

Mayor Patrick L. McCrory    Mayor Pro Tem Susan Burgess

Michael Barnes  
Nancy Carter  
Andy Dulin  
Anthony Foxx  
Patsy Kinsey

John W. Lassiter  
Don Lochman  
James Mitchell, Jr.  
Patrick Mumford  
Warren F. Turner

## **CITY COUNCIL WORKSHOP**

**Monday, March 5, 2007**

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### **Room 267**

- 5:00 p.m.            Dinner**
- 5:15 p.m.            Economic Development: Revote on Vetoed Motion Regarding Belmont Convenience Store Acquisition**
- 5:30 p.m.            Environment: Projected Wastewater Treatment Capacity Needs**
- 6:00 p.m.            Housing & Neighborhood Development: “Occupancy Requirements” – Minimum Housing Code**
- 6:20 p.m.            Environment: Proposed Floodplain Regulations Revisions**
- 7:05 p.m.            Environment: Conditional Rezoning Comments**
- 7:30 p.m.            Citizens’ Forum  
Room 267**
- 8:00 p.m.            Transportation: Transportation Action Plan and Funding Options**
- 8:20 p.m.            Economic Development: Update on Brooklyn Village, Minor League Baseball and Third Ward Park**
- 8:45 p.m.            Adjourn**

## Revote on Vetoed Motion Regarding Belmont Convenience Store Acquisition

**Action:** Revote on motion to approve a reimbursement agreement with the Charlotte Mecklenburg Development Corporation in the amount not to exceed \$1.1 million for services required to acquire, demolish and resale up to seven designated convenience stores and identify possible future retail site in the Belmont neighborhood.

**Staff Resource:** Tom Flynn, Economic Development  
Debra Campbell, Planning  
Stanley Watkins, Neighborhood Development

### Explanation

- At the February 26 City Council meeting the motion referenced in the action item above passed by a 10 to 1 vote.
- Council members Burgess, Foxx, Lassiter, Mumford, Barnes, Carter, Kinsey, Lochman, Mitchell, and Turner voted in favor of the motion. Council member Dulin voted against the motion.
- The Mayor vetoed the motion.
- By City Charter the item is required to be on the agenda of the next regular or special meeting of Council. In order for such action to become effective, seven affirmative votes are required at this meeting.
- **Veto Upheld:**
  - If the vote on the motion is less than seven affirmative votes, the veto is upheld and the reimbursement agreement for the acquisition of the convenience stores is not approved.
- **Veto Not Upheld**
  - If the motion receives seven or more affirmative votes, the reimbursement agreement for the acquisition of the convenience stores is approved.

### Attachment

Belmont Convenience Store Acquisition Council Action from February 26, 2007.

## **Belmont Convenience Store Acquisition**

**Action:** Approve a reimbursement agreement with the Charlotte-Mecklenburg Development Corporation in an amount not to exceed \$1.1 million for services required to acquire, demolish and resale up to seven designated convenience stores, and identify a possible future retail site in the Belmont neighborhood.

**Staff Resource:** AC Shull, Economic Development Office

### **Explanation**

- The City contracted with the Charlotte-Mecklenburg Development Corporation (CMDC) in 2004 to conduct an analysis of 13 convenience stores located in the Belmont neighborhood for possible acquisition and demolition as recommended in the Belmont Revitalization Plan.
- CMDC's study identified the highest priority convenience stores for acquisition based on crime, alcohol-related nuisance, community sentiment, environmental concern, non-conforming use status, physical condition, acquisition ease and location impact (see attachment).
- CMDC will acquire up to seven convenience store sites, conduct a Phase I Site Assessment, demolish the structures and sell the land after rezoning.
- The Charlotte Housing Authority will be given preference in purchasing (at appraised value) the store sites for housing purposes after the lots have been rezoned to conform to the Belmont Revitalization Plan or the Planning Commission staff agrees with the reuse of the land. The sale proceeds will be escrowed by the City and earmarked for possible future retail development in the Belmont neighborhood.
- CMDC will also identify a possible future retail site that will serve the community and the HOPE VI development. A federal grant, in the amount of \$750,000, has been requested to support the development of a retail center once a site is identified.
- The City Engineering Department will monitor the sites for environmental compliance during the demolition process.

### **Funding**

The 2006 Neighborhood Improvement Bonds included \$1.1 million for the acquisition of Belmont convenience stores.

### **Attachment**

Convenience Store Estimated Acquisition Expense

## Convenience Store Estimated Acquisition Expenses

	A to Zee Convenience	Downtown Convenience	Friendly's 2	Josh's Grocery	JRs Kwik Stop	K&L Laundry	Little Hornet	LK Farrar	Midtown Food Mart	Parkwood Grocery	Stewart and Perinas	Walkers Grocery	76 Station	
<i>Purchase Price</i>	149,866	91,910	129,158	101,573	154,951	107,996		299,383	388,766	190,225	84,832	195,169	319,813	
<i>Brokerage</i>	8,992	5,515	7,749	6,094	9,297	6,480		17,963	23,326	11,414	5,090	11,710	19,189	
<i>Demolition</i>	6,840	3,360	5,097	3,672	7,323	4,320		10,587	16,800	7,134	3,690	9,072	11,328	
<i>Phase I</i>	1,800	1,800	1,800	1,800	1,800	1,800		1,800	1,800	1,800	1,800	1,800	1,800	
<i>Environmental</i>	50,000	50,000	5,000	50,000	5,000	25,000	This store was purchased by the adjacent church after our 2004 study.	5,000	50,000	5,000	50,000	25,000	50,000	
<i>Potential</i>														
<i>Relocation</i>	11,400	5,600	8,495	6,120	12,205	7,200		17,645	28,000	11,890	6,150	15,120	18,880	
<i>Soil Testing</i>	7,500	7,500	1,500	7,500	1,500	3,000		1,500	7,500	1,500	7,500	3,000	7,500	
<i>Closing Costs</i>	7,493	4,596	6,458	5,079	7,748	5,400		14,969	19,438	9,511	4,242	9,758	15,991	
<i>Professional Fees</i>	6,964	4,966	6,666	5,523	6,991	5,526	16,475	18,851	10,129	4,093	8,932	17,584		
<i>Contingency</i>	25,085	17,525	17,192	18,736	20,681	16,672	38,532	55,448	24,860	16,740	27,956	46,208		
<i>Less: Residual Value</i>	(24,225)	(32,250)	(37,500)	(36,500)	(19,820)	(30,145)	(112,500)	(82,500)	(63,000)	(17,500)	(28,125)	(119,790)		
	251,715	160,522	151,616	169,598	207,676	153,248	0	311,355	527,428	210,464	166,636	279,393	388,502	

# ***COUNCIL WORKSHOP AGENDA ITEM SUMMARY***

**TOPIC:** Projected Wastewater Treatment Capacity Needs

**COUNCIL FOCUS AREA:** Environment

**RESOURCES:** Doug Bean

**KEY POINTS:**

- Staff will brief Council on the anticipated wastewater capacity needs, based on population growth projections adopted by the City and County.
- Presentation will include the required wastewater treatment plant capital projects needed to meet projected growth requirements.

**COUNCIL DECISION OR DIRECTION REQUESTED:**

Will be considered in the 2008-2012 CIP and the 2008 Budget.

**ATTACHMENTS:**

None.

# ***COUNCIL WORKSHOP AGENDA ITEM SUMMARY***

**TOPIC:** “Occupancy Requirements” – Minimum Housing Code

**COUNCIL FOCUS AREA:** Housing & Neighborhood Development

**RESOURCES:** Walter Abernethy, Neighborhood Development

**KEY POINTS:**

- In August 2004, neighborhood leaders met with the City Manager to discuss community issues. One issue raised at the meeting was the impact of large households on neighborhood quality of life.
- The City Manager directed the Planning Department to establish a stakeholder’s process to consider this issue. Through this stakeholder’s process, staff brought forward a recommendation to amend the “occupancy requirements” within the Minimum Housing Code.
- At the December 11, 2006 meeting of the Housing & Neighborhood Development Committee, Neighborhood Development presented several recommendations for changes to the Minimum Housing Code.
- A number of minor changes were approved and referred to the full Council for a public hearing and vote. These minor changes were approved by City Council on February 12, 2007.
- The Housing & Neighborhood Development Committee also received a proposed change to the “occupancy requirements” within the Minimum Housing Code, which limits the number of individuals that may reside in a house.
- The proposed changes will result in greater consistency with other North Carolina jurisdictions and will be more restrictive than the current code. As an example, the proposed change would allow approximately seven individuals in a 1,000 sq. ft. house; a difference from the existing allowance of eleven.
- Occupancy standards were not part of the February 12, 2007 ordinance changes. The Committee voted to forward the proposed occupancy standards to full Council for discussion and direction.

**COUNCIL DECISION OR DIRECTION REQUESTED:**

Approve staff's recommendation to amend the "occupancy standards" within the Minimum Housing Code. The next steps would be to set a date for public hearing and final Council action.

**ATTACHMENTS:**

Summary of Proposed New Occupancy Standards

**Amendments to the Housing Code: Occupancy Requirements & Minor Amendments  
Housing and Neighborhood Development Committee  
December 11, 2006**

**Committee Action Requested:**

Make recommendations for changes to the Housing Code and forward to City Council for a public hearing.

**Background:**

The City Council requested that the Planning Commission review the definition of for Single Family in the City Zoning Ordinance in response to concerns of over crowding in housing units. A stakeholders group was convened in December, 2005 to review the issue. After extensive group discussions and research of other cities at the national and state level, it was recommended the most appropriate way to address this issue to amend Chapter 11 of the City Code (Housing). The findings and recommendations from the stakeholders group were presented as information to the Economic Development & Planning Committee on September 7, 2006. The City Manager has decided to refer this matter to the Housing and Neighborhood Development Committee along with other minor amendments to bring the local ordinance into conformance with the State Building Code. [Note: The Community Safety Committee is also reviewing regulations for the Motel/Hotel Ordinance, which may include additional changes to the Housing Code.]

**Program Description:**

**Occupancy Standards and Enforcement**

Most cities surveyed have some standards of occupancy of houses and apartments. Requirements ranged from a finite number of persons allowed to occupy a given dwelling to occupancy limits based on the number of bedrooms or total space. Enforcement is usually done through application of local ordinances, most commonly the Housing Ordinance. All of the cities surveyed made reference to the difficulty in enforcing this portion of their ordinances.

Charlotte's ordinance determines the number of people allowed to occupy a unit based upon either the square footage of habitable space or the amount of bedroom space, with the most restrictive provision applying. Charlotte's ordinance was found to be more liberal than most other cities in North Carolina, with respect to occupancy.

The proposed changes establish a minimum habitable square footage of 150 square feet for the first occupant and increase the square footage for each additional occupant, from 50 square feet to 100 square feet. For bedroom space, it also decreases the square footage for the first bedroom from 80 square feet to 70 square feet and increases the square footage requirement for each additional occupant from 20 square feet to 50 square feet of bedroom space.



For example:

Housing Unit	Old Ordinance	New Ordinance
1,000 Square Foot House: Assumptions: Habitable Space: 823 Sq. Ft. Bedroom Space: 373 Sq. Ft.	Habitable Space: 11 people Bedroom Space: 11 people	Habitable Space: 7 people Bedroom Space: 7 people  Only 7 persons permitted

The new standards for occupancy would bring the ordinance more in line with the rest of the State, and better address the overcrowding issue.

**Other Amendments**

The other recommended amendments to Chapter 11 of the City Code (Housing) include:

- 1.) Window bars at bedroom windows shall be consistent with the state building code.
- 2.) Porch, and entrance platform guards shall be consistent with the state building code.

Other Minor changes (to better clarify the ordinance) in other parts of the code. (See Attached Text Amendment)

**Legal Perspective:**

The City Attorney's Office has determined that the changes recommended to the Housing Code are within the bounds allowed by law.

**Attachment**

Proposed Chapter 11 of City Code (Housing) Text Amendments.

## Amendment to the Chapter 11 of the City Code (Housing)

### Sec. 11-33. **Reserved**

### Sec. 11-45 Violations; penalty

(d) It shall be unlawful for the owner of a dwelling that is imminently dangerous to health or safety to collect rent from another person who occupied the dwelling at the time it became imminently dangerous to health or safety or to permit any other person to begin occupancy of such dwelling. A dwelling is imminently dangerous to health or safety if it is in violation of any one of the following minimum standards of fitness established by article III of this chapter:

- (1) Rotted, fire damaged, or insect damaged steps, flooring, or structural supports, as provided in subsections 11-79(b) and 11-83(b)(1).
- (2) Fire hazard in a chimney that is in use, as provided in section 11-81.
- (3) Unsafe wiring, as provided in subsection 11-82(e).
- (4) Unsafe ceiling or roof, as provided in subsections 11-83(e)(1), (e)(7), (f)(1), (f)(5).
- (5) No potable water supply, as provided in subsection 11-80(h).
- (6) No operable heating equipment, as required by subsection 11-81(b), during November, December, January, February, or March.
- (7) No operable sanitary facilities, as provided in subsections 11-80(i) and (j).
- (8) Severe rat infestation where the dwelling is not impervious to pests, as provided in subsection 11-84(c).
- (9) No safe, continuous, and unobstructed exit from the interior of the building to the exterior at street or grade level, as provided in subsection 11-79(c).
- (10) No access provided to all rooms within a dwelling unit without passing through a public space, as provided in subsection 11-77(1).
- (11) Any window or door providing access to any dwelling unit lacking an operable lock or the owner failing to provide a change of locks or keys to a new tenant, as provided in subsections 11-77(n) and 11-78(g).
- (12) No operable smoke detector or alarm, as provided in subsection 11-77(p).

**(13) Every dwelling shall comply with the current county health regulations governing carbon monoxide alarms.**

attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this

**Deleted: Rehabilitation and housing inspections division.**¶  
There is hereby created and established a division within the neighborhood development department, under the direction of the code enforcement official, which shall be composed of a chief housing code inspector and such other employees as shall be authorized by the city council and appointed by the city manager.¶  
(Code 1985, § 11-23)

state, the city council may, after the expiration of such one-year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

**Sec. 11-77. Space and use.**

- (a) At least one room in the dwelling shall contain not less than 150 square feet.
- (b) A kitchen-dining room combination, if any, shall be not less than 100 square feet.
- (c) A first bedroom, if any, shall be not less than 100 square feet.
- (d) A second bedroom, if any, shall be not less than 70 square feet.
- (e) There shall be at least 70 square feet in each habitable room.
- (f) There shall be at least 150 square feet of floor space in habitable rooms for the first occupant in each dwelling unit; at least 100 square feet for each additional occupant, (Children one year of age and under shall not be counted).
- (g) There shall be at least 70 square feet of bedroom floor space for the first occupant; at least 50 square feet for each additional, (Children one year of age and under shall not be counted).

**Deleted:** each of the next three occupants; and at least 50 square feet for each additional occupant over the number of four.

**Deleted:** 80

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**Deleted:** the second occupant; and at least 30 square feet for

**Deleted:** occupant over the number of two.

**Sec. 11-78. Light and ventilation.**

- (a) The window-glazed area in each habitable room of a dwelling or dwelling unit shall not be less than eight percent of the floor area or eight square feet, whichever is greater.
- (b) The openable window area in each habitable room shall be equal to at least one-half of the minimum allowance window area and facing directly to the outside for ventilation unless the room is served by an approved ventilating system.
- (c) All windows and doors opening to the outside shall be adequately screened unless the room is served by an approved ventilating system. Screens shall fit openings snugly, and the screen mesh shall not be torn or otherwise defective.
- (d) Screens shall not be permanently fixed to the window frame or sash.
- (e) In bathrooms containing more than one water closet, the window area shall be at least three square feet of glazed area. Where adequate windows cannot be provided, metal ducts with at least 72 square inches in open area and extending from the ceiling through the roof, or mechanical ventilation to the outside, shall be provided.
- (f) Every public hall and inside stairway in every multifamily dwelling shall be adequately lighted at all times with an illumination of at least three footcandles per square foot in the darkest portion of the normally traveled stairs and passageways.
- (g) All windows opening to the outside shall be reasonably weathertight and shall have operable locks.

(h) Window bars, grills, or other impediments to escape in case of fire shall not be permitted at habitable room windows, except as permitted by the state building code.

(Code 1985, § 11-53)

### Sec. 11-83 Structural standards

(b) *Floors.* Floors shall conform to the following:

- (1) There shall be no decayed, termite-damaged, fire-damaged, broken, overloaded or sagging sills.
- (2) Sills shall be properly supported and reasonably level.
- (3) Joists and beams shall not be overloaded, sagging or broken and shall be structurally sound and not likely to cause structural weakness in the future.
- (4) Maximum spans for floor joists, beams and sills, providing they show signs of being weak or overloaded, shall comply with the requirements of the state building code.

(c) *Exterior walls.* Exterior walls shall conform to the following:

- (1) There shall be no wall in which the plumbline from the top center of studs falls outside the base plate at any point along the wall.
- (2) Maximum spacing for studding, providing they show signs of being weak or overloaded, shall comply with the requirements of the state building code.
- (3) Studs shall be structurally sound and not likely to cause structural weakness in the future.
- (4) There shall be no broken or cracked structural members.
- (5) All siding shall be weathertight, with no holes or excessive cracks or decayed boards, or siding material which permit air to penetrate rooms.

(e) *Ceilings.* Ceilings shall conform to the following:

- (1) There shall be no joists, or beams which are decayed, broken, sagging, or improperly supported at the ends.
- (2) Maximum spacing for ceiling joists, providing they show signs of sagging and being weak, shall comply with the requirements of the state building code.
- (3) Maximum spans for ceiling joists, providing they show signs of being weak or overloaded, shall comply with the requirements of the state building code.

- (4) There shall be no holes or excessive cracks which permit air and dust to penetrate rooms.
- (5) There shall be no loose plaster, boards, gypsum wallboard, or other ceiling finish.
- (6) There shall be no cardboard, newspaper, highly combustible or improper ceiling finish; all ceiling materials shall be of the same or similar quality and material.
- (7) Ceiling joists, and beams shall be structurally sound and not likely to cause structural weakness in the future.

(g) *Porches.* Porches shall conform to the following:

- (1) The floor, ceiling, and roof shall be equal to requirements set forth in this section, except sills, joists, and floors need not be level if providing drainage of floors; floors need not be weathertight; the ceiling height may be seven feet; and the attic need not be vented.
- (2) Every porch, terrace or entrance platform 30 inches or more above the adjacent finished grade shall be equipped with railings or guards not less than 36 inches high, unless other effective barriers provide adequate safety. Guard opening limitations shall conform to the requirements of the state building code
- (3) If post and railings are provided, they shall be structurally sound and not likely to cause structural weakness in the future.

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# ***COUNCIL WORKSHOP AGENDA ITEM SUMMARY***

**TOPIC:** Proposed Floodplain Regulations Revisions

**COUNCIL FOCUS AREA:** Environment

**COMMITTEE CHAIR:** Anthony Foxx

**RESOURCES:** Tim Richards, Engineering & Property Management  
Dave Canaan, Mecklenburg County Land Use and  
Environmental Services

**KEY POINTS:**

- The current ordinance was approved by City Council on May 12, 2003.
- The City maintains and provides service to the City of Charlotte residents whose properties drain to the minor system (generally drain less than one square mile), which is the network of pipes and channels that drain to the major system, more commonly referred to as the regulated creeks or floodplains.
- The County maintains and provides service to City of Charlotte and Mecklenburg County residents who live along the regulated creeks (creeks that drain greater than one square mile) that are regulated by the Federal Emergency Management Agency (FEMA) and the City's Floodplain Regulations.
- The Floodplain Regulations (Regulations) are a City ordinance with authority for administration of the Regulations delegated to the County by the City Manager as part of a comprehensive floodplain management and construction permitting approach.
- The current ordinance needed revising to reflect general administrative improvements, language reflecting FEMA requirements, changes to some local standards and new levee requirements.
- The Storm Water Advisory Committee (SWAC) worked through a dedicated sub-committee along with outside development and environmental interests. The sub-committee met seven times over a three-month period in deliberating the proposed revisions.
- A special SWAC sub-committee involving outside parties interested in levees met several times to develop the levee language.

- City Council held a public hearing on the proposed revisions in July 2006. The Floodplain Regulations revisions were referred to the Environment Committee (Committee) for review and recommendation.
- The Committee discussed the proposed revisions during five meetings between September 2006 and January 2007. In addition, the Committee held a special meeting with representatives of the Chantilly neighborhood to discuss their specific concerns. Those concerns centered on making improvements to homes within the Community Floodplain and will be highlighted in the staff presentation.
- On January 16, the Committee unanimously approved the changes to the Floodplain Regulations. All the staff recommendations were approved with the exception of provisions related to the “substantial improvement”.
- The Committee added provisions related to notification and recommends requesting the Mecklenburg Board of County Commissioners to support Charlotte Mecklenburg Storm Water Services in pursuing:
  - Development, funding and implementation of a Floodplain Remapping program, and
  - Expanding the notification of current and future owners of floodplain properties
- Members of the committee are: Anthony Foxx (Chair), Susan Burgess, Nancy Carter, Don Lochman and Pat Mumford.
- Many of the changes would improve the clarity and administration of the regulations. The more significant changes generally fall into one of the following areas:
  - Floodplain permitting
  - Access to buildings during floods
  - Building standards
  - Parking lot requirements
  - Levee requirements
  - Revisions to substantial improvement requirements

**OPTIONS:**

Council may choose to accept or modify the Committee recommendations.

**COUNCIL DECISION OR DIRECTION REQUESTED:**

The workshop briefing is for information and to answer Council questions. On March 26, Council will be asked to approve the recommendations for the proposed Floodplain Regulations and set a public hearing for April 9.

## **ATTACHMENTS:**

1. PowerPoint presentation on proposed revisions
2. Summary of proposed changes to City of Charlotte Floodplain Regulations - March 2007
3. Substantial Improvement Exemption / Floodplain Notifications Proposed Action Plan
4. Letter from Storm Water Advisory Committee Chair
5. Proposed Requests by City Council of Mecklenburg Board of County Commissioners
6. Frequently Asked Questions
  - a. Higher Floodplain Management Standards (Adopted Local Standards compared to FEMA/State Minimum Standards)
  - b. Stakeholder Input and Outreach Efforts
  - c. Proposed Notification & Education Process
7. Proposed Text of Revised Ordinance – Chapter 9 Floodplain Regulations





**Charlotte-Mecklenburg Storm Water Services**

# **Floodplain Ordinance Proposed Revisions**

*City Council Workshop*



*March 5, 2007*

# Agenda – Floodplain Management

- 💧 **Process to date**
- 💧 **Background on floodplains**
- 💧 **Flooding and program history**
- 💧 **Floodplain Ordinance Proposed Revisions**
- 💧 **Process forward**

# Floodplain Regulations

- 💧 **Safeguarding the Environment**
  - 💧 Quality of life
  - 💧 Balance...
    - Environmental health
    - Sound fiscal policy
    - Growth
  - 💧 Compliance, Proactive, Leadership
- 💧 **Relationship to proposed Post Construction Ordinance**
- 💧 **City/County relationship**

# Process to date

- ◆ **Proposed changes to the City's Floodplain Ordinance...**
  - ◆ Clean up wording & readability
  - ◆ Add/Remove definitions
  - ◆ Improve Administration
  - ◆ Compliance with FEMA requirements
  - ◆ Codify recent Ordinance interpretations
  - ◆ Revise several regulations

# Process to date

## 💧 Stakeholder input:

- 💧 Storm Water Advisory Committee (SWAC)
  - Sub-committee, developer, environmental
  - Unanimous endorsement
- 💧 Riverside Drive residents
- 💧 Subdivision Steering Committee
- 💧 Chantilly Neighborhood
- 💧 Levee stakeholders group
- 💧 10,000 piece mailing

# Process to date

## 💧 July 24<sup>th</sup> Public Hearing

### 💧 2 speakers

- Appeal period after notification of Administrator's decision
- Length of time to approve a general permit
- Request for an extension for staff review of Briar Creek/Chantilly neighborhood flooding

### 💧 Referred to the Environment Committee

# Process to date

- 💧 **Environment Council Committee**
  - 💧 6 monthly meetings
  - 💧 Background on floodplains, flood history, NFIP, etc
  - 💧 Reviewed staff proposed Ordinance changes
  - 💧 Sought additional feedback
    - Neighborhood outreach (750 mailers)
    - Feedback page on SWS website
    - Approximately 12 responses
  - 💧 Committee supports staff and recommends additional Ordinance and programmatic changes

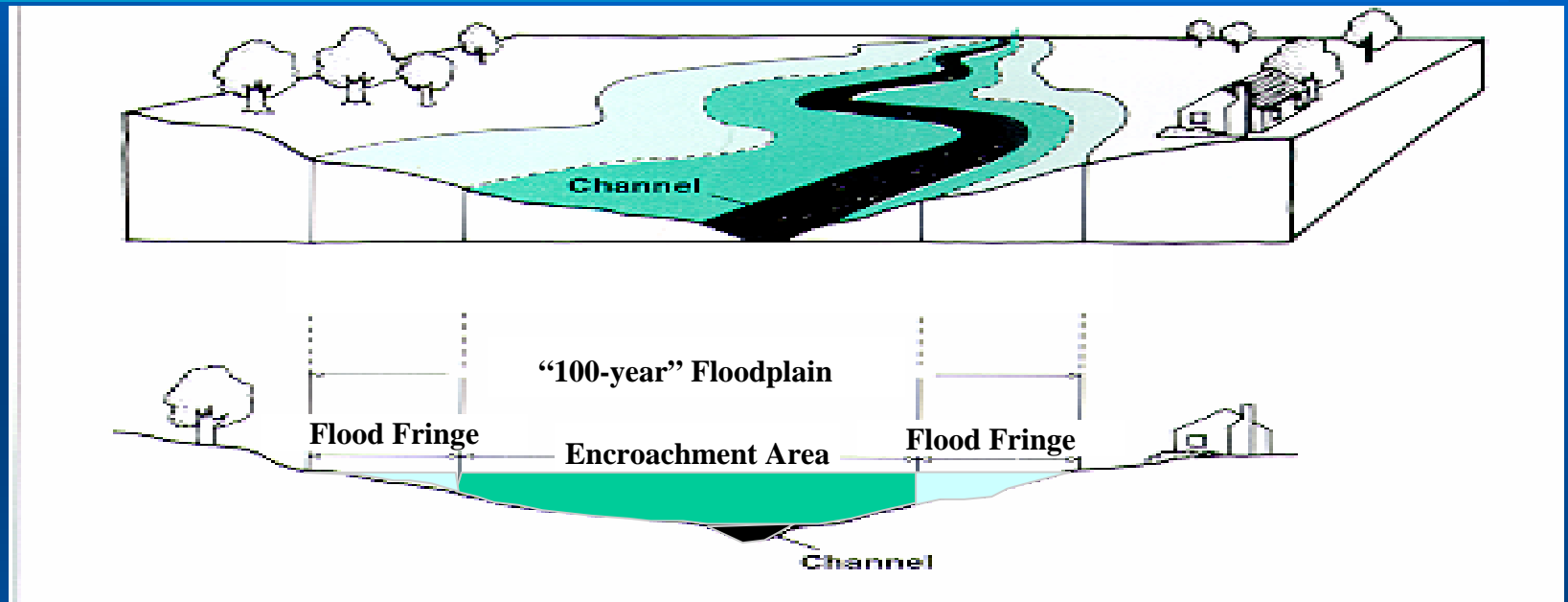
# Background: Floodplains



- 💧 **Natural area**
- 💧 **Flood storage, conveyance**
- 💧 **Filtering of pollutants, greenways, habitat**



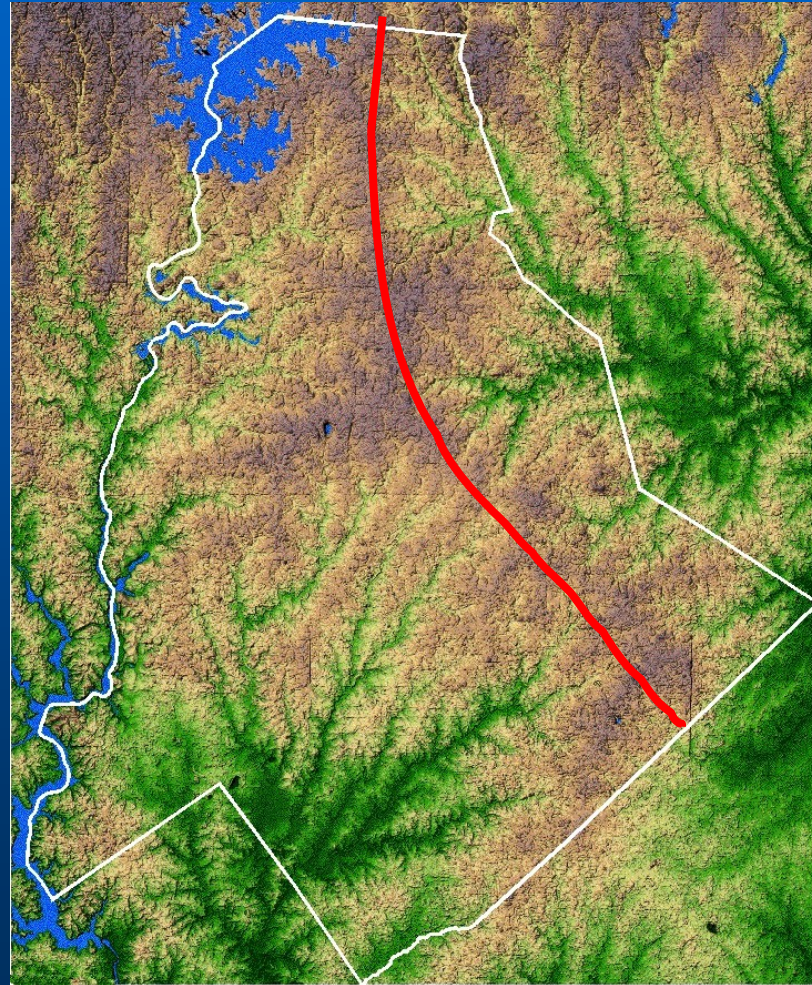
# Background: Floodplains



- ◆ Overbank flooding is normal
- ◆ Stream channel handles 2 – 5 year storm
- ◆ 1% chance each year of being flooded

# Background: Floodplains

- 💧 “Top of the hill”
- 💧 5% of City
- 💧 Urban, national average is 7.5%



# National Flood Insurance Program

- 💧 **Optional to the community**
- 💧 **If a community participates**
  - 💧 Anyone may purchase flood insurance
  - 💧 Properties in the floodplain are eligible for federally backed mortgages (FHA, VA, Fannie Mae, etc)
  - 💧 Community must regulate development by:
    - Adopting a Floodplain Ordinance
    - Adopting Floodplain maps
- 💧 **For properties in the FEMA floodplain**
  - 💧 During a 30-year mortgage:
    - 1% chance that a home will burn
    - 26% that it will flood in a 100-year flood
    - Many homes flood in more frequent floods

# NFIP: Exposure to Losses

- 💧 1650 Policies in force
- 💧 \$19.75 Million in Claims
- 💧 1325 Claims



# Flooding History in Charlotte-Mecklenburg



- ◆ 1958 Myers Park and Westfield flooded
- ◆ 1973 50-year flood, Little Sugar Creek
- ◆ 1975 \$12M in losses, three separate floods
- ◆ 1976 25-year flood, Irwin Creek and Sugar Creeks

# Flooding History in Charlotte-Mecklenburg



- 💧 1989 Hugo, limited flood damages
- 💧 1995 Jerry, \$16M in losses

# Flooding History in Charlotte-Mecklenburg



- 💧 1997 Danny, \$60M in losses, 3 deaths
- 💧 2003, \$2M in losses

# Flooding History in Charlotte-Mecklenburg



- ◆ 2004 Frances, \$1.5M in losses along Catawba River
- ◆ 2005 Little Hope Creek flooding
- ◆ 2006 Irwin, Little Sugar and Briar Creek (4 floods)



# Turning Point

## Guidance Document Strategies

- Developed after the '95 and '97 floods
- Stakeholders developed document
  - I. New Development
  - II. Flood Warning/Response
  - III. Drainage System Maintenance
  - IV. Public Information
  - V. Interagency Coordination
  - VI. Hazard Mitigation Planning
    - Flood Mitigation “Buyout projects”

# Flood Hazard Mitigation



BEFORE - July 97

AFTER 2001



# Flood Hazard Mitigation

TODAY



# Guidance Document Strategies

I. New Development

II. Flood Warning/Response

III. Drainage System Maintenance

IV. Public Information

V. Interagency Coordination

VI. Hazard Mitigation Planning

# Two floodplains??

- 🔹 FEMA Floodplain

- 🔹 100-year flood

- 🔹 Primarily used to rate flood insurance policies

- 🔹 Community or “Ultimate” Floodplain

- 🔹 100-year flood

- 🔹 Full Buildout in the watershed

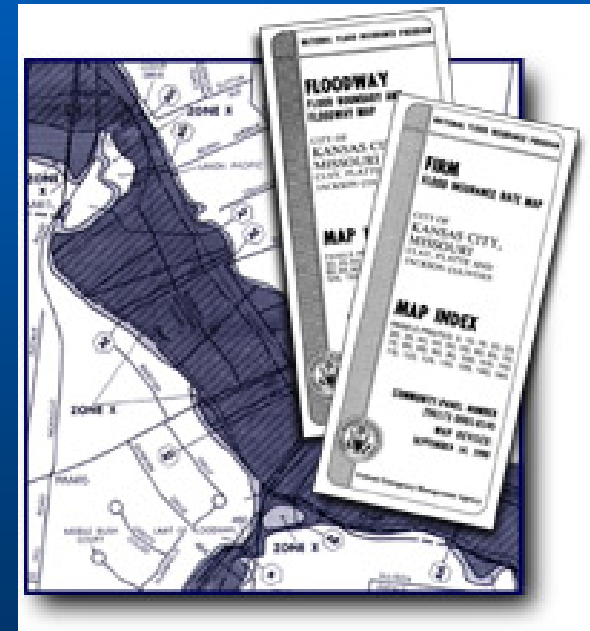
- 🔹 Used adopted District Plans



# New Development

## Upstream Land Use Impacts:

- ◆ FEMA Floodplain (1999 land use)
  - ◆ Average change: +1.9' to -1.9'
  - ◆ Range: +8.7' to -6.1
- ◆ Community Floodplain
  - ◆ Average change: +4.3 to -0.2
  - ◆ Range: +11.0 to -4.6
- ◆ Floodplain - from 429' to 611'



# Flood Mitigation: Mapping ↔ Buy-outs

## 2000 Flood Mitigation/Buy-out Program started with....

- Removing 110 families from the floodplain
- \$9M State and federal funding
- \$5.2M local funding

## 2000 Floodplain Ordinance and maps adopted

- Limit the number of future buy-outs
- Forward thinking – take into account new development, reduce future risks



# Floodplain Structures



- **FEMA Maps (1975 - 2003)**

- 4000 buildings, of which 550 flood into living space (estimate)

- **FEMA Maps (2003 - current)**

- 3020 buildings, of which 700 flood into living space (estimate)

- **Community Floodplain**

- 4420 buildings, of which 1300 flood into living space (estimate)

- **Community Floodplain (w/o current reg's)**

- 2000 buildings would flood into the living space (estimate)

**“600 buildings”**





# Proposed Ordinance Changes

- 💧 Substantial Improvements
- 💧 Floodplain Development Permits
- 💧 Variance to Development in the Community Encroachment Area
- 💧 Property Owner Notification
- 💧 Permit Time Limits
- 💧 Flood Increases on Existing Buildings
- 💧 Floodplain Fill Certification
- 💧 Levee Requirements
- 💧 Parking Lot Requirements
- 💧 Access to Buildings During a Flood

# Committee Recommendation

## Substantial Improvements

### 💧 Overview – Existing Ordinance

- 💧 Grandfathers renovations/repairs up to 25% of value of structure with no restrictions
- 💧 Grandfathers one-time renovation/repair up to 50% of value of structure with no restrictions
- 💧 If renovations/repairs exceed 2 – 25% or one more than 50%, the structure needs to come into compliance

### 💧 Staff Recommendation – No Changes

# Committee Recommendation

## Substantial Improvements

### 💧 Description of Proposed Change

- 💧 Expand grandfathering for the “600 buildings” above FEMA but below Community flood elevations
- 💧 Restrict to only renovations
- 💧 Require tear-downs and rebuilds to come into compliance

### 💧 Reason for Change

- 💧 Increase flexibility
- 💧 Allow unlimited renovations without floodplain restrictions
- 💧 Apply restrictions when
  - Floodplains are re-mapped and
  - FEMA flood elevations are higher than the living space elevations

Tear Down /Rebuild - 1659 Scotland Ave



Compliant

Non-Compliant



## Improvements with Less Than 2 Walls Removed

2625 Laburnum





## Improvements with Less Than 2 Walls Removed

2604 Bay St



# **Committee and Staff Recommendation**

## **Substantial Improvements – Other Issues**

- 💧 **Council Support/Request to BOCC**
- 💧 **Floodplain Remapping**
  - 💧 Current FEMA floodplain based on 2000 landuse
  - 💧 New, more accurate District Plans available
  - 💧 Develop, implement floodplain remapping effort
- 💧 **Expanding Notification Efforts**
  - 💧 More specific mailers
  - 💧 Improve Storm Water and POLARIS GIS internet sites
  - 💧 Pursue changes to MLS and Property Disclosure Form
  - 💧 Recordation of Notices and Affidavits on floodplain properties

# Proposed Change

## Floodplain Development Permits

### 💧 Description of Proposed Change

#### 💧 Allow for two types of permits:

- General Floodplain Development Permit (GFDP) to "Permit" certain man-made activities, no impact on flood heights
- Individual Floodplain Development Permit (IFDP) required for any man-made activities, potential to impact flood heights

### 💧 Reason for Change

- 💧 Reduce/eliminate paperwork and permitting time
- 💧 FEMA compliant

#### Note:

- 💧 Fee structure to be proposed as part of FY08 budget process
- 💧 Currently service is paid by all storm water rate payers





## Proposed Change

# Variance for Development in Community Encroachment Area

## 💧 Description of Proposed Change

- 💧 Does not automatically require a variance
- 💧 Variance is required if development does not meet Ordinance requirements
- 💧 Eliminates Administrative Approval “variance”

## 💧 Reason for Change

- 💧 Reduce the workload on the Zoning Board of Adjustment
- 💧 Decrease in costs to the owner
- 💧 More closely follows the FEMA process
- 💧 Will not increase the risk of flooding to properties

## Proposed Change

# Notifying Surrounding Property Owners of Proposed Projects



## 💧 Description of Proposed Change

- 💧 Notification still required
- 💧 Only for development that increases water surface elevations
- 💧 Variance not automatically required
- 💧 Technically-based opposition still be able to appeal

## 💧 Reason for Change

- 💧 Reduce delay of project with no flooding impacts on buildings
- 💧 Non-technical based opposition will no longer hold up permits
- 💧 Reduce the workload on the Zoning Board of Adjustment
- 💧 Decrease in costs to the owner

# Proposed Change

## Permit Time Limits



### 💧 Description of Proposed Change

- 💧 Project must begin construction within two years
- 💧 Or a new permit is required

### 💧 Reason for Change

- 💧 Prevent floodplain projects from dragging on unnecessarily



# Proposed Change

## Flood Increases on Existing Buildings

### 💧 Description of Proposed Change

- 💧 Located only in the Community Encroachment Area
- 💧 No increase of "future" flood levels on existing buildings
- 💧 Seeking a variance is allowed

### 💧 Reason for Change

- 💧 Prevent proposed projects from increasing "future" flood damages to nearby, existing buildings



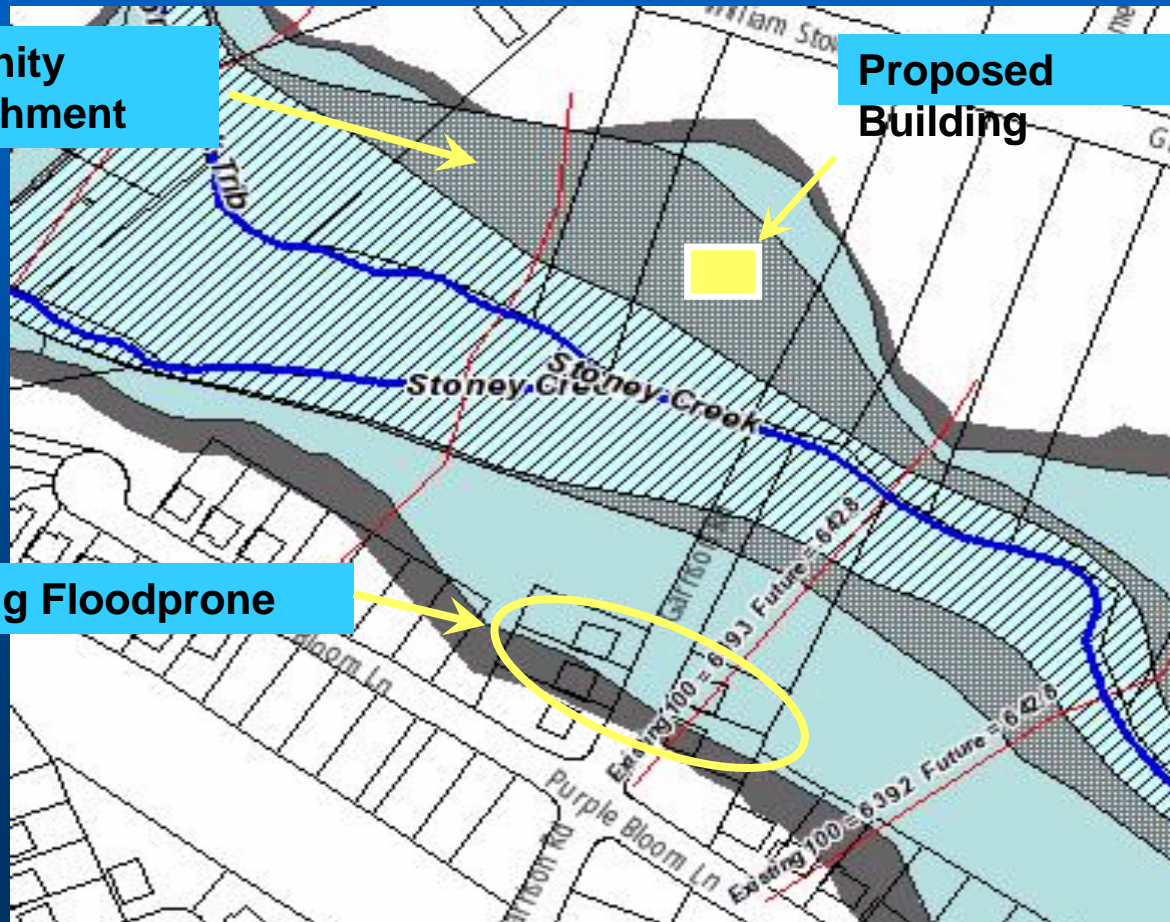
# Proposed Change

# Flood Increases on Existing Buildings

Community  
Encroachment  
Area

Proposed  
Building

Existing Floodprone  
Bldgs



# Proposed Change

# Floodplain Fill Certification

## 💧 Overview – Existing Ordinance

- 💧 No fill certification requirement other than height of building
- 💧 No fill certification requirement to prevent misplaced fill in the floodplain

# Proposed Change Floodplain Fill Certification



## 💧 Description of Proposed Change

- 💧 Adds a new "certification" requirement
- 💧 Projects with fill in the Community Encroachment Area
- 💧 Require a "As-built" map showing the elevations of the ground after work is finished

## 💧 Reason for Change

- 💧 Reduce the instances of fill or structures being mistakenly placed within the Community Encroachment Area

# Proposed Change

# Levee Requirements

## 💧 Description of Proposed Change

### 💧 Conditions for Approval:

- Levee location
- Type of improvements the levee is designed to protect
- Notification of surrounding property owners
- Levee maintenance requirements
- Current floodplain lines do not change
- No community maintenance of private levees





# Proposed Change

# Parking Lot Requirements

## 💧 Overview – Existing Ordinance

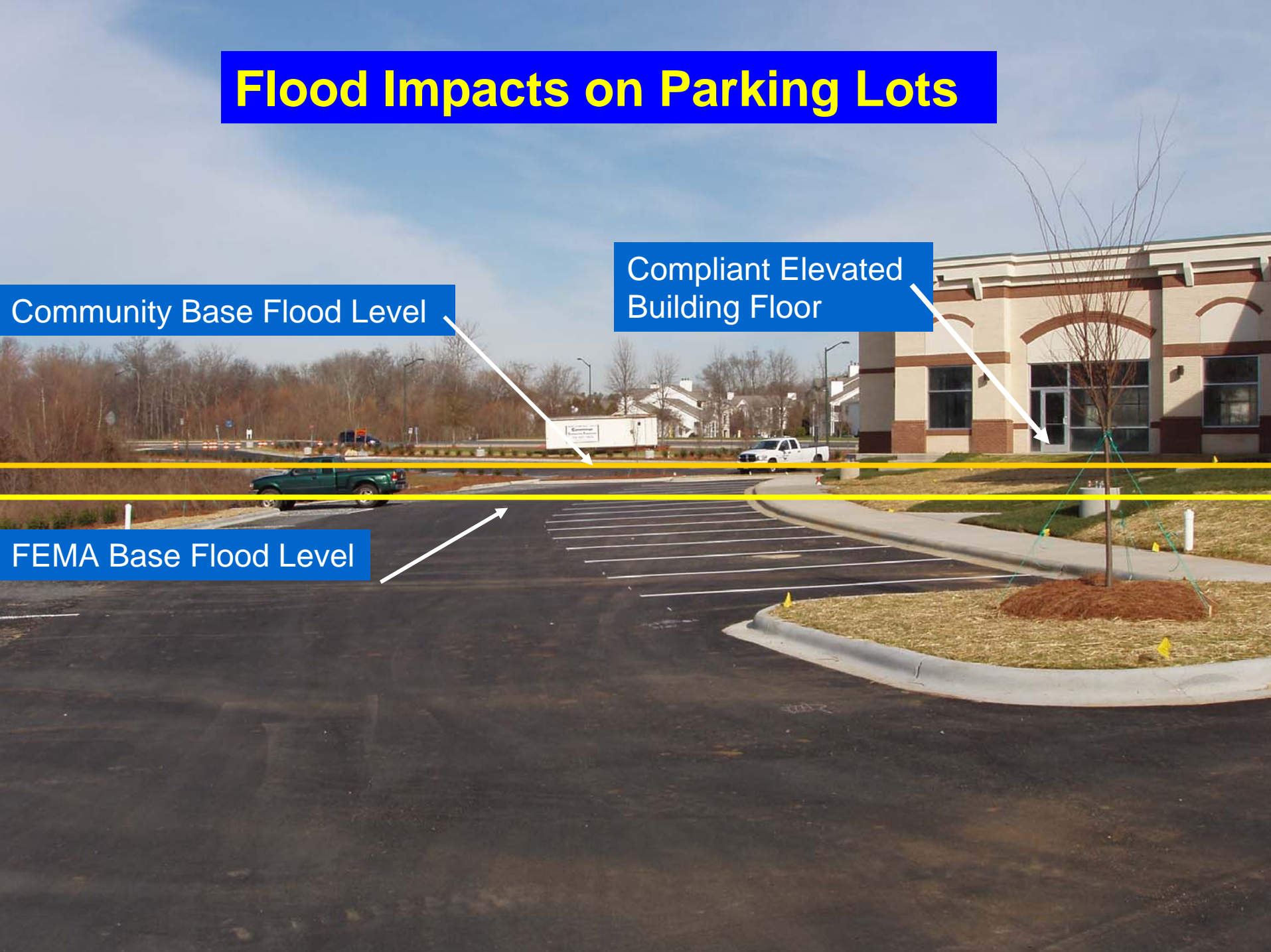
- 💧 No restrictions regarding building new parking lots in the floodplain
- 💧 No requirement to ensure parking lots are safe from flooding

# Flood Impacts on Parking Lots

Community Base Flood Level

Compliant Elevated Building Floor

FEMA Base Flood Level



# Proposed Change

## Parking Lot Requirements

### 💧 Description of Proposed Change

- 💧 New or substantially improved non-single family buildings
- 💧 Water depths no more than six inches during a flood (future conditions)
- 💧 Require all parking areas
- 💧 Variance is available

### 💧 Reason for Change

- 💧 Prevent major damage to vehicles, cars floating downstream, and adding to water pollution

## Proposed Change

# Access to buildings during flood

### 💧 Overview – Existing Ordinance

- 💧 Access to buildings during flood events
- 💧 Applies within Community Encroachment Area
- 💧 Current ordinance, refers to "Permanent Vehicular Access"
- 💧 Applies to new or "substantially improved" buildings
- 💧 If condition can not be met (public street is under water) the project can not be approved
- 💧 Property owner cannot ask for a variance



## Dryland Access – Whitehall Retail



Gravel Drive – 12' Wide



## Proposed Change

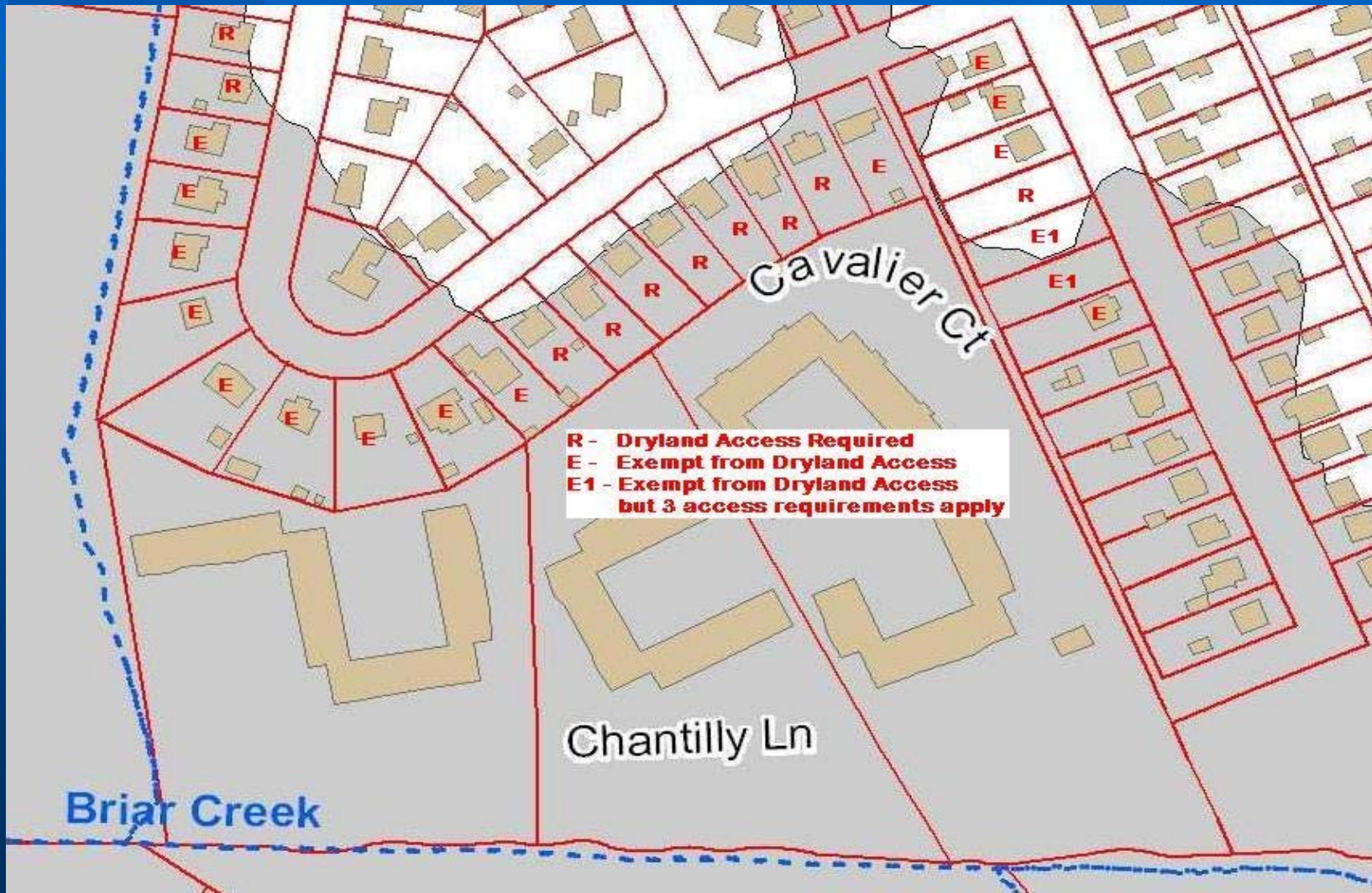
# Access to buildings during flood

### 💧 Description of Proposed Change

- 💧 Expands the area where "Dryland Access" is required to entire floodplain
- 💧 Property owner would be able to request a variance
- 💧 If the property does not have access to a dry public street, exemptions apply to:
  - Substantially Improved buildings anywhere within the Floodplain
  - New buildings outside the Community Encroachment Area

# Proposed Change

## Access to buildings during flood



# Proposed Change

## Access to buildings during flood

### 💧 Proposed Exemptions – Dryland Access

- 💧 For Property without access to a dry public street
  - Substantial Improvement within entire Floodplain
  - New Buildings outside the Community Encroachment
    1. Connect to highest point of street
    2. At least 12' wide
    3. At least as high as the street





## Proposed Change

# Access to buildings during flood

### 💧 Reason for Change

- 💧 More clearly defines what is required
- 💧 Assist emergency response vehicles in reaching flood prone buildings
- 💧 Occupants can more safely exit the building during a flood
- 💧 Makes "dryland access" apply to buildings located in any part of the floodplain
- 💧 Makes available relief through the variance process
- 💧 Allows for exemptions

# Proposed Ordinance Changes

- 💧 Substantial Improvements
- 💧 Floodplain Development Permits
- 💧 Variance to Development in the Community Encroachment Area
- 💧 Property Owner Notification
- 💧 Permit Time Limits
- 💧 Flood Increases on Existing Buildings
- 💧 Floodplain Fill Certification
- 💧 Levee Requirements
- 💧 Parking Lot Requirements
- 💧 Access to Buildings During a Flood

# Next Steps

- 💧 **March 5<sup>th</sup> Council Workshop**
  - 💧 Receive as Information
- 💧 **March 26<sup>th</sup> Council Meeting**
  - 💧 Consider approving Environment Committee's Recommendations
  - 💧 Set a Public Hearing for April 9<sup>th</sup> on Revised Floodplain Ordinance
- 💧 **April 9<sup>th</sup> Council Meeting**
  - 💧 Hold Public Hearing
- 💧 **April 23<sup>rd</sup> Council Meeting**
  - 💧 Consider adoption of Floodplain Ordinance changes

An aerial photograph of a golf course during autumn. A winding water feature, possibly a stream or pond, flows through the center of the course, surrounded by green grass and brown earth. The surrounding area is densely wooded with trees in various shades of orange, yellow, and brown. In the far background, a city skyline is visible under a hazy sky, featuring several tall skyscrapers. The text "Thank You" is overlaid in the center of the image in a large, bold, yellow font with a black outline.

**Thank You**

# Summary of proposed changes to City of Charlotte Floodplain Regulations - March 2007 -

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## Modifications presented at July 2006 Public Hearing

### Proposed Substantive Changes

#### *Staff & Environmental Committee Recommendations*

- Floodplain Development Permits
- Variance to Development in the Community Encroachment Area
- Property Owner Notification
- Permit Time Limits
- Flood Increases on Existing Buildings
- Access to Buildings During a Flood
- Building Standards
- Floodplain Fill Certification
- Parking Lot Requirements
- Levee Requirements

#### Note:

The proposed floodplain regulations include many other non-substantive changes that clarify current regulations, codify current interpretations, update terms and definitions, correct typographical errors, and improve the readability of the regulations.

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## Modifications since July 2006 Public Hearing

### Proposed Substantive Changes

#### *Staff & Environmental Committee Recommendations*

- Added ordinance objective – to inform existing and potential owners of flood risk and development restrictions. [Section 9-5 (b) (10)]
- Expand applicability of regulations to include FEMA and locally approved revisions to data shown on the floodplain maps. [Section 9-5 (c) and 9-36]
- Added “underground utilities” to the list of examples of items included in the General Floodplain Development Permit. [Section 9-62 (b) (1) (b)]
- Added duty of the Floodplain Administrator to provide floodplain information to potential buyers through a notice in the chain of title. [Section 9-63 (23)]
- Extended the time to appeal a Zoning Board of Adjustment decision from 10 days to 20 days [Section 9-82 (b)]

- Deleted requirement for ductwork to be above the Flood Protection Elevation. [Section 9-101 (a) (5)]
- Added requirement for owners to provide notice to potential buyers when a 25% - 50% improvement has occurred, through a notice in the chain of title. [Section 9-102 (a) (1) (b)]
- Deleted language clarifying how long owners have to construct buildings on lots approved under the subdivision floodplain permit, and deleted clarification of which flood elevations will govern upon construction of the building. State law will dictate. [Section 9-104 (2) and (3)]

## **Proposed Substantive Changes**

### ***Environmental Committee Recommendations***

- Substantial Improvement Exemption for renovations of Residential and Nonresidential buildings above the FEMA Flood Protection Elevation. [Section 9-102 (a) (1) (a)]
- Expand definition of “New Construction”. Expanded definition is needed to limit the Substantial Improvement Exemption to “renovations” of existing buildings, and prevent it from applying to “tear down/rebuild” projects. [Section 9-21 and 9-63 (17)]

### **Note:**

The Environmental Committee recommends this exemption in order to lessen the restrictions on some property owners with buildings in the Community Floodplain.

The advantages of this proposed exemption are:

- Immediate cost savings to property owners considering substantial improvements to their buildings.
- May improve short-term “marketability” of the property.
- Property owner will be allowed to make larger improvements and increase the value of the property.
- May prevent some “tear down/rebuilds” to existing older homes.

Staff has concerns that this exemption will significantly increase the value of some buildings that will be damaged or potentially destroyed by flooding in the future. The shortcomings of this proposed exemption are:

- Inconsistent with current floodplain management goal of reducing the potential loss of life and property due to flooding.
- More property damage will occur due to larger/more expensive buildings that are at risk to future flooding.
- Regulatory “building elevation requirement” will be applied differently depending if the structure is considered new construction or the structure is being renovated. Owners constructing a new building and owners considering substantial improvements to a building below FEMA regulatory elevations will incur additional cost to insure their building is above the community flood levels. But owners considering substantial

improvements to existing buildings above FEMA regulatory elevations will not be required to insure their building is above the community flood levels.

- Owners will lose this exemption as maps are revised, if their building is remapped below the FEMA Flood Protection Elevation.
- May harm the long-term “marketability” of the property.

# **Substantial Improvement Exemption**

## **Existing Structures above FEMA and below Community regulatory flood elevations**

### **Background:**

- When the floodplains were remapped by Charlotte-Mecklenburg Storm Water Services (CMSWS) and FEMA in 2000, a Community floodplain (assumed full build-out in the watershed) was drawn to prevent new development and redevelopment from being constructed in future floodprone areas.
- The Floodplain Ordinance that accompanies the maps in regulating development in the Community floodplain currently contains “grandfathering” (modeled after FEMA regulations) that would allow structures to be renovated up to 50% of their value without having to bring the structure into compliance with Community regulatory flood elevations.
- The Floodplain Ordinance also contains restrictions preventing structures from being improved greater than 25% of the value twice within 10 years without having to bring the structure into compliance with Community regulatory flood elevations.
- CMSWS staff estimates there are approximately 600 existing structures that are above FEMA regulatory flood elevations and below the Community regulatory flood elevations.
- Since 2000, CMSWS has been awarded over \$31M in funding for the acquisition and removal of approximately 150 floodprone buildings. It is estimated there are approximately another 250 floodprone buildings that qualify for acquisition at a total cost of over \$50M. These are in addition to the 600 buildings discussed above.

### **Exemption Option for Substantial Improvements:**

Ordinance Revisions: Under direction by City Council, the following modification could be made to the current floodplain ordinance making it less restrictive to the 600 buildings (those above FEMA and below Community regulatory Flood Elevations):

- Exemption applies to renovations only
- Tear down/rebuilds would need to become compliant with the Community floodplain elevations (i.e., meet existing regulations).
- There would not be an upper limit as to the increased value of the structure before the structure would need to come into compliance with the Community flood elevations.

### **Pros/Cons:**

- Pros:
  - Immediate cost savings to the existing property owner
  - May improve short-term “marketability” of the property
  - Property owner will be allowed to make larger improvements
- Cons:
  - Totally inconsistent with the goal of reducing the chances for loss of property due to flooding



- Inequitable – owners of new buildings or those below FEMA regulatory elevations have to incur additional cost to become compliant – but – owners of existing buildings above FEMA do not
- Buildings with greater value will flood in the future
- Owners may need to purchase flood insurance in the future
- Owners may be subjected to the FEMA Substantial Improvement as maps are revised

Notification: If the above exemption is adopted, when a property owner applies for a building permit to construct improvements that are over 50% of the building value, the property owner will have the following options:

1. Construct the structure so that it meets the Community regulatory flood elevation, or
2. Submit a request for a variance from the substantial improvement rule through the ZBA, or
3. Prior to issuance of a building permit, the property owner would be required to record an Affidavit with the Register of Deeds Office that could be identified in the chain of title for the property. The Affidavit will acknowledge that the property owner elected to proceed with the renovations/rehabilitations, and was made aware of the Community Base Flood Elevations and that in the future there will be:
  - a. potential for flood losses,
  - b. potential for mandatory purchase of flood insurance,
  - c. potential for FEMA substantial improvement rules to apply, and
  - d. no local funds available for flood mitigation assistance (buyouts, elevations, etc).

Tear down/rebuilds: The Floodplain regulations would need to clearly differentiate between improvements to the existing structure and “tear down/rebuilds”. Tear down/rebuilds can be defined by revising the definition of New Construction as follows:

New Construction also means construction of a replacement structure commenced after total demolition; or renovation/rehabilitation of an existing structure that results in the partial or complete removal of 2 external walls and has a total cost equal to or exceeding 50 percent of the market value of the structure before the “start of construction” of the improvement.

# **Floodplain Notifications – Proposed Action Plan**

## **Background**

Notifying and educating property owners about floodplains and floodplain regulations are extremely important. There are numerous methods of notifying impacted residents about floodplain regulations. To date, staff has primarily relied on mailings (both direct and general) and city/county websites to provide basic floodplain information to the community. In the section below, staff has listed many options to proactively notify the general public and impacted property owners about floodplain regulations. Some of these are within staff's ability to implement, and others will take agreements with 3<sup>rd</sup> party groups to implement.

## **Summary of Options**

### **POLARIS & Storm Water Website GIS Applications**

Floodplain information is readily available on the internet. The County maintains the most commonly used webpage for general real estate information, POLARIS. Currently, FEMA and Community floodplain lines are displayed. More detailed floodplain information is located on the City-County Storm Water Services (SWS) webpage under the Floodzone Interactive Map. Staff is currently working to improve POLARIS to more effectively notify and “redirect” interested users to more detailed floodplain information on the SWS Website. Staff is also actively working on the SWS website's Floodzone Interactive Map to more clearly notify individual owners of their floodplain individual property information on the Floodzone Interactive Map.

#### ***ACTIONS:***

- Pursue improvement to POLARIS floodplain information
- Implement improvements to Floodzone Interactive Map

### **Annual Direct Mailers**

Staff will send annual direct mailings to owners of floodplain property. The mailers will serve two purposes; to inform and educate property owners and to receive additional points to maintain our rating in the Community Rating System that provides flood insurance discounts to homeowners.

#### ***ACTIONS:***

- Continue recently started annual direct mailings to individual floodplain property owners

### **Media Campaign**

The FY2006 media campaign includes efforts to educate the community about floodplains. In previous years, the campaign was primarily focused on water quality education.

#### ***ACTIONS:***

- Continue recent efforts to include floodplain education in media campaign

### **Carolina Multiple Listing Service - Charlotte Regional Realtor® Association**

The Carolina Multiple Listing Service is a property listing system used by Realtors to advertise and market properties. The system contains lots of information pertaining to the property. Staff can initiate discussions with the CMLS related to adding floodplain information to “Tempo” system. This would provide information to buyers and realtors upon listing the property for sale.

#### ***ACTIONS:***

- Pursue discussions with CMLS to add floodplain information to the TEMPO system

### **Property Disclosure Statement - NC Real Estate Commission**

North Carolina General Statute 47E requires owners of residential real estate (single-family homes and buildings with up to four dwelling units) to furnish purchasers a property disclosure statement. The disclosure statement is filled out by the property owner and delivered to the purchaser no later than the time the purchaser makes an offer to purchase the property. The disclosure statement provides the owner with the option to indicate whether the owner has actual knowledge of the item or the owner is making no representations as to any characteristic or condition.

#### ***ACTIONS:***

- Pursue discussions with NCREC to expand disclosure to include Community Floodplains

### **Notice in Chain of Title**

From discussions related to the Floodplain Regulations, it appears that Staff, the City Council Environment Committee, and neighborhoods all desire greater notification of floodplain ordinance restrictions to owners and potential buyers of floodprone property. This option would give notice to the buyer prior to closing on the property.

#### ***ACTIONS:***

- If the Substantial Improvement exemption is adopted, staff can draft language for the Floodplain Regulations to notify future owners that improvements greater than 50% have occurred. The Owner would record an Avadavat in the chain of title. Details are provided under the exemption option for substantial improvements.
- Staff can draft language for the Floodplain Regulations for renovations/rehabilitations to existing buildings that cost between 25% and 50% of the Market Value. Future owners would be aware that one 25% improvement has occurred by the Owner recording a Notice in the chain of title. The notice would acknowledge the following:
  - FEMA substantial improvement rule applicability,
  - inability to improve the structure greater than 25% of the value of the structure without having to bring the structure into compliance with Community flood elevations, and
  - potential for flood losses,

- Council can direct staff to inform potential buyers of Substantial Improvement restrictions through the recordation of a notice in the property chain of title, for all structures with the Lowest Floor below the Flood Protection Elevation. The County would record a Notice disclosing the structure is within the floodplain and the location of additional information concerning restrictions on renovations, potential for flood damages, flood insurance requirements, etc is available.

**From:** Bruce A. Andersen [bruceaa@ieee.org]  
**Sent:** Wednesday, January 03, 2007 9:31 PM  
**To:** FoxxCharlotte@aol.com; Burch, Julie  
**Cc:** Richards, Tim; Canaan, Dave  
**Subject:** Floodplain ordinance - proposed changes

From: Bruce A. Andersen  
email: bruceaa@ieee.org

Mr. Anthony Foxx, Chairman  
Environment Council Committee

Subject: Floodplain ordinance

In listening to discussion in the Environment Council Committee regarding the Floodplain Ordinance on December 18, it was clear that you believed a change was necessary. At our meeting on December 21, the Storm Water Advisory Committee (SWAC) discussed the option offered to your committee by staff. Please allow me to express the concerns of our committee.

When the SWAC first reviewed the City Floodplain Ordinance, we recognized that the issues were complex and formed a sub-committee to review the staff draft and make suggestions for improvement. This sub-committee met for 7 times over a three-month period and exchanged numerous Email conversations. We discussed the substantial improvement issue at five of these meetings.

Each time the committee made a revision in the wording relating to substantial improvement, new problems became apparent in the revised wording. Only after extensive efforts by staff and lengthy discussions in the sub-committee meetings was a workable solution reached. Had the members not taken the time to reexamine the wording carefully each time, serious problems would have been missed.

While a small minority of residents complain about what the ordinance says they cannot do, our committee is concerned with what the ordinance does not say! The ordinance does not say an owner cannot make a 24% improvement every year for 5 years. This would total 120%, or more than doubling the value. This "loophole" already allows significant latitude to the property owner. While on the subject of loopholes, it is not difficult to envision an innovative owner and builder producing a plan that circumvents the rules in the option offered by staff in response to your concerns.

Note also that the ordinance specifically allows the property owner to seek a variance to allow modifications the owner finds necessary. Please recognize the impact that making these changes will have on the community.

- Increases chances for loss of property,
- Increases financial risk to tax payers due to additional costs related to emergency response,
- Increases cost of insurance through the National Flood Insurance Program,
- Increases cost of insurance to majority,
- Continued delays in getting the ordinance approved will increase the risk to the majority, and
- The change, even if it were effective, would not prevent non-monetary impacts to those owners whose property will someday flood - such as displacement from their home and loss of personal effects and memorabilia.

While the Storm Water Advisory Committee does support the proposed additional notification efforts, the SWAC voted to ask your committee to allow the substantial improvement language to remain unchanged.

Thank you for your consideration.

Bruce A. Andersen, Chairman  
Storm Water Advisory Committee

cc: Julie Burch, Assistant City Manager  
Tim Richards, Charlotte Storm Water Services Manager  
Dave Canaan, Mecklenburg County Water & Land Resources Director

SWAC Members:

Bruce Anderson, Environmental Profession representative (Chairman)  
Roy Alexander, Neighborhood representative (Vice-Chairman)  
Paul DuPont, Institutions representative  
Donald Jones, General Contractor representative  
Tim Mead, Neighborhood representative  
Fred Monroe, Neighborhood representative  
Donnie Robinson, Industrial/Manufacturing/Commercial Property representative  
David Stewart, Developer/Design professional representative  
Vacant, Neighborhood representative

# **Proposed Requests by City Council of Mecklenburg Board of County Commissioners**

## **Floodplain Management**

### *Environmental Committee Recommendations*

#### **Background:**

- Prior to the development of Charlotte-Mecklenburg Storm Water Services (CMSWS) in 1993, Charlotte maintained the storm drainage system within the City street right-of-way and the County maintained the floodplains. Then, as it is today, the City Council delegated the authority to enforce the City's Floodplain Ordinance as part of a comprehensive floodplain management and construction permitting approach.
- In 1993, the City, County and Towns executed Storm Water Interlocal Agreements that acknowledged the County's continued responsibility for FEMA streams and floodplain areas, as well as, the municipalities' land-use decision making authority related to the floodplain ordinances.
- Since 1993, CMSWS has expanded the level and extent of service significantly. Today the floodplain management program now includes an expanded community outreach program (mailings, internet site, etc), flood warning and flood mitigation services (buyouts, flood proofing guidance, etc). These program elements are under the direction of the Board of County Commissioners as mutually agreed to among the City, County and Towns. Establishing a community floodplain (based on ultimate build-out in the watershed) in 2000 and enforcement of the municipalities' floodplain regulations based on the community floodplain has had a tremendous impact on reducing future flood losses.

#### **City Council Request of Mecklenburg Board of County Commissioners:**

As discussed above, the City Council and Town Boards have more of a land-use/regulatory role in floodplain management. The County has a role in implementation of the floodplain ordinances for new and redevelopment, but more so in the implementation of flood mitigation projects (floodplain buyout program); floodplain remapping, stream restoration and maintenance; flood warning; and community outreach (flood safety, insurance availability, vegetation management, etc).

Based on Floodplain Ordinance revisions being discussed by the Environment Council Committee, as a result of Ordinance changes proposed by CMSWS staff and the Charlotte-Mecklenburg Storm Water Advisory Committee, the following request would like to be made to the Board of County Commissioners:

- Support CMSWS efforts in the development, funding and implementation of a Floodplain Remapping program.
- Pursue expanding the notification of current and future owners of floodplain properties to be aware of development restrictions and flooding potential through:
  - More specific, annual notifications/mailers
  - Continuing to improve the POLARIS and Storm Water GIS internet sites
  - Working with the Carolina Multiple Listing Services to include floodplain information
  - Researching possible revisions to the Property Disclosure Form to address the community floodplain
  - Requiring the recordation of an Affidavit that states the property owner that has elected to proceed with a renovation while not bringing the

structure up to the community regulatory flood elevations has  
relinquished the ability to access local mitigation funds in the future



# Frequently Asked Questions Proposed Floodplain Regulations revisions

## **General Floodplain Questions**

### **How does the 100-year flood or the 1% chance flood event really work?**

Statistically speaking, there is a 1% chance in any given year that a 100-year flood event will take place. The 100-year flood event may not happen in a given year, though it may happen 2 or 3 times in a given year. Just because it happens one year does not reduce its chances of happening the next year. The flood event is characterized by the flooding that has a 1% chance of occurring in any given year.

### **What is the cumulative impact on existing buildings and land caused by new development in the floodplains?**

It is difficult to determine the cumulative impact of small, individual developments because the models available today are unable to measure very small impacts and how they may affect water surface elevations. The floodplain maps were revised in 2000 and reduced the amount of land available for development in the floodplain from 50% to 25%.

### **Is flood insurance required inside the floodplain?**

Yes, flood insurance is required, if you have an outstanding mortgage and the building is located within the Federal Emergency Management Agency (FEMA) Floodplain. You may also purchase flood insurance if you are outside the FEMA floodplain at a reduced rate.

### **What is the difference between the FEMA Floodplain and the Community Floodplain?**

The FEMA Floodplain represents the land area subject to flooding based on a 1% chance flood using 1999 land use conditions. FEMA uses this floodplain to regulate development for insurance purposes. The Community Floodplain represents the land area subject to flooding based on a 1% chance flood using future land use conditions. Charlotte uses the Community Floodplain to regulate development so that flood damages do not increase as the City builds out. A graphic showing example FEMA and Community lines is attached.

## **General Floodplain Regulations Questions**

### **What is the relationship between the Floodplain Regulations revisions and the Post Construction Controls Ordinance?**

The Floodplain Regulations deal with development in and around the floodplains. The Post Construction Controls Ordinance deals with protecting water quality and our streams as well as reducing impacts immediately downstream from development. The Post Construction Controls Ordinance discussions will occur later this year.

### **How do the City's Environmental Principles relate to the Floodplain Regulations?**

The Environmental Principles deal primarily with water quality and quantity issues and how protecting them support a sustainable community. The Floodplain Regulations are a part of our storm water system, benefiting from the Environmental Principles and efforts to protect and improve their beneficial and natural functions.

### **How does the proposed Post Construction Controls Ordinance (PCCO) relate to Floodplain Regulations?**

The proposed PCCO will provide regulatory guidance for development throughout the City, affecting both small and large creeks. The PCCO will propose regulations to improve both water quality and quantity problems in the City; however, at this time it reflects the City's long-held practice to require detention to reduce flooding impacts immediately downstream of development. However, in large, less frequent storm events, runoff is allowed to flood the floodplains. The Floodplain Regulations have customarily been used to regulate development in and around those floodplains to protect and improve their beneficial and natural functions of the floodplains, while keeping buildings out of harms way.

### **What are the differences between FEMA requirements and local higher standards?**

The attached table shows the current FEMA requirements and the City's higher standards.

### **What is the impact of Floodplain Regulations on marketability of a home?**

City or County staff does not have studies showing the impact on marketability. It is staff's observance that homes within the floodplains continue to sell.

**How do you deal with properties that were not in a regulated floodplain when they were either purchased or developed, but now are?**

Properties get into a regulated floodplain in one of the following ways:

1. They were shown to be in the FEMA floodplain as a result of the original mapping adopted in 1973.
2. Rising flood levels caused by development and increased impervious areas upstream.
3. More accurate mapping as a result of factors such as; more accurate existing and future land use conditions, better topography information, resolving past mapping errors, etc.

**Will there be additional costs to the property owner?**

Currently, the costs for administering the Floodplain Regulations are paid by all fee payers as part of their Storm Water fee. A fee schedule, to be implemented in FY08, will be developed by Mecklenburg County so that only those seeking Floodplain permits will pay for the service.

**What Council Districts and neighborhoods are affected by having structures between FEMA and Community Flood Protection Elevations?**

All Council Districts are affected by this issue. A map showing locations of neighborhoods with properties where the first floor elevations are above the FEMA Protection Elevation, but below the Community Protection Elevation has been provided to Council recently and are available if needed.

**Who has been involved as stakeholders in the process?**

A listing of stakeholder participating groups is attached.

**What is the notification process now vs. what is being proposed?**

A graphic showing current and proposed notification procedures are attached.

**What is the cost for County staff to administer the Floodplain Regulations?**

The cost to be recouped via Floodplain Permit fees in support of administering the Floodplain Regulations is anticipated to be approximately \$80,000 per year.

## **Levees**

### **How many levees are in Charlotte?**

Staff knows of at least four significant levees in Charlotte. Two are on public property and two are on private property. There may be other, smaller levees that staff is not aware of.

### **Does the City have liability by not maintaining private levees?**

Liability is a very broad issue. In general, a private levee will require that a private engineer certify the safety of the levee; therefore, the City Attorney's Office believes the liability will remain with the engineer or the private entity ensuring maintenance of the levee.

### **Who does staff hold accountable if the person(s) responsible for levee maintenance leave or go out of business?**

Should the party or parties responsible for levee maintenance leave or go out of business, Mecklenburg County will determine whether the levee should be removed or breached for safety reasons. Should the levee need to be removed or breached, the work will be done by Mecklenburg County.

## **Substantial Improvement**

### **Why are some of the residents in the Chantilly neighborhood expressing concerns about the revisions?**

There are 15 homes in this neighborhood where the first floor elevations are above the FEMA Protection Elevation, but below the Community Protection Elevation. They believe the Community Floodplain prevents them from being able to improve their properties as they wish.

### **Why does the City require Substantial Improvement regulations for the Community Floodplains?**

The substantial improvement portion of the regulations is required in the FEMA floodplain in an effort to prevent major improvements to structures in flood-prone areas. This reduces the risk of increased insurance claims for the National Flood Insurance

Program (NFIP). The City has substantial improvement rules in place for the Community Floodplains in a similar effort to prevent major investment in an area that may not be flood-prone at this time, but will be in the future. As an aside, this helps the NFIP, but more importantly, it communicates risk to current and future property owners.

**Who determines the structure value when complying with the substantial improvement rules?**

Initially Mecklenburg County will estimate the value of a structure based on tax value information. Should a property owner disagree with this value, they may have an appraisal performed to document a different value.

**Do interior renovations count towards the substantial improvement threshold?**

Yes, all renovations, reconstruction or damages (regardless of actual repair work done) count except for:

- Any correction of existing violations of State or Community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or,
- Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

**What is the cost to elevate a structure so that it meets the Community or FEMA substantial improvement rules?**

Costs for this work vary; however, it is estimated to cost between \$35,000 and \$50,000 to raise a 1,500 square foot house. The actual costs will depend on the specific situation.

**Mapping**

**What is being done to prevent continued rise of the FEMA floodplain line towards the Community line?**

Currently there are no measures taken to prevent this from happening. The City has existing regulations for commercial development that require some new development and redevelopment to detain storm water runoff from smaller storm events; however, the larger, less frequent events (100-year) mapped by the floodplains will continue to increase. The City will need to determine if it is appropriate to try to reduce flooding from the 100-year floods. The upcoming PCCO discussion will be the best opportunity for making this decision.

**How do you determine the Community Floodplain lines and the amount of water to support them?**

Mecklenburg County uses ultimate build-out of the City along with current small area plans produced by the Planning Commission in modeling future floodplains. The County will also be proposing a floodplain mapping protocol to reduce inaccuracies in the future caused by land uses being out of date.

**How often are maps updated?**

The original floodplain maps were produced in 1973 and a subsequent remapping occurred in 2000 with final maps adopted by FEMA in 2004. Maps may be re-modeled and re-drawn when there are significant land use changes in a watershed or significant development and/or topographic changes occur in the floodplain. The County is in the process of formulating a re-mapping strategy that will begin in FY08.

**Other topics**

**What other topics have been discussed during the Floodplain Regulations revisions process?**

You may have heard references to issues surrounding things like the Doral/Cavalier Apartments, a CSX Railroad embankment and proposed solutions to Chantilly flooding. These items have been discussed in other venues outside the Floodplain Regulations revisions process and even some during the process. The City and County staff will continue to work with residents having these questions. Most of these issues are related to County operations, rather than Floodplain Regulations.

# *FEMA vs. Community Flood Elevations (“600 Buildings”)*



**Community Flood Height**

**FEMA Flood Height**

## **Note:**

- 1) House does not flood based on FEMA flood height**
- 2) House may flood in the future as development occurs in the watershed (Community Flood Protection Elevation)**

# Higher Floodplain Management Standards

## Adopted Local Standards\* compared to FEMA/State Minimum Standards

Higher Standard	FEMA/State Minimums	Description/Local Requirements	Benefits
Community Floodplains (Future Conditions)	<ul style="list-style-type: none"> <li>• Map the 100 and 500-year with little regulations</li> <li>• Construction allowed at flood elevations based on existing landuse</li> </ul>	<ul style="list-style-type: none"> <li>• Floodplain maps were revised locally in 2000 and include floodplain location and heights based on build-out in the watersheds using the Charlotte-Mecklenburg Planning Commission District Plans.</li> <li>• New buildings and substantially improved buildings must be built with the lowest floor elevated at least one foot above the Future Base Flood Elevation (2 feet on Catawba).</li> </ul>	<ul style="list-style-type: none"> <li>• Estimated 800 newly constructed buildings will not be at risk to future flooding</li> </ul>
Higher floor elevation requirement (Freeboard)	<ul style="list-style-type: none"> <li>• Lowest floors of new or substantially improved buildings must be elevated only to the existing conditions base flood elevation</li> </ul>	<ul style="list-style-type: none"> <li>• Floors of new or substantially improved buildings must be elevated at least one (1) foot above the future base flood elevation. (2 feet on Catawba).</li> </ul>	<ul style="list-style-type: none"> <li>• This will provide an extra degree of safety for factors not accounted for in the mapping such as, stream blockages, sedimentation in culverts, and inaccuracies in the mapping models.</li> </ul>



# Higher Floodplain Management Standards

## Adopted Local Standards\* compared to FEMA/State Minimum Standards

Higher Standard	FEMA/State Minimums	Description/Local Requirements	Benefits
Substantial/Damage Improvement	<ul style="list-style-type: none"> <li>• Must become compliant with FEMA minimum requirements</li> <li>• Damages or improvements, occurring in one event, costing greater than 50% of the value of the building.</li> </ul>	<ul style="list-style-type: none"> <li>• Prevents rebuilding or significant improvements and continued flood losses/claims</li> <li>• Requires elevation of an existing building, if the building is improved or damaged in two events in a 10-year period when the value of each event is over 25% of the building's market value.</li> </ul>	<ul style="list-style-type: none"> <li>• Buildings will be brought up to compliance and made safer in a shorter time period.</li> <li>• Flood Insurance policy holders will become eligible sooner for up to \$30,000 to elevate. Helps improve improves CRS rating.</li> </ul>
Encroachment Zones	<ul style="list-style-type: none"> <li>• 1 foot surcharge</li> <li>• Maximum developed area allowed</li> <li>• 50% developed and 50% non-developed areas</li> </ul>	<ul style="list-style-type: none"> <li>• Wider areas are shown on flood maps which are reserved to allow the free flow of high velocity flood waters while limiting development in these areas.</li> <li>• 0.1 foot surcharge</li> <li>• Minimum developed area allowed (except for total prohibition)</li> <li>• 25% developed and 75% non-developed areas</li> </ul>	<ul style="list-style-type: none"> <li>• May prevent loss of life and property damage during flood events, since a larger portion of the floodplain is reserved to discharge a flood.</li> <li>• This will limit the amount that flood levels might otherwise be increased above predicted BFEs due to placement of fill and other obstructions to the flow of floodwater. Also, this higher standard will provide CRS credits.</li> </ul>

# Higher Floodplain Management Standards

## Adopted Local Standards\* compared to FEMA/State Minimum Standards

Higher Standard	FEMA/State Minimums	Description/Local Requirements	Benefits
Permanent Vehicular Access	<ul style="list-style-type: none"> <li>• None – voluntary program</li> </ul>	<ul style="list-style-type: none"> <li>• The driveway to new or substantially improved buildings located in the floodway portion of the floodplain, must be elevated above the future base flood elevation and must connect to a public street above the future base flood elevation.</li> <li>• Exemptions when no dry public street (proposed ordinance):               <ul style="list-style-type: none"> <li>- New construction outside encroachment area</li> <li>- Substantially improved buildings anywhere in the floodplain</li> </ul> </li> <li>• Variance are allowed (proposed ordinance)</li> </ul>	<ul style="list-style-type: none"> <li>• Provides a safer access for regular and emergency vehicles to buildings located in this high hazard, high velocity area of the floodplain.</li> </ul>
Community Rating System (CRS)	<ul style="list-style-type: none"> <li>• None – voluntary program</li> </ul>	<ul style="list-style-type: none"> <li>• Communities' Floodplain Management programs are rated by FEMA to determine to what degree their programs exceed FEMA's minimum standards. Flood Insurance policy holders in the community receive a discount on their premiums based on the rating.</li> </ul>	<ul style="list-style-type: none"> <li>• Charlotte flood insurance policy holders receive a 25% discount. The largest discount of any similar sized city in the US.</li> <li>• \$240,000 annual savings</li> </ul>

Note: \* Adopted by City Council in October 1999 and May 2003.

# 2006 Charlotte Floodplain Ordinance Proposed Revisions

## *Stakeholder Input and Outreach Efforts*

### Charlotte-Mecklenburg Storm Water Advisory Committee (SWAC):

- Advises BOCC and Council on budget and policy issues
- 9 members
- Appointed by City (3), County (3), Towns (2) and SWAC (1)
- Represent various groups: environmental, development, legal, general contractor, institutions, industry, and neighborhoods (3)
- Floodplain Subcommittee:
  - SWAC Chairman, SWAC Vice-Chair, General Contractor and added two more to the subcommittee (environmental and engineer)
  - Reviewed over 8 meetings over 4 months
- Reviewed Ordinance over a period of approximately 8 to 10 months
- Unanimous vote of endorsement (July 2006)

### Subdivision Steering Committee:

- Ad-hoc technical advisory committee to City/County staff
- Subdivision and land development matters
- 8 land development industry representatives, 8 City/County staff members
- Meet monthly
- Received updates when the Floodplain Subcommittee was meeting
- Provided comments prior to SWAC endorsement

### Riverside/Lake Drive Residents:

- Immediately downstream of Mountain Island Lake Dam, Catawba River
- 150 residents
- May 30, 2006 Neighborhood Meeting
  - Duke FERC Re-licensing
  - Floodplain Ordinance Changes

### Chantilly Neighborhood:

- Briar Creek, adjacent to Doral/Cavalier Apartments
- 600 residents
- 3 neighborhood meetings since April 2006
- Possibly more neighborhood meetings in the future related to study findings and floodplain map changes

### Levee Stakeholders Group:

- Groups who have expressed an interest in constructing levees
- Property owners, private engineers, and legal
- Pinebrook Business Park
- Myers Park Drive residents (Airlie subdivision)
- Multiple meetings since late 2004

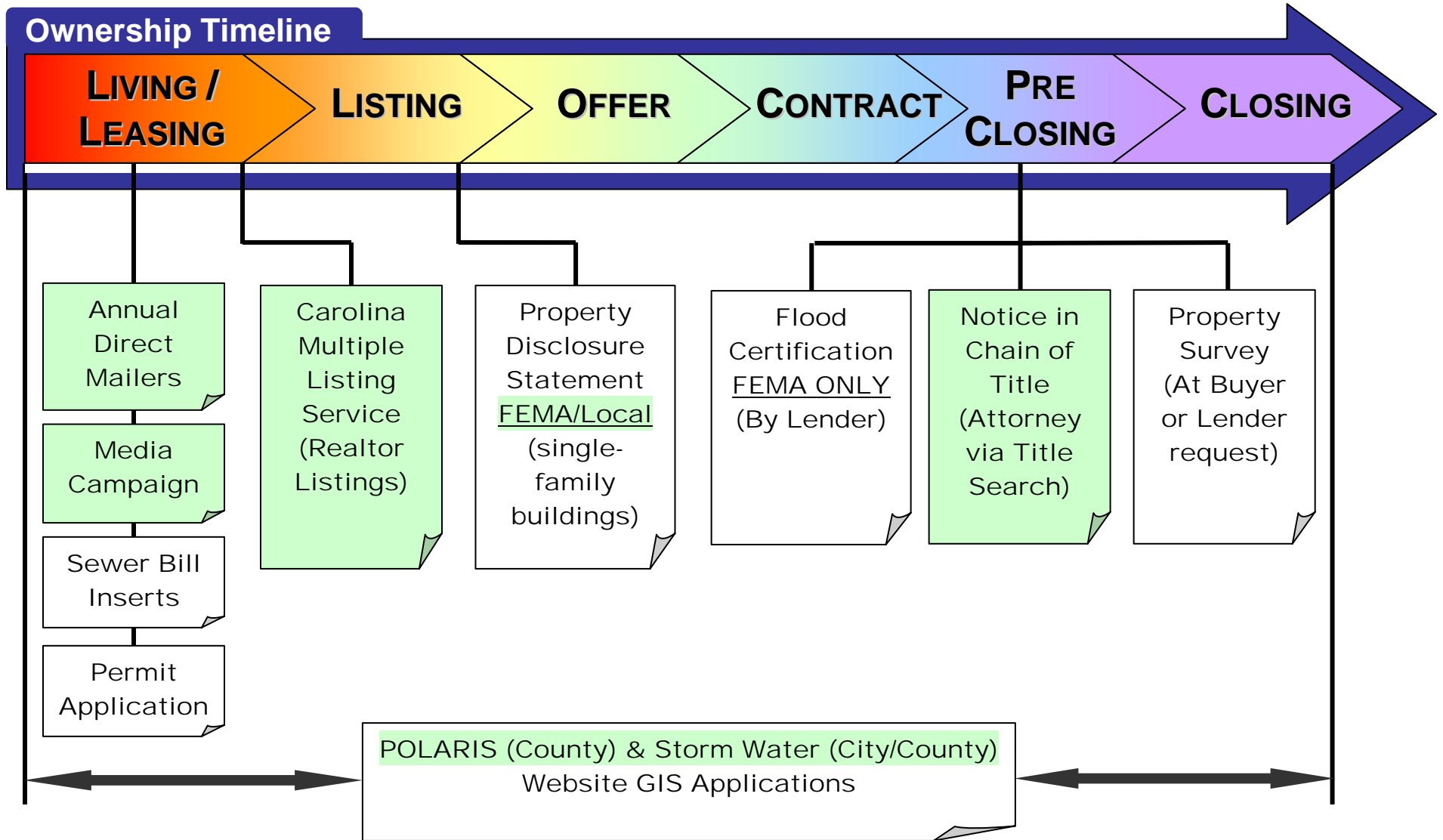
### Floodplain Mailings (July 2006):

- Prior to Public Hearing
- 1600 property owners with structures below community flood heights
- 3300 property owners with structures above community flood heights
- 8000 vacant property owners
- Website contained an Ordinance summary, proposed ordinance, existing ordinance and ability to provide comments

# FLOODPLAIN NOTIFICATION & EDUCATION

## *Property Ownership Life Cycle*

### *As Proposed*



December 5, 2006

ORDINANCE NO. \_\_\_\_\_ ORDINANCE AMENDING CHAPTER 9

AN ORDINANCE AMENDING CHAPTER 9, (FLOODWAY REGULATIONS) OF THE CODE OF THE CITY OF CHARLOTTE:

## **Chapter 9 FLOODPLAIN REGULATIONS**

### **ARTICLE I. STATUTORY AUTHORIZATION, FINDINGS, PURPOSE AND OBJECTIVES**

#### **Section. 9-1. Short title.**

The regulations set out in this ordinance (sometimes herein referred to as "this regulation" or "this ordinance") shall be known and may be cited as the "Floodplain Regulations of Charlotte, North Carolina."

#### **Section. 9-2. Statutory authorization.**

The legislature of the State of North Carolina has in the general statutes of North Carolina, authorized cities to adopt regulations designed to promote the public health, safety and general welfare of its citizenry by regulating the placement of obstructions in flood hazard areas.

#### **Section. 9-3. Findings of fact.**

(a)The flood hazard areas of Charlotte and Charlotte's Land Use jurisdiction are subject to periodic inundation which results in loss of life, increased health and safety hazards, destruction of property, and disruption of commerce and governmental services. Inundation from flood waters results in public expenditures for flood protection, flood disaster relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(b)These flood losses are created by the cumulative effect of obstructions in Floodplains, causing increases in flood heights and velocities and by the occupancy in flood hazard areas by uses vulnerable to floods or hazards to other lands which are inadequately elevated, floodproofed or otherwise unprotected from flood damages.

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**Section. 9-4. Statement of purpose.**

It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

1. Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards or which result in damaging increases in erosion or in flood heights or velocities;
2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. Control the alteration of natural Floodplains, stream channels and natural protective barriers which are involved in the accommodation of flood waters;
4. Control filling, grading, dredging and other Development which may increase erosion or flood damage; and
5. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

**Section. 9-5. Objectives.**

(a) The regulations of the Special Flood Hazard Areas herein set forth are intended to protect areas of designated Floodplains subject to and necessary for regulating flood waters and to permit and encourage the retention of open-land uses which will be so located and designed as to constitute a harmonious and appropriate part of the physical development of the City as provided in the comprehensive plans as such are adopted and amended from time to time.

(b) The specific intent in establishing Special Flood Hazard Areas composed of floodways and flood fringe areas includes the following:

1. To control uses such as fill dumping, storage of materials, structures, buildings and any other works which, acting alone or in combination with other existing or future uses, would cause damaging flood heights and velocities by obstructing flows and reducing floodplain storage;
2. To protect human life and health;
3. To minimize the expenditure of public money for costly flood-control projects;
4. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
5. To permit certain uses which can be appropriately located in flood hazard areas and to assure such permitted uses will not impede the flow of flood waters or otherwise cause danger to life and property at or above or below their locations along

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the floodways;

6. To minimize prolonged business interruptions;

7. To protect existing drainage courses that carry abnormal flows of stormwater in periods of heavy precipitations;

8. To minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone and sewer lines and streets and bridges located in Floodplains;

9. To meet the needs of the streams to carry flood waters and protect the creek channels and Floodplains from Encroachment so that flood heights and flood damage will not be increased;

10. To inform existing and potential property owners that property is in a Special Flood Hazard Area as well as the associated flood risks and development restrictions; and

11. To minimize future flood losses by depicting Community Flood Fringe Areas on the Flood Insurance Rate Maps.

Deleted: 10. To ensure that potential buyers are notified that property is in a Special Flood Hazard Area; and¶

(c). This ordinance is intended to permit only that Development within the Floodplain which is appropriate in light of the probability of flood damage and presents a reasonable social and economic use of land in relation to the hazards involved. The regulations hereinafter set forth shall apply to all property located within the Special Flood Hazard Area as shown on the Flood Insurance Rate Maps (FIRM) including FEMA and/or locally approved revisions to data shown on the FIRMs. It is the intent that these regulations combine with and coordinate with the zoning ordinance regulations for the zoning district in which such property is located. Any use not permitted by the zoning regulations shall not be permitted in the Special Flood Hazard Area, and any use permitted by the zoning regulations shall be permitted in these districts only upon meeting conditions and requirements as prescribed in this ordinance.

Deleted: and the Community Flood Fringe Area

Deleted: Community

**Section 9-6 – 9-20. Reserved.**

## ARTICLE II. DEFINITIONS

### Section 9-21. Definitions.

Unless specifically defined in this section, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application. The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context

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clearly indicates a different meaning.

*Accessory Structure* means a structure which is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

*Addition (to an existing building)* means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition which is connected by a firewall or is separated by independent perimeter load-bearing walls is "New Construction."

*Appeal* means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance.

*Backwater Area* is a length of stream where the water surface slope differs from the channel bed slope due to downstream obstructions (culverts, bridges, other stream, etc.). The slopes are depicted on the stream profile plots included in the Mecklenburg County and City of Charlotte Flood Insurance Studies.

*Basement* means the lowest level or story of a building which has its floor subgrade on all sides.

*Building* means any structure built for support, shelter or enclosure for any occupancy or storage.

*Community Base Flood* means the flood determined using future land use conditions having a one percent chance of being equaled or exceeded in any given year.

*Community Base Flood Elevation* means the elevation shown on the Flood Insurance Rate Map Flood Hazard Data Table, having a one percent chance of being equaled or exceeded, determined using future land use conditions.

*Community Conditional Letter of Map Revisions (CoCLOMR)* means a letter from the Floodplain Administrator that provides conditional approval of a study that proposes to change the location of the Community Encroachment Lines, and/or the location of the Community Flood Fringe Line, and/or Community Base Flood Elevations.

*Community Encroachment Area* means the channel of a stream or other watercourse and the adjacent land areas that must be reserved in order to discharge the FEMA Base Flood without cumulatively increasing the water surface elevation more than 0.1 feet. (see attachments).

*Community Encroachment Lines* are lateral limits of the Community Encroachment Area, within which, in the direction of the stream or other body of water, no structure or fill may be added, unless specifically permitted by this ordinance. (see attachments).

*Community Flood Fringe Area:* The land area located between the Community Encroachment Line and the Community Flood Fringe Line as defined herein. (see attachments).



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*Community Flood Fringe Line* is the line that depicts the outer limits of the Community Flood Fringe Area (outer limits of the Community Special Flood Hazard Area).

*Community Letter of Map Revision (CoLOMR)* means a letter from the Floodplain Administrator that provides final approval of a study, based on as-built conditions, that changes the location of the Community Encroachment Lines and/or the Community Flood Fringe Lines.

*Community Special Flood Hazard Area* is the land subject to a one - percent or greater chance of flooding in any given year from a Community Base Flood. It includes the FEMA Floodway, Community Encroachment Area, FEMA Flood Fringe Area, and the Community Flood Fringe Area. (see attachments ).

*Conditional Letter of Map Revision (CLOMR)* means FEMA's comments on whether a project, if built as proposed, would meet the minimum NFIP standards.

*Critical Facility* means a building used to house a function that is vulnerable or essential to the community. Uses include but are not limited to: child and adult daycare facilities, nursing homes, schools, hospitals, fire, police and medic facilities and other uses as deemed by the Floodplain Administrator.

*Development* means any manmade change to improved and unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating or drilling operations.

*Dry Public Street* means a public street at the intersection of a proposed driveway where the surface of the pavement is at an elevation above the Community Base Flood Elevation.

*Dryland Access* means a gravel, paved or concrete access route, at least 12' wide, which is above the Community Base Flood Elevation and connects an Habitable Building to a Dry Public Street.

*Elevated Building* means a non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers), or shear walls.

*Encroachment* means the advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain. Building renovations contained within the existing building footprint area are not considered an Encroachment.

*Existing Manufactured Home Park or Manufactured Home Subdivision* means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale for which the construction of facilities for servicing the lot on which the manufactured home is to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads and the construction of streets) was completed before August 15, 1978.

*Expansion to an Existing Manufactured Home Park or Subdivision* means the preparation of the additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and with final site grading or the pouring of concrete slabs).

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*FEMA* is the Federal Emergency Management Agency.

*FEMA Base Flood* means the flood determined using land use conditions as of July 1999 having a one percent chance of being equaled or exceeded in any given year.

*FEMA Base Flood Elevation (BFE)* means the elevation shown on the Flood Insurance Rate Map that indicates the water surface elevation resulting from a FEMA Base Flood that has a one percent chance of equaling or exceeding that level in any given year.

*FEMA Flood Fringe Area* is the land area located between the FEMA Floodway Lines and the line depicting the maximum elevation subject to inundation by the FEMA Base Flood as defined herein (see attachments).

*FEMA Flood Fringe Line* is the line on a map that depicts the outer limits of the *FEMA Flood Fringe Area*.

*FEMA Floodway* means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the FEMA Base Flood, without cumulatively increasing the water surface elevation more than 0.5 feet. On the Catawba River, and the portions of Six Mile Creek and Rocky River which run along the county boundary line, the FEMA Floodway means the channel of a stream or other watercourse and the adjacent land areas that must be reserved in order to discharge the FEMA Base Flood, without cumulatively increasing the water surface elevation more than 1.0 feet.

*FEMA Floodway Lines* are the lateral limits of the FEMA Floodway. (see attachments).

*FEMA Special Flood Hazard Area* is the land subject to a one percent or greater chance of flooding in any given year from a FEMA Base Flood. It includes the FEMA Floodway, Community Encroachment Area, and the FEMA Flood Fringe Area. (see attachments)

*Flood or Flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters; and/or
2. The unusual and rapid accumulation of run-off of surface waters from any source.

*Flood Insurance Rate Map (FIRM)* means an official map of a community, in both digital and printed format, on which the Federal Emergency Management Agency has delineated the Special Flood Hazard Area and the risk premium zones applicable to the community.

*Flood Insurance Study* is an examination, evaluation, and determination of Special Flood Hazard Areas, corresponding water surface elevations, flood insurance risk zones, and other flood data in a community. The study includes a Flood Insurance Study report, and/or Flood Insurance Rate Map (FIRMs).

*Floodplain* means the land subject to inundation by the Community Base Flood and is encompassed by the Community Special Flood Hazard Area.

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*Floodplain Administrator* (or Administrator) means the person, agent, or his or her designees, appointed to administer, implement and enforce the provisions of this ordinance.

Comment [B1]: 9-61 uses an "or" rather than an "/"

*Floodplain Development Permit* means either an Individual Floodplain Development Permit or a General Floodplain Development Permit issued for development in the Floodplain per the requirements of Section 9-62 of this ordinance.

*Floodproofing* means any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitation facilities, or structures with their contents.

*Flood Protection Elevation* means the elevation to which all structures located within the Community Special Flood Hazard Area must be elevated (or floodproofed if non-residential). Within areas where Base Flood Elevations (BFEs) have been determined, this elevation shall be the Community Base Flood Elevation plus one ( 1 ) foot of freeboard (except along the Catawba River where it is the FEMA Base Flood Elevation plus two (2) feet of freeboard). In areas where no BFE has been established, all structures and other Development must be elevated (or floodproofed if non-residential), to two (2 ) feet above the highest adjacent grade.

*Floodwall* means a wall built along a shore or bank to protect an area from flooding.

*Floodway* means the either the FEMA Floodway or the Community Encroachment Area.

*Floor* (see *Lowest Floor*)

*Functionally Dependent Facility* means a facility that cannot be used for its intended purpose, unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair or seafood processing facilities. The term does not include long-term storage, manufacture, sales or service facilities.

*General Floodplain Development Permit* is a permit issued for certain types of Development in the Floodplain per Section 9-62 of this ordinance.

*Habitable Building* means a structure designed primarily for, or used for human habitation. This includes, but is not limited to, houses, condominiums, townhomes, restaurants, retail establishments, manufacturing buildings, commercial buildings, office buildings, manufactured homes, and similar uses. It does not include Accessory Structures. (see definition above).

*Hazardous Waste Management Facility* means a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste as defined in NCGS Article 9 of Chapter 130A.

*Highest Adjacent Grade* means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of the structure.

*Historic Structure* means any structure that is:

1. listed individually in the National Register of Historic Places (a listing maintained by

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- the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
2. certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
  3. individually listed on a State inventory of historic places;
  4. individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified
    - a. by an approved state program as determined by the Secretary of Interior, or
    - b. directly by the Secretary of Interior in states without approved programs.

*Individual Floodplain Development Permit* means a permit for Development in the Floodplain that involves activities not listed in Section 9-62 (1) and may not qualify for a General Floodplain Development Permit.

*Letter of Map Revision (LOMR)* means an official amendment to the currently effective FEMA FIRM based on as-built conditions. It is issued by FEMA and may change FEMA Base Flood Elevations, the location of the FEMA Floodway Lines and/or the location of the FEMA Flood Fringe line.

*Letter of Map Amendment (LOMA)* means a letter from FEMA that officially removes a property or building from the FEMA Special Flood Hazard Area (SFHA) that was inadvertently shown in the SFHA on the FIRM.

*Letter of Map Revision based on Fill (LOMR-F)* means a letter from FEMA that officially removes a property from the FEMA Special Flood Hazard Area (SFHA) as a result of placing fill on the property.

*Levee* means a manmade structure, usually an earthen embankment, Floodwall or a combination of both that is designed and constructed to contain, control or divert the flow of water so as to provide protection from temporary flooding.

*Levee System* means a flood protection system which consists of Levee(s) and/or Floodwall(s) and associated structures, such as closure and drainage devices.

*Lowest Floor* means the lowest floor of the lowest enclosed area (including the basement and/or attached garage). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's Lowest Floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

*Manufactured Home* means a structure, transportable in one (1) or more sections, which is built on a permanent chassis and designed to be used with or without permanent foundation when connected to the required utilities. The term "manufactured home" does not include a

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"recreational vehicle."

*Manufactured Home Park or Subdivision* means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

*Market Value* means the value of a building, excluding land value, that is determined by an appraiser certified in North Carolina. The tax value of the building may be used for screening purposes.

*Mean Sea Level* means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this ordinance, the term is synonymous with the "North American Vertical Datum of 1988 (NAVD 88)."

*New Construction* means structures for which the start of construction commenced on or after August 15, 1978, and includes subsequent improvements to such structures. For purposes of Section 9-102, New Construction also means construction of a replacement structure commenced after total demolition; or renovation/rehabilitation of an existing structure that results in the partial or complete removal of 2 external walls and has a total cost equal to or exceeding 50 percent of the market value of the structure before the "start of construction" of the improvement.

*New Manufactured Home Park or Subdivision* means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs) is completed on or after August 15, 1978.

*Nonconforming Building or Use* means any legally existing building or use which fails to comply with the provisions of this ordinance.

*Non-solid Fence* means a fence with at least 75% open area.

*North American Vertical Datum (NAVD)* as corrected in 1988 is a vertical control used as a reference for establishing varying elevations within the floodplain. If a datum other than NAVD 88 is used then use the datum listed as the reference datum on the applicable FIRM panel for use on Elevation Certificate completion. See Flood Insurance Administration (FIA)-20 part 1, 8.

*Open House Forum* is a public meeting held by the owner of the proposed Levee and the Director of Mecklenburg County Storm Water Services, or his designee. The purpose of the Open House Forum is to provide an opportunity for discussion between the owner that has submitted an application for the construction of a Levee, nearby property owners, and other interested parties.

*Recreational Vehicle* means a vehicle which is: (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projection; (3) designed to be self-propelled or permanently towable by a car or light duty truck; and (4) designed primarily not for use as a permanent dwelling, but as temporarily living quarters for recreational, camping, travel or

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seasonable use.

*Reference Level* is the portion of a structure or other Development that must be compared to the flood protection elevation to determine regulatory compliance of such building. Within Special Flood Hazard Areas designated as zones A1-A30, AE, A, A99, AO, or AH, the reference level is the top of the lowest floor.

*Remedy a Violation* means to bring the structure or other Development into compliance with this ordinance or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impact may be reduced include protecting the structure or other affected Development from flood damages, implementing the enforcement provisions of this ordinance or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other Development.

*Repetitive Loss* means flood-related damages sustained by a structure on two (2) separate occasions during any 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds twenty-five percent (25%) of the Market Value of the structure before the damage occurred.

*Solid Waste Disposal Facility* means any facility involved in the storage or disposal of non-liquid, non-soluble materials ranging from municipal garbage to industrial wastes that contain complex and sometimes hazardous substances. Solid waste also includes sewage sludge, agricultural refuse, demolition wastes, mining wastes, and liquids and gases stored in containers as defined in NCGS 130A-290(a)(35).

*Special Flood Hazard Area* means either the Community Special Flood Hazard Area or the FEMA Special Flood Hazard Area. See definitions above.

*Start of Construction* means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as pouring a slab or footing, installation of piles, construction of columns, or any work beyond the state of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not parts of the main structure. For Substantial Improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

*Structure* means for floodplain management purposes, a walled and roofed building, a manufactured home, a gas or liquid storage tank, or other man-made facilities or infrastructures that are principally above ground.

*Substantial Damage* means damage of any origin sustained by a structure whereby the cost of restoring the structure to the condition before damage occurred would equal or exceed 50 percent of the market value of the structure before the damages occurred. *Substantial Damage* also

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means flood-related damages sustained by a structure on two separate occasions during a 10 year period beginning after October 11, 1999, for which the cost of repairs at the time of each such flood event, on average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. See definition of "Substantial Improvement."

*Substantial Improvement* means any repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, or combination thereof, where the total cost equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

- (a) any correction of existing violations of State or Community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or,
- (b) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

*Substantial Improvement* also means any repair, reconstruction, or improvement to a structure on two separate occasions during a 10 year period beginning after October 11, 1999, for which the total cost of repairs, reconstruction or improvement at the time of each alteration, equals or exceeds 25 percent of the market value of the structure before the damage occurred or the Substantial Improvement began. The Floodplain Administrator may determine if separate actions constitute a single project (Section 9-101 (13)). For the purposes of this definition, "*Substantial Improvement*" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

*Substantially Improved Existing Manufactured Home Park or Subdivision* means where the repair, reconstruction, rehabilitation, or improvement of the streets, utilities, and pads equals or exceeds 50 percent of the value of the streets, utilities, and pads before the repair, reconstruction, or improvement commenced.

*Technically Measurable* means an activity and/or condition that can be modeled within the stated or commonly known accuracy of the FEMA approved hydraulic models or other engineering computations, and may have an impact on Base Flood Elevations. The Floodplain Administrator will determine if a proposed activity and/or condition meets the Technically Measurable definition.

*Variance* is a grant of relief to a person from the requirements of this ordinance.

*Violation* means the failure of a structure or other Development to be fully compliant with this ordinance. A structure or other Development without the elevation certificate, other certifications or other evidence of compliance required in Articles IV and V is presumed to be in violation, until such time as the documentation is provided.

*Watercourse* means a lake, river, creek, stream, channel or other topographic feature within a Special Flood Hazard Area on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

## ARTICLE III. GENERAL PROVISIONS

### Section. 9-36. Lands to which this ordinance applies.

This ordinance shall apply to all lands in the land use jurisdiction of the City of Charlotte within the area shown on the Flood Insurance Rate Maps (FIRM) or any FEMA and/or locally approved revisions to data shown on the FIRMs, as being located within the Special Flood Hazard Areas or land adjacent to the Special Flood Hazard Areas if it is effected by the work that is taking place.

### Section. 9-37. Basis for establishing the Special Flood Hazard Areas

The Flood Insurance Rate Maps (FIRM), FEMA and/or locally approved revisions to data shown on the FIRMs, Flood Insurance Study and other supporting data, for Mecklenburg County including the City of Charlotte, dated February 4 2004, are adopted by reference and declared to be a part of this ordinance.

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### Section. 9-38. Floodplain Development Permit required.

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any Development activities. The *Floodplain Ordinance Guidance Document* may be used for illustrative purposes to assist in determining the applicable type of Floodplain Development Permit required.

### Section. 9-39. Compliance.

No structure or land shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.

### Section. 9-40. Abrogation and greater restrictions.

It is not intended by this ordinance to repeal, abrogate, annul or in any way impair or interfere with any existing provisions of laws or ordinances or any rules, regulations or permits previously adopted or issued, or which shall be adopted or issued, in conformity with law, relating to the use of buildings or premises; nor is it intended by this ordinance to interfere with or abrogate or annul any easements, covenants or other agreements between parties; provided, however, that, where this ordinance imposes a greater restriction upon the use of buildings or premises or requires larger yards, courts or other open spaces than are imposed or required by such existing provisions of laws or ordinances, or by such rules, regulations or permits or by such easements, covenants or agreements, the provisions of this ordinance shall control.

### Section. 9-41. Interpretation.



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In the interpretation and applications of this ordinance, all provisions shall be:

1. Considered as minimum requirements;
2. Liberally construed to meet the purposes and objectives of this regulation as stated in Sections 9-4 and 9-5 ; and
3. Deemed neither to limit nor repeal any other powers granted under state statutes.

**Section. 9-42. Warning and disclaimer of liability.**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Charlotte, Mecklenburg County, or on any agent, officer or employee thereof for any flood damages that result from reliance on this ordinance or by any administrative decision lawfully made hereunder.

**Section. 9-43. Penalties for violation.**

Violation of the provisions of this ordinance or failure to comply with any of its requirements including violation of conditions and safeguards established in connection with grants of Floodplain Development Permits, Variances or special exceptions, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than five hundred dollars (\$500.00) or imprisoned for not more than thirty (30) days. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Charlotte or the Floodplain Administrator from taking such other lawful action as is necessary to prevent or remedy any violation, including but not limited to seeking injunctive relief, orders of abatement, or other similar equitable relief.

**Sections 9-44 – 9-60. Reserved.**

## **ARTICLE IV. ADMINISTRATION AND ENFORCEMENT**

**Section. 9-61. Designation of Floodplain Administrator.**

The City Manager designates the County Floodplain Administrator, and his or her designees, as the persons with the authority to administer, implement and enforce the provisions of this

**Section. 9-62. Floodplain Development Permits and certification requirements.**

(a) A Floodplain Development Permit is required for any Development within the Community Special Flood Hazard Area (CSFHA) and is subject to the conditions below. The Floodplain Administrator is authorized to create, and amend from time to time as necessary, a Technical Guidance Document to help explain the application of the provisions of this ordinance, specifically the Floodplain Development Permit provisions, through the use of charts and related written materials. The Technical Guidance Document shall not be a part of this ordinance, and shall be solely for illustrative and educational purposes. If there is any discrepancy between the Technical Guidance Document and this ordinance, the provisions of this ordinance shall control.

(b) Floodplain Development Permits fall into one of two types: General Floodplain Development Permits (GFDP) and Individual Floodplain Development Permits (IFDP). If the proposed development activities meet the requirements of the General Floodplain Development Permit, an Individual Floodplain Development Permit is not required.

**1. General Floodplain Development Permit** – The intent of the General Floodplain Development Permit (GFDP) is to allow uses or activities in the Community Special Flood Hazard Area (including the FEMA Floodway and Community Encroachment Area) which inherently will not increase FEMA and/or Community Base Flood Elevations. The following uses and activities are permitted under a GFDP, without the need for an Individual Floodplain Development Permit, flood study or variance, as long as they result in no Technically Measurable increases in FEMA and/or Community Base Flood Elevations.

- a. General farming, pasture, horticulture, forestry, wildlife sanctuaries, gardens, lawns, landscaping and other similar activities;
- b. Utility infrastructure (poles, sewer manholes, vent pipes, underground utilities, etc.), sign poles, non-solid fences, and other similar activities.
- c. On-grade driveways, trails, sidewalks, boardwalks, roads and road maintenance; storm drainage system construction, repairs and maintenance (Major & Minor system), and other similar activities. The Floodplain Administrator must be notified in writing, including a project description and sketch plan, prior to commencement of these activities.
- d. Interior renovations with a value of less than \$10,000, to a structure with its Lowest Floor not meeting the requirements of Section 9-102 (1),(2).
- e. Interior renovations of any value, to a structure with its Lowest Floor meeting the requirements of Section 9-102 (1),(2).

Deleted: and

**2. Individual Floodplain Development Permits.** Individual Floodplain Development Permits are required for all other projects that do not meet the requirements of a General Floodplain

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Development Permit. Application for an Individual Floodplain Development Permit (IFDP) shall be made to the Floodplain Administrator on forms furnished by him or her prior to any Development activities proposed to be located within the Community Special Flood Hazard Area. Requirements for submittal are available from the Floodplain Administrator.

### 3. Certification Requirements.

- a. A Final As-Built Elevation Certificate (*FEMA Form 81-31*) (for either residential or non-residential buildings) or Floodproofing Certificate (*FEMA Form 81-65*) is required after construction is completed and prior to the issuance of a Certificate of Occupancy or a Temporary Certificate of Occupancy. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation or floodproofed elevation of the reference level and all attendant utilities. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When floodproofing is utilized, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to the issuance of a Certificate of Occupancy or Temporary Certificate of Occupancy. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make said corrections required shall be cause to withhold the issuance of a Certificate of Occupancy or Temporary Certificate of Occupancy.
- b. For proposed Development to be located outside of the Community Encroachment Area and the FEMA Floodway, a certification from a registered land surveyor or professional engineer that states that no fill material was placed within the FEMA Floodway or Community Encroachment Area of any watercourse, will be required prior to issuance of a Certificate of Occupancy or Temporary Certificate of Occupancy.
- c. For proposed Development within the Community Encroachment Area or the FEMA Floodway, an as-built topographic map prepared by a registered land surveyor or professional engineer will be required prior to issuance of a Certificate of Occupancy or Temporary Certificate of Occupancy.
- d. If a manufactured home is placed within the Floodplain and the elevation of the chassis is 36 inches or higher above adjacent grade, an engineered foundation certification is required.
- e. Certification Exemptions. The following structures, if located within the Floodplain, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) above:
  - i. Recreational Vehicles meeting requirements of Section 9-102 (a)(9);
  - ii. Temporary Structures meeting requirements of Section 9-102 (a) 10); and
  - iii. Accessory Structures less than 150 square feet meeting requirements of Section 9-102 (a)(11).

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**Section. 9-63. Duties and responsibilities of the Floodplain Administrator.**

The Floodplain Administrator is authorized to and shall perform, but not be limited to, the following duties:

1. Reviewing, approving, and issuing all Floodplain Development Permits to assure that the permit requirements of this ordinance have been satisfied.
2. Reviewing, approving and issuing all documents applicable to Letters of Map Change.
3. Advising the permittee that additional federal or state permits may be required; and if specific federal or state permits are known, requiring that copies of such permits be provided and maintained on file with the Floodplain Development Permit.
4. Notifying adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse and submitting evidence of such notification to the Federal Emergency Management Agency.
5. Assuring that within available resources, maintenance is provided within the altered or relocated portion of any altered Watercourse so that the flood-carrying capacity is not diminished.
6. Not issuing a Floodplain Development Permit for Encroachments within the Community Encroachment Area and/or the FEMA Floodway unless the certification and flood hazard reduction provisions of Article V are met.
7. Reviewing and recording the actual elevation (in relation to mean sea level) of the Lowest Floor (including basement) of all new or substantially improved structures, in accordance with Section 9-62 (3).
8. Reviewing and recording the actual elevation (in relation to mean sea level) to which the new or substantially improved non-residential structures have been floodproofed, in accordance with Section 9-62 (3).
9. Obtaining certifications from a registered professional engineer or architect in accordance with Section 9-102 (a)(2) when floodproofing is utilized for a particular non-residential structure.
10. Making the interpretation of the exact location of boundaries within the FEMA Special Flood Hazard Area or the Community Special Flood Hazard Area when, for example, there appears to be conflict between a mapped boundary and actual field conditions. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this ordinance. Procedures for changing flood hazard area boundaries and lines depicted on the Flood Insurance Rate Maps are identified in the National Flood Insurance Program regulations (44 CFR Parts 59-78).

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11. Maintaining all records pertaining to the provisions of this ordinance and making them available for public inspection.
12. Making on-site inspections of projects.
13. Serving notices of violation, issuing stop work orders, revoking permits and taking corrective actions.
14. Maintaining a copy of the Letter of Map Amendment issued from FEMA in the Floodplain Development Permit file when a property owner has received a Letter of Map Amendment (LOMA). (A LOMA is typically applied for and approved when the exact location of boundaries of the FEMA Special Flood Hazard Area conflicts with the current, natural topography information at the site.)
15. Determining the required information to be submitted with an application for approval of an Individual Floodplain Development Permit.
16. Reviewing information provided by a property owner or his designated agent for the purpose of making a determination of the total cost of repairs as it relates to a Substantial Improvement, including a determination of whether a series of repairs, reconstructions or improvements constitute one single alteration such that the total cost of the repairs, reconstructions or improvements will be the cumulative cost from the first alteration.
17. Reviewing information provided by a property owner or his designated agent for the purpose of making a determination of whether the proposed construction activities constitute New Construction for purposes of this ordinance.
18. Reviewing and approving FEMA Conditional Letters of Map Revision and FEMA Final Letters of Map Revision if Authorized by FEMA to do so.
19. Making on-site inspections of work in progress. As the work pursuant to a Floodplain Development Permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit.
20. Issuing stop-work orders. Whenever a building or part thereof is being constructed, reconstructed, altered or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stop order shall be in writing and directed to the person doing the work. The stop order shall state the specific work to be stopped, the specific reasons for the stoppage and the conditions under which the work may be resumed. Violation of a stop work order constitutes a misdemeanor.
21. Revoking Floodplain Development Permits. The Floodplain Administrator may revoke and require the return of the Floodplain Development Permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans or specifications; for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentation made in securing the permit. Any permit mistakenly issued in violation of an applicable state or local law may also be revoked. Revoked permits may

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be resubmitted for approval using the requirements of the ordinance in effect at the time of the original submittal unless they were revoked because of the intentional submission of incorrect information by the permittee or his agent, or under other circumstances where allowing resubmittal using the requirement of the ordinance in effect at the time of the original submittal would not be equitable or consistent with public policy. However, base flood elevations that govern the elevation to which the structure is built must comply with the regulations and flood elevations in effect at the time of application for the building permit.

22. Making periodic inspections. The Floodplain Administrator and each member of his inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
23. Providing owners of structures in the Floodplain with information concerning their flood risk, and (for structures with the Lowest Floor below the Flood Protection Elevation) inform potential buyers of Substantial Improvement restrictions through the recordation of a notice in the property chain of title.

**Section. 9-64. Corrective Procedures.**

1. Violations to be corrected. When the Floodplain Administrator finds violations of applicable state and local laws and notifies the property owner or building occupant of the violation, the owner or occupant shall immediately remedy each violation of law cited in the notice.
2. Actions in event of failure to take corrective action. If the owner or occupant of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give written notice, by certified or registered mail to the last known address or by personal service that:
  - a. The building or property is in violation of the Floodplain Regulations;
  - b. A hearing will be held before the Floodplain Administrator at a designated place and time, not later than twenty (20) calendar days after the date of the notice; at which time the owner or occupant shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
  - c. Following the hearing, the Floodplain Administrator may issue such order to alter, vacate or demolish the building, or to remove fill or other unauthorized Encroachment, as appears appropriate.
3. Order to take corrective action. If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or Development is in violation of the Floodplain Regulations, he shall issue an order in writing to the owner or occupant, requiring the owner or occupant to remedy the violation within such period, not less than sixty (60) days, as the Floodplain Administrator may prescribe; provided that, where the Floodplain Administrator finds that there is imminent danger to life or other

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property, he may order that corrective action be taken in such lesser period as may be feasible.

4. Appeal. Any owner or occupant who has received an order to take corrective action may appeal the order to the Charlotte Zoning Board of Adjustment (hereinafter referred to as the "Board of Adjustment" or "Board") as provided in Article VI, Section 9-82. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The Board of Adjustment shall hear an appeal within a reasonable time and may affirm, modify and affirm or revoke the order.
5. Failure to comply with order. If the owner or occupant of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the Board of Adjustment following an appeal, he/she shall be guilty of a misdemeanor and shall be punished in the discretion of the court. In addition, the owner or occupant shall be subject to civil enforcement as described in Article III, Section 9-43.

**Sections 9-65 – 9-80. Reserved.**

## **ARTICLE VI. APPEALS AND VARIANCES**

### **Section. 9-81. Authority of Board of Adjustment.**

- (a) The Board of Adjustment shall hear and decide appeals from any order, decision, determination or interpretation made by the Floodplain Administrator pursuant to or regarding these regulations.
- (b) The Board of Adjustment shall hear and decide petitions for Variances from the requirements of this ordinance.

### **Section 9-82. Initiation and Filing of Appeal.**

- (a) An appeal of an order, decision, determination or interpretation made by the Floodplain Administrator may be initiated by any person aggrieved by any officer, department, board or bureau of the city.
- (b) A notice of appeal in the form prescribed by the Board of Adjustment must be filed with the Board's Clerk, with a copy to the Floodplain Administrator, within twenty (20) days of the order, decision, determination or interpretation and must be accompanied by a nonrefundable filing fee as established by the city council. Failure to timely file such notice and fee will constitute a waiver of any rights to appeal under this section and the Board of Adjustment shall have no jurisdiction to hear the appeal.

### **Section 9-83. Standards and Hearing Procedure.**

- (a) The Board of Adjustment will conduct the hearing on an appeal of an order, decision, determination or interpretation of these regulations in accordance with its normal hearing procedures as set out in the City of Charlotte Zoning Code.

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(b) At the conclusion of the hearing, the Board of Adjustment may reverse or modify the order, decision, determination or interpretation under appeal upon finding an error in the application of these regulations on the part of the Floodplain Administrator who rendered the decision, determination or interpretation. In modifying the decision, determination or interpretation, the Board will have all the powers of the officer from whom the appeal is taken.

**Section 9-84. Initiation and Filing of Variance Petition.**

(a) A petition for Variance may be initiated only by the owner of the affected property, or an agent authorized in writing to act on the owner's behalf.

(b) A petition for a Variance from these regulations in the form prescribed by the Board of Adjustment must be filed with the Board's Clerk, with a copy to the Floodplain Administrator, and be accompanied by a nonrefundable filing fee as established by the city council.

**Section 9-85. Factors for Consideration and Determination of Completeness**

(a) In passing upon Variances, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and the:

- a. Danger that materials allowed to be placed in the floodway as a result of the Variance may be swept onto other lands to the injury of others during a Community Base Flood;
- b. Danger to life and property due to flooding or erosion damage from a Community Base Flood;
- c. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage during the Community Base Flood;
- d. Importance of the services provided by the proposed facility to the community;
- e. Necessity to the facility of a waterfront location, where applicable;
- f. Availability of alternative locations, not subject to flooding or erosion damage during a Community Base Flood, for the proposed use;
- g. Compatibility of the proposed use with existing and anticipated Development;
- h. Relationship of the proposed use to the Mecklenburg County Floodplain Management Guidance Document, Mecklenburg County Flood Hazard Mitigation Plans, the Mecklenburg County Greenway Plan, and any other adopted land use plans for that area;
- i. Safety of access to the property in times of a Community Base Flood for ordinary and emergency vehicles.
- j. Expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters during a Community Base Flood expected at the site; and



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- k. Costs of providing governmental services during and after flood events, including maintenance and repair of public utilities and facilities, such as sewer, gas, electrical and water systems and streets and bridges.

(b) A written report addressing each of the above factors shall be submitted with the application for a Variance.

(c) Upon consideration of the factors listed above and the purposes of this ordinance, the Board of Adjustment may attach such conditions to the granting of Variances as it deems necessary to further the purposes of this ordinance.

(d) Variances may be issued for the repair or rehabilitation of Historic Structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a Historic Structure and the Variance is the minimum necessary to preserve the historic character and design of the structure.

**Section 9-86. Conditions for Variances.**

(a) Variances shall not be issued when the Variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.

(b) Variances shall not be issued within any designated Floodway if the Variance would result in any increase in flood levels during the Community and/or FEMA Base Flood discharge unless the requirements of 9-102 (a) (6) are met.

(c) Variances shall only be issued upon a determination that the Variance is the minimum necessary, considering the flood hazard, to afford relief.

(d) Variances shall only be issued prior to approval of a Floodplain Development Permit.

**Section 9-87. Standards for Granting Variance.**

(a) Variances shall only be issued upon:

(i) a showing of good and sufficient cause;

(ii) a determination that failure to grant the Variance would result in exceptional hardship; and

(iii) a determination that the granting of a Variance will not result in increased flood heights (unless the requirements of Section 9-102 (a)(6) are met), additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with other existing local laws or ordinances.

(b) The fact that the property could be utilized more profitably or conveniently with the Variance than without the Variance shall not be considered as grounds for granting the Variance.

**Section 9-88. Miscellaneous Conditions.**

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- (a) In addition to consideration of the items in 9- 85(a), if Dryland Access cannot be obtained, a Variance to the requirement for Dryland Access may be granted by the Board of Adjustment upon consideration of the following conditions:
- a. a determination that all possible alternatives have been investigated in an attempt to provide the safest access from a proposed Habitable Building to a dry public street.
  - b. the existence of a site plan prepared by a Licensed Land Surveyor or Professional Engineers indicating that the proposed access to Habitable Buildings on the property poses the least risk from flooding.
- (b) In addition to consideration of the items in 9-85(a), a Variance may be issued by the Board of Adjustment for solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following criteria are met:
- a. The use serves a critical need in the community.
  - b. No feasible location exists for the use outside the Special Flood Hazard Areas.
  - c. The Lowest Floor of any structure is elevated above the Community Base Flood Elevation or is designed and sealed by a Professional Engineer or a Registered Architect to be watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
  - d. There will be no storage of materials or tanks which could flood within the Special Flood Hazard Area unless they are contained in a structure as defined in c) above.
  - e. The use complies with all other applicable laws and regulations.
  - f. The City has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the Variance.

**Section 9-89. Notification and Recordkeeping.**

- (a) Any applicant to whom a Variance from the FEMA Base Flood Elevation is granted shall be given written notice specifying the difference between the FEMA Base Flood Elevation and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced Lowest Floor elevation. Such notification shall be maintained with a record of all Variance actions.
- (b) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances regarding FEMA minimum standards to the Federal Emergency Management Agency and the State of North Carolina upon request.

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**Section 9-90. Appeal from Board of Adjustment.**

(a) Any person aggrieved by the final decision of the Board of Adjustment to grant or deny a Floodplain Development Permit shall have 30 days to file an appeal to Mecklenburg County Superior Court, as provided in N.C.G.S. 143-215.57 (c).

(b) Any party aggrieved by the decision of the Board of Adjustment related to any other order, decision, determination or interpretation of these regulations, including the granting or denial of a Variance, shall have 30 days from the receipt of the Board's decision to file a petition for review in the nature of *certiorari* in Mecklenburg County Superior Court.

**Section 9-91 – 9-100. Reserved.**

## ARTICLE V. PROVISIONS FOR FLOOD HAZARD REDUCTION

**Section. 9-101. General standards.**

- (a) In all Special Flood Hazard Areas, the following provisions are required:
1. All New Construction and Substantial Improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure;
  2. Manufactured Homes shall be anchored to prevent flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, the use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces;
  3. All New Construction and Substantial Improvements shall be constructed with materials and utility equipment resistant to flood damage;
  4. All New Construction or Substantial Improvements shall be constructed by methods and practices that minimize flood damage;
  5. Electrical, heating, ventilation, plumbing, air-conditioning equipment and other service facilities shall be designed, constructed or installed at least one foot (two (2) feet along the Catawba River including Lake Wylie, Mountain Island Lake, and Lake Norman) above the Community Base Flood Elevation. These include but are not limited to HVAC equipment, water softener units, bath/kitchen fixtures, electric meter panels/boxes, utility/cable boxes, appliances (i.e., washers, dryers, refrigerator, etc.), hot water heaters, electric wiring, and outlets/switches;
  6. All new and replacement water supply systems shall be designed to minimize or eliminate the infiltration of floodwaters into the system;
  7. New and replacement sanitary sewage systems shall be designed to minimize or eliminate the infiltration of floodwaters into the system and discharges from the systems into

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floodwaters;

8. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;
9. Any alteration, repair, reconstruction or improvements to a structure which is in compliance with the provisions of this ordinance, shall meet the requirements of "New Construction" as contained in this ordinance;
10. Construction of new solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted in Special Flood Hazard Area. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated above the Community Base Flood Elevation or designed to be watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy;
11. Any new critical facility must be located outside of the 500-year (0.2%) flood fringe area and elevated at least one foot above the 500-year (0.2%) flood elevation or the Community Base Flood Elevation whichever is greater. The determination of this flood fringe area and elevation will be provided by the Floodplain Administrator;
12. Subdivisions. All Development proposals submitted for review and approval in accordance with the City of Charlotte Subdivision Ordinance shall also comply with the following provisions:
  - a. locate and construct public utilities and facilities, such as sewer, gas, electrical and water systems, to minimize flood damage;
  - b. construct all new streets located in a Community Special Flood Hazard Area in accordance with the applicable provisions of the Subdivision Ordinance;
  - c. design and construct adequate drainage to reduce exposure to flood hazards; and
  - d. take such other appropriate measures needed to minimize flood damage.
13. For the purpose of determining Substantial Improvement, the Floodplain Administrator shall make a determination of the total cost of repairs as it relates to a Substantial Improvement, including a determination of whether a series of repairs, reconstructions or improvements constitute one single alteration such that the total cost of the repairs, reconstructions or improvements will be the cumulative cost from the first alteration.

**Section. 9-102. Specific standards.**

- (a) In all Community and FEMA Special Flood Hazard Areas where Community and FEMA Base Flood Elevation data have been provided, as set forth in Section 9-37, the following provisions are required:

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## 1. Residential construction.

New Construction or Substantial Improvement of any residential structure shall have the Lowest Floor including basement, and attached garages, elevated at least one foot above the Community Base Flood Elevation. Along the Catawba River, including Lake Wylie and Mountain Island Lake, New Construction or Substantial Improvement of any residential structure shall have the Lowest Floor, including basement, and attached garages, elevated at least two feet above the FEMA Base Flood Elevation. Where a lot is impacted by FEMA and/or Community Base Flood Elevations from both the Catawba River and a stream flowing into the Catawba River, the higher of the FEMA and/or Community Base Flood Elevations will apply.

- a. Substantial Improvement - Community Base Flood Elevation Exemption.  
Existing buildings having the lowest floor located at least one foot above the FEMA Base Flood Elevation, but less than one foot above the Community Base Flood Elevation that are proposing a Substantial Improvement, are exempt from elevating the Lowest Floor above the Flood Protection Elevation. However, the property owner must Record an Affidavit of Floodplain Construction below Community Base Flood Elevation with the Register of Deeds Office prior to the issuance of a building permit. The Affidavit (provided in the Technical Guidance Document) will acknowledge that the property owner elected to proceed with the renovations/rehabilitations, and was made aware of the Community Base Flood Elevations and that in the future there will be:
  - i. potential for flood losses,
  - ii. potential for mandatory purchase of flood insurance,
  - iii. potential for FEMA substantial improvement rules to apply, and
  - iv. no local funds available for flood mitigation assistance (buyouts, elevations, etc).
- b. Non-substantial Improvements Notice  
Renovations/rehabilitations to existing buildings having the lowest floor below the Flood Protection Elevation and costing between 25% and 50% of the Market Value of the building will require the recordation of a Notice of Floodplain Improvements (provided in the Technical Guidance Document) with the Register of Deeds Office prior to the issuance of a Certificate of Occupancy.

## 2. Nonresidential construction.

New Construction or Substantial Improvement of any commercial, industrial or nonresidential structure shall meet the requirements for residential construction in Section 102 (a), 1 above, or the structure may be floodproofed in lieu of elevation, provided that all areas of the structure below the required elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in Section 9-62 (3).

**Deleted:** New Construction or Substantial Improvement of any commercial, industrial or nonresidential structure shall have the lowest floor, including basement, elevated at least one foot above the Community Base Flood Elevation. Along the Catawba River, including Lake Wylie and Mountain Island Lake, New Construction or Substantial Improvement of any residential structure shall have the lowest floor, including basement, and attached garages, elevated at least two feet above the FEMA Base Flood Elevation. Where a lot is impacted by FEMA and/or Community Base Flood Elevations from both the Catawba River and a stream flowing into the Catawba River, the higher of the FEMA and/or Community Base Flood Elevations will apply. New Construction or Substantial Improvement of any commercial, industrial or nonresidential structure may be floodproofed in lieu of elevation, provided that all areas of the structure below the required elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in Section 9-62 (3).

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3. New Buildings Removed From the FEMA Special Flood Hazard area by Fill.

When new buildings have been constructed on land that has been removed from the FEMA Special Flood Hazard Area by the placement of fill, they must have the Lowest Floor (including basement) elevated at least one foot (two feet on the Catawba River) above the Community Base Flood Elevation.

4. Elevated buildings.

New Construction or Substantial Improvement of elevated buildings, that include fully enclosed areas formed by foundation and other exterior walls below the Community Base Flood Elevation shall meet the requirements of Section 9-102 (a), and shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.

- a. Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:
  - i. Provide a minimum of two (2) openings, having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding;
  - ii. The bottom of all openings shall be no higher than one (1) foot above adjacent grade at the opening ;
  - iii. Openings may be equipped with screens, louvers, valves or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions;
  - iv. Openings must be on different sides of the enclosed area if possible; and
  - v. If the building has more than one enclosed area, each must have openings.
- b. Foundation enclosures:
  - i. Vinyl or sheet metal skirting is not considered an enclosure for regulatory and flood insurance rating purposes. Therefore such skirting does not require hydrostatic openings as outlined above.
  - ii. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires hydrostatic openings as outlined above to comply with this ordinance.
- c. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or enter to the living area (stairway or elevator).
- d. The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas.

5. Dryland Access. Access to Habitable Buildings during a flood event is extremely

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hazardous. Dryland Access must be provided to new or Substantially Improved Habitable Buildings according to the following criteria:

Dryland Access is required if any portion of either the Habitable Building or vehicular access route, connecting the Habitable Building to a public street, is within the Floodplain. If Dryland Access cannot be obtained, a Variance to the requirement for Dryland Access may be granted by the Board of Adjustment. Plans and details for the Dryland Access must be submitted by a registered professional engineer or surveyor and approved by the Floodplain Administrator.

The following are exempt from the Dryland Access requirement.

- a. Substantial Improvement to an existing Habitable Building where the property does not have any access to a Dry Public Street.
  - b. Construction of a new Habitable Building where both the Habitable Building and the access route connecting it to a public street, are located entirely outside the Community Encroachment Area and where the property does not have any access to a Dry Public Street. Under this exemption, access from the Habitable Building to the public street must;
    - i. Connect to the highest point of the public street adjacent to the property;
    - ii. Be constructed of gravel, pavement or concrete and be at least 12' wide; and
    - iii. Be constructed entirely at or above the elevation of highest point of the public street adjacent to the property.
6. FEMA Floodway and Community Encroachment Area. The FEMA Floodway and the Community Encroachment Area are very hazardous areas due to the velocity of floodwaters which carry debris and potential projectiles and have erosion potential. The following provisions shall apply within each of these designated areas:

- a. Community Encroachment Area. No Encroachments, requiring an Individual Floodplain Development Permit (Section 9-62), including fill, New Construction, Substantial Improvements and other Development shall be permitted within the Community Encroachment Area unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that such Encroachment would not result in increased flood heights of greater than 0.10' during the occurrence of a Community Base Flood. Such certification and associated technical data by a registered engineer shall be approved by the Floodplain Administrator. Any change which would cause a rise of more than 0.10' in the Community Base Flood Elevation will require notification of impacted property owners, and a Community Conditional Letter Of Map Revision (CoCLOMR) from the Floodplain Administrator. If approved and constructed, as-built plans must be submitted and approved by the Floodplain Administrator and a Community Letter of Map Revision (CoLOMR) issued. A Certificate of Occupancy will not be issued without the above stated Community Letter of Map Revision.

Projects impacting existing Habitable Buildings that increase the Community Base Flood Elevation more than 0.00' will not be allowed without a Variance.

- b. FEMA Floodway. No Encroachments requiring an Individual Floodplain Development Permit (Section 9-62 ), including fill, New Construction, Substantial Improvements and other Development shall be permitted within the FEMA Floodway unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that such Encroachment would not result in any (0.00') increase in the FEMA Base Flood Elevations during the occurrence of a FEMA Base Flood and no increase in the Community Base Flood Elevations during the occurrence of the Community Base Flood. Such analysis performed by a registered professional engineer shall be approved by the Floodplain Administrator. Any change which would cause a rise in the FEMA Base Flood Elevation or an increase in the FEMA Floodway width during the occurrence of the FEMA Base Flood will require notification of impacted property owners, and a Conditional Letter Of Map Revision from FEMA. If approved and constructed, as-built plans must be submitted by the property owner and approved by FEMA and a Letter Of Map Revision issued. A Certificate of Occupancy will not be issued without the above stated Conditional Letter of Map Revision.

Any change which would cause a rise in the Community Base Flood Elevation or an increase in the width of the Community Encroachment Area during the occurrence of the Community Base Flood will require notification of impacted property owners, and a Community Conditional Letter Of Map Revision (CoCLOMR).

Projects which cause a rise of greater than 0.00' in the FEMA Base Flood Elevation and impact an existing Habitable Building, will not be allowed.

- c. No manufactured homes shall be permitted, except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring and the elevation standards of Section 9-102 (a)(8) are met.

7. Additions/Improvements.

- a. Additions and/or improvements to pre-FIRM structures whereas the addition and/or improvements in combination with any interior modifications to the existing structure
  - i. are not a Substantial Improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
  - ii. are a Substantial Improvement, both the existing structure and the addition and/or improvements must comply with the standards of Section 9-102, (a),

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- b. Additions to post-FIRM structures with no modifications to the existing structure shall require only the addition to comply with the standards of Section 9-102. (a), 1.
- c. Additions and/or improvements to post-FIRM structures whereas the addition and/or improvements in combination with any interior modifications to the existing structure
- i. are not a Substantial Improvement, the addition and/or improvements only must comply with the standards for New Construction.
  - ii. are a Substantial Improvement, both the existing structure and the addition and/or improvements must comply with the standards of Section 9-102. (a), 1.
- d. Where a fire wall or independent perimeter load-bearing wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and only the addition must comply with the standards for New Construction.

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#### 8. Manufactured Homes:

New, replaced, or substantially improved Manufactured homes located: outside a manufactured home park or subdivision; in a new manufactured home park or subdivision; in an expansion to an existing manufactured home park or subdivision; or in an existing manufactured home park or subdivision, must be elevated on a permanent foundation such that the Lowest Floor of the manufactured home is elevated at least one (1) foot above the Community Base Flood Elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

- a. Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. For the purpose of this requirement, manufactured homes must be anchored to resist flotation, collapse, or lateral movement in accordance with the Regulations for Mobile Homes and Modular Housing adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by raising the chassis at least 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or other foundation elements of at least equivalent strength. When the elevation of the chassis is above 36 inches in height an engineering certification is required.
- b. An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivision located within the Special Flood Hazard Area. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.

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9. Recreational Vehicles shall either:

- a. be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or
- b. meet all the requirements for New Construction.

10. Temporary Structures. Prior to issuance of a Floodplain Development Permit for a temporary structure the following requirements must be met:

- a. All applicants must submit to the Floodplain Administrator a plan for removal of such structure(s) in the event of a hurricane or flash flood notification. The plan must include the following information:
  - i. a specified time period for which the temporary use will be permitted. The time specified may not exceed three months, and is renewable up to one year;
  - ii. the name, address, and phone number of the individual responsible for the removal of the structure;
  - iii. the time frame prior to the event at which a structure will be removed;
  - iv. a copy of the contract or other suitable instrument with a trucking company to ensure the availability of removal equipment when needed; and
  - v. designation, accompanied by documentation, of a location outside the floodplain to which the temporary structure will be removed.
- b. The above information shall be submitted in writing to the Floodplain Administrator for review and written approval.

11. Accessory Structure. When accessory structures (sheds, detached garages, etc.), are to be placed in the Floodplain the following criteria shall be met:

- a. Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
- b. Accessory structures shall be designed to have a low flood damage potential;
- c. Accessory structures shall be firmly anchored in accordance with Section 9-101(a)(1); and
- d. Service facilities such as electrical and heating equipment shall be elevated in accordance with Section 9-101 (a)(5).
- e. Accessory structures shall have hydrostatic openings per Section 9-102 (a)(4).
- f. Accessory structures under 150 square feet do not require an elevation or

floodproofing certificate.

g. Accessory structures shall not be temperature-controlled

12. All parking areas for new or substantially improved non-single family Habitable buildings must be at an elevation such that water depths would be less than 6" deep in any parking space during the occurrence of a Community Base Flood.
13. Levees. In all Community and FEMA Special Flood Hazard Areas where Community and FEMA Base Flood Elevation data have been provided, the following provisions for Levees are required as set forth in Section 9-37.

#### **General Levee Requirements**

1. Levees will be treated as Development in the Floodplain and are subject to all applicable sections of this Ordinance.
2. The primary purpose of a Levee must be to protect Habitable Buildings from flooding above the Lowest Floor from a Community Base Flood event. However, the protection of buildings that are not Habitable Buildings or Habitable Buildings that flood in less than the Community Base Flood event are permissible incidental results of the location of the Levee.
3. With the exception of a Levee that protects a building or feature that must be located in the vicinity of a stream to be functional such as a stream monitor, water/sewer facility or other uses approved by the Floodplain Administrator, Levees require the approval of the Director of Mecklenburg County Storm Water Services, or his designee, regardless of their location within the Community Special Flood Hazard Area (entire Floodplain).
4. With the exception of a Levee that protects a building or feature that must be located in the vicinity of a stream to be functional such as a stream monitor, water/sewer facility or other uses approved by the Floodplain Administrator, the owner of the Levee and the Director of Mecklenburg County Storm Water Services, or his designee, shall conduct an Open House Forum prior to consideration of approval. The Open House Forum initiates a 30-day comment period for the Director or his designee to receive comments from the public.
5. Owners of land adjacent to a proposed Levee shall be notified of the Open House Forum and be provided an opportunity to submit written comments during the 30-day comment period. Notification is to occur through regular mail, as well as a sign being placed at a conspicuous place at the creek and along the public and private road(s) of the properties that would be protected by the proposed Levee.
6. After the end of the 30-day comment period, but no more than 60 days from the end of the comment period, the Director shall approve or disapprove the application or request more information from the owner of the Levee. If the Director determines that the additional information is sufficiently significant, the Director may offer an additional 30-day

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comment period to all parties involved. Consistent with Article VI, the Director's decision may be appealed to the Zoning Board of Adjustment

7. Regardless of whether the proposed Levee would meet FEMA certification requirements, floodplain lines and flood elevations will not be modified based on the location, performance or any other aspects of the Levee.

#### **Levee Permitting Requirements**

Prior to the issuance of a Floodplain Development Permit for construction of a proposed Levee, the applicant must submit the following information in writing to the Floodplain Administrator for review and written approval:

- a. Plans and/or specifications showing the location of the proposed Levee is as far away from the adjacent creek as reasonably possible;
- b. A copy of the written approval for the Levee received from the Director of Mecklenburg County Storm Water Services;
- c. Verification of notification to owners of land adjacent to the proposed Levee (those within 500 feet of the property lines of the parcel on which the proposed Levee is to be located or within a distance equal to the length of the proposed Levee, whichever is greater), Notification is also to include properties that are in the Community Special Flood Hazard Area and within the hydraulic modeling limits as described below;
- d. Copies of all written comments received from property owners referenced above;
- e. Hydrologic and hydraulic flood models showing the proposed-conditions if the Levee is proposed to be located within the Community Encroachment Area and that accounts for the future construction of other Levees;
- f. A copy of the contract with the entity responsible for construction of the proposed Levee;
- g. A copy of the maintenance plan for the Levee which has been certified by a NC Professional Engineer, which shall include a description of the process by which the Levee will be inspected annually and provide for updated plans to be provided annually to property owners and residents intended to benefit from the Levee.

#### **Section. 9-103. Standards for streams with drainage areas of one square mile or greater not having established Community or FEMA Base Flood Elevations and Community Encroachment Areas and FEMA Floodways.**

1. All streams in Mecklenburg County with drainage areas of one square mile or greater, have established Community and FEMA Base Flood Elevations and Community Encroachment Areas and FEMA Floodways.

# Article VII. LEGAL STATUS PROVISIONS

## Section 9-104. Legal Status Provisions

### 1. Effect on rights and liabilities under the existing Floodway Regulations.

This ordinance in part comes forward by re-enactment of some of the provisions of the Floodway Regulations enacted \_\_\_\_\_ (*original adoption date of this ordinance*) as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the Floodway Regulations of Charlotte enacted on \_\_\_\_\_ (*original adoption date of this ordinance*), as amended, which are not reenacted herein, are repealed.

### 2 Effect upon outstanding Floodplain Development Permits.

Nothing herein contained shall require any change in the plans, construction, size or designated use of any Development or any part thereof for which a **Floodplain Development Permit** has been granted by the Floodplain Administrator before the time of passage of this Floodplain Regulation ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of two (2) years subsequent to passage of this ordinance or any revision thereto, such permit shall become void and construction or use shall be in conformity with the provisions of this ordinance.

Any application(s) for a Floodplain Development Permit received prior to the effective date of these Floodplain Regulations shall be reviewed under the regulations in effect at the time of the initial application. Any incomplete application(s) for a Floodplain Development Permit will be valid only for ninety (90) days after the Floodplain Administrator has requested additional information from the applicant or his agent. If ninety (90) days after the owner or his agent has received the request for additional information the applicant has failed to submit reasonably complete information that demonstrates a good faith effort to provide all the additional information requested, as determined by the Floodplain Administrator, the application will become void. Any subsequent submittals will be considered as new applications and reviewed under the regulations in effect on the date the subsequent submittal is received by the Floodplain Administrator.

**Deleted:** Owners of lots in subdivisions covered by Floodplain Development Permits issued for the construction of the subdivision shall have the right to initially construct Habitable Buildings on all the lots under the Floodplain Regulations pursuant to which the Floodplain Development Permit was issued for a period of five (5) years from the date of issuance of the Floodplain Development Permit. However, base flood elevations that govern the elevation to which the structure is built must comply with the regulations and flood elevations in effect at the time of application for the building permit or Floodplain Development Permit to construct the structure.¶

### 3. Expiration of Floodplain Development Permits issued after Floodplain Regulation adoption.

Individual Floodplain Development Permits issued pursuant to this ordinance expire two years after the date of issuance unless (i) the work has commenced within two (2) years after

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the date of issuance, or (ii) the issuance of the permit is legally challenged in which case the permit is valid for two (2) years after the challenge has been resolved.

Any incomplete application(s) for an Individual Floodplain Development Permit will be valid only for ninety (90) days after the Floodplain Administrator has requested additional information from the applicant or his agent. If ninety (90) days after the owner or his agent has received the request for additional information the applicant has failed to submit reasonably complete information that demonstrates a good faith effort to provide all the additional information requested, as determined by the Floodplain Administrator, the application will become void. Any subsequent submittals will be considered as new applications and reviewed under the regulations in effect on the date the subsequent submittal is received by the Floodplain Administrator.

**Deleted:** Owners of lots in subdivisions covered by Floodplain Development Permits issued for the construction of the subdivision shall have the right to initially construct Habitable Buildings on all the lots under the Floodplain Regulations pursuant to which the Floodplain Development Permit was issued for a period of five (5) years from the date of issuance of the Floodplain Development Permit. However, base flood elevations that govern the elevation to which the structure is built must comply with the regulations and flood elevations in effect at the time of application for the building permit or Floodplain Development Permit to construct the structure.

**EFFECTIVE DATE.**

This ordinance shall become effective upon adoption.

**ADOPTION CERTIFICATION.**

I hereby certify that this is a true and correct copy of the floodplain regulations as adopted by the City Council of the City of Charlotte, North Carolina, on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

WITNESS my hand and the official seal of \_\_\_\_\_, this the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**Approved as to form:**

\_\_\_\_\_

**City Attorney**

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**CERTIFICATION**

I, Brenda R. Freeze, City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 12th day of May, 2003, the reference having been made in Minute Book 119, and recorded in full in Ordinance Book 52, Page(s) 216-243.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 14th day of May, 2003.

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Brenda R. Freeze, CMC, City Clerk

# ***COUNCIL WORKSHOP AGENDA ITEM SUMMARY***

**TOPIC:** Conditional Rezoning Comments

**COUNCIL FOCUS AREA:** Environment

**RESOURCES:** Keith MacVean, Planning  
Tim Richards, Engineering & Property Management

**KEY POINTS:**

- In December 2006, Council asked staff, “Who gives staff authority to implement, through the rezoning process, policies from ordinances that haven’t been adopted?”
- Staff presented the attached PowerPoint presentation on February 19, 2007 to address the question.
- There needs to be a process for making storm water quality and quantity recommendations to petitioners between now and when the proposed Post Construction Controls Ordinance is adopted.
- In the interim, staff will develop a method of making the petitioners aware of the basis of storm water quality and quantity recommendations so it is clear the staff comments are not derived from an ordinance adopted by Council, but rather from extensive stakeholder review of the proposed ordinance.
- The proposed Post Construction Controls Ordinance will be discussed with Council during the summer of 2007, with a goal of adopting an ordinance by December 2007.

**COUNCIL DECISION OR DIRECTION REQUESTED:**

None. This is for Council information and any additional feedback.

**ATTACHMENTS:**

PowerPoint presentation on “Mayor and Council Follow-up: Mitigating Impacts of Development, Zoning Dinner Meeting, February 19, 2007”



# Conditional Zoning Comments

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Mayor and Council Follow-up  
Mitigating Impacts of Development  
Zoning Dinner Meeting  
February 19, 2007





# Council Follow-Up

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- Respond to question posed at December Zoning Dinner Meeting: “Who gives staff authority to implement, through the rezoning process, policies from ordinances that haven’t been adopted?”
  
  - Discuss Conditional Rezoning Process
  
  - Discuss Storm Water Review and Recommendations Process
-

# Conditional Zoning Comments

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- “The City Council, after receiving the report and recommendation of the Planning Commission, shall consider the reports and recommendations of the Planning Commission, the Planning staff, and other departments” (Zoning Ordinance Sect. 6.111 (1))
  
  - “In considering any petition to reclassify property, the City Council may consider, although is not required to, the following.....” (Zoning Ordinance Sect. 6.111 (3))
  
  - “The adequacy of public facilities and services intended to serve the subject property, including but not limited to roadways, parks and recreational facilities....stormwater drainage systems....” (Zoning Ordinance Sect. 6.111 (3)(b))
-

# Conditional Zoning Comments

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- ❑ “Reasonable and appropriate conditions may be attached to the approval of conditional petitions” (Zoning Ordinance Sect. 6.205)
  
  - ❑ “Conditions and site-specific standards shall be limited to:
    - Those that address conformance to City plans and ordinances
    - Those that address impacts reasonably expected to be generated by the development or use of the site” (Zoning Ordinance Sect. 6.205)
  
  - ❑ “Only those conditions mutually approved by the Council and petitioner may be incorporated into the petition” (Zoning Ordinance Sect. 6.205)
-

# Conditional Zoning Comments

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Current Practice **DOES NOT**:

1. Implement draft Post Construction Ordinance
  2. Require or request any water quality or quantity measures outside current regulations for **by-right development**
  3. Request water quality or quantity measures outside of what is needed to address impacts resulting from the development
-

# Conditional Zoning Comments

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## Current Practice **DOES**:

1. Ask departments to comment on rezoning petitions (Planning, CDOT, Engineering, Utilities, Schools, and County)
  2. Limit comments to the following:
    - Those that address conformance with City plans and ordinances
    - Those that address impacts reasonably expected to be generated by the development or use of the site
  3. Planning staff compiles and returns comments to the petitioner
  4. The petitioner works with staff, citizens and other interested parties to determine how comments can be addressed
-

# Conditional Zoning Comments

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## Stormwater Recommendations

- Staff has an obligation to highlight redeveloping sites that have an adverse impact on downstream properties or the general public (6.205)
  - Ultimately Council makes the decision whether or not to approve or disapprove (6.205)
-

# Existing Practices

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- Rezoning petitions often result in higher densities
  - Higher densities increase impervious surfaces which degrades water quality and increases downstream flows - unless mitigated
  - Existing regulations do not address the increased demand on the downstream drainage system
-



# Examples of project impacts

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- Ridgelane Road
    - Single-family residential
    - No detention required
    - Storm Water Services constructed pipe with public funds to accommodate increased flows
  
  - East Providence Storm Water CIP
    - Single-family residential
    - No detention required
    - Storm Water Services constructed 7 culverts and performed major channel stabilization with public funds
-

# Conditional Zoning Comments

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## Stormwater Recommendations

- Charlotte has on-going flooding and water quality issues
  
  - Federal and State regulations will soon require Charlotte to implement programs to mitigate water quality impacts from development
-

# Conditional Zoning Comments

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## Stormwater Recommendations

- Staff participated in a stakeholder process
    - 18-month
    - 25-member
    - Determine industry, environmental and resident values regarding draft water quality regulations
  - The stakeholder process, used to develop a model draft Post Construction Ordinance, has been the best available information for making water quality/quantity recommendations on conditional zonings
-

# Conditional Zoning Comments

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## Stormwater Recommendations

- Conditionally zoned projects can be grandfathered under existing regulations even when new, more appropriate regulations develop
  - City Storm Water Services, County Storm Water Services and Land Development Services coordinate water quality/quantity comments on each conditional zoning
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# Conditional Zoning Comments

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Questions

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# ***COUNCIL WORKSHOP AGENDA ITEM SUMMARY***

**TOPIC:** Transportation Action Plan and Funding Options

**COUNCIL FOCUS AREA:** Transportation

**STAFF RESOURCE:** Norm Steinman, CDOT

**KEY POINTS:**

- In January, Council's Budget Committee asked for additional information from staff about the expenditures recommended in the Transportation Action Plan (TAP) so that Council could decide the relation between the TAP's recommendations and possible new revenue sources.
- At the February 12, 2007 Council Dinner Briefing, staff presented information describing the expenditures recommended in the TAP for various programs.
- Council requested that this topic be placed on the next Workshop to allow further discussion by Council.

**COUNCIL DECISION OR DIRECTION REQUESTED:**

Discussion of Council's approach to alternative revenues.

**ATTACHMENTS:**

PowerPoint Presentation "Transportation Action Plan and Funding Options" dated February 12, 2007

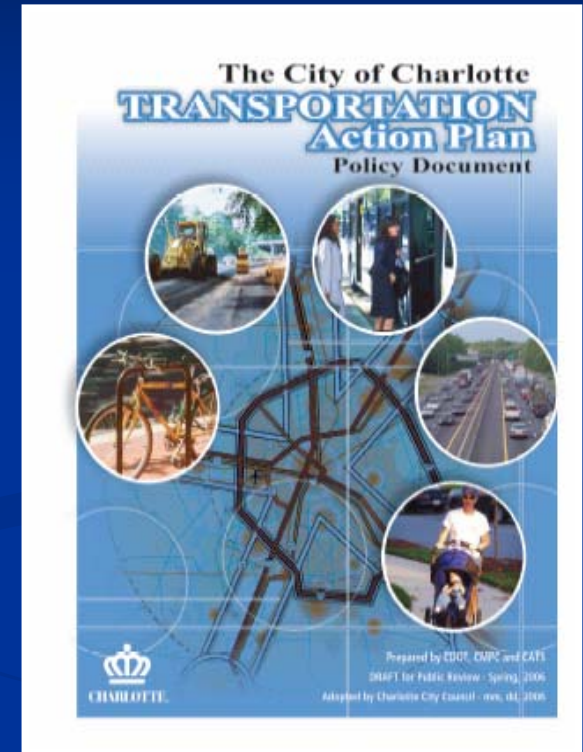
# Transportation Action Plan and Funding Options

Presentation to  
Charlotte City Council  
February 12, 2007

Norm Steinman  
Charlotte DOT

# What is the Transportation Action Plan (TAP)?

- The City's first long-range, comprehensive multi-modal transportation plan

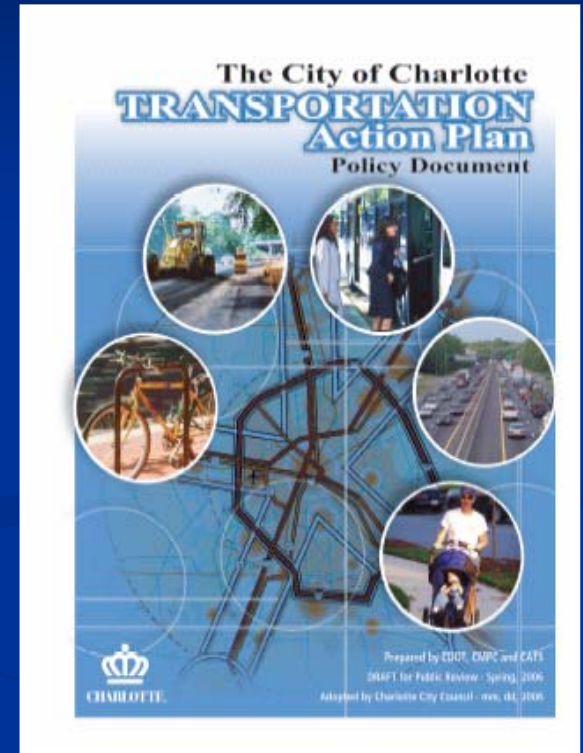




# Purpose of the TAP

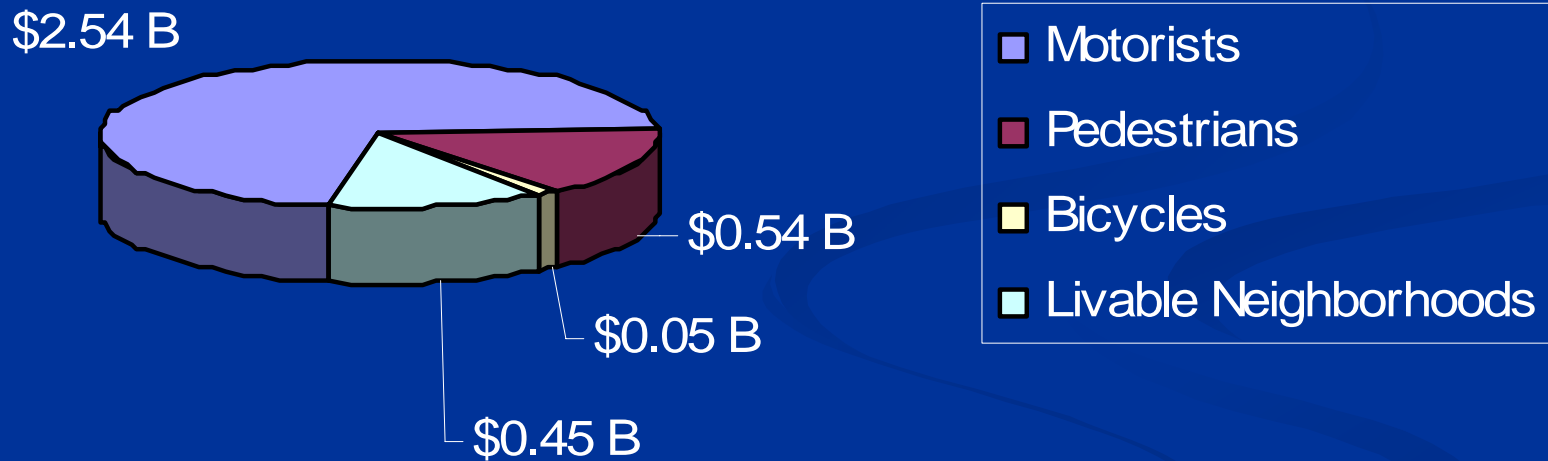
Describes City's policies,  
programs, projects and  
partnerships to

- reduce or eliminate existing deficiencies
- accommodate ongoing growth



# Proposed 25-year Expenditures in TAP, by Category

\$3.57 Billion



# New Revenues approved by Council since adoption of TAP

- Potentially \$286 Million for transportation from 2006, 2008, and 2010 Bonds
- Other Revenues for transportation

# Programs included in TAP funded at least 50% by 2006, 2008 & 2010 Bonds

- Sidewalk Construction
- Area Plan Projects
- Traffic Calming
- Traffic Control Devices
- Bridges
- Minor Roadway Improvements
- Railroad Grade Crossings/Safety
- State Highway Participation
- Center City Implementation

# Programs included in TAP funded at less than 50% by 2006, 2008 & 2010 Bonds

- Major Roadway Projects
- Intersection Capacity
- Farm-to-Market Road Improvement
- Street Connectivity
- Public-Private Participation
- Corridors Implementation
- Pedestrian & Traffic Safety
- Traffic Flow Enhancement
- Bicycle
- Streetscape/Pedscape

# Programs included in TAP not funded by 2006, 2008 & 2010 Bonds

- Air Quality and Congestion Mitigation
- Safe Routes to Schools
- Centers Implementation
- Curb and Gutter Maintenance
- Pedestrian Connectivity
- Sidewalk Maintenance

# Other Revenues

- \$4.3 million in FY 07 for Street Resurfacing (16-year cycle)
- \$1.35 million/year from Vehicle Rental Tax for future pre-construction activities

# Largest Expenditure Categories in TAP

Program	\$ in Millions	Cumulative %
Specific Thoroughfares	950	28%
Intersection Capacity	400	40%
Farm-to-Market Roads	304.5	49%
Sidewalk Construction	277.5	57%
Corridors Implementation	252.5	65%
Street Connectivity	150	69%
Street Resurfacing	131	73%
Traffic Flow Enhancement	90.5	76%
Traffic Control Devices	79	78%
Bridges	70	80%



# Smallest Expenditure Categories in TAP

- 1% each of total
  - Air Quality & Congestion Mitigation
  - Traffic Calming
  - Safe Routes to Schools
  - Centers Implementation
  - Bicycle
  - Curb and Gutter Maintenance
  - Pedestrian Connectivity
  - Center City Implementation
  - Pedestrian & Traffic Safety
  - Sidewalk Maintenance
  - Area Plan Implementation
  - Railroad Grade Crossings

# Assessment of 10-Year Options

- \$1.1 Billion at TAP funding levels
- \$1.1 Billion with more emphasis on programs for motorists
- \$0.5 Billion
- \$0.5 Billion with more emphasis on programs for motorists

<b>Program Category</b>	<b>\$1.1 B, at TAP funding level</b>	<b>\$1.1 B, with road emphasis</b>	<b>\$0.5 B, at TAP modal level</b>	<b>\$0.5 B, with road emphasis</b>
Specific Throughfare and Street Projects	<b>90%</b>	<b>100%</b>	<b>45%</b>	<b>50%</b>
Intersection Capacity & Multimodal Enhancement Program	<b>85%</b>	<b>100%</b>	<b>45%</b>	<b>50%</b>
Farm-to-Market Road Improvement Program	<b>65%</b>	<b>95%</b>	<b>35%</b>	<b>50%</b>
Sidewalk Construction Program	<b>85%</b>	<b>65%</b>	<b>45%</b>	<b>30%</b>
Centers and Corridors Implementation: Corridors	<b>85%</b>	<b>70%</b>	<b>45%</b>	<b>35%</b>
Street Connectivity Program	<b>75%</b>	<b>100%</b>	<b>40%</b>	<b>50%</b>
Street Resurfacing Program	<b>95%</b>	<b>95%</b>	<b>50%</b>	<b>50%</b>
Traffic Flow Enhancement Program	<b>90%</b>	<b>90%</b>	<b>45%</b>	<b>45%</b>
Traffic Control Devices Upgrade Program	<b>95%</b>	<b>95%</b>	<b>50%</b>	<b>50%</b>
Bridge Program	<b>85%</b>	<b>85%</b>	<b>45%</b>	<b>45%</b>

# Conclusions

With approximately \$40 million additional revenue per year, TAP can be funded as recommended for 10 years

or

With approximately \$20 million additional revenue per year, TAP can be funded for 10 years at 50% of funding level recommended in TAP

# Next Steps

Options for Council:

- a) Refer information to (City/County)  
Alternative Revenues Work Group
- b) Additional Council discussion
- c) Take no action at this time

# Basis for Proposed Expenditures in TAP

- a) Previously Defined Plan of Projects with Evaluation/Prioritization of Projects
- b) Estimate of Units of Production with some Evaluation/Prioritization of Projects
- c) Rate of Production to Attain/Maintain Standard

Program	Projects List	Prelim. Priorities	Time-Sensitive
Specific Thoroughfares	●		
Intersections		●	
Farm-to-Market		●	
Sidewalk Construction		●	
Corridor Implementation			●
Street Connectivity			●
Street Resurfacing			●

# Transportation Action Plan

## \$3.57 Billion





# How would you allocate \$100 towards transportation?

Type of Improvements	Allocation
Widen Thoroughfares	\$ 17.90
Better Pedestrian Facilities	\$ 13.00
New Thoroughfares	\$ 11.00
Better Maintenance	\$ 18.90
Better Bicycle Facilities	\$ 11.50
Improve Street Appearance	\$ 10.70
Coordinate Traffic Signals	\$ 17.00
<b>TOTAL</b>	<b>\$ 100.00</b>

# Projects with Planning & Design Complete

- 2% each of total
  - Traffic Control Devices
  - Bridges
  - Public-Private Participation
  - Streetscape/Pedscape
  - Minor Roadway Improvement
  - State Highway Participation

## ***COUNCIL WORKSHOP AGENDA ITEM SUMMARY***

**TOPIC:** Update on Brooklyn Village, Minor League Baseball and Third Ward Park

**COUNCIL FOCUS AREA:** Economic Development

**RESOURCE:** Curt Walton

**KEY POINTS:**

- Staff will present an update on the status of the efforts to redevelop Marshall Park (called Brooklyn Village), develop a park in Third Ward and bring minor league baseball to the center city.

**COUNCIL DECISION OR DIRECTION REQUESTED:**

None at this time. The earliest date that Council action may be requested is March 26, 2007.

**ATTACHMENTS:**

Status Report

## Update on Brooklyn Village, Minor League Baseball And Third Ward Park

On November 2, 2006, County Manager Harry Jones sent a letter (Attachment 1) to City Manager Pam Syfert suggesting Mecklenburg County take a greater leadership role in the accomplishment of the land swaps proposed by Charlotte Center City Partners. The nine deal points outlined in that letter form the basis for the process moving forward. The land swaps are necessary to achieve the overall vision of a mixed-use redeveloped Marshall Park and CMS headquarters (now called Brooklyn Village), a minor league baseball stadium on 7.8 acres the County owns in Third Ward, and a public park in Third Ward on land owned by Mass Mutual (Cornerstone Real Estate Advisors). The City Council and the County Commission endorsed the revised concept in December 2006.

Since that time, Mecklenburg County has negotiated and executed Memoranda of Understanding (MOU) with the Charlotte Knights (Attachment 2) and Cornerstone Real Estate Advisors (Attachment 3). Each document is similar to the draft MOUs that the City drafted with these two entities prior to Mecklenburg County taking the lead. While the City is not party to either of these agreements, there are components that affect the City. A summary of those agreements, as well as the issues that impact the City, follows:

### MOU with the Charlotte Knights

- *Note: Under this concept the County would lease 7.8 acres it already owns to the Charlotte Knights for the baseball stadium. The baseball site is bounded by S. Graham, S. Mint, W. Second and W. Fourth Streets.*
- Forty-nine year lease of the County's land to the Charlotte Knights, with two additional 25-year options, for \$1 per year.
- Mecklenburg County will fund infrastructure costs up to \$7.8 million. If the costs are greater than \$7.8 million, the Charlotte Knights pay the next \$1 million. If the costs exceed \$8.8 million, the agreement may be terminated by either the County or the Knights. *Note: the funding source of the \$7.8 million is the first \$7.8 million from the sale of Spirit Square, of which the City owns roughly two-thirds. Proceeds in excess of \$7.8 million return to the City and the County in pro rata shares.*
- The Charlotte Knights will plan, design and fund construction of the stadium.
- The Charlotte Knights will work with the County on a program to include minority and small businesses in the construction process, commensurate with the County's Minority, Women and SBE program.
- The Charlotte Knights will be responsible for the costs and expenses of owning, managing, maintaining and operating the stadium.
- The Charlotte Knights will pay all property and other taxes assessed to the stadium.
- The Charlotte Knights will negotiate an agreement with the City to assure that the stadium is designed and operated to accommodate public safety and traffic enforcement. *Note: City staff has advised the County and the Charlotte Knights that there is no objection to this clause, but that our recommendation to City Council would be to approve the agreement with the Knights for payment of any extra public safety and traffic expenses prior to approving the Interlocal Agreement with Mecklenburg County. Staff is working with the Knights on that draft agreement.*
- The MOU is non-binding in all respects.

### MOU for Development of Brooklyn Village (Cornerstone)

- *Note: under this concept, the City and CMS would convey property in Second Ward to Mecklenburg County. The County would then swap the Second Ward property to Cornerstone in exchange for Cornerstone's land in Third Ward (the new Third Ward Park).*
- The County will be responsible for infrastructure costs up to \$3.2 million.
- Cornerstone's developer, Spectrum Investment Services, will construct:
  - 150,000 to 180,000 square feet of office, of which 60,000 will be made available to CMS for its headquarters;
  - Approximately 410 condominium residential units, of which at least 250 will be priced between \$140,000 and \$300,000;
  - 284 apartments, with monthly rental rates for at least 180 units priced between \$500 and \$1,200 monthly;
  - A minimum of 50,000 square feet of restaurant and retail space;
  - 30-40 affordable housing units.
- The development will include an urban park.
- The developer agrees to a 20% minority participation goal.
- With CMS' agreement, the developer shall lead a private fundraising effort to restore and preserve the Second Ward High School gym, and to turn it into a community center for the Second Ward neighborhood.

### City/County Interlocal Agreement

On February 7, 2007, County staff provided the above two agreements to City staff, along with the framework of an interlocal agreement between the City and the County. The November 2, 2006 letter suggests the framework would be as follows:

- The City would convey its portion of Marshall Park to the County.
- The City would also convey its portion of Spirit Square to the County, which would in turn sell the property excluding the historic First Baptist Church building. The first \$7.8 million of the proceeds would be used to provide the infrastructure for the baseball stadium. The remainder of the proceeds would be returned to the City and the County on a pro rata share. The City owns approximately two-thirds of the property.
- The City would abandon rights-of-way at no cost necessary to build the baseball stadium and Third Ward park.
- The County would convey its portion of the Wachovia cultural facilities to the City.

There is considerable agreement between City and County staff regarding how best to implement the above framework. Issues remaining to be resolved include the following:

- Private Sale authority (an option for disposition of Spirit Square). Mecklenburg County will own the property and currently does not have that authority. Local legislation has been requested.
- Long-term lease authority (to be used in agreement with Charlotte Knights). Mecklenburg County currently does not have authority to enter into leases with terms longer than 10 years without going through a competitive process. Local legislation has been requested.
- Infrastructure for the baseball stadium (the \$7.8 million cost). It is not yet clear whether the County will want to contract with the City to build the infrastructure,

- build it themselves or to contract with someone else. To do so will require an agreement to protect the City from budget and schedule issues.
- To address the private sale, long-term lease and road construction issues, the County has requested the City consider extending its authority in each of these areas to the County to enable the transactions being considered. North Carolina General Statutes 160A-460 and -461 authorize two or more units of local government to enter into contracts that provide for one unit to exercise powers of the other unit. (Attachment 4)
  - Responsibility for any environmental remediation costs for Marshall Park and/or Spirit Square.
  - General “unwind” provisions for the land swap in the event that any portion of the project fails to move forward.

#### Other Key Issues to Resolve

There are several other issues yet to be resolved that do not clearly fall under any of the above agreements, including:

- Affordable Housing in Brooklyn Village. The City, the Housing Authority, and Spectrum/Cornerstone continue to explore ways to provide the affordable housing component of Brooklyn Village. The goal is a minimum of 30 units at 30% AMI. Fulfilling this goal will most likely involve an equal financial contribution from the Housing Authority and the City (through the Housing Trust Fund). The amount of that contribution is currently unknown.
- CMS/Mecklenburg County MOU. There currently is not a draft MOU between Mecklenburg County and CMS, nor has there been as much discussion with CMS of this overall concept. Satisfying CMS’ headquarters space needs in exchange for its land in Second Ward is a key component to the overall deal structure.
- Pending Legal Actions. Legal action with the intent to stop a project such as this is a possibility.

#### Conclusion

Discussions and negotiations with all parties involved are continuing and generally going well. When there is resolution to a number of the issues involving the City/County Interlocal Agreement, the affordable housing component and the MOU between the County and CMS, staff will bring draft documents to the City Council for review. That could be as early as March 26, 2007. Under that schedule, Council action could be requested in April.

February 28, 2007



NOV 2 2006

MECKLENBURG COUNTY  
Office of the County Manager

November 2, 2006

Pamela A. Syfert, City Manager  
City of Charlotte  
600 E. Fourth Street  
Charlotte, North Carolina 28202

Dear Pam:

I am writing regarding the land swap proposal which was introduced by Charlotte Center City Partners last December. Mecklenburg County's primary reason for being involved with the proposal is to optimize the location of the voters' approved and funded park which is planned for the Third Ward. We delayed constructing the park on land currently owned by Mecklenburg County to determine if the park could be moved to a preferred site closer to Tryon Street. I believe the land swap concept is indeed the best way to facilitate the completion of these proposed projects; however, I would like to propose a different approach than Center City Partners proposed and, therefore, different than our staffs have pursued over the past several months.

I will elaborate on each of these components below, but essentially my proposal is this:

1. The City conveys Marshall Park to the County at no cost to the County. The appraised value of that property is \$13,010,000.
2. The City conveys its ownership in Spirit Square to the County at no cost to the County. The City's portion of the property has an appraised value of \$7,528,613.
3. The City conveys the rights-of-way (primarily Poplar Street within the new park site and Third Street within the proposed baseball stadium) to the County at no cost to the County. The appraised value of the Poplar Street right-of-way is \$2,694,000. The appraised value of the Third Street right-of-way has not been determined.
4. The County conveys its ownership in the Wachovia cultural facilities to the City at no cost to the city. The estimated value of that property is \$29,500,000.
5. The County retains ownership of the proposed baseball site in Third Ward.
6. The County provides the infrastructure for baseball (estimated at \$7.8 million), under the terms of a lease mutually agreeable to the County and the Charlotte Knights.
7. The County provides the infrastructure for Brooklyn Village (estimated at \$3.2 million) under terms mutually agreeable to the County and the buyer.
8. Proceeds from the sale of Spirit Square in excess of \$7.8 million will be shared with the City in the pro rata proportions of the property owned by the City and the County.
9. Once the swaps of public land are completed, the County will:
  - a. Enter into appropriate agreements with Spectrum properties to ensure the property is developed in concert with the Second Ward Master Plan and in keeping with the



- September 20, 2006 letter, vision statement and master plan submitted by Spectrum properties to the City Manager;
- b. complete land swaps or sales with private parties under terms mutually agreeable to the County and those parties.

Marshall Park. You will recall that we had considerable discussion during the Parks and Recreation consolidation in 1992 about whether Marshall Park should stay under the ownership of the City or be transferred to Mecklenburg County with most of the other park assets. The consensus decision at that time was to leave Marshall Park with the city; however, we recently completed an analysis of the County's efforts to provide parks facilities throughout the county. The findings indicate that the East and Central Park Districts have fewer county-owned parks and recreation facilities, on a per capita basis, than any other areas of the county. Marshall Park has now become a critical link to enable the land swap necessary to secure the preferred park site in the Third Ward. It also provides us with an opportunity to provide a more suitable park through the redevelopment of Second Ward, which helps us to address that deficiency in the Central Park District. I request that the City convey Marshall Park to the County at no cost to the County, as was done in 1992 with the other City-owned park facilities.

Spirit Square. The City and County jointly own 49% of Spirit Square. Of the remainder, the City owns 43% and the County owns 8%. In July the Mecklenburg County Board of Commissioners directed me to negotiate with the City regarding ownership and potential land transactions to facilitate the projects proposed by Charlotte Center City Partners. There is considerable private interest in redeveloping that property, but its complicated ownership will be an impediment. I request that the City convey its ownership interests in Spirit Square to the County at no cost to the County. The County would use the proceeds to fund the baseball infrastructure, up to \$7.8 million, and any proceeds in excess of \$7.8 million will be shared with the City on a pro rata basis.

City-owned Rights-of-Way. There are City-owned rights-of-way within the footprints of the new park and proposed baseball stadium. Without abandonment of these rights-of-ways, the projects cannot happen. I request that the City convey these rights-of-way to the County at no cost to the County.

Cultural Facilities. In October 2006, the City Council and the County Board approved agreements with Wachovia that resulted in the County having a 30% ownership share in the new cultural facilities. I request that the City accept donation of the County's ownership share of these facilities in exchange for the above referenced properties.

You and I have discussed the importance of redevelopment of Second Ward in keeping with the Second Ward master plan and the project description presented by Spectrum Properties in September 2006. The County will work with the City and Spectrum Properties to find the most appropriate vehicle through which to ensure the redevelopment adheres to both of those guidelines.

I anticipate taking this proposal to my Board on November 8, 2006. I would request that you notify me as soon as possible as to the City's interest in this proposal. I think it would be in all of our best interests if we could have these issues resolved by the end of the calendar year, preferably including any action our respective boards would need to take.

I appreciate the spirit of cooperation with which our staffs have approached this project to date and look forward to successfully completing the project in the coming weeks. If you have any questions, please do not hesitate to give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read "Harry L. Jones, Sr.", written in a cursive style.

Harry L. Jones, Sr.  
County Manager

**MEMORANDUM OF UNDERSTANDING**  
**for**  
**THE DEVELOPMENT OF A MINOR LEAGUE BASEBALL STADIUM**

This Memorandum of Understanding sets out the key terms under which Knights Baseball, LLC (“the Knights”) would lease land from Mecklenburg County (the “County”) for the construction and operation of a minor league baseball stadium in center city Charlotte (the “Stadium”). This Memorandum is conceptual and intended primarily to outline the major features of the Stadium, financing, and other matters fundamental to the construction and operation of the Stadium. This Memorandum is non-binding in all respects. Details are included to indicate planning and proposals made to date, not to form binding plans for site development, financing, assignment of responsibilities, or other matters.

**1. The Site**

**1.1** The Stadium will be constructed by the Knights on land owned by the County (approximately 7.8 acres) bounded by South Graham, South Mint, West Second, and West Fourth streets (the “Site”).

**1.2** The County will enter into a long-term ground lease (the “Lease”) with the Knights for \$1 per year for a term mutually agreeable to the County and the Knights, allowing the Knights to use the Site for the Stadium described herein. The County shall have the right to terminate the Lease if the Knights cease playing baseball in the Stadium or if baseball ceases to be the primary use. The initial term shall be a period of 49 years with two (2) twenty five (25) year options. However, if Major League Baseball drafts the territory, the lease will remain in effect for thirty (30) years from the date of the original lease, unless the Knights are made whole for the money spent on stadium construction.

**1.3** Upon expiration or termination of the Lease, the County will have absolute, unencumbered ownership of the Site and the Stadium, with no restrictions as to future use if baseball ceases to be the primary use.

**2. Site Development**

**2.1** Current plans for the site development are attached to this Memorandum. These plans are preliminary and may be changed during site investigation, design development and stadium construction.

**2.2** The County will be responsible for site demolition including the removal of the old Virginia Paper Building and appurtenances.

**2.3** The County will pay to relocate West Third Street and install new public sidewalks, lighting and street drainage systems, all utilities to site, and other improvements necessary to prepare the site for construction.

**2.4** The County will conduct a detailed subsurface site investigation to determine if there are on-site environmental conditions, including rock, which may require special remediation. The County’s obligation for site remediation will be limited to that necessary to allow the site to be used alternatively as an urban park.

**2.5** The County agrees to fund infrastructure and site cost described in this section not to exceed \$7.8 million. The Knights will be responsible for any extra site development costs, beyond \$7.8 million but not to exceed \$1 million. If it is determined that infrastructure and site costs will exceed \$8.8 million, then this agreement can be terminated by either party unless other funds become available to the Knights to cover the overage.

**3. Stadium Design**

**3.1** The Knights, at its cost and expense, will be responsible for planning and design of the Stadium.

**3.2** The Knights agree to participate in a collaborative process to ensure the integration of all development initiatives in Third Ward during design and construction of the Stadium.

**3.3** Prior to the completion of final design, the Knights will provide a report, prepared by a mutually agreed upon third party, demonstrating the long-term economic viability of the Team.

**3.4** The Knights will cause the Stadium to be designed and constructed by qualified, experienced professional architects, engineers, and construction contractors, all of whom will be retained and compensated by the Knights.

**3.5** Design and construction of the stadium will be in accordance with the City of Charlotte's UMUD requirements.

**4. Stadium Construction**

**4.1** The Knights, at its cost and expense, will be responsible for constructing and equipping the Stadium.

**4.2** The Knights will be responsible for all costs associated with the construction of the Stadium, including any cost overruns.

**4.3** The Knights agree to work with the County on a satisfactory program to include minority and small businesses in the construction process, commensurate with the County's Minority, Women, and Small Business Enterprise Program.

**5. Stadium Operations**

**5.1** The Knights will be solely responsible for the costs and expenses of owning, managing, maintaining, and operating the Stadium.

**5.2** The Knights will negotiate an agreement with the City of Charlotte to assure that the Stadium is designed and operated to accommodate public safety and traffic enforcement.

**5.3** The Knights will be entitled to all revenues and responsible for all losses and liabilities generated by its ownership, maintenance and operation of the Stadium during the term of the Lease.

**5.4** The Knights agree to coordinate special stadium event programming with the Charlotte Regional Visitors Authority, Charlotte Center City Partners, and the Mecklenburg County Park and Recreation Department.

**6. Financing**

**6.1** Prior to execution of the Lease, the Knights will provide for review by the County pro forma and fully executed agreements proving that it has secured financing in an amount and under terms sufficient to ensure construction of a Stadium that will be long-term economically viable. The agreements shall contain no contingencies other than execution of the Lease.

6.2 During the term of the Lease, the Knights shall be responsible for and shall pay all ad valorem taxes and other taxes assessed with respect to the Stadium and all tangible personal property on the Site that is owned by the Knights, including any tangible personal property leased by the Knights which, under the terms of the applicable lease agreement, requires the lessee to pay the same and shall further pay such other taxes as may be assessed on the Knights under applicable law subject to the right to contest the applicability or amount of any tax by appropriate proceedings.

7. **General Matters**

7.1 **Site Availability** - The availability of the Site for a minor league baseball stadium is contingent upon negotiated agreements among and between the County, the City of Charlotte, the Charlotte-Mecklenburg Board of Education and private land owners, which would result in the County obtaining a substitute site for a planned Third Ward urban park. The Knights acknowledge that the Lease and any other agreements shall be subject to the approval of the Mecklenburg County Board of Commissioners, which the Board may withhold in its sole discretion.

7.2 **Team Name**- The Knights team name will include the word "Charlotte" throughout the term of the Lease.

7.3 **Indemnity** - The lease agreement will contain reasonable language to protect the County from losses in the event there are problems in construction or delivery of the baseball stadium.

7.4 **Insurance** - During construction and throughout the term of the Lease, the Knights will be responsible for maintaining property and casualty insurance, liability insurance and other appropriate insurance coverage in amounts and under terms set forth in the Lease and agreed to by the Knights.

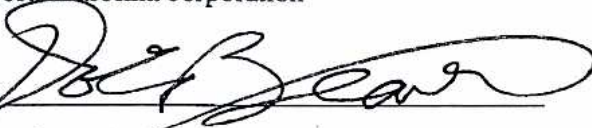
7.4 **Non-Binding Memorandum of Understanding** - The parties will negotiate a legally binding Lease Agreement that sets out in detail the terms of this Memorandum of Understanding.

7.5 **This memorandum of understanding is contingent on the Knights securing new legal council and advice as to the contents of this agreement.**

The remainder of this page has been left blank intentionally.

The Chairman of the Board of County Commissioners for Mecklenburg County, and the duly appointed officers of Knights Baseball, LLC have signed this non-binding Memorandum of Understanding on behalf of the respective parties to indicate their understanding and agreement to the basic terms for development of the minor league baseball Stadium and their respective responsibilities.

Knights Baseball, LLC ,  
a North Carolina corporation


By: 

Name: Donald C. Beaver

Title: Member / Manager

Date: 1/25/2007

THE COUNTY OF MECKLENBURG,  
a political subdivision of the  
State of North Carolina

By: 

Name: Jennifer Roberts

Title: Chairman of the Board  
of County Commissioners

Date: 1/31/2007

**MEMORANDUM OF UNDERSTANDING**  
**for**  
**THE DEVELOPMENT OF BROOKLYN VILLAGE**

This Memorandum of Understanding sets out the key terms under which Cornerstone Real Estate Advisors, Inc (the real estate arm of Mass Mutual) and Mecklenburg County (the "County") will exchange land and by which Cornerstone and its partner Spectrum Investment Services ("the Developer") will develop a mixed use village in Second Ward ("Brooklyn Village"). This Memorandum is conceptual and intended primarily to outline the major features of Brooklyn Village, financing, implementation schedule, and other matters fundamental to the development and construction of Brooklyn Village. This Memorandum is non-binding in all respects. Details are included to indicate planning and proposals made to date, not to form binding plans for land transactions, site development, financing, assignment of responsibilities, or other matters.

**1. Land Exchanges**

**1.1** Cornerstone (or an affiliate) owns or is in the process of acquiring 187,354 square feet of land located in Third Ward bounded by South Church, South Mint, West Second, and West Third Streets, which Cornerstone will swap for land owned by the County.

**1.2** The County owns or is in the process of acquiring 493,971 square feet of land located in Second Ward bounded by South McDowell Street, Third Street, Second Street and the First Baptist Church property, a portion of which the County will swap for land owned by Mass Mutual. (The County property is commonly referred to as the "old Marshall Park" and "old CMS office building" sites.)

**1.3** Mecklenburg County will retain approximately 165,528 square feet of land in Second Ward and will develop it as an urban park, which will be coordinated with the Brooklyn Village Project.

**1.4** The exact size of the Second Ward urban park will be determined by the amount of land remaining after an "equal-value" land exchange with Mass Mutual and allowances for public street rights-of-way.

**2. Brooklyn Village**

**2.1 General** - Brooklyn Village consists primarily of a combination of condominiums, apartments, office space, retail, and community facilities designed to encourage diversity and to honor the old Brooklyn neighborhood. Brooklyn Village will be completed over a 3-4 year period after the land exchanges and shall result in approximately \$135 million of new property value. The Vision Statement and Masterplan for Brooklyn Village are attached for reference.

**2.2 Site Development** - The County will be responsible for removal of the existing water feature, relocating the existing storm water culvert, and constructing new roads in the Second Ward up to a maximum combined cost of \$3.2 million. All site development cost in excess of \$3.2 million will be the responsibility of the Developer. The site development work (except for the new roads) will be completed from April - July, 2007, so that the office building can begin in July or August of 2007. Since Developer is responsible for costs in excess of \$3.2 million, Developer shall be an active team member of the construction team with authority to co-approve the budget and any change orders.

**2.3 Office Building** - The Developer will construct a 150,000 to 180,000 rentable square feet office building on the old Marshall Park site. Up to 60,000 square feet of the space will be made available for purchase by the Charlotte-Mecklenburg Board of Education ("CMS"). The CMS office space will be ready for occupancy no later than 3 years after executing the land exchange agreements. At completion of the office building, the County will immediately abate the old CMS building.

**2.4 Residential Condominium Units**– The Developer will construct two residential condominium projects with a total of approximately 410 residential units. At least 250 units will be priced between \$140,000 and \$300,000. This demonstrates a commitment to create owned workforce housing in the center city.

**2.5 Residential Apartment Units** – The Developer will construct approximately 284 apartment units, with monthly rental rates for at least 180 units priced between \$500 and \$1200. This demonstrates a commitment to create rental workforce housing in the center city.

**2.6** Developer has also committed to the Charlotte Housing Authority (CHA) to turn 30-40 units in the apartment project into affordable housing under the terms of a letter agreement. CHA shall have one year from the closing of the land swap to make a determination on these affordable units.

**2.7 Restaurants and Retail Shops**– The Developer will construct a minimum of 50,000 square feet of restaurant and retail space in Brooklyn Village to help fulfill the vision of the Second Ward Masterplan. The parties understand that in order for the retail space to be financially viable, the design of the urban park must create a real “placemaking” setting in the village that will draw people to the park on a regular basis. As such, Developer’s commitment to develop the retail component is contingent upon Developer’s acceptance of the final park design.

### **3. Urban Park**

**3.1** Because of the significance of the park’s design to the success of the \$135 million investment, Developer shall work with Land Design (who was a major participant in the creation of the Second Ward Masterplan) and the Park and Recreation Department to produce a schematic design for the park. Developer and Land Design shall work through the Parks and Recreation Public Process to insure that the park is designed as a public park. The Second Ward Masterplan will also serve to guide the design, as it was the result of a thorough public process for the area.

**3.2** Developer and Land Design will also consult with Charlotte Center City Partners in a collaborative process to insure that the park contributes to the overall event goals for downtown. The end result of this collaboration shall be a Calendar of Events that will activate the park for the public.

**3.3** The approved schematic design of the park, along with a narrative summary of key issues and important specifications, will be attached to the land swap documents at closing. The County will also work with Developer to obtain CDOT and Planning Commission agreement with the Masterplan and treatment of the roads and entrances to Brooklyn Village prior to closing.

**3.4** Developer shall also participate in the finalization of design documents by the Park and Recreation Commission, and the bidding of the construction of the park. This work should be completed by July, 2008 so that construction of the park can begin in the fall of 2008.

**3.5** Mecklenburg County will be responsible for the costs and expenses of constructing, programming and managing the park. The County will also be responsible for all design costs after schematic design.

**3.6** The County shall commence construction of the park at such time as the residential component (excluding the Condo B project) of Brooklyn Village commences (target time frame is Fall 2008).

**3.7** The parties recognize that making the retail portion of Brooklyn Village work is critical. Developer will form a Brooklyn Village Master Association to work with the Parks and Recreation Commission and Charlotte Center City Partners to create an annual list of events for the park. The Park and Recreation Department will create an annual budget for an active urban park to support this vision.

**3.8** The parties will work cooperatively to make sure the park is secure, safe, and well maintained.



#### 4. **Financing**

4.1 Prior to exchange of real property, the Developer will provide for review by the County a pro forma and fully executed agreements proving that it has secured financing in an amount and under terms sufficient to ensure construction of Brooklyn Village that will be fiscally viable.

4.2 Developer (or the individual building entities) shall be responsible for and shall pay all ad valorem taxes and other taxes assessed with respect to Brooklyn Village and all tangible personal property on the Site that is owned by the Developer, including any tangible personal property leased by the Developer which, under the terms of the applicable lease agreement requires the lessee to pay the same and shall further pay such other taxes as may be assessed on the Developer under applicable law subject to the right to contest the applicability or amount of any tax by appropriate proceedings.

#### 5. **General Matters.**

5.1 **Site Availability.** The availability of the Second Ward and Third Ward sites for exchange is contingent upon negotiated agreements among and between the County, the City of Charlotte, the Charlotte-Mecklenburg Board of Education and private land owners, which would result in the County obtaining a substitute site for a planned Third Ward urban park. Developer acknowledges that any and all agreements shall be subject to the approval of the Mecklenburg County Board of Commissioners, which the Board may withhold in its sole discretion.

5.2 **Second Ward Master Plan.** Brooklyn Village is the first phase of planned redevelopment in Second Ward. The mission of the Second Ward Master Plan is *"to create a livable and memorable urban neighborhood in the heart of the city through mixed land use, diverse architecture and housing types, unique infrastructure and a hierarchy of open spaces. These components will combine to welcome and support a diverse population with varied ages, races and socio-economic backgrounds"*. Developer will establish a citizens' advisory group to ensure that the Second Ward Master Plan vision is implemented. The citizen advisory group will include in its membership, a representative from the Second Ward High School Association, the Charlotte-Mecklenburg Planning Commission, and Charlotte Center City Partners.

5.3 Developer will develop the project with a 20% minority participation goal, and will monitor the participation throughout the project. The development team, the architectural team, the marketing team, as well as the construction team shall be a model of this diversity goal. Additionally, the Developer will work with Charlotte-Mecklenburg Schools to establish apprenticeship and internship programs in every area of the project.

5.4 Contingent upon agreement by CMS, Developer shall lead a private fundraising effort to restore and preserve the Second Ward High School Gym, and to turn it into a Community Center for the Second Ward neighborhood. This is also in keeping with the Second Ward Masterplan goals.

5.5 **Non-Binding Memorandum of Understanding.** The parties will immediately begin diligent negotiation of a legally binding agreement that sets out in detail the terms of this Memorandum of Understanding.

The Chairman of the Board of County Commissioners for Mecklenburg County, and the duly appointed officers for (the Developer) have signed this non-binding Memorandum of Understanding on behalf of the respective parties to indicate their understanding and agreement to the basic terms for development of the Brooklyn Village and their respective responsibilities.

Spectrum Investment Services,  
a North Carolina corporation

By: James M. Dulin  
Name: James M. Dulin  
Title: Chairman  
Date: January 18, 2007

THE COUNTY OF MECKLENBURG,  
a political subdivision of the  
State of North Carolina

By: Jennifer Roberts  
Name: Jennifer Roberts  
Title: Chairman of the Board  
of County Commissioners  
Date: 1/30/2007

Cornerstone Real Estate Advisers, Inc.

By: Thomas G. Duda  
Name: Thomas G. Duda  
Title: Executive Vice President  
Date: 1/23/07

Article 20.

Interlocal Cooperation.

Part 1. Joint Exercise of Powers.

**§ 160A-460. Definitions.**

The words defined in this section shall have the meanings indicated when used in this Part:

- (1) "Undertaking" means the joint exercise by two or more units of local government, or the contractual exercise by one unit for one or more other units, of any power, function, public enterprise, right, privilege, or immunity of local government.
- (2) "Unit," or "unit of local government" means a county, city, consolidated city-county, local board of education, sanitary district, facility authority created under Part 4 of this Article, or other local political subdivision, authority, or agency of local government. (1971, c. 698, s. 1; 1975, c. 821, s. 4; 1979, c. 774, s. 1; 1981, c. 641; 1995, c. 458, s. 3.)

**§ 160A-461. Interlocal cooperation authorized.**

Any unit of local government in this State and any one or more other units of local government in this State or any other state (to the extent permitted by the laws of the other state) may enter into contracts or agreements with each other in order to execute any undertaking. The contracts and agreements shall be of reasonable duration, as determined by the participating units, and shall be ratified by resolution of the governing board of each unit spread upon its minutes. (1971, c. 698, s. 1.)

**§ 160A-462. Joint agencies.**

(a) Units agreeing to an undertaking may establish a joint agency charged with any or all of the responsibility for the undertaking. The units may confer on the joint agency any power, duty, right, or function needed for the execution of the undertaking, except that legal title to all real property necessary to the undertaking shall be held by the participating units individually, or jointly as tenants in common, in such manner and proportion as they may determine.

(b) The participating units may appropriate funds to the joint agency on the basis of an annual budget recommended by the agency and submitted to the governing board of each unit for approval. (1971, c. 698, s. 1.)

**§ 160A-463. Personnel.**

(a) The units may agree that any joint agency established under G.S. 160A-462 shall appoint the officers, agents, and employees necessary to execute the undertaking, or that the units jointly shall appoint these personnel, or that one of the units shall appoint the personnel with their services contracted for by the other units or by the joint agency. If the units determine that one unit shall appoint the personnel, the agreement shall provide that the jurisdiction, authority, rights, privileges, and immunities (including

coverage under the workers' compensation laws) which the officers, agents, and employees of the appointing unit enjoy within the territory of that unit shall also be enjoyed by them outside its territory when they are acting pursuant to the agreement and within the scope of their authority or the course of their employment.

(b) When the subject of an undertaking is a sovereign function of government, the exercise of which has been delegated to an officer of each participating unit, the agreement may provide that one officer shall exercise the function for all the participating units, with all of the powers, duties, and obligations that an officer exercising the function in a single unit would have. (1971, c. 698, s. 1; 1991, c. 636, s. 3.)

**§ 160A-464. Provisions of the agreement.**

Any contract or agreement establishing an undertaking shall specify:

- (1) The purpose or purposes of the contract or agreement;
- (2) The duration of the agreement;
- (3) If a joint agency is established, its composition, organization, and nature, together with the powers conferred on it;
- (4) The manner of appointing the personnel necessary to the execution of the undertaking;
- (5) The method of financing the undertaking, including the apportionment of costs and revenues;
- (6) The formula for ownership of real property involved in the undertaking, and procedures for the disposition of such property when the contract or agreement expires or is terminated;
- (7) Methods for amending the contract or agreement;
- (8) Methods for terminating the contract or agreement;
- (9) Any other necessary or proper matter. (1971, c. 698, s. 1.)

**§ 160A-465. Repealed by Session Laws 1979, c. 774, s. 2.**

**§ 160A-466. Revenue and expenditures for joint undertakings.**

When two or more units of local government are engaged in a joint undertaking, they may enter into agreements regarding financing, expenditures, and revenues related to the joint undertaking. Funds collected by any participating unit of government may be transferred to and expended by any other unit of government in a manner consistent with the agreement. An agreement regarding expenses and revenues may be of reasonable duration not to exceed 99 years. (2003-417, s. 1.)

**§§ 160A-467 through 160A-469. Reserved for future codification purposes.**

Part 2. Regional Councils of Governments.

**§ 160A-470. Creation of regional councils; definition of "unit of local government".**

(a) Any two or more units of local government may create a regional council of governments by adopting identical concurrent resolutions to that effect in accordance