the community from an economic standpoint. Hundreds of people would be coming to this location on Sundays, and throughout the week for various activities that would increase Smithfield traffic, driving business for local businesses. The old saying “Church people like to eat” is a true statement and would greatly impact local restaurants, especially those located in and around the Smithfield Commons property.



8. This location is situated in a diverse community, and thus would provide us an opportunity to accomplish one of our main goals: to be and open and inviting place to people of all races, backgrounds and socioeconomic situations. To truly be a multi-ethnic, multi-ethnic, multi-generational group of people that reflects and benefits our community.
9. This location currently has been vacant as long as anyone we speak with can remember and has been unable to hold steady tenants since its inception. Our Church is not going anywhere and a 5 year commitment to be here would provide stability to the area and an anchor to the building that could help investors and businesses see that Smithfield is rather a thriving and diverse community with business, civic clubs, schools, government institutions and religious organizations all represented. A community cannot thrive without a balanced representation of the community in its borders.
10. We would offer significant and substantial beautification to this area. We would use only top-notch signage on the building, on the road frontage signs, and do a complete overhaul of the interior of this building and make it a very attractive environment in our community. In addition, since we want all of our environments to be attractive, we would go above and beyond to ensure the exterior landscaping in Smithfield Commons is always well maintained.
11. This location would be a central location to offer community service classes that we currently are unable to do effectively since we are “portable.” For instance, we will be able to offer, on a regular basis and free of charge, experiences such as parenting classes, finance classes, marriage classes, other community needs centered classes and events. Healthy homes and healthy finances in particular are a significant advantage to the community as a whole.
12. This location would allow us to have a permanent location that would leverage us to be more of a “steady” presence in the community and grow in our ability to reach new people and thus extend our impact.
13. We would be able to begin a leadership development center to help produce quality leaders that will help to grow Smithfield and help Smithfield become truly the great place that we all want it to become. Leadership development is a core component of our organization.
14. Last but not least, this location would provide a clear source of hope to our community. One of the things that breaks our heart more than any other thing in our community, is to see the masses of people who have no hope. To have no hope is a sad place to be, and we want the people of Smithfield to know and experience hope.

More reasoning can be provided upon request.

# SMITHFIELD COMMONS

1258 N. BRIGHTLEAF BLVD. | SMITHFIELD, NC 27577



THE CHAMBERS GROUP  
ACCELERATING RETAIL SUCCESS™



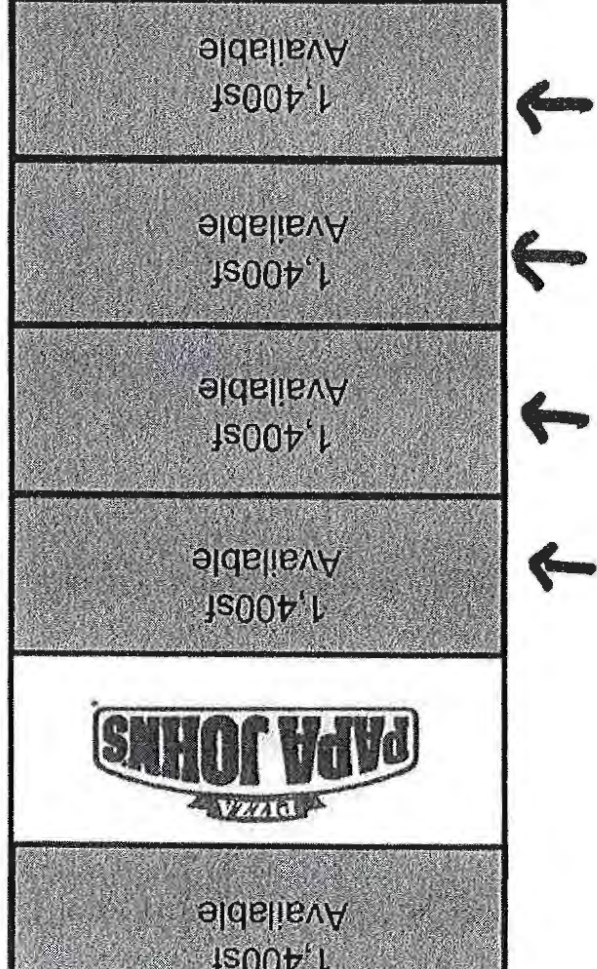
EXPERIENCE THE DIFFERENCE

# SMITHFIELD COMMONS

1258 N. Brightleaf Blvd. | Smithfield, NC 27577

## PROPERTY DETAILS

30-4,200 sf Available for Lease  
Five contiguous 1,400 sf units Available, two are end-cap spaces  
1,400 sf Strip Center located behind Applebee's and Hardee's, adjacent to Office Max  
Access to heavily trafficked N. Brightleaf Blvd./US 301  
Near Home Depot, Home Hardware, Murphy Oil, CVS, and another strip center are all close to the center



## TENANT ROSTER

AVAILABLE	1,4
<b>Papa John's Pizza</b>	<b>1,4</b>
AVAILABLE	1,4
AVAILABLE	1,4
AVAILABLE	1,4
AVAILABLE	1,4



THE CHAMBER GROUP

MEMBER SINCE 2017

Information herein has been obtained from sources believed to be reliable. While we do not doubt its accuracy, we have not verified it and make no guarantee, warranty, or representation about it. It is your responsibility to independently confirm its accuracy and completeness.

For more info, please contact  
**COLE**  
cole@chambers.com  
(919)

# SMITHFIELD COMMONS

1258 N. Brightleaf Blvd. | Smithfield, NC 27577



**ERS GROUP**  
PHILADELPHIA

Information herein has been obtained from sources believed to be reliable. While we do not doubt its accuracy, we have not verified it and make no guarantee, warranty, or representation about it. It is your responsibility to independently confirm its accuracy and completeness.

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**COLE**  
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 (919)



**Marcia High Armstrong**  
Board Certified Specialist in Family Law  
American Academy of Matrimonial Lawyers

**L. Lamar Armstrong, Jr.**  
American Board of Trial Advocates



**The Armstrong Law Firm, P.A.**  

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T r i a l   A t t o r n e y s

**L. Lamar Armstrong, III**  
**Eason Armstrong Keeney**  
Daniel K. Keeney

Friday, June 01, 2018

Town of Smithfield  
Planning Department

*Via Hand-Delivery to:*  
350 E. Market St.  
Smithfield, NC 27577

*Via U.S. Mail to:*  
P.O. Box 761  
Smithfield, NC 27577

Re: *Petition for Modification of the Smithfield UDO*

To Whom it May Concern:

I represent Lifespring Church (Lifespring) in its efforts to find a suitable, permanent location within Smithfield City Limits. Please allow this letter as Lifespring's "Statement of Justification" requested in the enclosed petition for amendment to Smithfield's Unified Development Ordinance (UDO).

Lifespring has reached an agreement in principal to lease available space within the "Smithfield Commons" shopping center located at 1258 N. Brightleaf Blvd. in Smithfield. This minor shopping center is zoned B-3.

Lifespring's ability to lease this space should not depend on the content of its speech and purpose. Our founding fathers decided hundreds of years ago that the government cannot arbitrarily deprive its citizens of fundamental freedoms of speech, religion, and assembly.

Yet Section 7.32 of the UDO currently does exactly that by arbitrarily singling out "churches" and "places of worship" in certain areas, including Smithfield Commons' location:

## SECTION 7.32 CHURCHES /PLACES OF WORSHIP.

When located in the B-2 and B-3 zoning districts, churches/places of worship shall be the principal use on a single parcel of property. Churches/places of worship shall not be located in a major or minor shopping center.

(“Section 7.32”).

Smithfield’s Planning Director recently encouraged Lifespring to submit applications for a special use permit and to amend the UDO. Lifespring is not obligated to submit any applications. Smithfield can change the UDO anytime it wants, so long as it follows applicable procedures. Smithfield does not need its residents to prompt it to comply with the law.

Furthermore, the UDO does not provide any exceptions (special use, conditional use, or otherwise) to Section 7.32. As long as Section 7.32 exists, religious groups cannot exist in any shopping centers or as the principal use on a single parcel. If Section 7.32 is removed, then religious groups can so exist. Either way, any special use permit application Lifespring submits is superfluous.

Having said the above, and though Lifespring would be justified in immediately filing a lawsuit, Lifespring has carefully deliberated and decided to go above and beyond and submit the requested applications before filing a lawsuit. Lifespring risks losing this important opportunity if Smithfield delays or denies the enclosed petition, but Lifespring has made the difficult decision to nonetheless trust that Smithfield will timely correct this problem.

Lifespring’s trust in Smithfield is also especially difficult considering Smithfield’s long history of unwillingness to follow religious freedom laws. Although this history is far too long to comprehensively summarize, a brief summary may be helpful for anyone reading this who are not aware of it:

- Until last October, Smithfield’s Land Use Code banned all churches/religious groups from all commercial zones (B-1, B-2, and B-3). No exceptions, other than churches grandfathered in before this rule was enacted decades ago. This clearly violated religious freedom laws (including the Federal 1<sup>st</sup> Amendment and the RLUIPA<sup>1</sup>).

---

<sup>1</sup> Religious Land Use and Institutionalized Persons Act, full copy enclosed.

- In 2016 and 2017, Smithfield (through a committee) considered updates and revisions to its outdated Land Use Code, including adoption of the UDO.
- Lifespring attended most of this committee's monthly public meetings and respectfully urged it to make necessary changes to cease religious discrimination, in particular by treating religious groups equally with non-religious groups.
- Lifespring provided the committee members my letter (enclosed) explaining religious freedom laws and how Smithfield's Land Use Code clearly violated those laws.
- Instead of fully complying with these laws, the committee chose a "compromise" solution that included Section 7.32.

Section 7.32 still violates the 1<sup>st</sup> Amendment and RLUIPA. Enclosed is a letter that the U.S. Department of Justice sends to municipalities like Smithfield who violate RLUIPA. Smithfield cannot justify a per se ban of all religious groups from all shopping centers. Smithfield cannot justify allowing non-religious non-profits (for example, Rotary Club) but not religious non-profits (for example, Lifespring) to occupy space in shopping centers. There simply is no compelling reason for excluding all religious groups from all shopping centers, or otherwise treating religious groups differently than non-religious groups.

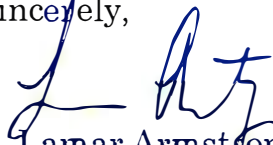
Smithfield must comply with the Constitution, regardless of whether Smithfield believes doing so will "serve the public interest" or "enhance or promote the purposes and goals of adopted plans and policies". Nevertheless, to address these questions raised in the enclosed petition for amendment, please see the enclosed "statement of justification". Lifespring takes its commitment to serve the Smithfield community seriously and believes it can best accomplish that mission at and through the above location.

If Smithfield refuses or unreasonably delays, Lifespring is prepared, as a last resort, to file a lawsuit pursuant to the RLUIPA and 42 U.S.C. § 1983. Lifespring implores Smithfield to fix this problem by deleting Section 7.32 so



that Lifespring can focus its resources on continuing to make a difference in this community.

Sincerely,



L. Lamar Armstrong, III

*Attorney for Lifespring Church*

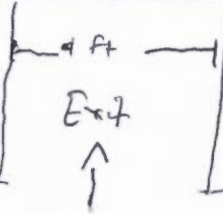
Enclosures

NOT TO SCALE

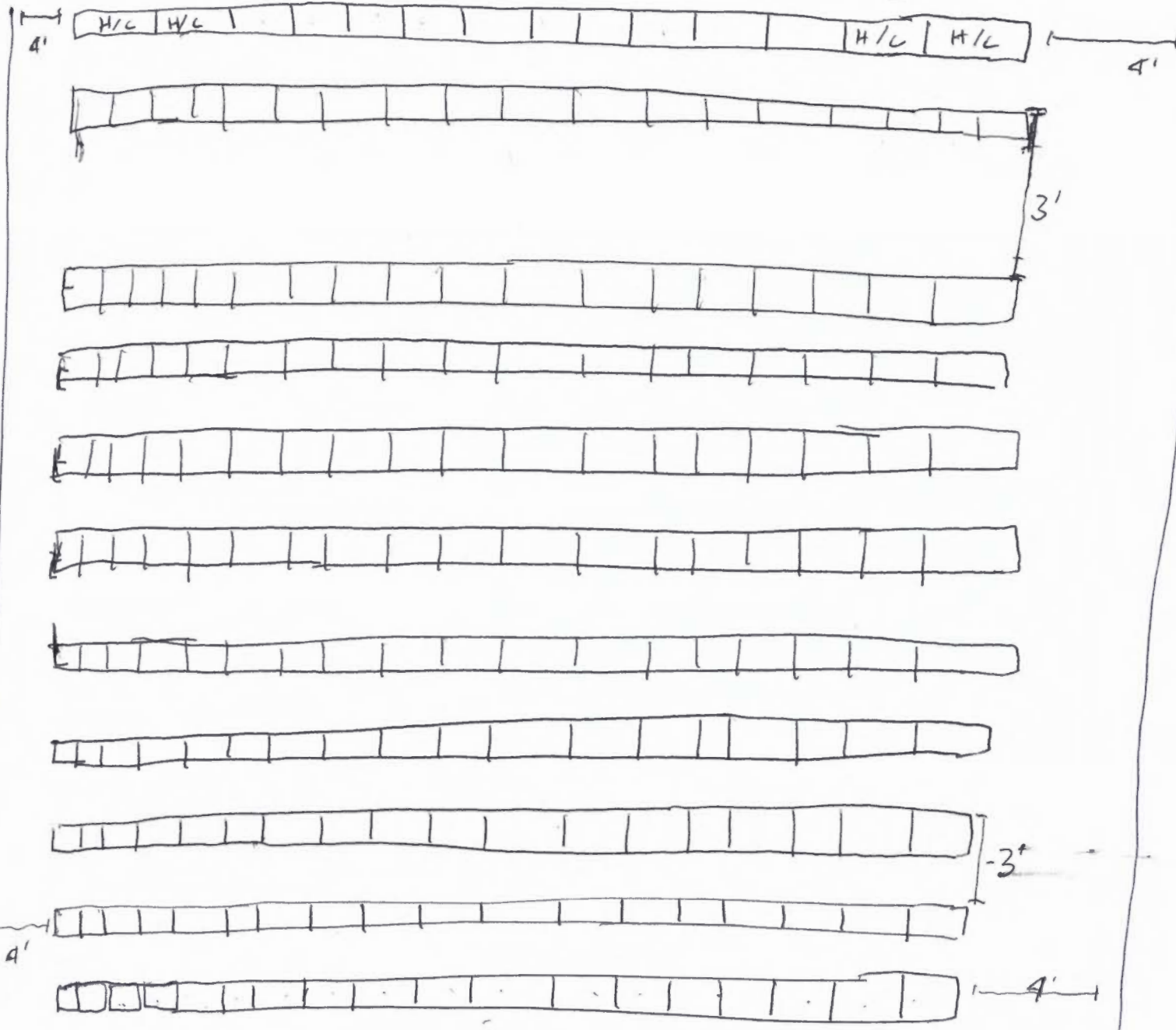
# AUDITORIUM SEATING CHART

H/C = Handicap Space

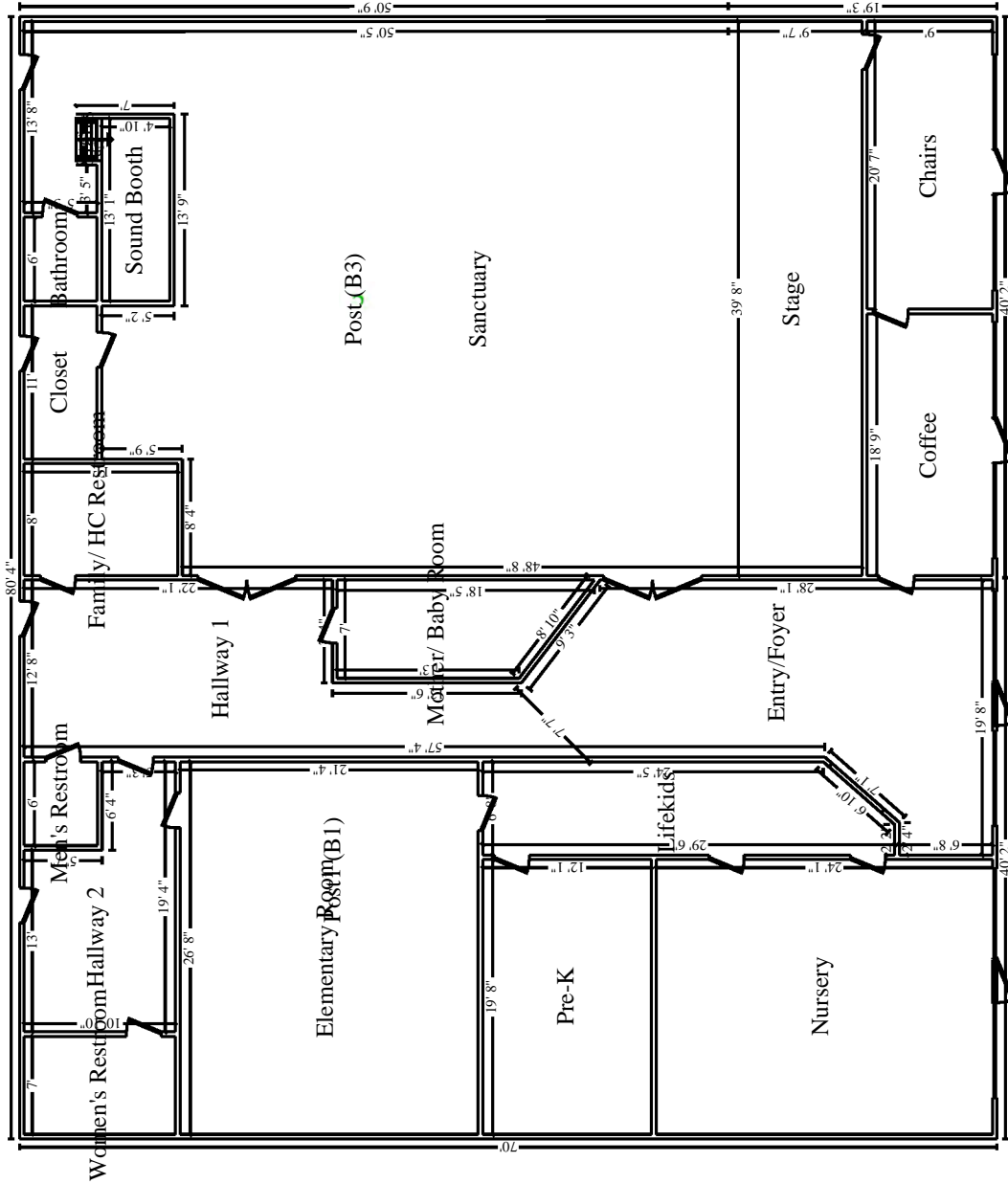
36 in wide

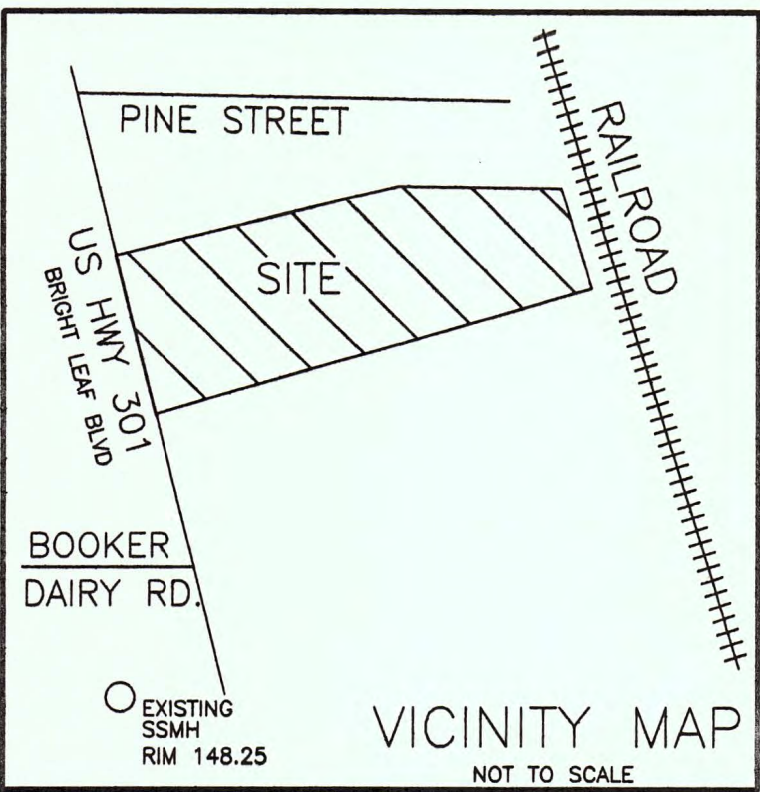


Entry



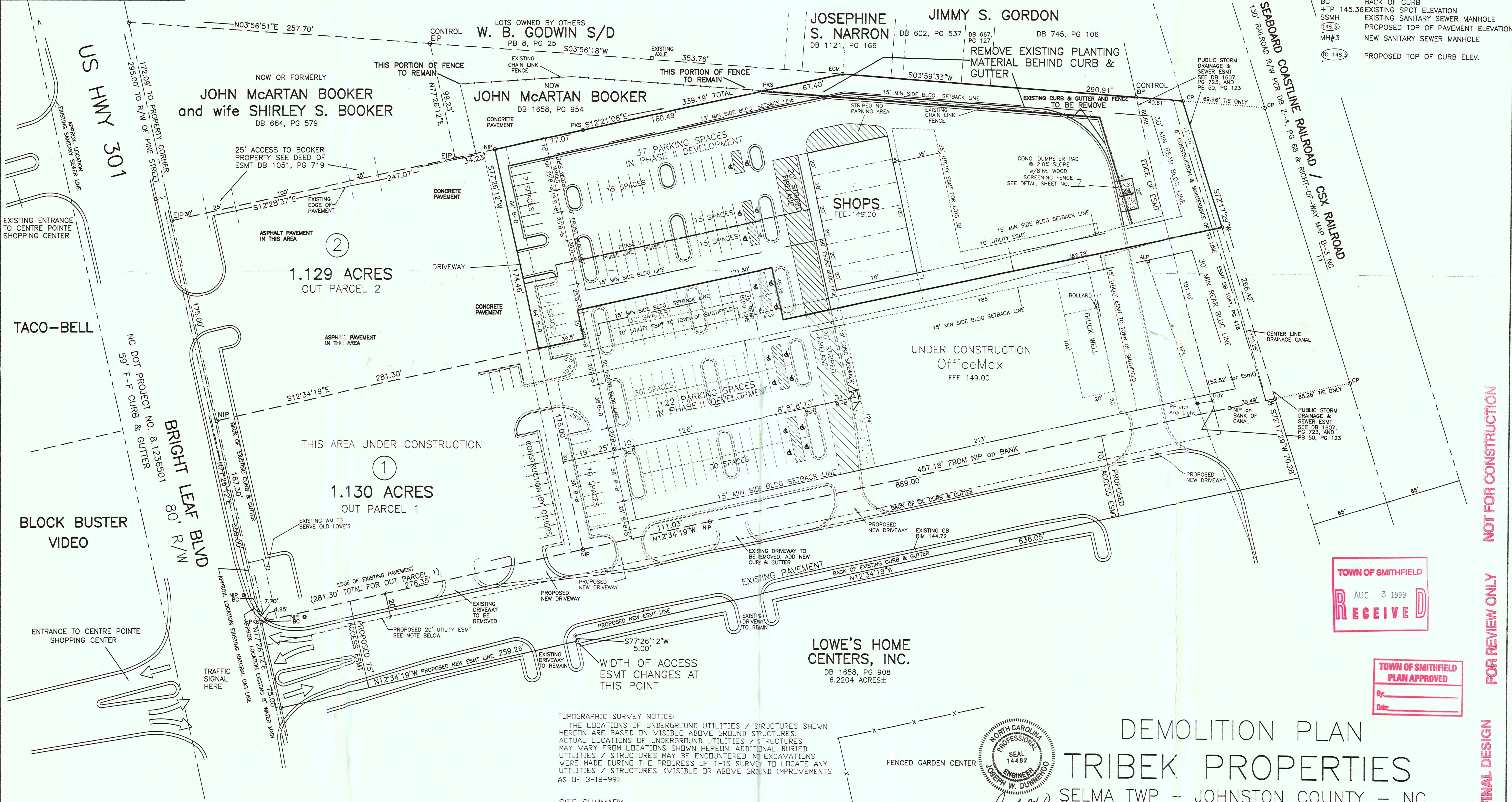
STAGE





**LEGEND**

---	LINES SURVEYED
---	LINES NOT SURVEYED
EIP	EXISTING IRON PIPE FOUND
EL5	EXISTING CONCRETE MONUMENT FOUND
WM	EXISTING LIGHTED STAKE FOUND
---	WATER METER
EPK	EXISTING P K NAIL FOUND
NIP	NEW IRON PIPE SET
PKS	P K NAIL SET
PP	POWER POLE
R/W	RIGHT OF WAY
DB	DEED BOOK
PB	PLAT BOOK
ES	EXISTING IRON STAKE FOUND
OHPL	OVERHEAD ELECTRICAL POWER LINE
CP	COMPUTED POINT
MH	MANHOLE
WL	WATER LINE or MAIN
ALP	AREA LIGHT POLE
FH	FIRE HYDRANT
CB or DI	CATCH BASIN or DROP INLET
BC	BACK OF CURB
+TP 145.36	EXISTING SPOT ELEVATION
SSMH	EXISTING SANITARY SEWER MANHOLE
(148.3)	PROPOSED TOP OF PAVEMENT ELEVATION
MH#3	NEW SANITARY SEWER MANHOLE
(148.3)	PROPOSED TOP OF CURB ELEV.



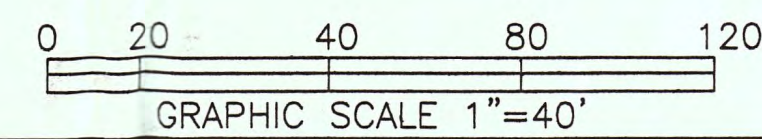
**TOPOGRAPHIC SURVEY NOTICE:**  
 THE LOCATIONS OF UNDERGROUND UTILITIES / STRUCTURES SHOWN HEREIN ARE BASED ON VISIBLE ABOVE GROUND STRUCTURES. ACTUAL LOCATIONS OF UNDERGROUND UTILITIES / STRUCTURES MAY VARY FROM LOCATIONS SHOWN HEREIN. ADDITIONAL BURIED UTILITIES / STRUCTURES MAY BE ENCOUNTERED. NO EXCAVATIONS WERE MADE DURING THE PROGRESS OF THIS SURVEY TO LOCATE ANY UTILITIES / STRUCTURES. (VISIBLE OR ABOVE GROUND IMPROVEMENTS AS OF 3-18-99)

**SITE SUMMARY**  
 ZONING DISTRICT B-3  
 TOTAL LAND AREA 4.479 ACRES  
 SHOPS BUILDING AREA - 8,400 SF  
 1 SPACES / 200 SF OF BLDG AREA = 42 REQUIRED  
 52 SPACES PROVIDED 6 BEING HANDICAP



**DEMOLITION PLAN**  
**TRIBEK PROPERTIES**  
 SELMA TWP - JOHNSTON COUNTY - NC  
 ALSO BEING IN THE CITY LIMITS OF THE TOWN OF SMITHFIELD, NORTH CAROLINA  
 DATE: 7-28-99 SCALE: 1" = 40'  
 SHEET 1 of 7

**DENNIS RAY BLACKMON, RLS**  
 Land Surveying - Land Development Consultant - Mapping  
 1023C WEST MARKET STREET - P. O. BOX 1401  
 SMITHFIELD, NC 27577 PHONE: 934-3490



NOT FOR CONSTRUCTION  
 FOR REVIEW ONLY  
 FINAL DESIGN  
 THIS NOTE IS RED IN COLOR ON ORIGINAL

# 1200 Block of North Brightleaf Boulevard



**Project Name:**  
Lifespring Church

**Proposed Use:**  
Place of Assembly

**File Number:**  
SUP-18-06

**Property Owner:**  
Tribeck Properties, Inc

**Applicant:**  
Lifespring Church

**Location:**  
1250 North Brightleaf Blvd

**Tax ID#**  
14074013J

**Zoning District:**  
B-3 (Entrance Highway Business)

**Map created by the**  
Mark E. Helmer, AICP  
Senior Planner,  
GIS Specialist  
on 7/16/2018



1 inch = 250 feet







# Request for Town Council Action

**Public Hearing:** Zoning Text Amendment  
Date: 08/07/2018

---

**Subject:** Zoning Text Amendment  
**Department:** Planning  
**Presented by:** Stephen Wensman  
**Presentation:** Public Hearing

---

## Issue Statement

The Town of Smithfield Planning Department is requesting an amendment to the Unified Development Ordinance (UDO) that would allow for the return of high-rise business identification signs as a permitted use in the B-3 (Highway Entrance Business) zoning district when the property is within 660 feet of the right-of-way of I-95.

## Financial Impact

There will be no financial impact to the Town.

## Action Needed

To review the requested application, hold a public hearing for the proposed Unified Development Ordinance text amendment, and make a decision whether to approve, deny or amend the amendment with a statement declaring the request is consistent with the Town of Smithfield Comprehensive Growth Management Plan and that the request is reasonable and in the public interest.

## Recommendations

The Planning Department and Planning Board recommend the Town Council approval of the proposed amendment to Article 10 of the UDO and recommends that the Town Council approve a statement declaring the request is consistent with the Town of Smithfield Comprehensive Growth Management Plan and that the request is reasonable and in the public interest.

Approved:  Town Manager  Town Attorney

Attachments:

1. Staff Report
2. Ordinance
3. Application and Petition for Amendment to the UDO



# Staff Report

<b>Public Hearing: Date:</b>	<b>Zoning Text Amendment 08/07/2018</b>
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The Planning Department is requesting a text amendment to Article 10 of the Town of Smithfield Unified Development Ordinance (UDO) that will allow for single tenant high-rise business identification signs as a permitted use by right when the property is within the B-3 (Highway Entrance Business) zoning district and within 660 feet of the right-of-way of I-95.

## History:

High rise business identification signs are very tall signs designed to be seen from the I-95 corridor. The purpose of high-rise business identification signs is to help the traveling public identify our local retailers while approaching the exit needed to be taken to reach the desired destination. Because they are permitted for on-site advertising only, high-rise signs are not affected by the State prohibition on outdoor advertising signs adjacent to the Interstate Highway System.

High-rise signs have been permitted within the Town of Smithfield since the 1990's but were inadvertently removed from the current UDO that was adopted in 2017. There are currently nine permitted high-rise signs located near exit 95 and 2 located near exit 93.

High rise business identification signs were originally permitted to have a maximum height of 100 feet and a maximum sign area of 400 feet per side and were available to single tenant developments within 660 feet of the I-95 corridor regardless of the zoning district with a conditional use permit issued by the Town of Smithfield Board of Adjustment.

In 2015, an ordinance amendment was adopted that set the minimum height of high-rise signs to 50 feet. This minimum height limit was put in place to discourage the practice of calling a traditional ground mounted sign that exceeds the maximum height a "high-rise" sign.



The proposed high-rise sign ordinance will serve to promote quality branded restaurants, hotels and retailers and will insure that the Town of Smithfield remains North Carolina's premier stop along the I-95 corridor. The proposed high-rise business identification sign ordinance will allow for:

- High-rise signs to advertise activities conducted on the property upon which it is located only.
- An expedited administrative approval process for high-rise business sign applications.
- A single tenant development to qualify for one high-rise business identification sign if the property is located within a B-3 zoning district AND is within 660 feet of the right-of-way of Interstate 95.
- A maximum height of 100 feet and a minimum height of 50 feet.
- Up to 400 square feet of sign area per side.
- Ground mounted, free standing and of mono-pole design only.
- One High-rise identification signs to be permitted in addition to all other allowable signs.
- Existing high-rise signs to be repaired or replaced if substantial damage occurs.

The proposed ordinance amendment will also create a definition of a high-rise business identification sign and provide a photograph of a typical installation.

---

**Consistency Statement:**

The zoning text amendment as proposed is consistency with the Town of Smithfield Comprehensive Growth Management Plan and other adopted plans, and that the amendment is reasonable and in the public interest.

---

**Recommended Motion:**

The Planning Department and Planning Board recommend the Town Council approval of the proposed amendment to Article 10 of the UDO and recommends that the Town Council approve a statement declaring the request is consistent with the Town of Smithfield Comprehensive Growth Management Plan and that the request is reasonable and in the public interest.

**DRAFT ORDINANCE # ZA-18-04**  
**AN ORDINANCE TO AMEND THE TOWN OF SMITHFIELD**  
**UNIFIED DEVELOPMENT ORDINANCE ARTICLE 7, SECTION**  
**7.3 CHURCHES / PLACE OF WORSHIP, AMEND ARTICLE 6**  
**ZONING DISTRICTS, SECTION 6.5 TABLE OF USES AND**  
**ACTIVITIES, AND AMEND APPENDIX A-DEFINITIONS**

**WHEREAS**, the Smithfield Town Council wishes to amend certain provisions in the Unified Development Ordinance by making changes to the Town of Smithfield Unified Development Ordinance to allow for churches/places of worship and clubs or private lodges meeting halls within shopping centers providing additional supplemental standards can be met.

**WHEREAS**, it is the objective of the Smithfield Town Council to have the UDO promote regulatory efficiency and consistency and the health, safety, and general welfare of the community;

**NOW, THEREFORE**, be it ordained that the following Articles are amended to make the following changes set forth in the deletions (strikethroughs) and additions (double underlining) below:

**PART 1**

[Revise Article 7.32, to create supplemental standards for churches /places of worship and clubs or private lodge meeting halls.]

**SECTION 7.32 CHURCHES /PLACES OF WORSHIP AND CLUB OR PRIVATE LODGE MEETING HALLS AND INDOOR STORAGE FACILITIES.**

~~When located in the B-2 and B-3 zoning districts, churches/places of worship shall be the principal use on a single parcel of property. Churches/places of worship shall not be located in a major or minor shopping center.~~

**7.32.1** Churches/Places of Worship and Club or Private Lodge Meeting Halls shall have adequate parking meeting Article 10, Section 10.3.

**7.32.2** The land use will not significantly increase traffic on local roadways within a residential neighborhood.

**7.32.3** In B-2 and B-3 zoning districts, the land use should not substantially decrease vehicular and/or pedestrian traffic or inhibit business activity for adjacent commercial businesses particularly during normal business hours. Obviously some businesses have more traffic than others. The Town recognizes that businesses in these zoning districts need active adjacent business space to attract customers to B-2 and B-2 zoning districts. The town intends for planning policies to encourage business traffic in these zoning districts while not prohibiting uses with less traffic. If a special use, due to inactivity during business hours or otherwise, substantially decreases commercial traffic then that special use is likely not to be in harmony with the existing development and uses with the area in which it is to be located.

**7.32.4** The land use will not impede the normal and orderly development of the surrounding property for uses permitted in the district. If a substantial portion of a commercial center is closed or not attracting traffic during normal business hours then that absence of activity would likely

impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

**AND**, be it ordained that the following Articles are amended to make the following changes set forth in the deletions (strikethroughs) and additions (double underlining) below:

[Revise Article 6, Zoning Districts, Section 6.5 Table of Uses and Activities that reference the supplemental standards found in Section 7.32 to which clubs or private lodge meeting halls shall adhere to.]

Excerpt of Article 6, Zoning Districts, Section 6.5 Table of Uses and Activities to be amended as follows.

Uses	B-1	B-2	B-3	Supplemental Regulations
<del>Civic Club</del> or <del>Fraternal Private</del> Lodge meeting halls		<u>SS</u>	<u>SS</u>	Section 7.32
Warehousing uses, <del>including mini-storage and indoor storage facilities</del>		<u>SS</u>	<u>SS</u>	<u>Section 7.32</u>

**AND**, be it ordained that the following Articles are amended to make the following changes set forth in the deletions (strikethroughs) and additions (double underlining) below:

[Revise Appendix A. Definitions, definition of Storage, self-service.]

**Storage Facility, Indoor Storage, self-service**

A building or part of a building where the principal use is for storage of goods, wares, or equipment, including mini-storage, which consists of ~~consisting of~~ individual, small, self-contained units that are leased or owned for the storage of goods and wares.

**PART 2**

That the Unified Development Ordinance shall be page numbered and revision dated as necessary to accommodate these changes.

**PART 3**

That these amendments of the Unified Development Ordinance shall become effective upon adoption.

Duly adopted this the \_\_\_ day of \_\_\_\_\_, 20\_\_.

---

M. Andy Moore, Mayor

ATTEST

---

Shannan L. Parrish, Town Clerk

DRAFT

**THE TOWN OF SMITHFIELD  
UNIFIED DEVELOPMENT ORDINANCE  
AMENDMENT CONSISTENCY STATEMENT  
BY THE SMITHFIELD TOWN COUNCIL  
ZA-18-04**

**Whereas** the Smithfield Town Council, upon acting on a zoning ordinance amendment to the *Unified Development Ordinance* and pursuant to NCGS §160A-383, is required to approve a statement describing how the action is consistent with the Town of Smithfield *Comprehensive Growth Management Plan*; and

**Whereas** the Smithfield Town Council, upon acting on a zoning ordinance amendment to the *Unified Development Ordinance* and pursuant to NCGS §160A-383, is required to provide a brief statement indicating how the action is reasonable and in the public interest.

**NOW THEREFORE, BE IT ADOPTED BY THE SMITHFIELD TOWN COUNCIL AS APPROPRIATE:**

**IN THE EVENT THAT THE MOTION TO RECOMMEND APPROVAL OF THE ORDINANCE AMENDMENT,**

That the final action regarding zoning ordinance amendment ZA-18-04 is based upon review of and consistency with, the Town of Smithfield *Comprehensive Growth Management Plan* and any other officially adopted plan that is applicable, along with additional agenda information provided to the Town Council and information provided at the regularly scheduled meeting of Town Council; and

It is the objective of the Town of Smithfield Town Council to have the *Unified Development Ordinance* promote regulatory efficiency and consistency and the health, safety, and general welfare of the community. The zoning ordinance amendment promotes this by offering fair and reasonable regulations for the citizens and business community of the Town of Smithfield as supported by the staff report and attachments provided to the Town Council at their regularly scheduled meeting. Therefore, the ordinance amendment is reasonable and in the public interest.

**IN THE EVENT THAT THE MOTION TO RECOMMEND APPROVAL OF THE ORDINANCE FAILS,**

That the final action regarding zoning ordinance amendment ZA-18-04 is based upon review of, and consistency, the Town of Smithfield *Comprehensive Growth Management Plan* and other officially adopted plans that are applicable; and

It is the objective of the Town Council to have the *Unified Development Ordinance* promote regulatory efficiency and consistency and the health, safety, and general welfare of the community. The zoning ordinance amendment does not promote this and therefore is neither reasonable nor in the public interest.



Town of Smithfield  
 Planning Department  
 350 E. Market St Smithfield, NC 27577  
 P.O. Box 761, Smithfield, NC 27577  
 Phone: 919-934-2116  
 Fax: 919-934-1134

**Petition for Amendment to the Unified Development Ordinance**

*Pursuant to Article 4 of the Town of Smithfield Unified Development Ordinance, Proposed amendments may be initiated by the Town Council, Planning Board, Board of Adjustment, members of the public, or by one or more interested parties. The application for any amendment shall contain a description of the proposed zoning regulation.*

**APPLICANT INFORMATION:**

\_\_\_\_\_  
 Petitioner's Name Address or PO Box

\_\_\_\_\_  
 City, State, Zip Code Telephone

Proposed amendment to the Town of Smithfield Unified Development Ordinance:

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

(Attach additional sheets as necessary)

This application must be accompanied by a Statement of Justification which addresses the following:

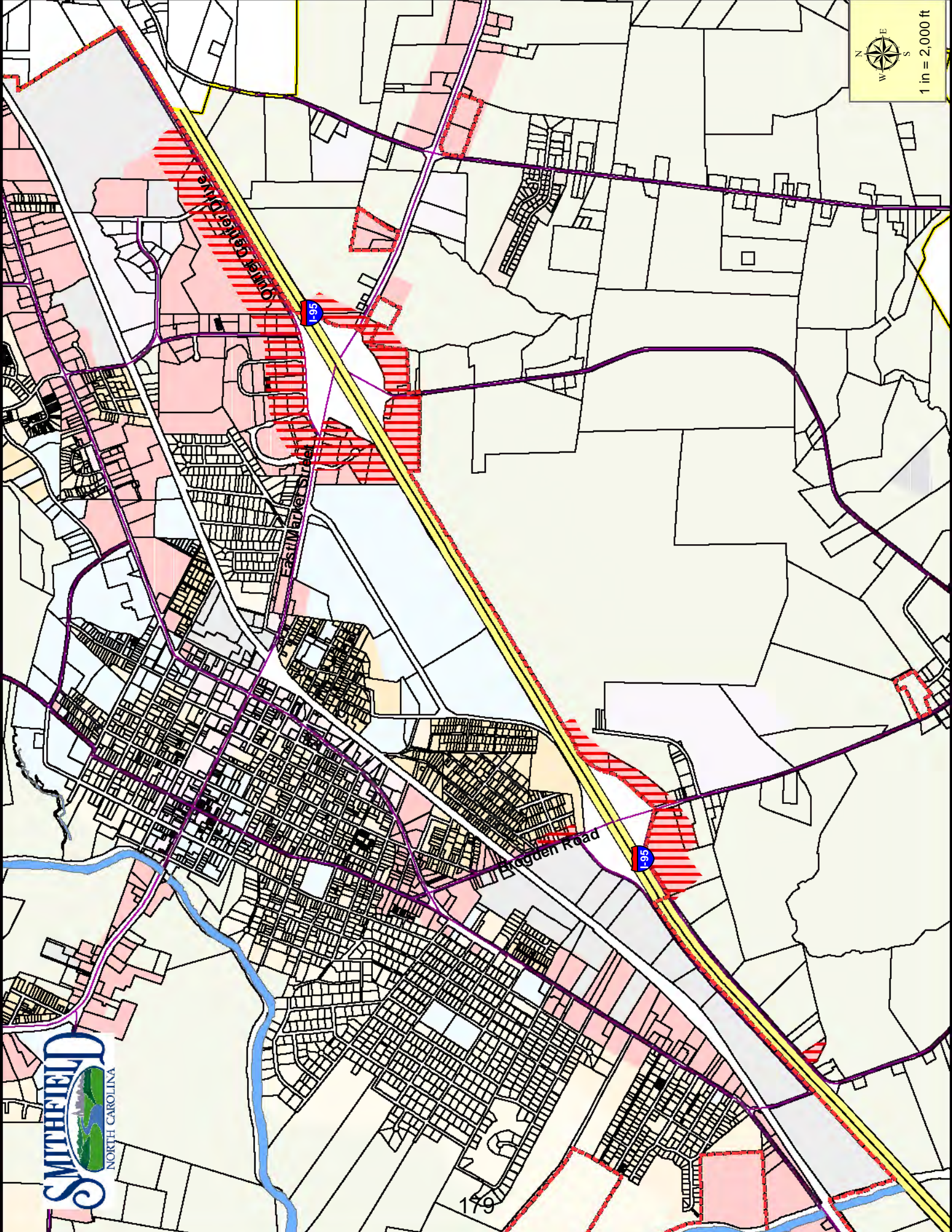
1. How the amendment proposed would serve the public interest or correct an obvious error in the existing ordinance.
2. How the amendment proposed will enhance or promote the purposes and goals of the adopted plans and policies of the governing body.

The undersigned hereby authorizes the filing of this petition and certifies that the information contained herein stands alone based on the merits of this request and is accurate to the best of their knowledge and belief.

\_\_\_\_\_  
 Signature of Petitioner Date

**FOR OFFICE USE ONLY**

File Number: \_\_\_\_\_ Date Received: \_\_\_\_\_ Amount Paid: \_\_\_\_\_









# Request for Town Council Action

**Public SUP-18-  
Hearing: 09  
Date: 08/07/2018**

---

**Subject:** Special Use Permit Storage in association with Auto Repair  
**Department:** Planning  
**Presented by:** Stephen Wensman  
**Presentation:** Public Hearing

---

## Issue Statement

The applicant, Will Gainey, is requesting a special use permit to allow outdoor storage in association with outdoor repair on a .24 acre parcel in the B-2 General Business zoning district.

## Financial Impact

None

## Action Needed

The Smithfield Town Council is requested to review the petition for a outdoor storage in association with auto repair within a B-2 General Business zoning district, hold a public hearing and make a decision in accordance with the finding of fact for a special use permit.

## Recommendation

The Planning Department recommends approval of the request for a special use permit to allow outdoor storage in association with auto repair with conditions:

1. That the five parking stalls be striped according to the lot survey dated 06-11-18.
2. That the vehicle storage area be fenced and screened from public view.
3. That no more than (5) vehicles be parked outside on the property except for vehicles parked in the fenced/screened outdoor storage area.
4. That the metal carport be removed from the property.
5. That the driveway on 5<sup>th</sup> Street nearest the intersection be closed and the landscape boulevard and curbing be restored according to Town of Smithfield Standards.

Approved:  Town Manager  Town Attorney

Attachments:

1. Staff **R**eport
2. Findings of Fact
3. Application



# Staff Report

**Agenda SUP-  
Item: 18-09**

**Application Number:** SUP-18-09  
**Project Name:** Market Street Automotive  
**TAX ID number:** 15025063  
**Town Limits/ETJ:** City  
**Applicant/Owner:** William T. Gainey, AVS Investments, LLC  
**Agents:** none

**REQUEST:**

The applicant, Will Gainey, is requesting a special use permit to allow outdoor storage in association with outdoor repair on a .24 acre parcel in the B-2 General Business zoning district.

**PROJECT LOCATION:** 440 East Market Street (corner of Market and 5<sup>th</sup> Streets)

**SITE DATA:**

**Acreage:** .24 acres  
**Present Zoning:** B-2 (General Business)  
**Proposed Zoning:** N/A  
**Existing Use:** Automotive Repair  
**Proposed Use:** Automotive Repair  
**Water Service:** Town of Smithfield  
**Sewer Service:** Town of Smithfield  
**Electrical Service:** Town of Smithfield

**ADJACENT ZONING AND LAND USES:**

North:	Zoning	Existing Use
	B-2 General Business	First Citizens Bank
South:	O/I – Office Institutional	Police Station
West:	B-2 General Business	Hopkins Carpet - Retail
East:	B-2 General Business	Wood Termite and Pest Control Business

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**ENVIRONMENTAL:** There does not appear to be any environmentally sensitive areas on the property considered for a special use permit to include flood plains, designated wetlands or watershed protected areas.

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**STAFF ANALYSIS AND COMMENTARY:**

The applicant owns Market Street Automotive which is an auto repair business in an old traditional service gas station on .24 acres in the heart of the Smithfield downtown, located at the corner of E. Market Street and 5<sup>th</sup> Street. The applicant operates an automobile repair business on the property and the applicant plans to expand the number of service bays in order to keep up with demand. The applicant is proposing a 30 ft. x 50 ft. addition in the rear of the building. The addition is large enough to trigger the threshold for compliance with Article 10, Part 1 Off-street Parking & Off-street Loading Requirements and Article 10, Part 2 Landscape requirements of the UDO. The applicant has received a variance from the Board of Adjustments on July 26, 2018 to encroach into the landscape yards with parking, a variance from the required landscape yard requirement, and a 3.9' variance from the 15' rear yard setback.

The property currently has a two service doors for auto repair services and a lobby area. There are two service doors facing Market Street and two facing the alley behind the property. The entire property is impervious with bituminous and concrete paving up to the sidewalks in the public right-of-way and the alley in the rear of the property. An existing nonconforming metal carport canopy is located between the existing building and the Hopkins Carpet building. Removal of this carport was a condition of the variance and shall be a recommended condition of approval for the special use permit.

Current driveway access to the site is from one 45' curbcut on Market Street and a 30' and 10' curbcut on 5<sup>th</sup> Street and alley access the full width of the property (79.91'). A condition of the variance approval was that the 30' 5<sup>th</sup> Street access be closed and the curbing and boulevard be replaced because of its close proximity to the intersection and for safety reasons.

The applicant is proposing 5 parking stalls for guests, one of which will be a handicap accessible stall. The existing overhead canopy will remain and two of the parking stalls will be located under the canopy. The applicant is proposing vehicle storage in association with the auto repair business which requires an approved special use permit. The vehicle storage area is proposed as a 19'.5 x 50' fenced and screened area between the new addition and the adjacent Hopkins Carpet building. In a screened enclosure, the parks can be parked in close to each other rather than in a standard striped parking stall, saving space on such a small property.

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## **FINDINGS OF FACT** (*Staff findings in Bold Italic*)

1. The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, or general welfare. *The land use, outdoor storage in association with auto repair, will be in a paved storage area entirely screened from the public view and located between the proposed structure and the adjacent business building and will therefore, not be a deterrent to the public, health, safety or welfare.*
2. The special use will be in harmony with the existing development and uses within the area in which it is to be located. *The land use is an improvement the existing auto repair business in that the parking will be regulated or limited such that vehicles will need to be either within the building, in the outdoor vehicle storage area screened from the public, or in designated parking stalls, therefore in harmony with the area.*
3. The establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district. *The land use will have no impact on the orderly development or improvement to the area. In fact, the one of the driveways on 5<sup>th</sup> Street will be closed lessening the impact on the normal and orderly development of the district.*
4. Adequate utilities, access roads, drainage, parking, or necessary facilities have been or are being provided. *Adequate utilities and parking exist and will be provided, and drainage will remain unchanged (exempt from drainage requirements.*
5. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets. *There are adequate means of ingress and egress. The driveway on 5<sup>th</sup> Street closest to the Market Street intersection will be closed.*
6. The special use shall, in all other respects, conform to all the applicable regulations of the district in which it is located. *Yes, all regulations have been conformed with, or a variance from them have been approved.*
7. Public access shall be provided in accordance with the recommendations of the Town's land use plan and access plan or the present amount of public access and public parking as exists within the Town now. If any recommendations are found to conflict, the system requiring the greatest quantity and quality of public access, including parking, shall govern. *The access conforms to plans.*
8. The proposed use will be in conformity with the land use plan, thoroughfare plan, or other plan officially adopted by the Town Council. *The access conforms to plans.*

**PLANNING DEPARTMENT RECOMMENDATIONS:**

The Planning Department recommends approval of the request for a special use permit to allow outside storage in association with auto repair with the following conditions:

1. That the five parking stalls be striped according to the lot survey dated 06-11-18.
  2. That the vehicle storage area be fenced and screened from public view.
  3. That no more than (5) vehicles be parked outside on the property except for vehicles parked in the fenced/screened outdoor storage area.
  4. That the metal carport be removed from the property.
  5. That the driveway on 5th Street nearest the intersection be closed and the landscape boulevard and curbing be restored according to Town of Smithfield Standards.
- 

**TOWN COUNCIL ACTION REQUESTED:**

The Smithfield Town Council is requested to review the petition for a special use permit to allow outside storage in association with auto repair, SP-18-09, hold a public hearing and make a decision in accordance with the finding of fact for a conditional use permit.

**Town of Smithfield  
Special Use Permit Application  
Finding of Fact / Approval Criteria**

**Application Number:** SUP-18-09    **Name:** Market Street Automotive

**Request:** Applicant seeks a special use permit for outside storage in association with auto repair.

In approving an application for a special use permit in accordance with the principles, conditions, safeguards, and procedures specified herein, the Town Council may impose reasonable and appropriate conditions and safeguards upon the approval. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the Town Council. The Town Council shall include in its comments a statement as to the consistency of the application with the Town's currently adopted Comprehensive Plan. The applicant has the burden of producing competent, substantial evidence tending to establish the facts and conditions which the below requires.

The Town Council shall issue a special use permit if it has evaluated an application through a quasi-judicial process and determined that:

1. The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, or general welfare.
2. The special use will be in harmony with the existing development and uses within the area in which it is to be located.
3. The establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
4. Adequate utilities, access roads, drainage, parking, or necessary facilities have been or are being provided.
5. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
6. The special use shall, in all other respects, conform to all the applicable regulations of the district in which it is located.
7. Public access shall be provided in accordance with the recommendations of the Town's land use plan and access plan or the present amount of public access and public parking as exists within the Town now. If any recommendations are found to conflict, the system requiring the greatest quantity and quality of public access, including parking, shall govern.
8. The proposed use will be in conformity with the land use plan, thoroughfare plan, or other plan officially adopted by the Town Council.

**Once all findings have been decided one of the two following motions must be made:**

**Motion to Approve:** *Based upon satisfactory compliance with the above stated findings and fully contingent upon acceptance and compliance with all conditions as previously noted herein and with full incorporation of all statements and agreements entered into the record by the testimony of the applicant and applicant's representative, I move to approve Special Use Permit Application # SUP-18-09 with the following condition:*

1. That the five parking stalls be striped according to the lot survey dated 06-11-18.
2. That the vehicle storage area be fenced and screened from public view.
3. That no more than (5) vehicles be parked outside on the property except for vehicles parked in the fenced/screened outdoor storage area.
4. That the metal carport be removed from the property.
5. That the driveway on 5th Street nearest the intersection be closed and the landscape boulevard and curbing be restored according to Town of Smithfield Standards.

**Motion to Deny:** *Based upon failure to meet all of the above stated findings and for reasons stated therein, I move to deny Special Use Permit Application # SUP-18-09 for the following stated reason:*

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**Record of Decision:**

**Based on a motion and majority vote of the Town of Smithfield Town Council for the Special Use Permit Application Number SUP-18-09 is hereby:**

\_\_\_\_\_ **approved upon acceptance and conformity with the following conditions:**

1. That the five parking stalls be striped according to the lot survey dated 06-11-18.
2. That the vehicle storage area be fenced and screened from public view.
3. That no more than (5) vehicles be parked outside on the property except for vehicles parked in the fenced/screened outdoor storage area.
4. That the metal carport be removed from the property.
5. That the driveway on 5th Street nearest the intersection be closed and the landscape boulevard and curbing be restored according to Town of Smithfield Standards.

\_\_\_\_\_ **denied for the noted reasons.**

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**Decision made this 7<sup>th</sup> day of August, 2018 while in regular session.**



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**M. Andy Moore, Mayor**

**ATTEST:**

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**Shannan L. Parrish, Town Clerk**



Town of Smithfield  
 Planning Department  
 350 E. Market St Smithfield, NC 27577  
 P.O. Box 761, Smithfield, NC 27577  
 Phone: 919-934-2116  
 Fax: 919-934-1134

**SPECIAL USE PERMIT APPLICATION**

*Pursuant to Article 4, of the Town of Smithfield Unified Development Ordinance, an owner of land within the jurisdiction of the Town (or a duly authorized agent) may petition the Town Council to allow a Special Use. Special Uses are uses that may be appropriate in a particular district, but has the potential to create incompatibilities with adjacent uses.*

*Special Use Permit applications must be accompanied by nine (9) sets of the application, nine (9) sets of required plans and one (1) digital copy of all required documents, an Owner's Consent Form (attached) and the application fee. The application fee is \$300.60. All fees are due when the application is submitted.*

**SITE INFORMATION**

Name of Project: Market Street Automotive Acreage of Property: 1/4 acre  
 Parcel ID Number: 5008045J Tax ID: 15025063  
 Deed Book: 05134 Deed Page(s): 0155  
 Address: 440 E. Market St., Smithfield, NC 27577  
 Location: Corner of 5th Street and Market Street

Existing Use: Auto Mechanic Shop Proposed Use: Auto Mechanic Shop  
 Existing Zoning District: B2 Commercial

Is project within a Planned Development: Yes No  
 Planned Development District (if applicable): N/A  
 Is project within an Overlay District: Yes No  
 Overlay District (if applicable): N/A

**FOR OFFICE USE ONLY**

File Number: \_\_\_\_\_ Date Submitted: \_\_\_\_\_ Date Received: \_\_\_\_\_ Amount Paid: \_\_\_\_\_

**OWNER INFORMATION:**

Name: AVS Investments LLC

Mailing Address: 440 E. Market St., Smithfield, NC 27577

Phone Number: 919-300-1201

Fax:

Email Address: autovalueofsmithfield@hotmail.com

**APPLICANT INFORMATION:**

Applicant: (Same as owner)

Mailing Address:

Phone Number:

Fax:

Contact Person: William Gainey

Email Address:

**STATEMENT OF JUSTIFICATION**

*Please provide detailed information concerning all requests. Attach additional sheets if necessary.*

A special use permit is requested simply to allow more vehicles to be on our site in a fenced in "vehicle storage" area versus legal parking spaces. This will allow us to be in compliance with parking requirements and at the same time, move all finished vehicles to this "storage" area. The storage area will meet all requirements in terms of appearance, safety, etc. Due to the size of our parcel, legal parking places are limited. This SUP will allow us to run our business as efficiently as possible while still keeping the parcel as organized as clean as possible. Less cars will be seen by the general public because they will be fenced in. Overall looks of the property will greatly improve.

## REQUIRED FINDING OF FACT

*Article 4 of the Town of Smithfield Unified Development Ordinance requires applications for a Special Use Permit to address the following findings. The applicant has the burden of producing competent, substantial evidence tending to establish the facts and conditions which this section requires. The Town Council shall issue a special use permit if it has evaluated an application through a quasi-judicial process and determined that:*

- 1) The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, or general welfare.  
The SUP requested will not endanger anyone or anything. We are simply requesting the SUP due to the size of our parcel and our need for more indoor space. The SUP will allow us to expand and still meet parking requirements by allowing us a "vehicle storage" area where only employees will be allowed.
- 2) The special use will be in harmony with the existing development and uses within the area in which it is to be located.  
The SUP requested will allow us to keep vehicles in an enclosed area where they will not be seen by the general public. The SUP will also allow us to expand. Our proposed expansion will be in harmony with our adjacent neighboring properties and will only improve the looks of our corner and parcel.
- 3) The establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.  
Being located on the corner of 5th and Market, any neighboring properties will not be affected now or in the future by our requested SUP. The SUP is going to be used solely on our parcel and will have no affect on neighbors or the general public.
- 4) Adequate utilities, access roads, drainage, parking, or necessary facilities have been or are being provided.  
The SUP will allow us to store cars in a fenced in location. Utilities, access, drainage, and/or necessary facilities will be provided and/or installed as needed
- 5) Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.  
Our SUP request will not affect traffic on either 5th, Market, or the alley on the back side of our parcel. Only two employees are at this location so we will be certain traffic congestion isnt an issue now and also be sure that it never becomes an issue.
- 6) The special use shall, in all other respects, conform to all the applicable regulations of the district in which it is located.  
The SUP will solely allow us to store vehicles. The provided storage area will however meet all regulations and requirements in regards to appearance, etc.
- 7) Public access shall be provided in accordance with the recommendations of the Town's land use plan and access plan or the present amount of public access and public parking as exists within the Town now. If any recommendations are found to conflict, the system requiring the greatest quantity and quality of public access, including parking, shall govern.  
This SUP will not effect the amount of public parking spaces. It will however allow us to use what parking we have for new customers and allow finished vehicles to be in storage.
- 8) The proposed use will be in conformity with the land use plan, thoroughfare plan, or other plan officially adopted by the Town Council.  
The SUP requested will conform with all plans adopted by the Town Council and/or the county. We understand that any regulations as far as appearance, safety, etc will still apply to this area/SUP and we will make sure that we comply with all said rules and regulations.

## REQUIRED SITE PLAN INFORMATION

*Article 5 of the Town of Smithfield Unified Development Ordinance requires a site plan be prepared by a professional engineer, registered land surveyor, or licensed architect and shall be drawn to scale of not less than one inch equals 30 feet. The site plan shall be based on the latest tax map information and shall be of a size as required by each individual site plan. The site plan shall contain the following information, if applicable as determined by the UDD Administrator:*

- 1) A key map of the site with reference to surrounding areas and existing street locations.
- 2) The name and address of the owner and site plan applicant, together with the names of the owners of all contiguous land and of property directly across the street as shown by the most recent tax records.
- 3) Parcel Identification Numbers (PIN) for site and adjacent properties.
- 4) Deed book and page reference demonstrating ownership of property.
- 5) Location of all existing and proposed structures, including their outside dimensions and elevations, streets, entrances, and exits on the site, on contiguous property, and on property directly across the street.
- 6) Building setback, side line, and rear yard distances.
- 7) Location of watercourses, ponds, flood zones, water supply watershed areas, and riparian buffers.
- 8) All existing physical features, including existing trees greater than eight (8) inches in diameter measured four and one-half (4.5) feet above ground level, and significant soil conditions.
- 9) Topography showing existing and proposed contours at no greater than ten (10) foot intervals. All reference benchmarks shall be clearly designated.
- 10) The zoning of the property, including zoning district lines where applicable.
- 11) Lot line dimensions and property lines of the tract to be developed (with dimensions identified), adjacent property lines (including corporate limits, Town boundaries, and county lines).
- 12) Parking, loading, and unloading areas shall be indicated with dimensions, traffic patterns, access aisles, and curb radii per the requirements of Article 10, Part I.
- 13) Types of surfaces for drives, sidewalks, and parking areas.
- 14) Location and design of existing and proposed sanitary waste disposal systems, water mains and appurtenances (including fire hydrants) on or adjacent to the parcel.
- 15) Other utility lines both under- and above-ground, including electric power, telephone, gas, cable television.
- 16) Location of all US Clean Water Act Section 404 wetland areas, located of detention/retention ponds (Best Management Practices), riparian buffers and impervious surface areas with area dimensions, and ratios of impervious surface to the total size of the lot.
- 17) The location of all common areas.
- 18) The location and dimensions of all areas intended as usable open space, including all recreational areas. The plans shall clearly indicate whether such open space areas are intended to be offered for dedication to public use or to remain privately owned.
- 19) Landscaping and buffering plan showing what will remain and what will be planted, indicating names of plants, trees, and dimensions, approximate time of planting, and maintenance plans per the requirements of Article 10, Part II. The plan shall include the tree line of wooded areas and individual trees eight (8) inches in diameter or more, identified by common or scientific name.
- 20) Proposed site lighting.

**APPLICANT AFFIDAVIT**

*I/We, the undersigned, do hereby make application and petition to the Town Council of the Town of Smithfield to approve the subject Special Use Permit. I hereby certify that I have full legal right to request such action and that the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the Planning Department of the Town of Smithfield, North Carolina, and will not be returned.*

*William T Gurney*  
Print Name

*[Handwritten Signature]*  
Signature of Applicant

*07/18/18*  
Date

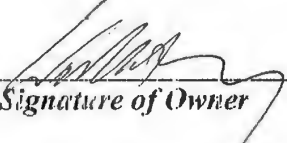
# OWNER'S CONSENT FORM

Name of Project: Market Street Automobile Submittal Date: 7/18/18

## OWNERS AUTHORIZATION

I hereby give CONSENT to Jerry Ball Land Surveying (type, stamp or print clearly full name of agent) to act on my behalf, to submit or have submitted this application and all required material and documents, and to attend and represent me at all meetings and public hearings pertaining to the application(s) indicated above. Furthermore, I hereby give consent to the party designated above to agree to all terms and conditions which may arise as part of the approval of this application.

I hereby certify I have full knowledge the property I have an ownership interest in the subject of this application. I understand that any false, inaccurate or incomplete information provided by me or my agent will result in the denial, revocation or administrative withdrawal of this application, request, approval or permits. I acknowledge that additional information may be required to process this application. I further consent to the Town of Smithfield to publish, copy or reproduce any copyrighted document submitted as a part of this application for any third party. I further agree to all terms and conditions, which may be imposed as part of the approval of this application.

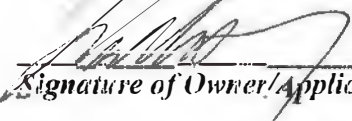
  
Signature of Owner

William T Garry  
Print Name

07/18/18  
Date

## CERTIFICATION OF APPLICANT AND/OR PROPERTY OWNER

I hereby certify the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the Planning Department of the Town of Smithfield, North Carolina, and will not be returned.

  
Signature of Owner/Applicant

William T Garry  
Print Name

07/18/18  
Date

## FOR OFFICE USE ONLY

File Number: \_\_\_\_\_ Date submitted: \_\_\_\_\_ Date received: \_\_\_\_\_

**LEGEND**

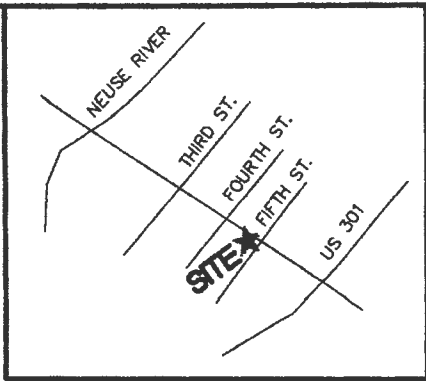
BC BACK OF CURB  
 EIS EXISTING IRON STAKE  
 ECM EXISTING CONCRETE MONUMENT  
 EX. EXISTING  
 R/W RIGHT-OF-WAY  
 CL CENTERLINE

PARCEL #5008045J

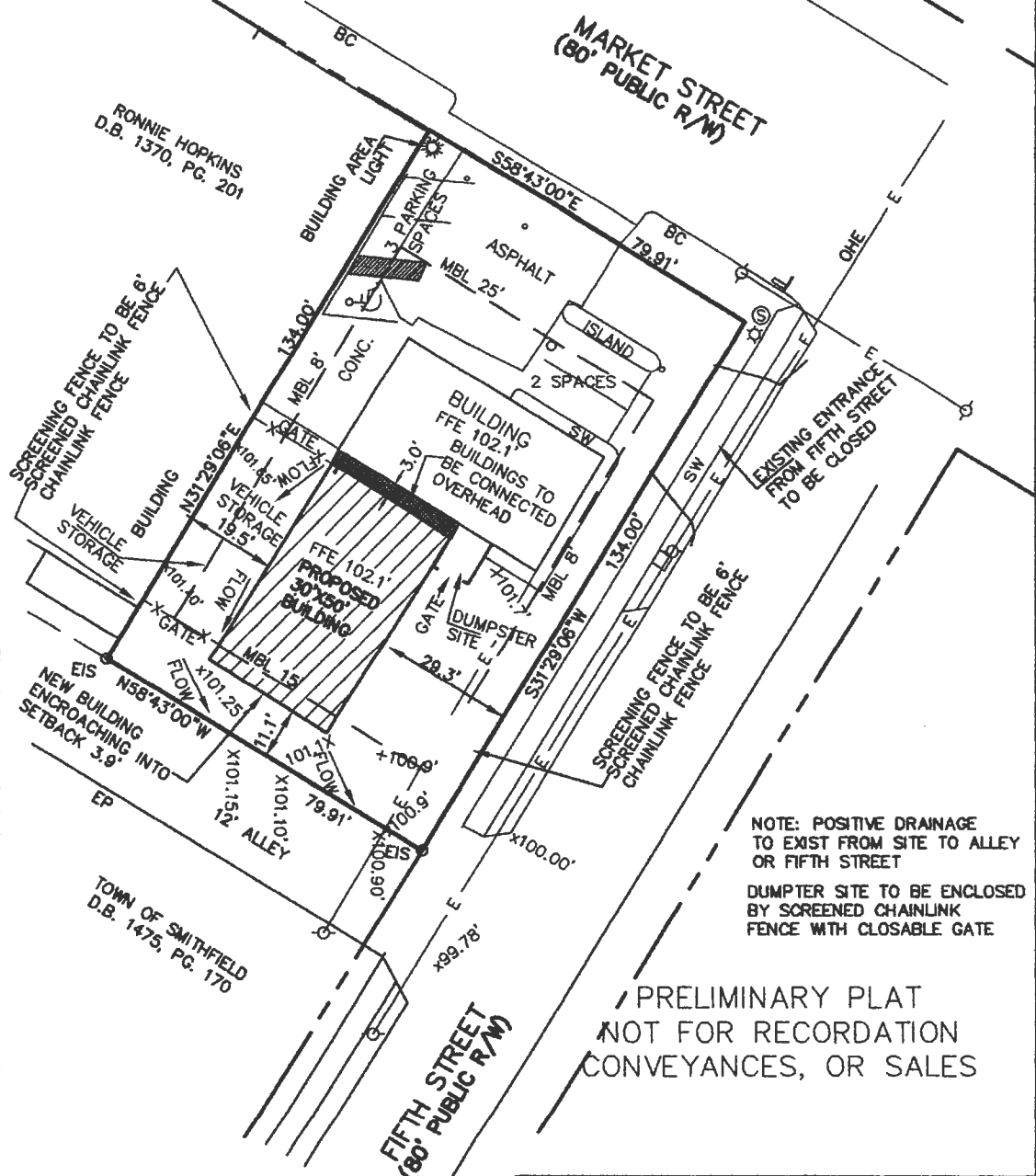
SITE ADDRESS:  
 735 INDUSTRIAL PARK DRIVE  
 SMITHFIELD, NC 27577

ZONING - B-2  
 SETBACKS FRONT 25'  
 SIDES 8'  
 REAR 15'

THIS PLAT DOES NOT CONFORM TO  
 NCGS 47-30 AND IS NOT INTENDED  
 FOR RECORDATION.



VICINITY MAP  
 (NO SCALE)



NOTE: POSITIVE DRAINAGE  
 TO EXIST FROM SITE TO ALLEY  
 OR FIFTH STREET  
 DUMPTER SITE TO BE ENCLOSED  
 BY SCREENED CHAINLINK  
 FENCE WITH CLOSABLE GATE

PRELIMINARY PLAT  
 NOT FOR RECORDATION  
 CONVEYANCES, OR SALES



PROPOSED BUILDING FOR  
WILL GAINY

JERRY BALL LAND SURVEYING, P.C.  
 205 S. POLLOCK ST.  
 SELMA, N. C. 27576  
 (919) 965-0077

TOWN OF SMITHFIELD JOHNSTON COUNTY  
 NORTH CAROLINA  
 SCALE: 1" = 50' DATE: 06-11-18





# Request for Town Council Action

**Ladder  
Public Fire Truck  
Hearing: Financing  
- USDA**  
Date: 08/07/2018

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**Subject:** Ladder Fire Truck Public Hearing  
**Department:** Finance  
**Presented by:** Greg Siler  
**Presentation:** Public Hearing

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**Issue Statement:** Hold a Public Hearing and Consider Authorizing the Filing of an Application with the United States Department of Agriculture (USDA) for Installment Financing to purchase a 100 foot Aerial Platform Ladder Fire Truck

**Financial Impact:** The interest expense on \$1,126,105 over 20 years with semi-annual payments, at an indicative rate of 3.88 % is \$503,594. Total repayment of principal and interest is \$1,629,699.

**Action Needed:** Conduct the Public Hearing, receive and consider input from interested citizens regarding the financing of this project.

**Recommendation:** N/A

Approved:  Town Manager  Town Attorney

Attachments: 1. Amortization Schedule

**Note: the attached amortization schedule is for estimation purposes only and is not an offer or commitment from any lending institution.**



# Staff Report

**Public Hearing: Ladder Fire Truck Financing - USDA**

The Town of Smithfield is considering financing the purchase of a 100 foot aerial platform ladder fire truck and USDA is being considered as a possible financing option. As required by the USDA the Town must hold a public hearing to receive and consider public input from interested citizens regarding the financing of this project.

The loan amount is approximately \$1,126,105. Using an indicative interest rate of **3.88%** for **20 years** and **semi-annual estimated payments of \$40,716** or \$81,432 annually, total repayment would be \$1,629,699. **A summary of the project's estimated annual payments (closing cost not included) are found in the table below.**

<b>Loan Amount</b>	<b>Annual Debt Payment</b>	<b>Years</b>
\$1,126,105	\$81,432	1 thru 20

For illustrative purposes only, the impact on property rates to cover the annual debt service is approximately one cent. This estimate is for informational and reference purposes in evaluating the potential impact of this **project on the town's budget and financial condition.**  
Note: **This project is included in the Town's annual Capital Improvements Plan (CIP).**

## Amortization Schedule

Principal: \$1,126,105.00				
Interest Rate: 3.88%				
Payment Interval: Semi-Annually				
# of Payments: 40				
Payment: \$40,715.73				
<b>Schedule of Payments</b>				
Please allow for slight rounding differences.				
Pmt #	Payment	Principal	Interest	Balance
1	\$40,715.73	\$18,869.29	\$21,846.44	\$1,107,235.71
2	\$40,715.73	\$19,235.36	\$21,480.37	\$1,088,000.35
Year 1		\$38,104.65	\$43,326.81	
3	\$40,715.73	\$19,608.52	\$21,107.21	\$1,068,391.83
4	\$40,715.73	\$19,988.93	\$20,726.80	\$1,048,402.90
Year 2		\$39,597.45	\$41,834.01	
5	\$40,715.73	\$20,376.71	\$20,339.02	\$1,028,026.19
6	\$40,715.73	\$20,772.02	\$19,943.71	\$1,007,254.17
Year 3		\$41,148.73	\$40,282.73	
7	\$40,715.73	\$21,175.00	\$19,540.73	\$986,079.17
8	\$40,715.73	\$21,585.79	\$19,129.94	\$964,493.38
Year 4		\$42,760.79	\$38,670.67	
9	\$40,715.73	\$22,004.56	\$18,711.17	\$942,488.82
10	\$40,715.73	\$22,431.45	\$18,284.28	\$920,057.37
Year 5		\$44,436.01	\$36,995.45	
11	\$40,715.73	\$22,866.62	\$17,849.11	\$897,190.75
12	\$40,715.73	\$23,310.23	\$17,405.50	\$873,880.52
Year 6		\$46,176.85	\$35,254.61	
13	\$40,715.73	\$23,762.45	\$16,953.28	\$850,118.07
14	\$40,715.73	\$24,223.44	\$16,492.29	\$825,894.63
Year 7		\$47,985.89	\$33,445.57	
15	\$40,715.73	\$24,693.37	\$16,022.36	\$801,201.26
16	\$40,715.73	\$25,172.43	\$15,543.30	\$776,028.83
Year 8		\$49,865.80	\$31,565.66	
17	\$40,715.73	\$25,660.77	\$15,054.96	\$750,368.06
18	\$40,715.73	\$26,158.59	\$14,557.14	\$724,209.47
Year 9		\$51,819.36	\$29,612.10	
19	\$40,715.73	\$26,666.07	\$14,049.66	\$697,543.40
20	\$40,715.73	\$27,183.39	\$13,532.34	\$670,360.01
Year 10		\$53,849.46	\$27,582.00	
21	\$40,715.73	\$27,710.75	\$13,004.98	\$642,649.26
22	\$40,715.73	\$28,248.33	\$12,467.40	\$614,400.93
Year 11		\$55,959.08	\$25,472.38	

	23	\$40,715.73	\$28,796.35	\$11,919.38	\$585,604.58
	24	\$40,715.73	\$29,355.00	\$11,360.73	\$556,249.58
Year 12			\$58,151.35	\$23,280.11	
	25	\$40,715.73	\$29,924.49	\$10,791.24	\$526,325.09
	26	\$40,715.73	\$30,505.02	\$10,210.71	\$495,820.07
Year 13			\$60,429.51	\$21,001.95	
	27	\$40,715.73	\$31,096.82	\$9,618.91	\$464,723.25
	28	\$40,715.73	\$31,700.10	\$9,015.63	\$433,023.15
Year 14			\$62,796.92	\$18,634.54	
	29	\$40,715.73	\$32,315.08	\$8,400.65	\$400,708.07
	30	\$40,715.73	\$32,941.99	\$7,773.74	\$367,766.08
Year 15			\$65,257.07	\$16,174.39	
	31	\$40,715.73	\$33,581.07	\$7,134.66	\$334,185.01
	32	\$40,715.73	\$34,232.54	\$6,483.19	\$299,952.47
Year 16			\$67,813.61	\$13,617.85	
	33	\$40,715.73	\$34,896.65	\$5,819.08	\$265,055.82
	34	\$40,715.73	\$35,573.65	\$5,142.08	\$229,482.17
Year 17			\$70,470.30	\$10,961.16	
	35	\$40,715.73	\$36,263.78	\$4,451.95	\$193,218.39
	36	\$40,715.73	\$36,967.29	\$3,748.44	\$156,251.10
Year 18			\$73,231.07	\$8,200.39	
	37	\$40,715.73	\$37,684.46	\$3,031.27	\$118,566.64
	38	\$40,715.73	\$38,415.54	\$2,300.19	\$80,151.10
Year 19			\$76,100.00	\$5,331.46	
	39	\$40,715.73	\$39,160.80	\$1,554.93	\$40,990.30
	40	\$41,785.51	\$40,990.30	\$795.21	\$0.00
Year 20			\$80,151.10	\$2,350.14	
<b>Grand Total</b>			<b>\$1,126,105.00</b>	<b>\$503,593.98</b>	

# Consent Agenda Items

the 1990s, the number of people with diabetes has increased in all industrialized countries. In the Netherlands, the prevalence of diabetes is estimated to be 10% in 2000, and is expected to rise to 15% by 2020 (1).

Diabetes is a chronic disease with a high prevalence and a high burden of morbidity and mortality. The most common complications of diabetes are cardiovascular disease, nephropathy, retinopathy, and neuropathy. The prevalence of these complications is high, and the burden of morbidity and mortality is high. The most common cause of death in people with diabetes is cardiovascular disease (2).

The prevalence of diabetes is increasing in all industrialized countries. In the Netherlands, the prevalence of diabetes is estimated to be 10% in 2000, and is expected to rise to 15% by 2020 (1). The prevalence of diabetes is also increasing in developing countries. In India, the prevalence of diabetes is estimated to be 10% in 2000, and is expected to rise to 15% by 2020 (3).

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The Smithfield Town Council met in regular session on Tuesday, July 10, 2018 at 7:00 p.m. in the Council Chambers of the Smithfield Town Hall, Mayor M. Andy Moore presided.

Councilmen Present:

Travis Scott, Mayor Pro-Tem  
Marlon Lee, District 1  
Dr. David Barbour, District 4  
Emery Ashley, At-Large  
John A. Dunn, At-Large  
Stephen Rabil, At-Large

Councilmen Absent

David Stevens, District 2

Administrative Staff Present

Michael Scott, Town Manager  
John Blanton, Fire Chief  
Lenny Branch, Public Works Director  
Ted Credle, Public Utilities Director  
Gary Johnson, Parks & Rec Director  
Tim Kerigan, Human Resources/PIO  
Shannan Parrish, Town Clerk  
R. Keith Powell, Chief of Police  
Greg Siler, Finance Director  
Stephen Wensman, Planning Director

Present:

Bob Spence, Town Attorney  
Bill Dreitzler, Town Engineer

Administrative Staff Absent

**CALL TO ORDER**

Mayor Moore called the meeting to order at 7:00.

**INVOCATION**

The invocation was given by Mayor Pro-Tem Scott followed by the Pledge of Allegiance lead by member of Boy Scout Troop 77.

**APPROVAL OF AGENDA:**

Councilman Ashley made a motion, seconded by Councilman Rabil, to amend the agenda as follows:

- Add to the Consent Agenda Item # 11: Special Event: Riders for Rescues from 1:00 pm until 3:00 pm at 1043 Outlet Center Drive.

Unanimously approved.

**PRESENTATIONS:**

**1. Presentation by USDA Rural Development for the Awarding of the Rural Business Development Grant in the amount of \$99,256 for the Wayfinding Project**

Town Manager Michael Scott informed the Council the Town had been awarded a grant from USDA for the Wayfinding Project. He commended DSDC Executive Director Sarah Edwards for her hard work in securing this grant on behalf of the Town.

USDA Representative Brian Queen explained that USDA sent a letter of conditions and grant agreement to the Town. This project will allow the Town to put wayfinding signage throughout the Town. The Town has contributed \$104,000 match into the project. This project will continue to attract small businesses in downtown. This yearlong grant will allow the Town to access funds needed to ensure that the wayfinding project is completed.

Councilman Ashley made a motion, seconded by Councilman Rabil, to accept the USDA grant in the amount of \$99,256. Unanimously approved.

**2. Recognition of Master Police Officer Jordan Cutchins for obtaining the Advanced Law Enforcement Certification from the North Carolina Education and Training Standards Commission.**

Captain Grady informed the Council that Officer Cutchins had received his Advanced Law Enforcement Certificate from the North Carolina Education and Training and Standards Commission. Officer Cutchins joined sixteen other members of the Smithfield Police Department that have received this specific recognition. Applications have to be submitted to Training and Standards then are approved by the Board of Commissioners. This certificate program allows dedicated officers to receive statewide recognition for education, professional training and on the job experience.

Officer Cutchins holds a Bachelors Degree in Criminal Justice and Criminology from Mount Olive College. Officer Cutchins with his four year degree needed an additional 24 training points (480 hours of training) as well as 6 years of continuous law enforcement service to obtain this certificate. Officer Cutchins has been with the Smithfield Police Department for ten years. He has worked on patrol during his career and has served the Department as a K-9 handler. Officer Cutchins also served four years in the Marine Corps and proudly served two tours in Iraq.

Mayor Moore, Chief of Police R. Keith Powell and Captain Grady presented Officer Cutchins with a framed Advanced Law Enforcement Certificate

**3. Acceptance of the North Carolina Department of Environmental Quality Division of Water Resources award, signifying that the Town of Smithfield Water Plant received the 2017 Area Wide Optimization Award.**

Tiffany Holly representing the North Carolina Department of Environmental Quality presented Public Utilities Director Ted Credle and Water Plant Superintendent Dale Boyette with the 2017 Area Wide Optimization Award.

**PUBLIC HEARINGS:**

Town Clerk Shannan Parrish administered affirmations to those that wished to offer testimony during the Public Hearing.

- 1. Special Use Permit Request – Baldovinos Event Space (SUP-18-07):** The applicant was requesting a special use permit to construct and operate a public / private club on a 2.71 acre tract of land located within a B-3 (Highway Entrance Business) zoning district. The property considered for approval was located on the west side of the South Brightleaf Boulevard approximately 300 feet north of its intersection with Tyler Drive. The property is further identified as a Johnston County Tax ID# 15J11023A.

Councilman Dunn made a motion, seconded by Councilman Lee, to open the Public Hearing. Unanimously approved.

Mayor Moore asked Town Attorney Bob Spence to provide a brief explanation of the quasi-judicial proceedings. The Town Attorney explained the legislature has set up special or conditional uses. Special use applications allow the Council to determine if there would be adverse effects on the property or surrounding properties. There were four conditions that the Council must approve or deny. These conditions do not change, however additional conditions may be placed on the property to buffer adjacent properties. Buffering properties is used to allow inconsistent uses that would mitigate or decrease potential problems. Mr. Spence explained quasi-judicial proceedings and defined competent testimony. He further explained only an expert can testify to property values and increased traffic.



Planning Director Stephen Wensman testified that the applicant, Curry Engineering Group, PLLC, was requesting a special use permit for a private club / event center on property located within a B-3 (Highway Entrance Business) zoning district. The B-3 zoning district was the Town's most intensive zoning district. Currently, the property serves as a residential use which was permissible in the B-3 zoning district.

Mr. Wensman further testified the applicant was proposing the following: a 9300 sq. ft. facility with 108 parking stalls, an outdoor patio, a lateral parking lot connection to Holt Lake Barbeque, a stormwater facility located in the front of the property, site lighting in accordance with the UDO and sidewalk along the street. The applicant was proposing a type C landscape buffer comprised of a 10 foot wide planting yard and 6 foot high privacy fence adjacent to the residential zoned property to the north. A standard 15 foot street yard was proposed adjacent to South Brightleaf Boulevard.

Mr. Wensman described the proposed interior design with 6200 square feet of proposed open space and the proposed exterior design.

Mr. Wensman testified the use would require an NCDOT Access permit and would be subject to NCDOT review and conditions. A Traffic Impact Analysis was not required by the UDO. Mr. Wensman had a conversation with NCDOT about the existing center lane, but a deceleration lane maybe required. The applicant would have to meet any standards set by NCDOT.

Mr. Wensman testified that per the UDO, this use was considered an assembly use. For all assembly uses, parking is one space per every three fixed seats plus one space per three moveable seats. At this time, they have not proposed any seating. By using the one space per three fixed seats, it is the most restrictive standard.

The Planning Department recommended approval of the special use permit, SUP-18-07 with the following condition: Provide a site plan conforming with the UDO including adequate parking, landscaping and buffering to be approved and constructed prior to operating as a private club.

Planning Director Stephen Wensman has incorporated his entire record and provided it to Council in written form in the July 10, 2018 agenda packet

Mr. Wensman provided staff's recommendations to the Eight Finding of Fact. They are as follows:

1. The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, or general welfare.  
Staff Recommendation: No detrimental impact or endangerment to health, safety or welfare – use is buffered as required and access off of highway.
2. The special use will be in harmony with the existing development and uses within the area in which it is to be located.  
Staff Recommendation: B-3 zoning is most intensive district. Use is permitted with a special use permit.
3. The establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.  
Staff Recommendation: The use will have no impact on the development of other business uses in the district or adjacent to the site.
4. Adequate utilities, access roads, drainage, parking, or necessary facilities have been or are being provided.  
Staff Recommendation: Utilities, access, drainage and parking are being provided as required by the UDO.
5. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

Staff Recommendation: Requires an NCDOT Permit and will be subject to NCDOT requirements

6. The special use shall, in all other respects, conform to all the applicable regulations of the district in which it is located.

Staff Recommendation: The special use will conform to all applicable regulations with a valid permit.

7. Public access shall be provided in accordance with the recommendations of the Town's land use plan and access plan or the present amount of public access and public parking as exists within the Town now. If any recommendations are found to conflict, the system requiring the greatest quantity and quality of public access, including parking, shall govern.  
Staff Recommendation: The access conforms with plans

8. The proposed use will be in conformity with the land use plan, thoroughfare plan, or other plan officially

Staff Recommendation: The use is in conformity with plans adopted by the Town Council.

Mayor Moore asked if there were any questions from the Council.

Mayor Pro-Tem Scott questioned when the property was rezoned to B-3. Mr. Wensman responded that the Comprehensive plan was twenty years old and it has been zoned B-3 since possibly even before that time. Properties to the north east are zoned and used as residential.

Councilman Ashley questioned the permitted uses in a B-3 zoning district that do not require a special use permit. Mr. Wensman responded the following are permitted uses art galleries, auto part stores, auto service stations, beauty shops, car washes, rug dealers, commercial kennels, exterminating services, food stores, food trucks, gas stations, convenient stores, glass repairs locksmiths, pawn shops, repair shops, restaurants and any retail uses. Councilman Ashley further questioned why this use required a special use permit. Mr. Wensman responded a special use permit was required because it was being proposed as a private night club serving alcohol

Councilman Barbour questioned how the Council could deny a special use permit. Mr. Wensman responded that is any of the Eight Finding of Fact could not be met, the Council could deny the request. He also explained the Council could impose any reasonable conditions to lessen the impact of the adjacent properties. Councilman Barbour further questioned if the Town could require the applicant to complete a Traffic Impact Analysis. Mr. Wensman responded that it was not required. Town Attorney Bob Spence explained that the Town could not require the applicant to pay for the study to be completed.

Mayor Moore questioned if the current UDO allowed for event centers in the B-3 zoning district. Mr. Wensman responded that the code was silent on event centers, but there was an interpretation that if something was not specifically outlined in the code, Mr. Wensman could make a determination. Since the applicant was requesting full ABC permitting, the application had to come before the Council for approval as a special use.

Mayor Pro-Tem Scott asked for the definition of night club. Mr. Wensman explained that under the current UDO, this use would be classified as a private club or lodge. The ABC Commission legislates private clubs which means they are not open to the public. The ABC Commission was also the enforcing body for private clubs. Police are unable to enter the establishment without an invitation and Planning staff cannot enter to monitor the use. The Fire Chief may enter the facility if there is a suspected fire hazard.

Mayor Moore questioned if the request was for a public or private establishment. Mr. Wensman responded that the intended use was for a private club.

Councilman Ashley questioned if the Town had been informed of the long range plan for the widening of US 301. Mr. Wensman responded that if there are plans to widen the road, he has not be informed, but if needed the NCDOT would ask for additional right of way from the property owner.

Mr. Wensman testified that the special use would run with the property meaning that if the Council approved the special use for a private club with alcohol sales then no matter who owned the property, they would be able to have the same type of establishment. Mr. Wensman further testified that if the owner doesn't comply with the UDO, the permit could be revoked. It would be difficult for staff to ascertain if the use was in compliance with the UDO because staff would not be permitted to enter the property without invitation.

Councilman Ashley questioned the number of establishments along US 301 that served alcohol. Town Manager Michael Scott responded only the restaurants served alcohol.

Mayor Pro-Tem Scott questioned the maximum occupancy for the intended use. Fire Chief John Blanton testified that per the fire code, occupancy was based on square footage. If the use was standing room only, then approximately 1100 people could occupy the space. If seating was installed, then approximately 390 people could occupy the space.

The application, Jarred Matthews of Curry Engineering Group, PLLC in Fuquay Varina, testified that the general use would be for an event center to hold weddings, birthday and club events. The owner felt it was necessary to be able to sell alcohol for these type of events. The owner was only proposing a night club or a high end restaurant in the event that there wasn't a market for an event center. At this time, no fixed seating was planned due to the nature of an event space. There would be moveable chairs and tables. There would be no noise from the outside patio area as no outdoor speakers would be installed. Mr. Matthews further testified that they will comply with any NCDOT requirements. The applicant was also willing to allow any reasonable conditions as a show of good faith.

Councilman Ashley questioned the proposed hours of operation. Mr. Matthews responded that he was willing to negotiate hours of operation.

Councilman Dunn questioned if the overall plan was to have an event center with the option of having a night club. This was the proposal because the investment was so large the owner still wanted to maintain cash flow. If the sole primary purpose was to rent the space would a liquor license be necessary. Mr. Matthews responded that it was their thought that a liquor license would be necessary. Mayor Moore questioned if the person renting the space could simply apply for a one time permit. Police Chief Keith Powell stated that a one time permit could be issued.

Mayor Pro-Tem Scott stated that the citizens in the area had to be considered and this proposed use would transfer to the next owner.

Mayor Moore stated if the request if was for a public/ private club; he found it hard to believe that it would be in harmony with the adjacent properties.

Mr. Wensman stated that he asked the applicant to consider reasonable conditions that could be placed on the permit and the applicant was now proposing a restaurant.

Councilman Ashley questioned how noise would be regulated. Mr. Wensman responded that the noise level would have to be metered at the property line with a noise meter.

Mayor Moore questioned if the Council could place a condition on the use that Town staff would be able to enter the facility at any time. Mr. Spence thought that would be a reasonable condition, but he would have to research it.

Councilman Ashley stated that this major concern was the alcohol being served. There were many venues throughout the county that required a one time permit.

Mayor Moore asked the applicant if he was in agreement with the testimony provided by Mr. Wensman. The applicant, Jarred Matthews, testified he was in agreement with the testimony offered by Mr. Wensman.

Mayor Moore asked if there were any comments/questions from those that had been duly affirmed to offer testimony.

Michael Kane of 124 Quail Run stated his property was directly on the west side of the proposed event site. Mr. Kane stated that it appeared the plan changed in the middle of the meeting. It was his opinion that Finding of Fact 8 had not been met. He further stated that he did not want to hear all the noise that could be potentially generated from the proposed us.

Tony Andreola of 250 Lakepark Circle stated that he was speaking on behalf of some of the residents. Mr. Andreola explained the Holts Lake Communities were one of the most desirable residential areas in Smithfield. The character of the area attracted most of the residents to the area.. The proposal would have a negative effect on the tranquility of the community. It was Mr. Andreola's opinion that Smithfield needed better more stable neighborhoods and not more noise, traffic and litter. Mr. Andreola further stated that the potential risk would be increased by people who have been consuming alcohol then dangerously trying to navigate onto Brightleaf Blvd.

Johnny Shark of 470 County Club Road stated he was concerned about the safety and quality of life of his neighborhood. He expressed concerns about an increased amount of intoxicated drivers that would be departing from such an establishment

Elgie Griffin of 3340 US 301 expressed her concerns for the increased amount of noise and the potential for intoxicated persons trespassing on her property.

Kay Creech expressed her concerns about the increase in noise and light pollution. It was her opinion that this would not be best for the community.

Dennis Coffey, President of the Lakepark Circle Homeowner Association, explained he was speaking on behalf of the residential homeowners of properties immediately to the south of the proposed event center. The development was planned for an area of the highway that was already congested and a site of many accidents. The homeowners believed the proposed facility would aggravate an existing problem that already proved to be a safety hazard. The homeowners were concerned about the effect the event center would have on the environment of a quiet residential neighborhood which would cause a decline in property values. The homeowners purchased their residences specifically because of the nature of the surroundings. The homeowners oppose the granting of a permit and petitioned the council to consider the positions of a significant number oftax payers and preserve the very attributes which created a community in which very few people lived 30 years ago. Dr. Coffey questioned how the proposed facility could be in harmony with surrounding area. Dr. Coffey testified that he was a surgeon for forty years and he directed a trauma center for five year. As an expert, he stated that he had treated at least two people who had accidents in the curve near Holt Lake Barbeque. A curve, a poorly lit stretch of two lane road and 108 cars coming out of a facility serving alcohol was a dangerous combination. He urged the Council to consider denying this request.

Grover Dees of 62 Huntington Place explained that he was not an expert but merely a resident of the community. He stated that the traffic on 301 was already horrendous and the influx of traffic that an event center/ night club would create would only exacerbate the problem. He expressed his opposition to the planned use.

Linwood Parker, Mayor of the Town of Four Oaks, stated that the Town of Smithfield and the Town of Four Oaks have grown together at Holt Lake. He questioned if this was the highest and best use for the property. He further questioned if this proposed use was best for the area or should the Towns be looking for something that would enhance growth for both the Towns. He explained that any decision made tonight would still be in use thirty years from now. He asked the Town of Smithfield and the Town of Four Oaks to work together to make US 301 the entrance to the communities that both Towns desired it to be.

Kay Carroll of 1112 South lakeside Drive explained that traffic because of the flea market was already bad enough. He stated that the owner was potentially investing a million dollars on an event space, but Mr. Carroll did not feel that the owner would recoup his investment on simply providing an event facility. It was Mr. Carroll's opinion that this site was not appropriate or safe for such a venue.

Mayor Pro-Tem Scott made a motion, seconded by Councilman Barbour, to close the Public Hearing. Unanimously approved.

### **The Written Finding**

Mayor Pro-Tem Scott made a motion, seconded by Councilman Lee, to vote against findings 1, 2, 3, 6 and 8 below eight Findings of Fact. Unanimously approved.

The Town Council shall issue a special use permit if it has evaluated an application through a quasi-judicial process and determined that:

1. The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, or general welfare.
2. The special use will be in harmony with the existing development and uses within the area in which it is to be located.
3. The establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
4. Adequate utilities, access roads, drainage, parking, or necessary facilities have been or are being provided.
5. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
6. The special use shall, in all other respects, conform to all the applicable regulations of the district in which it is located.
7. Public access shall be provided in accordance with the recommendations of the Town's land use plan and access plan or the present amount of public access and public parking as exists within the Town now. If any recommendations are found to conflict, the system requiring the greatest quantity and quality of public access, including parking, shall govern.
8. The proposed use will be in conformity with the land use plan, thoroughfare plan, or other plan officially adopted by the Town Council.

### **Record of Decision: Denial of Special Use Permit Application Number SUP-18-07**

Councilman Ashley made a motion, seconded by Councilman Lee, that based upon not meeting Findings 1, 2, 3, 6 and 8, he moved to deny Special Use Permit Application SUP-18-07. Unanimously approved.

The Council recessed the meeting from 8:49 until 8:55.

## **2. Community Development Block Grant**

Councilman Ashley made a motion, seconded by Mayor Pro-Tem Scott, to open the Public Hearing. Unanimously approved

Town Manager Michael Scott informed the Council the Town of Smithfield was interested in seeking funds from the State's Small Cities Community Development Block Grant Program (CDBG). The CDBG program was administered by the North Carolina Department of Commerce and the North

Carolina Department of Environment and Natural Resources. The State of North Carolina's CDBG Program permits grant funds to be used toward infrastructure projects that address health/safety needs (public water and sewer projects); neighbor revitalization needs (housing development, acquisition, disposition, clearance and remediation activities, relocation, public facilities (senior center, housing for homeless persons, housing or shelters for victims of domestic violence, transitional housing facility, community/neighborhood/ recreation facility, other), and public infrastructure or support Economic Development (public infrastructure; building demolition; and vacant building renovation) projects. Applications for Economic Development must show that in excess of 60% of the CDBG will benefit low or moderate-income persons through job creation or retention. Applications for other CDBG programs must show that funded activities: (1) will provide greater than a 50% benefit to low or moderate income persons; (2) benefit identified special need populations; (3) address health and safety needs; or (4) eliminate slum & blight.

The request included a grant proposal for Housing Rehabilitation which begins as a forgivable loan for the owner/occupied structures of low to moderate income families. The Town has enlisted the assistance of Skip Green to assist in authoring the grant. A portion of this process also requires us to enlist the assistance of a non-profit organization who has experience in administrating the grant and evaluating, scheduling, and inspecting repairs of houses that receive an individual award. As part of this process we must also create a housing selection committee. After meeting with representatives of Johnston, Lee, Harnett Community Action (JLHCA), staff believed they hold the necessary prerequisites and experience to fulfill this need. As part of grant submission approval, staff also requests approval of JLHCA to be used as our housing selection committee.

Skip Green explained that CDBG requires two public hearings and this was the first of the two. Mr. Green explained that all CDBG funding has to benefit low to moderate incomes. Since Johnston County is a tier three, the maximum the Town could receive was \$ 750,000 for community revitalization with at least 51% being low to moderate income.

Mayor Moore asked if there were any questions from the Council

Councilman Lee expressed his appreciation to Mr. Green. He also expressed his appreciation to Marie Watson of Johnston Lee Harnett Community Action and their partnership with the Town.

Councilman Barbour questioned if there was a targeted project for the grant. Mr. Green responded the housing rehabilitation would begin in the Belmont area. Town Manager Michael Scott stated it was the hope that this would be the beginning. It was the desire that once home rehabbing begun in a concerted effort, the Town would continue to receive grant funding to continue to improve the quality of homes in the area. Mr. Green stated that homes had to be owner occupied, meet the income level and the owner must be willing to participate in the program.

Councilman Ashley asked the Town Manager to explain some of the grants the Town has been awarded. The Town Manager responded that the Town was awards a \$70,000 grant from Golden Leaf for a stormwater plan. Also, a \$500,000 grant from Golden Leaf was awarded to extend a 16" water line down Durwood Stephenson Highway to help increase water flow to the west side of Smithfield.

Mayor Pro-Tem Scott made a motion, seconded by Councilman Dunn, to Close the Public Hearing. Unanimously approved

Councilman Ashley made a motion, seconded by Councilman Dunn to approve the submitting of the CDBG grant application and approval of Johnston Lee Harnett Community Action to be used as the Town's housing selection committee. Unanimously approved.

### **3. Resolution #619 (06-2018) Closing a Portion of North Second Street**

Councilman Dunn made a motion, seconded by Councilman Rabil, to open the public hearing. Unanimously approved.

Public Utilities Director Ted Credle addressed the Council on a request to close North 2nd Street

from the intersection of North Street and 2nd Street in a northeast direction until the roadway intersects with Hospital Road. The reason for the road closure was that this road closure was needed to facilitate the expansion of the Town's Water Plant. The Water Plant expansion would be an active work zone during construction and once completed, ingress & egress would be physically impossible due to the presence of newly constructed basins & tanks. The expansion was needed for existing and project growth and increased fire protection. Mr. Credle explained that certain structures would be constructed in the right away and the road will be impassible. By law, all land owner directly effected must be notified of the road closure. The Town of Smithfield were the effected landowners.

Mr. Credle further explained that the next steps were as follows: After public hearing, approve resolution to close portion of road, hire a surveyor to create a map of the closure, record map/deed at court house and close the road by September 1<sup>st</sup>.

Mayor Pro-Tem Scott stated he had met with citizens in the area and their concerns needed to be addressed before the Town took any additional actions. Some concerns expressed were as follows: alternatives to closing the road, funding if the project was over budget, alternate traffic routes and increased vehicle and pedestrian traffic

Clint Sena of 312 North Second Street informed the Council he resided one block from the water plant. One of the major concerns was that the water plant expansion had not been finalized or approved. It was Mr. Sena's opinion t the plan should be approved or denied before the road was officially closed. Another concern was the necessity to expand the water plant because if the capacity was already serving the community why was more capacity needed. It was his opinion that the water should be used to serve the Town and not Johnston County.

It was Councilman Barbour's recollection that on May 21<sup>st</sup> the Council approved the expansion of the water plant. Councilman Barbour also stated that at several meetings Mr. Credle thoroughly informed the Council of the plans for the water plant expansion

Town Manager Michael Scott directed the Town Clerk to read the follwing excerpt from the May 21, 2018 Budget Session Minutes.

*Councilman Ashley made a motion, seconded by Mayor Pro-Tem Scott, to submit an application to the Local Government Commission for the Water Plant Expansion Loan. Unanimously approved.*

*The Town Manager explained before the LGC would approve the loan, Council must approve the water plant expansion.*

*Mayor Pro-Tem Scott made a motion, seconded by Councilman Rabil, to expand the water plant. Unanimously approved.*

Councilman Ashley stated the Council has been discussing the expansion of the water plant for the past six years. The water plant was aging and needed to be upgraded and expanded.

Mr. Sena questioned if surplus water would be sent out of the Town. Councilman Ashley responded that the Town has a contract to sell water to Johnston County that has been in place for a very long time. Every gallon of water is sold to the County helped fund the expansion of the water plant.

Pam Lampe questioned if the Town desired more capacity simply to sell more water to the County. Councilman Ashley responded the expansion was necessary to prepare for growth.

Some citizens expressed concerns because they believed they were not informed of this project or the projected cost.

Mr. Credle explained that one of the earliest process was the Town had to submit an engineering report to the state. The report has already been reviewed twice. The engineering was based ion a sketched plan that was presented to Council in December and April. The state will grant approval based on the sketched plan. The engineering estimate was also approved by the state.

Billie Stevens questioned if this was the only alternative. Mr. Credle responded that it was the only alternative.

Someone asked where the greenway would be relocated. Mr. Credle responded the exact route had yet to be determined. The greenway cannot be permanently closed because it is a part of the Mountains to the Sea Trail.

Guy Lampe of 415 North Second Street explained there has always been a buffer between his property and the water plant. He did not want the nature trail relocated closer to his property. He explained that he did not want a dog park or a splash park at Talton field . He questioned if the Council wanted to close the road before there was a plan that all the neighbors could agree on.

Town Manager Michael Scott stated the closing of Second Street would have to occur. The Town had conceptual plans of keeping the soccer fields at Talton Park and another that change the park area.

John Branch of Third Street stated he didn't want the Council to do something the citizens were going to regret. He asked the Council to consider not moving forward with the project in the event that the cost estimates were much higher than anticipated or budgeted.

Mayor Moore explained that there were still a lot of hurdles to climb, but the Council had to start somewhere.

Mayor Moore asked Mr. Credle if he was 100% sure there are no other options for the placement of the water tanks and the expansion. Mr. Credle responded that with the way the topography fell, he was 100% sure that there were no other options. To the left, there was a blue line creek that the Town cannot go near. To the North, there were wetlands that cannot be harmed. To the South were residential properties and a cemetery. Mr. Credle explained that he only had one option and it was the best option because of the topography.

Councilman Barbour explained the Town had a timeline in which we can request to draw more water out of the river. If the Town doesn't take the additional allocation now, the County will take it. The Town would have to totally rely on someone else for the Town's future.

Councilman Ashley suggested that a community meeting be held.

Mary Stevens of 211 North Second Street stated she was informed that the old Freedman's House was going to be relocated next to the cemetery. The Town Manager responded it was part of the conceptual plan, but nothing has been approved.

Mayor Moore stated that the water plant has to go where it has to go and the road has to close. He challenged Mr. Credle to investigate every possible option.

Pam Lampe expressed her concerns to the Council about being unaware of the project. She stated that she did not understand why it was necessary to expand the water plant if it was for the sole purpose of selling more water to the County. She further stated she was upset because she does not want the nature trail relocated next to her home. She asked that additional buffering be provided so that she could not see the proposed project from her property.

Councilman Ashley made a motion, seconded by Mayor Pro-Tem Scott, to close the public hearing. Unanimously approved.

Mayor Pro-Tem Scott made a motion, seconded by Councilman Ashley, to table the road closure until the August 7<sup>th</sup> meeting . Unanimously approved.

Councilman Ashley made a motion, seconded by Mayor Pro-Tem Scott, to hold a community meeting on Tuesday, July 31<sup>st</sup> at 6:00 p.m. in the Town Hall Council Chambers. Unanimously approved.



**CITIZENS' COMMENTS: None**

**CONSENT AGENDA:**

Councilman Ashley made a motion, seconded by Councilman Dunn, to approve the following items as listed on the Consent Agenda:

1. Approved the following Minutes:
  - May 10, 2018 – Budget Session
  - May 15, 2018 – Budget Session
  - May 21, 2018 – Budget Session
  - June 5, 2018 – Regular Meeting
  - June 5, 2018 – Close Session
2. Special Event – National Night Out: Approval was granted to the Smithfield Police Department to hold an event on August 7, 2018 from 5:00 pm until 8:00 pm at 1025 Outlet Center Drive. The event will have amplified sound.
3. Resolution #620 (07-2018) Adopting the 2018-2019 Employee Handbook

**RESOLUTION # 620 (07-2018)  
TOWN OF SMITHFIELD  
PERSONNEL POLICY**

WHEREAS, the Mayor and Town Council of the Town of Smithfield recognize the importance of its municipal employee in meeting the service needs of Town residents; and

WHEREAS, it is the desire of the Mayor and Town Council to maintain a municipal work force composed of qualified, competent, dedicated employees; and

WHEREAS, the Mayor and Town Council recognize the necessity of equitable rates of pay and reasonable conditions of employment in the maintenance of such a work force; and

WHEREAS, it is the desire of the Mayor and Town Council to establish a system of personnel administration that will assure equity of compensation and fair and reasonable employee treatment.

NOW, THEREFORE BE IT RESOLVED, by the Smithfield Town Council, that the following guidelines shall cover the appointment, pay plan, salary, promotion, demotion, dismissal, and employment conditions of the employees of the Town of Smithfield, North Carolina amending/ replacing where appropriate the existing articles and sections.

{Attached by reference and made a part of these official minutes is a copy of the Town of Smithfield's Employee Handbook which is on file in the Office of the Town Clerk}

4. Resolution # 621 (08-2018) Supporting the East Coast Greenway Grant Application

**TOWN OF SMITHFIELD  
RESOLUTION # 621 (08-2018)  
RESOLUTION IN SUPPORT FOR THE EAST COAST GREENWAY APPLICATION FOR THE  
2018 BUILD TRANSPORTATION DISCRETIONARY GRANT APPLICATION**

WHEREAS, the East Coast Greenway vision is a 3,000-mile route for biking, walking, and other active means from Maine to Florida. By providing fun, safe, and accessible infrastructure for everything from a local commute to a long adventure, the Greenway will foster healthy, sustainable, and prosperous communities throughout the Eastern Seaboard; and

WHEREAS, the East Coast Greenway route serves 40-60 miles of bike and pedestrian facilities throughout the Upper Coastal Plain Rural Planning Organization planning area and connecting 5 local towns to a continuous network of safe bike and pedestrian facilities to 25 cities and 425 rural communities from Maine to Florida; and

WHEREAS, the East Coast Greenway is good for business, good for public health, and good for transportation infrastructure by creating a linear park that everyone can enjoy for generations to come; and

WHEREAS, the East Coast Greenway route is being planned to go through the Town of Smithfield and the Town believes the project will improve vehicular and pedestrian mobility for regional tourism and residents, enhance safety, and provide resilience and quality of life in Smithfield; and

WHEREAS, the citizens of the Town of Smithfield share a community of interest with the East Coast Greenway for employment, health care, shopping and recreation, and businesses now located in the area; and

WHEREAS, the East Coast Greenway route will bolster the Town's existing Mountain's to Sea Greenway and plans for its extension, with the Town serving as a hub between the two planned greenways; and

WHEREAS, the East Coast Greenway application's plans to extend broadband coverage along the greenway route also complement's the Town of Smithfield's plans and interest in expanding broadband;

THEREFORE, BE IT RESOLVED that the Town of Smithfield endorses and supports the East Coast Greenway 2018 BUILD Grant Application.

5. Approved to change Management Software for Parks and Recreation and SRAC.
6. Bid Award in the amount of \$18,000 to Triangle J. Council of Governments to conduct the Salary Study
7. Approved the following Budget Amendment

**1. Revenue**

45-75-3870-3870-0301	Transfer From Water Fund	\$ 1,964,233	\$ (300,000)	\$ 1,664,233
45-71-3700-7200-0001	AIA Grant - Water	-	150,000	150,000
45-71-3700-7220-0002	AIA Grant - Sewer	-	150,000	150,000
		<u>\$ 1,964,233</u>	<u>\$ -</u>	<u>\$ 1,964,233</u>

To fund the Water/Sewer Asset Inventory and Assessment (AIA) Project as approved at the October 4, 2016 Council Meeting with grant proceeds. Was originally funded with fund balance

8. Approved Career Ladder promotions in the Fire Department. Two employees were promoted from the rank of Firefighter I to the rank of Firefighter II.
9. The following Advisory Board Appointments were approved:
  - Lyn Andrews was appointed to serve a three year on the Parks and Recreation Advisory Commission

10. New Hire Report

<u>Position</u>	<u>Department</u>	<u>Budget Line</u>	<u>Rate of Pay</u>
Firefighter I	Fire	10-20-5300-5100-0200	\$15.64/hr. (\$34,157.76/yr.)

P/T Lifeguard	P & R – Aquatics	10-60-6220-5100-0220	\$7.50/hr.
P/T Lifeguard	P & R – Aquatics	10-60-6220-5100-0220	\$7.50/hr.
P/T Lifeguard	P & R – Aquatics	10-60-6220-5100-0220	\$7.50/hr.
P/T Lifeguard	P & R – Aquatics	10-60-6220-5100-0220	\$7.50/hr.
P/T P&R Staff	P & R – Recreation	10-60-6220-5100-0210	\$9.00/hr.
P/T SRAC Staff	P & R – Aquatics	10-60-6220-5100-0220	\$8.00/hr.
P/T SRAC Staff	P & R – Aquatics	10-60-6220-5100-0220	\$8.00/hr.
P/T SRAC Receptionist	P & R – Aquatics	10-60-6220-5100-0220	\$9.00/hr.
P/T Laborer	PU – Water/Sewer	30-71-7220-5100-0200	\$8.00/hr.
P/T Laborer	PU – Water/Sewer	30-71-7220-5100-0200	\$8.00/hr.
Utility Line Mechanic	PU – Water / Sewer	30-71-7220-5100-0200	\$12.46/hr. (\$25,916.80/yr.)

**Current Vacancies**

<u>Position</u>	<u>Department</u>	<u>Budget Line</u>
Marketing & Comm. Specialist	General Government	10-10-4100-5100-0200
Police Officer I	Police	10-20-5100-5100-0200
P/T Lifeguard	P & R – Aquatics	10-60-6220-5100-0220
Utility Line Mechanic	PU – Water / Sewer	30-71-7220-5100-0200

11. Special Event: Riders for Rescue at the Shelton Harvey Davidson Store located at 1043 Outlet Center Drive. This event will have amplified sound.

Unanimously approved.

**BUSINESS ITEMS:**

1. **Consideration and Approval to amend the FY 2018 – 2019 Fee Schedule for Solid Waste Service due to recent increase in tipping fees by Johnston County.**
2. **Consideration and Approval to amend the FY 2018 – 2019 Fee Schedule for Wastewater due to the recent increase in Wastewater Treatment rates by Johnston County**

Town Manager Michael Scott informed the Council that Business Item 1 and Business Item 2 could be discussed together since both items dealt with increases adopted by Johnston County that became effective July 1<sup>st</sup>. The increases were to tipping fees and wastewater treatment fees. Staff was requesting these fees be passed onto the consumer and the FY 2018-2019 Adopted Fee Schedule be amended to reflect the increases. The Town Manager explained that during the budget process, staff informed the Council that Johnston County was proposing fee increases that would be effective in September, but the County chose to make those increases effective in July.

Councilman Dunn made a motion, seconded by Councilman Barbour, to amend the FY 2018-2019 Fee Schedule to reflect the increases in tipping fees and wastewater treatment fees adopted by Johnston County. Unanimously approved.

3. **Consideration and Approval to amend the FY 2018-2019 Fee Schedule for SRAC rates for Town of Smithfield Employees and Johnston County School Employees**

Parks and Recreation Director Gary Johnson addressed the Council on a request to amend the fee schedule for Town of Smithfield employees and Johnston County school employees. Mr. Johnson explained upon review of the adopted fee schedule, it was discovered that there was miscommunication on the intended SRAC membership rates for the employees of the Town of Smithfield and Johnston County Public Schools.

Aquatic Center Director Dale explained that the mix up was the community rates versus corporate rates.

Mayor Moore questioned if the SRAC membership could be provided to all full-time employees free of charge as a part of the Town's wellness program.

Councilman Ashley questioned if the membership would be considered a taxable benefit

Mayor Moore suggested the item be tabled until the August 7<sup>th</sup> meeting to allow staff to investigate if the membership would be considered a taxable benefit.

Town Manager Michael Scott suggested the fee schedule be amended for SRAC rates for Town of Smithfield Employees and Johnston County School Employees back to the FY 2017-2018 fees.

Mayor Pro-Tem Scott made a motion, seconded by Councilman Barbour to amend the fee schedule for SRAC rates for Town of Smithfield Employees and Johnston County School Employees back to the FY 2017-2018 fees and table a decision until the August Council meeting to allow staff to determine if a membership was a taxable benefit. Unanimously approved.

#### **4. Consideration and Approval to enter into an Agreement with Envirolink for the purpose of performing an analysis that will be the basis of the beginning of a discussion regarding the implementation of System Development Fees**

Public Utilities Director Ted Credle addressed the Council on a request to enter into an agreement with Envirolink to perform an analysis on the potential for system development fees. Mr. Credle explained that this item was brought before the Council at the June meeting. The Council requested that the item be tabled until three bids could be solicited from reputable firms. Staff contacted three firms and the following bids were received:

Envirolink: \$20,000  
WR Martin Management Consulting \$20,000  
Wildan Financial \$22,500

Staff was requesting the Town enter into an agreement with Envirolink because they are already a vendor in good standing with the Town. Mr. Credle further explained that system Development Fees were one-time charges to assess new development, fees would be used to offset cost of Capital Improvements and allow new development to pay for new extensions of service. Envirolink would perform analysis to determine what the "maximum" fees could be.

Councilman Dunn made a motion, seconded by Councilman Rabil, to approve the agreement with Envirolink in the amount of \$20,000.00 Unanimously approved.

### **Councilmembers Comments**

- Mayor Pro-Tem Scott reminded everyone the official opening of the boat ramp would occur on Saturday, July 14<sup>th</sup> with the River Rat Regatta to follow. He expressed his appreciation to DSDC Director Sarah Edwards on the successful Fourth of July Celebration. He suggested that all the communities in Johnston County work together to do one large celebration.
- Mayor Moore informed the Council of the recent passing of the Town of Selma's Town Clerk, Brenda Thorne. He offered condolences to the Mayor and Town Staff.

### **Town Manager's Report:**

Town Manager Michael Scott gave a brief update to the Council on the following items:

- Town Meeting: The Planning Department will be hosting its first public meeting seeking public input regarding the Town's future transportation and land use plans on Tuesday,

September 18, 2018 6:00 PM-8:00 PM at the SRAC Banquet Room- 600 Booker Dairy Rd.

- Town Video: The Town recently installed a video feed at the corner of Fourth Street and Market. The camera is controlled by the Town and can focus 180 degrees. The camera will be set looking westerly on Market Street so media outlets and the public can view the downtown from our website. The system will also be used to record events such as the annual Christmas Parade
- Town App: Town Staff is in the process of creating Smithfield's own App for its website. The App will be available in both Apple and Android applications. This will assist in facilitating additional information to our citizenry and the public in general.
- The Town Manager was asked to investigate a matter brought before the Council by Councilman Lee whereby a young lady stated that the Police Department acted inappropriately during a recent drug round up event. Chief of Police Keith Powell investigated the matter and determined that the officers acted appropriately and the story conveyed to Councilman Lee was inaccurate..

### **Department Reports**

A highlight of each department's monthly activities was given to the Council

### **Adjourn**

Councilman Ashley made a motion, seconded by Councilman Dunn, to adjourn the meeting. The meeting adjourned at approximately 10:34 pm.

ATTEST:

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M. Andy Moore, Mayor

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Shannan L. Parrish, Town Clerk





# Request for Town Council Action

**Consent  
Agenda  
Item:**  
**Special  
Event**  
Date: 08/07/2018

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**Subject:** Martin Luther King Jr Parade Revision  
**Department:** Planning and Zoning  
**Presented by:** Shannan Parrish  
**Presentation:** Consent Agenda Item

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## Issue Statement

During the September 1, 2015 Council Meeting, the Council approved this parade as an annual event. The petitioner is requesting to amend the previously approved time and date.

## Financial Impact

Police Department Overtime to manage traffic and security for the parade.

## Action Needed

Approve revisions as stated for parade.

## Recommendation

Approve revision as requested

Approved:  Town Manager  Town Attorney

Attachments:

1. Staff Report
2. Parade Permit & request
3. Ordinance # 495



## Staff Report

**Consent  
Agenda  
Item:** **Special  
Event**

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The petitioner is requesting the annual Martin Luther King, Jr. parade be permanently moved to the third Saturday in February. The parade is proposed to begin at 3:00 pm on Saturday, February 16<sup>th</sup>. Staging for the event is proposed to begin at 2:00 pm with the parade lasting approximately 30 minutes. There will be a number of units in the parade including floats, vehicles and bands. The proposed route will be the same as the Town Christmas parade. Staging will be on South Sixth Street with the parade route exiting from Sixth Street onto Market Street and proceeding west on Market Street exiting onto South Second Street.

There is anticipated need for security and traffic control by the Police Department. The route of the parade will require street closure as well as traffic control by the Police Department. Traffic will be rerouted in the same manner as it is for the Christmas Parade. Barricades and cones will be provided by the Public Works Department.

The route and time of the proposed parade will also require approval from NCDOT. In the form of adoption of Ordinance # 495 which will be sent to NCDOT.

Food will not be sold. No fireworks will be allowed. Pets will not be allowed.





## 2019 NAACP Dr. Martin Luther King, Jr. Parade

April 23, 2018

To: Smithfield Town Council  
Cc: Smithfield Police Department  
From: The Johnston County Branch of the NAACP  
Re: The Martin Luther King, Jr. Parade

On behalf of the Branch members and citizens of Johnston County, we are very grateful for your cooperation given towards our production of our annual Dr. King Parade. From the assistance and cooperation of the Police Department to the assistance and guidance of Shannon and her staff, to the Town Council for your flexibility in the last minute changes due to weather concerns, we say thank you.

Our desire is to honor the memory of Dr. King in a spirit of unity. By abiding by the guidelines, and having the participation of a broad spectrum of the population, we worked together for that common cause. Since we did not hear any complaints, we trust everything was to your satisfaction. We received only positive feedback.

We were so pleased with the day and time; we are formally requesting approval to hold the 2019 MLK Parade on Saturday, February 16th at 3:00 PM. We intend to follow the same route as this year. As soon as a decision can be made, we will start planning for next year's parade.

Again, thank you for a cooperative spirit. We look forward to hearing from you.

Thank you for your consideration,

  
Dr. Gettys Cohen Jr. D.D.S. Branch President

  
Mrs. Barbara L. Monk, Parade Committee Chair



# SMITHFIELD POLICE DEPARTMENT

110 S. Fifth Street • Smithfield, NC 27577  
Phone: (919) 934-2121 • Fax: (919) 934-0223



*Robert K. Powell, Chief*

## SMITHFIELD POLICE DEPARTMENT PARADE PERMIT APPLICATION INFORMATION

1. The application **must be filled out completely.**
2. The application must be filed at least twenty-one (21) days prior to the scheduled date of the parade.
3. Parade route must be specified including **all** streets to be traveled, the assembly point and the disbanding point.
4. Parade must be during daylight hours.
5. The person designated in the application as responsible for the physical conduct of the parade is required to be physically present and to accept responsibility for compliance with any and all terms of the parade permit. This person is also responsible for monitoring the conduct of participants in the parade.

**Permit application fee:** A fee of \$25.00 is required for processing an application. Fee must be paid at the time the application is submitted. Payment **MUST BE** in the form of a **CASHIER'S CHECK** or **MONEY ORDER** made out to the **TOWN OF SMITHFIELD.**

Further information and questions should be directed to:

Smithfield Police Department  
110 S. Fifth Street  
Smithfield, NC 27577  
(919) 934-2121



# SMITHFIELD POLICE DEPARTMENT

110 S. Fifth Street • Smithfield, NC 27577  
Phone: (919) 934-2121 • Fax: (919) 934-0223



Robert K. Powell  
Chief

## APPLICATION FOR PARADE PERMIT

I, Dr. Bettys Cohen Jr. address P.O. Box 2547 Smithfield, NC Permit Number: \_\_\_\_\_  
telephone (H) 919-934-5778 (B) 919-934-9664, do  
hereby make application for a parade permit to conduct a parade within the corporate limits of the Town of  
Smithfield as provided by Chapter 17 of the Smithfield Code of Ordinances.

It is understood and agreed that any permit issued to this application is issued on condition that the answers to the following questions are true and correct to the best of the knowledge, information and belief of the applicant.

- (1) If an organization, the name and address: NAACP Sebastian County Branch  
Principal officers and addresses: P.O. Box 2547 - Smithfield, NC 27577  
Dr. Bettys Cohen, Jr. - President & Barbara Monk - Chair  
Does applicant have authorization to act on behalf of the organization?  Yes  No Parade Com
- (2) Name, address and telephone number of the person who will be the parade chairman and who will be directly responsible for its conduct: Barbara Monk - Chair of MLK Parade Committee  
115 Lafoy Drive, Clayton 27527 919-585-6707
- (3) The purpose, objective and reasons for conducting such parade: MLK Celebration
- (4) Date of Parade 2-16-19 Formation Time 2:00pm  
Start Time 3:00 pm End Time 4:00 pm
- (5) Is the route for the parade described completely on the reverse of this application? \_\_\_\_\_
- (6) The approximate number of units in the parade include: #0  
Number of Persons: as needed  
Number of Vehicles: as needed Type: Vans, cars, trucks & trailers  
Number of Animals: NONE Type: \_\_\_\_\_
- (7) Is parade route deviation requested? no  
Is deviation request letter to City Manager included? \_\_\_\_\_  
Is petition attached? \_\_\_\_\_
- (8) Name and address of person who will accompany the parade and carry the permit at all times:  
Barbara Monk, 115 Lafoy Drive, Clayton
- (9) The interval of space to be maintained between units is: as needed
- (10) Will the parade occupy all or only a portion of the width of the streets proposed to be traveled?  
all or as needed
- (11) I hereby agree that I will provide 4 monitors along the parade route as required by the City, under the terms of the permit issued, in order that adequate provision can be made for the safe and orderly movement of the parade.

Subscribed and sworn before me  
this 27 day of April, 20 18.



Notary Public  
My Commission Expires: 12/19/20

Bettys Cohen Jr D.D.S.  
Applicant

Investigated By:

Chief Of Police  
Robert K Powell



# SMITHFIELD POLICE DEPARTMENT

110 S. Fifth Street • Smithfield, NC 27577  
Phone: (919) 934-2121 • Fax: (919) 934-0223



Robert K. Powell  
Chief

## PARADE PERMIT APPLICATION AGREEMENT AND RELEASE

(Town Code Section 17-71)

This agreement made this 27 day of April, 20 18, by and between the Town of Smithfield, hereinafter called Town, and Dr. Gettys Cohen Jr, hereinafter called Applicant. It is specifically understood that if this application is made on behalf of an organization that all terms herein apply to each member of such organization who will participate in the event for which the permit is issued.

### WITNESSETH:

In consideration of Town's granting an appropriate permit to Applicant to sponsor or conduct a parade which will require utilization of Town personnel, Applicant agrees to waive, release from and hold harmless the Town as to any and all claims, of whatever nature in law or equity which may be alleged by Applicant to arise as result of or as part of the event for which this permit is issued, excepting injury or damage found to have been proximately caused by the Town.

Applicant further agrees to defend and indemnify the Town, its agents and employees, from any claims, judgments or other remedy that any third person may seek arising from the conduct of the Town regarding the event for which this permit is issued, excepting injury or damage found to have been proximately caused by Town.

It is specifically understood that the Town, in issuing this permit, is in no way a sponsor of this event.

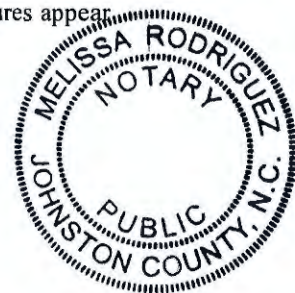
Applicant whose signature appears below, in executing this agreement certifies that he is duly authorized to bind himself and all others who will participate in the proposed event and does hereby bind same to the terms of this agreement.

This 27 day of April, 20 18.

Gettys Cohen Jr  
Applicant Town of Smithfield

Before me this 27 day of April, 20 18, the persons whose signatures appear above identified themselves as same and executed this document in my presence.

[Signature]  
Notary Public  
My Commission Expires: 12/19/20



**TOWN OF SMITHFIELD  
North Carolina**

**ORDINANCE # 495**

**AN ORDINANCE DECLARING ROAD CLOSURES FOR THE ANNUAL CHRISTMAS TREE LIGHTING, THE ANNUAL CHRISTMAS PARADE AND THE ANNUAL MARTIN LUTHER KING, JR. PARADE**

**WHEREAS**, the Town Council of the Town of Smithfield acknowledges a long tradition of providing an annual Christmas Parade and annual Tree Lighting Ceremony for the pleasure of its citizens; and

**WHEREAS**, the Town Council of the Town of Smithfield acknowledges a new tradition of providing an annual Martin Luther King, Jr. Parade for the pleasure of its citizens; and

**WHEREAS**, the Town Council of the Town of Smithfield acknowledges its citizens realize a financial benefit from holding these annual events; and

**WHEREAS**, the Town Council of the Town of Smithfield acknowledges each event requires approximately two hours to install signing and traffic control to be provided by the Smithfield Police Department, and also requires approximately two hours for removing signs, traffic control and litter.

**WHEREAS**, Any ordinances or parts of ordinances in conflict with this ordinance are hereby repealed, and this ordinance shall be in full force and effect as an ordinance of the Town of Smithfield from the date of its adoption by the Town Council of the Town of Smithfield.

**NOW THEREFORE BE IT ORDAINED** by the Town Council of the Town of Smithfield pursuant to the authority granted by G.S. 20-169 that they do hereby declare a temporary road closure during the days and times set forth below on the following described portion of a State Highway System route:

**Annual Tree Lighting Ceremony**

**Date:** First Thursday of every December  
**Time:** 5:00 pm to 9:00 pm  
**Route Description:** North 3<sup>rd</sup> Street between Market Street and Bridge Street  
Market Street (US70) from 2<sup>nd</sup> Street to 4<sup>th</sup> Street.

**Annual Christmas Parade**

**Date:** Second Thursday of every December  
**Time:** 5:00 pm to 9:00 pm  
**Route Description:** Market Street (US70) from South 6<sup>th</sup> Street to South 2<sup>nd</sup> Street

**Annual Martin Luther King, Jr. Parade**

**Date:** Third Saturday of every February  
**Time:** 2:00 pm to 4:00 pm  
**Route Description:** Market Street (US70) from South 6<sup>th</sup> Street to South 2<sup>nd</sup> Street

Duly adopted this the 10<sup>th</sup> day of August, 2018

\_\_\_\_\_  
M. Andy Moore, Mayor

ATTEST

\_\_\_\_\_  
Shannan L. Parrish, Town Clerk





# Request for Town Council Action

**Consent  
Agenda  
Item:** Application  
for  
Temporary  
Use Permit  
Date: 08/07/2018

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**Subject:** Temporary Use Permit  
**Department:** Department of Social Services  
**Presented by:** Planning Department  
**Presentation:** Consent Agenda Item

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## Issue Statement

The Council is being asked to allow the Department of Social Services to close Seventh St between Hancock and North Street on October 31, 2018 from 2:00-5:30pm for a Halloween Event.

## Financial Impact

None

## Action Needed

To approve the Temporary Use Permit Application

## Recommendation

Approved:  Town Manager  Town Attorney

Attachments:

1. Staff Report
2. Temporary Use permit Application



## Staff Report

**Consent  
Agenda  
Item:**

**Application  
for  
Temporary  
Use Permit**

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Department of Social Services has requested to close Seventh Street, between Hancock and North Street on October 31<sup>st</sup>, 2018 from 2:00-5:30 pm. DSS will be holding a Halloween Event for children and the street closure will allow DSS to have the kids walk together down the closed street. No food or goods will be sold, no sound will be amplified and security will not be needed. They have however requested barricades to be placed in appropriate places by Public Works.





Town of Smithfield Planning Department  
P.O. Box 761 or  
350 East Market Street  
Smithfield, NC 27577

### Temporary Use Permit Application

Completed applications should be submitted to the Town of Smithfield Planning Department **at least four weeks prior to the event**. All applicants should read the following pages before completing all sections required. Incomplete applications may increase the permit processing time. If a person other than the property owner signs this application, a notarized written authorization from the property owner must be attached.

**A site plan/diagram of event property MUST BE ATTACHED (see attachments)**

<b>TYPES OF EVENT</b>		<b>PERMIT FEE \$100</b>
<input type="checkbox"/> Expansion or replacement of existing facilities	<input type="checkbox"/> Construction Trailer	
<input type="checkbox"/> Sale of agricultural products grown off-site	<input type="checkbox"/> Real estate sales office or model home	
<input type="checkbox"/> Sale of fireworks	<input type="checkbox"/> Sale of non-agricultural products, except fireworks	
<input checked="" type="checkbox"/> Special event, over 100 people in attendance	<input type="checkbox"/> Not-for-profit event, over 100 people in attendance	
<input type="checkbox"/> Athletic event on streets, greenways	<input type="checkbox"/> Town recognized event _____	
<input type="checkbox"/> other (please describe) _____	<input type="checkbox"/> Live Band / Concert _____	

<u>Halloween Event at DSS</u>	<u>7th st. between Hancock + North St.</u>
Name of Event	Location of Event (exact street address)

Applicant name Rebecca Boone E-mail address rebecca.boone@johnstonnc.com  
 Address 744 North St. Smithfield NC Zip 27577  
 Day phone 919-989-5368 Mobile phone 919-502-9905  
 Event set-up/start time/date 2:00 pm 10-31-18 Event clean-up/end date/time 5:30 pm 10-31-18  
 Sound amplification hours NO Will food or goods be sold? NO  
 Security provided by Smithfield Police or private security (describe duties): \_\_\_\_\_  
 Private agency name & phone, if applicable: \_\_\_\_\_

Will any Town property be used (i.e., streets, parks, greenways)? 7th Street between Hancock + North St.  
 Do you wish to: Restrict animals at this event? (Circle Yes No) Prohibit Fireworks? (Circle Yes No)

I hereby certify that the information contained in this application is true to the best of my knowledge and I further certify that this event will be conducted per all applicable local laws. I certify that I have received the attached information concerning the regulations for Temporary Uses. I certify that I have notified all adjoining property owners of the planned temporary use.

<u>Rebecca Boone</u>	<u>Rebecca Boone</u>	<u>7/19/18</u>
Applicant's name (print)	Signature	Date
	<u>Switt Sabir DIRECTOR</u>	

**PLEASE RETURN THIS PERMIT TO THE PLANNING DEPARTMENT WITH \$100.00 FEE.**

Method of payment: Cash \_\_\_\_\_ Check # \_\_\_\_\_ Credit Card \_\_\_\_\_ Amount \$ \_\_\_\_\_

Reviewing Planner: [Signature] Date: 7/30/18  
(Note: See attached letter)





# Request for Town Council Action

**Consent  
Agenda  
Item:**  
Date: 08/07/2018

**Disposition  
of Retired  
Service  
Animal**

**Subject:** Retirement of K-9 (Surplus)  
**Department:** Police  
**Presented by:** R.K. Powell (Chief)  
**Presentation:** Consent Agenda Item

### Issue Statement

The Police Department is asking to have Police K-9 Argo declared surplus property and allowed to retire with his handler. The Shelter and cement pad constructed to house K-9 Argo will also need to be declared surplus as well.

### Financial Impact

It will cost approximately \$13,000.00 to replace Police K-9 Argo. The plan is to use Forfeiture Funds to purchase another K-9.

### Action Needed

The department is requesting the Town Council to allow Police K-9 Argo be declared surplus and allowed to retire with his handler. MPO Hundley will dismantle the Kennel that was used to house Argo and it will be returned. The actual Shelter and Cement will need to be declared as surplus and released to MPO Hundley.

### Recommendation

The Department is recommending Police K-9 Argo to be declared surplus and allowed to retire with his handler. The request is made due to age of the K-9 and health related issues.

Approved:  Town Manager  Town Attorney

Attachments:

1. Staff report
2. NCGS 20-187.4. Disposition of retired service animals.



# Staff Report

**Consent  
Agenda  
Item:**      **Disposition  
of Retired  
Service  
Animal**

To:                M.L. Scott, Town Manager  
From:             R.K. Powell, Chief of Police  
Subject:          Request to declare certain property as "Surplus"

MPO Kenny Hundley tendered his resignation from the Smithfield Police Department effective July 24, 2018. MPO Hundley is one of two K-9 officers and is assigned a police K-9 (Argo). Argo is approximately 9 1/2 years old and has been working for 8 years.

The determination to retrain a K-9 is/has always been made by the age and health of the animal. The most current literature suggests that most K-9's have a useful field life of approximately 6-7 years, depending on the particular dog. Argo is beginning to experience issues with his hips and has began to show signs of slowing down.

The cost of retraining (matching and retraining the dog with a new handler) would cost the department roughly \$2500 to \$3000. Since Argo is 9 1/2 years old , the cost-benefit of retraining the dog seems contrary to good business sense. Due to the age of the dog, it has no monetary value other than that of a 9 1/2 year old dog.

MPO Hundley has agreed to take Argo as a family pet, with no further expense to the town. In most cases with other towns, the K-9 officers have been allowed to take the dog when it is retired. The police department is requesting the Police K-9 named Argo to be declared surplus property and turned over to MPO Hundley.

Sincerely,

Robert K. Powell  
Chief of Smithfield Police

**20-187.4. Disposition of retired service animals.**

(a) Upon determination that any service animal is no longer fit or needed for public service, the State or unit of local government may transfer ownership of the animal at a price determined by the State or unit of local government and upon any other terms and conditions as the State or unit of local government deems appropriate, to any of the following individuals, if that individual agrees to accept ownership, care, and custody of the service animal:

- (1) The officer or employee who had normal custody and control of the service animal during the service animal's public service to the State or unit of local government.
  - (2) A surviving spouse, or in the event such officer or employee dies unsurvived by a spouse, surviving children of the officer or employee killed in the line of duty who had normal custody and control of the service animal during the service animal's public service to the State or unit of local government.
  - (3) An organization or program dedicated to the assistance or support of service animals retired from public service.
- (b) For purposes of this section, the following definitions apply:
- (1) "Service animal." - Any horse, dog, or other animal owned by the State or a unit of local government that performs law enforcement, public safety, or emergency service functions.
  - (2) "Unit of local government." - As defined in G.S. 159-7(b)(15). (2016-101, s. 1.)





# Request for Town Council Action

**Consent  
Agenda  
Item:**

Purchase  
of Zero  
Turn  
Mower

**Date:**

08/07/2018

**Subject:** Purchase of Commercial Zero Turn Mower  
**Department:** Public Works Appearance Division  
**Presented by:** Lenny Branch, Public Works Director  
**Presentation:** Consent Agenda Item

## Issue Statement

The Public Works Department is proposing the purchase of a 2018 Scag Zero Turn Mower from W. Landis Bullock Industrial and Contractor Supply in the amount of \$12,157.92.

## Financial Impact

If approved by Council, the purchase of the new Zero Turn Mower comes in \$842.08 under the \$13,000 budgeted in this year's Capital Outlay line.

## Action Needed

Council approval to award contract to W. Landis Bullock Industrial and Contractor Supply for purchase of budgeted Zero Turn Mower.

## Recommendation

Staff recommends awarding the purchase contract to the lowest bidder W. Landis Bullock Industrial and Contractor Supply in the amount of \$12,157.92

Approved:  Town Manager  Town Attorney

Attachments:

1. Staff Report
2. Equipment estimates



# Staff Report

**Consent  
Agenda  
Item:**

**Purchase  
of Zero  
Turn  
Mower**

---

The Town Council approved \$13,000 in the Public Works Appearance Division capital line to purchase a new Zero Turn Mower. The Public Works Department received proposals from three (3) companies and are as follows:

- |   |             |
|---|-------------|
| 1. W. Landis Bullock Industrial and Contractor Supply | \$12,157.92 |
| 2. East Coast Equipment                               | \$16,695.00 |
| 3. Musgrave Equipment                                 | \$18,517.76 |

It is the recommendation of the Public Works department to purchase the 2018 Scag Commercial Zero Turn Mower from W. Landis Bullock Industrial and Contractor Supply for the amount of \$12,157.92.



# W. Landis Bullock

## Industrial and Contractor Supply

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*A Division of Jandis Industrial and Contractor Supply, Inc.*

March 14, 2018

Town of Smithfield  
Attention: Lenny Branch  
Fax: 919 934-1522

Quote on Scag Mower

Model STTII72V-35BV Turf Tiger II  
72 Inch Cut  
35 HP Briggs Vanguard Engine  
Air Cooled

Cutter deck driveshaft system provides consistent, reliable power and a wide cutting height range, deck cutting heights for 1" to 6" in ¼ increments.

Heavy duty drive system features dual 16 cc pumps and high-torque wheel motors for responsive, dependable power.

Up to 12-mph forward speed for maximum productivity.

Fabricated, welded and reinforced Velocity Plus cutter deck is ultra-strong and true commercial grade. Tri-Plate deck is nearly ½" thick.

Price: \$11,389.15

Plus Tax: \$768.77

Total: \$12,157.92

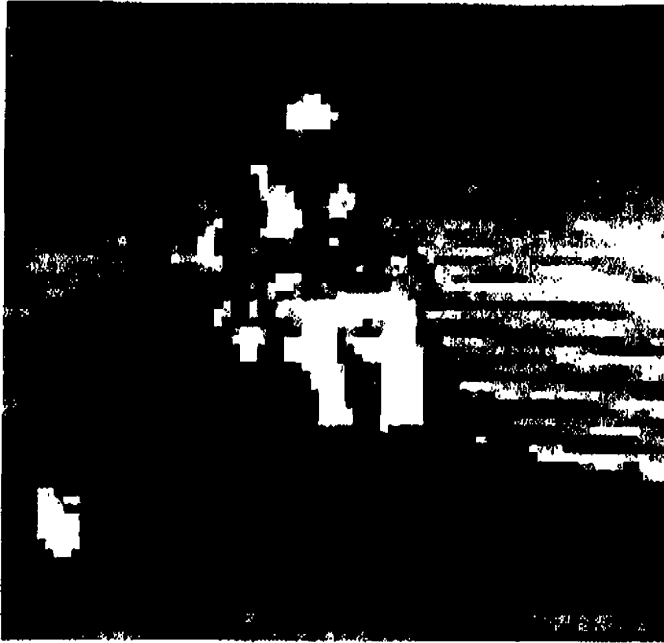


**JOHN DEERE**

Quote Id: 17845490

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Prepared For:  
**Town Of Smithfield Accounts Payable**



Prepared By: **Stephen Giorgi**

East Coast Equipment, LLC  
2112 Central Park Drive  
Winterville, NC 28590

Tel: 252-355-4818

Fax: 252-355-6674

Email: [sgiorgi@eastcoastequip.com](mailto:sgiorgi@eastcoastequip.com)



**Quote Summary**

**Prepared For:**  
 Town Of Smithfield Accounts Payable  
 Po Box 761  
 Smithfield, NC 27577  
 Business: 919-934-2116

**Prepared By:**  
 Stephen Giorgi  
 East Coast Equipment, LLC  
 2112 Central Park Drive  
 Winterville, NC 28590  
 Phone: 252-355-4818  
 sgiorgi@eastcoastequip.com

**Quote Id:** 17845490  
**Created On:** 20 July 2018  
**Last Modified On:** 20 July 2018  
**Expiration Date:** 20 August 2018

Equipment Summary	Selling Price	Qty	Extended
JOHN DEERE Z997R DIESEL W 72 In. 7-GAUGE SIDE DISCHARGE DECK	\$ 16,695.00 X	1 =	\$ 16,695.00
Oil Change (\$29.95 Value)	Included, Value of \$ 29.95	\$ 0.00 X	1 = \$ 0.00
<b>Equipment Total</b>			<b>\$ 16,695.00</b>

<b>Quote Summary</b>	
Equipment Total	\$ 16,695.00
DELIVERY FEE	\$ 0.00
SubTotal	\$ 16,695.00
Sales Tax - (6.75%)	\$ 1,126.91
Est. Service Agreement Tax	\$ 0.00
<b>Total</b>	<b>\$ 17,821.91</b>
Down Payment	(0.00)
Rental Applied	(0.00)
<b>Balance Due</b>	<b>\$ 17,821.91</b>



**JOHN DEERE**

# Selling Equipment

Quote Id: 17845490

Customer: TOWN OF SMITHFIELD ACCOUNTS PAYABLE

## JOHN DEERE Z997R DIESEL W 72 In. 7-GAUGE SIDE DISCHARGE DECK

Hours:

Stock Number:

				Selling Price
				\$ 16,695.00
Code	Description	Qty	Unit	Extended
091BTC	Z997R DIESEL W 72 In. 7-GAUGE SIDE DISCHARGE DECK	1	\$ 24,439.00	\$ 24,439.00
<b>Standard Options - Per Unit</b>				
001A	United States/Canada	1	\$ 0.00	\$ 0.00
<b>Standard Options Total</b>				<b>\$ 0.00</b>
<b>Value Added Services</b>				
	Oil Change (\$29.95 Value)	1	\$ 0.00	\$ 0.00
<b>Value Added Services Total</b>				<b>\$ 0.00</b>
<b>Other Charges</b>				
	EnviroCrate	1	\$ 40.00	\$ 40.00
	Setup	1	\$ 288.32	\$ 288.32
<b>Other Charges Total</b>				<b>\$ 328.32</b>
<b>Suggested Price</b>				<b>\$ 24,767.32</b>
<b>Customer Discounts</b>				
<b>Customer Discounts Total</b>			<b>\$ -8,072.32</b>	<b>\$ -8,072.32</b>
<b>Total Selling Price</b>				<b>\$ 16,695.00</b>



**Quote ID :17845490Customer Name : TOWN OF SMITHFIELD ACCOUNTS PAYABLE**

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Product features, prices and specifications are based on published information at the time of publication and are subject to change without notice. All trademarked terms, including John Deere, the leaping deer symbol and the colors green and yellow used herein are the property of Deere & Company, unless otherwise noted. Products, product features, and other content on this site may only be accurate for products marketed and sold in North America.  
Copyright © 1994-2016 Deere & Company. All Rights Reserved. File Created: 20-Jul-2016

## **2018 JOHN DEERE Z997R DIESEL W 72** **In. 7-GAUGE SIDE DISCHARGE DECK**

### **Key Features**

#### **Powerful diesel engine for increased performance**

The Z997R is powered by a three-cylinder, liquid-cooled diesel engine with a gross 37.4 hp (27.5 kW) that meets U.S. Environmental Protection Agency (EPA) Final Tier 4 emission standards. The engine achieves Final Tier 4 compliance by using a DOC/DPF (diesel oxidation catalyst with diesel particulate filter) system.

The three-cylinder diesel engine features low noise levels, superior fuel economy, and a high torque reserve that provides plenty of power and performance.

Key features of the engine include:

- Economical, cast-in block cylinder design gives good cooling and long life.
- Liquid-cooled design provides more consistent operating temperatures than air-cooled.
- Direct fuel injection is provided.
  - Injects fuel directly on top of pistons for more efficient combustion
  - Develops more horsepower per gallon of fuel
  - Improves starting
- Aluminum alloy pistons with built-in steel struts are lightweight to reduce connection rod bearing loads and provide good heat-transfer characteristics.
  - Design permits tighter tolerances and neutralizes expansion of the piston, thereby reducing blow-by fuel and noise from the piston slap
  - Higher top rings on the piston and a thinner head gasket greatly reduce the volume of unburned waste and increase combustion efficiency
- Timing gears and injector drive gears utilize helical profile gears to help lower engine noise.
  - Gear teeth have a newly designed "roll-off" profile, giving almost no clash, no noise, and no backlash
- Fuel filter with replaceable element is provided.
- Full-pressure intake manifold provides quick starts in temperatures down to 0°F (-18°C).
- Auto-bleed fuel system gives extra convenience.
  - No need to prime the system if the unit runs out of fuel; the system will self-prime the injection pump, lines and injectors, providing fast fuel recovery
- Key start and shutoff eliminates fuel shut-off knob; electric solenoid shuts fuel supply off immediately when key is turned off.
- See-through coolant recovery tank permits operator to check coolant level without removing radiator cap.
- Sealed radiator compartment keeps trash and debris on outside of hood.
- Dual-element, dry-type air cleaner with safety element and air service indicator is provided.
  - Dual-element design for added engine protection
  - Easy to service
  - Completely sealed for effective cleaning and 90 to 95 percent of dirt ejected before it reaches the paper element
  - Secondary safety element for additional filtering
  - Air-restriction indicator to let operator know when the filter needs servicing
- Full-pressure lubrication with full-flow filter lengthens engine life.
  - Engine wear reduced by ensuring proper lubrication, even when operating on hillsides or uneven terrain

**Quote ID :17845490Customer Name : TOWN OF SMITHFIELD ACCOUNTS PAYABLE**

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- Oil filter helps keep oil clean for increased engine life
- Automotive-type alternator (75 amp) provides plenty of charge to the battery.
- Rear-mounted, covered radiator and fan keeps noise away from the operator and is easy to service.
- Isolated engine mounting reduces engine vibration at operator's station for more comfortable operation.



Three-cylinder diesel engine



Convenient access to engine

Base Equipment On: Z997R

## Key Features

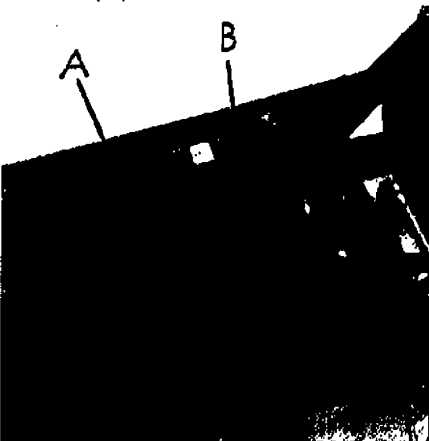
### Standard operator comfort and convenience package for ease of use

The comfort and convenience package includes large, ergonomically angled control levers with specially padded grips and built-in electronic controls to raise or lower the mower deck and disengage the mower blades.



Comfort and convenience handles

Base Equipment On: Z997R



Control buttons

The push button (A) on the left motion control lever raises the mower deck. The push button (B) on the right-hand control lever shuts off the power take-off (PTO).

Once the PTO has been shut off using the button, the PTO switch must be pushed down and pulled up again to engage the PTO.

Quote ID :17845490 Customer Name : TOWN OF SMITHFIELD ACCOUNTS PAYABLE

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Base Equipment On: Z997R

### Mower decks

#### 60-in. (152-cm) and 72-in. (183-cm) 7Iron™ PRO commercial mower decks



Z997R with 72-in. (183-cm)  
7Iron PRO mower deck

Since 1998, the 7Iron mower deck has demonstrated commercial quality, performance, and durability. The 7Iron PRO mower decks deliver an even higher quality of cut in more-diverse conditions.

The Z997R is available with 60-in. (152-cm) and 72-in. (183-cm) side-discharge 7Iron PRO commercial mower decks.

#### Features include:

- Higher blade tip speed of 18,000 fpm (5488 m/min) gives more blade strikes per distance of forward travel.
- Redesigned front baffle better manages airflow and controls clippings.
- Spindle pocket reinforcement gives greater structural durability.
- Spindle housings are made of ductile cast iron.
- A gusseted spindle housing design puts additional reinforcement where it is needed.
- A raised discharge chute gives more even clipping distribution.

Base Equipment On: Z997R



Double-captured anti-scalp wheel

Double-captured anti-scalp wheels provide increased durability.

#### 7Iron PRO commercial mower deck features include:

- 7-gauge, 0.179-in. (4.5-mm) steel construction for commercial durability
- 3-spindle design for a smooth, even cut
- Plastic discharge deflector for reduced damage to foliage and resistance to bending
- Formed steel design stamped from a single sheet to eliminate corners where grass can collect
- Deep deck for increased vacuum action that reduces dropped clippings
- Shaft drive from engine to mower
- Belt drive from gearbox to spindles
- Spindle zerks greasable from the top
- Quick-change cutting-height adjustment
- Available Tricycler™ mulching kits
- Blade overlap of 1.57 in. (40 mm), nearly 0.79 in. (20 mm) greater than previous decks, to reduce missed grass blades

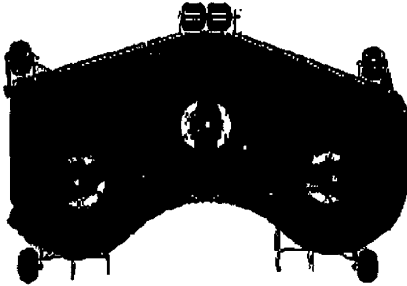
Base Equipment On: Z997R

#### Key features of the 7Iron PRO Mower Deck:

- Deck is stamped-steel construction to minimize the number of welds and provide a smooth underside, with fewer sharp corners, for reduced material buildup.
- There are no welds on the deck shell to wear or break. It is stamped from a single sheet of steel.
- The rounded corners of the stamped deck help distribute impact stress to reduce the potential of damage when the mower contacts trees, rocks, curbs, and other fixed obstacles.

**Quote ID :17845490 Customer Name : TOWN OF SMITHFIELD ACCOUNTS PAYABLE**

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60-in. (152-cm) 7Iron  
PRO mower deck shown

- A deep-deck design of 5.5 in. (14 cm) delivers excellent airflow so material can be processed quickly and efficiently.
- The wide-discharge opening provides even clipping dispersal for an excellent, finished appearance in all conditions.
- The front edge is raised above the blade plane to allow even cutting of tall grass.

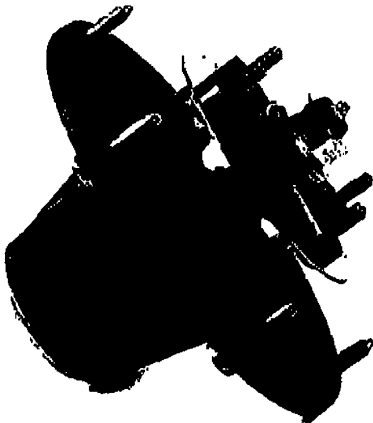
Base Equipment On: Z997R

**Spindle housings are made of ductile cast iron for extra durability**

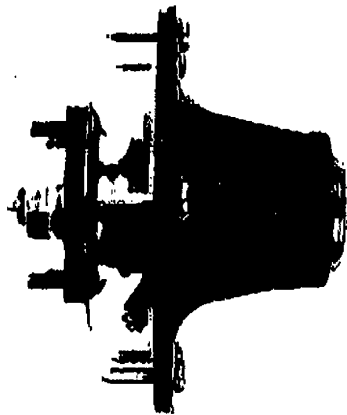
Commercial mower decks have three 1-in. (25-mm) spindles that are cold-forged and heat-treated for strength. Each spindle is supported by precision ball bearings, providing great performance and reliability.

The blade spindles are designed for many hours of trouble-free operation:

- The spindle housings are made of ductile cast iron and have a gusseted design that puts the reinforcement where it is needed.
- Ductile cast-iron material provides increased impact strength.
- Strength of cast iron protects against damage from blade impacts.
- Grease fitting is mounted at the top for easy access.
- Grease pressure-relief valve minimizes seal damage from overfilling with grease and keeps debris from entering housing.
- The 8-in. (20.3-cm) diameter housing distributes loads and impacts to minimize deck-shell damage.
- Spindle assembly can be rebuilt.



Cast-iron spindle assembly



Cast-iron mower spindle

Base Equipment On: Z997R

**Safety and serviceability**

**Three-year, bumper-to-bumper warranty**



Quote ID :17845490 Customer Name : TOWN OF SMITHFIELD ACCOUNTS PAYABLE



Z930M ZTrak Mower



Z970R ZTrak Mower

Base Equipment On: Z915E, Z920M, Z925M, Z930M, Z945M EFI, Z950M, Z955M EFI, Z960M, Z930R, Z950R, Z970R  
**E and M Series three-year, 1200 hour bumper-to-bumper warranty**

An exclusive two-year, unlimited hour/three-year, 1200-hour (whichever comes first) bumper-to-bumper warranty is standard for all John Deere E and M Series Mowers. The warranty is best in its class and places John Deere at the forefront of commercial mowing. It is also hassle free, with one company handling all of the paperwork.

*NOTE: 36 months or 1200 hours, whichever comes first. For the first 24 months, there is no hour limitation.*

Base Equipment On: Z915E, Z920M, Z925M, Z930M, Z945M EFI, Z950M, Z955M EFI, Z960M, Z930R, Z950R, Z970R  
**R Series three-year, 1500 hour bumper-to-bumper warranty**

An exclusive two-year, unlimited hour/three-year, 1500-hour (whichever comes first) bumper-to-bumper warranty is standard on all John Deere R Series mowers. The warranty is best in the industry and puts John Deere at the forefront of commercial mowing. It is also hassle free, with one company handling all of the paperwork.

*NOTE: 36 months or 1500 hours, whichever comes first. For the first 24 months, there is no hour limitation.*

Base Equipment On: Z915E, Z920M, Z925M, Z930M, Z945M EFI, Z950M, Z955M EFI, Z960M, Z930R, Z950R, Z970R

**Product Specification Details :**

<b>Manufacturer Model</b>	<b>John Deere Z970R (2018)</b>
<b>Engine</b>	---
Manufacturer/Model	3TNV88C
Power	At 3,000 rpm, PS, 37.4
Displacement	100.2
Cylinders	Three
Crankcase capacity	3.8
Oil filter	A passage integral, replaceable, visible
Lubrication	Full pressure
Cooling	Liquid
Air cleaner	Sec, replaceable
Pre-cleaner	Yes
<b>Fuel system</b>	
Fuel type	Diesel or Biodiesel (up to B20)
Fuel consumption	---
Fuel tank capacity	11.8
Fuel tank switch/shut-off valve	Yes
<b>Electrical system</b>	



**Quote ID :17845490 Customer Name : TOWN OF SMITHFIELD ACCOUNTS PAYABLE**

Charge system	75
Battery voltage	12
Cold cranking amp	At 18 degrees C 490
Hour meter	Standard multi-function display
Operator presence starting system	De série
<b>Drivetrain</b>	
Wheel motors	Parker Ross TG0310 18.9
Hydraulic pumps	---
Travel speed	---
Forward	0-11.5
Speed range	---
Reverse	0-5
Speed and direction control	Zero turn
Hydraulic capacity	Tank capacity 3.2
Hydraulic oil cooler	Yes
Filter	Spln-on Type
Transmission	---
<b>Tires</b>	
Drive wheels	28x12-12
Rear tires	26x12-12
Load rating	4pr
<b>Brakes</b>	
Dynamic braking	Dual hand controlled levers
Park brake	Calliper disc brake
Park brake actuation	Hand lever
<b>PTO</b>	
Type	Hydraulic clutch
Drive	Internal wet disk clutch
<b>Mower decks</b>	
Size	Side discharge 60, Mulch On Demand™ (MOD) 80, rear discharge 80
Deck construction	7-Iron PRO; One piece stamped steel (except for 60 in. rear discharge)
Deck thickness	7
Discharge	Side discharge, Mulch On Demand, rear discharge
Height-of-cut range	1.6-5.0
Increments	0.25
Cutting width	60, 72
<b>Blades</b>	
Length	60-in. deck 21
Thickness	0.25
Blade tip speed	60- in. deck approximately 17,480
Number	Three
<b>Wheels</b>	
Center wheel type	Flat free
Center wheels	15x6-6
Front anti-scalp rollers	LH, RH, Center
Rear anti-scalp rollers	LH, RH, Center
<b>Dimensions</b>	
Length	60 in. side discharge 85
Width	60-in. side discharge end MOD 74
Height	ROPs up 85
Weight	60-in. side discharge 1,774; 60-in. rear discharge 1,827
<b>Buyer's note</b>	
Warranty	---
<b>Key Specs</b>	
Engine Manufacturer/model	---
Engine Power	---
Fuel tank capacity	---
Mower deck size	---
Blade tip speed	---
Transmission	---
Speed range	---
Drive wheels	---



**Quote ID :17845490Customer Name : TOWN OF SMITHFIELD ACCOUNTS PAYABLE**

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Caster wheels	---
Warranty	---
<b>Additional Information</b>	
Date collected	Le 24 avril 2017

# Sales Quotation

## Musgrave Equipment Company

3866 US Hwy 70 West  
 Goldsboro, NC 27530  
 Phone: 919-736-0808  
 Fax: 919-736-0437

To: <i>Town of Smithfield</i> <i>Smithfield N.C.</i> <i>Attention: Henry</i>	If you have any questions, please call James Roberts at 919-736-0808  <i>FAX 919-934-1522</i>
--	---

Item	Quantity	Description	Unit Price	Total Price
1.	<i>1</i>	<i>ZD1511LE-72 - Zukooff</i>		
2.		<i>72" side discharge mower</i>		<i>17346.85</i>
3.				
4.				
5.		<i>TAX</i>		<i>1170.91</i>
6.				<i>18517.76</i>
7.				
8.				
9.				
10.				
11.				
12.				

We will be happy to supply any further information you may need and trust that you call on us to fill your order, which will receive our prompt and careful attention.

Per 

*7-20-18*  
 Date:



# Request for Town Council Action

**Consent  
Agenda  
Item:** Purchase of  
Work Truck  
**Date:** 08/07/2018

---

**Subject:** Purchase of A New Work Truck

**Department:** Public Utilities

**Presented by:** Ted Credle

**Presentation:** Consent Agenda Item

---

## Issue Statement

The purchase of a new truck was approved by Town Council for this year's budget and was quoted by vendors.

## Financial Impact

\$50,000 was approved in the FY 2018-2019 budget for this purchase

## Action Needed

Approve the purchase of the work truck

## Recommendation

Staff recommends the approval of the purchase of a truck form Deacon Jones for the quoted price of \$29,051.00

Approved:  Town Manager  Town Attorney

Attachments:

1. Staff Report
2. Price quote/documentation from Capital Ford
3. Price quote/documentation from Deacon Jones
4. Price quote/documentation from Ford Direct



# Staff Report

**Consent  
Agenda  
Item: Purchase of  
Work Truck**

---

As part of the approved budget for the present fiscal year (2018-2019), the Town Council approved funding to purchase a new work truck for the Water Distribution/Collection Division in Public Utilities.

The quoted vehicles are under the approved budget and will fit Town needs. We will use remaining funds to assist with another approved project – the water line tie-in on Old Goldsboro Road.

---

# Capital Ford, Inc.

## Government Sales Division

From Jennifer Romano Gov't Sales  
Phone/Fax Office 919-790-4648 Fax 919-871-6917  
E-Mail [jromano@capitalford.com](mailto:jromano@capitalford.com)

DATE July 3rd 2018  
Town of Smithfield

FINAL QUOTE NC State Contract 070A

2019 F250 4x2 Reg Cab 142" WB	\$ 29,061.00
Painted White/ Vinyl Interior / delivered	included
Power group/keyless entry/cruise control/Rear Camera	Included
Trailer Tow Package	included
8' Knapheide Service Body w/ Spray Liner	included
Spare Tire and wheel	Included
3.73 Elocking Axle	included
Air conditioning	included
AM/FM Radio	included
6.2L V-8 Gas Engine	included

Please allow at least 12 Weeks for delivery

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Total	\$ 29,061.00
-------	--------------

Remit to  
[jromano@capitalford.com](mailto:jromano@capitalford.com)  
Capital ford of Raleigh  
4900 Capital Blvd  
Raleigh NC 27616

---

2605 Millbrook Road

1-800-849-3166



Fax: 919-790-4740



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BIO TO TOWN of Smithfield  
ATT. PAT BUTLER

2019 FORD F-250 REG. CAB / 142" Wheelbase / 6.2 V-8 /  
6 spd. Auto Trans. / Trailer tow pkg. / AC / AM-FM /  
3.73 Electronic Lock Axle / PWR-Equipment group /  
REAR CAMERA / SPARE TIRE & WHEEL / CRUISE /

8FT. KNAPHEIDE SERVICE BODY  
w/ SPRAYLIDER

\$ 29051.00

NO TAX or FEES INCLUDED

Truck to be ordered. Allow 12-16 WEEKS Delivery

Thank You: JEFF HILL  
919-736-3387 OFFICE  
919-222-0090 CELL



KTP-001541 NC 9-NORMAL, NB, 101541, JC091 2798

ULN CERT CERT TRD R RAMP BUMP CAMP BOOK EXFL



1FDBF2A69 JEC04088 NB

BU09



Go Further  
ford.com

VEHICLE DESCRIPTION

**SUPER DUTY**

2018 F250 SRW 4X2 REG CAB  
XL 142" WB STYLESIDE  
6.2L EFI V-8 ENGINE  
6 SPEED AUTOMATIC TRANS G

JE **C04088**

EXTERIOR OXFORD WHITE  
INTERIOR MEDIUM EARTH GRAY VINYL

STANDARD EQUIPMENT INCLUDED AT NO EXTRA CHARGE

**EXTERIOR**

- BOX RAIL/TAILGATE MOLDINGS
- DOOR HANDLES - BLACK
- HEADLAMPS -WIPER ACTIVATED
- LOCKING REMOVABLE TAILGATE
- PICKUP BOX, TIE DOWN HOOKS  
-NA W/BOX DLT
- SPARE TIRE AND WHEEL LOCK  
-NA W/BOX DLT
- TOW HOOKS
- TRAILER SWAY CONTROL

**INTERIOR**

- AIR COND, MANUAL FRONT
- DRIVER SEAT-MANUAL LUMBAR
- OUTSIDE TEMP DISPLAY
- PARTICULATE AIR FILTER
- TILT/TELESCOPE STR. COLUMN
- VINYL SUN VISORS

**FUNCTIONAL**

- 4-WHEEL ANTI-LOCK DISC BRAKING SYSTEM
- HILL START ASSIST
- JEWEL EFFECT HEADLAMPS
- MYKEY®
- REAR VIEW CAMERA  
NA W/BOX DLT
- TWIN I-BEAM INDEPENDENT FRT SUSPENSION W/STAB BAR

**SAFETY/SECURITY**

- ADVANCETRAC WITH RSC
- AIRBAGS - SAFETY CANOPY
- BELT-MINDER CHIME
- DRIVER/PASSENGER AIR BAGS
- SECURILOCK® ANTI-THEFT SYS
- SOS POST CRASH ALERT SYS

**WARRANTY**

- 3YR/36,000 BUMPER / BUMPER
- 5YR/60,000 POWERTRAIN
- 5YR/60,000 ROADSIDE ASSIST

INCLUDED ON THIS VEHICLE

(MSRP)

**OPTIONAL EQUIPMENT/OTHER**

- PREFERRED EQUIPMENT PKG.600A
- 6 SPEED AUTOMATIC TRANS G
- 3.73 ELECTRONIC LOCKING AXLE
- POWER EQUIPMENT GROUP
- PICKUP BOX DELETE
- XL DECOR PACKAGE
- T00004 GVWR PACKAGE
- 50 STATE EMISSIONS
- TRAILER BRAKE CONTROLLER
- TELESCPING TT MIRR-POWR/HTD
- REAR STAB BAR W/ AUX SPRINGS
- UPFITTER SWITCHES
- EXTRA HEAVY DUTY ALTERNATOR
- XL VALUE PACKAGE
- .CRUISE CONTROL
- .AM/FM STEREO CD/CLK

NO CHARGE  
390.00  
915.00  
625.00  
NO CHARGE  
NO CHARGE  
270.00  
125.00  
165.00  
NO CHARGE  
720.00

**PRICE INFORMATION**

BASE PRICE \$32,985.00  
TOTAL OPTIONS/OTHER 1,960.00  
TOTAL VEHICLE & OPTIONS/OTHER DESTINATION & DELIVERY 34,945.00  
1,295.00

(MSRP)

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1FDBF2A69JEC04088

**TOTAL MSRP \$36,240.00**

RAMP ONE

CA2L

RAMP TWO

FINAL ASSEMBLY PLANT

KENTUCKY

METHOD OF TRANSP.

CONVOY

ITEM #: 21-0002 O/T 1

**SPECIAL ORDER**

JC091,N RB 2X 835 001541 03.09.18

This label is affixed pursuant to the Federal Automobile Information Disclosure Act. Gasoline, License, and Title Fees, State and Local taxes are not included. Dealer installed options or accessories are not included unless listed above.



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# Request for Town Council Action

**Consent  
Agenda  
Item:**  
Date: 08/07/2018

**Award of  
Contract**

---

**Subject:** Award of Contract for Water Line tie-in on Old Goldsboro Road

**Department:** Public Utilities

**Presented by:** Ted Credle

**Presentation:** Consent Agenda Item

---

## Issue Statement

Residents along Old Goldsboro Road frequently experience cloudy water. Although the water is safe, this cloudiness is a nuisance and should be remedied. By making another connection, and "looping" the system, the water line will naturally flush and remedy any taste, odor, or cloudiness. This project was approved as part of this year's budget.

## Financial Impact

\$49,972. \$40,000 was budgeted for this project in FY 2018-2019 budget. A new work truck is also requested for approval during this council meeting. The work truck is \$20,000 under the budgeted amount, allowing the excess to be used for the additional amount needed for the Goldsboro Road Sewer project.

## Action Needed

Approve the award of Contract to the low bidder

## Recommendation

Staff recommends the approval of the proposed low-bid Contractor

Approved:  Town Manager  Town Attorney

Attachments:

1. Staff Report
2. Bid from RD Braswell
3. Bid from Corbett Contracting



# Staff Report

Consent  
Agenda  
Item: Award of  
Contract

Residents along a dead-end portion of Old Goldsboro regularly have issues with cloudy water. In response, the Town flushes the hydrants and the water clears up for about two to three weeks. The water is safe, but this is an ongoing issue for these residents.

To stop this repetitive issue, the Town proposes to **"loop"** the water system by making another connection near the dead end, along Old Goldsboro Road. This will have the added benefit of providing another connection into the west side of Pine Acres subdivision, which will assist when there are maintenance needs.

This project was approved in the FY 2018-2019 budget line item 30-71-7220-5700-7400. The project was bid to multiple contractors. The low bidder was RD Braswell. Four contractors were asked to bid and only two submitted. Two other **bidders submitted "no bid"**. Because the bid amount is under the state mandated \$500,000 amount, three bids are not required.

Staff is asking to have the low bidder perform the work, so that a second connection can be made to the west side of Pine Acres and the residents along old Goldsboro Road can maintain clear water.

**CORBETT CONTRACTING, INC**

**Proposal**

June 29, 2018

Town of Smithfield  
Att: Pat Butler

RE: Proposal—Old Goldsboro Road Waterline Replacement

1 EA	12X6 TS&V	4900.00	4900.00
1100'	6" DR-18 C-900	26.00	28600.00
20'	6" DIP CL-350	35.00	700.00
2 EA	6" GATE VAVES	1040.00	2080.00
1 EA	FIRE HYDRANT	2790.00	2790.00
2 EA	6" 45 DEGREE BENDS	750.00	1500.00
1 EA	6X6 TEE	380.00	380.00
1 EA	6X6 TEE CUT IN PLACE	3500.00	3500.00
4 EA	¾" WATER SERV RECONNECTS	1500.00	6000.00
1 EA	RECONNECT 2" MAIN	1750.00	1750.00
1 EA	ABANDON EXIST 6"	6000.00	6000.00
32 SY	ASPHALT REMOVE & REPLACE	125.00	4000.00
1 EA	TESTING	2500.00	2500.00
1 LS	SEEDING & MULCHING	1500.00	<u>1500.00</u>
		<b>TOTAL</b>	<b>66200.00</b>

**INCIDENTAL ITEMS**

STONE STABILIZATION:	39.00 /TON
CLEARING:	NONE
ROCK:	250.00/CY
ALL LINES STOP:	AS PER PLAN
BONDS :	IF NEEDED
FEES:	NONE
ASPHALT REMOVAL:	INCLUDED
ASPHALT REPLACEMENT:	INCLUDED
PERMITS:	NONE
STAKING:	BY OTHERS
SEEDING & MULCHING:	BY OTHERS

ADJ. ON VALVE BOXES IN PAVEMENT: NONE  
ADJ. ON MANHOLES IN PAVEMENT: NONE

PRICE DOES NOT INCLUDE DISPOSAL OR BORROW MATERIAL  
PRICE DOES NOT INCLUDE RELOCATION OF EXISTING UTILITIES

UNDERCUT/SELECT BACKFILL 45/CY

AUTHORIZED SIGNATURE: \_\_\_\_\_



## R. D. BRASWELL CONSTRUCTION COMPANY

3241 U.S. 70 EAST SUITE I01  
SMITHFIELD, N. C. 27577

TELEPHONE 919-965-3131  
Fax 919-965-2643

June 27,2018

Town of Smithfield  
P.O Box 761  
Smithfield, N.C 27577

ATT: Pat

RE: Old Goldsboro Rd. Waterline Replacement

Pat:

Please accept this as my official proposal for the above referenced project. Our prices are as follows:

1. 1 ea. 12" X 6" Tapping Sleeve, Valve, and box=	\$7,105.00
2. 1092 LF 6" c-900 PVC waterline @ \$26.00/lf =	\$28,392.00
3. 2 ea. 6" MJ 45 degree bends @ \$455.00/ea. =	\$ 910.00
4. 1 ea. 6" MJ Tee @ \$505.00/ea. =	\$ 505.00
5. 1 ea. Fire Hydrant assembly @ \$4,310.00/ea. =	\$4,310.00
6. 1 ea. Tie-in to existing 6" waterline at Ash Street	\$3,550.00
7. 1 ea. Abandon Existing 6"	\$1,800.00
8. 4 ea. ¾" Water service re-connects @ \$850.00/ea.	\$3,400.00

**TOTAL**

**\$49,972.00**

Your early attention and response to this proposal will enable us to hold our prices for thirty days.

Thanks;

Dick Braswell



# Request for Town Council Action

**Consent**   **Purchase of**  
**Agenda**   **Bucket**  
**Item:**   **Truck**  
Date: 08/07/2018

---

**Subject:** Purchase of A New Bucket Truck

**Department:** Public Utilities

**Presented by:** Ted Credle

**Presentation:** Consent Agenda Item

---

## Issue Statement

The purchase of a new bucket truck was approved by Town Council for this year's budget and was quoted by vendors.

## Financial Impact

If awarded to the low bidder, the financial impact would be \$203,923. Funds in the amount of \$265,000 were budgeted in FY 2017-2018 and FY 2018-2019.

## Action Needed

Approve the purchase of the bucket truck

## Recommendation

Staff recommends the approval of the low-bid bucket truck from Terex (through NJPA)

Approved:  Town Manager  Town Attorney

## Attachments:

1. Staff Report
2. Price quote/documentation from Terex – through NJPA
3. Price quote/documentation from Altec – Through NJPA
4. Price quote/documentation from NESCO
5. Price quote/documentation from Customtruck



# Staff Report

**Business  
Agenda  
Item: Purchase of  
Bucket Truck**

---

As part of the approved budget for the present fiscal year (2018-2019), the Town Council approved funding to purchase a new bucket truck for the Electric Division in Public Utilities. This was a continuation of approval from the previous year (2017-2018), where funds were previously set aside for the same purpose. The total amount budgeted for this purchase is \$265,000.

The quoted vehicles are under the approved budget and will fit Town needs. Similar to Fire vehicles, this truck will take around 11 months to manufacture, once ordered. Staff is asking the Council to approve the order for, and subsequent manufacture of, the proposed bucket truck; so we can replace truck #805; which is 18 years old and needs almost constant maintenance.





**TEREX**<sup>®</sup>

**CUSTOMER ORDER ACKNOWLEDGEMENT**

Terex Utilities, Inc. - 200 Eden Way - White House, TN 37188 - Phone: 605-882-4000 - Fax: 605-882-1842

Date: **6/15/2018**

Quote Number: QU10955

Unit: OPTIMA-HR55

Town Of Smithfield  
230 Hospital RD  
Smithfield,NC,27577

Attention: Rodney Johnson

NJPA Baseline Price: \$111,517  
Chassis: \$76,140

Steel Surcharge: \$3,664  
NJPA Open Market Items: \$12,602

Grand Total Each: **\$203,923**

Prices are subject to change until shipment. Applicable taxes and surcharges will be added. Taxes, shipping & handling and lead times are estimates and subject to change. Quoted prices are based on total quoted package and subject to change if all items not purchased. All prices quoted are in U.S. dollars unless otherwise specified. Payment by cash or certified check only. Chassis payment is due upon chassis receipt at our facility. Quote withdrawn after 30 days. Please ensure the accuracy of the specifications and drawings you provide. Changes made after receipt of order may incur additional charges. If you are trading equipment in, you warrant that: You have good title to the trade-in; it is free of all liens and encumbrances; all information you have provided related to the trade-in is true and correct.

Notes:

- 1) Delivery Terms are: FCA, Shipping Point Delivery Prepaid and Included.
- 2) Terms: Net 30 days.
- 3) Delivery days from receipt of order shall be 240 - 300

Buyer hereby agrees to purchase the products in this quotation, subject to acceptance by Seller. Buyer has read and agrees to Seller's Terms and Conditions of Sale.

Terex Utilities Inc.

Mike Tiernan  
Sales Coordinator

Ronnie Norris  
Account Manager

Accepted By: \_\_\_\_\_

PO Number: \_\_\_\_\_

Quantity: \_\_\_\_\_

Grand Total: \_\_\_\_\_

Date: \_\_\_\_\_



Opportunity Number: 809433  
 Quotation Number: 410382  
 Sourcewell Contract #: 012418-ALT  
 Date: 7/18/2018

Quoted for: Town of Smithfield

Customer Contact:

Phone: / Email:

Quoted by: Melissa Fuller

Phone: 540-966-2983 / Email: melissa.fuller@altec.com

Altec Account Manager: Brian Carnahan

**REFERENCE ALTEC MODEL**

AN55E-OC	Overcenter Articulating Aerial Device with Material Handling, Extended Sid	\$173,073
----------	--	-----------

**(A.) SOURCEWELL OPTIONS ON CONTRACT (Unit)**

1			
2			
3			

**(A1.) SOURCEWELL OPTIONS ON CONTRACT (General)**

1	DP	Dica Pads and Pad Holder - 24" x 24" x 1", With Rope Handle (Pair)	\$615
2	DP	Dica Pads and Pad Holder - 24" x 24" x 1", With Rope Handle (Pair)	\$615
3	CH	Cone Holder, Fold Over Post Style	\$269
4	BK	WATER CASK (Includes Bracket)	\$200
5	BK	WATER CASK (Includes Bracket)	\$200
6	SPOT4	SIX (6) POINT STROBE SYSTEM (LED)	\$758
7	TBE	ELECTRIC TRAILER BRAKE CONTROLLER. Controls Trailers with Electric	\$224
8	PSWI	PURE SINE WAVE INVERTER.1800 Watts Continuous. GFCI Outlet at Rear	\$2,477

**SOURCEWELL OPTIONS TOTAL: \$178,431**

**(B.) OPEN MARKET ITEMS (Customer Requested)**

1	UNIT	Elevator Unit ILO Standard Unit	\$3,993
2	UNIT & HYDRAULIC ACC	Wireholder Sheave Combo, Subbase Storage, Hose Reel and Hoses	\$3,224
3	BODY	Custom Body ILO Stock Body including Aluminum Boxes, Lights	\$15,743
4	BODY & CHASSIS ACC	Ladder Rack, Rear Step, Grab Handles, Reciever Tube, Wire Reel Holders	\$2,924
5	ELECTRICAL	Flood Lights, Underbody Lighting, Grounding Package, Receptacles	\$4,271
6	FINISHING	DOT Certification	\$131
7	CHASSIS	Custom Chassis ILO Stock Chassis	\$7,692
8	OTHER		

**OPEN MARKET OPTIONS TOTAL: \$37,978**

**SUB-TOTAL FOR UNIT/BODY/CHASSIS: \$216,409**

Delivery to Customer: \$438

**TOTAL FOR UNIT/BODY/CHASSIS: \$216,847**

**(C.) ADDITIONAL ITEMS (items are not included in total above)**

1			
2			
3			
4			

**\*\*Pricing valid for 45 days\*\***

**NOTES**

**PAINT COLOR:** White to match chassis, unless otherwise specified

**WARRANTY:** Standard Altec Warranty for Aerials and Derricks - One (1) year parts warranty One (1) year labor warranty Ninety (90) days warranty for travel charges (Mobile Service) Limited Lifetime Structural Warranty. Chassis to include standard warranty, per the manufacturer.

**TO ORDER:** To order, please contact the Altec Account Manager listed above.

**CHASSIS:** Per Altec Commercial Standard

**DELIVERY:** No later than 330-360 days ARO, FOB Customer Location

**TERMS:** Net 30 days

**BEST VALUE:** Altec boasts the following "Best Value" features: Altec ISO Grip Controls for Extra Protection, Only Lifetime Warranty on Structural Components in Industry, Largest Service Network in Industry (Domestic and Overseas), Altec SENTRY Web/CD Based Training, Dedicated/Direct Gov't Sales Manager, In-Service Training with Every Order.

**TRADE-IN:** Equipment trades must be received in operational condition (as initial inspection) and DOT compliant at the time of pick-up. Failure to comply with these requirements, may result in customer bill-back repairs.

**BUILD LOCATION:** Roanoke

## Rodney Johnson

---

**From:** Jeremy Hanks <jeremy.hanks@nescorentals.com>  
**Sent:** Monday, July 09, 2018 9:55 PM  
**To:** Rodney Johnson  
**Subject:** 55ft Hydraulic Articulating Bucket truck bid

Mr Johnson,

I just wanted to inform you that **NESCO Rentals will not be able** to submit a quotation for this request.

Sincerely,

### Jeremy Hanks

Southeastern Territory Manager

*NESCO Rentals*

---

3112 E State Rd 124 | Bluffton, IN 46714

p/f: (260) 824-7161 | m: (260) 273-7942

e: [jeremy.hanks@nescorentals.com](mailto:jeremy.hanks@nescorentals.com)

[www.NescoRentals.com](http://www.NescoRentals.com) | [Catalog](#)

[Facebook](#) | [LinkedIn](#) | [Twitter](#) | [YouTube](#)

## Rodney Johnson

---

**From:** Brandon Riley <briley@customtruck.com>  
**Sent:** Thursday, July 05, 2018 11:55 AM  
**To:** Rodney Johnson  
**Subject:** NO BID  
**Attachments:** 2018 - Town of Smithfield - 55' overcenter bucket spec.pdf

This is a no bid response in regards to the attached bid

Thanks

Brandon Riley  
Territory Manager-Southeast

**DIRECT** +1 (682) 200-6999  
**MOBILE** +1 (404) 625-0191

[Equipment Lookbook](#)  
[customtruck.com](#)



My email address has changed to [briley@customtruck.com](mailto:briley@customtruck.com) please update your address book.



# Request for Town Council Action

**Consent  
Agenda  
Item:** Purchase of  
AMI Meters  
**Date:** 08/07/2018

---

**Subject:** Purchase of AMI Meters form Nexgrid

**Department:** Public Utilities

**Presented by:** Ted Credle

**Presentation:** Consent Agenda Item

---

## Issue Statement

The purchase of Advanced Metering Infrastructure (AMI) meters from Nexgrid has been approved by Town Council and quoted by the manufacturers.

## Financial Impact

This purchase will cost \$166,200

For FY 2018-2019, the total project budget was approved as \$500,000 (Electric)

## Action Needed

Approve the purchase of Meters (1,000) to be installed in the Town for electric service

## Recommendation

Staff recommends the approval of the purchase of the AMI meters

Approved:  Town Manager  Town Attorney

Attachments:

1. Staff Report
2. Price quote/documentation from Nexgrid



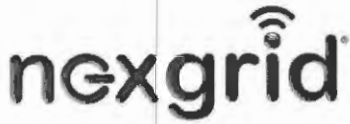
# Staff Report

**Consent  
Agenda  
Item: Purchase of  
AMI Meters**

---

As part of the approved budget for the present fiscal year (2018-2019), the Town Council approved funding to continue the acquisition and installation of AMI meters throughout the Town. This is the first order of the present fiscal year, covering the area east of Brightleaf Boulevard from the Neuse River, northward to Aspen Drive.

This order of electric meters will number 1,000. These new meters will be the next step of branching service outward through the Town.



QUOTE

915 Maple Grove Dr

Suite 200

Fredericksburg, VA 22407

Toll Free: 1-833-NEXGRID

Fax: 540-328-9895

Quote # QSMI072518

SOW # 0

PO # 0

Amy Streisel

Date: July 25, 2018

Smithfield, NC

Item	Part Number	Description	QTY	Unit Price	Extended Price
<b>Communication Infrastructure</b>					
1	ecoNet SL	ecoNet SL Communication Gateway W/Street Light Controller and Power Measurement	5	\$424.94	\$2,124.70
2	ecoSwitch SL-HG	ecoSwitch Streetlight Repeater/Controller with Power Measurement w/ high gain capability	4	\$135.30	\$541.20
<b>Subtotal:</b>					<b>\$2,665.90</b>
<b>Electric AMI</b>					
3	intelaMeter I210+ 2S 200	Aclara i210+ Form 2S 200 Meter & intelaMeter Communication Module	1000	\$109.51	\$109,510.00
<b>Subtotal:</b>					<b>\$109,510.00</b>
<b>Optional Accessories</b>					
4	Aclara I210+ 2S RD	Remote Disconnect for Aclara I210+ 2S Meter (Incremental Cost)	1000	\$53.34	\$53,340.00
5	HGAB 29	ecoNet SL High Gain Antenna Bracket	8	\$39.00	\$312.00
6	HGA	ecoNet SL High Gain Antenna	8	\$45.00	\$360.00
<b>Subtotal:</b>					<b>\$54,012.00</b>
<b>Final System Cost:</b>					<b>\$166,187.90</b>

\*Assumes Smithfield will provide Nexgrid access to backbone on the corner of East Lee and Martin Luther King Drive.

Terms

Customer is responsible for all shipping and receiving charges from POO Fredericksburg VA. Executed PO must be received a minimum of 90 days prior to delivery date.  
 Finance terms: 50% due in advance, remaining balance due upon hardware delivery, net 30 with approved credit. Late payments will be assessed a late fee of one and one-half percent (1.5%) per month on outstanding balances. Service hours and customary expenses will be billed as incurred on a monthly basis.  
 All Nexgrid products include a 10 year limited warranty, all other hardware carries manufactures standard warranty.  
 The prices quoted above are applicable only to a firm, non-cancelable Purchase Order received within the Effective Period for the Products listed above.  
 Customer shall be responsible for all standard and customary travel related expenses and per Diem.  
 Taxes, Import Fees, VAT and any other unknown government or transportation charge is the responsibility of the customer. Quotes are valid for 30 days.

Nexgrid  
 Signature:   
 Name: Haim Shaul  
 Date: 7/25/18

Customer  
 Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Date: \_\_\_\_\_

End of Quotation







# Request for Town Council Action

**Consent  
Agenda  
Item:** Police  
Promotion  
**Date:** 08/07/2018

---

**Subject:** Promotion  
**Department:** Police Department  
**Presented by:** Chief R.K. Powell  
**Presentation:** Consent Agenda

---

## Issue Statement

The Police Department has recently promoted Officer Brandon Smith to the Position of Sergeant at this time his team commander assignment has not been decided but will be in a couple of days. Sergeant Brandon Smith has been with the Smithfield Police Department for 8 years. He has held the rank of Patrol Officer and has been a Field Training Officer.

## Financial Impact

Sergeant Smith will receive a 10% increase in pay due to the promotion, or \$4,344 annually. The pay increase will be covered by the current budget.

## Action Needed

Approve Promotion

## Recommendation

Complete Promotional Process

Approved:  Town Manager  Town Attorney

Attachments:

1. Staff Report



## Staff Report

Consent  
Agenda  
Item: Police  
Promotion

---

The police department completed its promotional process consistent with its CALEA approved guidelines and policies less than two years ago. The promotional list remains valid until such time as two years passes. Brandon Smith has been selected from this list to **become the Smithfield Police Department's next patrol sergeant. He will be the front line supervisor** for a patrol shift of four patrol officers and supplementary supervision of one K-9 officer. He will be a non-exempt employee, as is the norm for this position. Brandon Smith is currently a Master Police Officer. He will receive additional first line supervisory training as soon as it becomes available.



# Request for Town Council Action

**Consent  
Agenda  
Item:** Adoption of  
Amendments  
to the TJCOG  
Charter  
Date: 08/07/2018

---

**Subject:** Martin Luther King Jr Parade Revision  
**Department:** General Government  
**Presented by:** Shannan Parrish  
**Presentation:** Consent Agenda Item

---

## Issue Statement

Triangle J Council of Governments is requesting that the Town of Smithfield adopt amendments to its charter.

## Financial Impact

None

## Action Needed

Approve amendments to the Triangle J. Council of Government's Charter by adopting Resolution # 622 (09-2018)

## Recommendation

Adopt Resolution # 622 (09-2018)

Approved:  Town Manager  Town Attorney

Attachments:

1. Staff Report
2. Triangle J. Council of Governments Amended Charter
3. Resolution #622 (09-2018)



# Staff Report

**Consent  
Agenda  
Item:** **Adoption of  
Amendments  
to the TJCOG  
Charter**

---

In April, the Triangle J Board of Delegates approved updates to the Charter Resolution to reflect current practices and regional boundaries. In order to finalize the adoption process, each of the member government's governing boards must review and adopt the updated resolution. A red-lined copy with changes and a final version of the document are also attached.

# Triangle J Council of Governments Charter Resolution

WHEREAS, together with the other county and municipal governmental units adopting concurrent Resolutions identical hereto, recognize that there is a need for such governmental units to consult among themselves and to act in concert with reference to regional matters affecting health, safety, welfare, education, recreation, economic conditions, regional planning or planning development; now, therefore, be it

RESOLVED, that pursuant to the General Statutes of North Carolina, Chapter 160A, Article 20, Part 2, the following Resolution is adopted for the establishment of a regional council of governments.

## ARTICLE I

Short Title - Binding Effect. This Resolution is the "Charter" of this Regional Council; and said Charter, together with all amendments thereto, is binding upon and shall ensure the benefit of all governmental units adopting it.

## ARTICLE II

Name. The name of the regional council of governments hereby established is the Triangle J Council of Governments.

## ARTICLE III

Purpose. The purposes of the Council are:

- 1) To serve as a forum for discussion of governmental problems of mutual interest and concern;
- 2) To develop and formalize policy recommendations concerning specific matters having an areawide significance which may include but are not limited to the following:
  - a) human resource development and human relations,
  - b) housing, public and private.

- c) health care and hospital services.
  - d) ~~R~~recreation.
  - e) sanitation and refuse disposal.
  - f) ~~C~~ommunications.
  - g) ~~T~~ransportation.
  - h) water, sanitary sewer, electric power and other utility services.
  - i) air, water and other environmental development.
  - j) commercial and industrial development.
  - k) law enforcement.
  - l) ~~W~~welfare.
  - m) fire protection and prevention.
  - n) regional land use planning.
  - o) ~~manpower-workforce~~ development and training, and
  - p) conservation and development of natural resources.
- 3) To promote inter-governmental cooperation;
  - 4) To provide organizational machinery to insure effective communication and coordination among the participating governmental units and other governmental units.
  - 5) To serve as a vehicle for the collection and distribution of information concerning matters of areawide interests;
  - 6) To review, upon request of any governmental unit within the Triangle J Region, applications of that unit for any grant in aide, federal, state or private; and
  - 7) To provide services to local governments and residents in the area known as the Triangle J Region where appropriate and authorized.

The Council shall strive to promote harmony and cooperation among its members. It shall seek to deal with regional problems in a ~~manner which~~manner that is mutually satisfactory and shall respect the autonomy of all local governments within the Triangle J Region.

#### **ARTICLE IV**

##### Membership

- 1) The initial membership of the Council of Governments shall consist of the general purpose governmental units of and in the counties of Chatham, Durham, Johnston,

Lee, Orange, and Wake, known as the Triangle J Region, which adopted a resolution pursuant to N.C.G.S. 160A-470 on or before June 30, 1972.

- 2) Any municipality or county in the Triangle J Region ~~which that~~ is not an initial member of the Council may join this Council by ratifying or adopting this Charter and upon a majority vote of approval by ~~the existing member~~ the Board of Delegates. Notice of such application for admission shall be given ~~to existing~~ a members ~~of by~~ the Council at least ten (10) days prior to the date of the meeting at which the vote is to be taken.
- 3) All rights and privileges of membership in the Council shall be exercised on behalf of the member governments by their delegates to the Council.
- 4) Any special purpose governmental agency in the Triangle J region involved in matters affecting the health, safety, natural resources, welfare or education of the citizens of North Carolina, such as school boards, sanitary districts, and soil and water conservation districts, is eligible to apply for an affiliate membership in the Council. The application may be approved and an affiliate membership granted to such special purpose governmental unit upon the affirmative vote of the Board of Delegates. ~~a majority of the membership attending at any meeting~~ The affiliate member shall pay no assessment, but the Council may charge each affiliate members a reasonable sum to cover its proportionate share of the direct costs of providing services to the affiliate members, provided such payments are authorized by law. The affiliate member shall have no vote in the Council, but its designated representative may serve on any technical or advisory committee and may otherwise participate in the deliberations of the Council.

## ARTICLE V

Withdrawal. Any member may withdraw from the Council at the end of any fiscal year, provided written notice of intent to withdraw is given to each of the other members at least sixty (60) days prior to the end of the fiscal year.

## ARTICLE VI

### Governing Board.

- 1) The governing board of the Council of Governments shall be known as the Board of Delegates, which shall be constituted as described below.

- 2) The Board of Delegates shall consist of one delegate from each member governmental unit. Each governmental unit may designate any number of alternate~~ive~~ delegates. All delegates and alternates shall be elected members of the governing bodies of the member governmental units they represent. The delegates and alternates, as well as their successors, shall be selected by the member governing bodies in any manner consistent with law and the regulations governing such body, and their names shall be certified to the Council in the manner described by the Bylaws of the Council.
  
- 3) The term of office of each delegate shall commence upon the date of his/her appointment and certification to the Council by the governing body of the member governmental unit he or she represents; and such terms shall expire when the appointing body has appointed his or her successor and certified such successor to the Council, unless he or she shall sooner resign, or cease to be an elected member of said governing body, in which case his or her term shall expire on the effective date of such event. Each member shall certify to the Council the names~~s~~ of its delegates~~s~~ and any alternate(s) prior to the first Board of Delegates meeting of the calendar year. Only an individual who has been duly appointed and certified to the Council as a delegate or alternate may ~~be~~ serve as a voting member of the Board of Delegates.
  
- 4) The delegates shall be compensated, upon submittal of proper receipts, for direct expenses incurred in connection with discharging their duties as delegates to the Triangle J Council of Governments.
  
- 5) It is the intent of this Charter that all delegates to the Council shall have demonstrated an interest in the sound development of Region J.

## ARTICLE VII

Meeting. Regular meetings of the Board of Delegates shall be held, monthly as provided in the Bylaws to receive reports from its standing committees and to conduct necessary business. The Chair~~man~~ may cancel the regular meeting if he or she determines that there is no need for the meeting. Special meetings of the Board of Delegates may be called by the Chair~~man~~, or by any three members thereof. All meetings shall be open to the public.

At least 48 hours written notice of any meeting shall be given to all delegates of the Board of Delegates. It shall state the time, place, and purpose of the meeting, and may be sent by electronic means telegram. At least twenty-four (24) hours oral written notice shall be given of any committee meeting to all committee members. Any member may waive notice of this requirement for as to himself/herself.



## ARTICLE VIII

### Quorum and Voting Requirements.

- 1) Except as provided in Paragraph 4 of this Article, each member governmental unit shall be entitled to one vote on all matters coming before the Board of Delegates or before any committee to which such member unit is duly appointed. All votes shall be cast by the delegates, or in his or her absence, by an alternate delegate of the member government.
- 2) The quorum shall be established in the Bylaws. The affirmative vote of a simple majority of ~~representatives~~ members present at any meeting at which a quorum is present shall be required for any action or recommendation of the Board ~~of~~ any Committee, unless this Charter or the Bylaws of the Council require a larger affirmative vote on particular matters.
- 3) Voting shall be by voice, by show of hands, or, upon the request of any three delegates, by a poll of the delegates.
- 4) At the request of any delegate present, any questions shall be determined by weighted voting. Weighted voting shall mean that each participating member local government shall have one vote for each 5,000 units of population, as determined by the most recent decennial census, and for any remaining fraction of 5,000 units within the geographical boundaries of the participating government, except that any participating government whose jurisdiction has a population of less than 5,000 shall have one vote. In the case of any weighted voting question delegates representing local governments with at least two thirds of the aggregate votes of member local governments shall be present and participating. An affirmative vote of at least two thirds of the votes cast shall be required to decide any weighted voting question.
- 5) Proxy voting is not allowed.
- 5)6) The provisions in this Article VIII apply to all committees and boards of the Council except to the extent such committee or board has adopted different measures.

## ARTICLE IX

### Officers of the Board of Delegates

- 1) At the first regular meeting of the Board of Delegates, and annually thereafter as provided by the Bylaws, the Board of Delegates shall elect a ~~e~~Chairman, a ~~f~~First ~~v~~Vice

~~eChairman, a sSecond vVice eChair and a sSecretary-tTreasurer, and a treasurer~~ to serve as officers for one year or until their successors have been duly elected. The Board of Delegates may also elect such additional officers as the Board of Delegates finds to be necessary in the proper performance of its duties.

- 2) The ~~eChairman~~ shall preside at all meetings of the Board of Delegates and shall conduct said meeting in an orderly and impartial manner so as to permit a free and full discussion by the membership of such matters as may be brought to the Board of Delegates. The ~~eChairman~~ shall have the same voting rights as other members.
- 3) The ~~eChairman~~ may appoint such advisory committees as he or she finds ~~to be~~ necessary or desirable.
- 4) The ~~fFirst vVice eChairman~~ shall perform all of the duties of the ~~eChairman~~ in the absence of the ~~eChairman~~, or in the event of the inability of the ~~eChairman~~ to act, and shall perform such other duties as the Board of Delegates may delegate to him or her. The Second Vice Chair shall perform all of the duties of the First Vice Chair in the absence of the First Vice Chair or in the event of the inability of the First Vice Chair to act.
- 5) All other officers elected by the Board of Delegates shall perform such duties as may be prescribed by the Board of Delegates.

## ARTICLE X

### Finance Matters:

- 1) On or before the 15th day of April each year, the Council shall prepare and submit to each participating governmental unit its proposed general budget for the next fiscal year.
- 2) The general budget shall set out the proportionate share of the budget to be borne by each member governmental unit by a method ~~as~~ established in the By-laws and reviewed periodically by the Board of Delegates.
- 3) A special budget providing for cooperative arrangements or coordinated action for two or more members may be adopted at the request of members participating in special functions. The share of the special budget to be borne by each participating member shall be determined by the participating members.

- 4) Upon approval of its share of each budget by a member local government, such member shall appropriate its share of the budget, and after adoption of its own budget, shall forward to the budget officer ~~his~~its share of the budget.
- 5) All local appropriations to the Council shall be made in accordance with the Local Government Budget and Fiscal Control Act, as may be appropriate.
- 6) The finance officer shall have authority to collect, deposit, and disburse funds made available to the Council from any source whatsoever, and also perform other duties as prescribed by G.-S. 159-25. Finance officers shall be bonded as required by G.-S. 159.29. All monies received for the Council shall be deposited into an official depository of the Council for the exclusive use of the Council, and shall be paid out only by check signed by the finance officer and countersigned by the Executive Director or another official designated ~~for this product~~ by the Council. ~~The countersigning officer shall countersign checks~~Funds shall be disbursed only when they are within the amount of appropriations made according to the budget of the Council.
- 7) The Board of Delegates may designate a Council employee or, with the agreement of the governing body involved, designate one of the city or county accountants as the finance officer to perform the duties as described in the Local Government Budget and Fiscal Control Act insofar as post-budget approval of expenditures is concerned.
- 8) It shall be the duty of the Board of Delegates to require that all financial records and accounts of the Council be audited annually by a certified public accountant or by an accountant certified by the Local Government Commission as qualified to audit local governmental accounts. A copy of the annual audit shall be forwarded to each member county and municipality and to the secretary of the Local Government Commission.

## ARTICLE XI

### Committee Structure.

- 1) The Board of Delegates may establish an Executive Committee, other committees of the Board itself, and technical and advisory committees.
- 2) Executive Committee. The Executive Committee shall consist of ~~twelve~~two delegates, ~~two~~ from each county in the Region. The officers of the Council and the immediate past eChair shall automatically be members, and will thereby occupy that number of the two seats allotted to their county. Each county government will occupy one seat

on the committee. The other seat from each county, will be occupied by a municipal delegate from that county. The municipal delegate will be chosen by a vote of all the municipal delegates from that county unless that seat is allotted automatically assigned as provided above. If delegates from two municipalities within the same county serve as an officer and/or immediate past chair, \_\_\_\_\_ If there are more eligible delegates than available seats for those delegates to serve on the Executive Committee due to the automatic assignments provided above, then the number of Executive Committee members shall be temporarily increased to allow all eligible delegates to serve on the Executive Committee. such delegates shall decide amongst themselves who shall serve on the Executive Committee. In the event of disagreement, the remaining members of the Executive Committee shall make the selection.

- 3) Technical and Advisory Committees. The Chairman may appoint technical or advisory committees with broadly representative membership for any of the planning studies and work elements in the Program of Work. These Committees should work directly with the Council staff and its consultants and make periodic reports to the Council. In addition to reviewing periodic progress reports, these advisory committees should directly participate in the planning process.

## ARTICLE XII

Annual Report. The Council shall prepare and submit an annual written report of its activities, including a financial statement, to the participating governmental units.

## ARTICLE XIII

Powers, Duties and Functions of the Council. Within the limits of funds and personnel available, the Council:

- 1) Shall have and may exercise, in accordance with its Charter and Bylaws, all of the powers which the General Assembly of North Carolina has authorized, and may hereafter from time to time authorize, this Charter to confer upon the Council, including, but not limited to, all of the specific powers enumerated in Section 160A-475 (any amendments thereto) of the General Statutes of North Carolina, which powers are incorporated herein by reference.
- 2) Shall have, and may exercise, in addition to and not in limitation of the foregoing, the following powers:

- (a) To create such committees as it deems necessary to exercise the powers granted to the Council herein in dealing with problems or problem areas that do not involve all the members of the Council. At least one delegate from each member governmental unit affected by the problem or problem area to be dealt with by the committee is entitled to be a member of that committee. Any two or more member governmental units shall have the right to have a Council committee formed to exercise the powers of the Council with reference to any problem which affects the petitioning governmental units, unless the Council shall reasonably determine that the problem or problem area in question should be assigned to an existing committee, in which case the petitioning member shall be entitled to be represented on said committee. The subject matter over which ~~may any~~ committee has jurisdiction to exercise the powers of the Council shall be specifically defined, but may be enlarged or restricted by the Council from time to time. Unless the right of a member of representation on any particular committee granted herein above is asserted, the Chair~~man~~ of the Council shall designate the membership of all committees.
- (b) To accept, receive and disburse in furtherance of the duties, purposes, powers, and functions specified in the Charter all member assessments, funds, grants, and services made available by the State of North Carolina, any other municipality or county or other governmental or quasi-governmental unit or agency, (whether or not a member of such Council) and private and civic sources. The Council may provide matching funds, grants or services, received from any source, to or from any governmental or quasi-governmental agencies established by the Council or any two or more member governmental units in furtherance of the duties, purposes, powers, and functions herein contained. None of the powers contained in this subparagraph may be exercised by any committee except with respect to ~~t~~ funds budgeted or appropriated for their use by the Council.
- (c) To meet with, consult with, and act in concert with any county or municipality, ~~or~~ any agency of the State, ~~or~~ Federal government, any civic organization, ~~or~~ any private organization ~~any other~~ in the furtherance of the purposes and objects within its jurisdiction.
- (d) To participate, as a unit of local government, in any undertaking with any other unit of local government, whether or not a member of the Council, for the joint exercise of governmental powers in accordance with the ~~pursuant to the~~ provisions of Chapter 160A, Article 20, Part 1 of the General Statutes of North Carolina (and any amendments thereto).

- (e) To contract with any person, firm or corporation for goods and/or services when same have been authorized by budget appropriations or by special resolution of the Council appropriating available funds.
- (f) To adopt Bylaws containing such rules and regulations for the conduct of its business as it may deem necessary for the proper discharge of its duties and the performance of its functions, not inconsistent with the Charter of the laws of North Carolina.
- (g) To create agencies of the Council to act for and on behalf of the Council in the planning and development of particular programs which affect the health, safety, welfare, housing, education, economic conditions or regional development of two or more member governmental units. Such agencies shall have such membership, staff, powers, duties and responsibilities as may be specified in the Council Resolutions ~~pursuant to this establishing~~ such agencies ~~is established~~, consistent with powers herein granted to the Council. Provided, however, such agency shall at all times be acting for and on behalf of, and shall be responsible to the Council. The Council may appropriate funds for the use of agency programs which it has received from any source, including member assessments, provided such appropriation is made in accordance with the Charter.
- (h) To contract with and provide services to local governmental units within Region J.
- (i) To serve as an informational clearinghouse and, as a reviewing agency with respect to Federal, State and local services or resources available to assist in the solution of problems.
- (j) To request and receive contributions of research assistance from its own agencies, private research organizations, civil foundations, institutions of higher learning, and other organizations.
- (k) To purchase, lease, rent or otherwise acquire real and personal property to the extent necessary to discharge the other powers, duties and functions set forth herein and to the extent such purchases are authorized by general or special budgets and are within the limits of funds appropriated for or provided to the Council by the participating governmental units and others for such purposes.
- (l) To act as the official reviewing agency of the participating governmental units for all programs, Federal, State, or private, requiring regional review.

It is the desire of the membership of this Council to avoid duplication of governmental functions, particularly in the planning and development of future programs in areas of governmental responsibility, and to that end this Council is created, should function, and these powers are given.

#### ARTICLE XIV

Amendments. Amendments to this Charter shall become effective when adopted by resolution of two-thirds (2/3rds) of the participating governmental units in the Council of Governments.

#### ARTICLE XV

Dissolution. The Council may be dissolved at the end of any fiscal year only (1) upon the adoption of a dissolution resolution by the governing bodies of all member governmental units, or (2) the withdrawal from the Council of all but one (1) of the member governmental units. If such dissolution is affected by resolution of all member governments, such resolutions shall specify the method of liquidating the Council's assets and liabilities. If such dissolution is occasioned by withdrawal of all but one member, the remaining governmental unit shall have the power to liquidate all assets and liabilities and it shall then distribute the net proceeds, if any, to those members who paid the latest annual assessment and in the same proportions. Any deficit shall be the responsibility of those member governments who would have received the net proceeds, and in the same proportions.

Amended: July 1, 1975  
February 18, 1976  
April 28, 1982  
February 14, 1985  
March 27, 1996  
Insert Date

# **Town of Smithfield Resolution# 622 (09-2018) Adopting the Triangle J Council of Governments Charter Resolution**

WHEREAS, together with the other county and municipal governmental units adopting concurrent Resolutions identical hereto, recognize that there is a need for such governmental units to consult among themselves and to act in concert with reference to regional matters affecting health, safety, welfare, education, recreation, economic conditions, regional planning or planning development; now, therefore, be it

RESOLVED, that pursuant to the General Statutes of North Carolina, Chapter 160A, Article 20, Part 2, the following Resolution is adopted for the establishment of a regional council of governments.

## **ARTICLE I**

Short Title - Binding Effect. This Resolution is the "Charter" of this Regional Council; and said Charter, together with all amendments thereto, is binding upon and shall ensure the benefit of all governmental units adopting it.

## **ARTICLE II**

Name. The name of the regional council of governments hereby established is the Triangle J Council of Governments.

## **ARTICLE III**

Purpose. The purposes of the Council are:

- 1) To serve as a forum for discussion of governmental problems of mutual interest and concern;
- 2) To develop and formalize policy recommendations concerning specific matters having an areawide significance which may include but are not limited to the following:
  - a) human resource development and human relations.
  - b) housing, public and private.
  - c) health care and hospital services.
  - d) recreation.
  - e) sanitation and refuse disposal.



- f) communications.
  - g) transportation.
  - h) water, sanitary sewer, electric power and other utility services.
  - i) air, water and other environmental development.
  - j) commercial and industrial development.
  - k) law enforcement.
  - l) welfare.
  - m) fire protection and prevention.
  - n) regional land use planning.
  - o) workforce development and training, and
  - p) conservation and development of natural resources.
- 3) To promote inter-governmental cooperation;
  - 4) To provide organizational machinery to insure effective communication and coordination among the participating governmental units and other governmental units.
  - 5) To serve as a vehicle for the collection and distribution of information concerning matters of areawide interest;
  - 6) To review, upon request of any governmental unit within the Triangle J Region, applications of that unit for any grant in aid, federal, state or private; and
  - 7) To provide services to local governments and residents in the area known as the Triangle J Region where appropriate and authorized.

The Council shall strive to promote harmony and cooperation among its members. It shall seek to deal with regional problems in a manner that is mutually satisfactory and shall respect the autonomy of all local governments within the Triangle J Region.

#### **ARTICLE IV**

##### Membership

- 1) The initial membership of the Council of Governments shall consist of the general purpose governmental units of and in the counties of Chatham, Durham, Johnston, Lee, Orange, and Wake, known as the Triangle J Region, which adopted a resolution pursuant to N.C.G.S. 160A-470 on or before June 30, 1972.
- 2) Any municipality or county in the Triangle J Region that is not an initial member of the Council may join this Council by ratifying or adopting this Charter and upon a majority vote of approval by the Board of Delegates. Notice of such application for

admission shall be given to existing members of the Council at least ten (10) days prior to the date of the meeting at which the vote is to be taken.

- 3) All rights and privileges of membership in the Council shall be exercised on behalf of the member governments by their delegates to the Council.
- 4) Any special purpose governmental agency in the Triangle J region involved in matters affecting the health, safety, natural resources, welfare or education of the citizens of North Carolina, such as school boards, sanitary districts, and soil and water conservation districts, is eligible to apply for an affiliate membership in the Council. The application may be approved and an affiliate membership granted to such special purpose governmental unit upon the affirmative vote of the Board of Delegates. The affiliate member shall pay no assessment, but the Council may charge each affiliate member a reasonable sum to cover its proportionate share of the direct costs of providing services to the affiliate members, provided such payments are authorized by law. The affiliate member shall have no vote in the Council, but its designated representative may serve on any technical or advisory committee and may otherwise participate in the deliberations of the Council.

#### **ARTICLE V**

Withdrawal. Any member may withdraw from the Council at the end of any fiscal year, provided written notice of intent to withdraw is given to each of the other members at least sixty (60) days prior to the end of the fiscal year.

#### **ARTICLE VI**

##### Governing Board.

- 1) The governing board of the Council of Governments shall be known as the Board of Delegates, which shall be constituted as described below.
- 2) The Board of Delegates shall consist of one delegate from each member governmental unit. Each governmental unit may designate any number of alternate delegates. All delegates and alternates shall be elected members of the governing bodies of the member governmental units they represent. The delegates and alternates, as well as their successors, shall be selected by the member governing bodies in any manner consistent with law and the regulations governing such body, and their names shall be certified to the Council in the manner described by the Bylaws of the Council.

- 3) The term of office of each delegate shall commence upon the date of his/her appointment and certification to the Council by the governing body of the member governmental unit he or she represents; and such terms shall expire when the appointing body has appointed his or her successor and certified such successor to the Council, unless he or she shall sooner resign, or cease to be an elected member of said governing body, in which case his or her term shall expire on the effective date of such event. Each member shall certify to the Council the name of its delegate and any alternate(s) prior to the first Board of Delegates meeting of the calendar year. Only an individual who has been duly appointed and certified to the Council as a delegate or alternate may serve as a voting member of the Board of Delegates.
- 4) The delegates shall be compensated, upon submittal of proper receipts, for direct expenses incurred in connection with discharging their duties as delegates to the Triangle J Council of Governments.
- 5) It is the intent of this Charter that all delegates to the Council shall have demonstrated an interest in the sound development of Region J.

## **ARTICLE VII**

Meeting. Regular meetings of the Board of Delegates shall be held, as provided in the Bylaws to receive reports from its standing committees and to conduct necessary business. The Chair may cancel the regular meeting if he or she determines that there is no need for the meeting. Special meetings of the Board of Delegates may be called by the Chair, or by any three members thereof. All meetings shall be open to the public.

At least 48 hours written notice of any meeting shall be given to all delegates of the Board of Delegates. It shall state the time, place, and purpose of the meeting, and may be sent by electronic means. At least twenty-four (24) hours written notice shall be given of any committee meeting to all committee members. Any member may waive notice of this requirement for himself/herself.

## **ARTICLE VIII**

### Quorum and Voting Requirements.

- 1) Except as provided in Paragraph 4 of this Article, each member governmental unit shall be entitled to one vote on all matters coming before the Board of Delegates or before any committee to which such member unit is duly appointed. All votes shall be cast by the delegate, or in his or her absence, by an alternate delegate of the member government.

- 2) The quorum shall be established in the Bylaws. The affirmative vote of a simple majority of members present at any meeting at which a quorum is present shall be required for any action or recommendation of the Board or any Committee, unless this Charter or the Bylaws of the Council require a larger affirmative vote on particular matters.
- 3) Voting shall be by voice, by show of hands, or, upon the request of any three delegates, by a poll of the delegates.
- 4) At the request of any delegate present, any questions shall be determined by weighted voting. Weighted voting shall mean that each participating member local government shall have one vote for each 5,000 units of population, as determined by the most recent decennial census, and for any remaining fraction of 5,000 units within the geographical boundaries of the participating government, except that any participating government whose jurisdiction has a population of less than 5,000 shall have one vote. In the case of any weighted voting question delegates representing local governments with at least two thirds of the aggregate votes of member local governments shall be present and participating. An affirmative vote of at least two thirds of the votes cast shall be required to decide any weighted voting question.
- 5) Proxy voting is not allowed.
- 6) The provisions in this Article VIII apply to all committees and boards of the Council except to the extent such committee or board has adopted different measures.

## **ARTICLE IX**

### Board of Delegates

- 1) At the first regular meeting of the Board of Delegates, and annually thereafter as provided by the Bylaws, the Board of Delegates shall elect a Chair, a First Vice Chair, a Second Vice Chair and a Secretary-Treasurer to serve as officers for one year or until their successors have been duly elected. The Board of Delegates may also elect such additional officers as the Board of Delegates finds to be necessary in the proper performance of its duties.
- 2) The Chair shall preside at all meetings of the Board of Delegates and shall conduct said meeting in an orderly and impartial manner so as to permit a free and full discussion by the membership of such matters as may be brought to the Board of Delegates. The Chair shall have the same voting rights as other members.

- 3) The Chair may appoint such advisory committees as he or she finds necessary or desirable.
- 4) The First Vice Chair shall perform all of the duties of the Chair in the absence of the Chair, or in the event of the inability of the Chair to act, and shall perform such other duties as the Board of Delegates may delegate to him or her. The Second Vice Chair shall perform all of the duties of the First Vice Chair in the absence of the First Vice Chair or in the event of the inability of the First Vice Chair to act.
- 5) All other officers elected by the Board of Delegates shall perform such duties as may be prescribed by the Board of Delegates.

## **ARTICLE X**

### Finance Matters:

- 1) On or before the 15th day of April each year, the Council shall prepare and submit to each participating governmental unit its proposed general budget for the next fiscal year.
- 2) The general budget shall set out the proportionate share of the budget to be borne by each member governmental unit by a method established in the By-laws and reviewed periodically by the Board of Delegates.
- 3) A special budget providing for cooperative arrangements or coordinated action for two or more members may be adopted at the request of members participating in special functions. The share of the special budget to be borne by each participating member shall be determined by the participating members.
- 4) Upon approval of its share of each budget by a member local government, such member shall appropriate its share of the budget, and after adoption of its own budget, shall forward to the budget officer its share of the budget.
- 5) All local appropriations to the Council shall be made in accordance with the Local Government Budget and Fiscal Control Act, as may be appropriate.
- 6) The finance officer shall have authority to collect, deposit, and disburse funds made available to the Council from any source whatsoever, and also perform other duties as prescribed by G.S. 159-25. Finance officers shall be bonded as required by G.S. 159.29. All monies received for the Council shall be deposited into an official depository of the Council for the exclusive use of the Council, and shall be paid out only by check signed by the finance officer and countersigned by the Executive

Director or another official designated by the Council. Funds shall be disbursed only when they are within the amount of appropriations made according to the budget of the Council.

- 7) The Board of Delegates may designate a Council employee or, with the agreement of the governing body involved, designate one of the city or county accountants as the finance officer to perform the duties as described in the Local Government Budget and Fiscal Control Act insofar as post-budget approval of expenditures is concerned.
- 8) It shall be the duty of the Board of Delegates to require that all financial records and accounts of the Council be audited annually by a certified public accountant or by an accountant certified by the Local Government Commission as qualified to audit local governmental accounts. A copy of the annual audit shall be forwarded to each member county and municipality and to the secretary of the Local Government Commission.

## **ARTICLE XI**

### Committee Structure.

- 1) The Board of Delegates may establish an Executive Committee, other committees of the Board itself, and technical and advisory committees.
- 2) Executive Committee. The Executive Committee shall consist of two delegates from each county in the Region. The officers of the Council and the immediate past Chair shall automatically be members, and will thereby occupy that number of the two seats allotted to their county. Each county government will occupy one seat on the committee. The other seat from each county will be occupied by a municipal delegate from that county. The municipal delegate will be chosen by a vote of all the municipal delegates from that county unless that seat is automatically assigned as provided above. If there are more eligible delegates than available seats for those delegates to serve on the Executive Committee due to the automatic assignments provided above, then the number of Executive Committee members shall be temporarily increased to allow all eligible delegates to serve on the Executive Committee. .
- 3) Technical and Advisory Committees. The Chair may appoint technical or advisory committees with broadly representative membership for any of the planning studies and work elements in the Program of Work. These Committees should work directly with the Council staff and its consultants and make periodic reports to the Council. In addition to reviewing periodic progress reports, these advisory committees should directly participate in the planning process.

## ARTICLE XII

Annual Report. The Council shall prepare and submit an annual written report of its activities, including a financial statement, to the participating governmental units.

## ARTICLE XIII

Powers, Duties and Functions of the Council. Within the limits of funds and personnel available, the Council:

- 1) Shall have and may exercise, in accordance with its Charter and Bylaws, all of the powers which the General Assembly of North Carolina has authorized, and may hereafter from time to time authorize, this Charter to confer upon the Council, including, but not limited to, all of the specific powers enumerated in Section 160A-475 (any amendments thereto) of the General Statutes of North Carolina, which powers are incorporated herein by reference.
- 2) Shall have, and may exercise, in addition to and not in limitation of the foregoing, the following powers:
  - (a) To create such committees as it deems necessary to exercise the powers granted to the Council herein in dealing with problems or problem areas that do not involve all the members of the Council. At least one delegate from each member governmental unit affected by the problem or problem area to be dealt with by the committee is entitled to be a member of that committee. Any two or more member governmental units shall have the right to have a Council committee formed to exercise the powers of the Council with reference to any problem which affects the petitioning governmental units, unless the Council shall reasonably determine that the problem or problem area in question should be assigned to an existing committee, in which case the petitioning member shall be entitled to be represented on said committee. The subject matter over which any committee has jurisdiction to exercise the powers of the Council shall be specifically defined, but may be enlarged or restricted by the Council from time to time. Unless the right of a member of representation on any particular committee granted herein above is asserted, the Chair of the Council shall designate the membership of all committees.
  - (b) To accept, receive and disburse in furtherance of the duties, purposes, powers, and functions specified in the Charter all member assessments, funds, grants, and services made available by the State of North Carolina, any other municipality or county or other governmental or quasi-governmental

unit or agency, (whether or not a member of such Council) and private and civic sources. The Council may provide matching funds, grants or services, received from any source, to or from any governmental or quasi-governmental agencies established by the Council or any two or more member governmental units in furtherance of the duties, purposes, powers, and functions herein contained. None of the powers contained in this subparagraph may be exercised by any committee except with respect to funds budgeted or appropriated for their use by the Council.

- (c) To meet with, consult with, and act in concert with any county or municipality, any agency of the State or Federal government, any civic organization, or any private organization in the furtherance of the purposes and objects within its jurisdiction.
- (d) To participate, as a unit of local government, in any undertaking with any other unit of local government, whether or not a member of the Council, for the joint exercise of governmental powers in accordance with the provisions of Chapter 160A, Article 20, Part 1 of the General Statutes of North Carolina (and any amendments thereto).
- (e) To contract with any person, firm or corporation for goods and/or services when same have been authorized by budget appropriations or by special resolution of the Council appropriating available funds.
- (f) To adopt Bylaws containing such rules and regulations for the conduct of its business as it may deem necessary for the proper discharge of its duties and the performance of its functions, not inconsistent with the Charter of the laws of North Carolina.
- (g) To create agencies of the Council to act for and on behalf of the Council in the planning and development of particular programs which affect the health, safety, welfare, housing, education, economic conditions or regional development of two or more member governmental units. Such agencies shall have such membership, staff, powers, duties and responsibilities as may be specified in the Council Resolutions establishing such agencies, consistent with powers herein granted to the Council. Provided, however, such agency shall at all times be acting for and on behalf of, and shall be responsible to the Council. The Council may appropriate funds for the use of agency programs which it has received from any source, including member assessments, provided such appropriation is made in accordance with the Charter.
- (h) To contract with and provide services to local governmental units within Region J.



- (i) To serve as an informational clearinghouse and, as a reviewing agency with respect to Federal, State and local services or resources available to assist in the solution of problems.
- (j) To request and receive contributions of research assistance from its own agencies, private research organizations, civil foundations, institutions of higher learning, and other organizations.
- (k) To purchase, lease, rent or otherwise acquire real and personal property to the extent necessary to discharge the other powers, duties and functions set forth herein and to the extent such purchases are authorized by general or special budgets and are within the limits of funds appropriated for or provided to the Council by the participating governmental units and others for such purposes.
- (l) To act as the official reviewing agency of the participating governmental units for all programs, Federal, State, or private, requiring regional review.

It is the desire of the membership of this Council to avoid duplication of governmental functions, particularly in the planning and development of future programs in areas of governmental responsibility, and to that end this Council is created, should function, and these powers are given.

#### **ARTICLE XIV**

Amendments. Amendments to this Charter shall become effective when adopted by resolution of two-thirds (2/3rds) of the participating governmental units in the Council of Governments.

#### **ARTICLE XV**

Dissolution. The Council may be dissolved at the end of any fiscal year only (1) upon the adoption of a dissolution resolution by the governing bodies of all member governmental units, or (2) the withdrawal from the Council of all but one (1) of the member governmental units. If such dissolution is affected by resolution of all member governments, such resolutions shall specify the method of liquidating the Council's assets and liabilities. If such dissolution is occasioned by withdrawal of all but one member, the remaining governmental unit shall have the power to liquidate all assets and liabilities and it shall then distribute the net proceeds, if any, to those members who paid the latest annual assessment and in the same proportion. Any deficit shall be the responsibility of those member governments who would have received the net proceeds, and in the same proportions.

Amended: July 1, 1975  
February 18, 1976  
April 28, 1982  
February 14, 1985  
March 27, 1996  
April 25, 2018

Adopted this the 7<sup>th</sup> Day of August, 2018

---

M. Andy Moore, Mayor

Attest:

---

Shannan L. Parrish, Town Clerk



# Request for City Council Action

**Consent  
Agenda  
Item:** **Advisory  
Board  
Appointments**

Date: 08/07/2018

---

**Subject:** Advisory Board Appointments  
**Department:** General Government  
**Presented by:** Town Clerk, Shannan Parrish  
**Presentation:** Consent Agenda Item

---

## Issue Statement

The Town Council is asked to consider two reappointments to the Historic Properties Commission.

## Financial Impact

N/A

## Action Needed

The Town Council is asked to consider and approve the reappointments of Art Andrews and Mary Nell Ferguson to the Historic Properties Commission

## Recommendation

Staff recommends approval of these appointments.

Approved:  Town Manager  Town Attorney

Attachments:

1. Staff Report
2. Art Andrews – Board Application
3. Mary Nell Ferguson – Board Application



# Staff Report

Consent Agenda Item    Advisory Board Appointments

---

## **Current Board vacancies are as follows:**

**Appearance Commission** – 3 positions

**Historic Properties** – 2 positions

**Parks and Recreation Advisory Commission**

- 1 In-Town Member

**Planning Board** – 1 ETJ Alternate

## **Board Reappointments**

1. Art Andrews has submitted an application for consideration to be reappointed to a second term on the Historic Properties Commission.
2. Mary Nell Ferguson has submitted an application for consideration to be reappointed to a second term on the Historic Properties Commission



Town of Smithfield
Board, Commission, or Committee
Application

Name: ANDREWS (Last) ART (First) W (MI)

Home Address: 215 SOUTH 4TH ST.

Business Name & Address: -

Telephone Numbers: 919 934 8046 (Home) 919 631 2429 (Mobile) AANDREWS@NC.RR.CO.NC (Email)

Please check the Board(s) that you wish to serve on:

- Appearance Commission
Board of Adjustment In Town Resident
Board of Adjustment ETJ Member
Historic Properties Commission
Library Board of Directors
Parks/Recreation Advisory Commission
Planning Board In-Town Resident
Planning Board ETJ Resident
Other:

Interests & Skills: HISTORY

Circle highest level of education completed: (High School) 10 11 12 GED College 1 2 3 4 5 6

Recent Job Experiences: SVP FINANCE AND BUSINESS SERVICES

Civic or Service Organization Experience:

Town Boards previously served on and year(s) served: APPEARANCE COM 1980s

Please list any other Boards/Commissions/Committees on which you currently serve: CURRENTLY HISTORIC SMITHFIELD FOUNDATION BOARD

Why are you interested in serving on this Board/Commission/Committee?

DO MY PART IN PROMOTING HISTORIC PROPERTIES IN SMITHFIELD

**Affirmation of Eligibility:**

Has any formal charge of professional misconduct, criminal misdemeanor or felony ever been filed against you in any jurisdiction?

Yes  No If yes, please explain disposition: \_\_\_\_\_

Is there any conflict of interest or other matter that would create problems or prevent you from fairly and impartially discharging your duties as an appointee of the Smithfield Town Council?  Yes  No If yes, please explain: \_\_\_\_\_

I understand this application is public record and I certify that the facts contained in this application are true and correct to the best of my knowledge. I authorize and consent to background checks and to the investigation and verification of all statements contained herein as deemed appropriate and if necessary. I further authorize all information concerning my qualifications to be investigated and release all parties from all liability for any damages that may result from this investigation. I understand and agree that any misstatement may be cause for my removal from any Board/Commission/Committee. I understand regular attendance to any Council Board/Commission/Committee is important and, accordingly, I further understand that if my attendance is less than the standards established for any such body that this is cause for removal. Lacking any written standards for attendance by any Board/Commission/Committee, it is expected that I will attend at least 75% of all meetings during any one calendar year to maintain my seat on any Board/Commission/Committee to which I may be appointed. This form will remain on file in the Office of the Town Clerk and requests for updates will be sought prior to any consideration for reappointment (or future appointment) to any Board/Commission/Committee.

Printed Name: ART ANDREWS

Signature: [Handwritten Signature] Date: 7/25/2018

Return completed for to:  
Shannan Parrish  
Town Clerk  
P. O. Box 761  
Smithfield, North Carolina 27577  
Phone: (919) 934-2116 Fax: (919) 989-8937 E-Mail: [shannan.parrish@smithfield-nc.com](mailto:shannan.parrish@smithfield-nc.com)

**Applicants are required to be a resident of the Town of Smithfield for In-Town positions and within the Town's ETJ for ETJ positions**



Town of Smithfield  
Board, Commission, or Committee  
Application

Name: Ferguson Mary Nell L.  
(Last) (First) (MI)

Home Address: 1108 Baker Street, Smithfield, NC 27577

Business Name & Address: NA - Retired

Telephone Numbers: 919-989-8481 919-210-8801 mnferguson41@gmail.com  
(Home) (Mobile) (Email)

Please check the Board(s) that you wish to serve on:

- |  |   |
|--|---|
| <input type="checkbox"/> Appearance Commission                     | <input type="checkbox"/> Parks/Recreation Advisory Commission |
| <input type="checkbox"/> Board of Adjustment In Town Resident      | <input type="checkbox"/> Planning Board In-Town Resident      |
| <input type="checkbox"/> Board of Adjustment ETJ Member            | <input type="checkbox"/> Planning Board ETJ Resident          |
| <input checked="" type="checkbox"/> Historic Properties Commission | <input type="checkbox"/> Other: _____                         |
| <input type="checkbox"/> Library Board of Directors                | _____   |

Interests & Skills: Interest in preserving the history of Smithfield + Johnston County. I have a masters degree in school administration and a minor in Public Adm from NC SU. I am a retired school principal.

Circle highest level of education completed: (High School) 10 11 12 GED College 1 2 3 4 6

Recent Job Experiences: Work part time with JC Public Schools as a principal administrator.

Civic or Service Organization Experience: Member of the following: Delta Kappa Gamma - Alpha Beta Chapt, DAR, Heritage Board since it started, JCC Auditorium Board, Arts Council, many First Baptist Church jobs such as Personnel Committee + Ryberg Scholarship.

Town Boards previously served on and year(s) served: one term on Smithfield Historic Properties Commission.

Please list any other Boards/Commissions/Committees on which you currently serve: See above

Why are you interested in serving on this Board/Commission/Committee? Smithfield is my home town + I want to see it prosper.

**Affirmation of Eligibility:**

Has any formal charge of professional misconduct, criminal misdemeanor or felony ever been filed against you in any jurisdiction?

Yes  No If yes, please explain disposition: \_\_\_\_\_

Is there any conflict of interest or other matter that would create problems or prevent you from fairly and impartially discharging your duties as an appointee of the Smithfield Town Council?  Yes  No If yes, please explain: \_\_\_\_\_

I understand this application is public record and I certify that the facts contained in this application are true and correct to the best of my knowledge. I authorize and consent to background checks and to the investigation and verification of all statements contained herein as deemed appropriate and if necessary. I further authorize all information concerning my qualifications to be investigated and release all parties from all liability for any damages that may result from this investigation. I understand and agree that any misstatement may be cause for my removal from any Board/Commission/Committee. I understand regular attendance to any Council Board/Commission/Committee is important and, accordingly, I further understand that if my attendance is less than the standards established for any such body that this is cause for removal. Lacking any written standards for attendance by any Board/Commission/Committee, it is expected that I will attend at least 75% of all meetings during any one calendar year to maintain my seat on any Board/Commission/Committee to which I may be appointed. This form will remain on file in the Office of the Town Clerk and requests for updates will be sought prior to any consideration for reappointment (or future appointment) to any Board/Commission/Committee.

Printed Name: Mary Nell W. Ferguson

Signature: Mary Nell W. Ferguson

Date: July 27, 2018

Return completed for to:  
Shannan Parrish  
Town Clerk  
P. O. Box 761  
Smithfield, North Carolina 27577  
Phone: (919) 934-2116 Fax: (919) 989-8937 E-Mail: [shannan.parrish@smithfield-nc.com](mailto:shannan.parrish@smithfield-nc.com)

**Applicants are required to be a resident of the Town of Smithfield for In-Town positions and within the Town's ETJ for ETJ positions**





# Staff Report

**Consent  
Agenda  
Item:** **New  
Hire /  
Vacancy  
Report**

**Date of Meeting:** August 07, 2018

**Staff Work By:** Tim Kerigan, HR Director

### **Background**

Per Policy, upon the hiring of a new or replacement employee, the Town Manger or Department Head shall report the new/replacement hire to the Council on the Consent Agenda at the next scheduled monthly Town Council meeting.

In addition, please find the following current vacancies:

<u>Position</u>	<u>Department</u>	<u>Budget Line</u>
Marketing and Communications Specialist	General Government	10-10-4100-5100-0200
Police Officer I	Police	10-20-5100-5100-0200
P/T Lifeguard	P & R – Aquatics	10-60-6220-5100-0220
Utility Line Mechanic	PU – Water / Sewer	30-71-7220-5100-0200

### **Action Requested**

The Town Council is asked to acknowledge that the Town has successfully filled the following vacancies in accordance with the Adopted FY 17-18 Budget.

<u>Position</u>	<u>Department</u>	<u>Budget Line</u>	<u>Rate of Pay</u>
P/T P&R Gen. Services	P & R – Recreation	10-60-6200-5100-0220	\$8.00/hr.
P/T SYCC Gen. Services	P & R – Recreation	10-60-6240-5100-0220	\$9.00/hr.
P/T SYCC Gen. Services	P & R – Recreation	10-60-6240-5100-0220	\$9.00/hr.
Utility Line Mechanic	PU – Water / Sewer	30-71-7220-5100-0200	\$12.46/hr. (\$25,916.80/yr.)



# Financial Report

the study. The authors are grateful to the National Science Foundation (NSF) for its support of this research. The authors also thank the anonymous reviewers for their helpful comments on an earlier draft of this paper.

## References

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- Alford, R. L., and J. R. Sargent. 1994. "The Effect of the Number of Alternatives on Choice Behavior: A Meta-Analysis." *Journal of Experimental Psychology: Applied* 10(1): 1-14.

## Authors' Note

1. The authors would like to thank the National Science Foundation (NSF) for its support of this research.

## Correspondence

2. Correspondence should be addressed to S. M. M. Koozekanani, Department of Psychology, University of California, San Diego, La Jolla, CA 92092.

## Received

3. Received 10/10/98; revised 11/10/98; accepted 12/10/98.

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## NOTICE

Financial Summaries and Charts for year-end (June 30, 2018) are not included in this month's report. Unlike the other eleven months in the year, expenses and revenues received after June 30<sup>th</sup>, but for the prior year are continually applied back to the month of June. Therefore, the year-end numbers at June 30, 2018, are reported in the annual audit report.



# Department Reports

the 1990s, the number of people in the world who are under 15 years of age has increased from 1.1 billion to 1.5 billion. The number of people aged 65 and over has increased from 200 million to 350 million. The number of people aged 75 and over has increased from 50 million to 100 million. The number of people aged 85 and over has increased from 10 million to 20 million.

The number of people aged 65 and over is expected to increase to 500 million by 2025. The number of people aged 75 and over is expected to increase to 150 million by 2025. The number of people aged 85 and over is expected to increase to 40 million by 2025.

The number of people aged 65 and over is expected to increase to 600 million by 2050. The number of people aged 75 and over is expected to increase to 200 million by 2050. The number of people aged 85 and over is expected to increase to 60 million by 2050.

The number of people aged 65 and over is expected to increase to 700 million by 2075. The number of people aged 75 and over is expected to increase to 250 million by 2075. The number of people aged 85 and over is expected to increase to 80 million by 2075.

The number of people aged 65 and over is expected to increase to 800 million by 2100. The number of people aged 75 and over is expected to increase to 300 million by 2100. The number of people aged 85 and over is expected to increase to 100 million by 2100.

The number of people aged 65 and over is expected to increase to 900 million by 2125. The number of people aged 75 and over is expected to increase to 350 million by 2125. The number of people aged 85 and over is expected to increase to 120 million by 2125.

The number of people aged 65 and over is expected to increase to 1 billion by 2150. The number of people aged 75 and over is expected to increase to 400 million by 2150. The number of people aged 85 and over is expected to increase to 140 million by 2150.

The number of people aged 65 and over is expected to increase to 1.1 billion by 2175. The number of people aged 75 and over is expected to increase to 450 million by 2175. The number of people aged 85 and over is expected to increase to 160 million by 2175.

The number of people aged 65 and over is expected to increase to 1.2 billion by 2200. The number of people aged 75 and over is expected to increase to 500 million by 2200. The number of people aged 85 and over is expected to increase to 180 million by 2200.

The number of people aged 65 and over is expected to increase to 1.3 billion by 2225. The number of people aged 75 and over is expected to increase to 550 million by 2225. The number of people aged 85 and over is expected to increase to 200 million by 2225.

The number of people aged 65 and over is expected to increase to 1.4 billion by 2250. The number of people aged 75 and over is expected to increase to 600 million by 2250. The number of people aged 85 and over is expected to increase to 220 million by 2250.

The number of people aged 65 and over is expected to increase to 1.5 billion by 2275. The number of people aged 75 and over is expected to increase to 650 million by 2275. The number of people aged 85 and over is expected to increase to 240 million by 2275.

The number of people aged 65 and over is expected to increase to 1.6 billion by 2300. The number of people aged 75 and over is expected to increase to 700 million by 2300. The number of people aged 85 and over is expected to increase to 260 million by 2300.





# Staff Report

**Economic  
Development  
Update**

---

**Date of Meeting:** August 07, 2018  
**Staff Work By:** Tim Kerigan, Economic Development Liaison

## **Update**

In July 2017, upon request of Economic Development Liaison Tim Kerigan along with Rocky Lane of Sanford Holshouser, Council approved to continue to engage the Scope of Work with Sanford Holshouser for Implementation of the Strategic Economic Development Update Action Items that originally began in August 2016.

Since August of 2016, the Town has been able to make steady progress on implementing the identified action items from the Town's Economic Development Strategic Plan that was updated in 2014.

Please see the attached most recent Implementation Activities and Progress Matrix.

Going further, at the request of Council, staff will provide similar monthly summary and matrix updates.

## **Action Requested**

No action requested.

## Smithfield Economic Development Implementation Activities June 2018

1. Tim and Rocky met with Daniel Leslie of Penn Compression. Construction on the 30,000 square foot expansion is going well. Daniel gave an overview of the company, their products, and markets. Tim explained the intent of the BRE program and the pledge to support and assist the company in any way possible. Daniel cited a potential issue with the expansion that Tim will follow-up on.
2. Tim and Rocky, along with Chris Johnson of JCE, Harry Swendsen of the NCEDP, and Mike Mancuso of the Smithfield-Selma Chamber of Commerce, met with Bob Lockhart, Robert Scott, and Scott Smith of Global Skyware. The company is approaching the end of their current lease and they are considering relocating their operations. The company's main products are satellite dishes, and their markets are world-wide. They do not want to move, but their lease payments are very high. In addition, the various pressures on the company were discussed and how they were impacting the company. Bob Lockhart, General Manager, must make a proposal to the board of directors in July. He requested that any assistance, incentives, etc. that could be offered to the company to assist with a small expansion and to retain the company and its employees (216) as they exist today would be appreciated and that the information was needed by 15JUL18. It was agreed that we, town, county, state, and chamber would meet again soon to coordinate any incentive package.
3. Tim and Rocky met with Steve Brinckek of OPW. The company manufactures components that are used at gas stations, including the nozzle for the delivery system (gas pump), the piping, and various other components that deliver the gas from the underground storage tank to customer's tank. The plant is 303,000 square feet and currently employs 280 with immediate expansion plans for a new product line to add another 60 people. Tim explained the purpose and mission of the town's BRE program and offered the pledge of assistance. Steve spoke of adding some resin tanks and is working with the county and town to obtain permits. He praised the level of support he was getting from both.

# SMITHFIELD STRATEGIC PLAN IMPLEMENTATION-June 30 2018

ACTIVITY	TASK	PARTNER	RESOURCES NEEDED	STATUS	NOTES
Develop overall support for the Economic Development Program					
	Develop and increase support for the Town's economic development efforts	Smithfield-Selma Chamber of Commerce		Good contact and support established with the organization. Tim attends Chamber meetings regularly	
		Commercial Realtors		Maintaining on-going contact with realtors.	
		SEDAC		Maintaining on-going contact with SEDAC.	
305		East Smithfield		Meeting with Tony Nixon to discuss needs, challenges, and opportunities in the community.	Received a listing of East Smithfield concerns submitted to the former town manager by the East Smithfield Improvement Organization.
		Business Community		Meeting with business community via BRE program.	Additional meetings with the business community are being scheduled via BRE activities.
Existing Business & Industry Support					
	Reestablish the Existing Industry Outreach Program				
	Develop a contact directory of Existing Industries			Initial Directory completed and will be updated regularly.	

ACTIVITY	TASK	PARTNER	RESOURCES NEEDED	STATUS	NOTES
	Developing an introductory letter to be mailed by January 2017				
	Schedule visitations			Visitations are on-going.	Contacted several companies via phone to discuss the town's renewed emphasis on BRE.
					Met with six companies to discuss the town's renewed emphasis on BRE and offered our assistance with any issues. Expansion plans were identified and will be followed-up on.
	Determine Recognition Activities			Options discussed and being considered.	
New Business Recruitment	Identify needs of major companies in the County that Smithfield can capitalize on	JCED		Met with Chris Johnson and discussed business attraction and expansion issues, including product and workforce.	
	Attract new business investment and jobs			Met with Durwood Stephenson regarding an initiative that would be of great benefit to the town, and would assist in the recruitment of other businesses.	
Town Image/Gateways					

ACTIVITY	TASK	PARTNER	RESOURCES NEEDED	STATUS	NOTES
	Gateways				
	Identify areas for improvement	SEDAC		Meetings to be scheduled in conjunction with Visioning/Branding and the development of the Strategic Communication Plan (SCP) to more fully discuss the issue.	Met with a developer who expressed developing a parcel located a one of Smithfield's gateways. The developer has been involved in many successful projects and what the vision he expressed for the property would greatly enhance the area and improve the aesthetics. We will follow up with the developer to identify ways that we can encourage him to make his vision a reality.
		East Smithfield - Tony Nixon Business Community		Tony Nixon of the East Smithfield Improvement organization was identified as the best person to contact re: to East Smithfield issues.	Information will be gathered on the different areas of the town, including East Smithfield, in the development of the SCP and Visioning/Branding efforts.
	Conduct a Visioning/Branding process				
		ElectriCities/ Business Community/ SEDAC/East Smithfield		Town Council agreed to move forward with the development of the Strategic Communication Plan at their 07MAR17 meeting and a draft is being prepared by ElectriCities for review.	Received a draft strategic communications plan from Michelle Vaught, VP of Marketing for ElectriCities.

ACTIVITY		TASK	PARTNER	RESOURCES NEEDED	STATUS	NOTES
					A decision on what level of Visioning/Branding effort the town feels is appropriate will be made after a review of the SCP.	
					A decision on what level of Visioning/Branding effort the town feels is appropriate will be made after a review of the SCP.	
Product Development						
	Industrial Sites and Buildings	Increase the Town's product inventory	County and SEDAC		<p>Contacted one of the Wellons-Howell property owners to discuss recertification. Reached out to owners of other properties identified as suitable for development as industrial sites. Searching for other suitable properties for evaluations and inclusion in the town's product inventory</p>	Continued to follow up with the co-owner of the property. The issues with the property are still pending. The co-owner recommended following up again in a month

ACTIVITY		TASK	PARTNER	RESOURCES NEEDED	STATUS	NOTES
					<p>The town is partnering with Johnston County Economic Development on assembling properties for an industrial park that will then be certified. Five parcels lie within the town's corporate limits. Land owners will be contacted to secure the properties for the project.</p>	<p>Geotechnical, engineering, and environmental evaluations are ongoing. In addition, other required information, such as utility availability, highway access, zoning, and the required title search is being prepared and gathered for the certification package.</p> <p>Certification documents will be submitted in August for consideration.</p>
309						
	Infrastructure Improvements					

ACTIVITY		TASK	PARTNER	RESOURCES NEEDED	STATUS	NOTES
		Golden LEAF Grant	Public Works Department- Johnston County		The county has received, or will receive grant funding for economic development related projects from the Golden LEAF Foundation. One of the projects identified is the extension improvement of water/sewer lines along the U.S. 70 corridor, which will serve the new industrial park. The GL Board will approve the projects at their April meeting.	Estimates for the number of jobs that West Smithfield Industrial Park could support and the average wage of those jobs are being prepared to be included in a follow up information request from the Golden LEAF in support of the grant.
Downtown Redevelopment	Renovation and redevelopment of Downtown properties	Redevelopment of the former Town Hall			The final report on the redevelopment of the Old Town Hall by the UNC SOG graduate student class was presented on	



ACTIVITY		TASK	PARTNER	RESOURCES NEEDED	STATUS	NOTES
						<p>renovating/rehabilitating old facilities in multiple communities in several states. This developer is familiar with the Old Town Hall and indicated that he and his partner may have some interest in the renovation of the property and possibly other projects in Smithfield. The owner has another offer, but the developer remains interested if this deal falls through.</p>
Internal/External Marketing						
311		Identify the Economic Development Program Spokesman			Tim Kerigan is the spokesperson for the Economic Development Program.	
		Develop a newsletter			Exploring options for newsletter.	
		Develop Marketing Materials			The marketing flyer has been reviewed and finalized, utilizing town staff resources.	The Electricities Smart Communities Grant Award was received and will be used to enhance the town's marketing materials.
	Internal/External					

ACTIVITY	TASK	PARTNER	RESOURCES NEEDED	STATUS	NOTES
	Strategic Communications Plan			Received a draft strategic communications plan, social media presentation, social media content calendar, and references to additional resources for social media.	The documents are being reviewed and assessed as to how best to utilize the information.
Johnston Community College					
	Convene a meeting with JCC leadership to discuss opportunities for collaboration	JCC		Follow up meeting with Dr. Johnson and Dr. McGraw to continue earlier discussion and identify other areas of collaboration.	
Incentives	Review the Town's Incentives to assess the Town's competitiveness			A list of typical incentive practices was developed for consideration of incentive proposals for current and future prospects	A conference call with Mike Scott, Mike Fleming, Tim and Rocky was conducted with Ernie Pearson, an attorney and SHEDC partner with extensive experiences in incentives was held to discuss practices and procedures.
Retirement Development	Determine interest in advancing this initiative				

ACTIVITY	TASK	PARTNER	RESOURCES NEEDED	STATUS	NOTES
Residential Development	Assess Housing Stock	Tax Office Planning Department Local Realtors		Working with the SEDAC Redevelopment Committee to explore options of increasing/enhancing the housing stock in the town limits, primarily near downtown.	
					A conference call with Ernie Pearson and Mike Scott, Mike Fleming, Tim, and Rocky was held to discuss the various ways that residential renovation/revitalization/development might be encouraged.
Retail Development	Expanding the Retail offerings of the Town	ElectriCities-Retail Strategies		Discussions were held with a retail developer that has an interest in the town for a project.	
Public Education					Tim met with Supt. Renfro to discuss the Smithfield Economic Development program and explore areas of collaboration and support



**FINANCE DEPARTMENTAL REPORT FOR JUNE, 2018**

**SUMMARY OF ACTIVITIES:**

Daily Collections/Property Taxes/Other.....	\$2,806,350
Franchise Tax.....	297,626
Sales & Use Tax.....	234,231
Powel Bill.....	0
<b>Total Revenue</b>	<b>\$3,338,207</b>

Expenditures: General, Water, Electric and Firemen’s Fund..... \$3,561,411

**FINANCE:**

- Compiled and submitted monthly retirement report on 6/29/18
- Issued 10 purchase orders
- Processed 553 vendor invoices for payment and issued 315 accounts payable checks
- Prepared and processed 3 regular payrolls. Remitted federal and state payroll taxes on 6/1/2018, 6/15/2018 and 6/29/2018
- Issued 1 new privilege licenses (new law change in effect 7/1/2015)
- Issued 1 peddler license
- Collected \$0.00 on past due privilege license fees. **NOTE:** Total collected now at \$10,714. The past due collections are the result of mailing some 287 past due notices to local businesses. Approximately 40 second notices were sent
- Sent 0 past due notices for grass cutting
- Collected \$475.47 in grass cutting invoices. Total collected to date is \$7,502
- Processed 18 NSF Checks (Utility and SRAC)
- Bad debt calendar year-to-date collections total \$29,652.74 (EMS = \$10,455.13; SRAC = \$5,896.62; Utility= \$13,300.99; and Other = \$0).
- Invoiced five (3) grave openings for a total of \$2,100
- Invoiced Smithfield Housing Authority and Johnston Community College for Police Security
- Paid \$0 to First Citizens Bank for bank fees in May
- Paid \$5,006.71 to PNC Bank for credit/debit card fees

**FINANCE DIRECTOR**

- Attended Town Council Meeting on June 5, 2018
- Prepared year-end P.O. Encumbrances on June 5, 2018
- Provided Sarah Edwards of DSDC with tax history back to 2005
- Responded to Councilman Marlon Lee on Sarah Yard Center expenditures on June 7, 2018
- Met with Sarah Edwards on DSDC payment history
- Prepared excel budget spreadsheet for system upload on June 13, 2018
- Set up 28 new accounts in the general ledger system to accommodate the new FY19 budget
- Meet with NCCMT Lee Carter on investments
- Crosstrain in lockbox and late penalty processing to accommodate vacation schedules
- Prepared for and accommodated Auditors from TPSA visit for revenue testing on June 13 and 14, 2018
- Attended Department Head meeting on June 26, 2018
- Attended meeting with Johnston County on motor vehicle taxes
- Interviewed with Kendall Rompt of Tyler Tech to share Town of Smithfield’s story on collaboration with ElectricCites to host Tyler software on June 29, 2018



Town of Smithfield  
 Planning Department  
 350 E. Market St Smithfield, NC 27577  
 P.O. Box 761, Smithfield, NC 27577  
 Phone: 919-934-2116  
 Fax: 919-934-1134

**BOARD ACTIONS REPORT - 2018**

	June	Calendar Year to date
<b>Town Council</b>		
Zoning Map Ammendments	2	6
Special Use Permit	1	6
Zoning Ordinance Ammendments	0	5
Major Subdivisions	0	0
Annexations	0	0
Special Events	3	11
Site Plan	0	0
<b>Planning Board</b>		
Zoning Map Ammendments	0	6
Zoning Ordinance Ammendments	0	5
Major Subdivisions	0	0
<b>Board of Adjustment</b>		
Variance	0	0
Admin Appeal	0	0
<b>Historic Properties Commission</b>		
Certificate of Appropriateness	0	0
Historic Landmarks	0	0



**Town of Smithfield**  
**Planning Department**  
**350 E. Market St Smithfield, NC 27577**  
**P.O. Box 761, Smithfield, NC 27577**  
**Phone: 919-934-2116**  
**Fax: 919-934-1134**

**Permit Issued for June 2018**

		Permit Fees	Permits Issued
Site Plan	Minor Site Plan	200.00	2
Zoning	Land Use	\$1,350.00	19
Zoning	Sign	\$350.00	7
Report Period Total:		\$1,900.00	28
Fiscal YTD Total:		\$17,850.00	256

Z18-000099	Zoning	Land Use	Ronnie & Pamela Christmas	708 NC 210 Highway
Z18-000100	Zoning	Land Use		900 Wilson's Mills Road
Z18-000102	Zoning	Land Use	SFD Accessory Structure	2007 Vermont Street
SP18-000012	Site Plan	Minor Site Plan	Generator Install	2491 East US Hwy 70 Highway
Z18-000104	Zoning	Sign	BP Gas Station	817 South Third Street
Z18-000105	Zoning	Sign	Classy C's Consignment	331 East Market Street
Z18-000107	Zoning	Land Use	Luxury Nails and Spa	150 Suite B S. Equity Dr.
Z18-000101	Zoning	Land Use	SFD New Construction	1007 Fuller Street
Z18-000109	Zoning	Land Use	Rosa Mendez	1598 Cleveland
Z18-000108	Zoning	Sign	Executive Personnel Group	222 Venture Dr.
Z18-000110	Zoning	Land Use	SFD 12X12 Storage Barn	308 Smith Street
Z18-000111	Zoning	Sign	Smithfield Middle School	1455 Buffalo Road
Z18-000112	Zoning	Land Use	Existing SFD Addition/ New Roof	6278 Black Creek Road
Z18-000114	Zoning	Land Use	Smithfield Auto and Truck Service	36-C East Edgerton Street
Z18-000103	Zoning	Sign	Walgreens Temporary Banner	424 N Brightleaf Blvd
Z18-000113	Zoning	Land Use	SFD 8' X 14' Deck Addition	53 White Oak Drive
Z18-000106	Zoning	Land Use	Under the Oak Farm, LLC	135 South Third Street
Z18-000115	Zoning	Land Use	Premier Z, LLC	36-B East Edgerton Street
Z18-000116	Zoning	Land Use	SFD New Construction	104 Cypress Pointe
Z18-000117	Zoning	Land Use	New SFD Class A Mobile Home	6342 Black Creek Road
Z18-000119	Zoning	Land Use	River Walk Office Suites	101-2C East Market Street
Z18-000118	Zoning	Land Use	Aero Contractors, LTD	3463 Swift Creek Road
Z18-000120	Zoning	Land Use	Live Crawfish & Seafood Restaurant	150-Suite G S. Equity Dr.
Z18-000121	Zoning	Land Use	Existing SFD Carport Addition	302 Pace Street
Z18-000123	Zoning	Land Use	Golden Grove Insurance Agency	502 East Market Street
Z18-000124	Zoning	Sign	Golden Grove Insurance Agency, LLC	502 East Market Street
Z18-000122	Zoning	Sign	Walgreen's	424 North Brightleaf Blvd
SP18-000013	Site Plan	Minor Site Plan	OPW Resin Tanks	3250 US 70 Bus Hwy W.



**TOWN OF SMITHFIELD  
POLICE DEPARTMENT  
MONTHLY REPORT  
MONTH ENDING June 30, 2018**

**I. STATISTICAL SECTION**

Month Ending June 30, 2018	June 2018	June 2017	Total 2018	Total 2017	YTD Difference
Calls For Service	2157	2042	11479	11545	-66
Incident Reports Completed	142	170	851	964	-113
Cases Closed	98	121	591	671	-112
Accident Reports	67	79	429	437	-8
Arrest Reports	127	111	647	714	-67
Burglaries Reported	10	22	38	66	-28
Drug Charges	61	30	218	198	20
DWI Charges	6	9	32	59	-27
Citations Issued	294	173	1425	1212	213
Speeding	150	15	474	339	135
No Operator License	35	41	269	250	19
Registration Violations	31	27	225	159	66

**II. PERSONNEL UPDATE**

The police department currently has three vacancies at this time. One officer is currently out due to health issues pending surgery. Animal Control Officer is out due to maternity leave but Lynn Corbin is covering her duties part time. In the process of filling a vacant Sergeant's position.

**III. MISCELLANEOUS**

Mandatory in-service training was continued in June, with most courses be completed on line. Officers were involved with Coffee with a Cop, 301 Endless Yard Sale and assisted with traffic direction during the triathlon at the SRAC.

## REPORTED UCR OFFENSES FOR THE MONTH OF JUNE 2018

PART I CRIMES	June	June	+/-	Percent	Year-To-Date		+/-	Percent
	2017	2018		Changed	2017	2018		Changed
MURDER	0	0	0	N.C.	0	0	0	N.C.
RAPE	0	1	1	N.C.	1	1	0	0%
ROBBERY	0	1	1	N.C.	11	7	-4	-36%
Commercial	0	0	0	N.C.	2	1	-1	-50%
Individual	0	1	1	N.C.	9	6	-3	-33%
ASSAULT	4	4	0	0%	22	16	-6	-27%
* VIOLENT *	4	6	2	50%	34	24	-10	-29%
BURGLARY	21	10	-11	-52%	63	36	-27	-43%
Residential	6	8	2	33%	40	21	-19	-48%
Non-Resident.	5	2	-3	-60%	8	7	-1	-13%
Commercial	10	0	-10	-100%	15	8	-7	-47%
LARCENY	42	31	-11	-26%	256	214	-42	-16%
AUTO THEFT	0	3	3	N.C.	4	7	3	75%
ARSON	0	0	0	N.C.	0	0	0	N.C.
* PROPERTY *	63	44	-19	-30%	323	257	-66	-20%
PART I TOTAL:	67	50	-17	-25%	357	281	-76	-21%
PART II CRIMES								
Drug	27	32	5	19%	164	190	26	16%
Assault Simple	15	15	0	0%	84	72	-12	-14%
Forgery/Counterfeit	3	4	1	33%	29	20	-9	-31%
Fraud	7	3	-4	-57%	39	33	-6	-15%
Embezzlement	2	0	-2	-100%	8	3	-5	-63%
Stolen Property	1	1	0	0%	5	12	7	140%
Vandalism	6	5	-1	-17%	42	28	-14	-33%
Weapons	3	4	1	33%	19	16	-3	-16%
Prostitution	0	0	0	N.C.	0	0	0	N.C.
All Other Sex Offens	2	1	-1	-50%	10	6	-4	-40%
Gambling	0	0	0	N.C.	0	0	0	N.C.
Offn Agnst Faml/Chld	0	1	1	N.C.	1	3	2	200%
D. W. I.	9	4	-5	-56%	56	30	-26	-46%
Liquor Law Violation	0	0	0	N.C.	1	3	2	200%
Disorderly Conduct	1	1	0	0%	4	8	4	100%
Obscenity	0	0	0	N.C.	0	1	1	N.C.
Kidnap	0	0	0	N.C.	0	0	0	N.C.
All Other Offenses	10	11	1	10%	50	47	-3	-6%
PART II TOTAL:	86	82	-4	-5%	512	472	-40	-8%
=====								
GRAND TOTAL:	153	132	-21	-14%	869	753	-116	-13%

N.C. = Not Calculable





**Town of Smithfield**  
**Fire Department**  
June, 2018

**I. Statistical Section**

Responded to	2018 Jun	Jun IN	Jun OUT	2017 Jun	2018 IN	2018 OUT	2018 YTD	2017 YTD
<b>Total Structure Fires Dispatched</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>4</b>	<b>28</b>	<b>20</b>	<b>48</b>	<b>56</b>
*Confirmed Structure Fires (Our District)*	1	1	0	0	13	4	17	16
*Confirmed Structure Fires (Other Districts)*	0	0	0	1	0	0	4	19
<b>EMS/Rescue Calls</b>	<b>135</b>	<b>131</b>	<b>4</b>	<b>136</b>	<b>806</b>	<b>43</b>	<b>849</b>	<b>862</b>
<b>Vehicle Fires</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>10</b>	<b>3</b>	<b>13</b>	<b>4</b>
<b>Motor Vehicle Accidents</b>	<b>20</b>	<b>18</b>	<b>2</b>	<b>17</b>	<b>109</b>	<b>9</b>	<b>118</b>	<b>100</b>
<b>Fire Alarms (Actual)</b>	<b>4</b>	<b>4</b>	<b>0</b>	<b>11</b>	<b>48</b>	<b>7</b>	<b>55</b>	<b>73</b>
<b>Fire Alarms (False)</b>	<b>8</b>	<b>7</b>	<b>1</b>	<b>9</b>	<b>45</b>	<b>4</b>	<b>49</b>	<b>38</b>
<b>Misc./Other Calls</b>	<b>35</b>	<b>29</b>	<b>6</b>	<b>25</b>	<b>127</b>	<b>33</b>	<b>160</b>	<b>109</b>
*Mutual Aid (Received)*	10	0	0	2	0	0	37	32
*Mutual Aid (Given)*	4	0	0	4	0	0	33	46
*Overlapping Calls (Calls at the same time)*	23	0	0	30	0	0	162	181
<b>TOTAL EMERGENCY RESPONSES</b>	<b>205</b>	<b>191</b>	<b>14</b>	<b>202</b>	<b>1173</b>	<b>119</b>	<b>1292</b>	<b>1242</b>

\* Denotes the breakdown of calls, these are not calculated into the totals \*  
**IN/OUT** denotes in and out of the Town, not outside the fire district. When we respond to another fire district (Mutual Aid), which is outside of our total fire district boundaries that is reported in (**Other Districts**).

	Jun	YTD
Fire Inspections/Compliance Inspections	27	260
Public Fire Education Programs	6	17
Children in Attendance	295	817
Adults in Attendance	36	302
Plans Review Construction/Renovation Projects	5	30
Fire Code Citations	0	0
Fire Lane Citations	0	0
Consultation/Walk Through	11	102
Re-Inspections	63	147

**II. Major Revenues**

	Jun	YTD
<b>Inspections</b>	<b>\$2,075.00</b>	\$9,450.00
<b>False Alarms</b>	<b>\$275.00</b>	\$2,250.00
<b>Fire Recovery USA</b>	<b>\$1,140.00</b>	\$5,018.40
<b>EMS Debt Setoff</b>	<b>\$482.58</b>	\$10,937.71

## **Major Expenses for the Month:**

### **III. Personnel Update:**

- We filled the vacancy of the full-time staff, now we are at 100% staffed.
- We have many vacancies in the Volunteer Firefighter positions and are currently seeking recruitment of volunteers to become probationary Volunteer Firefighters.

### **IV. Narrative of monthly departmental activities:**

- We participated in Fire prevention programs throughout the month of June: South Smithfield Primary; Station Tour from, A Bright Start Daycare; SRAC Summer Camp.
- We participated with an end of year school event at South Smithfield Elementary; we provided the sprinkler for the kids on three consecutive days.
- We provided the sprinkler at the SRAC for their Summer Camp.

**Town of Smithfield  
Public Works Department  
June 30, 2018**



200 Total Work Orders completed by the Public Works Department

5 Burials, at \$700.00 each = \$3,500.00

0 Cremation Burial, \$400.00 each = \$0

\$5,000.00 Sunset Cemetery Lot Sales

\$2,500.00 Riverside Extension Cemetery Lot Sales

399.14 tons of household waste collected

128 tons of yard waste collected

6.58 tons of recycling collected

104 scrap tires were collected and recycled.

**Town of Smithfield**  
**Public Works Appearance Division**  
**Cemetery, Landscapes, and Grounds Maintenance**  
**Buildings, Facilities, and Sign Division**  
**Monthly Report**  
**June 30, 2018**



**I. Statistical Section**

5 Burials  
0 Works Orders – Buildings & Facilities Division  
12 Work Orders – Grounds Division  
36 Work Orders – Sign Division

**II. Major Revenues**

Sunset Cemetery Lot Sales:	\$5,000.00
Riverside Ext Cemetery Lot Sales:	\$2,500.00
Grave Opening Fees:	\$3,500.00
Total Revenue:	\$11,000.00

**III. Major Expenses for the Month:**

\$10,000.00 to Servco for first draw in locker room renovations, \$30,000.00 to Blackmon Companies for Stream Debris Removal add-ons.

**IV. Personnel Update:**

None for the month

**V. Narrative of monthly departmental activities:**

The overall duties include daily maintenance on cemeteries, landscapes, right-of-ways, buildings and facilities. The Public Works Department safety meeting was on "Derailing Diabetes".

**Town of Smithfield  
Public Works Drainage/Street Division  
Monthly Report  
June 30, 2018**



**I. Statistical Section**

- a. All catch basins in problem areas were cleaned on a weekly basis.
- b. 4 - Work Orders – 6.91 Tons of Asphalt was placed in 4 utility cuts.
- c. Cut two nuisance properties for the Planning Department.
- d. 325 Linear Feet of ditches were cleaned.
- e. 18 - Work Orders – 1,410lbs. of Cold Patch was used for 33 Potholes.

**II. Major Revenues**

None for the month

**III. Major Expenses for the Month:**

\$116,097.00 to Gregory Poole for new 420 Cat backhoe purchase, \$4,695.67 to Withers Ravenel Pavement Condition Survey.

**IV. Personnel Update:**

None for the month

**V. Narrative of monthly departmental activities:**

The Public Works Department safety meeting was on "Derailing Diabetes".

**Town of Smithfield  
Public Works Department  
June 30, 2018 Drainage Report**

Location: Dead End of Church Street.  
Starting Date: 6/4/2018  
Completion Date: 6/4/2018  
Description: Cut back the right of way.  
Man-hours: 1hr.  
Equipment: 2 Scag mowers.  
Materials: N/A

Location: Blount Street, S 5<sup>th</sup> FEMA lots, Woodall and SBL, Riverside FEMA lot, 3<sup>rd</sup> Street FEMA lot, Martin Street lot, MLK and College Road, Outlet Center Drive, Powell Street, West Street.  
Starting Date: 6/4/2018  
Completion Date: 6/27/2018  
Description: Cut town lots, FEMA lots and right of ways.  
Man-hours: 48hrs.  
Equipment: 2 scag mowers plus hand tools.  
Materials: N/A

Location: 916 Third Ave.  
Starting Date: 6/6/2018  
Completion Date: 6/6/2018  
Description: Removed large tree that fell across town lot.  
Man-hours: 23hrs.  
Equipment: 420 Cat backhoe, knuckle boom truck, 401 dump truck plus chain saws.  
Materials: Hauled 3 loads to Spain farms.

Location: North Street and N 4<sup>th</sup>, Caswell and 7<sup>th</sup>, Bridge and Front, Glenn and S 5<sup>th</sup>, 255 A-270-230-275-735 Equity Drive, 540 North Street, Woodsdale entrance, Hood and Vermont, Outlet Center Drive at Outback, Futrell and Fayetteville, 701 A East Street, MLK and Brogden, 11 Berkshire Road, Berkshire and Hospital.  
Starting Date: 6/7/2018  
Completion Date: 6/25/2018  
Description: Repaired 33 potholes with Perma Patch asphalt.  
Man-hours: 3.08hrs.  
Equipment: 401 pickup plus hand tools.  
Materials: 23.5 bags of Perma Patch.

Location: 991 Country Club Road, 807 S 6<sup>th</sup>, 104 Sunset Drive, 19 Franklin Drive.  
Starting Date: 6/13/2018  
Completion Date: 6/13/2018  
Description: Repaired 4 utility cuts with 9.5A asphalt mix.  
Man-hours: 25hrs.  
Equipment: 420 Cat backhoe, 405 dump truck plus hand tools.  
Materials: 6.91 tons of 9.5 A asphalt mix.

Location: SRAC (Triathlon race)  
Starting Date: 6/15/2018  
Completion Date: 6/18/2018  
Description: Delivered 100 cones and 20 event containers for the triathlon race.  
Man-hours: 2hrs.  
Equipment: 401 pickup plus cone trailer.  
Materials: N/A

Location: 310 S 7<sup>th</sup> Street.  
Starting Date: 6/20/2018  
Completion Date: 6/20/2018  
Description: Repaired damaged drain line with 2 yards of 3000psi concrete.  
Man-hours: 4hrs..  
Equipment: 401 pickup plus jet truck.  
Materials: 2 yards of 3000psi concrete.

Location: Ditch bank behind Sunset Cemetery.  
Starting Date: 6/18/2018  
Completion Date: 6/21/2108  
Description: Cut 325LF of ditch bank for positive drainage. Removed 4 loads of obstruction from bank.  
Man-hours: 23hrs.  
Equipment: Mini track hoe, 405 dump truck and 420 Cat backhoe.  
Materials: N/A

Location: 815 and 817 Martin Street.  
Starting Date: 6/27/2018  
Completion Date: 6/27/2018  
Description: Cut two nuisance properties for planning department.  
Man-hours: 4hrs.  
Equipment: Scag mowers plus hand tools.  
Materials: N/A

**Town of Smithfield  
Public Works Fleet Maintenance Division  
Monthly Report  
June 30, 2018**



**I. Statistical Section**

  0   Preventive Maintenances

  0   North Carolina Inspections

 57   Work Orders

**II. Major Revenues**

None for the month

**III. Major Expenses for the Month:**

None for the month

**IV. Personnel Update:**

None for the month

**V. Narrative of monthly departmental activities:**

The Public Works Department safety meeting was on "Derailing Diabetes".



**Town of Smithfield  
Public Works Sanitation Division  
Monthly Report  
June 30, 2018**



**I. Statistical Section**

The Division collected from approximately 4100 homes, 4 times during the month

- a. Sanitation forces completed 60 work orders
- b. Sanitation forces collected tons 399.14 of household waste
- c. Sanitation forces disposed of 64 loads of yard waste and debris at Spain Farms Nursery
- d. Recycled 1.11 tons of clean wood waste (pallets) at Convenient Site Center
- e. Town's forces collected 0 tons of construction debris (C&D)
- f. Town disposed of 104 scrap tires that was collected at Convenient Site Center
- g. Recycling forces collected 3.83 tons of recyclable plastic
- h. Recycled 1,720 lbs. of cardboard material from the Convenient Site Center
- i. A total of 0 gals of cooking oil was collected at the Convenient Site Center
- j. Recycled 4200 lbs. of plastics & glass (co-mingle) Sonoco Products

**II. Major Revenues**

- a. Received \$ 17.96 from Sonoco Products for cardboard material
- b. Sold 0 lbs. of aluminum cans for \$0
- c. Sold 1600 lbs. of shredder steel for \$100.00 to Omni Source
- d. Sold 300 lbs. Fed Shreds for \$15.00
- e. Sold 1040 lbs. Old sheet for \$416.00

**III. Major Expenses for the Month:**

Spain Farms Nursery was paid \$1,914.00 for disposal of yard waste and debris.  
Paid \$1,871.74 to Amick Equipment system Inc. for Radiator for leaf collector. Paid \$1,171.11 Carolina Environmental Systems Inc. for 15 roll out containers. Paid \$1,680.24 to Carolina Environmental Systems for repairs to household waste truck fuse box and cooling repair.

**IV. Personnel Update:**

No one new was hired.

**V. Narrative of monthly departmental activities:**

The department worked closely with Parks & Recreation providing traffic control devices for the "Three Little Pigs" Triathlon and event containers for special events held at the SRAC June 16, 2018. Delivered rollout and cones for "Third on Third" June 15, 2018. Delivered Roll outs and cones for Downtown Development June 29, 2018 for 4<sup>th</sup> of July fireworks celebration. Safety meeting dealing with "Derailing Diabetes" on June 6, 2018 by Sandy Altman  
Community Service Workers worked 36.12 hrs



## PARKS AND RECREATION

### MONTHLY REPORT FOR JUNE, 2018

#### PROGRAMS STATISTICS

NUMBER OF PROGRAMS	15	16
TOTAL ATHLETICS PARTICIPANTS	941	707
TOTAL NON/ATHLETIC PARTICIPANTS	439	140
NUMBER OF GAMES PLAYED	132	97
TOTAL NUMBER OF PLAYERS (GAMES)	3168	2328
NUMBER OF PRACTICES	29	29
TOTAL NUMBER OF PLAYER(S) PRACTICES	377	348

	June, 2018	17/18 FY YTD	June, 2017	16/17 FY YTD
PARKS RENTALS	27	271	18	236
USERS (PARKS RENTALS)	2858	21334	1145	17749
<b>TOTAL UNIQUE CONTACTS</b>	<b>7,783</b>		<b>4,668</b>	

#### FINANCIAL STATISTICS

	June, 2018	17/18 FY YTD	June, 2017	16/17 FY YTD
PARKS AND RECREATION REVENUES	\$ 2,928.00	\$ 83,327.00	\$ 3,820.00	\$ 68,374.00
PARKS AND RECREATION EXPENDITURES (OPERATIONS)	\$ 88,101.00	\$ 698,222.00	\$ 91,534.00	\$ 667,760.00
PARKS AND RECREATION EXPENDITURE (CAPITAL OUTLAY EQUIP)	\$ 42.00	\$ 133,849.00	\$ -	\$ 137,670.00

#### HIGHLIGHTS

Hosted Southern Johnston Baseball Invitational with 36 Teams Participating.  
Hosted 3 Youth Sports Camps (Basketball, Football, Tennis)



**SMITHFIELD RECREATION  
AND AQUATICS CENTER**

**SRAC MONTHLY REPORT FOR JUNE, 2018**

**PROGRAMS STATISTICS**

NUMBER OF PROGRAMS	24	28
TOTAL CONTACT WITH PROGRAM PARTICIPANTS	4845	3639

	<b>June, 2018</b>	<b>17/18 FY YTD</b>	<b>June, 2017</b>	<b>16/17 FY YTD</b>
SRAC MEMBER VISITS	6369		6948	64779
DAY PASSES	2170	10525	1585	10201
RENTALS (SRAC)	97	837	52	783
USERS (SRAC RENTALS)	6284	45004	2210	41828
<b>TOTAL UNIQUE CONTACTS</b>	<b>19,668</b>		<b>14,382</b>	

**FINANCIAL STATISTICS**

	<b>June, 2018</b>	<b>17/18 FY YTD</b>	<b>June, 2017</b>	<b>16/17 FY YTD</b>
SRAC REVENUES	\$ 83,597.00	\$ 723,359.00	\$ 75,589.00	\$ 734,113.00
SRAC EXPENDITURES	\$ 103,948.00	\$ 895,276.00	\$ 120,741.00	\$ 906,644.00
SRAC MEMBERSHIPS	3736		3863	

**HIGHLIGHTS**

Hosted 3 Little Pigs Triathlon with 425+ Participants / >1000 Spectators  
 Summer programming began with Summer Camps (all at capacity)  
 Hosted MMA event with 400+ attendees



- **Statistical Section**

- Electric CP Demand 29,406 Kw relative to May's demand of 26,807 Kw.
- Electric System Reliability for was 99.998%, with one (1) recorded outage; relative to May's 99.998%.
- Raw water treated on a daily average was 4.175 MG relative to 3.827 MG for May; with maximum demand of 5.256 MG relative to May's 4.776 MG.
- Total finished water to the system was 118.589 MG relative to May's 111.803 MG. Average daily for the month was 3.825 MG relative to May's 3.607 MG. Daily maximum was 4.692 MG (June 29<sup>th</sup>) relative to May's 4.464 MG. Daily minimum was 3.268 (June 1<sup>st</sup>), relative to May's 2.836 MG.

- **Miscellaneous Revenues**

- Water sales were \$217,356 relative to May's \$197,815
- Sewer sales were \$321,538 relative to May's \$299,042
- Electrical sales were \$1,455,290 relative to May's sales of \$1,161,414
- Johnston County Water purchases were \$175,778 for 87.889 MG relative to May's \$132,730 for 66.365 MG.

- **Major Expenses for the Month**

- Electricity purchases were \$1,178,109 relative to May's \$1,076,375
- Johnston County sewer charge was \$173,777 for 54.852 MG relative to May's \$199,919 for 64.048 MG.

- **Personnel Changes –**

- Luther Parrott resigned on June 26, 2018 as a Utility Line Mechanic



**Town of Smithfield  
Electric Department  
Monthly Report  
June, 2018**

**I. Statistical Section**

- Street Lights repaired –36
- Area Lights repaired -13
- Service calls – 53
- Underground Electric Locates –123
- Poles changed out, installed or removed-4
- Underground Services Installed/Repaired -3

**II. Major Revenues**

- N/A

**III. Major Expenses for the Month:**

- N/A

**IV. Personnel Update:**

- Utility Dept. had a Safety meeting on Confined Spaces.

**V. Miscellaneous Activities:**

- Continuing to install new Nexgrid electrical meters.
- Started another phase of conversion work on the south side of town. Holding street to Wellons St.
- Installed new 3 phase transformer for new addition at Neuse Charter School.
- Started counting Inventory.
- Installed lights shining on new insignia on water tank at 9<sup>th</sup> street.



## WATER & SEWER

### JUNE 2018 MONTHLY REPORT

● DISCONNECT WATER	5
● RECONNECT WATER	7
● TEST METER	3
● TEMPORARY METER SET	1
● DISCOLORED WATER CALLS	3
● LOW PRESSURE CALLS	0
● NEW/RENEW SERVICE INSTALLS	2
● LEAK DETECTION	11
● METER CHECKS	14
● METER REPAIRS	6
● WATER MAIN/SERVICE REPAIRS	7
● STREET CUTS	8
● REPLACE EXISTING METERS	4
● INSTALL NEW METERS	6
● FIRE HYDRANTS REPAIRED	0
● FIRE HYDRANTS REPLACED	0
● SEWER REPAIRS	8

- CLEANOUTS INSTALLED 4
- SEWER MAIN CLEANED 10381LF
- SERVICE LATERALS CLEANED 380LF
- SERVICE CALLS 102
- LOCATES 133
  
- SERVICE AND MAINTAINED ALL 18 LIFT STATIONS 2 TIMES PER WEEK
- INSPECTED ALL AERIAL SEWERS ONE TIME
- INSPECTED HIGH PRIORITY MANHOLES WEEKLY

## UPCOMING MAJOR EXPENSES FOR THE MONTH OF JULY

- Ordering large quantity of materials
- Ordering large quantity of safety materials
- Ordering trench box and trailer
- Ordering new truck for Lift Station Mechanic
- Ordering new tamp for crew
- Ordering new locator for crew

## PERSONNEL UPDATES

- Mario out with knee surgery

## UPCOMING PROJECTS FOR THE MONTH OF JULY

- Old Goldsboro Rd. water placement



## **MONTHLY WATER LOSS REPORT**

**JUNE, 2018**

### **(2) Meters with slow washer leaks**

**$\frac{3}{4}$ " Line,  $\frac{1}{8}$ " hole – 3days**

**(3)  $\frac{3}{4}$ " Line,  $\frac{1}{8}$ " Hole – 1day**

**$\frac{3}{4}$ " Line,  $\frac{1}{18}$ " hole – 7days**

**1"Line,  $\frac{1}{8}$  hole – 4days**

**2" Line,  $\frac{1}{4}$ " hole – 3days**



**Smithfield Water Plant**

Distribution Sampling Site Plan

**Hydrant Flushing**

Street Name	Date	Chlorine	Time	Gallons	Psi	Street Name	Date	Chlorine	Time	Gallons	PSI
Stephson Drive	06/18/18	3	15	7965	10	North Street	06/20/18	3.4	15	17820	40
Computer Drive	06/18/18	3.4	15	31860	10	West Street	06/20/18	3	30	156060	50
Castle Drive	06/18/18	3	15	7965	10	Regency Drive	06/20/18	3.4	15	63720	60
Parkway Drive	06/18/18	3.2	15	63720	40	Randers Court	06/20/18	3.4	15	15930	40
Garner Drive	06/18/18	3	15	63723	40	Noble Street	06/20/18	3	15	15930	40
Hwy 210 LIFT ST.	06/18/18	3	30	31860	40	Fieldale Dr#1(L)	06/20/18	3	15	63720	40
Skyland Drive	06/18/18	3	15	7965	10	Fieldale Dr#2(R )	06/20/18	3	15	63720	40
Bradford Street	06/18/18	2.4	30	31860	10	Heather Court	06/20/18	3.4	15	15930	40
Kellie Drive	06/19/18	2.8	30	15930	10	Reeding Place	06/20/18	3.4	15	15930	40
Edgewater	06/19/18	2.2	15	7965	10	East Street	06/20/18	3	30	127440	40
Edgecombe	06/19/18	2	15	15930	40	Smith Street	06/20/18	3.4	15	63720	40
Valley Wood	06/19/18	2.6	30	127440	40	Wellons Street	06/20/18	3	15	63720	40
Creek Wood	06/19/18	2.6	30	127440	40	Kay Drive	06/19/18	0.4	15	38985	15
White Oak Drive	06/19/18	2.6	30	15930	10	Huntington Place	06/19/18	0.6	15	38985	15
Brookwood Drive	06/19/18	2.8	30	45030	5	N. Lakeside Drive	06/19/18	0.6	15	9750	15
Runnymede Place	06/19/18	2.8	15	31860	10	Cypress Point	06/19/18	0.6	15	34890	12
Nottingham Place	06/19/18	3.2	15	38985	10	Quail Run	06/19/18	0.6	15	8715	12
Heritage Drive	06/19/18	2.6	15	38985	10	British Court	06/19/18	0.6	15	8715	12
Noble Plaza #1	06/20/18	2.6	15	9750	10	Tyler Street	06/19/18	0.4	15	78030	60
Noble Plaza #2	06/20/18	2.8	15	9750	10	Yelverton Road	06/19/18	2	15	63720	40
Pinecrest Street	06/20/18	2.4	15	9750	10	Ava Gardner	06/19/18	3.2	15	63720	40
S. Sussex Drive	06/20/18	2.8	15	31860	10	Waddell Drive	06/18/18	3.2	15	7965	10
Elm Drive	06/20/18	3	15	9750	10	Henly Place	06/18/18	3	15	8715	12
Bradford Street	06/20/18	2.4	15	38985	10	Birch Street	06/18/18	3	15	34890	12
Coor Farm Supply	06/20/18	2.8	15	7965	10	Pine Street	06/18/18	3	15	38985	15
Old Goldsboro Rd.	06/20/18	3	15	7965	10	Oak Drive	06/18/18	3.4	15	37695	14
Hillcrest Drive	06/20/18	3.2	15	31860	10	Cedar Drive	06/18/18	3	15	31860	10
Eason Street	06/20/18	3.2	15	38985	40	Aspen Drive	06/18/18	3.4	15	34890	12
Magnolia circle	06/21/18	3	30	156060	40	Furlonge Street	06/18/18	3	15	34890	12
Rainbow Drive	06/21/18	2	15	19500	60	Golden Corral	06/18/18	3.4	15	40290	16
Rainbow Circle	06/21/18	2	15	19500	60	Holland Drive	06/18/18	3	15	9750	15
Moonbeam Circle	06/25/18	2	15	19500	60	Davis Street	06/18/18	3.4	15	34890	12
Ray Drive	06/25/18	3	15	15930	60	Caroline Ave.	06/18/18	3	15	31860	10
Will Drive	06/20/18	3.2	15	63720	40	Johnston Street	06/18/18	3	15	38985	15
Michael Lane	06/21/18	3	15	63720	40	Ryans	06/18/18	2	90	9750	15
Ward Street	06/21/18	3	15	15930	40						

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