

**CITY OF GRAHAM  
AGENDA  
TUESDAY, MAY 2, 2017  
7:00 P.M.**

Meeting called to order by the Mayor  
Invocation and Pledge of Allegiance

**1. Honorary Recognitions and Proclamations:**

- Graham Recreation & Parks 10U Basketball League Champions – BSG Lady Heat

**2. Consent Agenda:**

- a. Approval of Minutes – April 4, 2017 Regular Session
- b. Tax Releases
- c. Request from Alamance County Manager Bryan Hagood to block off the North and South side of West Elm Street from Maple Street to the first turnaround in the island past the Criminal Courts Building for the annual Memorial Day Ceremony on Monday, May 29, 2017 from 9:30 a.m. to 1:00 p.m.
- d. Approve Resolution to grant easement to Duke Energy Carolinas, LLC to install and maintain facilities on City property at 201 South Main Street, 206 South Maple Street and 116 West Pine Street

**3. Old Business:**

- a. Public Hearing: Appearance Commission (AM1701). Request by the City of Graham Appearance Commission to rewrite their enabling Ordinance

**4. Recommendations from Planning Board:**

- a. Public Hearing: Fee for Appeals (AM1704). A request by Staff to add an Appeal Fee to the City of Graham Rates and Fees Schedule
- b. Public Hearing: Planning Board Requirements (AM1702). A request by the Graham City Council to amend the City of Graham Development Ordinance to permit real property owners within the City limits to serve on the Planning Board and Board of Adjustment

**5. Mission, Vision and Values Presentation**

**6. Connect NC Bond Grant:**

- a. Accept \$500,000 Connect NC Bond Grant and Approve Project Budget

**7. Impact Alamance Grant for Active Transportation:**

- a. Approve Resolution

**8. Encroachment Discussion**

**9. Issues Not on Tonight's Agenda**

## PROCLAMATION HONORING THE BSG LADY HEAT 10U GIRLS BASKETBALL TEAM

**WHEREAS**, THROUGH HARD WORK, FIGHT, GRIT AND PLAYING WITH A NEVER GIVE UP MENTALITY, THE BSG LADY HEAT GIRLS BASKETBALL TEAM WENT UNDEFEATED IN LEAGUE PLAY WITH A RECORD OF 8-0 AND WON THE GRAHAM RECREATION AND PARKS CHAMPIONSHIP TROPHY; AND

**WHEREAS**, THE BSG LADY HEAT WENT 7-2 IN THE SWAC TOURNAMENT AND CONCLUDED THEIR SEASON BY BEING NAMED THE SWAC 2017 10U STATE TOURNAMENT CHAMPIONS; AND

**WHEREAS**, WE RECOGNIZE THE FOLLOWING TEAM MEMBERS WITH GREAT PRIDE:

*DAJRA ARTHUR  
MADISON BROUILLARD  
PRESLEY LOVETTE  
ANIYAH RUDD*

*CHRISTINA BOWERS  
BROOKLYN COBLE  
JOSELYN PEREZ  
KIYA SHAVERS*

**COACHES:** *CHRIS BROUILLARD, CHRIS BOWERS, MATT LOVETTE, RYAN COBLE*

**NOW, THEREFORE**, I, JERRY PETERMAN, MAYOR OF THE CITY OF GRAHAM, DO HEREBY EXPRESS CONGRATULATIONS FOR THE SIGNIFICANT ACCOMPLISHMENTS ACHIEVED BY THE BSG LADY HEAT 10U GIRLS BASKETBALL TEAM AND ALSO OUR GRATITUDE FOR THE PRIDE AND RECOGNITION THEY HAVE BROUGHT TO THEMSELVES, THE GRAHAM RECREATION AND PARKS DEPARTMENT, AND THE ENTIRE GRAHAM COMMUNITY.

THIS THE 2<sup>ND</sup> DAY OF MAY 2017.

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JERRY PETERMAN, MAYOR  
CITY OF GRAHAM

**CITY OF GRAHAM  
REGULAR SESSION  
TUESDAY, APRIL 4, 2017  
7:00 P.M.**

The City Council of the City of Graham met in regular session at 7:00 p.m. on Tuesday, April 4, 2017, in the Council Chambers of the Municipal Building located at 201 South Main Street.

**Council Members Present:**

Mayor Jerry Peterman  
Mayor Pro Tem Jimmy Linens  
Council Member Griffin McClure  
Council Member Chip Turner  
Council Member Lee Kimrey

**Also Present:**

Frankie Maness, City Manager  
Aaron Holland, Assistant City Manager  
Darcy Sperry, City Clerk  
Nathan Page, Planning Director  
Keith Whited, City Attorney  
Tonya Mann, Utilities Director  
Shelby Smith, Pretreatment Coordinator

Mayor Jerry Peterman called the meeting to order and presided at 7:00 p.m. Mayor Pro Tem Linens gave the invocation and everyone stood to recite the Pledge of Allegiance.

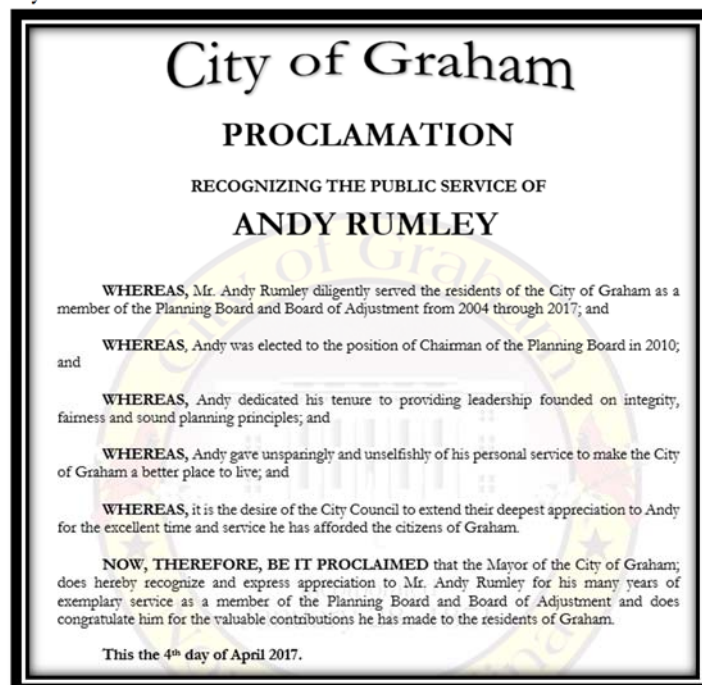
**Honorary Proclamations:**

➤ **North Graham Elementary School – The Lion King Production Recognition**

Council Member Griffin McClure introduced North Graham Elementary Principal Ms. Nancy Cothren, Drama Teacher Mr. Jordan Clifton and several students in attendance and congratulated them for the successful production they recently put on at the school.

➤ **Andy Rumley – Planning Board/Board of Adjustment Proclamation**

Mayor Peterman read a proclamation honoring former Planning Board Chairman Mr. Andy Rumley for his service to the City. Planning Board Vice Chairman Mr. Ricky Hall accepted the proclamation on behalf of Mr. Rumley.



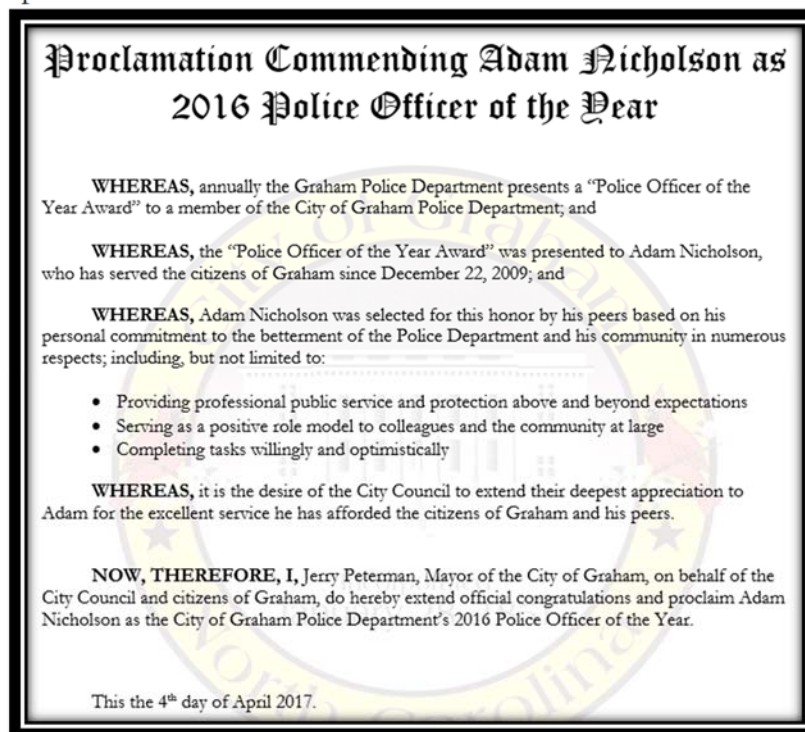
➤ **Brad Bullis – 2016 Fireman of the Year Proclamation**

Mayor Peterman presented a proclamation to Mr. Brad Bullis recognizing him as the 2016 Graham Fire Department's Fireman of the Year.



➤ **Adam Nicholson – 2016 Police Officer of the Year Proclamation**

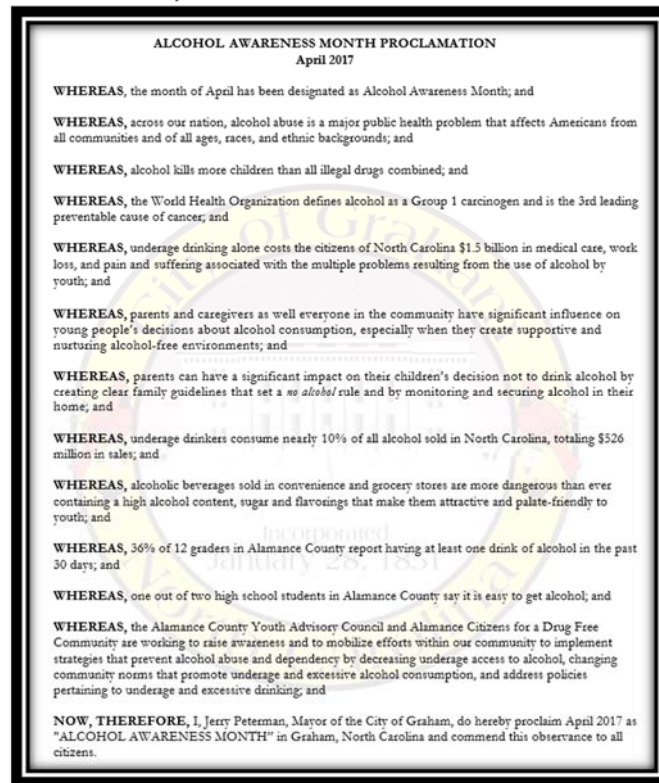
Mayor Peterman presented a proclamation to Mr. Adam Nicholson recognizing him as the 2016 Graham Police Department's Officer of the Year.





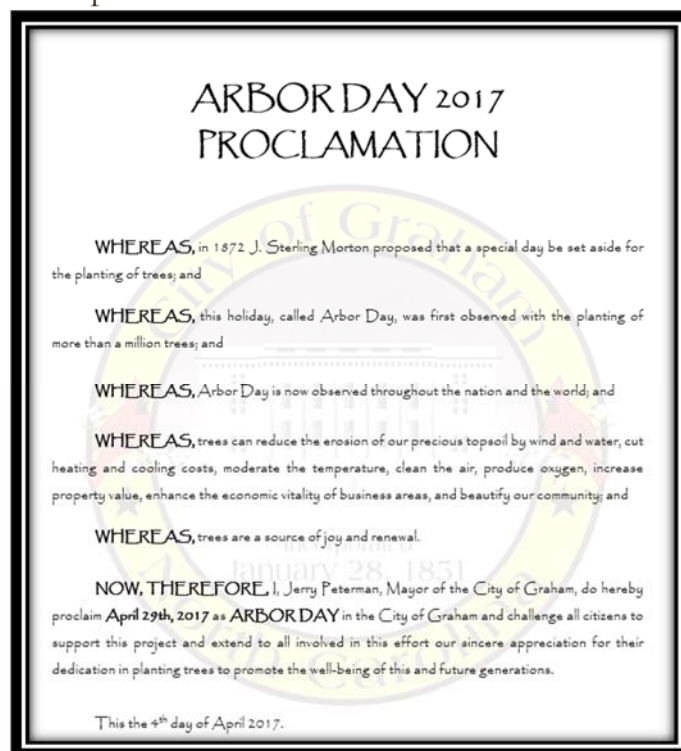
➤ **2017 Alcohol Awareness Month Proclamation**

Mayor Peterman presented a proclamation to Ms. Jennifer Arce-Navarete proclaiming April 2017 as Alcohol Awareness Month in the City of Graham.



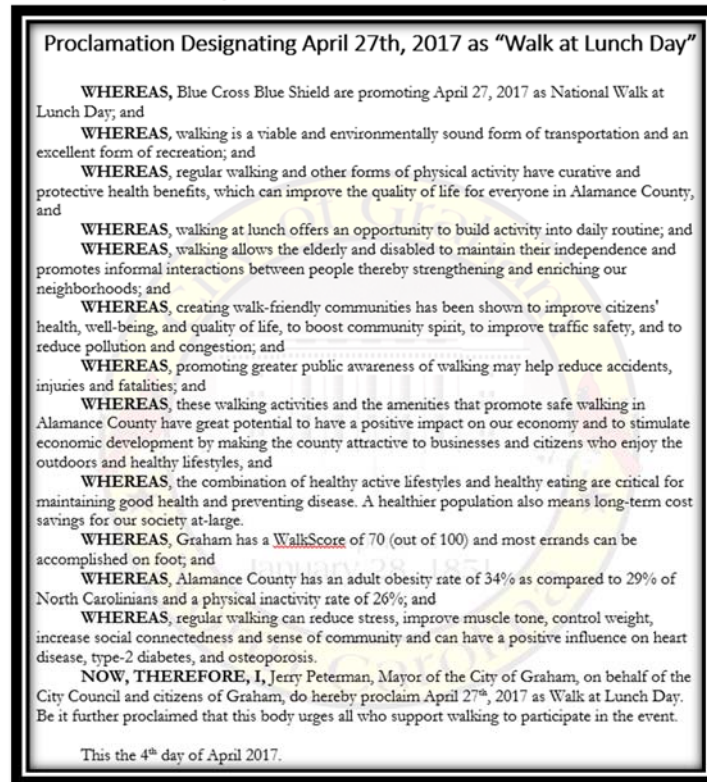
➤ **2017 Arbor Day Proclamation**

Mayor Peterman presented the 2017 Arbor Day Proclamation to Ms. Elaine Murrin, Graham Appearance Commission Chairperson.



## **Consent Agenda:**

- a. Approval of Minutes – March 7, 2017 Regular Session*
- b. Approval of Minutes – March 23, 2017 Special Session*
- c. Appoint Eric Crissman to Tree Board*
- d. April 27, 2017 – Walk at Lunch Day Proclamation*



Council Member Chip Turner made a motion to approve the Consent Agenda, seconded by Council Member McClure. All voted in favor of the motion.

## **Old Business:**

### *a. Boards and Commissions Meeting Venue Discussion*

At last month's regular City Council meeting, Council Member Lee Kimrey asked that the Council consider requiring meetings in which grant monies are awarded to be held in the Council Chambers and be recorded. It was decided at that time that due to Mayor Peterman's absence at that meeting, this request would be placed on the April 4, 2017 agenda.

Council Member Kimrey reiterated his belief that when grant monies are awarded, he would like to see those meetings held in the Council Chambers and have an audio recording done as well. Council Members referred to a recent meeting of the Graham Appearance Commission held at the Graham Civic Center. During that meeting, which was not recorded, the Business Beautification Grant awards were made to various businesses.

Ms. Murrin of 1213 Raspberry Run Graham stepped forward and advised Council that she was not aware that Council required a venue change and recording for a meeting as such. Mayor Peterman advised that this is something Council is looking at requiring going forward.

Mr. Chuck Talley, 808 Sideview Street Graham stepped forward and advised that he attended the Appearance Commission meeting being discussed and encouraged Council to require such meetings be held in the Council Chambers in the future.

By consensus, Council Members agreed that all future Boards and Commissions meetings by which there is to be an appropriation of grant monies will be held in the Council Chambers and be audio recorded.

### **Recommendations from Planning Board:**

***a. Public Hearing: Mallard Care Home (SUP1701). Request by Garry Wiley for a Special Use Permit to Allow a Family Care Home at 304 Mallard Creek Drive***

Mayor Peterman advised that this item had been withdrawn by Staff, adding that the applicant is not required to have a Special Use Permit for this request.

***b. Public Hearing: Steve's Rezoning (CR1701). Request by Justin Long to Rezone 329 and 331 West Harden Street from Light Industrial (I-1) to Conditional Business (C-B)***

Planning Director Nathan Page explained that this is a request to rezone the subject property from I-1 to C-B. The applicant is proposing to "allow for further expansion to take place closer to the property line and not interfere with the parking lot." The proposed uses for the new zone would include all uses within General Business (B-2), and the rear and side yards would be reduced to zero. The front yard 30 foot setback will be maintained (reduced from the current 50 foot front yard). The property is currently functioning as a grocery store as well as a religious service building.

Council Members and Staff discussed how this rezoning would affect the current businesses at this location and Mr. Page advised that he has granted a Unified Business Development Light use to the business owner. With no further discussion forthcoming, Mayor Pro Tem Jimmy Linens asked that he be recused due to the fact that the petitioners are his daughter and son-in-law. Mayor Peterman made a motion that Mayor Pro Tem Linens be recused, seconded by Council Member Kimrey. All voted in favor of the motion.

With no comments forthcoming, Mayor Peterman opened and closed the Public Hearing.

Council Member McClure asked Mr. Page if he knew why one Planning Board Member had voted against recommending this rezoning. Mr. Page stated he had no additional knowledge of anything other than what was in the Planning Board minutes from that meeting.

Planning Board Member Mr. Dean Ward was in attendance and advised Council that he voted in error at the Planning Board meeting and is not against this rezoning.

Council Member Kimrey made a motion that the application be approved with the following condition: 30 foot setback from Harden Street; and that the application is consistent with The Graham 2035 Comprehensive Plan and this action is reasonable and in the public interest for the following reason: Permitting this Conditional Zoning will create a conforming structure and allow for future expansion of a successful business. Council Member McClure seconded the motion and all voted in favor of the motion.

Mayor Pro Tem Linens rejoined the Council.

***c. Public Hearing: Appearance Commission (AM1701). Request by the City of Graham Appearance Commission to Rewrite Their Enabling Ordinance***

Mr. Page explained that the Appearance Commission and Tree Board's enabling ordinances are nestled within the Development Ordinance. He added that it was his understanding that this proposed ordinance amendment was approved by the Appearance Commission prior to going to the Planning Board and Council. Mr. Page further stated that this amendment would remove the stipulation that members of the Tree Board must be members of the Appearance Commission as well.

Following a brief discussion between Council Members and Staff, Council Members expressed concern with the proposed language throughout this amendment. Mr. Page stated that he had very little influence in the drafting of this proposed amendment, adding that the Appearance Commission was responsible for this draft.

With no further discussion, Mayor Peterman opened the Public Hearing.

Ms. Jan Searls of 526 East Pine Street Graham stepped forward to address Council. She informed Council that she is currently the Chairman of the Tree Board and that this amendment would mean that those Tree Board members who currently serve on the Appearance Commission as well, would be leaving the Appearance Commission.

Ms. Murrin stepped forward to answer questions from Council. Council Members asked Ms. Murrin about the number of meetings the Appearance Commission held in 2016 and asked about the proposed language concerning residency requirements and removal of members and officers. Council Member Kimrey expressed concern with language allowing someone other than Council to remove members from boards and commissions. Ms. Murrin was receptive to all suggestions from Council and admitted that she followed language found in a model ordinance when drafting this amendment.

Ms. Murrin asked Council what the process is for appointing members to various boards and commissions. Mayor Peterman stated he believes applications are received by the Clerk, sent to the boards and commissions and then they make a recommendation for appointment to Council.

Mr. Tom Boney of the Alamance News asked Ms. Murrin what the underlying reason was for this proposed rewrite. Ms. Murrin answered that it's the Commission's experience that the current ordinance is somewhat weak and does not reflect the Appearance Commission as they would like to see it, as it does not outline the Commission's goals, functions and contributions they would like to see. It also addresses having a seven member Appearance Commission. Mr. Boney asked if the Appearance Commission had voted on this proposed language, whereby Ms. Murrin stated that Appearance Commission members have seen a copy of this proposed amendment, but said she doesn't believe the Commission has voted on it. Council Member McClure stated that he attends the Appearance Commission meetings and remembers it being discussed but not necessarily voted on.

With no comments forthcoming, Mayor Peterman closed the Public Hearing.

Council Members agreed that the language being proposed in this amendment needs revisions and also added that it must be voted on by the Appearance Commission before coming back to Council for final approval. The Tree Board will also have to vote on being separated from the Appearance Commission. Council Member McClure made a motion that this item be tabled to the May 2, 2017 regularly scheduled City Council meeting, seconded by Council Member Kimrey. All voted in favor of the motion.

## **Boards and Commissions:**

### ***a. Planning Board:***

#### ***i. Appoint New Member to Serve the Remainder of Unexpired Term of Andy Rumley***

Mayor Peterman explained that Council must appoint a new member to the Planning Board. This member will be an in city member and will serve the remainder of Mr. Rumley's term.

Council Member Kimrey asked when the term will expire. City Clerk Darcy Sperry advised that this term expires June 30, 2018. Council Member Kimrey inquired as to why these applications were not sent to the Planning Board prior to this Council meeting. Mr. Page stated that requirement is not codified in the Development Ordinance and he was unaware of any concerns the Planning Board may have until after the applicants were notified that Council would be appointing a replacement at this meeting. Mr. Page added that he doesn't believe that it's good practice to allow a board to choose their own replacements. City Manager Frankie Maness stated that typically in the past, we have not had much interest in people wanting to serve on our board. Last June, we had more applicants interested in the same board(s) than in years past and those applications came directly to the City Council.

Council Member Kimrey referred to Mayor Peterman's remarks earlier in the meeting and stated that he too was under the assumption that applications went to the boards for review prior to coming to Council for appointment. Mayor Peterman advised that Ms. Sperry had sent him a note during this discussion stating that applications are not currently being sent to the boards prior to Council. Mr. Maness said that how applications are handled is a decision of the Council. He added that if Council would like for boards and commissions to make recommendations, we can do that. He reminded Council that one of the powers of Council is that they can appoint whom they wish to serve on boards and commissions. Mr. Maness said that there has been some inconsistency throughout the years with some boards making recommendations and others going directly to Council for appointments.

Mayor Peterman expressed concern with a board recommending someone and Council appointing someone else. He wondered about the potential for animosity amongst that board's members.

Jeanette Beaudry of 308 East Harden Street stepped forward and expressed concern that she had submitted a volunteer application for the Planning Board yet her application was not one of those submitted to Council. She added that in the past, she has been called and asked if she was interested in serving on the Planning Board and attended a Planning Board meeting. She stated that at that time, it was between her and one other woman and when it came before Council, someone other than those two women was appointed. She doesn't think that's fair. Ms. Sperry admitted that if Ms. Beaudry had submitted an application for the Planning Board, she may have overlooked it. She explained that when someone is appointed to a board, their application is moved from a pending folder to an archived one. She stated that if Ms. Beaudry's application had multiple boxes checked for multiple boards, she may have inadvertently moved the application without retaining a copy of it in the pending folder.

Ms. Searls stepped forward and expressed concern with membership commitments to boards and commissions. She eluded to the fact that someone can check all boxes on the current application without knowing what commitment level is for each board. She suggested that there be separate volunteer applications for boards. Mayor Peterman stated that he doesn't believe checking all boxes is an issue, instead not having enough applicants has been more of an issue.



Mr. Boney stated that the approach used by other local municipalities is that the application is submitted to the City Clerk and the City Council makes the appointment without input from the various boards and commissions. He added that Council may want to seek a recommendation from various boards for reappointments, but not initial appointments. Mayor Peterman stated that he liked that direction.

Mayor Peterman asked Council how they would like to proceed. Council Member Kimrey stated that he would like to proceed with the appointment due to the fact that the applicants had been informed that Council would be making an appointment at this meeting. All other Council Members agreed to proceed with the appointment.

Mr. Nathan Perry of 213 Guthrie Street Graham stepped forward and thanked Council for considering his application. Council Member McClure asked Mr. Perry about his experience with the Company Shops in Burlington. Mr. Perry replied that he believes that affiliation will be of great value here in Graham. Mayor Pro Tem Linens pointed out that Mr. Perry is currently serving on the Graham Recreation Commission.

Ms. Searls stepped forward and spoke on behalf of applicant Mr. Eric Crissman. She stated that a family matter kept him from being at this meeting himself and added that Mr. Crissman grew up in Graham and is interested in Graham's energy going forward.

Council Member Kimrey nominated Mr. Perry while Mayor Peterman nominated Mr. Crissman. Mayor Peterman polled each Council Member for their vote. Voting for Mr. Perry were Mayor Pro Tem Linens, Council Member McClure and Council Member Kimrey. Recognizing that Mr. Perry received a majority vote, Mayor Peterman advised that he would vote for Mr. Perry. Mr. Perry was appointed to serve the remainder of Mr. Rumley's term. Appointment carried 4-1. Ayes: Mayor Peterman, Mayor Pro Tem Linens, Council Member McClure and Council Member Kimrey. Nays: Council Member Turner.

### **Wastewater Treatment Plant Intergovernmental Agreement with the City of Mebane:**

#### ***a. Approve Agreement***

Mr. Maness explained that this proposed agreement will further utility operations between Graham and Mebane. He added that the City of Graham and the City of Mebane have partnered in utilities since June 22, 1973, as co-owners of the Graham-Mebane Water Treatment Plant and Reservoir. The Cities further partnered in utilities during the creation of the NCCP, in which water and sewer systems were interconnected and Graham began receiving wastewater from Mebane. In 2006, the City of Graham commissioned the construction of the Cherry Lane Pump Station with regionalization of sewer collection as a secondary purpose. The City of Mebane is requesting that the City of Graham consider a wastewater treatment plant capacity allocation of 750,000 gallons per day (.750 MGD). Under the proposed agreement, up to 750,000 gallons per day of wastewater from the Mebane collection system may be conveyed by the Cherry Lane Pump Station and treated by Graham.

The financial operations under the agreement would look very similar to that of the existing water plant process by which operating costs are divided based on actual flow and capital costs are divided by the allocation of the capacity of the plant. The existing water and sewer arrangement under the NCCP agreement is unaffected by this proposed agreement. In exchange for the 750,000 gallons per day allocation, it is proposed that Mebane will pay the City of Graham a total of \$2,682,464 in annual installments over 20 years.

The City of Graham will realize an undetermined amount of savings in operating expenses and future capital outlays for the WWTP. Over 60% of annual costs to operate the WWTP are fixed, and therefore would be the same regardless of the amount of wastewater treated.

Council Members and Staff discussed when Mebane would start sending sewer to us. Mr. Maness stated that it could be years before we see any volume, but at this point, he cannot say when Mebane would start sending anything to us. Mr. Maness advised that in addition to the \$2,682,464, Mebane would be charged a portion of capital costs and other related costs incurred by us. He added that assuming the City of Mebane sends its entire allocation of 750,000 gallons per day, the wastewater plant utilization would return to its 1996 flow amount and still have 40% of its capacity available. Mr. Maness advised that Utilities Director Tonya Mann and Pretreatment Coordinator Shelby Smith were present to answer any technical questions Council may have but that this agreement is more financial than technical in nature.

Council and Staff continued discussing capacity, finances, the Cherry Lane Pump Station, how this agreement may lessen the burden on the Graham taxpayers, wear and tear on equipment and if this agreement would prevent Graham from being able to service a large sewer user in the future. Mr. Maness stated if a large sewer customer should come to Graham, the revenues gained should support any improvements needed to service that customer.

With no further discussion forthcoming, Mayor Peterman made a motion to approve the Graham/Mebane Wastewater Treatment Plant Intergovernmental Agreement, seconded by Council Member Turner. All voted in favor of the motion.

### **Issues Not on Tonight's Agenda:**

Assistant City Manager Aaron Holland reminded Council that the Little Alamance Creek Stream Clean Up is scheduled for Saturday, April 22<sup>nd</sup> at 9:00 a.m. in Burlington and the Annual Stormwater Public meeting will be held Wednesday, May 3<sup>rd</sup> at 5:30 p.m. here in the Council Chambers.

Council Member McClure challenged the Council to help address the negative impact the County's recent revaluation has had on Graham property owners. He asked Council to look at demands and what motivates people to want to live in our community.

Council Member McClure also congratulated the 2017 NCAA National Champion Men's Basketball Team.

Council Member Kimrey gave an update on the Southern Loop. He explained that the Transportation Advisory Committee (TAC) recently met and they are unwilling to accept Council's request to eliminate the Southern Loop from Graham altogether. NCDOT requires an alternative route to be in place before it can be eliminated. They have agreed to have the Metropolitan Planning Organization (MPO) reach out to Graham Staff and look at other potential routes. Council Member Kimrey has encouraged Graham Staff members to look at routes outside the City of Graham and outside the City's ETJ. Once those routes are established, they will be brought before Council for a vote, if it is in Graham's jurisdiction. Mr. Page explained that the City had been protecting the corridor that was adopted up until the Council adopted the resolution no longer supporting it. We are no longer protecting any right of way but rather deferring protection of said right of way to NCDOT. Council Member Kimrey asked Mr. Page if we no longer are recognizing the route that is on the map. Mr. Page said that we are happy to recognize it but that the authority switched from the City of Graham to NCDOT when Council adopted the resolution no longer supporting it. Council advised Staff to be sure to inform any potential builder that they need to check with NCDOT if their project falls within the current route.

Mayor Peterman reminded Council of the Graham Sports Hall of Fame Banquet and the Graham Regional Park ribbon cutting.

At 9:15 p.m. Council Member Kimrey made a motion to adjourn, seconded by Council Member McClure. All voted in favor of the motion.

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Darcy Sperry, City Clerk

**CITY OF GRAHAM  
RELEASE ACCOUNTS**

**APRIL COUNCIL MEETING**

<u>ACCT #</u>	<u>YEAR</u>	<u>NAME</u>	<u>REASON FOR RELEASE</u>	<u>AMOUNT RELEASED</u>
501470	2014	MARTIN, GREGGORY A	DID NOT LIVE IN THE CITY LIMITS	1.73
501470	2015	MARTIN, GREGGORY A	DID NOT LIVE IN THE CITY LIMITS	1.48
501470	2016	MARTIN, GREGGORY A	DID NOT LIVE IN THE CITY LIMITS	1.35
650571	2015	COLLINS, DONALD	AMENDED PP IN 2015-DID NOT OWN	41.05
603448	2014	HOPKINS, SHERRY	MOBILE HOME DBL LISTED IN NEW OWNER	23.32
191142	2009	PREMISE NETWORKS INC	COMPANY DISSOLVED IN 2009 FILED BANKRUPTCY 1-2-2009. ALL ASSETS AND EQUIPMENT SOLD THROUGH BK	775.23
<b><i>TOTAL RELEASES</i></b>				<b><i>844.16</i></b>

# Alamance County

OFFICE OF THE COUNTY MANAGER  
124 West Elm Street  
Graham, North Carolina 27253-2865

**BRYAN HAGOOD**  
County Manager

Telephone: (336) 570-4044  
Facsimile: (336) 570-6360  
bryan.hagood@alamance-nc.com

April 17, 2017

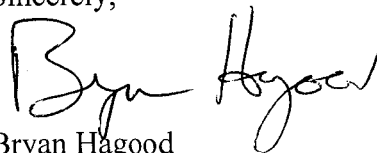
Mr. Frankie Maness, City Manager  
City of Graham  
Post Office Drawer 357  
Graham, NC 27253

Dear Frankie:

The Alamance County War Memorial Committee has started the planning process for the annual Memorial Day Ceremony to be held in Graham on Monday, May 29, 2017. On behalf of the Committee, I would like to request that the City of Graham block off the street from 9:30 a.m. to 1:00 p.m. as they have in the past. The area to be blocked off is the north and south side of West Elm Street from Maple Street to the first turnaround in the island past the Criminal Courts Building.

Frankie, if the Council approves the request, and you can provide the barricades, the County will place them in position and remove them at the times listed above. Please call if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryan Hagood". The signature is fluid and cursive, with the first name "Bryan" being more prominent than the last name "Hagood".

Bryan Hagood  
County Manager

BH: tf





# STAFF REPORT

SUBJECT:	DUKE ENERGY EASEMENT AGREEMENT AT CITY HALL PROPERTY
PREPARED BY:	AARON HOLLAND, ASSISTANT CITY MANAGER

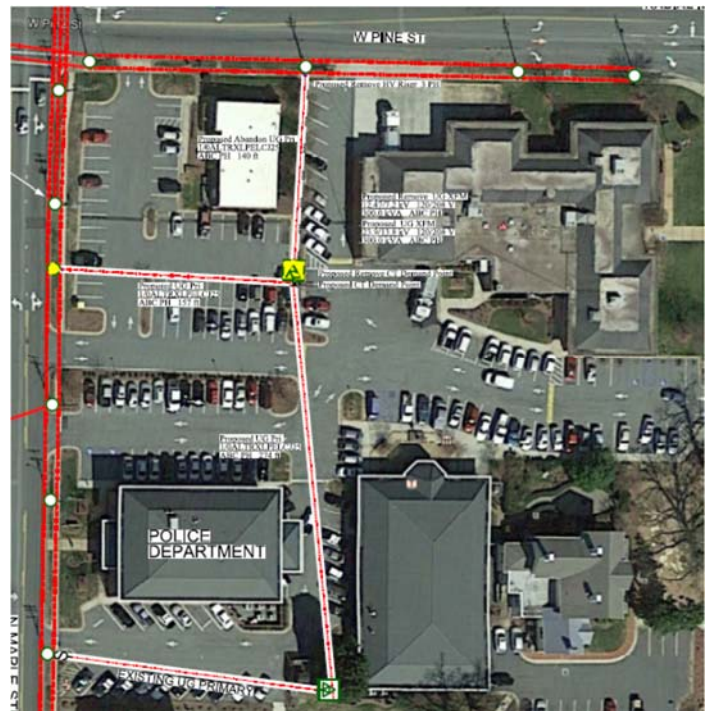
## REQUESTED ACTION:

Approve Resolution to Grant Easement to Duke Energy Carolinas, LLC to install and maintain facilities at the City Hall property.

## BACKGROUND/SUMMARY:

Over the years, the City Hall building has been plagued with the loss of power which has, at times, caused major disruption to citywide operations due to the fact that internet and data traffic for all City departments run through City Hall. Moreover, these disruptions have also affected the public's access to pay their bills, register for athletics, etc...

This issue is due to the service line feeding our building being old and in need of replacement. Duke Energy has been contacted numerous times about this issue and is now seeking to remedy the situation by replacing the line tentatively on May 21, 2017. In order to proceed, Duke Energy is requesting a twenty (20) foot wide easement area for the purposes of transmitting and distributing electrical energy and for communication purposes. This easement area will provide Duke Energy with the necessary space to replace the line that feeds City Hall.



## FISCAL IMPACT:

None

## STAFF RECOMMENDATION:

Approval. The service line is in desperate need of replacement and granting this easement will provide Duke Energy with the necessary space to remedy the issue.

## SUGGESTED MOTION(S):

I move we approve the Resolution to Grant Easement to Duke Energy Carolinas, LLC for the purposes of transmitting and distributing electrical energy and for communication purposes.

**RESOLUTION TO GRANT EASEMENT TO DUKE ENERGY CAROLINAS, LLC AT  
CITY HALL PROPERTY**

**WHEREAS**, The City of Graham “City” owns the parcels identified by Alamance County GIS parcel id(s) 145789, 145774, and 145775, also known as 201 South Main Street, 206 South Maple Street, and 116 West Pine Street;

**WHEREAS**, the City Hall building has been plagued with power loss over the years due to the need of a service line replacement;

**WHEREAS**, Duke Energy Carolina’s LLC requests twenty (20) foot wide easement for the purposes of transmitting and distributing electrical energy and for communication purposes;

**WHEREAS**, G.S. 160A-273 permits a city to grant easements over, through, under, or across any city property;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Graham that:

The City of Graham (“City”) hereby grants an easement to Duke Energy Carolina’s LLC for the purposes of transmitting and distributing electrical energy and for communication purposes.

**BE IT FURTHER RESOLVED** that the City Manager and City Clerk are hereby authorized to execute the necessary documents on behalf of the City.

Adopted this 2<sup>nd</sup> day of May 2017.

ATTEST:

\_\_\_\_\_  
Darcy Sperry, City Clerk

\_\_\_\_\_  
Jerry Peterman, Mayor

EASEMENT

NORTH CAROLINA  
ALAMANCE COUNTY

Prepared By: T Craver  
Return To: Duke Energy Carolinas  
2500 Fairfax Rd  
Greensboro, NC 27407

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

WITNESSETH:

THAT GRANTOR, for and in consideration of the sum of ONE DOLLAR (\$1.00), the receipt and sufficiency of which are hereby acknowledged, does hereby grant unto DEC, its successors, lessees, licensees, transferees, permittees, apportionees, and assigns, the perpetual right, privilege, and easement to go in and upon the land of GRANTOR situated in Graham Township, described as follows: Parcels 145789, 145774, 145775, being the property described in deeds to the City of Graham recorded in Deed Book 320, Page 165, Deed Book 884, Page 975, and Deed Book 1732, Page 351, Alamance County Registry, (the "Property"), LESS AND EXCEPT any prior out-conveyances, and to construct, reconstruct, operate, patrol, maintain, inspect, repair, replace, relocate, add to, modify and remove electric and/or communication facilities thereon including but not limited to, supporting structures such as poles, cables, wires, underground conduits, enclosures/transformers, vaults and manholes and other appurtenant apparatus and equipment (the "Facilities") within an easement area being twenty (20) feet wide, together with an area ten (10) feet wide on all sides of the foundation of any DEC enclosure/transformer, vault or manhole (the "Easement Area"), for the purpose of transmitting and distributing electrical energy and for communication purposes of DEC and Incumbent Local Exchange Carriers. The centerline of the Facilities shall be the center line of the Easement Area.

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

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

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

CITY of GRAHAM

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

Frankie Maness, City Manager

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

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, North Carolina, certify that Frankie Maness personally appeared before me this day and acknowledged that he is the City Manger of the City of Graham, and that by authority duly given and as the act of said City, the foregoing EASEMENT was signed.

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



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

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

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



# STAFF REPORT

Prepared by Nathan Page, Planning Director

## Text Amendment for: Article VI. Appearance Commission

**Type of Request:** Text Amendment

## Meeting Dates

Planning Board on March 21, 2017

City Council on April 4, 2017, May 2, 2017

## Contact Information

N/A

## Summary

The Appearance Commission has proposed a rewrite of their enabling language within the Development Ordinance. This amendment also removes the requirement for the Tree Board members to be members of the Appearance Commission. City Council reviewed this item at their April 4<sup>th</sup> meeting and requested that staff bring back the language with suggested changes at the next Council meeting.

**The following amendments to the Development Ordinance are proposed:**

### Existing Language:

#### Section 10.290 Created; duties

There is hereby created a commission to be known as the Graham appearance commission. The duties and functions of the commission shall be as follows:

- (1) The appearance commission shall be an advisory board to the mayor and city council and shall have no administrative duties.
- (2) The appearance commission is established for the purpose of promoting, planning, advising and encouraging the citizens of Graham to participate in providing for an appreciation of aesthetic values.
- (3) The appearance commission may accept gifts or bequests with the approval of city council.

#### Section 10.291 Membership; appointments

The appearance commission shall be composed of 15 members, appointed by the city council. The commission shall consist of a minimum of 14 residents of the city; one member may be a nonresident of the city who resides in its planning and zoning jurisdiction.

#### Section 10.292 Officers; voting

The appearance commission shall elect a chairman, a vice-chairman and a secretary from its membership. Each member shall have the right to vote on any question

### Project Name

Appearance Commission  
(AM1701)

### Location

city-wide

### Current Zoning

not applicable

### Proposed Zoning

not applicable

### Overlay District

not applicable

### Staff Recommendation

see below



**Section 10.293. Meetings**

The appearance commission may adopt a suitable time and place for its meetings.

**Section 10.294. Removal**

A member of the appearance commission may be removed by the city council for cause and upon the recommendation of at least 10 members of the commission, provided that any member who misses two consecutive meetings without cause may be removed by the city council.

**Section 10.295. Term of office**

Terms of office for commission members shall be four years. Nothing in this section shall affect the terms of members first appointed. Members may be appointed to succeed themselves.

**Sections 10.296-10.309 Reserved****Proposed Language:****Section 10.290 Created; duties**

The purpose of the Appearance Commission shall be to serve as an advisor to City Council by identifying and making recommendations for ways to improve the appearance of the City of Graham.

The duties of the Appearance Commission will be to:

- ~~a. develop a partnership between citizens, private organizations, businesses, and government agencies for the purpose of bringing attention to the City of Graham through visual appeal;~~
- ~~b. promote programs for business owners that will assist them in making improvements to the exterior façade of their establishments;~~
- ~~c. encourage community involvement by initiating and planning events that will contribute to the City's aesthetic appeal;~~
- ~~d. serve as a resource for residents seeking information regarding issues throughout the City that have an impact on its appearance.~~
- a. serve as an advisory board to the mayor and city council and shall have no administrative duties;
- b. develop a partnership between citizens, private organizations, businesses, and government agencies for the purpose of bringing attention to the City of Graham through visual appeal;
- c. promote programs for business owners that will assist them in making improvements to the exterior façade of their establishments;
- d. encourage community involvement by initiating and planning events that will contribute to the City's aesthetic appeal;
- e. The appearance commission may accept gifts or bequests with the approval of city council.

**Section 10.291 Membership; appointments**

~~The Appearance Commission shall be limited to a total membership of seven (7) persons. Members of the Appearance Commission will be appointed by the Graham City Council. Appearance Commission members shall serve a three-year term and may be appointed to subsequent three-year terms. If a member leaves mid-term, that vacancy will not be filled until the following term. If a conflict of interest, as defined under Section 10.2, should arise for a member, they will be required to bring it to the attention of the Commission and abstain from discourse and voting regarding such matters. Members~~

~~serving on the Appearance Commission will be required to reside within the city limits or ETJ of Graham, NC for the entirety of their term.~~

The Appearance Commission shall be limited to a total membership of seven (7) persons with up to two (2) members residing in the extraterritorial jurisdiction of Graham. Members shall be appointed by the Graham City Council upon receipt of a completed application submitted to the city clerk's office. Appearance Commission members shall serve a three-year term and may be appointed to subsequent three-year terms.

## **Section 10.292            Meetings; ~~removal~~**

The Graham Appearance Commission shall hold regularly scheduled meetings on a day and time agreed upon by a majority of the members. ~~Any member who misses two meetings during the current year may be subject to removal from the Appearance Commission. A member may be removed for cause by the City Council for reasons including, but not limited to, repeated unexcused absences. If a member is absent or expects to be absent for reasons of health or time out-of-town, that member may request that the absence(s) be excused. Before a member is removed for cause, they shall receive notification from the City Council describing the proposed action and giving the member an opportunity to state why the action should or should not be taken.~~

## **Section 10.29~~34~~            Voting**

~~Each regular member shall have one vote equal in weight. A quorum consists of at least 50% of current Commission membership and voting members must be present for any binding vote to take place.~~

For any meeting of the Appearance Commission, a quorum consists of a majority of its members. Votes taken by the commission shall "pass" when majority of those members present vote in favor of a motion. If a conflict of interest, as defined under Section 10.2, should arise for a member, they will be required to bring it to the attention of the Commission and abstain from discourse and voting regarding such matters.

## **Section 10.29~~45~~            Officers**

The Appearance Commission shall elect a Chair, Vice-Chair, and Secretary by a majority vote of the Commission members present. ~~Officers will serve for a period of one term (September through June). Officers may succeed themselves for an indefinite period based on Commission approval and subsequent voting. An officer can be removed from his/her position by a vote that is two-thirds of quorum. Advance notice of the motion to remove an officer must be given to the officer seven (7) days prior to the meeting at which the vote on the motion will be taken. Officers will serve for a period of one year or until he/she is re-elected or his/her successor is elected.~~

## **Section 10.29~~3~~            Distribution of Funds**

~~Request and administration of funds necessary to support the activities of the Appearance Commission are the responsibility of the Commission Chairman. Approval for funding requests for Commission-~~

~~sponsored activities will come from a vote by the Appearance Commission.~~

## Section 10.29~~56~~-10.309

Reserved

### Existing Language:

#### DIVISION 2. TREE BOARD

##### Section 10.320 Created; composition; qualifications

There is hereby created a tree board for the city, which shall consist of five (5) members, citizens and residents of this city, who shall be appointed by the mayor with the approval of the city council. The members of the tree board shall be members of the appearance commission. The city horticulturist shall be an ex officio member of the tree board.

### Proposed Language:

#### DIVISION 2. TREE BOARD

##### Section 10.320 Created; composition; qualifications

There is hereby created a tree board for the city, which shall consist of five (5) members, citizens and residents of this city, who shall be appointed by the mayor with the approval of the city council. ~~The members of the tree board shall be members of the appearance commission.~~ The city horticulturist shall be an ex officio member of the tree board.

### Conformity to The Graham 2035 Comprehensive Plan and Other Adopted Plans

Not applicable.

#### Applicable Planning District Policies and Recommendations

- Not applicable; city-wide.

#### Planning District

All

#### Development Type

All

### Staff Recommendation

Due to the amendment being recommended by the Appearance Commission, staff feels the City Council should use their discretion to determine the alignment with their vision for the future of the City.

- The proposed amendment, being proposed by the Appearance Commission, more clearly defines the future requirements and duties for Appearance Commission Members.

## PLANNING ZONING BOARD

Tuesday, April 18, 2017

The Planning & Zoning Board held their regular meeting on Tuesday, April 18, 2017 in the Council Chambers of the Graham Municipal Building at 7:00 p.m. Board members present were Ricky Hall, Bonnie Blalock, Barry Hicks, Nate Perry, Kenneth Dixon and Dean Ward. Member absent was Michael Benesch. Staff members present were Nathan Page, Planning Director, Aaron Holland, Assistant City Manager and Martha Johnson Zoning & Inspection Technician. Vice Chair Ricky Hall welcomed the Planning Board's new member Nate Perry. Mr. Hall then called the meeting to order, gave the Overview of the Board, general meeting rules and he gave the invocation.

1. Approval of the March 21, 2017 meeting minutes. Dean Ward made a motion for approval, second by Bonnie Blalock. All voted in favor. Next all members of the Planning Board were sworn in by Martha Johnson, notary.
2. Nomination of Chair and Vice Chair: Mr. Hall stated the Board needed new elections for officers since Andy Rumley resigned from the Board. Dean Ward nominated Ricky Hall for Chair, second by Bonnie Blalock. All voted aye. Bonnie Blalock nominated Dean Ward for Vice Chair, second by Ricky Hall. All voted aye.
3. Ricky Hall asked Nathan Page to elaborate concerning the SUP1701 for 304 Mallard Creek Dr. that was tabled at the last Planning Board meeting that got removed. Mr. Page said the case was for a family care or group home and during the application process that it came out it was only a family care home. That was a use by right for that location and it didn't need a Special Use Permit.
4. New Business:

**a. AM1702 Planning Board Requirements.** An amendment by City Council to permit real estate owners within the City Limits to serve on the Planning Board.

The following people spoke against this amendment for various reasons:

Eric Crissman	208 Albright Avenue
Tom Boney	114 W Elm Street
Jan Searls	526 E Pine Street

It was the consensus of the Board that they were against this change. Dean Ward made a motion to deny this approval, second by Bonnie Blalock. All voted aye to deny this amendment.

**b. AM1703 Food Trucks.** An amendment by Debarah Wilson to permit Temporary Outdoor Sales within the Downtown Business District. Mr. Page stated that Ms. Wilson has proposed amending the permitted uses for the B-1 in the Development Ordinance. This request is being made to assist those who are using the City of Graham for an event or festival to allow food trucks at planned events in Downtown Graham. There was also alternative language proposed for allowing food trucks not only for events and require not to be located within 100 feet of primary entrance to a competing business along with written permission from the owner. The following people spoke concerning this amendment:

Tom Boney	114 W Elm Street
Jennifer Talley	808 Sideview Street
Chuck Talley	808 Sideview Street
Debarah Wilson	110 Home Avenue
Janet Searls	526 E Pine Street
Eric Crissman	208 Albright Avenue

A citizen expressed concern about public health and safety with the food trucks, as well as stating they have significant contribution to the City of Graham or verification of paying sales tax. It was also mentioned that food trucks are in and very popular and they would give the citizens more options to eat. Some of the Board members would like to see the food trucks be allowed and felt the City needs something to get folks into downtown Graham without hurting the restaurants already there. Guidelines and restrictions need to be setup by the City for food trucks.

Ricky Hall made a motion to approve the alternative language part of the amendment, second by Nate Perry. The vote was 2 to 4 with Dean Ward, Bonnie Blalock, Barry Hicks and Kenneth Dixon dissenting. The motion was defeated. Dean Ward made a motion to table this item and send it back to the City Planner and City Council for more review and outreach to the public. Barry Hicks seconded the motion. The vote was 4 to 2 with Ricky Hall and Kenneth Dixon dissenting.

**c. AM1704 Appeal Fee.** An amendment proposed by staff for a fee to offset administrative expenses for appeals, to be refunded if the appeal is overturned. Mr. Page stated this was an amendment which the Planning Board had discussed at a previous meeting and it has come around again with it nearing budget time. There were several comments made concerning the legality of this amendment and possibly would be necessary to have the City Attorney review this before recommending it to City Council. Dean Ward made a motion to deny this appeal fee because of depriving citizens of due process, second by Bonnie Blalock. The vote was 5 to 1 to deny with Ricky Hall casting the dissenting vote.

No further business the meeting was adjourned.

Respectfully Submitted,  
Martha Johnson





# STAFF REPORT

Prepared by Nathan Page, Planning Director

**Text Amendment for: Sections 10.46 Duties of zoning enforcement officer, board of adjustment and city council as to matters of appeal**

**Type of Request:** Text Amendment

## Meeting Dates

Planning Board on April 18, 2017

City Council on May 2, 2017

## Contact Information

N/A

## Summary

The Planning Board has proposed adding a fee for appeals to the Ordinance, in an attempt to cover the costs the City must bear when they provide public notice for appeals, and to help offset the staff requirements for the quasi-judicial hearings.

**The following amendments to the Development Ordinance are proposed:**

Existing Language:

**Section 10.46**                      **Duties of zoning enforcement officer, board of adjustment and city council as to matters of appeal**

It is the intention of this article that all questions arising in connection with the enforcement of this article shall be presented first to the zoning enforcement officer, that such questions shall come before the board of adjustment only on appeal from the zoning enforcement officer, and that from the decision of the board of adjustment recourse shall be to the courts as provided by law. It is further the intention of this article that the duties of the Graham City Council in connection with this article shall not include the hearing of appeals from the action of the zoning enforcement officer. The duties of the city council in connection with this article shall be only the duty of considering and passing upon any proposed amendment or repeal of this article.

Proposed Language:

**Section 10.46**                      **Duties of zoning enforcement officer, board of adjustment and city council as to matters of appeal**

It is the intention of this article that all questions arising in connection with the enforcement of this article shall be presented first to the zoning enforcement officer, that such questions shall come before the board of adjustment only on appeal from the zoning enforcement officer, and that from the decision of the board of adjustment recourse shall be to the courts as provided by law. In the event of appeal of

### Project Name

Fee for Appeals (AM1704)

### Location

city-wide

### Current Zoning

not applicable

### Proposed Zoning

not applicable

### Overlay District

not applicable

### Staff Recommendation

Approval

an administrative decision, a fee fixed by the city council and kept on file in the office of the city clerk shall be paid to the City of Graham to cover the costs of advertising and a portion of the administrative expenses involved. However, in the event that the staff decision is overturned by the Board of Adjustment, the fee shall be returned to the applicant in full.

It is further the intention of this article that the duties of the Graham City Council in connection with this article shall not include the hearing of appeals from the action of the zoning enforcement officer. The duties of the city council in connection with this article shall be only the duty of considering and passing upon any proposed amendment or repeal of this article.

## Conformity to The Graham 2035 Comprehensive Plan and Other Adopted Plans

Not applicable.

### Applicable Planning District Policies and Recommendations

- Not applicable; city-wide.

#### Planning District

All

#### Development Type

All

## Staff Recommendation

Based on the comprehensive plan, staff **recommends approval** of the text amendment. The following supports this recommendation:

- The proposed amendment will reduce the incidence of frivolous appeals, thus decreasing the administrative burden on the City. However, it will allow valid cases to move forward without a financial burden for applicants.



## PLANNING BOARD Recommendation & Statement of Consistency

Per NCGS 160A-383, zoning regulations shall be made in accordance with an adopted comprehensive plan and any other officially adopted plan that is applicable. The Planning Board shall advise and comment on whether the proposed amendment is consistent with "The Graham 2035 Comprehensive Plan" and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the City Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with "The Graham 2035 Comprehensive Plan" shall not preclude consideration or approval of the proposed amendment by the City Council.

### Fee for Appeals (AM1704)

#### Type of Request

Text Amendment

#### Meeting Dates

Planning Board on April 18, 2017

City Council on May 2, 2017

☐ I move to **recommend APPROVAL** of the application as presented.

☒ I move to **recommend DENIAL**.

☐ The application **is consistent** with *The Graham 2035 Comprehensive Plan*.

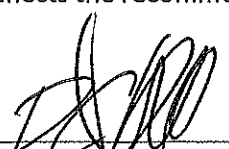
☐ The application **is not fully consistent** with *The Graham 2035 Comprehensive Plan*.

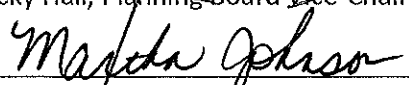
The action is reasonable and in the public interest for the following reasons:

depriving individuals of due process - 10th against  
property is acceptable

This report reflects the recommendation of the Planning Board, this the 18<sup>th</sup> day of April, 2017.

Attest:

  
Ricky Hall, Planning Board Vice-Chair

  
Martha Johnson, Secretary



## City Council Decision & Statement of Consistency

*Per NCGS 160A-383, zoning regulations shall be made in accordance with an adopted comprehensive plan and any other officially adopted plan that is applicable. When adopting or rejecting any zoning amendment, the City Council shall also approve a statement describing whether its action is consistent with the "The Graham 2035 Comprehensive Plan" and briefly explaining why the City Council considers the action taken to be reasonable and in the public interest. The Planning Board shall provide a written recommendation to the City Council, but a comment by the Planning Board that a proposed amendment is inconsistent with the "The Graham 2035 Comprehensive Plan" shall not preclude consideration or approval of the proposed amendment by the City Council.*

### Fee for Appeals (AM1704)

#### Type of Request

Text Amendment

#### Meeting Dates

Planning Board on April 18, 2017

City Council on May 2, 2017

Choose one...

☐ I move that the text amendment be **APPROVED**.

☐ I move that the text amendment be **DENIED**.

Choose one...

☐ The text amendment is **consistent** with *The Graham 2035 Comprehensive Plan*.

☐ The text amendment is **not fully consistent** with *The Graham 2035 Comprehensive Plan*.

State reasons...

This action is reasonable and in the public interest for the following reasons:

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This report reflects the decision of the City Council, this the 2<sup>nd</sup> day of May, 2017.

Attest:

\_\_\_\_\_  
Gerald R. Peterman, Mayor

\_\_\_\_\_  
Darcy L. Sperry, City Clerk



# STAFF REPORT

Prepared by Nathan Page, Planning Director

## Text Amendment for: Section 10.17 Created

**Type of Request:** Text Amendment

## Meeting Dates

Planning Board on April 18, 2017

City Council on May 2, 2017

## Contact Information

N/A

## Summary

The City Council has proposed amending the residency requirement for Planning Board members to the Development Ordinance

## The following amendments to the Development Ordinance are proposed:

Existing Language:

### Section 10.17 Created

There is hereby created a planning board, referred to in this article as the "board," to be composed of seven members, five residents and citizens of the City of Graham, appointed by the city and two members appointed by the county commissioners to represent the extraterritorial area. All members of the board, before entering upon their duties, shall take and subscribe to the oath of office required to be taken by officials of the city.

Proposed Language:

### Section 10.17 Created

There is hereby created a planning board, referred to in this article as the "board," to be composed of seven members, five residents and citizens of the City of Graham, or real property owners within the City limits, appointed by the city and two members appointed by the county commissioners to represent the extraterritorial area. All members of the board, before entering upon their duties, shall take and subscribe to the oath of office required to be taken by officials of the city.

## Conformity to The Graham 2035 Comprehensive Plan and Other Adopted Plans

Not applicable.

## Applicable Planning District Policies and Recommendations

- Not applicable; city-wide.

### Project Name

PB Requirements (AM1702)

### Location

city-wide

### Current Zoning

not applicable

### Proposed Zoning

not applicable

### Overlay District

not applicable

### Staff Recommendation

see below

### Planning District

All

### Development Type

All

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**Staff Recommendation**

Because of the nature of this amendment, staff acknowledges that the authority to appoint and remove members of the Planning Board lie solely with the City Council, who shall make decisions regarding requirements.

- The proposed amendment relaxes who may serve on the Planning Board, and allows the City Council more discretion regarding who may best represent the City's goals.





## PLANNING BOARD Recommendation & Statement of Consistency

Per NCGS 160A-383, zoning regulations shall be made in accordance with an adopted comprehensive plan and any other officially adopted plan that is applicable. The Planning Board shall advise and comment on whether the proposed amendment is consistent with "The Graham 2035 Comprehensive Plan" and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the City Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with "The Graham 2035 Comprehensive Plan" shall not preclude consideration or approval of the proposed amendment by the City Council.

### PB Requirements (AM1702)

#### Type of Request

Text Amendment

#### Meeting Dates

Planning Board on April 18, 2017

City Council on May 2, 2017

☐ I move to **recommend APPROVAL** of the application as presented.

☒ I move to **recommend DENIAL**.

☐ The application **is consistent** with *The Graham 2035 Comprehensive Plan*.

☒ The application **is not fully consistent** with *The Graham 2035 Comprehensive Plan*.

The action is reasonable and in the public interest for the following reasons:

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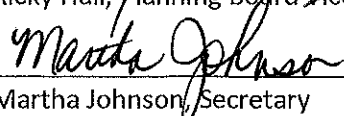


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This report reflects the recommendation of the Planning Board, this the 18<sup>th</sup> day of April, 2017.

Attest:

  
Ricky Hall, Planning Board Vice-Chair

  
Martha Johnson, Secretary



## City Council Decision & Statement of Consistency

*Per NCGS 160A-383, zoning regulations shall be made in accordance with an adopted comprehensive plan and any other officially adopted plan that is applicable. When adopting or rejecting any zoning amendment, the City Council shall also approve a statement describing whether its action is consistent with the "The Graham 2035 Comprehensive Plan" and briefly explaining why the City Council considers the action taken to be reasonable and in the public interest. The Planning Board shall provide a written recommendation to the City Council, but a comment by the Planning Board that a proposed amendment is inconsistent with the "The Graham 2035 Comprehensive Plan" shall not preclude consideration or approval of the proposed amendment by the City Council.*

### PB Requirements (AM1702)

#### Type of Request

Text Amendment

#### Meeting Dates

Planning Board on April 18, 2017

City Council on May 2, 2017

Choose one...

☐ I move that the text amendment be **APPROVED**.

☐ I move that the text amendment be **DENIED**.

Choose one...

☐ The text amendment is **consistent** with *The Graham 2035 Comprehensive Plan*.

☐ The text amendment is **not fully consistent** with *The Graham 2035 Comprehensive Plan*.

State reasons...

This action is reasonable and in the public interest for the following reasons:

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This report reflects the decision of the City Council, this the 2<sup>nd</sup> day of May, 2017.

Attest:

\_\_\_\_\_  
Gerald R. Peterman, Mayor

\_\_\_\_\_  
Darcy L. Sperry, City Clerk



# STAFF REPORT

<b>SUBJECT:</b>	HR INTERN SCHOOL PROJECT – CREATING MISSION, VISION AND VALUES STATEMENTS FOR THE CITY OF GRAHAM
<b>PREPARED BY:</b>	LORRIE ANDREWS, HUMAN RESOURCES MANAGER

## REQUESTED ACTION:

Receive report and discuss internship project related to Mission, Vision, and Values statements.

## BACKGROUND/SUMMARY:

The City of Graham partners with Elon University to afford for an internship program for its students. This partnership yielded our first intern in Human Resources during the spring semester. Dakota DeYent, a senior Human Services major and candidate for graduation in May, was tasked with several projects for the duration of his internship. His first project was to assist with an orientation program for our new hires and the second project was to help program and implement a new performance evaluation system. Both programs are built around Mission, Visions and Values. However, Mr. DeYent discovered during this process that the City did not have any record of establishing these statements, and coincidentally, his class project was structured around evaluating Mission, Vision, and Values. Due to the absence of these statements, his class project evolved into researching the potential creation of Mission, Vision, and Values statements for the City of Graham and demonstrating their application to the City.

To create the Mission, Vision, and Value statements, research found that input is needed from every section, department, or other invested groups in order to create an effective and widely accepted statement. To do this, employees, managers and members of the City Council were surveyed. The responses were surprisingly similar across departments and individuals, and through these responses a draft was created and attached for future consideration.

## FISCAL IMPACT:

N/A

## STAFF RECOMMENDATION:

Staff requests that Mr. DeYent's research and conclusions be considered in the development of these guiding statements.

## SUGGESTED MOTION(S):

N/A

## MISSION STATEMENT

*We are dedicated to creating an attractive, safe, and great place to reside, work, and play. We are committed to efficiently providing exceptional services to our employees and citizens.*

The logo for the Town of Graham, North Carolina, featuring a stylized bird icon above the word "GRAHAM" and "North Carolina" below it.

## VISION STATEMENT

*To establish our identity, plan for our future, preserve our history, and enhance our quality of life.*

The logo for the Town of Graham, North Carolina, featuring a stylized bird icon above the word "GRAHAM" and "North Carolina" below it.

## CORE VALUES

*Integrity – Honesty and ethics guide our behavior and decisions.*

*Identity - We recognize that it is not our own perception of who we are, it is our citizens' perceptions that are the most important.*

*Respect – We will treat all people equally and with dignity.*

*Reliability – We will consistently and readily provide quality services.*

*Team Work – We will work together to get the job done.*

The logo for the Town of Graham, North Carolina, featuring a stylized bird icon above the word "GRAHAM" and "North Carolina" below it.



# STAFF REPORT

SUBJECT:	ACCEPTANCE OF CONNECT NC BOND GRANT AND APPROVAL OF PROJECT BUDGET FOR AN INCLUSIVE PLAYGROUND AT GRAHAM REGIONAL PARK
PREPARED BY:	FRANKIE MANESS & BRIAN FAUCETTE

## REQUESTED ACTION:

Accept the Connect NC Bond Grant and approve a project budget for the planning and construction of an inclusive playground to be located at Graham Regional Park.

## BACKGROUND/SUMMARY:

In April of 2017, the City of Graham opened the first section of Graham Regional Park. Future plans for the Park include multiple athletic fields, a recreation center and several playgrounds. One of the playgrounds planned to be located near the recreation center is an inclusive playground. In late 2016, the City applied for a Connect NC Bond Grant to assist in providing the inclusive playground. An Inclusive playground is an intergenerational playground designed for individuals to play together regardless of physical challenges or disabilities. An inclusive playground goes beyond ADA accessibility by focusing on all types of disabilities, temporary or permanent and is designed not just for those confined to wheelchairs.

The City has been awarded \$500,000 from the Connect NC Bond Grant which requires acceptance by May 15, 2017 and construction to begin by April 30, 2020. When approving the application for the grant in 2016, Council agreed to provide a match in the amount of \$350,000. The proposed \$850,000 project includes a fenced playground featuring inclusive equipment and a poured in place rubber safety surface, parking lot, sidewalks, restroom, water fountain and associated planning, grading, utilities and contingency.

## FISCAL IMPACT:

Matching funds in the amount of \$350,000 are proposed to come from the Fund Balance in the General Fund.

## STAFF RECOMMENDATION:

Approval

## SUGGESTED MOTION(S):

I move we accept the \$500,000 Connect NC Bond Grant and approve the project budget.

## CAPITAL PROJECT ORDINANCE GRAHAM REGIONAL PARK INCLUSIVE PLAYGROUND

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAHAM, NORTH CAROLINA**, that pursuant to Section 13.2, Chapter 159 of the General Statutes of North Carolina, the following Capital Project Ordinance is hereby adopted:

Section 1. The Project authorized is the Graham Regional Park Inclusive Playground.

Section 2. The officials of the City of Graham are hereby directed to proceed with this program within the terms of the project. Staff is authorized to execute required grant documents and change orders within the budget ordinance.

Section 3. The following revenues are anticipated to be available to the City to complete the project:

Connect NC Bond Grant	\$500,000
Proceeds from Fund Balance in General Fund	<u>\$350,000</u>
	\$850,000

Section 4. The following amounts are appropriated for this project:

Professional Services	42,500
Construction	775,000
Contingency	<u>32,500</u>
	\$850,000

Section 5. The Finance Director shall report on the financial status of this project as directed by the City Council and will inform the Council of any unusual occurrences.

Section 6. Copies of this project ordinance shall be made available to the City Manager and the Finance Director for direction in carrying out this project.

Section 7. That this ordinance shall take effect on July 1, 2017.

This the 2<sup>nd</sup> day of May, 2017.

\_\_\_\_\_  
Jerry Peterman - Mayor

ATTEST:

\_\_\_\_\_  
Darcy Sperry, City Clerk







*Parks and  
Recreation  
Authority  
Members*

*Neal Lewis, Chair*

*Ann Babcock*

*Lydia Boesch*

*Chad Brown*

*Vinnie Goel*

*Lewis Ledford*

*Cynthia Tart*

*Lisa Wolff*

*Edward W. Wood*

## **North Carolina Connect NC Bond (CNCB) Grant**

March 28, 2017

The Honorable Jerry Peterman  
Mayor  
City of Graham  
637 Johnson Avenue  
Graham, North Carolina 27253

Dear Mayor Peterman:

As Chairman of the North Carolina Parks and Recreation Authority, I am pleased to congratulate you and the citizens of the City of Graham on being selected to receive funding from the Connect NC Bond Grant (CNCB). The Authority received 45 applications requesting more than \$9 million in assistance. These projects were of very high quality and the successful applications were truly outstanding.

The City of Graham will receive a grant for \$500,000 to fund the City of Graham Inclusive Playground project. The Division of Parks and Recreation will be sending additional details regarding the CNCB grant shortly.

We are excited about the potential of this project and look forward to working with you to make these resources available to your community. Parks and recreation contribute to healthier lifestyles, stronger communities and the quality of life that makes North Carolina a great place to live for citizens of all abilities. The Authority loves to see the impacts of our funding decisions and kindly asks that you consider informing staff of ground breaking ceremonies and ribbon cuttings when they are planned. Again, congratulations and we look forward to seeing the great work that we know you will do!

Sincerely,

A handwritten signature in blue ink that reads "Neal Lewis".

Neal Lewis, Chairman  
N.C. Parks and Recreation Authority

cc: Matt Whitlow, NCSU Recreation Resources Service



## North Carolina Division of Parks and Recreation

Governor Roy Cooper

Secretary Susi H. Hamilton

April 1, 2017

Mr. Frankie Maness  
City Manager  
City of Graham  
PO Drawer 357  
Graham, NC 27253

Dear Mr. Maness:

Enclosed please find two originals of the contract between the City of Graham and the North Carolina Department of Natural and Cultural Resources for the recently awarded Connect NC Bond grant. In order for the Department to execute these documents, you must sign and notarize both contract documents, then return them to the following address:

Ms. Marcia Lieber  
NC Division of Parks and Recreation  
1615 Mail Service Center  
Raleigh, NC 27699-1615

Once these signed and notarized contracts are returned, we will sign and return one to you for your records, along with further grant administration information. Please be advised that no work to be performed under this contract can take place until both parties have executed the contract. Failure to return the documents for execution by the department within 45 days after receipt may result in the department's withdrawal of the offered contract.

Should you have any questions regarding this contract, please contact Ms. Marcia Lieber at 919-707-9303.

Sincerely,

Carol Tingley  
Deputy Director, NC Division of Parks and Recreation

Enclosures

Michael A. Murphy, Director  
NC Division of Parks and Recreation  
1615 MSC - Raleigh, NC 27699-1615  
919.707.9300 / ncparks.gov

NORTH CAROLINA STATE PARKS  
*Naturally Wonderful*



STATE OF NORTH CAROLINA  
COUNTY OF WAKE

CONTRACTOR'S FEDERAL I.D.  
56-6001234

## Connect NC Bond Project Agreement

**Grantee: City of Graham**  
**Project Number: 2017 CNC 04**

**Project Title:** City of Graham Inclusive Playground

**Period Covered By This Agreement: 5/1/2017 to 4/30/2020**

**Project Scope (Description of Project):** Development includes inclusive playground equipment, accessible surface, shade structures, fencing, family restroom with water fountain, parking lot, sidewalks, utilities, lighting, site preparation, contingency and planning costs.

Project Costs: CONNECT NC BOND Amount \$ 500,000

Local Government Match                      \$ 350,000

## Conditions

The North Carolina Department of Natural and Cultural Resources (hereinafter called the "Department") and the \_\_\_\_ City of Graham\_\_\_\_ (hereinafter referred to as "Grantee", and together "Parties" or "Party") agree to comply with the terms, promises, conditions, plans, specifications, estimates, procedures, project proposals, maps, and assurances described in the North Carolina Parks and Recreation Trust Fund (PARTF) Administrative Rules and Grant Application which are hereby by reference made a part of the CONNECT NC BOND Grant Contract, (hereinafter "Grant" or "Contract"), and which are on file with the Division of Parks and Recreation. In addition, the Department and the Grantee agree to comply with the State of North Carolina's Terms and Conditions as listed in "Attachment A" to this Contract.

Now, therefore, the Parties hereto do mutually agree as follows:

Upon execution of this grant agreement, the Department hereby promises, in consideration of the promises by the Grantee herein, to obligate to the Grantee the grant amount shown above. The Grantee hereby promises to efficiently and effectively manage the funds in accordance with the approved budget, to promptly complete grant assisted activities described above in a diligent and professional manner within the project period, and to monitor and report work performance.

The Parties to this Contract agree and understand that the payment of the sums specified in this Contract is dependent and contingent upon and subject to the appropriation, allocation and availability of funds for this purpose to the Department.

## **Section I. Eligible Project Costs and Fiscal Management**

1. The CONNECT NC BOND grant amount must be matched on at least a ~~dollar for dollar~~ basis by the Grantee. To be eligible, project costs must be incurred during the Contract period, be documented in the grant application, described in the project scope of this agreement, and initiated and/or undertaken after execution of this agreement by the Grantee and the Department.
2. CONNECT NC BOND assistance for land acquisition will be based on the fair market value of real property or the sales price, whichever is less. Value must be based upon an independent appraisal by a licensed appraiser holding a general or residential certification from the North Carolina Appraisal Board. The Department shall review the appraisal as to content and valuation. Approval of appraised amounts rests with the Department. The Grantee agrees to begin development on CONNECT NC BOND acquired land within five (5) years of the date this Contract is signed by the Department and Grantee in order to allow general public access and use.
3. Payment shall be made in accordance with the Contract documents as described in the Scope of Work (Attachment B). Payment for work performed will be made upon receipt and approval of invoice(s) from the Grantee documenting the costs

Dept. Grantee  
(BF) 80/20

6. The Grantee agrees to comply with all applicable federal, state and local statutory provisions governing purchasing, construction, land acquisition, fiscal management, equal employment opportunity and the environment including but not limited to the following:  
Local Government Budget and Fiscal Control Act (G.S. 159-7 to 159-42); Formal Contracts, Informal Contracts and Purchasing (including but not limited to G.S. 44A-26, G.S. 87-1 to 87.15.4, G.S. 133.1 to 133-40, G.S. 143-128 to G.S.143-135; Uniform Relocation Assistance Act (G.S. 133-5 to 133-18); Conflict of Interest (G.S. 14-234); Contractors must use E-Verify (G.S. 143-48.5); Americans With Disabilities Act of 1990 (P.L. 101-336) and ADA Accessibility Guidelines; N.C. State Building Code; and the North Carolina Environmental Policy Act (G.S. 113A-1 to G.S. 113A-12), and Sales Tax Refund (G.S. 105-164.14(c)).
7. The Grantee agrees it provides a drug-free workplace in accordance to the requirements of the Drug-Free Workplace Act of 1988 (43 CFR Part 12, Subpart D).
8. The Grantee agrees to permit periodic audits and site inspections by the Department to ensure work progress in accordance with the approved project, including a close-out inspection upon project completion. After project completion, the Grantee agrees to conduct grant Contract compliance inspections at least once every five (5) years and to submit a Department provided inspection report to the Department.
9. The Grantee agrees land acquired with CONNECT NC BOND assistance shall be dedicated in perpetuity as a recreation site for the use and benefit of the public, the dedication will be recorded in the deed of said property and the property may not be converted to other than public recreation use without approval of the Department. The Grantee agrees to maintain and manage CONNECT NC BOND assisted development/ renovation projects for public recreation use for a minimum period of twenty-five (25) years after project completion.
10. The Grantee agrees to operate and maintain the project site so as to appear attractive and inviting to the public, kept in reasonably safe repair and condition, and open for public use at reasonable hours and times of the year, according to the type of facility and area.
11. The Grantee shall agree to place utility lines developed with CONNECT NC BOND assistance underground.
12. If the project site is rendered unusable for any reason whatsoever, the Grantee agrees to immediately notify the Department of said conditions and to make repairs, at its own expense, in order to restore use and enjoyment of the project by the public.
13. The Grantee agrees not to discriminate against any person on the basis of race, sex, color, national origin, age, residency or ability in the use of any property or facility acquired or developed pursuant to this agreement.
14. The Grantee certifies that it:
  - (a) Has neither used nor will use any appropriated funds for payment to lobbyists;
  - (b) Will disclose the name, address, payment details, and purposes of any agreement with lobbyists whom Grantee or its sub-tier Contractor(s) or sub-grantee(s) will pay with profits or non-appropriated funds on or after December 22, 1989; and,
  - (c) Will file quarterly updates about the use of lobbyists if material changes occur in their use.

### **Section III. Project Termination and Applicant Eligibility**

1. The Grantee may unilaterally rescind this agreement at any time prior to the expenditure of funds on the project described in this Contract.
2. If through any cause, the Grantee fails to fulfill in a timely and proper manner the obligations under this Contract, the Department shall thereupon have the right to terminate this Contract by giving written notice to the Grantee of such termination and specifying the reasons thereof. In that event, the Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed in an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Grantee covered by this Contract.
3. Failure by the Grantee to comply with the provisions and conditions set forth in the formal application, CONNECT NC



## STAFF REPORT

SUBJECT:	IMPACT ALAMANCE GRANT FOR ACTIVE TRANSPORTATION
PREPARED BY:	NATHAN PAGE, PLANNING DIRECTOR

### REQUESTED ACTION:

Approve receipt of grant.

### BACKGROUND/SUMMARY:

The lane widths for much of Pine Street are in excess of what the Manual Uniform Traffic Control Devices (MUTCD), the American Association of State Highway and Transportation Officials (AASHTO), and the National Association of City Transportation Officials (NACTO) recommends. As such, this is an opportunity for Graham to utilize existing right-of-way and construct a bicycle route from the vicinity of Jones Street west along Pine Street until the vicinity of Home Avenue.

Last year Staff began investigating a number of locations, and found this route to be the easiest install from a fiscal point of view, as well as a location with vulnerable road users who are not yet able to operate an automobile. This route would allow students from Graham Middle School to safely ride into the downtown and therefore access the amenities and opportunities located in our Central Business District and help afford residents within several blocks of downtown an active transportation alternative.

The City has secured a \$60,000 grant from Impact Alamance to install bike lanes. Conceptual planning for this route is well underway and the next step of engineering design will indicate the location of on-street parking for Pine Street, as well as the potential treatments for all intersections. Any unexpended funds will be used to create crosswalks at local schools and parks. These will be designed by children in the community, but will be reviewed by Graham and NCDOT staff for conformance with safety requirements.





**FISCAL IMPACT:**

The city should anticipate no out of pocket expenses, as the grant is intended to pay for all portions of the proposed project, from engineering and planning to construction of the bicycle lanes. However, staff time may be used for the installation of the crosswalks.

**STAFF RECOMMENDATION:**

Approval. The Graham 2035 Comprehensive Plan calls for additional Active Transportation options within the City of Graham. Also, Policy 3.3.2 specifically aims to limit street width, reducing roadway lane widths in order to slow down vehicular traffic in areas where bicycle and pedestrian traffic is encouraged. There are other policies and goals related to this theme, most evident under Goal 3.3 Multimodal Street Design but also, strategy 3.2.3 begins to look at an interjurisdictional bicycle route.

**SUGGESTED MOTION(S):**

I move we approve the resolution authorizing the City Manager to accept \$60,000 in grant funds from Impact Alamance.

**RESOLUTION AUTHORIZING ACCEPTANCE OF ACTIVE TRANSPORTATION GRANT  
FUNDS FROM IMPACT ALAMANCE**

**WHEREAS**, Impact Alamance has identified access to active transportation as a need within Alamance County, and has released a call for proposals which suit this need; and

**WHEREAS**, the City of Graham was awarded \$60,000 from Impact Alamance to install bicycle lanes and crosswalks near our schools and parks;

**WHEREAS**, the proposed grant will require staff time for installation, but will pay for all material costs; and

**WHEREAS**, citizens will benefit from the additional travel options, particularly those students at Graham Middle School.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAHAM THAT** the City Manager is authorized to accept a payment of \$60,000 from Impact Alamance that will be utilized to pay for the installation of a bicycle route on Pine Street, as well as the possible installation of crosswalks.

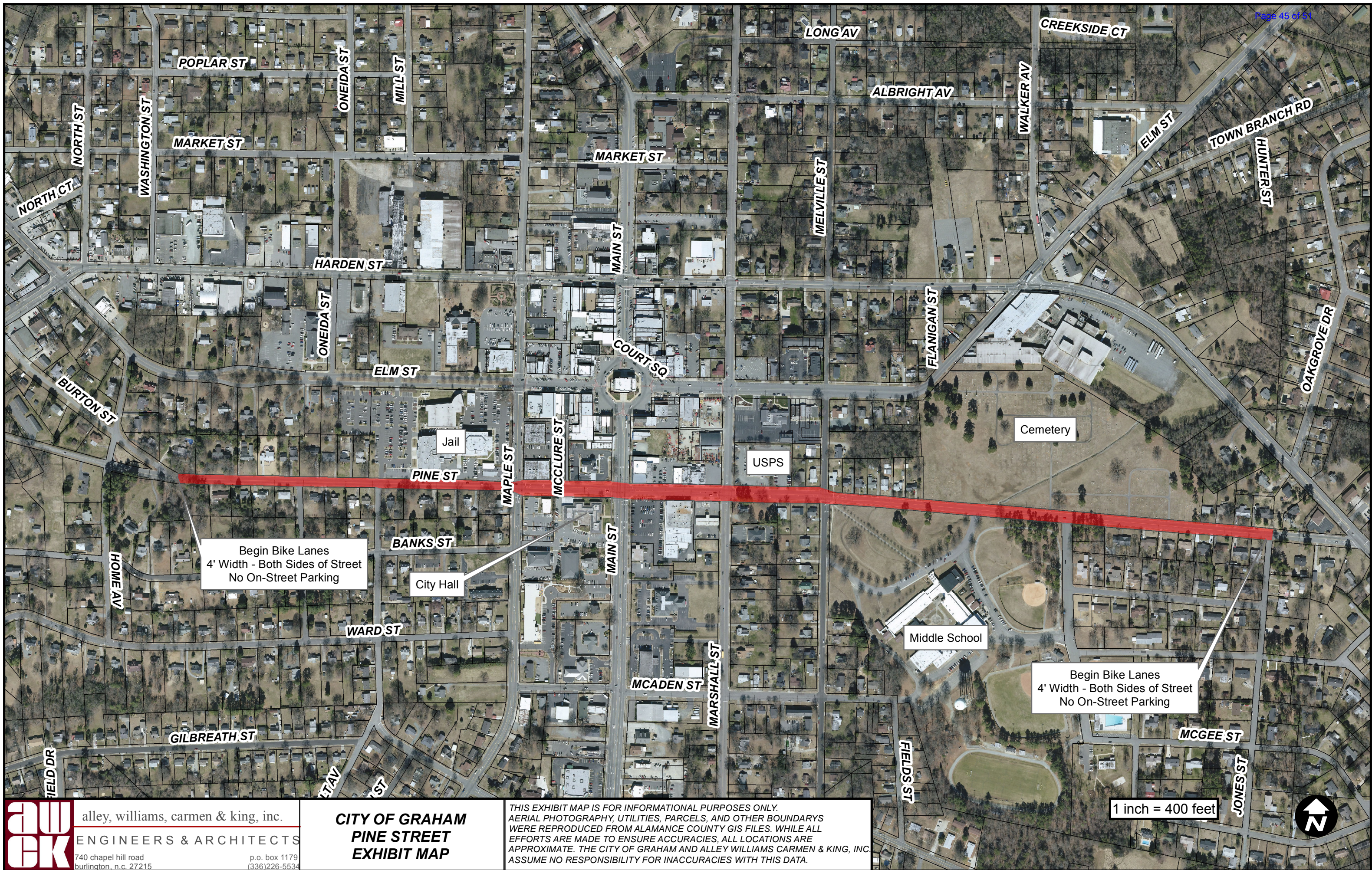
Adopted this the 2<sup>nd</sup> day of May, 2017.

\_\_\_\_\_  
Jerry Peterman - Mayor

ATTEST:

\_\_\_\_\_  
Darcy Sperry, City Clerk









## STAFF REPORT

SUBJECT:	ENCROACHMENT AGREEMENT FOR PRIVATE DEVELOPMENT IN R.O.W.
PREPARED BY:	NATHAN PAGE, PLANNING DIRECTOR

### REQUESTED ACTION:

Discuss right of way encroachment regulation and permit process.

### BACKGROUND/SUMMARY:

City staff has been approached with increasing frequency regarding semi-permanent encroachments into the right of way. Currently, the Ordinances only have a process for a developer to temporarily occupy the sidewalk (e.g. Sidewalk Café at The Press), but this carries the requirement that no structures be attached to the sidewalk. The decreasing popularity of franchise agreements between the City and utilities has also created a need for more formal encroachments into our right of way.



Projects that are currently under review that this would apply to include the Nicks' building, the Brantley Auto building, as well as the old Carver's location. These each have different impacts to the right-of-way, and some share jurisdiction with NCDOT.

There are a number of models from other jurisdictions, from simplistic single page agreements (Hillsborough) to elaborate thirty page documents (Cary). The Planning Department has recommended adoption of an approach similar to the City of Durham.

### FISCAL IMPACT:

Undetermined

### STAFF RECOMMENDATION:

Receive input and undertake legal investigation.

### SUGGESTED MOTION(S):

N/A

Sec. 62-57. - Franchises and licenses.

- (a) *Services in the public way subject to a franchise.* In order to place or maintain facilities in the public way, all persons that operate utilities that the city may franchise under the authority of G.S. 160A-319 or City Charter sections 67 through 73 shall apply for a franchise to be approved by the city council in accordance with the City Charter. Services for which a franchise shall be required include telephone; electrical power; water; wastewater collection, treatment, or disposal; gas production, transmission or distribution; transportation; solid waste collection and disposal; off-street parking systems; and stormwater management and drainage services. All franchises shall provide the city with a performance bond or other performance guarantee. All franchises shall obtain a permit from public works prior to performing work in the public way.
- (b) *Licenses.* A user shall apply for a license prior to placement or maintenance of facilities in the public way in situations in which the city does not issue franchises. The director of public works or designee shall determine, in his/her discretion, the necessity of a license and the type of license, taking into consideration the length of time the facilities will be in the public way, the potential impact on the public way, and the city's prior practice. Facilities for which a license shall be required include monument signs, monument mailboxes, fiber optic cable, irrigation systems, specialty street signs, canopies, specialty pavement structures, and other features.
  - (1) *Monument signs and mailboxes license.* A monument sign and mailbox license may be granted by the city council to construct and maintain a monument sign and/or monument mailbox within the public way.
  - (2) *Telecommunications license.* A telecommunication license may be granted to construct and maintain equipment that transmits/communicates between points specified by the user and provides services that are regulated under the Federal Telecommunications Act of 1996 and are not subject to a franchise agreement. This equipment shall be referred to as telecommunications system. The city council may grant a telecommunications license for users proposing to construct and maintain more than five miles of telecommunications system within the public way. The public works department may grant a telecommunications license for users proposing to construct and maintain five or less miles of telecommunications system within the public way. A performance bond or other performance guarantee for the work shall be provided by the applicant to the public works department prior to receiving the license.
  - (3) *Licenses for other facilities.* The public works department may grant a license to construct and maintain other facilities not included in (1) and (2).
- (c) *Compliance with all other requirements.* The requirements of sections 62-51 through 62-55 apply to franchisees and licensees and all franchisees and licensees shall apply for necessary authorizations from the department in addition to the franchise or license they hold.
- (d) *Contents of franchises and licenses.* Licenses and franchises shall, at a minimum, contain the following provisions:
  - (1) The identity and legal status of the user;
  - (2) The name and contact information for the officer, agent, or employee of user responsible for communications with the city, which shall be continuously updated as the information changes;
  - (3) A general description of existing and proposed facilities and the portions of the public way to be utilized for such facilities, with additional specifics as may be required by the department;
  - (4) A description of the services, if any, to be offered within the city, and the parts of the city or properties within the city where such services will be available, which description shall be updated as services change;
  - (5) A description of the services or facilities to be offered to the city itself, or to other public or governmental institutions within the city, if any such services are to be offered;

- (6) Acknowledgment that the license or franchise does not limit the city's police power and that the city may enact additional ordinances, standards, and requirements that will apply to user;
  - (7) Acknowledgment that the user will be required to obtain additional permits and approvals from the city beyond the license or franchise;
  - (8) Acknowledgment that the user is responsible for all damage caused by its contractors;
  - (9) Commitment to pay for all damages that arise in connection with the user's acts or omissions in the public way or the user's facilities;
  - (10) Commitment to defend and indemnify the city for all claims and liabilities that arise in connection with the user's acts or omissions in the public way or the user's facilities;
  - (11) A description of bonds or performance guarantees and insurance that are required, if any;
  - (12) The time period of the franchise or license;
  - (13) In the case of a franchise, acknowledgment that transfer or assignment requires approval of the city council under section 70 of the City Charter.
- (e) *Assignment.* If a license allows assignment, notice of the assignment shall be given to the department not less than 30 days prior to the assignment, with ownership and contact information updated to reflect the proposed assignment.
  - (f) *Information available to city.* All licensees and franchisees shall provide the city i) all books, data, records, maps, plans, GIS data files, billings, and payments or submissions to the state relating to the user's facilities and their function, location, income, history, maintenance, and repair, and ii) filings with the state utilities commission. The documents shall be provided within a reasonable period of time, not to exceed 30 days. The city may examine all such information at no cost. If information is copied for the city, the costs of copying, if any, shall be limited to the charges of a commercial copying facility selected by the city.
  - (g) *Declaration of forfeiture.* The city may declare a forfeiture of a license or franchise and all of the user's rights arising thereunder in the event the user does not comply with material provisions of its license or franchise, or is in substantial violation of this ordinance or other standards adopted by the city. The city shall give a franchisee or licensee at least 30 days' written notice of its intent to declare a forfeiture, which notice shall include a description of the noncompliance. The user shall have 30 days from receipt of the city's notice to cure the noncompliance or to make substantial progress toward such cure, as determined in the reasonable discretion of the city.

(Ord. No. 14665, § 2, 8-18-2014)

**Editor's note**— Ord. No. 14665, § 2, adopted August 18, 2014, set out provisions for use herein as § 62-56. Inasmuch as § 62-56 already existed, and at the editor's discretion, those provisions have been included herein as § 62-57.



NORTH CAROLINA  
DURHAM COUNTYLICENSE AGREEMENT FOR  
BALCONIES PROJECTING INTO ROW

THIS LICENSE AGREEMENT, made and entered into this the 5 day of May, 2014, by and between the **CITY OF DURHAM**, a municipal corporation ("the City"), and **CHURCH AND MAIN ASSOCIATES, LLC**, ("the Licensee");

## WITNESSETH:

In consideration of the performance of the conditions hereinafter set forth on the part of the Licensee, the City of Durham hereby grants to the Licensee, a license to construct and maintain balconies projecting into the right-of-way at 126 and 130 East Main Street (0821-12-96-6834 and 0821-12-96-6864). Hereinafter, the balconies projecting into the right-of-way shall be referred to as ("the System") which is made a part of this License Agreement.

The Licensee expressly agrees:

(1) That the installations will be in accordance with the approved plan. Modifications to the plan must be approved by the City Engineering Division.

(2) The work is to be inspected by, and shall conform to the requirements of, the City Engineering Division.

(3) The Licensee will assume the cost of installation, maintenance, and repair, including the cost of repairs to the street and pavement associated with the installation, maintenance, and repair of the System.

(4)(a) To the maximum extent allowed by law, Licensee shall indemnify and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this license (including but not limited to the constructing, maintaining, or repairing the pavement or street and in the installation, preparation, maintenance, or repair of the Systems) as a result of acts or omissions of Licensee or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a", Licensee shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City of Durham ("City").

(b) Definitions. As used in subsections "a" above and "c" below--"Charges" means claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines (including but not limited to those levied by the N.C. Department of Natural Resources and Community Development), penalties, royalties, settlements, and expenses (including interest and reasonable attorneys' fees assessed as part of any such item); and "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees.

(c) Limitation of Licensee's Obligation. Subsection "a" above shall not require the Licensee to indemnify or hold harmless the City, its independent contractors, agents, employees, or indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of the City, its independent contractors, agents, employees, or indemnitees.

(5) If the City notifies the Licensee that the City will change the grade of the street or perform any work on said street that may interfere with the System, the Licensee shall make such changes and relocations at the Licensee's expense as may be necessary so that the System will not interfere with, in any manner, such street work.

(6) At its own expense, the Licensee shall, upon the request of the City, relocate the System if it interferes with the construction, installation, repair, or maintenance of any underground utilities of the City.

(7) This license conveys no real property right or interest in any street or sidewalk area.

(8) The City may revoke this license upon ninety (90) days written notice. Within ninety days of receipt of such notice, the Licensee shall remove, at its expense, all materials, equipment, and supplies belonging to it and shall leave the site in as neat, safe, and undamaged condition as it was upon receipt of the notice.

(9) This license agreement is not transferable and when the property changes ownership, then the new owner will be responsible for either removing the System or applying for a new license agreement.

(10) E-Verify Compliance. The contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). The City is relying on this E-Verify Compliance section in entering into this contract. The parties agree to this section only to the extent authorized by law. If this section is held to be unenforceable or invalid in whole or in part, it shall be deemed amended to the extent necessary to make this contract comply with NCGS 160A-20.1(b).

## CHURCH AND MAIN ASSOCIATES, LLC

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

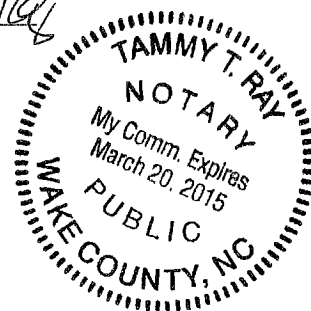
Manager

State of North Carolina  
 County of Wake

I, a notary public in and for the aforesaid county and state, certify that Roland Gammon III personally (1) appeared before me this day, (2) stated that he or she is a manager of **CHURCH AND MAIN ASSOCIATES, LLC**, a limited liability company organized and existing under the laws of the State of NC, (3) acknowledged that the foregoing agreement with the City of Durham carries on in the usual way the company's business, and (4) acknowledged the due execution of the contract on behalf of the company. This the 10 day of March, 2014.

My commission expires: March 20, 2015

Notary Public

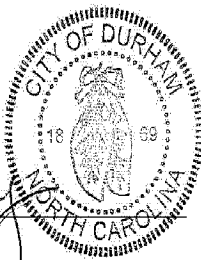


ATTEST:

CITY OF DURHAM

Attest:

J. Ann Gray  
 City Clerk



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

Thomas J. Bonfield  
 Thomas J. Bonfield  
 City Manager

preaudit certificate, if applicable \_\_\_\_\_

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

Susan M. Sandhoff

Susan M. Sandhoff - Deputy Finance Officer