

Regular Session, April 20, 2015, 7:00 p.m.
Catawba County Board of Commissioners

Appointments

| | | |
|---|-----|----------|
| Public Health | 499 | 04/20/15 |
| Home & Community Block Grant Advisory Board | 499 | 04/20/15 |

Hickory Public Schools

| | | |
|---|-----|----------|
| Request to transfer funds from completed projects to Old Longview Elementary Renovation Project | 499 | 04/20/15 |
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Ordinance

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| Request to rezone 5 acres from R-40 Residential to Highway Commercial – HWY 16 | 471 | 04/20/15 |
| Amendment to Conceptual Site Plan and Consideration of a New Development Agreement For Village at Sherrills Ford | 473 | 04/20/15 |

Public Hearings

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|--|-----|----------|
| Request to rezone 5 acres from R-40 Residential to Highway Commercial – HWY 16 | 471 | 04/20/15 |
| Amendment to Conceptual Site Plan and Consideration of a New Development Agreement For Village at Sherrills Ford | 473 | 04/20/15 |

The Catawba County Board of Commissioners met in regular session on Monday, April 20, 2015, at 7:00 p.m. in the Robert E. Hibbits Meeting Room of the 1924 Courthouse, 30 North College Avenue, Newton, North Carolina.

Present were Chair Randy Isenhower, Vice-Chair Barbara G. Beatty and Commissioners Katherine W. Barnes, Sherry E. Butler and Dan A. Hunsucker.

Also present were County Manager J. Thomas Lundy, Assistant County Managers Dewey Harris and Mary Furtado, Counsel to the Board David Hood, County Attorney Debra Bechtel, Assistant County Attorney Jodi Stewart and County Clerk Barbara Morris.

1. Chair Randy Isenhower called the meeting to order at 7:00 p.m. and noted a quorum was present.
2. Commissioner Sherry E. Butler led the Pledge of Allegiance to the Flag.
3. Commissioner Katherine W. Barnes offered the invocation.
4. Commissioner Barnes made a motion to approve the minutes from the Board's Regular Meeting of April 6, 2015. The motion carried unanimously.
5. Recognition of Special Guests: Chair Isenhower welcomed everyone present and specifically recognized Ray Von Beatty and Joyce Beatty and thanked them for their service on both the Social Services and Library Boards at the State level.
6. Public Comments for Items Not on the Agenda: None.
7. Public Hearings:
 - a. Planner Chris Timberlake came forward and requested the Board hold a public hearing to receive citizen comments and consider approval of an application to rezone approximately 5 acres from R-40 Residential to Highway Commercial (HC) District. The property is located at 2535 NC Highway 16 South in the Balls Creek Small Area Planning District and is occupied with two residences – a manufactured home and a stick-built home. The property was zoned R-40 Residential district, required a minimum lot size of 40,000 square feet (1 acre), and was considered a low density "general use" district. Predominant uses in this district include single-family homes and agriculture. The Highway Commercial district requires a minimum lot size of 40,000 square feet (1 acre) and is

considered a “general use” district. The district provides for highway-oriented business, office, service, and civic uses.

The surrounding parcels to the north are zoned Highway Commercial and parcels to the south, east and west are zoned R-40 Residential and contain single family dwellings, a manufactured home, and accessory structures. The 12 properties located on the north side of NC Highway 16 were zoned for C-S Commercial-Shopping when County zoning was initially adopted in 1974. The subject property, along with the properties located along NC Highway 16, are within the Rural Preservation-Overlay (RP-O) requiring a 100-foot front setback for structures. Non-residential development standards within the Unified Development Ordinance will regulate development of the property.

Public water and sewer are not currently available to the site. The County is planning a water line extension during the widening of Highway 16. NC Highway 16 is designated as a minor arterial transportation facility in the Catawba County Thoroughfare Plan. Traffic counts taken in 2013 north and south of the site each measured 12,000 average trips per day. Development of the property will not overburden the existing roadway. The widening of Highway 16 to a divided four-lane facility from Tower Road to Claremont Road is funded and construction is scheduled in year 2017/2018.

The Balls Creek Small Area Plan, accepted on June 16, 2003, serves as the current land use plan for this area. The property is located in an area recommended for neighborhood commercial development. The Highway Commercial district is equal to the recommendations for neighborhood commercial recognized in the plan.

Staff recommended the five acres owned by 2535 NC HWY 16 S, LLC be rezoned from R-40 Residential to Highway Commercial District based upon the property’s proximity to other Highway Commercial properties located on the opposite side of NC Highway 16 and the request being consistent with the accepted Balls Creek Small Area Plan, future land use recommendations.

The Planning Board held a public hearing on Monday March 30, 2015, to consider the request. Five adjacent property owners spoke in opposition to the request. Their concerns were they would like to see the area remain residential and they are not in favor of a mini-storage facility near their property. (Note: This was a general district rezoning request; a host of different uses should be considered as possibilities in the Highway Commercial district.)

The Planning Board’s comments were that it could appreciate the land owners not wanting to see change; the widening of Highway 16 will likely promote development at the nearby intersection, making change unavoidable; the existing convenience store, auto repair, and auction uses in close proximity should be considered, and the commercial node was designated by the County around the intersection when the Balls Creek Small Area Plan was adopted. The Planning Board voted 9 – 0 to submit a favorable recommendation to the Catawba County Board of Commissioners, to rezone the 4.99 acres owned by 2535 NC Hwy. 16 South LLC, from R-40 Residential to Highway Commercial District based upon the reasons listed above under staff recommendation.

Chair Isenhower opened the public hearing, noting it had been duly advertised. No one came forward to speak and Chair Isenhower closed the public hearing. Vice-Chair Barbara G. Beatty asked if water would go that far down HWY 16 and Utilities and Engineering Director Barry Edwards indicated the water would go with the highway all the way to Buffalo Shoals Road in a planned waterline extension project. Vice-Chair Beatty asked about the connectivity of the wells on the property and staff indicated that any applicable wells would be evaluated by Environmental Health. Chair Isenhower asked how long the properties north of HWY 16 had been zoned Highway Commercial and staff confirmed this zoning had been in place since 1974.

Commissioner Barnes made a motion to approve the requested rezoning and adopt the following ordinance and consistency statement. Commissioners Isenhower, Barnes, Butler and Hunsucker voted in favor; Vice-Chair Beatty voted in opposition. The motion carried.

ZONING MAP AMENDMENT CONSISTENCY STATEMENT

On April 20, 2015 the Catawba County Board of Commissioners conducted a public hearing for the purpose of considering a zoning map amendment to Parcel Identification Number 3659-15-54-0276 (Case #RZ2015-01). The applicant is 2535 NC Hwy. 16 S, LLC. The managing member of the LLC is Jo Ann Ethier.

Upon considering the matter, the Catawba County Board of Commissioners finds the request to be consistent with Map 5 titled "Future Land Use Recommendations" of the Balls Creek Small Area Plan. The Board of Commissioners therefore finds the request reasonable based upon:

- 1) The property's proximity to other Highway Commercial properties located on the opposite side of NC Highway 16; and
- 2) The request being consistent with the accepted Balls Creek Small Area Plan, future land use recommendations.

The Catawba County Board of Commissioners therefore approves the zoning map amendment. This approval was affirmed by a vote of ____ - ____ of the Catawba County Board of Commissioners.

**ORDINANCE NO. 2015 -
AMENDMENT TO THE CATAWBA COUNTY ZONING MAP**

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS, that the Catawba County Official Zoning Atlas is hereby amended by rezoning the following described property from R-40 Residential to Highway Commercial (HC) district.

One parcel totaling approximately 4.99 acres located at 2535 NC Highway 16 South in the Balls Creek Small Area Planning District, Bandy's Township, and further identified by Parcel Identification Number 3659-15-54-0276.

PLAN CONSISTENCY STATEMENT:

Pursuant to NCGS 153A-341, the Catawba County Board of Commissioners finds the request to be consistent with Map 5 titled "Future Land Use Recommendations" of the Balls Creek Small Area Plan. The Board of Commissioners therefore finds the request reasonable based upon:

- 1) The request being in harmony with the existing adjacent industrial land use; and
- 2) The property being in close proximity to Interstate-40 (freeway), a major transportation facility.

This, the 20th day of April 2015.

b. Planner Chris Timberlake presented a request for the Board to conduct a public hearing to consider the following items: a **conceptual site plan amendment for the Village at Sherrills Ford** within the existing Planned Development-Conditional District (PD-CD); a **Development Agreement** between the Village at Sherrills Ford, LLC and Catawba County which provides amenities and long term benefits to the community; and a **Consistency Statement** affirming the proposed conceptual plan and development agreement are consistent with previously adopted plans.

The proposed development offered a variety of benefits to the region, County, and community including:

- Pedestrian Oriented Mixed-Use Development – Providing amenities to attract and retain citizens of all ages, backgrounds, and interests.

- Economic – Creation of full-time jobs associated with construction, medical, retail (i.e. grocery, convenience/gas), office and professional along with enhanced property and sale tax revenue.
- Housing – Variety of housing types, sizes, and price points to accommodate young working individuals to retirees.
- Transportation – Improvements associated with roads, intersections, and pedestrian access.
- Park – Contributions to Catawba County to serve as grant match toward development of Mountain Creek Park.
- Public Service Site – Contribution of 1.5 acres for Catawba County's future use.
- Medical Site – Three (3) acre set aside for future development of a medical facility by Catawba Valley Medical Center.
- YMCA – Developer agrees to engage in good faith conversations and negotiations with the YMCA regarding the sale of a site located within the Village at Sherrills Ford Site to the YMCA for a facility to be owned and operated by the YMCA.

On April 16, 2007, the Board of Commissioners approved the rezoning of five parcels identified in this request to Planned Development-Conditional District (PD-CD) and a development agreement for the purpose of securing the County's interests and allowing a mixed-use development known as the Village Center. The current property owner, the Village at Sherrills Ford, LLC, desired to amend the conceptual plan and enter into a new development agreement with Catawba County.

The subject parcels (five tracts) are zoned Planned Development-Conditional District (PD-CD) and are either vacant, wooded or occupied by an office and storage buildings. Combined, they total approximately 200 acres in size and are located at and around the intersection of Slanting Bridge Road (SR 1844) and East NC Highway 150 in the Sherrills Ford Small Area Planning District, Mountain Creek Township. They are further identified as Parcel ID numbers 4607-16-83-2252, 4607-16-73-6008, 4607-16-84-1504, 4607-15-72-4766 and 4607-16-92-7839.

Adjacent properties to the north are zoned R-20 Residential and are either vacant/wooded or occupied by single-family residences; properties to the south are zoned R-20 Residential, R-30 Residential, O-I Office-Institutional and HC Highway Commercial and are vacant/wooded, occupied by a boat dealership (HC), a professional office (O-I), a church (R-20), or single-family residences (R-30); properties to the east are zoned R-20 Residential and R-30 Residential and are either vacant/wooded or occupied by single-family residences, and properties to the west across the CSX Railway are zoned R-30 Residential and are either vacant/wooded or occupied by single-family residences.

The Sherrills Ford Fire Department is located on the western side of Slanting Bridge Road, and for all practical purposes is surrounded by the proposed development. This property is zoned R-30 Residential. The property at the northwest corner of Slanting Bridge Road and NC Highway 150 is zoned RC Rural Commercial.

The five tracts, which comprise the Village at Sherrills Ford, are located within the Watershed Protection Overlay (WP-O), Mixed-Use Corridor Overlay (MUC-O), Floodplain Management Overlay (FP-O) and the Catawba River Corridor Overlay (CRC-O) Districts, all of which have specific use and density standards for development.

The MUC-O District requires specific design standards for building, types of materials, parking, lighting, signage and landscaping. In order to comply with the Watershed Protection Overlay, a high-density option was approved by the Board of Commissioners on April 16, 2007 for the site which will allow up to 50% imperviousness with stormwater controls being installed. Detailed engineering plans for the high-density stormwater design must be submitted to the North Carolina Department of Environment and Natural Resources for review and approval which will detail the impervious area and the types of and design for stormwater facilities to be installed. Such plans will ultimately address the quantity of surface water on and off-site, as required by the State's watershed regulations.

The proposed uses located within the Village at Sherrills Ford consist of the following: Section A – a maximum of 95 single-family units; Section B – a maximum of 80 single-family units; Section C – a maximum of 150 detached patio units or townhouses; Section D – a maximum of 150,000 square feet of office and medical uses and related accessory uses; Section E – a maximum of 165,000 square feet of retail, restaurant, and service uses and related accessory uses; Section F – a maximum of 450 multi-family residential units and allowed accessory uses; and Section G – a mixed use and multi-use component devoted to a combination of office, medical office, retail, restaurant and service uses. The maximum gross floor area devoted to retail, restaurant and service uses shall be 300,000 square feet; the maximum gross floor area devoted to office and medical uses shall be 50,000 square feet.

The developer shall make a good faith effort to complete each of the seven sections within 10 years.

Along with the proposed development agreement, the developer proposed to complete the Village at Sherrills Ford in accordance with the Village at Sherrills Ford Planned Development Notes listed below:

Village at Sherrills Ford Planned Development Notes

These Planned Development Notes form a part of the PD-CD Concept Site Plan (the “Site Plan”) for the Village at Sherrills Ford multi-use and mixed use development (the “Development”) that is planned to be developed on an approximately 200 acre site located on the north and south sides of N.C. Highway 150 generally at the intersection of Slanting Bridge Road and N.C. Highway 150 (the “Site”).

This master planned development could contain retail, restaurant, service, office, medical office, governmental, educational and a variety of residential uses. This Development will further the objectives of the Sherrills Ford Small Area Plan and the Highway 150 Corridor Plan. This Development has been designed in consideration of the unique characteristics and features of the Site.

1. Development of the Site will be governed by the Site Plan, these Planned Development Notes, a Development Agreement between the Developer and Catawba County that was approved and executed pursuant to N.C.G.S. § 153A-349 et seq. and by the standards of the Catawba County Unified Development Ordinance (the “UDO”). The development depicted on the Site Plan is intended to reflect the arrangement of proposed uses and structures on the site, but the exact configuration, placement, and size of individual site elements may be altered or modified within the limits prescribed by the UDO and the Development Agreement during the design development and construction phases. The Site Plan and these Planned Development Notes are intended to enable the development of this proposed multi-use and mixed use Development.

2. The Site may be devoted to any use allowed in the Planned Development zoning district and/or the MUC-O zoning district in accordance with the standards of those zoning districts and the standards of the Site Plan and these Planned Development Notes. The development of the Site will also be in conformance with the relevant provisions of the MUC-O zoning district except as noted in these Planned Development Notes. Because of the unique nature of the Development and the potential for inconsistencies between the Planned Development zoning district and the MUC-O guidelines, the Planning Staff may approve alternative development standards to those of the MUC-O zoning district provided that such alternative development standards comply with the spirit of the MUC-O development standards and regulations. Developer may also seek amendments to the text of the UDO and the text of these Planned Development Notes. Developer will construct a multi-use and mixed use development in general conformity with the Site Plan. Developer will provide internal

pedestrian connections between the various development components within the Site and pedestrian connections from the Site to the adjacent public sidewalks, balancing the need for vehicular as well as pedestrian access. Developer may place retail and restaurant uses within office buildings located on the Site as well as within the retail buildings planned for the Site in order to further the mixed-use nature of the Development. Retail and restaurant floor area located within office buildings will not be counted towards the total retail and restaurant floor area allowed within other portions of the Site. Any such retail space will be limited to 75% of the first floor area of the office building and may only be located in multistory office buildings that contain at least 15,000 square feet of total floor area.

3. Residential densities may vary in different sections of the Site in keeping with the various dwelling types. Residential uses may be located within any portion of the Site including retail and office areas as a mixed use on the site and within mixed use structures. Retail uses may include uses such as supermarket, general merchandise, hardware, home improvement, business services, banks, civic, dry cleaners, personal services, restaurant, gas station, or similar uses designed and intended to serve not only the residents in this mixed-use community, but the residents in the surrounding areas as well. The uses that may locate on an out parcel will be designed as part of the overall development in terms of consistent landscaping, signage, and architectural style. More than one use or type of use may locate on an out parcel so long as the uses are located within the same structure.

4. Buffer areas and project edges will be established on the Site in accordance with the requirements of the UDO.

5. Signage on the Site will comply with the standards of the UDO. Developer may submit a signage package for wall signage for the various site components that may utilize alternative design standards which may exceed one or more of the limitations established by the UDO. Such alternative design standards may take into account the distance of the building from nearby public roads and the size of the building and is subject to the review and approval of the Planning Director.

6. Lighting on the Site will comply with the standards of the UDO. Developer may submit a lighting plan for the various site components that may utilize alternative design standards which may exceed one or more of the limitations established by the UDO. Such lighting plan shall utilize a consistent lighting theme and is subject to the review and approval of the Planning Director.

7. Parking will be provided on the Site in accordance with the requirements of the UDO.

8. Screening will conform to the applicable standards of the UDO.

9. Subject to the approval of the Planning Staff, Developer may shift allowed floor area from retail/service uses to office uses, and from office uses to retail/service uses provided that any such shift of floor area is neutral from a traffic impact standpoint. Subject to the approval of the Planning Staff, Developer may shift allowed residential units between the various types of allowed residential uses provided that such shift is neutral from a traffic impact standpoint.

10. Access to the Site will be provided by numerous connections to the newly constructed streets within the Site as generally depicted on the Site Plan. All driveway and street connections are subject to approval by the North Carolina Department of Transportation ("NCDOT"). Developer shall dedicate the necessary right-of-way and construct additional lanes for the widening of N.C. Highway 150 along the Site's frontage on N.C. Highway 150. Setbacks for structures have been planned to accommodate the potential widening of N.C. Highway 50.

11. All dumpsters on the Site will be screened with a solid enclosure with gates constructed of materials that are compatible with the architectural theme of the Development. Chain link fencing shall not be used for the dumpster enclosure.

12. Developer will construct a street network with appropriate collector and other streets, all of which will be reviewed as part of the normal subdivision process.

13. Developer will comply with the applicable portions of the Floodplain Management Overlay and Watershed Protection Overlay-high density option standards of the UDO. The provisions of the Site Plan and these Planned Development Notes will supplant the Catawba River Corridor standards. Further, Developer reserves the right to utilize individual site or larger area-wide storm water detention and management facilities, ponds, and related facilities.

14. Developer will comply with the applicable provisions of the MUC-O zoning district except as noted herein or as depicted on the Site Plan.

15. Developer shall submit a plan for a pedestrian and bicycle network to connect the various elements within the Site as the various elements of the Site are constructed. Linkages will be established to connect buildings and uses on the Site to this pedestrian network. Pedestrian linkage at the lakefront shall be incorporated into the plan. Bicycle parking shall be provided at blocks of non-residential facilities, including public services, restaurants and other retail uses.

16. The gross floor area of a single tenant retail structure will be limited to 165,000 square feet and no more than two single retail tenants may exceed 100,000 square feet of gross floor area in size. If a 'garden center' is built as part of any such use, the area of the 'garden center' will be counted in the total floor area for that tenant. Additionally, Developer will limit the number of out parcels that may accommodate "auto oriented" uses such as gas stations to two sites and restaurants with drive in windows to a total of four. Outparcels are defined as any lots which contain freestanding buildings fronting along N.C. Highway 150.

17. The exact location and extent of the open space areas will be determined through the detailed design and subsequent review of development plans. The open space areas will be developed with a combination of active and passive recreation areas, trails, pathways, and other amenities. Developer shall provide an open space/pedestrian plan which gives general details of the location of open space, center greens and trails.

18. The Site is divided into seven development areas designated on the Site Plan as Section A, Section B, Section C, Section D, Section E, Section F and Section G. The maximum permitted density and the development standards for each Section are set forth below.

(A) **Maximum Permitted Density**

- (i) **Section A:** a maximum of 95 single family detached residential units.
- (ii) **Section B:** a maximum of 80 single family detached residential units.
- (iii) **Section C:** a maximum of 150 single family detached patio residential units.
- (iv) **Section D:** a maximum of 150,000 square feet of gross floor area devoted to office and medical office uses and allowed accessory uses relating thereto.
- (v) **Section E:** a maximum of 165,000 square feet of gross floor area devoted to retail, restaurant and service uses and allowed accessory uses relating thereto.
- (vi) **Section F:** a maximum of 450 multi-family residential units and allowed accessory uses relating thereto.
- (vii) **Section G:** a mixed and multi-use component devoted to a combination of office, medical office, retail, restaurant and service uses. The maximum gross floor area that may be

devoted to retail, restaurant and service uses shall be 300,000 square feet, the maximum gross floor area that may be devoted to office and medical office uses shall be 50,000 square feet.

(B) **Development Standards**

(i) **Section A**

| | |
|----------------------------------|-------------------|
| Maximum Dwelling Units Per Acre: | 6 |
| Minimum Lot Area: | 6,000 square feet |
| Minimum Lot Width: | 50 feet |
| Minimum Front Setback: | 20 feet |
| Minimum Side Setback: | 5 feet |

Minimum Rear Setback: 20 feet; 40 feet from any exterior property line of the Site that adjoins single family use or zoning

(ii) **Section B**

| | |
|----------------------------------|-------------------|
| Maximum Dwelling Units Per Acre: | 6 |
| Minimum Lot Area: | 6,000 square feet |
| Minimum Lot Width: | 50 feet |
| Minimum Front Setback: | 20 feet |
| Minimum Side Setback: | 5 feet |

Minimum Rear Setback: 20 feet; 40 feet from any exterior property line of the Site that adjoins single family use or zoning

(iii) **Section C**

| | |
|----------------------------------|-------------------|
| Maximum Dwelling Units Per Acre: | 6 |
| Minimum Lot Area: | 3,000 square feet |
| Minimum Lot Width: | 30 feet |
| Minimum Front Setback: | 20 feet |
| Minimum Side Setback: | 5 feet |

Minimum Rear Setback: 20 feet; 40 feet from any exterior property line of the Site that adjoins single family use or zoning

(iv) **Section D**

Minimum Front Setback: 35 feet from N.C. Highway 150; 20 feet from other streets external to the Site; and 15 feet from streets internal to the Site

Minimum Side Setback: 50 feet from any exterior property line of the Site that adjoins single family use or zoning; 20 feet from any other exterior property line of the Site; and 0 feet from any property line that is internal to the Site

Minimum Rear Setback: 50 feet from any exterior property line of the Site that adjoins single family use or zoning; 20 feet from any other exterior property line of the Site; and 0 feet from any property line that is internal to the Site

(v) **Section E**

Minimum Front Setback: 35 feet from N.C. Highway 150; 20 feet from other streets external to the Site; and 15 feet from streets internal to the Site

Minimum Side Setback: 50 feet from any exterior property line of the Site that adjoins single family use or zoning; 20 feet from any other exterior property line of the Site; and 0 feet from any property line that is internal to the Site

Minimum Rear Setback: 50 feet from any exterior property line of the Site that adjoins single family use or zoning; 20 feet from any other exterior property line of the Site; and 0 feet from any property line that is internal to the Site

(vi) **Section F**

Maximum Dwelling Units Per Acre: 20

Minimum Lot Area: 11,500 square feet

Minimum Lot Width: 55 feet

Minimum Front Setback: 15 feet

Minimum Side Setback: 10 feet; 50 feet from any exterior property line of the Site that adjoins single family use or zoning

Minimum Rear Setback: 40 feet

Minimum Building Separation: 15 feet

(vii) **Section G**

Minimum Lot Width: 55 feet

Minimum Front Setback: 35 feet from N.C. Highway 150; 20 feet from other streets external to the Site; and 15 feet from streets internal to the Site

Minimum Side Setback: 50 feet from any exterior property line of the Site that adjoins single family use or zoning; 20 feet from any other exterior property line of the Site; and 0 feet from any property line that is internal to the Site

Minimum Rear Setback: 50 feet from any exterior property line of the Site that adjoins single family use or zoning; 20 feet from any other exterior property line of the Site; and 0 feet from any property line that is internal to the Site

(C) In order to be able to adapt to varying market conditions, emerging trends that encourage high quality design and innovative arrangement of buildings and open space throughout the Site,

substantial flexibility from the conventional standards is possible by modifying the following standards established in these regulations:

- Street right-of-way must meet NCDOT standards
- Street type and construction standards (including width) for public streets must meet NCDOT standards
- Lot size
- Lot width
- Setbacks and yards
- Building separation
- Public street frontage
- Off-street parking

The details of these modifications, if they are proposed, may be approved by the Planning Director and will be included in the normal development review processes.

19. Developer acknowledges that other standard development requirements imposed by the UDO or other County ordinances may apply to the development of this Site.

20. The term "Developer" shall be deemed to include the heirs, devisees, grantees, personal representatives, successors in interest and assignees of Developer and any subsequent owner or owners of the Site who may be involved in its development from time to time.

21. A consistent architectural theme and color scheme throughout the non-residential portions of the Site shall be used. An architectural plan for the various site components will be submitted for review and approval by the County staff.

22. Single tenant buildings greater than 75,000 square feet must provide recessions and projections of 4 feet or more from the primary building line comprising a total of at least 33% of the storefront length.

23. The front facade of all single family residential dwellings and accessory structures shall be covered only with brick, stone, hard stucco (synthetic stucco is not permitted), wood, or siding consisting of wood or composite material; provided, that any horizontal siding must be completely supported to maintain a straight and even outer surface and must be fully and properly finished. Vinyl products will be permitted on the remaining three sides of the structures and on the front facade as soffit, fascia, window trim, door trim at roof gables, etc. With respect to multi-family residential buildings and non-residential buildings, vinyl shall not be used as a prominent building material, however, vinyl and other metal materials may be used as an accent material.

24. Outside storage of materials shall be screened or be placed so as not to be viewable from public/private streets or adjoining property. Outdoor display of materials offered for sale may occur at the front of stores but may not be located within parking areas.

25. Developer shall provide on the approved final site plan a design incorporating types of uses that maximize the water frontage exposure to views from retail, restaurants, offices and live/work units to encourage after 5 p.m. and weekend social activities.

26. Developer shall provide on the approved final site plan a streetscape within the non-residential portions of the Site that accommodates storefront features to the extent feasible and links the outlying retail and residential uses.

27. Developer shall provide on the approved final site plan an emphasis on pedestrian accommodations to include maximum utilization of the lakefront by including such amenities as public art display, water features and public assembly. The pedestrian amenities plan shall be subject to the review and approval of the Planning Director.

28. Developer shall provide on the approved final construction site plan for the shielding of the parking area from the traveling public along the south side of N.C. Highway 150 through a combination of landscaping, street trees and/or fencing or columns. The overall site streetscape plan shall be subject to the review and approval of the Planning Director.

29. Service areas and mechanical/electrical equipment shall be screened or shall not be visible from public/private streets.

30. Traffic signals shall conform to the minimum adopted design standards of NCDOT. The Petitioner will consider the use of mast arm traffic signal design and will coordinate with Catawba County and NCDOT at the time of signal installation.

31. Outdoor shipping or storage containers are prohibited in the non-residential areas except during construction.

32. In the event that these conditions conflict with the approved Development Agreement, the Development Agreement provisions shall control.

North Carolina General Statutes §153A-349 et. seq allows local governments to enter into a development agreement with a developer to mitigate for the impacts of a large-scale development project through the securing of amenities which will address growth, improve quality of life and provide long-term benefits to the community. The agreement also provides assurance to the developer that development standards will remain stable over the long-term life of the project.

The proposed Village at Sherrills Ford development, due to its size and long-term build out, qualify under the General Statutes to be subject to a development agreement. The County and representatives of the Villages at Sherrills Ford LLC have co-drafted a development agreement that is viewed to be in the best interest of the County by providing orderly growth and long-term benefits to the community, while meeting the interests of the developers. The Village at Sherrills Ford development agreement establishes the terms and structure of the development by the developer of approximately 200 acres consisting of five parcels located around the intersection of Slanting Bridge Road and NC Highway 150.

The term of the development agreement is twenty years. Following is an overview of the development agreement.

General Provisions:

- The Village at Sherrills Ford, LLC to develop a mixed-use retail, office, medical office, governmental, educational and residential development on approximately 200 acres. This development, referred to as the **Village at Sherrills Ford**, is located on the following parcels: 4607-16-83-2252, 4607-16-73-6008, 4607-16-92-7839, 4607-16-84-1504, and 4607-15-72-4766. Within 5 years, complete Sections A, B, C, D, and E. Within 10 years, complete Section D, G, and F.
- The developer shall be responsible for the expense and installation of all off-site transportation improvements required by NCDOT relative to the Transportation Impact Analysis.
- The developer shall donate to the County an approximate 1.5 acre parcel of land for use as a County service center site.
- The developer shall reserve an approximate 3 acre site for purchase by the Catawba Valley Medical Center.
- The developer shall engage in good faith conversations and negotiations with the YMCA regarding the sale of a site located within the Village at Sherrills Ford.
- The developer shall donate \$500,000, in four equal installments over a three year period, to the County for the purpose of constructing improvements within Mountain Creek Park.
- The County agrees to construct three sewer laterals that will serve the Village at Sherrills Ford, north of Highway 150.

- The developer shall engineer, design, permit, construct and install water and sewer lines within the Village of Sherrills Ford including water and sewer lines along Slanting Bridge Road.
- The developer shall pay County and City of Hickory fees at the time application is made for water and sewer service.

Enforcement

A yearly review will be conducted to ensure the developer can demonstrate good faith compliance with the terms of the development agreement. The developer shall have the opportunity to cure any breach of the agreement.

Procedure for Adoption of the Development Agreement

A development agreement adopted pursuant to N.C.G.S. 153A-349 must be noticed to the public and adopted like any other zoning ordinance amendment. Adjoining property owners of the development agreement areas have received individual mail notice and the properties have been posted with signs noting the time and place of a public hearing. The Board of Commissioners must conduct a public hearing in order to consider adoption of the development agreement.

Utilities

Public water and sewer is available to the Village at Sherrills Ford properties. The developer will be responsible for engineering, designing, permitting, constructing, and installing the sewer and water lines to be located within the Village at Sherrills Ford site including water and sewer lines along Slanting Bridge Road north of Highway 150. The County will construct three sewer laterals north of Highway 150.

Public Services

As the Village at Sherrills Ford development builds out, the County will look at the need for additional public services. As part of the development agreement, 1.5 acres of land is being donated to the County in the Village at Sherrills Ford site for a community services center.

Transportation

A Traffic Impact Analysis (TIA) has been produced by the developer and will be reviewed by NCDOT. Pending approval of the TIA by NCDOT, certain transportation and traffic improvements must be constructed by the developer to mitigate adverse impacts created by the proposed development. A summary of the proposed transportation improvements is outlined below.

NC Highway 150 is designated as a major thoroughfare by the Catawba County Transportation Plan. Major thoroughfares are defined as primary traffic arteries of the urban area. Their purpose is to move traffic from city to city and within urban areas; therefore, strip development and multiple driveway access is to be discouraged.

At this particular location, NC Highway 150 is a 2-lane roadway. 2013 traffic counts were taken to the east and the west the intersection of NC Highway 150 and Slanting Bridge Road. This study measured an average daily traffic (ADT) count of 12,000 and 9,400, respectively.

The capacity of this particular span of NC Highway 150 is estimated to be approximately 12,100 to 14,860 vehicles per day (VPD). The State Transportation Improvement Plan (STIP) contains plans for the widening of NC Highway 150 to a divided multi-lane facility. The planning and design portion of the project is currently underway. Right-of-way acquisition is set to begin in 2017 and construction commencing in 2019 on Section B which extends from Harvel Road in Catawba County to Highway 21 in Mooresville. Section A, which extends from NC 16 Bypass to Harvel Road, is currently unfunded.

The TIA identifies the following traffic improvements for the Village at Sherrills Ford:

Proposed Improvements for Phase I

Slanting Bridge Road and Site Entrance 1 (northern most entrance to Section A on Slanting Bridge Road)

- Provide a 100' internal protected driveway stem.

Slanting Bridge Road and Site Entrance 2 (southern entrance to Section B on Slanting Bridge Road)

- Construct a northbound left-turn lane on Slanting Bridge Road with 100' of storage and appropriate taper.
- Provide a 100' internal protected driveway stem.

NC 150 and Sherrill's Ford Road

- Construct a westbound right-turn lane with 300' of storage and appropriate taper.
- Signal upgrades to accommodate the recommended geometric changes.

Proposed Improvements for Phase 2

NC 150 and Sherrill's Ford Road

- Construct a northbound left-turn lane with 100' of storage and appropriate taper.
- Construct a southbound left-turn lane with 250' of storage and appropriate taper.
- Signal upgrades to accommodate the recommended geometric changes.

NC 150 and Slanting Bridge Road

- Extend the westbound left-turn lane by approximately 200' to provide 325' of storage and appropriate taper.
- Signal upgrades (e.g. loop replacements) as needed to accommodate the recommended geometric changes.

NC 150 and Site Entrance 10 (the Boulevard)

- Construct an eastbound left-turn lane with 200' of storage and appropriate taper.
- Construct a westbound right-turn lane to provide 325' of storage and appropriate taper. The widening for the right-turn lane shall accommodate a future left-turn lane on the westbound approach.
- Construct three exist lanes on the southbound approach, including an inside lane with 325' of storage and appropriate taper, a middle lane, and an outside lane with 150' of storage and appropriate taper. Install painted island on the inside lane and mark the remaining two lanes as left-turn and right-turn lanes.
- Provide a 325' internal protected driveway stem.
- Install an actuated traffic signal at this intersection with appropriate signal heads, controller and cabinet, poles, loop detectors, junction boxes, etc. Signal warrant analysis shall be performed before the signal installation, and the signal installation must be approved by the local jurisdictions and NCDOT. If required by NCDOT, signal interconnection shall be provided to coordinate with the adjacent signals at the NC 150 and Slanting Bridge Road intersection and the NC 150 and Sherrill's Ford Road intersection.

Slanting Bridge Road and Site Entrance 2

- Construct two westbound exit lanes at this proposed intersection including one through/left-turn shared lane and one right-turn lane with 100' of storage and appropriate taper.
- Construct a southbound left-turn lane on Slanting Bridge Road with 100' of storage and appropriate taper.
- Provide a 100' internal protected driveway stem on the east leg.

Slanting Bridge Road and Site Entrance 3 (southern entrance to Section E on Slanting Bridge Road)

- Construct a northbound right-turn lane on Slanting Bridge Road with 100' of storage and appropriate taper.
- Provide a 100' internal protected driveway stem.

NC 150 and Site Entrance 8 (entrance to Section E just east of Slanting Bridge/150 intersection)

- Construct a westbound right-turn lane with 100' of storage and appropriate taper.
- Provide a 100' internal protected driveway stem.

In addition to vehicular transportation improvements, the developer will install sidewalks within the development and along the major road corridors (Highway 150 and Slanting Bridge Road) to benefit pedestrian use.

Land Use Plan

The Sherrills Ford Small Area Plan, which was accepted in February 2003, provided land use recommendations which included a village component located at the intersections of Hwy. 150 at Sherrills Ford and Slanting Bridge Roads. The plan recommendations concerning the individual properties are as follows:

Village Center

The development site for the Village at Sherrills Ford is identified as being within a "Village-Mixed Use" area. The "Village-Mixed Use" area is recommended to contain a mixture of commercial, office and residential land-uses. Such varying types of land-uses are recommended to be in close proximity to one another to provide convenience goods and services to surrounding neighborhoods, as well as encouraging linkages to employment centers.

Public Informational Meeting

Staff held a public informational meeting at the Sherrills Ford Elementary School Cafeteria on Monday, March 23. Approximately 332 citizens attended the drop-by forum and presentation.

Staff's Recommendation

Staff recommended the Planning Board submit a favorable recommendation to the Board of Commissioners relative to the Village at Sherrills Ford, LLC development proposals:

1. **A conceptual site plan amendment for the Village at Sherrills Ford** within the existing Planned Development-Conditional District (PD-CD);
2. **A Development Agreement** between the Village at Sherrills Ford, LLC and Catawba County which provides amenities and long term benefits to the community; and
3. **A Consistency Statement** affirming the proposed conceptual plan and development agreement are consistent with previously adopted plans.

Public Hearing Discussion

The Planning Board conducted a public hearing on March 30, 2015 to consider the request. Twenty-one people spoke concerning the request including Robert Davis, who spoke on behalf of the applicant.

PLANNING BOARD'S RECOMMENDATION

The Planning Board voted 8 – 1 to favorably recommend to the Board of Commissioners relative to the Village at Sherrills Ford, LLC development proposals:

1. **A conceptual site plan amendment for the Village at Sherrills Ford** within the existing Planned Development-Conditional District (PD-CD);
2. **A Development Agreement** between the Village at Sherrills Ford, LLC and Catawba County which provides amenities and long term benefits to the community; and
3. **A Consistency Statement** affirming the proposed conceptual plan and development agreement are consistent with previously adopted plans.

Post Planning Board Presentation

Staff gave a presentation at the April 6, 2015 Board of Commissioners meeting on the proposed development. A brief description of comments is included in the minutes of that meeting.

Vice-Chair Beatty asked what the timeframe was for the Preliminary Design Plans for HWY 150. Mr. Timberlake responded those plans were expected in late 2015 or early 2016. Commissioner Dan Hunsucker asked what the expected costs were for the required transportation improvements. Phase I TIA improvement costs were estimated at \$500,000 and over \$1 million for Phase II. Vice-Chair Beatty asked what plans were being made for the Fire Department to get out on the road to respond to calls. Mr. Timberlake indicated a WSP Engineer would have to make the determination as to what would be required.

Chair Isenhower opened the public hearing, noting it had been duly advertised. He asked that people try to keep their comments to three minutes to allow everyone a chance to speak. He indicated the first to speak would be Attorney Forrest Farrell who was representing several clients so he would have ten minutes. The following people spoke during the public hearing:

Forrest Farrell: Spoke of the 2007 Agreement running with the land; there were five parties to the original agreement and all must agree to amending that agreement; CVMC site in 2007 agreement was 10 acres – the current agreement only allotted 3 acres; less in current agreement for county services site; less donation in current agreement for Park; no bond required in 2007 agreement – a bond should be required now; 2007 agreement had location reserved for YMCA for 36 years – current agreement just a good faith discussion regarding YMCA; follow the law and enforce the previous agreement.

Mike Roth – Terrell – 200 acres ravaged by clear cutting; owner should apologize to Board, Terrell and Catawba County; they need to explain who they are; what projects have they completed before; postpone any approval until all questions are answered.

Dr. Jim Ross – Terrell – read in a letter from Lynn Lail which stated as a commissioner, voted for 2007 agreement; 2007 agreement gave the county a lien to ensure performance – none in new agreement; agreement runs with the land; opposed to current agreement.

Glenn Hunsucker – Terrell – Board has done a great job up until now; friends and neighbors disagree with this agreement; traffic is a real problem; an adequate bond should be required for developer.

Bobby Smith – Lincolnton – Real Estate Developer – familiar with business; Crescent is no longer here; you have to have someone willing to take on the development; this development will be beautiful and you need the residential to support the commercial; currently no medical or grocery – this plan will bring that; traffic will be fine; this is a good company and a good plan.

David Gerard – Kiser Island Road – Board should take time to properly vet the developer; worried about construction quality and density; what about environmental/traffic/emergency services/police needs studies; higher density means higher crime; care should be given to the type of development; vote no or vote to postpone.

Doug Rink – Maiden – this is a moral hazard; now have more info than the Planning Board had; Crescent is not gone – it is alive and well; we are bailing out a Charlotte developer; kick the can down the road and wait 30 days to make a decision.

Ed Neill – Airport Road – worked on the UDO and the Sherrills Ford Small Area Plan; we should be inviting the Development Community; can't compare Crescent to this agreement; vote yes; smart growth; no sprawl – walkability; a no vote will tell business not to come to Catawba County.

Joannie Gardner – Mecklenberg – Real Estate Broker in Area – the property where they clear cut was a tree farm, meant to be harvested; this is not a high density project; tax dollars will stay in

Catawba County; wants to shop in the Village Center; Planning and Zoning Department is very competent; needs to go forward now.

Nicole Morford – Sherrills Ford – growth is too fast; slow down; no gas stations.

Danny Hearn – President, Chamber – speaking on behalf of the Board of Directors of the Chamber of Commerce; have waited a long time for this – five years; appreciates the staff's updates to the community; need development like this to keep people in the county and get a workforce for growing companies; we are losing sales tax dollars to other counties; population growth projection for the county are bad; need the tax base and sales tax base; this is a workforce issue; great opportunity; the business community wants this.

Eric Martin – turned in petition with over 100 signatures against the development – he is not a wealthy investor; this is against his constitutional rights; has a right to live on his property; this will raise property values and he won't be able to pay his taxes.

Maureen Roberge – Huntersville – Realtor – this would raise the median home price; this development encompasses what buyers are looking for.

Bryan Jones – Wagner Property Group – will bring in a grocery store.

Brian Ethridge – City Manager for DR Horton – largest home builder in US. Lives in Lincoln County – 5 minutes from site; this type of development is coming; age targeted homes – price point \$240,000 - \$300,000; buyers will dictate price with upgrades; base would be \$240,000 with median between \$260-\$270,000. In response to Commissioner Barnes inquiry – square footage of single family homes would be 1600-2000 sq ft for patio homes and 2700-2800 for other single family homes.

Gavin Teng – WSP Engineering – outlined traffic engineering. In response to inquiry by Vice-Chair Beatty question regarding the fire department, he responded an on-demand signal could be considered; in response to Chair Isenhower's inquiry, stated a traffic analysis was currently being conducted. – confirmed the Plan that has to be approved by NCDOT does not take into consideration the fire station.

Steven Bailey – WSP Engineering – 2007 vs. 2015 agreement – less traffic due to less commercial.

Robert Davis – Represents Applicant – traffic condition now vs. after development will remain the same or improve due to the ten different entrances and exits and improvements required by the TIA. Density is within the current zoning and rooftops are needed for commercial growth. The product is in keeping with the area (excluding lake front property). The median price point exceed current median price point by \$50,000. The agreement provides multiple opportunities for places to live, for business, supports the Park, is not sprawl and is walkable. This meets or exceeds the requirements of the UDO.

John Buric – Applicant's Attorney – Crescent's bankruptcy released them from agreement; 2007 agreement not binding.

Susan Townley – Sherrills Ford – not well received; Planning Commission represented the Developer; will another wastewater treatment plant be needed? Honor the businesses already there; support small businesses; the Board is working for developers not the citizens.

Doug Batterberg – Lake Bluff Drive – have to depend on NCDOT to improve the road; blind intersection at Slanting Bridge Road.

Chair Isenhower confirmed that no one else wished to speak and closed the public hearing at 9:35 p.m. and asked for any questions from the Board.

Commissioner Barnes said she had spoken with the developer at each of the previous meetings regarding quality. She had been approached by people in the community with favorable comments about the development but wanted to be assured that this would be a quality project. She asked Counsel to the Board to speak to the issue of bonding. Counsel to the Board David Hood responded that he was not involved in the Development Agreement or asked about the need for a bond. He stated a bond would generally be required at the development phase, not at this point. County Attorney Debra Bechtel clarified that if the County had put up money as an investment in the project, then a bond would be required but no investment had been made at this point by the County. The Subdivision Review Board is charged with reviewing preliminary subdivision plats. When approval for a final plat is sought, bonds for certain uncompleted work such as roads, landscaping, etc. would be required. If the work is already complete, no bond would be necessary.

Vice-Chair Beatty questioned that the development would add to the labor force when some of the development was age-targeted. She wondered if young people would want to live there with the current broadband problems and she again addressed her concerns about the access the fire department would need to the roadway.

Commissioner Hunsucker acknowledged the concerns voiced over traffic, density and the quality of the homes. He believed development would cause the needed traffic improvements. In regard to the density questions, he noted the number of homes set forth in the agreement were maximum numbers and would not be immediate. He was encouraged by the pictures of the quality of the homes the developer provided but would have liked to have seen more. He stated that nobody likes change and there were nuances to every situation. We want our kids to stay in the County but we need places for them to live. He campaigned on less government, and pro-business and he believed this was pro-business.

Commissioner Butler questioned whether the clear-cutting met with the requirements of the UDO and if it was illegal. County Attorney Bechtel clarified that the developer owned the land and had no plans yet approved so they had not broken any laws. Commissioner Butler stated she thought the vote should be delayed until the Board had more info. Chair Isenhower asked for what questions she had so they could be answered with the developer as well as staff here at the meeting.

Commissioner Barnes noted that multiple overlay districts applied to this area. She asked that the Development Agreement be amended to remove vinyl as a siding option and that vinyl only be used for soffits, trim and windows.

Chair Isenhower said every elected official wants economic development. He noted that there had been only 11 subdivisions approved since 2011. He stated the County was not growing; we were losing the 20-40 year olds; we needed to work with developers. He was not sure how much do we want to regulate – if someone wants to come here and spend their money, we should welcome them. He said there were many layers to make this a good development and the County Subdivision Review Board would be the checks and balances on these layers to ensure the developer delivered a quality product.

Commissioner Hunsucker made a motion to adopt the following ordinance and consistency statement:

Ordinance No. 2015-_____

**AMENDMENT TO THE CONCEPTUAL SITE PLAN FOR THE VILLAGE AT SHERRILLS FORD
AND
NEW DEVELOPMENT AGREEMENT**

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS, that the Conceptual Site Plan is hereby amended and a new Development Agreement approved for the following properties.

Five parcels totaling approximately 200 acres located around the intersection of Slanting Bridge Road and NC Highway 150 in the Sherrills Ford Small Area Planning District, Mountain Creek Township, and further identified by Parcel Identification Numbers 4607-16-83-2252, 4607-16-73-6008, 4607-16-84-1504, 4607-15-72-4766 and 4607-16-92-7839.

PLAN CONSISTENCY STATEMENT:

Pursuant to N.C.G.S. §153A-341, and upon consideration of the Sherrills Ford Small Area Plan and Highway 150 Corridor Plan, all materials presented to the County by the Village at Sherrills Ford, LLC, members of the public and county staff, and upon further consideration of the educational, recreational, environmental, growth, road improvement, economic and infrastructure needs of this area of Catawba County, the Catawba County Planning Board finds the request to be consistent with the Sherrills Ford Small Area Plan and Highway 150 Corridor Plan and reasonable and in the public interest for the following reasons:

- 1) compact, interconnected mixture of uses, including single-family and multi-family residential, commercial, office and community uses, in a pedestrian-friendly, architecturally-integrated design with controlled driveway access to Highway 150 makes the Village at Sherrills Ford conform to the Sherrill's Ford Small Area Plan and Highway 150 Corridor Plan.
- 2) public sewer introduced into the area allows for increased density, as recognized in other utility corridors in the Sherrills Ford area, while preserving open space through a cluster subdivision design.
- 3) higher zoning standards and site conditions imposed upon the Village at Sherrills Ford development;
- 4) the compact, mixed-use design of the Village at Sherrills Ford provides for a land use pattern which will lessen traffic along the Highway 150 corridor by providing for commercial opportunities in a centralized development located within the southeast area of the County as compared to individual developments scattered along Highway 150 or traveling outside of the County for retail opportunities;
- 5) facility basis as opposed to smaller, more numerous stormwater facilities; and
- 6) the proposed conceptual plan and accompanying Development Agreement the County has been able to attain through private expense numerous public amenities that more than mitigate the impact of this development and which include but are not limited to: donation of land for a County service site, \$500,000 contribution toward the development of Mountain Creek Park, substantial road improvements, and land reserved for a medical center and a YMCA.

Commissioner Barnes made a motion to amend the motion to include an amendment to the Village at Sherrills Ford Planned Development Notes to exclude vinyl from options for exterior materials, with the exception of soffits, trim and windows.

Chair Isenhower asked for a vote on the motion to amend the motion made by Commissioner Barnes. Commissioners Isenhower, Barnes, Butler and Hunsucker voted in favor; Vice-Chair Beatty opposed. The vote carried.

Chair Isenhower asked for a vote on the original motion made by Commissioner Hunsucker as stated in the Ordinance and Consistency Statement above. Commissioners Isenhower, Barnes and Hunsucker voted in favor; Commissioners Beatty and Butler opposed. The vote carried. The following development agreement applies:

| | | |
|--------------------------------|---|------------------------------|
| STATE OF NORTH CAROLINA |) | |
| |) | DEVELOPMENT AGREEMENT |
| COUNTY OF CATAWBA |) | |

This Development Agreement (the "**Agreement**") is made and entered into this 20th day April, 2015 by and between **THE VILLAGE AT SHERRILLS FORD, LLC**, a North Carolina limited liability company ("**Developer**"), and **CATAWBA COUNTY, NORTH CAROLINA** ("**County**"), a political subdivision of the State of North Carolina.

STATEMENT OF PURPOSE

1. Section 153A-349.1(a)(1) of the North Carolina General Statutes provides that "large-scale development projects often occur in multiple phases extending over a period of years, requiring a long-term commitment of both public and private resources."
2. Section 153A-349.1(a)(3) of the North Carolina General Statutes provides that "because of their scale and duration, such large-scale projects often require careful integration between public capital facilities planning, financing, and construction schedules and the phasing of the private development."
3. Section 153A-349.1(a)(4) of the North Carolina General Statutes provides that "because of their scale and duration, such large-scale projects involve substantial commitments of private capital by developers, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of development."
4. Section 153A-349.1(a)(5) of the North Carolina General Statutes provides that "because of their size and duration, such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas."
5. Section 153A-349.1(a)(6) of the North Carolina General Statutes provides that "to better structure and manage development approvals for such large-scale developments and ensure their proper integration into local capital facilities programs, local governments need the flexibility in negotiating such developments."
6. In view of the foregoing, Sections 153A-349.1(b) and 153A-349.3 of the North Carolina General Statutes expressly authorize local governments and agencies to enter into development agreements with developers pursuant to the procedures and requirements of Sections 153A-349.1 through 153A-349.13 of the North Carolina General Statutes, which procedures and requirements include approval of the development agreement by the governing body of the local government by ordinance after a duly noticed public hearing.
7. Section 153A-349.4 of the North Carolina General Statutes restricts the use of a development agreement to property that "contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of the application)." N.C.G.S. 153A-349.4 further provides that "development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years."

BACKGROUND

1. Developer is the owner of several parcels of land located on the north and south sides of N.C. Highway 150 generally at the intersection of Slanting Bridge Road and N.C. Highway 150 in Catawba County, North Carolina, which parcels of land are more particularly described on Exhibit A attached hereto and incorporated herein by reference, and are more particularly depicted on Exhibit B attached hereto and incorporated herein by reference. These parcels of land contain a total of approximately 206 acres and they are hereinafter collectively referred to as the "**Village at Sherrills Ford Site**."
2. The Village at Sherrills Ford Site is located in the southeastern portion of Catawba County in an area known as Sherrills Ford. The Sherrills Ford area is bounded by Lake Norman and the Catawba River to the east, the Catawba County - Lincoln County line to the south, N.C. Highway 16, Buffalo Shoals Road

and Murray Hills Road to the west and U.S. Highway 10, the Town of Catawba's extraterritorial jurisdiction and the Catawba River to the north.

3. On April 16, 2007, the County and a prior owner of the Village at Sherrills Ford Site, Carolina Centers, LLC, entered into a development agreement that was recorded in Book 02833 at Page 0286 of the Catawba County Public Registry (the "**Carolina Centers Development Agreement**"). The Carolina Centers Development Agreement encumbers the Village at Sherrills Ford Site and it governs, among other things, the types of uses and maximum density of development allowed on the Village at Sherrills Ford Site, and it provides, among other things, for the construction of infrastructure that will serve the Village at Sherrills Ford Site and the dedication or provision of public amenities on the Village at Sherrills Ford Site by the developer of the Village at Sherrills Ford Site.

4. Key Harbor Communities, LLC and Key Harbor Holdings, LLC (hereinafter collectively referred to as "**Key Harbor**") are also parties to the Carolina Centers Development Agreement, and the Carolina Centers Development Agreement encumbers parcels of land that were owned by Key Harbor. Pursuant to the express terms of the Carolina Centers Development Agreement, the owner of the Village at Sherrills Ford Site is not responsible or liable for the performance of the covenants, commitments and obligations of Key Harbor under the Carolina Centers Development Agreement, and the Village at Sherrills Ford Site is not encumbered by the covenants, commitments and obligations of Key Harbor under the Carolina Centers Development Agreement.

5. On April 16, 2007, the Catawba County Board of Commissioners (the "**Board of Commissioners**") rezoned the Village at Sherrills Ford Site to the Planned Development conditional zoning district ("**PD-CD**") to permit the development of a multi-use project on the Village at Sherrills Ford Site (the "**Carolina Centers Multi-Use Project**"). In connection with the approval of the rezoning of the Village at Sherrills Ford Site to PD-CD, the Board of Commissioners also approved a concept site plan (the "**Carolina Centers Concept Site Plan**") that, together with the Carolina Centers Development Agreement, governs the development and use of the Village at Sherrills Ford Site. The configurations, placements and sizes of the lots, buildings, open space, parking areas, streets and other improvements planned for the Carolina Centers Multi-Use Project are depicted on the Carolina Centers Concept Site Plan and/or described in the development standards set out on the Carolina Centers Concept Site Plan subject, however, to any rights to make minor amendments thereto as allowed under the Catawba County Unified Development Ordinance (the "**UDO**").

6. Developer desires to develop a multi-use project on the Site that could contain retail, office, medical office, governmental, educational, service and residential uses (such project being hereinafter referred to as the "**Village at Sherrills Ford**"). A Concept Site Plan (as defined below) of the Village at Sherrills Ford is attached hereto as Exhibit C and incorporated herein by reference. To permit the development of the Village at Sherrills Ford on the Village at Sherrills Ford Site, a new PD-CD concept site plan relating to the Village at Sherrills Ford must be approved by the Board of Commissioners, which will replace the Carolina Centers Concept Site Plan.

7. In connection with the Village at Sherrills Ford, Developer and the County desire to enter into this Agreement for the purposes described herein.

8. The Sherrills Ford Small Area Plan (the "**Small Area Plan**") was adopted by the Board of Commissioners on February 17, 2003, and the guiding principles of the Small Area Plan include, among other things, balanced land uses with a mixture of housing, shopping and employment; pedestrian oriented development; well-planned retail development with varying sizes and functions; and flexibility in regulations.

9. As outlined in the Small Area Plan, and as a result of sewer availability and the desire to maximize development opportunities along the utility corridors, the County has endorsed a development vision for the Sherrills Ford area that proposes to provide for higher densities on the Village at Sherrills Ford Site and the development of a multi-use project on the Village at Sherrills Ford Site that would contain, among other things, retail and office uses as well as single family detached homes, attached single family homes and multi-family dwelling units.

10. The Highway 150 Corridor Plan (the “**Corridor Plan**”) was adopted by the Board of Commissioners on September 8, 2014, and the Corridor Plan supports the development of a multi-use project on the Village at Sherrills Ford Site and it reinforces the land use principles of the Small Area Plan.

11. After careful review and deliberation, the County has determined that the above described Village at Sherrills Ford is consistent with the Small Area Plan, the Corridor Plan and the UDO, and that it would further the County’s land use planning objectives and policies as set out in these documents, as well as the health, safety, and economic well-being of the County.

12. The County has also determined that the Village at Sherrills Ford presents a unique opportunity for the County to secure quality planning and growth, to protect the environment, and to strengthen the tax base.

Accordingly, Developer and the County desire to enter into this Agreement for the purposes of (a) agreeing upon the maximum density of the Village at Sherrills Ford and the types of uses allowed therein; (b) coordinating the construction of infrastructure that will serve the Village at Sherrills Ford and the community at large; and (c) providing assurances to Developer and its successors in interest that Developer may proceed with the development of the Village at Sherrills Ford Site and the Village at Sherrills Ford in accordance with the new PD-CD concept site plan described below and the terms of the Agreement without encountering future changes in ordinances, regulations or policies that would affect Developer’s ability to develop the Village at Sherrills Ford Site and the Village at Sherrills Ford under the new PD-CD concept site plan and the terms hereof for the term of this Agreement.

TERMS

NOW, THEREFORE, based upon the terms and conditions set forth herein and in consideration of the mutual promises and assurances provided herein, the parties do hereby agree as follows:

33. Public Hearing. Pursuant to Section 153A-349.5 of the North Carolina General Statutes, the Board of Commissioners conducted a public hearing on April 20, 2015 to consider the approval and execution of this Agreement in accordance with the procedures set out in N.C.G.S. § 153A-323. The notice of public hearing specified, among other things, the location of the Village at Sherrills Ford Site that is the subject of this Agreement, the development uses proposed on the Village at Sherrills Ford Site and a place where a copy of the Agreement can be obtained. The Board of Commissioners approved this Agreement and authorized the County’s execution of the same at the conclusion of the public hearing. The County may execute the Agreement on a subsequent date.

34. Term. The term of this Agreement shall commence on April 20, 2015 and it shall terminate on April 20, 2035 unless sooner terminated by the mutual consent of the parties hereto or their successors in interest, or unless extended by the mutual consent of the parties hereto or their successors in interest.

35. Approval of New PD-CD Concept Site Plan. On April 20, 2015, the Board of Commissioners, after holding a duly noticed public hearing and in accordance with the procedures specified in the UDO, approved a new PD-CD concept site plan (hereinafter referred to as the “**Concept Site Plan**”) to accommodate the development of the Village at Sherrills Ford on the Village at Sherrills Ford Site. The Concept Site Plan is comprised of The Village at Sherrills Ford Proposed Development Master Plan & Conceptual Image Booklet dated April 20, 2015 and the Planned Development Notes, and the Concept Site Plan is attached hereto as Exhibit C and incorporated herein by reference. The Concept Site Plan governs the development and use of the Village at Sherrills Ford Site and the Village at Sherrills Ford Site shall be developed in accordance with the terms and conditions of the Concept Site Plan. The configurations, placements and sizes of the lots, buildings, open space, parking areas, streets and other improvements planned for the Village at Sherrills Ford Site shall be as depicted on the Concept Site Plan or as described in the development standards set on the Concept Site Plan subject, however, to any rights Developer may have to make adjustments to the same as provided on the Concept Site Plan, and to Developer’s right to seek minor changes or amendments to the Concept Site Plan pursuant to Section 44-301(e) of the UDO. For entitlement purposes only, the Village at

Sherrills Ford Site is divided into the following development areas on the Concept Site Plan: Section A, Section B, Section C, Section D, Section E, Section F and Section G.

36. Permitted Uses/Maximum Density/Placement and Types of Buildings. The Village at Sherrills Ford Site may be devoted to retail, office, medical office, governmental, educational and service uses and to single family detached residential uses, single family attached residential uses and multi-family residential uses together with any incidental or accessory uses associated therewith that are permitted under the UDO in the Planned Development zoning district. The maximum floor area for the retail, governmental, educational, service, office and medical office uses and the maximum number of residential units that may be developed on the Village at Sherrills Ford Site shall be as provided on the Concept Site Plan (as the same may be amended from time to time). Notwithstanding the foregoing, in no event shall the permitted density on the Village at Sherrills Ford Site exceed the following:

- Section A: a maximum of 95 single family detached residential units.
- Section B: a maximum of 80 single family detached residential units.
- Section C: a maximum of 150 single family residential units that may be comprised of single family detached patio residential units, single family attached residential units (townhomes) or a combination thereof.
- Section D: a maximum of 150,000 square feet of gross floor area devoted to office and medical office uses and allowed accessory uses relating thereto.
- Section E: a maximum of 165,000 square feet of gross floor area devoted to retail, restaurant and service uses and allowed accessory uses relating thereto.
- Section F: a maximum of 450 multi-family residential units and allowed accessory uses relating thereto.
- Section G: a mixed and multi-use component devoted to a combination of office, medical office, retail, restaurant and service uses. The maximum gross floor area that may be devoted to retail, restaurant and service uses shall be 300,000 square feet, and the maximum gross floor area that may be devoted to office and medical office uses shall be 50,000 square feet.

Subject to the approval of the Catawba County Planning Staff (the “**Staff**”), which approval shall not be unreasonably withheld or delayed, Developer may shift allowed floor area from retail and service uses to office and medical office uses, and from office and medical office uses to retail and service uses provided that any such shift of floor area is neutral from a traffic impact standpoint. Subject to the approval of the Staff, and in accordance with the UDO, which approval shall not be unreasonably withheld or delayed, Developer may also shift allowed residential units between the various types of allowed residential uses provided that such shift is neutral from a traffic impact standpoint.

The placement of the buildings on the Village at Sherrills Ford Site and the types of buildings are more particularly depicted on the Concept Site Plan.

37. Development Schedule. The Village at Sherrills Ford Site shall be developed in accordance with the schedule set out below, or as may be amended by the agreement of the parties to reflect actual market absorption. Pursuant to N.C.G.S. § 153A-349.6(b), the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of this Agreement pursuant N.C.G.S. § 153A-349.8 but must be judged based upon the totality of the circumstances, including, but not limited to, Developer’s good faith efforts to attain compliance with the relevant development schedule. The development schedule is a budget planning tool and shall not be interpreted as mandating the development pace initially forecast or preventing a faster pace of development if market conditions support a faster pace.

- Within 5 years of the date of this Agreement, Developer shall commence and complete the development of Section A, Section B, Section C and Section E of the Village at Sherrills Ford development.
- Within 10 years of the date of this Agreement, Developer shall commence and complete the development of Section D, Section G and Section F of the Village at Sherrills Ford development.

38. Law in Effect at the Time of the Agreement Governs the Development of the Village at Sherrills Ford Site. The laws, land development regulations and ordinances applicable to the development of the Village at Sherrills Ford Site and the Village at Sherrills Ford are those in force as of the date of this Agreement. Accordingly, Developer and its successors in interest shall have a vested right to develop the Village at Sherrills Ford Site and the Village at Sherrills Ford in accordance with the Concept Site Plan, the terms of this Agreement and the terms of the UDO and any applicable laws, land development regulations and ordinances as they exist as of the date hereof during the entire term of this Agreement. Pursuant to N.C.G.S. § 153A-349.7(b) and except as provided in N.C.G.S. § 153A-344.1(e), the County may not apply subsequently adopted laws, land development regulations, ordinances or development policies to the Village at Sherrills Ford Site or the Village at Sherrills Ford during the term of this Agreement without the written consent of Developer or its successor in interest. Additionally, no future development moratoria or impact fees shall apply to the Village at Sherrills Ford Site or to the Village at Sherrills Ford without the written consent of Developer or its successors in interest. This Agreement does not abrogate any rights preserved by N.C.G.S. § 153A-344 or N.C.G.S. § 153A-344.1, or that may vest pursuant to common law or otherwise in the absence of this Agreement. The County agrees that the specific laws, land development regulations and ordinances in force as of the date of this Agreement are more particularly set out in Exhibit D attached hereto and incorporated herein by reference.

39. Transportation Improvements. Developer has caused to be prepared by WSP Engineering a Traffic Impact Analysis for the Village at Sherrills Ford (the "TIA"). The TIA is currently being reviewed by the North Carolina Department of Transportation ("NCDOT") and is subject to its approval. Developer, or its successor in interest, shall, at its sole cost and expense, install all of the off-site transportation improvements that are required to be installed by the developer of the Village at Sherrills Ford in the TIA as approved by NCDOT. The off-site transportation improvements that are required to be installed by Developer shall be installed in accordance with the schedule set out in the phasing analysis in the TIA as approved by NCDOT, and such off-site transportation improvements shall be installed in accordance with the specifications of NCDOT. If Developer, or its successor in interest, fails to install any of the required off-site transportation improvements in accordance with the terms of the approved phasing analysis, then the County may, at its option, withhold the issuance of any further building permits or certificates of occupancy for the Village at Sherrills Ford until such time as the delinquent off-site transportation improvements are completed.

40. Donation/Reservation of Land for Public Purposes/Donation of Funds for Mountain Creek Park.

- Service Center Site. Developer shall donate and convey to the County, at no cost to the County, an approximately 1.5 acre parcel of land located within Section D of the Village at Sherrills Ford Site that is more particularly identified on the Concept Site Plan for a satellite service center for County services, including, but not limited to, the Catawba County Sheriff's Office, County offices, Catawba County Emergency Services or other County services (the "**Service Center Site**"). The deed of conveyance shall restrict the use of the Service Center Site to County services. The Service Center Site shall be donated and conveyed to the County by Developer within one (1) year of the date on which a building permit for the first building to be constructed on the Village at Sherrills Ford Site is issued.

In no event shall Developer be responsible for the construction of any improvements required for access to the Service Center Site, the provision of utilities to the Service Center Site or the development and use of the Service Center Site or any costs related thereto. Easements shall be provided to the County by Developer, at no cost to the County, over, under and across the Village at Sherrills Ford Site for any required utilities to serve the Service Center Site, and over and across all of the internal streets and driveways on the Village at Sherrills Ford Site for access to and from N.C. Highway 150 to the Service Center Site. None of the easements described above may be in locations that would prevent or inhibit the development of the

Village at Sherrills Ford Site as depicted on the Concept Site Plan. All utilities serving the Service Center Site shall be underground.

- Catawba Valley Medical Center. Developer hereby reserves an approximately three (3) acre site located within the Village at Sherrills Ford Site (the "**Medical Center Site**") that is more particularly identified on the Concept Site Plan for purchase by the Catawba Valley Medical Center ("**CVMC**"). Pursuant to the terms of this paragraph, CVMC may purchase the entire Medical Center Site or a portion thereof. The Medical Center Site shall be reserved for purchase by CVMC for a period of three (3) years, with such three (3) year period commencing on the date of the issuance of the first building permit for the Village at Sherrills Ford Site and expiring three (3) years thereafter (the "**Medical Center Reservation Period**"). To exercise its option to purchase the Medical Center Site or a portion thereof, CVMC must notify Developer in writing that it will purchase the Medical Center Site or the relevant portion thereof and the parties must enter into a written contract for the same within the Medical Center Reservation Period. Should CVMC fail to exercise its option to purchase the Medical Center Site or a portion thereof within the Medical Center Reservation Period, then the reservation shall expire and Developer may develop the Medical Center Site or the portion not to be acquired by CVMC in accordance with the terms of the Concept Site Plan, or in accordance with an amendment to the Concept Site Plan that is approved pursuant to the UDO.

The purchase price for the Medical Center Site or the relevant portion thereof shall be the fair market value of the Medical Center Site or the relevant portion thereof as determined by an appraiser mutually agreed upon by Developer and CVMC. If Developer and CVMC cannot mutually agree on one appraiser, then the fair market value shall be determined by three (3) appraisers holding the earned designation "MAI" and having at least five (5) years' experience in appraising commercial real estate in Catawba County, North Carolina, with one appraiser to be selected by Developer, one appraiser to be selected by CVMC and the third appraiser to be selected by the other two appraisers. If the three appraisers are unable to agree on the fair market value, then each appraiser shall submit its written determination of the fair market value within thirty (30) days after the third appraiser's appointment and the fair market value shall be the average of the three appraisers' determinations of fair market value. Developer and CVMC each shall pay the cost of the appraiser it selects and the cost of the third appraiser shall be split equally between Developer and CVMC. If Developer and CVMC mutually agree on one appraiser, then Developer and CVMC shall split equally the cost of the single appraiser.

In no event shall Developer be responsible for the construction of any improvements required for access to the Medical Center Site, the provision of utilities to the Medical Center Site or the development and use of the Medical Center Site or any costs related thereto. Easements shall be provided to CVMC by Developer, at no cost to CVMC, over, under and across the Village at Sherrills Ford Site for any required utilities to serve the Medical Center Site, and over and across all of the internal streets and driveways on the Village at Sherrills Ford Site for access to and from N.C. Highway 150 to the Medical Center Site. None of the easements described above may be in locations that would prevent or inhibit the development of the Village at Sherrills Ford Site as depicted on the Concept Site Plan. All utilities serving the Medical Center Site shall be underground.

- YMCA Site. Developer agrees to engage in good faith conversations and negotiations with the YMCA regarding the sale of a site located within the Village at Sherrills Ford Site to the YMCA for a facility to be owned and operated by the YMCA, which site is hereinafter referred to as the "**YMCA Site.**" In the event that Developer and the YMCA reach an agreement regarding the location, size and sale of the YMCA Site to the YMCA, the purchase price for the YMCA Site shall be the fair market value of the YMCA Site as of the date that the parties reach an agreement as determined by a third party appraisal procured by Developer.

The purchase contract between Developer and the YMCA shall contain a provision that provides that in the event that the YMCA does not begin construction of its facility within five (5) years of the date that it acquires the YMCA Site, then Developer may purchase the YMCA Site from the YMCA for the purchase price paid by the YMCA. In this event, Developer may develop the YMCA Site in accordance with the Concept Site Plan.

In no event shall Developer be responsible for the construction of any improvements required for access to the YMCA Site, the provision of utilities to the YMCA Site or the development and use of the YMCA Site or any costs related thereto. Easements shall be provided to the YMCA by Developer, at no cost to the YMCA, under and across the Village at Sherrills Ford Site for any required utilities to serve the YMCA Site, and over and across all of the internal streets and driveways on the Village at Sherrills Ford Site for access to and from N.C. Highway 150 to the YMCA Site. None of the easements described above may be in locations that would prevent or inhibit the development of the Village at Sherrills Ford Site as depicted on the Concept Site Plan. All utilities serving the YMCA Site shall be underground.

- Donation of Funds to the County for Mountain Creek Park. Developer shall donate the sum of Five Hundred Thousand and No/100 Dollars (\$500,000) to the County to be used by the County solely for the purpose of constructing improvements within Mountain Creek Park (the "**Park Donation**"). The Park Donation shall be paid in four (4) equal installments of One Hundred and Twenty Five Thousand and No/100 Dollars (\$125,000) in accordance with the following schedule:

A. Within thirty (30) days of the date on which this Agreement is recorded in the Catawba County Public Registry (the "**Recording Date**"), Developer shall pay to the County the sum of One Hundred and Twenty Five Thousand and No/100 Dollars (\$125,000);

B. On the first anniversary of the Recording Date, Developer shall pay to the County the sum of One Hundred and Twenty Five Thousand and No/100 Dollars (\$125,000);

C. On the second anniversary of the Recording Date, Developer shall pay to the County the sum of One Hundred and Twenty Five Thousand and No/100 Dollars (\$125,000); and

D. On the third anniversary of the Recording Date, Developer shall pay to the County the sum of One Hundred and Twenty Five Thousand and No/100 Dollars (\$125,000).

If Developer fails to make any of the above referenced payments to the County, then the County may, in its discretion, withhold any or all building permits and/or certificates of occupancy for the Village at Sherrills Ford until such time that Developer complies with its obligations under this paragraph 8(D). Additionally, the County may sue the Developer for specific performance.

41. Public Sewer and Water/Sewer Laterals. The County represents and warrants that public sewer and public water, in sufficient capacities to serve the Village at Sherrills Ford, are currently available to the Village at Sherrills Ford Site as of the date of this Agreement. All sewer and water systems shall be designed to the City of Hickory's specifications.

The County agrees, at its sole cost and expense, to construct and install three (3) sewer laterals that will serve the Village at Sherrills Ford. The three (3) sewer laterals shall be installed in three separate locations on the Village at Sherrills Ford Site, north of Highway 150. The Developer shall choose the specific locations of the three (3) sewer laterals. The first sewer lateral shall be constructed and installed by the County within one hundred and twenty (120) days of the last to occur of the following: (i) the date on which the donation of the Service Center Site to the County has been completed (which shall be defined as the delivery of the deed from Developer to the County), and (ii) the date on which Developer notifies the County in writing of the desired location of the first sewer lateral. The remaining two (2) sewer laterals shall be constructed and installed by the County within twelve (12) months of the date on which Developer notifies the County in writing of the desired locations of the remaining two (2) sewer laterals.

42. Sewer and Water Lines. Developer, at its sole cost and expense, shall engineer, design, permit, construct and install the sewer and water lines to be located within the Village at Sherrills Ford Site to serve the Village at Sherrills Ford to include water and sewer lines along Slanting Bridge Road (the "Internal Sewer and Water Lines"). The developer agrees that the County may elect, at County's expense, to upsize the water line along Slanting Bridge Road. The Internal Sewer and Water Lines shall be engineered, designed, constructed and installed in accordance with all applicable federal, state and local laws, regulations and policies, and they shall be designed to the City of Hickory's specifications. The Internal Sewer and Water

Lines shall be transferred to the County for ownership and the Internal Sewer and Water Lines shall be operated and maintained by the City of Hickory after they have been constructed and installed.

43. Sewer and Water Fees. Water and sewer fees shall be paid in accordance with the County's and City of Hickory's fees at the time application is made for water and sewer service.

44. Sewer and Water Capacity Reservation. In making plans for maintaining, upgrading and expanding the County's sewer and water systems in order to provide sufficient sewer treatment capacity and water treatment capacity for citizens of the County, the County shall take into account the commercial/non-residential and residential development planned for the Village at Sherrills Ford Site as shown on the Concept Site Plan and shall reserve sufficient sewer treatment capacity and water treatment capacity within its sewer and water systems to supply adequate quantities of public sewer and water treatment services to the Village at Sherrills Ford Site and the Village at Sherrills Ford to the extent necessary for Developer to construct and obtain certificates of occupancy for each of the non-residential buildings and non-residential uses, dwelling units and amenities planned for the Village at Sherrills Ford Site (the "Guaranteed Capacity"). The County shall maintain the Guaranteed Capacity for the term of this Agreement, unless this Agreement is terminated earlier pursuant to its terms. The rights and obligations conferred by this Agreement may be assigned by Developer to any purchaser or other developer of any portion of the Village at Sherrills Ford Site. The County shall be notified in writing of the assignment of such rights.

45. Connection to the County's Sewer and Water System. Upon the request of Developer, the County agrees to permit the physical connection of the Village at Sherrills Ford to the County's sewer and water system subject to the terms and conditions of this Agreement and applicable federal, state and local laws.

46. Local Development Permits. In accordance with N.C.G.S. § 153A-349.6(b), the following is a description or list of the local development permits and approvals required for the development of the Development:

- Zoning Authorization Permits.
- Soil Erosion and Sedimentation Control Permits.
- NCDOT Driveway Permits.
- NCDOT Encroachment Agreements.
- Building Permits.
- All other local, state or federal permits required for this development.

The failure of this Agreement to address a particular permit, condition, term or restriction does not relieve Developer of the necessity of complying with any other permitting requirements, conditions, terms or restrictions. Notwithstanding the foregoing, the County represents to Developer that no other permits, approvals, consents or authorizations are needed from the County with respect to Developer's intended development of the Village at Sherrills Ford Site.

47. Amendment. The terms of this Agreement may be amended by the mutual consent of the parties hereto or their successors in interest. A major modification of the terms of this Agreement shall follow the same procedures as required for the initial approval of this Agreement, which procedures shall include a public hearing. A minor amendment to the Concept Site Plan pursuant to the UDO shall not be considered to be an amendment to this Agreement.

48. Recordation/Binding Effect. Within fourteen (14) days after the County enters into this Agreement, Developer shall record this Agreement in the Catawba County Public Registry. Subject to paragraph 24 below, the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties hereto.

49. Periodic Review.

- Pursuant to N.C.G.S. § 153A-349.8, the Zoning Administrator or other County Manager designee shall conduct a periodic review (the "Periodic Review") at least every twelve (12) months, at which time Developer shall be required to demonstrate good faith compliance with the terms of this Agreement.
- If, as a result of the Periodic Review, the County finds and determines that Developer has committed a material breach of the terms or conditions of the Agreement, the County shall serve notice in writing, within a reasonable time after the Periodic Review, upon Developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing Developer a reasonable time in which to cure the material breach.
- If Developer fails to cure the material breach within the time given, then the County unilaterally may terminate or modify the Agreement; provided, however, that the notice of termination or modification or finding of breach may be appealed to the Board of Adjustment in the manner provided by **N.C.G.S. § 153A-345(b)**.

50. Default. The failure of Developer or the County to comply with the terms of this Agreement shall constitute a default, entitling the non-defaulting party to pursue such remedies as allowed under applicable law, provided, however, that no termination of this Agreement may be declared by the County absent its according to Developer the notice and opportunity to cure set out in N.C.G.S. § 153A-349.8. In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in the Agreement or to enjoin any threatened or attempted violation of the Agreement; or to obtain any remedies consistent with the purpose of the Agreement. Legal actions shall be instituted in the Superior Court of the County of Catawba, State of North Carolina, or in the Federal District Court in the Middle District, and the parties hereto submit to the personal jurisdiction of such courts without application of any conflicts of laws provisions of any jurisdiction. Notwithstanding anything contained herein to the contrary, the violation of any rule, policy, regulation, ordinance or law by a homeowner or builder in the Development shall not be considered to be an event of default under this Agreement.

51. Notices. Any notice, demand, request, consent, approval or communication which a signatory party is required to or may give to another signatory party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such party may from time to time direct by written notice given in the manner herein prescribed. Such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile or if by mail on the fifth (5th) business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided. All notices, demands, requests, consents, approvals or communications to the County shall be addressed to:

County at: Mr. Tom Lundy
Catawba County Manager
P.O. Box 389
Newton, NC 28658
828-465-8392 (fax)
tlundy@catawbacountync.com

Developer at: The Village at Sherrills Ford, LLC
Attention: Keith L. Hawthorne
617 North Main Street
Belmont, NC 28012-3137
704-552-2760

52. Entire Agreement. This Agreement sets forth, and incorporates by reference all of the agreements, conditions and understandings between the County and Developer relative to the Village at Sherrills Ford Site and the Village at Sherrills Ford and there are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among these parties relative to the matters addressed herein other than as set forth or as referred to herein.

53. Construction. The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.

54. Assignment. After notice to the County, Developer may assign its rights and responsibilities hereunder to subsequent land owners of all or any portion of the Village at Sherrills Ford Site, provided that no assignment as to a portion of the Village at Sherrills Ford Site will relieve Developer of responsibility with respect to the remaining portion of the Village at Sherrills Ford Site owned by Developer without the written consent of the County. In the event that Developer sells the Village at Sherrills Ford Site in its entirety and assigns its rights and responsibilities to a subsequent land owner, then Developer shall be relieved of all of its covenants, commitments and obligations hereunder.

55. Excluded Property. Notwithstanding anything contained herein to the contrary, the following property that is conveyed by Developer to a third party shall not be subject to or encumbered or burdened by this Agreement:

- A lot containing a single family detached residential unit for which a certificate of occupancy has been issued.
- A lot containing a single family attached residential unit for which a certificate of occupancy has been issued.
- A lot containing a multi-family residential building or buildings for which a certificate of occupancy has been issued.

56. Termination of the Carolina Centers Development Agreement. The County and Developer hereby agree and confirm that the Carolina Centers Development Agreement is terminated as it relates solely to the Village at Sherrills Ford Site, such that the Village at Sherrills Ford Site is not encumbered or burdened by the Carolina Centers Development Agreement and the Developer and its successors in interest have no covenants, commitments and obligations thereunder. The County and Developer agree to execute a written instrument evidencing the termination of the Carolina Centers Development Agreement as it relates to the Village at Sherrills Ford Site and to record the same in the Catawba County Public Registry immediately after the recording of this Agreement.

57. Governing Law. This Agreement shall be governed by the laws of the State of North Carolina.

58. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

59. Agreement to Cooperate. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending such action; provided, however, each party shall retain the right to pursue its own independent legal defense.

60. Agreements to Run with the Land. This Agreement shall be recorded in the Catawba County Public Registry. The agreements, covenants and restrictions contained herein shall be deemed to be a lien upon, binding upon and run with the land and shall be binding upon and an obligation of all successors in the ownership of the Village at Sherrills Ford Site.

61. Severability. If any term or provision herein shall be judicially determined to be void or of no effect, such determination shall not affect the validity of the remaining terms and provisions.

62. Authority. Each party represents that it has undertaken all actions necessary for corporate or public approval of this Agreement, and that the person signing this Agreement has the authority to bind the Developer or the County.

IN WITNESS WHEREOF, the parties hereby set their hands and seals, effective the date first above written.

8. Appointments:
Commissioner Hunsucker made a recommendation to appoint Dana Greene for a first term on the Public Health Board to fill a vacancy in a position last held by Susan Witherspoon. This term will expire June 30, 2018. Commissioner Butler made a recommendation to appoint Tina Miller, Marcheta Campbell and Bob Spuller for first terms to fill vacancies on the Home and Community block Grant Advisory Committee. These terms will expire June 30, 2018. These recommendations came in the form of a motion which carried unanimously.

9. Departmental Reports:
Hickory Public Schools
Hickory Public Schools Director of Facilities Adam Huckabee and Finance Officer Adam Steele presented a request for the Board to approve to transfer \$94,298.08 from completed projects to the Renovations to Old Longview Elementary School Project. The Fiscal Year 2014/15 budget included \$100,000 to renovate the former Longview Elementary School for maintenance staff. Funds were included to perform needed renovations for this purpose, including some electrical work and a secured lot for equipment storage. Due to the age of the building, the scope of the work required to renovate the building is greater than anticipated. Specifically, more electrical work is required, the HVAC system needs to be upgraded, and asbestos was found. The school system also requested contingency to cover any additional costs it may incur as the asbestos is abated and changes that may have to be completed due to inspections or other unforeseen conditions in this older building. Anticipated costs are as follows: Moss Marlow \$152,950; Holland and Hamrick Design/C.A. cost \$11,000; National Emission Standards for Hazardous Air Pollutants (NESHAP) inspection \$5,000 and Contingency \$25,348.08. Staff recommends the Board of Commissioners approve the transfer the remaining balances in the completed Oakwood Elementary School Stairs (\$217.42), Gym Floor/Bleachers (\$18,327.66) , System-wide Rekeying. (\$74,000), and Activity Bus (\$1,753) projects to the Renovations to the Old Longview Elementary School Project. Commissioner Butler made a motion to approve this request. The motion carried unanimously. The following appropriations apply:

Transfer of Appropriation:

| | | |
|------------------------------|--|-------------|
| From: | | |
| 420-750100-865200-32108-3-02 | Oakwood Elementary School Stairs | \$217.42 |
| 420-750100-865200-32108-3-03 | Oakwood Gym Floor/Bleachers | 18,327.66 |
| 420-750100-865200-32150-3-21 | System-wide Rekeying | \$74,000.00 |
| 420-750100-865200-32150-4-07 | Activity Bus | \$1,753.00 |
| To: | | |
| 420-750100-865200-32106-3-07 | Renovations to Old Longview Elementary | \$94,298.08 |

- 10. Other Items of Business: None.
- 11. Attorney's Report: None.
- 12. Manager's Report Manager's Report: None.

13. Adjournment. Commissioner Hunsucker made a motion to adjourn at 10:22 p.m. The motion carried unanimously and the meeting adjourned.

Randy Isenhower, Chair
Catawba County Board of Commissioners

Barbara E. Morris
County Clerk