

AGENDA

CITY OF NEWTON



May 5, 2020

AGENDA
CITY OF NEWTON
NEWTON CITY COUNCIL - REGULAR MEETING

May 5, 2020
7:00 p.m.

- | | | |
|------|-----|---|
| Page | 1. | <u>Call to Order – Mayor Eddie Haupt</u> |
| | 2. | <u>Opening – Council Member Ed Sain</u> |
| 3 | 3. | <u>Approval of Minutes from the April 21, 2020, Regular Meeting</u> |
| | 4. | <u>Consideration of Consent Agenda Items</u> |
| 6 | A. | Consideration of Proclamation – Police Week, May 10-16, 2020 |
| 7 | B. | Consideration of Proclamation – Public Works Week, May 17-23, 2020 |
| 8 | C. | Consideration of Amendment to the Fee Schedule for Splash Pad |
| | 5. | <u>Comments from the Public: (IF YOU WISH TO MAKE A PUBLIC COMMENT ON NON-AGENDA ITEMS RELATED TO CITY BUSINESS, PLEASE EMAIL CITY CLERK AMY FALOWSKI AT CITYCLERK@NEWTONNC.GOV OR CALL 828-695-4359 TO LEAVE A VOICE COMMENT. ALL EMAILS AND VOICE COMMENTS MUST BE RECEIVED BY 5:00 PM ON MAY 5, 2020)</u> |
| | 6. | <u>Public Hearing</u> |
| 9 | A. | Consideration of Rezoning - #2020-01 Filed by Kevin McMillan |
| | 7. | <u>New Business</u> |
| 27 | A. | Consideration of AIA Acceptance and Award for Engineering for Sewer Investigation |
| 34 | B. | Consideration of Agreement with McGill Associates, PA for Lake Dam Retaining Wall Repair Project |
| 36 | C. | Introduction of Proposed Sidewalk Dining Ordinance |
| 40 | D. | Introduction of Proposed Food Trucks Ordinance |
| | 8. | <u>City Manager’s Report</u> |
| | 9. | <u>Questions and Comments From Mayor and Council</u> |
| | A. | Reports from Appointed Representatives on Outside Boards – Council Member Anne Wepner |
| | 10. | <u>Adjournment</u> |

**MINUTES
REGULAR MEETING OF THE NEWTON CITY COUNCIL**

April 21, 2020 – 7:00 p.m.

The regular meeting of the Newton City Council was held at 7 p.m. Tuesday, April 21, 2020 at Newton City Hall, and also Electronically VIA Zoom.

PRESENT: Mayor Eddie Haupt

PRESENT ELECTRONICALLY VIA ZOOM: Mayor Pro Tem John Stiver and Council Members Jerry Hodge, Anne Wepner, Jody Dixon, Beverly Danner and Ed Sain

STAFF PRESENT: City Manager Todd Clark, City Clerk Amy S. Falowski, City Attorney John Cilley, Public Information Officer Alex Frick, and IS Director Chris Little

PRESENT ELECTRONICALLY VIA ZOOM: Assistant City Manager Sean Hovis, City Department Heads and members of the management team

PRESENT IN ADJACENT VIEWING AREA: IS Technician Spencer Hodges

ITEM 1: CALL TO ORDER

Mayor Eddie Haupt welcomed everyone and called the meeting to order.

ITEM 2: OPENING Invocation and Pledge of Allegiance

Council Member Anne Wepner provided the opening and Pledge of Allegiance.

ITEM 3: APPROVAL OF MINUTES

Upon motion duly made by Council Member Ed Sain, seconded by Mayor Pro Tem John Stiver, it was unanimously RESOLVED:

That the Minutes from the March 3, 2020 Regular Meeting be – APPROVED

ITEM 4: CONSIDERATION OF CONSENT AGENDA ITEMS

Upon motion duly made by Council Member Jody Dixon, seconded by Mayor Pro Tem John Stiver, it was unanimously RESOLVED:

That the Consent Agenda be – APPROVED

- A. Tax Releases
- B. Sewer Adjustments
- C. Consideration of Appointments to Boards and Commissions
- D. Consideration of Revisions to the Public Art Commission Bylaws
- E. Consideration of Budget Amendment to Provide Additional Funding for Vehicle and Building Repairs – Fire Department
- F. Consideration of Budget Ordinance Amendment to Recognize Revenue and Authorize Expenditure for Capital Purchase in FY 2019-2020 Budget
- G. Consideration of Budget Ordinance Amendment to Recognize a Donation from Walmart and Authorization of Expenitures for the Purchase of Traffic Safety Cones – Fire Department

- H. Consideration of Budget Ordinance Amendment to Recognize a Donation from Saint Andrew’s Anglican Church of Newton and Authorze Expenditure Appropriation – Police Department
- I. Proclamation – Child Abuse Prevention Month, April, 2020
- J. Proclamation – National Library Week
- K. Proclamation – Telecommunicator’s Week

Council Member Jerry Hodge stated that concerning Item 3 on the Consent Agenda, he would like to thank the citizens that have offered to volunteer their time for their willingness to serve and give back by serving on these various boards and committees.

(Ordinances, Resolutions and Proclamations are hereby referenced and on file in the Office of the City Clerk)

ITEM 5: COMMENTS FROM THE PUBLIC: (IF YOU WISH TO MAKE A PUBLIC COMMENT ON NON-AGENDA ITEMS RELATED TO CITY BUSINESS, PLEASE EMAIL CITY CLERK AMY FALOWSKI AT CITYCLERK@NEWTONNC.GOV OR CALL 828-695-4359 TO LEAVE A VOICE COMMENT. ALL EMAILS AND VOICE COMMENTS MUST BE RECEIVED BY 5:00 PM ON APRIL 21, 2020)

Mayor Eddie Haupt asked if anyone present would like to make comment concerning non-agenda items.

Phone Message from Marie Ellis, read by City Manager Todd Clark, stated that she is concerned with large trucks travelling on South College Avenue. She stated the trucks disrupt her daily life and the lives of others on that street. Mr. Clark stated that he would look in to the situation.

E-mail letter from Dana Ramseur, read by City Manager Todd Clark, addressed her concern for special appropriations made by the city to non-profit organizations.

E-mail letter from Twyla McDermott, read by City Manager Todd Clark, thanked council for streaming the meeting and asked about Phase 3 of the Streetscape Project and how that would impact businesses after Covid-19.

E-mail letter from Michael Waltuch, read by City Manager Todd Clark, asked council to clarify the process businesses would need to go through to apply for funds for businesses negatively impacted by Covid-19.

Mr. Clark stated that he would address these concerns with these individuals.

ITEM 6: New Business

- A. Consideration of Resolution to Adopt City Policies on Public Attendance and Remote Attendance by Council and Staff at City Council Meetings

City Attorney John Cilley stated that this Resolution would adopt a city policy on public attendance and remote attendance by City Council and staff at City Council Meetings. Mr. Cilley recommended approval.

Upon motion duly made by Council Member Anne Wepner, seconded by Council Member Jerry Hodge, it was unanimously RESOLVED:

That Resolution - City Policies on Public Attendance and Remote Attendance by Council and Staff at City Council Meetings be – ADOPTED.

(Ordinances, Resolutions and Proclamations are hereby referenced and on file in the Office of the City Clerk)

ITEM 7: City Manager's Report

Meetings & Events

- Dates for Budget Workshops
 - May 11th
 - May 12th
 - May 13th
 - May 18th - if needed
 - May 19th - if needed
 - May 20th - if needed

Other

- Rezoning Request
- Food Truck Ordinance
- Sidewalk Dining Ordinance
- Streetscape Construction
- Update on Census
- Budget Process Has Started
- Permitting Report
 - Utility Disconnections and Payment Plans
 - Revenue Losses

ITEM 8: Questions and Comments from Mayor and Council

Mayor Haupt asked if there were any questions or comments from City Council.

Council Member Ed Sain gave a report on the Appearance and Recreation Committees.

ITEM 9: Adjournment

Upon motion duly made by Council Member Jody Dixon, seconded by Mayor Pro Tem John Stiver, it was unanimously RESOLVED:

That the Meeting be – ADJOURNED

Amy S. Falowski, City Clerk



Eddie Haupt, Mayor

PROCLAMATION
DESIGNATING MAY 15, 2020
AS NATIONAL PEACE OFFICERS MEMORIAL DAY
AND THE WEEK OF MAY 10-16, 2020
AS NATIONAL POLICE WEEK

WHEREAS, in communities across this nation, there are more than 900,000 police officers who are committed to the preservation of life and property, risking their lives to protect us from all who would mock the law, providing protection, law and order and serving the cause of justice; and

WHEREAS, police officers, including members of the Newton Police Department, accept a profound responsibility and work to uphold our laws, safeguard our rights and freedoms, and serve on the front lines in the fight against crime and injustice; and

WHEREAS, since the first recorded death in 1791, more than 20,000 police officers in the United States have made the ultimate sacrifice and have been killed in the line of duty; and

WHEREAS, President John F. Kennedy proclaimed May 15th as National Peace Officers' Memorial Day to honor the deeds of those courageous men and women who have made the ultimate sacrifice in service to their community or have become disabled in the performance of duty and U.S. flags should be flown at half-staff; and

WHEREAS, Congress has designated the calendar week that May 15th falls be known as National Police Week, where the service and sacrifice of all officers killed in the line of duty will be honored; and

WHEREAS, the names of these dedicated public servants are engraved on the walls of the National Law Enforcement Officers Memorial in Washington, D.C.;

NOW, THEREFORE, I, Eddie Haupt, Mayor of the City of Newton, on behalf of Newton City Council, do hereby proclaim the week of May 10-16, 2020 as Police Week in the City of Newton, NC and call upon all citizens to publicly salute ALL police officers, past and present who by their faithful and loyal devotion to their responsibilities, have rendered a dedicated service to their communities across the nation.

I FURTHER call upon all citizens of the City of Newton to observe May 15, 2020, as Peace Officers Memorial Day to honor those peace officers who, through their courageous deeds, have lost their lives or have become disabled in the performance of duty.

In witness thereof, I have hereunto set my hand and caused the Seal of the City of Newton to be affixed.

Adopted the 5th day of May 2020



Eddie Haupt, Mayor

City of Newton
Proclamation
Public Works Week

Whereas, public works services provided in our community are an integral part of our citizens' everyday lives; and

Whereas, the support of an understanding and informed citizenry is vital to the efficient operation of public works systems and programs such as water, sewers, streets and highways, public buildings, and solid waste collection; and

Whereas, the health, safety and comfort of this community greatly depends on these facilities and services; and

Whereas, the quality and effectiveness of these facilities, as well as their planning, design, and construction, are vitally dependent upon the efforts and skill of public works officials; and

Whereas, the efficiency of the qualified and dedicated personnel who staff public works departments is materially influenced by the people's attitude and understanding of the importance of the work they perform,

Now, therefore, I, Eddie Haupt Mayor of the City of Newton do hereby proclaim the week of May 17-23, 2020 as National Public Works Week in The City of Newton and I call upon all citizens and civic organizations to acquaint themselves with the issues involved in providing our public works and to recognize the contributions which public works officials make every day to our health, safety, comfort, and quality of life.

In witness thereof, I have hereunto set my hand and caused the Seal of the City of Newton to be affixed.

Adopted the 5th day of May 2020

Eddie Haupt, Mayor



**CITY OF NEWTON
REQUEST FOR COUNCIL ACTION**

DATE: April 29, 2020

TO: Todd Clark, City Manager

FROM: Sandra Waters, Parks and Recreation Director

CONSIDERATION OF: Amendment to the Schedule of Fees and Charges for Splash Pad

Approved for Council Consideration



Background:

The City Council held a series of workshops in January and March for planning purposes. It was during these meetings that City Council reviewed the operations of the newly constructed splash pad located at the Main Recreation Center. Many different aspects of operation were discussed and after due consideration, City Council voted to charge patrons for use of the splash pad at the last work session held on March 2, 2020.

Upon the direction of City Council, the staff was directed to prepare an amendment to the Schedule of Fees and Charges for adoption an upcoming City Council meeting. The recommended amendments are as follows:

Daily Admission Fee

\$1.00 per Person

Season Pass

\$25.00 per person (Pass Valid Memorial Day-Labor Day of the current season)

*\$1.00 Per Day After Holiday As Long As Splash Pad Is Open.

Private Rental Parties

Resident-\$50.00 for 2 HRS.

Non-Resident-\$75.00 for 2 HRS.

Business/Corporate Events- (Same as Resident/Non-Resident Fees)

Requested Action:

Consideration of the amendment to the Schedule of Fees and Charges for use of the splash pad as outlined in this Request for Council Action.

CITY OF NEWTON REQUEST FOR COUNCIL ACTION

DATE: April 28, 2020

TO: E. Todd Clark, City Manager

FROM: Alex Fulbright, Assistant Planning Director

CONSIDERATION OF: Rezoning Application #2020-01 as requested by Kevin McMillan.

Approved for Council Consideration



Background:

Kevin McMillan has submitted an application to rezone two (2) parcels. The request is to rezone property located in the northwest quadrant of the intersection of Northwest Blvd and West 1st Street from R-20 Single Family Residential to P-1 Office and Intuitional. The subject site consists of a 0.84 acres tract identified as Catawba County Pins 3730-11-75-3168 and 3730-11-75-3360.

Review:

Zoning History:

The subject site was zoned R-15 on both the 1958 and 1966 zoning maps. R-15 is the predecessor to the R-20 Single Family Residential zoning district, which is what the property was zoned on the 1983 zoning map and currently. There have been no prior attempts to change the zoning of the subject site. There has been several changes to the zoning in the proximity of the subject site over the years, which are as follows:

1987 – Property just south of the subject site, where Willis Reynolds, CVS, and Newton Vision Center is located was rezoned from R-20 to P-1 Office and intuitional.

1997 – Property south of Willis Reynolds, where CVS and Newton Vision Center was rezoned from P-1 to B-4 General Business. This property was included in the 1987 request above.

1998 –Property southwest of the subject site, also known as Court Street Commons, which contains Newton Family Physicians and Azalea Glen was rezoned from R-20 to PD-MX Planned Development Mixed Use.

2005 – Property southeast of the subject site was rezoned from R-11 Single family and Two Family Residential to P-1. This property is/was a vacant parcel on Northwest Blvd adjacent to the Insurance and Lawyers offices

Surrounding Land Use and Zoning:

North—Property to the north of the subject property is a part of Hildebrand Heights Subdivision, a single family home development. The zoning is R-20 Single Family Residential.

South—Property to the south of the subject property is Willis Reynolds Funeral Home and is zoned P-1.

West— Property to the west of the subject property is a part of Hildebrand Heights Subdivision, a single family home development. The zoning is R-20 Single Family Residential.

East— Property to the east is First Baptist Church, Allied Financial Service, and State Farm. The zoning is R-11 Single Family and Two Family Residential and P-1 Office and intuitional.

Transportation:

The property is located on Northwest Blvd (US Hwy 321 Business), a major arterial for the City of Newton, and West 1st Street, local neighborhood street. The 2017 Average Daily Traffic Count for Northwest Blvd was 22,000. This thoroughfare was widened to five lanes in 1992 and has a capacity of 37,400 cars per day. There are no traffic counts for West 1st Street; however, there are no known problems along the street and it is not included in any plans to be improved.

Utilities:

Water and Sewer are available to the site.

Land Development Plan:

The subject site is located outside of the City’s Adopted Area Plans so it is subject to the guidance provided in the 1988 Land Development Plan. The 1988 future land use map, which is attached, identifies the subject site as a barricade area located between residential and commercial land uses. Land uses in barricade areas are generally moderately intensive land use which in this context could be a higher density residential district or office and intuitional. One of the major points in the Land Development Plan for Residential Land is to protect the existing stable neighborhoods from inappropriate types of scale and intensity of land use.

Public Notice:

Public notice for this rezoning case has been performed as follows:

Newspaper: published on April 23 and 30, 2020.

Posted on-site: 2 signs posted and maintained on-site since February 14, 2020

Mailed notices: sent notice to the applicant, owner of the sites, owners of adjacent property, and the owners of property within 100 feet of the property adjacent to the subject site. 20 letters were sent on April 23, 2020.

Recommendation action:

Staff recommended approval to the Planning Commission at their meeting held on February 25th at the conclusion of the public hearing, the Planning Commission voted to unanimously to recommend approval to the City Council. The request is consistent with the Land Development Plan for the area and the site has appropriate utilities. Any adverse impacts to adjoining properties would be mitigated by development standards contained in the City's Zoning Ordinance, which would apply when the property is developed; standards include but are not limited to buffers, screening, structure placement, density of development, and signage.

ORDINANCE
ORDINANCE AMENDING OFFICIAL ZONING ATLAS
(Kevin McMillian)

WHEREAS, the City of Newton City Council, at a scheduled public hearing on May 5, 2020 reviewed a request from Kevin McMillian to rezone property located in the northwest quadrant of the intersection of Northwest Blvd and West 1st Street from R-20 Single Family Residential to P-1 Office and Institutional Zoning Classification:

WHEREAS, the public hearing was duly held as scheduled, advertised, and posted; and

WHEREAS, the City of Newton Planning Commission and the City of Newton City Council found the request is consistent with the 1988 Land Development Plan; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF NEWTON CITY COUNCIL:

Section 1: That properties located in the northwest quadrant of the intersection of Northwest Blvd and West 1st Street, consists of 0.84 acres, further identified as Catawba County parcel id numbers 3730-11-75-3168 and 3730-11-75-3360 is hereby rezoned from R-20 Single Family Residential to P-1 Office and Institutional Zoning Classification in its entirety. The parcel identified by parcel id number 3730-11-75-3168 is currently owned by William Smith and the parcel identified by parcel id number 3730-11-75-3360 is currently owned by Beverly Caldwell and Janice Pitts.

Section 2: The Zoning Atlas and records of the City are hereby amended to show the foregoing changes and amendments.

Section 3: This ordinance shall become effective from and after its adoption.

Adopted this 5th day of May 2020

Eddie Haupt, Mayor

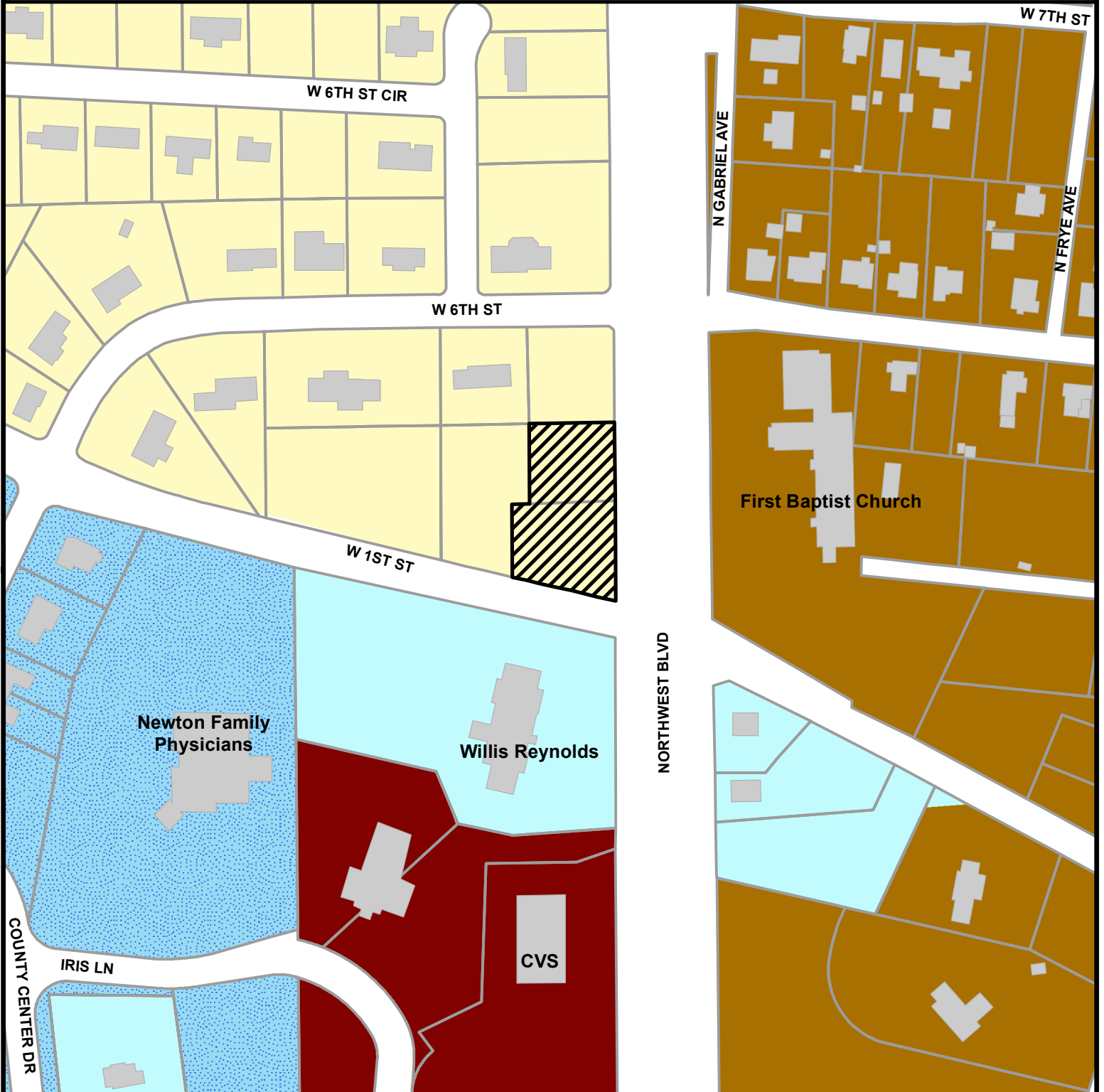
Amy Falowski, City Clerk











Rezoning #2020-01

Kevin McMillan
Northwest Blvd



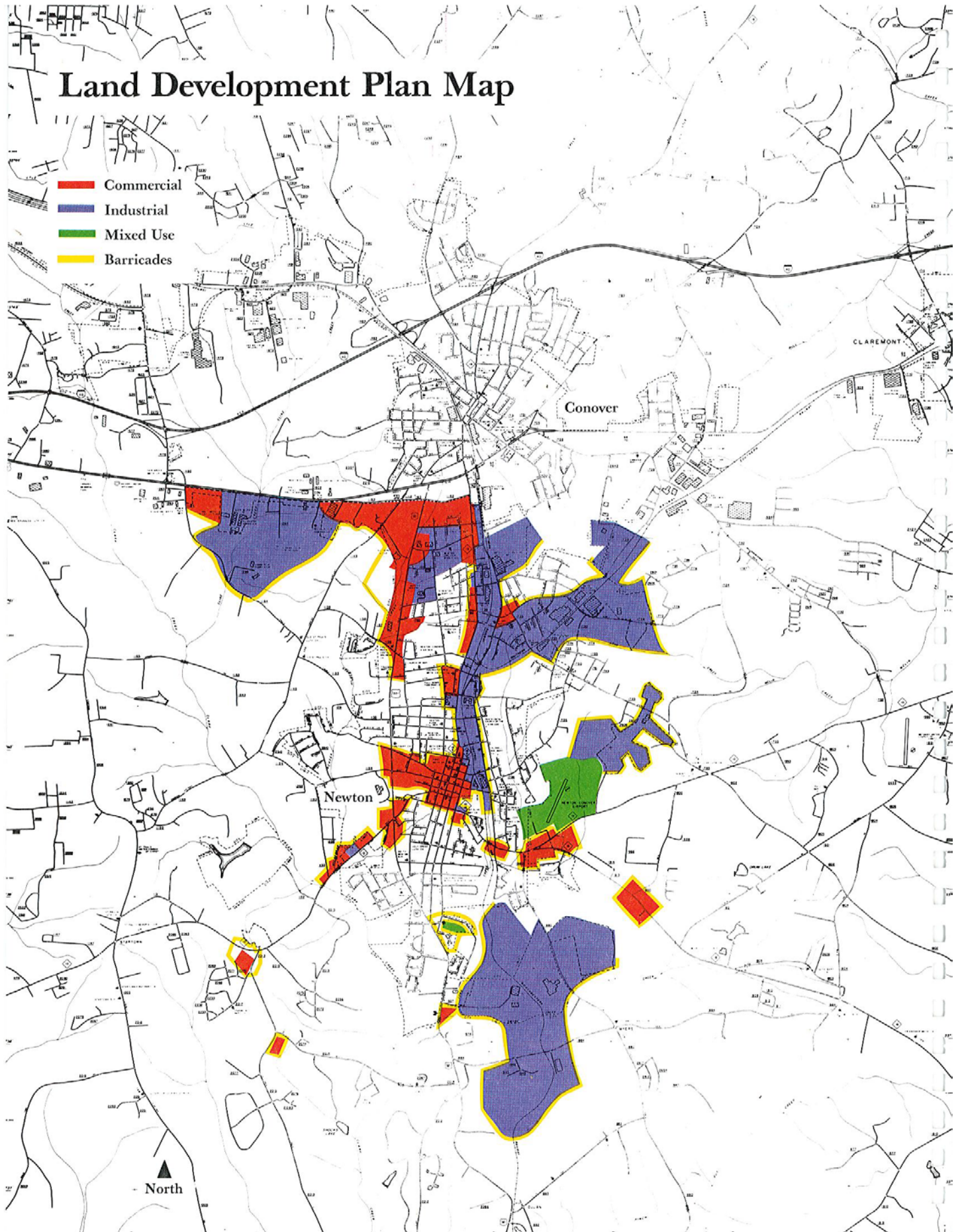
-  Subject Site
-  Single-and Two-family Residential (R-11)
-  Office and Institutional (P-1)
-  Single Family Residential (R-20)
-  General Business (B-4)
-  Planned Development Mixed Use



NOT TO SCALE

Land Development Plan Map

- Commercial
- Industrial
- Mixed Use
- Barricades



Permitted and permissible special uses by districts in the P-1 district

Permitted principal use

Forestry Truck farming and crop production BUSINESS OFFICES Radio and TV studio Community centers Country clubs Golf courses (18 holes) Greenways Park and playground Recreation clubs Aquarium Arboreta Art galleries Botanical gardens Libraries Museums MEMBERSHIPORGANIZATIONS Research activities Cemetery, human PLACES OF ASSEMBLY Public utility uses Adult care center Child care center Church/synagogue	College/univ./tech. coll. Multiple-family Single-family Two-family Professional residential Residential maternity homes Optician and optical supply stores Automatic bank teller Banks and finance cos. Advertising agency Arts/graphics service Blueprinters/drafting supplies Building cleaning and maintenance service Computer and data processing service Detective agencies Employment agencies Insurance agencies Management consultants News syndicates Personnel services Photocopying services Photo finishing labs. Photography services and studio Public relations services	Real estate services Health practitioner HOSPITAL Labs/medical Medical and dental clinics Nursing/conval./extended care Contractor's office Funeral parlor Photography studio Barber shop Beauty salon Accounting Architects Auditors/bookkeepers Engineers Interior designers Legal services Surveyors Business schools Vocational schools Parking off-street Alternative tower structure Telecommunications tower alternative
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Permitted accessory use

Gardening Private greenhouses Stable, residential	Radio and TV receiving antenna and dish, Customary access uses Monument sales	Swimming pool (in ground, regulated) Swimming pool (above ground, regulated)
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Special use approved by council

Circus/carnival/fair Crematorium Municipal garages	Public service facilities Schools Life care tr./facility	Bed and breakfast Bus shelters
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Special use approved by board of adjustment

Ham radio antenna	Tailoring and dress-making shops	Health clubs
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To whom it may concern,

02-06-2020

The city of Newton has been amazing for my insurance business. This location on Business Hwy 321 has served as an invaluable piece of my agency's growth. However, I currently lease my building and we are out growing the office space. It's very important for me to stay in this location so I can continue to serve the customers I've worked so hard to obtain. I now have the opportunity to purchase land (Parcel ID 373011753168 and Parcel ID 373011753360) from Ms Beverly Caldwell, Janice Pitts, and William Smith. This land is just across the street from my current location and will be the perfect area for me to build a new office building for my State Farm Insurance Agency.

I have contacted all property owners and collected Signed Statements from each person granting me permission to get these two parcels rezoned.

The office building I plan to build will be approximately 30 Feet By 60 Feet with a parking lot. I have enclosed different examples of metal office buildings with brick and stone veneer appearance that I like.

Please allow these two parcels of land to be rezoned from Residential to Commercial to allow for this dream of mine to come true.

My cell phone is 704-640-3342. You can reach me directly, or at my office.

Thank you.



-Kevin



Kevin McMillan, Agent/Owner

Providing Insurance and Financial Services

55 Northwest Blvd

Newton, NC 28658

Office - 828-994-4475

Fax - 828-994-4479



Assessment Report - Catawba County NC as of January current year

Property Assessment Information:

Card: 1 of 1 Class R
 Next Previous Card

Revaluation Date: January 1, 2020

Parcel Information:

Parcel ID: **373011753168**
 Property Address:
 LRK(REID): 25834

Owner Information:

Name: SMITH WILLIAM EDWARD
 Name2:
 Address: 3 W 6TH ST
 City/State/Zip: NEWTON, NC 28658-3103

Assessment Information:

Market Building(s) Value: \$0
 Total Market Value: \$13,600

Market Land Value: \$13,600
 Use Total Value: \$0

Sales Data:

Date	Type	Price	Source	Validity
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Property Factors:

Topography	Utilities	Street or Road
LEVEL	ALL PUBLIC	PAVED

Building Permit Data:

Issue Date	Number	Amount	Purpose
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Notes:

Note1:

Last Update: 2019-02-12

Card: 1 of 1

Next Previous Card

The Building sketch is not currently available or there is no structure on property.

This map/report product was prepared from the Catawba County, NC Geospatial Information Services. Catawba County has made substantial efforts to ensure the accuracy of location and labeling information contained on this map or data on this report. Catawba County promotes and recommends the independent verification of any data contained on this map/report product by the user. The County of Catawba, its employees, agents, and personnel, disclaim, and shall not be held liable for any and all damages, loss or liability, whether direct, indirect or consequential which arises or may arise from this map/report product or the use thereof by any person or entity.

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Assessment Report - Catawba County NC as of January current year

Property Assessment Information:

Card: 1 of 1 Class R
Next Previous Card

Revaluation Date: January 1, 2020

Parcel Information:

Parcel ID: 373011753360
Property Address:
LRK(REID): 25833

Owner Information:

Name: CALDWELL BEVERLY C
Name2: PITTS JANICE CALDWELL
Address: 801 W 6TH ST
City/State/Zip: NEWTON, NC 28658-3103

Assessment Information:

Market Building(s) Value: \$0
Total Market Value: \$11,500

Market Land Value: \$11,500
Use Total Value: \$0

Sales Data:

Date	Type	Price	Source	Validity
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Property Factors:

Topography	Utilities	Street or Road
LEVEL	ALL PUBLIC	PAVED

Building Permit Data:

Issue Date	Number	Amount	Purpose
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Notes:

Note1:

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Beverly C Caldwell
3763 Landmark Dr
Sherrills Ford, NC 28673

February 5, 2020

To Whom It Concerns:

RE: Re-Zoning request
Parcel ID: **373011753360**

I would like to grant permission and support the request to re-zone the parcel of property identified as Parcel ID: **373011753360**, located adjacent the corner lot of Northwest Blvd and West 1st Street, and facing Northwest Blvd that is being submitted by Kevin McMillan for a change from current zoning to allow him to purchase and build an office structure suited for his Insurance practice.

I believe that this parcel of property is best used for same type occupancy and is not well suited for residential use as currently zoned due to its location, highway frontage and the fact that it is bordered by the First Baptist Church, Willis Funeral Home and Crematorium, and a similar office complex where Kevin now has his insurance business.

I believe this property use will clean up the area, add tax value and basis without harming the other residential properties nearby.

Please support his request with our permission and request to allow the change.

Thank you



Beverly C. Caldwell

Janice Caldwell Pitts
801 West 6th Street
Newton NC 28658

February 4, 2020

To Whom It Concerns:

RE: Re-Zoning request
Parcel ID: **373011753360**

I would like to grant permission and support the request to re-zone the parcel of property identified as Parcel ID: **373011753360**, located adjacent the corner lot of Northwest Blvd and West 1st Street, and facing Northwest Blvd that is being submitted by Kevin McMillan for a change from current zoning to allow him to purchase and build an office structure suited for his Insurance practice.

I believe that this parcel of property is best used for same type occupancy and is not well suited for residential use as currently zoned due to its location, highway frontage and the fact that it is bordered by the First Baptist Church, Willis Funeral Home and Crematorium, and a similar office complex where Kevin now has his insurance business.

I believe this property use will clean up the area, add tax value and basis without harming the other residential properties nearby.

Please support his request with our permission and request to allow the change.

Thank you

A handwritten signature in black ink that reads "Janice Caldwell Pitts". The signature is written in a cursive, flowing style.

Janice Caldwell Pitts

William E. Smith
3 West 6th Street
Newton, NC 28658
smithw@sherrillfurniture.com
828-244-3485

February 3, 2020

To Whom It Concerns:

RE: Re-Zoning request
PIN number **373011753168**

I would like to grant permission and support the request to re-zone the parcel of property identified as PIN 373011753168, located on the corner of Northwest Blvd and West 1st Street that is being submitted by Kevin McMillan for a change from current zoning to allow him to purchase and build an office structure suited for his Insurance practice.

I believe that this parcel of property is best used for same type occupancy and is not suited for residential use as currently zoned due to its location, highway frontage and the fact that it is bordered by the First Baptist Church, Willis Funeral Home and Crematorium, and a similar office complex where Kevin now has his insurance business.

I believe this property use will clean up the area, add tax value and basis without harming the other residential properties nearby.

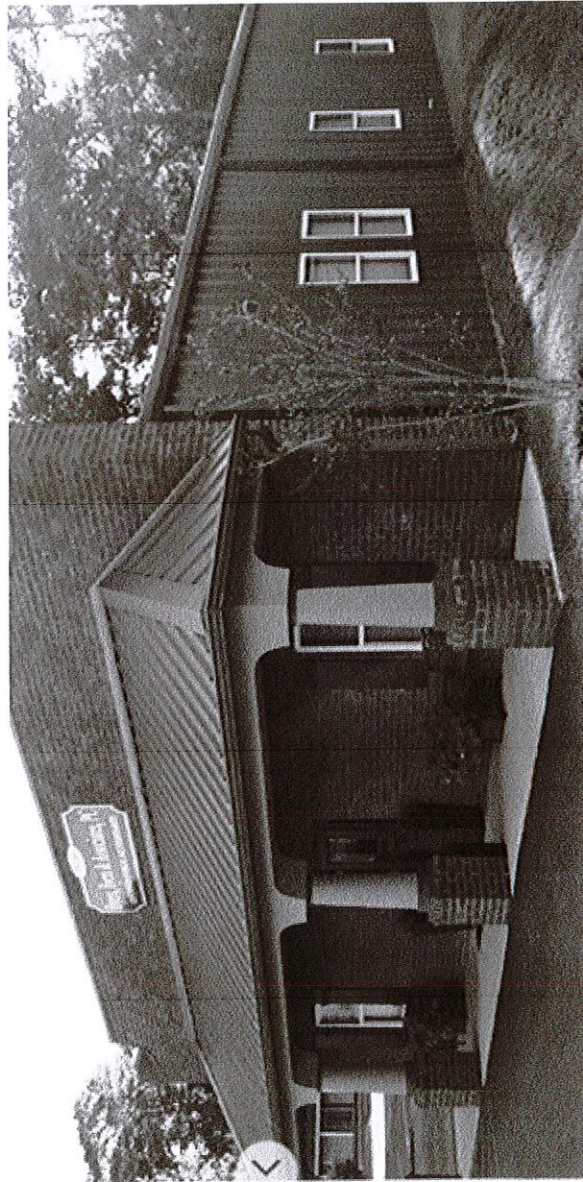
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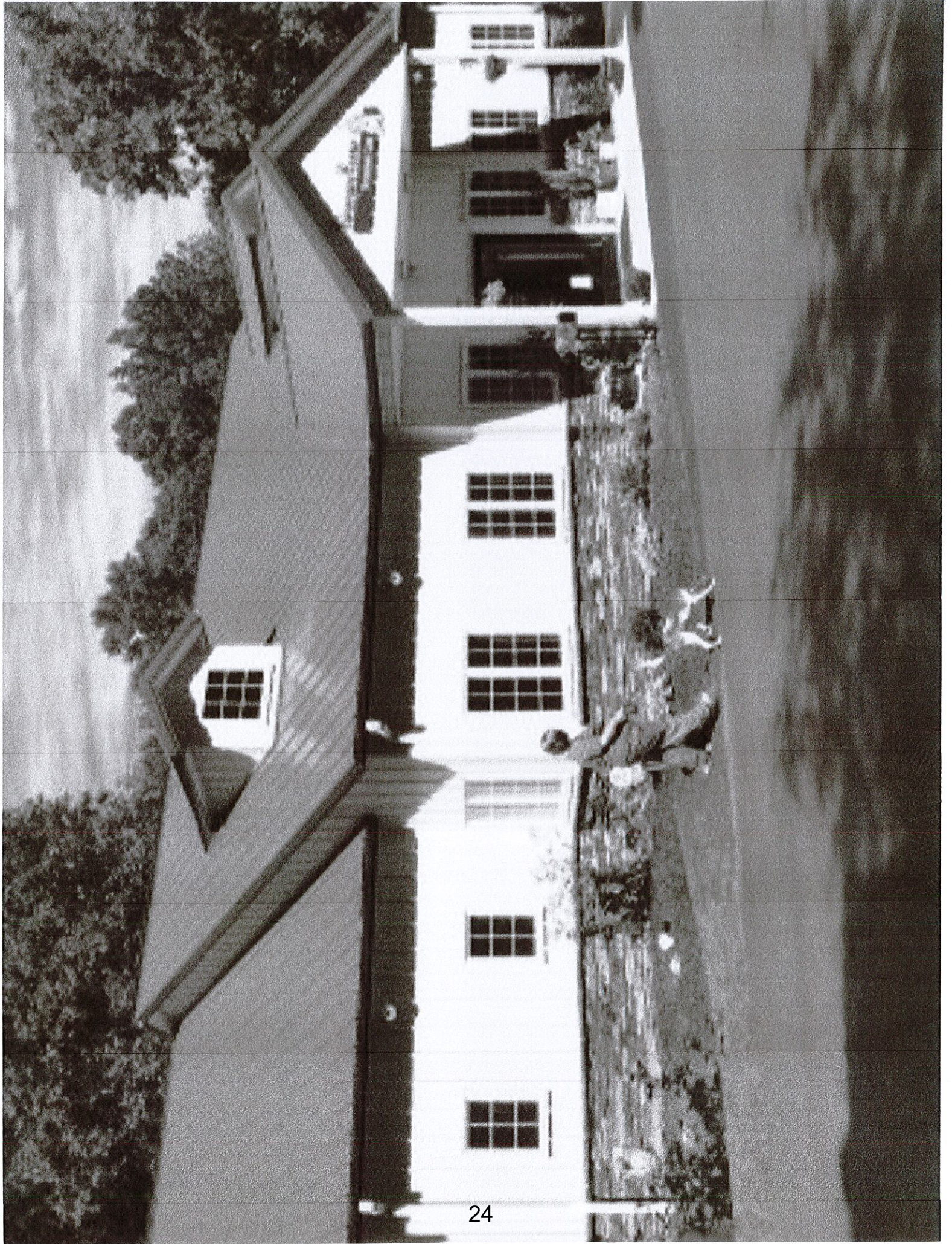
Thank you

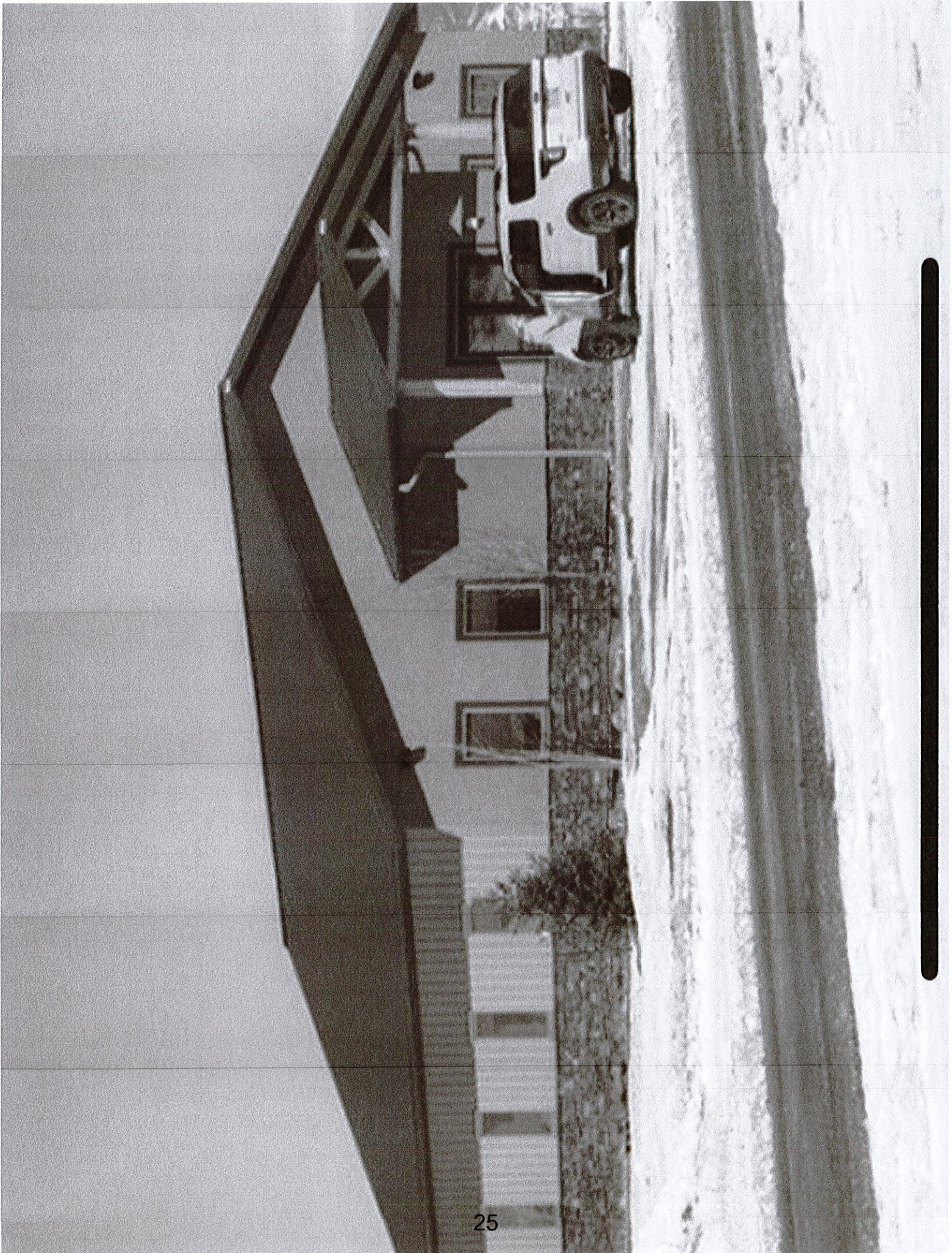
A handwritten signature in black ink, appearing to read 'W. E. Smith', with a large, sweeping flourish extending to the right.

William E. Smith

Examply







(21' Bay)

(25' Bay)

Fire Wall (60 Minute)

Parking

Parking

Parking

Parking

Parking

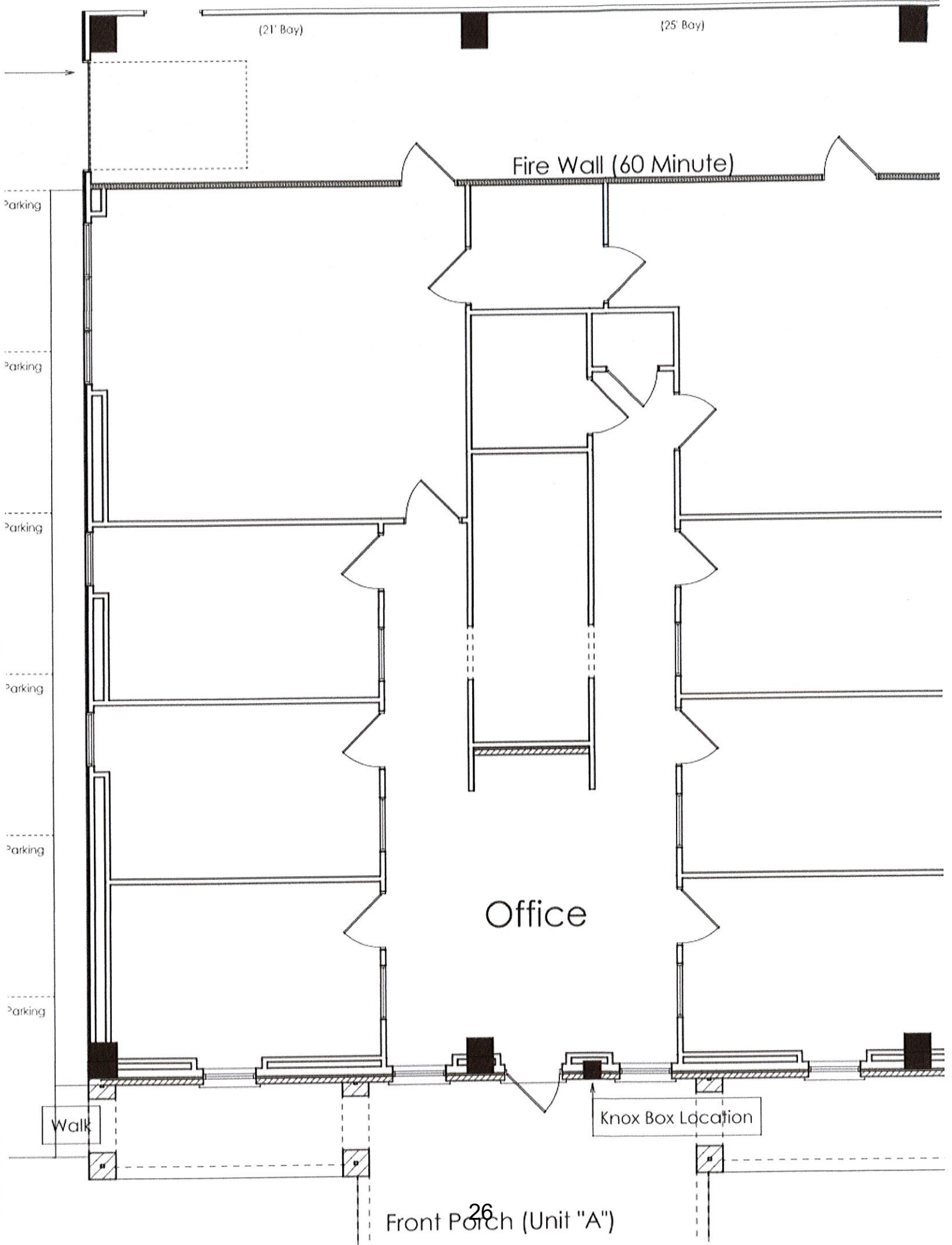
Parking

Office

Knox Box Location

Walk

26
Front Porch (Unit "A")



**CITY OF NEWTON
REQUEST FOR COUNCIL ACTION**

DATE: April 28, 2020

TO: Todd Clark, City Manager

FROM: Dusty Wentz, Director of PWU

CONSIDERATION OF: Adopt a Resolution of Acceptance of State Reserve Grant funds for Asset Inventory and Assessment of the Wastewater System

Approved for Council Consideration



Background:

In September of 2019, Council authorized staff to submit an Asset Inventory and Assessment grant application to the State for the sewer system. The application was successful, and the State has offered grant funding in the amount of \$150,000 with a 15% match (\$22,500) and a grant fee of 1.5% (\$2,250) (See attached approved letter). The City's required match is in this fiscal year budget.

This grant will help identify inflow and infiltration issues in our sewer collections system that are causing sewer overflow that has led to state violations with fines. Staff will focus on the North Eastern part of the sewer collection system. The city will be evaluating over 55,000 feet of sewer mains and over 150 manholes.

Currently, staff has released a Request for Qualifications (RFQ) to select the best qualified engineering firm to complete this work. Staff anticipates selection of a firm after this resolutions passes and for the engineering work to begin immediately following.

The attached resolutions are required by the State for the City to formally accept the grant funds.

Action Suggested:

Staff requests that council approve the attached resolutions to accept state funds.

RESOLUTION

- WHEREAS, The Federal Clean Water Act Amendments of 1987 and the North Carolina the Water Infrastructure Act of 2005 (NCGS 159G) have authorized the making of loans and grants to aid eligible units of government in financing the cost of a wastewater collection system project, and
- WHEREAS, The City of Newton has need for and applied for funding to implement a **wastewater collection system** project described as an asset inventory and assessment project, and
- WHEREAS, The City of Newton was eligible to receive a grant and was issued a Letter of Intent to Fund from the State Water Infrastructure Authority for State grant assistance for the project,
- WHEREAS, the North Carolina Department of Environmental Quality has offered a State Reserve Grant in the amount of \$150,000 to perform asset inventory and assessment work, and
- WHEREAS, The City of Newton intends to accept State grant assistance for the project,

NOW THEREFORE BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF NEWTON:

That The City of Newton, the **Applicant**, will arrange financing for all remaining costs of the project above the grant award, with acceptance of a State grant award, which includes a grant fee of 1.5% of the award amount or \$2,250.

That The City of Newton accepts the State Grant Award, State Project No. E-AIA-W-20-0191, in the awarded amount of \$150,000.

That the **Applicant** will provide for efficient operation and maintenance of the project on completion of construction thereof.

That E. Todd Clark, City Manager, the **Authorized Official**, and successors so titled, is hereby authorized to execute and accept the grant on behalf of the **Applicant** with the State of North Carolina for a grant to aid in the funding of the project described above.

That the **Authorized Official**, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with the project: to make the assurances as contained above; and to execute such other documents as may be required in connection with the grant.

That the **Applicant** has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

Adopted this the May 5th day of May, 2020, at Newton, North Carolina.

Eddie Haupt, Mayor

CERTIFICATION BY RECORDING OFFICER

The undersigned duly qualified and acting *Clerk* of the City of Newton does hereby certify: That the above/attached resolution is a true and correct copy of the resolution authorizing the filing of an application with the State of North Carolina, as regularly adopted at a legally convened meeting of the City Council of The City of Newton duly held on the _____ day of _____, 2020; and, further, that such resolution has been fully recorded in the journal of proceedings and records in my office. IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2020.

Amy S. Falowski, City Clerk



**STATE OF NORTH CAROLINA
DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER INFRASTRUCTURE**

Funding Offer and Acceptance

Legal Name and Address of Award Recipient **Project Number:** E-AIA-W-20-0191

City of Newton
PO Box 550
Newton, NC 28658

	<input type="checkbox"/>	Additional Amount for	Previous Total	Total Offered
Drinking Water	<input type="checkbox"/>	Funding Increases		
Wastewater	<input checked="" type="checkbox"/>			
State Revolving Fund (SRF)	<input type="checkbox"/>			
State Reserve Loan (SRP)	<input type="checkbox"/>			
State Reserve Grant (SRP)	<input type="checkbox"/>			
State Emergency Loan (SEL)	<input type="checkbox"/>			
Asset Inventory & Assessment Grant (AIA)	<input checked="" type="checkbox"/>			150,000.00
Merger/Regionalization Feasibility Grant (MRF)	<input type="checkbox"/>			

Project Description:

Asset Inventory Assessment Project

Total Financial Assistance Offer: \$ **150,000**
Match Percentage 15%: \$ 22,500
Grant Fee* (1.5 %): \$2250

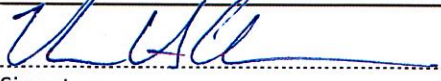
**Grant fee calculated based on grant amount.*

Pursuant to North Carolina General Statute 159G:

- The applicant is eligible under State law,
- The project is eligible under State law, and
- The project has been approved by the Department of Environmental Quality as having sufficient priority to receive financial assistance,

The Department of Environmental Quality, acting on behalf of the State of North Carolina, hereby offers the financial assistance described in this document.

For The State of North Carolina: **Kim H. Colson, P.E., Director, Division of Water Infrastructure**
North Carolina Department of Environmental Quality

 Signature	April 20, 2020 Date
--	------------------------

On Behalf of: _____
 Name of Representative in Resolution: _____
 Title (Type or Print): _____

I, the undersigned, being duly authorized to take such action, as evidenced by the attached CERTIFIED COPY OF AUTHORIZATION BY THE APPLICANT'S GOVERNING BODY, do hereby accept this Financial Award Offer and will comply with the Assurances and the Standard Conditions.

_____ Signature	_____ Date
--------------------	---------------

STANDARD CONDITIONS FOR ASSET INVENTORY AND ASSESSMENT GRANTS

1. The recipient acknowledges that no disbursements will be made until the grant fee has been received by the Division of Water Infrastructure.
2. The recipient acknowledges that no disbursements will be made until applicable service agreements or contracts are submitted. The description of work listed on invoices must be included in the scope of work shown on the agreements or contracts.
3. The required grant match must be documented to receive the full amount of this financial assistance offer. The grant match is a percentage of the financial assistance offer amount.
4. All funds provided pursuant to North Carolina General Statute 159G shall be expended solely for carrying out the approved project and an audit shall be performed in accordance with G.S. 159-34, as amended. **The recipient will expend all of the requisitioned funds for the purpose of paying the costs of the project within three (3) banking days following the receipt of the funds from the State.** Please note that the State is not a party to any contract(s) and the grant recipient is expected to uphold its contract obligations regarding timely payment.
5. Partial disbursements will be made promptly upon request, subject to adequate documentation of incurred eligible costs and grant match, and subject to the recipient's compliance with the conditions of this grant. Requests for reimbursement must be made using the Division of Water Infrastructure's reimbursement form.
6. The recipient must provide a digital copy of the Asset Inventory and Assessment products in a universally readable format.
7. The recipient must provide an executive level summary of the work performed, any conclusions made, and the next steps to be taken as a result of this work.
8. The recipient must provide approved minutes or a resolution confirming the completed Asset Inventory and Assessment work has been presented to the recipient's governing board.
9. A maximum of 95% of the grant will be paid prior to receipt of the documentation described in Standard Condition Nos. 6, 7, and 8. After receipt of this documentation, final payment will be made once it is requested.

Date: April 20, 2020

INVOICE

NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY

Payable to: NC/DEQ-DWI

Mail to: *Attention: Jackie Moore*
Division of Water Infrastructure
1633 Mail Service Center
Raleigh, NC 27699-1633

Bill To: City of Newton
PO Box 550
Newton, NC 28658

Item: 1.5 percent closing fee for AIA Project E-AIA-W-20-0191

Grant Amount: \$150,000.00

Grant Fee Amount: \$2,250.00

FOR USE OF DIVISION OF WATER INFRASTRUCTURE

Deposit to Fund _____ Amount Paid _____



NORTH CAROLINA
Environmental Quality

ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

Kim H. Colson
Director

February 28, 2020

Mr. E. Todd Clark, City Manager
City of Newton
PO Box 550
Newton, NC 28658

SUBJECT: Asset Inventory and Assessment Grant
Letter of Intent to Fund
Wastewater System AIA
September 2019 Application Cycle
Project No. E-AIA-W-20-0191

Dear Mr. Clark:


The Division of Water Infrastructure has reviewed your application to the Asset Inventory and Assessment grant program, and the State Water Infrastructure Authority has approved your project as eligible to receive a grant. The total grant amount will be \$150,000 with a required match of 15%. A grant fee of 1.5% will be invoiced with the grant offer.

The first milestone is the submittal of a preliminary project scope that includes a cost estimate and schedule for each major task by March 30, 2020. Upon review of this information, we will send the grant agreement and information package for your signature and approval.

Please note that work conducted prior to the receipt of the grant offer may later be determined to be ineligible, so please contact us if you desire to proceed before receipt of the grant offer. Some items included in the application may not be eligible for funding.

We look forward to working with you on this project. If you have questions, please contact Amy Simes, PE, Senior Program Manager at 919-707-9192.

Sincerely,



for Kim H. Colson, PE

CC: Mr. Clarence M. Lockamy, PE PLS, The Wooten Company, Hickory
Mark Hubbard, PE
AIA File



**CITY OF NEWTON
REQUEST FOR COUNCIL ACTION**

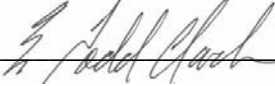
DATE: April 27, 2020

TO: Todd Clark, City Manager

FROM: Dusty Wentz, PWU Director

CONSIDERATION OF: Budget Amendment for Engineering for Replacement of Reservoir Retaining Wall Replacement on the Dam.

Approved for Council Consideration



Background:

The City of Newton has a water reservoir (City Lake) that is part of the water treatment process. The reservoir has a dam that was built in 1936. The dam was rebuilt in 1940 and in 1970. The Dam Safety Law of 1967 provides for the certification and inspection of dams in the interest of public health, safety, and welfare, in order to reduce the risk of failure, to prevent injuries to persons, damage to property, and to insure the maintenance of stream flows. The City of Newton's reservoir dam classification is high hazard. Dams are inspected and classified by North Carolina Department of Environmental Quality. (NCDEQ)

In December of 2019, City staff noticed the cinder block retaining wall over the reservoir dam was leaning towards the water and appeared to be getting worse. This cinder block retaining wall provides wave protection and provides erosion protection on top of the dam. City staff called in a contractor to see if something could be done to prevent the wall from collapsing. The suggestion was to replace the wall. The contractor also made staff aware that this wall will not last much longer and will collapse. Staff did reach out for a second opinion from an engineer that specializes in structured dams and got the same result. NCDEQ requires engineering plan review on replacing this retaining wall and may include permitting to do this work.

In January 2020, staff sent requests for qualifications to five (5) engineering firms for the design, permit, construction, and administration of replacing the retaining wall. On February 4, 2020, three were received from McGill Associates PA., Terracon, and The Wooten Company. City staff reviewed all the engineering firms to do a comparison of proposals and McGill Associates PA. is qualified and has shown they can complete this work.

Staff is ready to move forward with the engineering contract in the amount of \$88,200 out of necessity. The engineering contract and \$88,200 only applies to engineering services to the cinder block retaining wall. Once design is completed and permitted by the state, a bid will be released for construction.

Action Suggested:

Staff recommends that Council adopt the attached budget amendment for engineering services in the amount of \$88,200.

ORDINANCE

AN ORDINANCE TO AMEND REVENUES AND EXPENDITURES FOR FISCAL YEAR 2019-2020 FOR THE CITY OF NEWTON.

WHEREAS, the City Council of the City of Newton have adopted a Budget Ordinance for fiscal year beginning July 1, 2019 and ending June 30, 2020, in accordance with the General Statutes of the State of North Carolina; and

WHEREAS, the City Council desires to appropriate funds to provide for engineering costs for design, permitting, and construction administration for replacing the cinder block retaining wall at the City Lake water reservoir, and,

WHEREAS, the City Council desires to authorize the use of Fund Balance for this project and to authorize the related expenditure appropriation within the Water Treatment Plant Department operating budget.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON, NORTH CAROLINA, THAT:

THE FOLLOWING SOURCE OF REVENUE AND APPROPRIATION ARE HEREBY APPROVED.

Water & Wastewater Fund Revenues		
Fund Equity Appropriation	61-0000.3995	\$88,200
Water & Wastewater Fund Appropriations		
Capital Outlay – Land/Land Improvements	61-7130.8700	\$88,200

Adopted this 5th day of May, 2020

Eddie Haupt, Mayor

Amy S. Falowski, City Clerk



CITY OF NEWTON REQUEST FOR COUNCIL ACTION

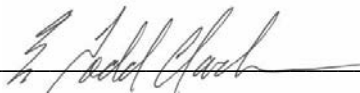
DATE: April 29, 2020

TO: E. Todd Clark, City Manager

FROM: R. S. Williams, AICP, Planning Director

CONSIDERATION OF: Revisions to Sidewalk Dining Ordinance draft

Approved for Council Consideration



Request:

At the Council Workshop in January, staff presented a draft for revisions to the Sidewalk Dining Ordinance and received input for the Council. Staff also solicited input and comments from the several restaurants, primarily in the downtown area, on the proposed revisions. The DNDA Board also reviewed the draft.

Background:

The Streetscape Revitalization Project addresses many needs and opportunities in Downtown Newton. One of the design goals was for wider sidewalks to enhance the walkability and provide space to encourage outdoor dining. The Code of Ordinances addresses sidewalk dining with certain regulations, of which upon review, needed to be updated and revised to further encourage and permit this use.

Of the comments received, staff noted there was one primary revision to the draft that should be included. The concept of design standards was originally not included in the draft, however both Council and a public comment indicated this should be included, particularly to not permit plastic street furniture as it was not very durable or visually appealing. Staff is working on specific language to address this revision, but will permit *“wood or metal materials for outdoor dining seating and tables in similar design to the restaurants décor.”*

Recommendation:

Staff requests any questions or comments by the City Council on this revision, or any others you wish to address. Staff will incorporate that in the final draft, with public hearings being held by the Planning Commission and City Council prior to any action.

(e) *Exception; sidewalk dining.* The purpose of this ordinance [section] shall be to establish a sidewalk dining ordinance within the City of Newton to promote the health, safety and welfare of persons operating sidewalk dining within the City of Newton and to protect the safety of their patrons, pedestrians and other users of roads. The City of Newton may enter into an agreement with the North Carolina Department of Transportation to permit use of the state right of way as provided by G.S. 136-18(9) and 136-27.4.

(1) *Requirements*

a. General: Sidewalk dining shall be permitted at such locations and subject to such regulations as are set forth in this article.

(2) *Sidewalk dining requirements and conditions:* Table, chairs and other furnishings shall be placed within a maximum of six feet from business/building.

a. Table, chairs and other furnishings shall be placed exclusively in front of the business that is engaged in sidewalk dining activities in such a manner that at least five feet of unobstructed paved space of the sidewalk, measured from any permanent or semi-permanent object, remains clear for the passage of pedestrians and provides adequate passing space that complies with the Americans with Disabilities Act.

b. Table, chairs, and other furnishings associated with sidewalk dining activities shall not obstruct any building entrance or exit, emergency entrance or exit, fire hydrant or standpipe, utility access, ventilation area or emergency call box. The sidewalk dining furnishings shall be located at least five (5) feet from any of said facilities with the exception of fire hydrants, which shall be at least fifteen (15) feet from said furnishings.

c. Tables, chairs and other sidewalk dining furnishings shall not obstruct any driveway, alleyway or access to private property. A minimum five (5) feet of spacing is required from any driveway, public or private, as measured from the driveway apron.

d. Tables, chairs, and other furnishings associated with sidewalk dining activities shall be constructed of wood or metal materials

for outdoor dining seating and tables in similar design to the restaurant's décor.

- e. The maximum posted speed permitted on the roadway adjacent to the right of way to be used for sidewalk dining activities shall not be greater than 35 miles per hour.
- f. The restaurant operator shall provide evidence of adequate liability insurance in an amount satisfactory to the City of Newton, but in no event in an amount less than amount specified by the City under G.S. 160A-485 as the limit of the local government's waiver of immunity or the amount of tort claim liability specified in G.S. 143-299.2, whichever is greater. The insurance shall protect and name the North Carolina Department of Transportation and the City as additional insureds on any policies covering the business and the sidewalk activities.
- g. The restaurant operator shall provide an agreement to indemnify and hold the department and the City from any claim resulting from the operation of sidewalk dining activities.
- h. The restaurant operator shall provide a copy of all permits and licenses issued by the state, county or city, including health and ABC permits, if any, necessary for the operation of the restaurant or business, or a copy of the application for the permit if no permit has been issued. This requirement includes any permits or certificates issued by the county or city for exterior alterations or improvements to the restaurant.
- i. The restaurant operator shall cease part or all sidewalk dining activities in order to allow construction, maintenance, or repair of any street, sidewalk, utility, or public building, by the department, the City, its agents or employees, or by any other governmental entity or public utility.
- j. Except as elsewhere permitted, the operation or furnishing of the sidewalk café shall not involve any permanent alteration to or encroachment upon any street or sidewalk. The restaurant operator and/or owner of the sidewalk dining operation shall be responsible for repairing any incidental damage to State right of way resulting from the operation of the sidewalk dining.

(3) *Inspection Prior to Usage.*

- a. Upon the issuance of a certificate of occupancy, each owner must have proof of ownership, and liability insurance, and a completed waiver of liability, releasing the North Carolina Department of Transportation and the City of Newton from liability that may arise as a result of operation of a sidewalk dining inside the City of Newton.
- b. All sidewalk dining locations must meet the requirements or minimum standards as set forth above in this section or additional City of Newton ordinances.
- c. All restaurant operators must maintain a valid certificate of occupancy while operating sidewalk dining on right-of-way.
- d. The certificate of occupancy shall not be transferable or assignable.

(4) *Enforcement.*

- a. Any other use or attempted use of any area permitted for sidewalk dining for commercial purpose not otherwise allowed in an area designated for sidewalk dining shall cease immediately upon notification by Code Enforcement.

(Code 1972, Subsection 17-01; Ord. No. 81.43, Subsection 1, 2; Ord. No. 2004.16, Subsection 1, 3-2-2004; Ord. No. 2014-26)

CITY OF NEWTON REQUEST FOR COUNCIL ACTION

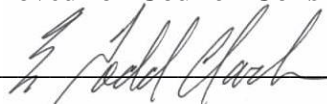
DATE: April 29, 2020

TO: E. Todd Clark, City Manager

FROM: R. S. Williams, AICP, Planning Director

CONSIDERATION OF: Revisions to Food Truck Ordinance draft

Approved for Council Consideration



Request:

At the Council Workshop in January, staff presented a draft for a new Food Truck Ordinance and received input for the Council. Staff also solicited input and comments from the several restaurants, primarily in the downtown area, on the proposed revisions. The DNDA Board also reviewed the draft.

Background:

Food trucks are beginning to have more of present in Newton over the last few years. The Code of Ordinance does not currently address the use or operation of food trucks in the city. Recently there are a few businesses, particularly downtown, that have expressed their concerns over potential effects to their businesses. While food trucks do serve a need for expanded and temporary dining opportunities, staff is cognizant that these operations could negatively impact the established restaurants.

Of the comments received, staff noted there was one primary revision to the draft that should be addressed. Initially in the proposed draft, hours of operation were set at 10:00 am to 8:00 pm. Concerns were made that these hours did not include breakfast hours or late night hours for operation. Both City Council and public comments indicated this should be revised, as they did not permit food trucks to operate with additional hours. Staff has reviewed this request and revises the draft for *hours of operation from 10:00 am to 10:00 pm*. Staff reviewed ordinances from cities across the state and did not find that breakfast hours were generally included.

In similar course with hours of operation, another comment was received that the 2 hour limit (or on-street parking hours) on food trucks using the public right-of-way (streets) was restrictive. Upon writing the initial draft, staff reviewed this and recommended that this was in keeping with other vehicles using on-street parking. Additionally, there is a concern expressed by some that there is not enough parking in downtown. Therefore staff wanted to address this so that there would not be an overuse, abuse or reduction the available customer / citizen parking by food truck operations.

Recommendation:

Staff requests any questions or comments by the City Council on this revision, or any others you wish to address. Staff will incorporate that in the final draft, with public hearings being held by the Planning Commission and City Council prior to any action.

Sec. 66-17 FOOD TRUCK VENDORS

(a) Definitions.

1. *Food truck* means a licensed, motorized vehicle or mobile food unit licensed by the NC State Division of Motor Vehicles and as authorized by N.C.G.S. 130A-247 et seq., which is temporarily stored in a location where food items are sold to the general public and is a vehicle mounted, vehicle towed or vehicle carried food service establishment, including ice cream trucks, designed to be readily moved.
2. *Permitted parking space* means the location identified by the City as an on-street parking space with markings indicating as being designated for such use.
3. *Vendor* means any person who owns, operates or manages a business that uses and who prepares or serves pre-packaged or cooked food and/or beverages for sale to the public on a recurring basis from a food truck.

(b) Food Truck Standards.

A food truck providing service must meet all of the following standards:

1. The food truck shall not be located within one hundred (100) feet of the main entrance of any restaurant, any outdoor dining space, or any fixed location of a competing nature nor shall food truck block or park in front of any other open business, unless said business owns the food truck, or permission given by property owner. This requirement shall not apply during festivals or other events when the streets are closed during such festival or event.
2. No food truck may be parked in a location that prohibits or restricts access to a private property. A minimum five (5) foot spacing is required from any driveway, measured from the driveway apron.
3. The food truck must be located at least five (5) feet from any utility box, utility vault, handicapped ramp, or similar feature. The food truck must be located at least fifteen (15) feet from a fire hydrant. This requirement shall not apply during festivals or other events when the streets are closed during such festival or event.
4. The food truck vendor must dispose of all waste associated with the food truck operation. City receptacles may not be utilized for this purpose. No liquid waste or grease may be poured into any tree pit, storm drain, street, gutter pan, sidewalk or any other public space. Grease cannot be released into the City's sanitary sewer system. The food truck vendor shall make available hand sanitizer to its customers.

5. A food truck may operate on every day of the week from the hours of 10:00 a.m. to 10:00 p.m. This requirement shall not apply during festivals or other events when the streets are closed during such festival or event.
 6. Vendor shall comply with all regulations and requirements of the North Carolina official County Health Department as well as any other governmental unit so authorized to issue such rules and regulations and shall provide documentation of compliance upon request.
 7. Food trucks must have the following fire extinguisher on board during hours of operation: minimum Class 2A, 10B and C rated extinguisher. If food preparation involves deep frying, a Class K fire extinguisher must also be on the truck. Fire extinguishers shall be maintained pursuant to National Fire Protection Association (NFPA) standard 10.
 8. A food truck vendor shall not operate the food truck as a drive-through window.
 9. The noise level from the food truck motor and generator must comply with the City's noise ordinance.
 10. No signage shall be allowed other than signs permanently attached to the motor vehicle. The food truck vendor shall not place or use sound equipment on or in the area of the mobile food unit. This requirement shall not apply during festivals or other events when the streets are closed during such festival or event.
 11. Alcohol may not be sold or served by any food truck vendor.
 12. Vendor or vendor's designee shall be in attendance of the food truck at all times, except in case of emergency.
 13. Vendor will bear all costs associated with the establishment and operation of the food truck, including, but not limited to the provision of water and electrical power. This requirement shall not apply during festivals or other events when the streets are closed during such festival or event.
- (c) Privately Owned Property Location for Operation of Food Truck
In addition to the standards enumerated in Section 66-17(b), a food truck providing service from privately owned property must meet the additional following standards:
1. A food truck may conduct business on privately owned, non-residential property subject to the approval of the property owner.
 2. The vendor for the food truck must submit proof of approval from the property owner upon request to do so by public official.
- (d) Parks Located Within the City of Newton for Operation of Food Truck.

In addition to the standards enumerated in Section 66-17(b), a food truck providing service from a public park must meet the additional following standards:

1. A food truck may utilize City of Newton Parks as enumerated in Section 70.1 as referenced in the Newton City Code.
2. All food trucks must receive prior written approval from the City of Newton to engage in food truck operations.
3. All food trucks must observe park hours and shall not be allowed to operate when said park is closed.

(e) Right-of-way Eligible for Food Truck Service.

In addition to the standards enumerated in Section 66-17(b), a food truck providing service from the right-of-way must meet all of the following additional standards:

1. The food truck may only be parked within the permitted parking space within City of Newton owned rights of way or maintained by the City of Newton but at no time shall be parked on any Department of Transportation right of way as provided for in North Carolina Statute 136-18(9), North Carolina Administrative Code 19A NCAC 02E.0414 and NCDOT Maintenance Operations Manual General Ordinance 14. This requirement shall not apply during festivals or other events when the streets are closed during such festival or event.
2. All food trucks must be situated on the street right of way to allow at least five (5) feet of unobstructed space for pedestrians on sidewalks, pedestrian paths and other locations intended primarily for pedestrian travel. If any applicable law, including Americans with Disability Act regulations, shall require a greater distance, the greater distance shall apply.
3. All food trucks must be situated such that the service window from which customers place orders are on the sidewalk or other pedestrian walkway side of the food truck and at no time shall customers be allowed to place orders from the motoring public side of said food truck. This requirement shall not apply during festivals or other events when the streets are closed during such festival or event.
4. The food truck may not operate or park within the permitted parking space before 10:00 AM and must cease operation and leave the permitted parking space by 10:00 PM. The food truck must observe the two-hour parking limit, as well as all other parking restrictions. This

requirement shall not apply during festivals and other events when the streets are closed during such festival or event.

(f) Enforcement.

1. Civil Penalties.

a. Violations of any of the provisions of this section will result in the following civil penalties:

- i. First offense in any twelve-month period ...\$100.00
- ii. Second or more offense in any twelve-month period...\$500.00

b. The City Manager or the Manager's designee may issue a notice of violation assessing civil penalties. The notice shall be issued in writing and shall set forth with reasonable specificity the basis for the civil penalty. The notice of violation shall be served by registered or certified mail, or by personal service. When service is made by registered or certified mail, a copy of the notice may also be sent by first class mail. Service shall be deemed sufficient if the first class mail is not returned by the Post Office within ten (10) days after the mailing. Refusal to accept the notice shall not relieve the violator of the obligation to pay the penalty.

c. The notice of violation shall contain a time period by which the violation must be corrected. From and after the date specified in the notice, each subsequent day that the violation continues in existence shall constitute a separate and distinct offense subject to additional civil penalties.

d. If a person fails to pay any civil penalty within thirty (30) days after the decision becomes final, the City may recover the penalty, together with all costs allowed by law, by filing a civil action in the General Court of Justice in the nature of a suit to collect a debt.

2. Administrative Fee.

Any person who violates this article shall pay an administrative fee of one hundred dollars (\$100.00) per violation in addition to civil penalty.

3. Other Remedies.

In addition to civil penalties, a violation of this division is a misdemeanor and may also be enforced through injunctive or other equitable relief, or a combination of remedies.

4. Appeals.

- a. A party aggrieved may appeal any decision under this section to the City Manager within fifteen (15) calendar days after the contested decision. An appeal must be made in writing and shall contain the reasons supporting the appeal and any evidence that supports it. The person appealing may review the evidence that is the basis of any suspension or violation during the City's normal business hours. The City Manager or his designee shall review the information provided and shall issue a written decision determining whether a violation has occurred.
- b. After receiving a determination from the City Manager or his designee, a party aggrieved may appeal to the City Council within twenty-one (21) calendar days after the City Manager's decision (or the decision of his designee) was mailed. The scope of the City Council's review shall be limited to verifying the facts supporting a written decision or Findings of Fact made on a suspension. If the City Council finds that the facts as found are correct, the civil penalty, administrative fee, or suspension shall be upheld.

(g) Termination or Amendment of Streetside Vending.

The City Council may amend, revise or terminate streetside vending by ordinance duly enacted.