

Lancaster County Council Infrastructure and Regulation Committee

Tuesday May 12, 2015

County Council Chambers
Council Administration Building
100 N. Main Street
Lancaster, SC 29720

1. **Call to Order – Committee Chair Larry Honeycutt** **3:00 p.m.**
2. **Approval of the agenda** *[deletions and additions of non-substantive matters]*
3. **Minutes of the April 14, 2015 meeting - pgs. 2-4**
4. **Chairman Comments**
5. **Citizens Comments**
6. **Discussion / Action Items**
 - a. Proposed amendments to Ordinance 960 – John Weaver – ***pgs. 5-10***
 - b. Airport Taxiway Lights – Steve Willis – ***pgs. 11-13***
 - c. Development Agreement by Covington/Sinacori Builders, LLC – *Penelope Karagounis – pgs. 14-62*
 - d. Moratorium – John Weaver – ***pgs. 63-71***
7. **Adjournment**

Anyone requiring special services to attend this meeting should contact 285-1565 at least 24 hours in advance of this meeting.

Lancaster County Council Infrastructure and Regulation Committee agendas are posted at the Lancaster County Administration Building and are available on the Website: www.mylancastersc.org



MINUTES OF THE LANCASTER COUNTY COUNCIL INFRASTRUCTURE AND
REGULATION COMMITTEE
COUNTY ADMINISTRATION BUILDING
COUNCIL CONFERENCE ROOM
101 N. MAIN STREET, LANCASTER

Members of the Lancaster County Council Infrastructure and Regulation Committee

Larry Honeycutt, Committee Chairman – District 4
Larry McCullough, Council Member – District 1
Jack Estridge, Council Member – District 6

Tuesday, April 14, 2015

The Committee Members present were Larry Honeycutt, Larry McCullough and Jack Estridge. Also present was Steve Willis, John Weaver, Virginia Burgess and other staff members. A quorum of the Lancaster County Council Infrastructure and Regulation Committee was present for the meeting.

The following press was notified of the meeting by e-mail or by fax in accordance with the Freedom of Information Act: Lancaster News, Kershaw News Era, The Rock Hill Herald, Fort Mill Times, Cable News 2, Channel 9 and the local Government Channel. The agenda was also posted in the lobby of the County Administration Building the required length of time and on the county website.

Approval of Agenda

MOTION to approve the agenda was made by Larry McCullough, SECONDED by Larry Honeycutt. Passed 3-0

Minutes of the March 24, 2015 meeting

Motion was made by Larry McCullough to approve the minutes of the March 24, 2015 meeting. SECONDED by Larry Honeycutt. Passed 3-0

Chairman Comments

There were no Chairman comments.

Citizen Comments

Peter Gertler – 6277 600 Carolina Commons, Indian Land, SC, spoke about getting an engineer and inspector to help Jeff Catoe in Public Works.

Waylon Wilson – 15117 Legend Oaks Court, Indian Land, SC, spoke about making a formal process for collecting roll back taxes on agriculture land.

Discussion/ Action

Presentation and Update on the Unified Development Ordinance

Kara Drane, with the Catawba Regional Council of Governments, went over a presentation of the proposed changes for the Unified Development Ordinance. This presentation is attached as schedule A.

Bath Lane road maintenance issues

Elaine Boone, with the Planning Department, explained that Bath Lane is a private road being maintained by Lancaster County Public Works Department. This was discovered when the property owner decided to survey out a one acre portion of the property to place a manufactured home.

Steve Willis, Administrator, recommended that the County retain the standard to insure proper road access on private roads.

Larry McCullough made a MOTION to accept the Administrator's recommendation and follow current process. SECONDED by Jack Estridge. Passed 7-0.

A Resolution regarding the Wylie Street Swimming Pool

John Weaver, County Attorney, explained that he had 3 items for them to consider. A Resolution that accepts the pool. An intergovernmental agreement between the County and the City of Lancaster to share operating costs. Lastly, there is an agreement between the County and Leroy Springs to convey the property to us "as is". A draft copy of these documents are in the agenda package, pages 10 – 22.

The Council Members decided that they would wait since the City will be voting on whether or not to take on half of the financial responsibility for the Wylie Street Swimming Pool later tonight and bring the information on their decision to the next meeting.

Proposed Ordinance and Lease regarding 1033 W. Meeting Street

Larry McCullough made a MOTION to recommend the proposed Ordinance and Lease to full Council. SECONDED by Jack Estridge. Passed 7-0.

Potential Engagement of Consultant regarding development of a business case for construction of a sports complex

Hal Hiott, Recreation Director, discussed the need to find some land suitable for the construction of a sports complex. He stated that this would need to be done first so that when we hire someone to do the study, they will be able to make plans suitable for the land area. Mr. Hiott explained that Clemson may be interested in doing an economic study for the County on these plans. Councilman McCullough said that he had already put in a request with USCL to see if they have someone who can do this economic study for the County also.

The Committee decided to wait until the next meeting to discuss the findings from both Clemson and USCL.

Potential road swap regarding the Regent Parkway issue

Steve Willis, Administrator, explained that this is an exchange of roads with the South Carolina Department of Transportation being proposed. The length of the roads to be exchanged is equivalent – 3.96 miles. The map is included in the agenda package on pages 35 and 36. This was initially an effort to accommodate Council's desire to address the Regent Parkway issue. If successful, staff envisions additional exchanges to help bring order to areas where we have a mixture of City and State roads.

Larry McCullough made a MOTION to move as recommended by staff.
SECONDED by Jack Estridge. Passed 7-0.

Adjournment

There being no further business, the Committee adjourned.

Larry McCullough made a MOTION to adjourn. SECONDED by Jack Estridge.
Passed 3-0.

Respectfully Submitted:

Approved by Committee Chair

Virginia C. Burgess
Deputy Clerk to Council

Larry Honeycutt, Committee Chair

Agenda Item Summary

Ordinance # / Resolution#: 2015-1346 and 960

Contact Person / Sponsor: John Weaver

Department: County Attorney

Date Requested to be on Agenda: April 16, 2015

Committee: Administration Committee

Issue for Consideration: Whether or not it is appropriate and in the best interest of Lancaster County for Council to consider an amendment to Section 4.01 of Ordinance No. 960 so as to permit the Developer, UHF Development Group, LLC, to pay the One Million (\$1,000,000.00) Dollar fee on a "per house" basis rather than on a lump sum basis as required in the original Development Agreement?

Points to Consider: On April 13, 2015, Council gave 1st reading to Ordinance 2015-1346, an ordinance that had its beginning in December, 2008 through the passage of Ordinance 959. The purpose of Ordinance 2015-1346 is to finalize, at last, the errors, disputes and differences that have existed on and off for more than six (6) years. Assuming that the new, replacement ordinances passes, the Developer's request relating to this Item Summary becomes relevant.

The Developer presented the Administrator and the County Attorney with a Summary Sheet on March 24, 2015 wherein was detailed both a timeline of the delays in the final resolution of Ordinance 959 and the alleged damages that the Developer has experienced as a result of the delay. The Developer may or may not have a claim as a result of the delay; but in either event, it appears clear that the errors and delays were in no way created by the actions of the Developer. There has been no express or implied threat of litigation; and, in fact, the Developer is emphatic in his assertion that such a course is an action of last resort. But, nevertheless, the cost to the developer as detailed in the Summary Sheet, if provable, is substantial.

Funding and Liability Factors: Pursuant to the Development Agreement, the Developer was to pay in lump sum fashion a fee of One Million (\$1,000,000.00) Dollars at the time of the issuing of the first building permit or July 1, 2018, whichever occurred first. The Development Agreement permits a maximum of eight hundred ten (810) building permits in the PDD. On average, the cost per building permit is approximately \$1,235.00.

Council Options: Council can reject the Developer's request and withhold any and all building permits until the total fee is paid in full. Alternatively, the Council can accept the Developer's proposal or find common ground in reaching a resolution that is established somewhere in the middle. Any change in the Development Agreement will need to be by agreement and not solely by the unilateral decision of either party.

Any agreement reached will require a 3 Reading amendment to the original Development Agreement as approved in Ordinance No. 960.

Recommendation: A compromise by Council so as to avoid the potential expense of protracted litigation would be in the best interest of Lancaster County.

STATE OF SOUTH CAROLINA)

COUNTY OF LANCASTER)

ORDINANCE NO. 250 AN 11-57

CLERK OF COURT
LANCASTER, SC

AN ORDINANCE

APPROVING THE DEVELOPMENT AGREEMENT BETWEEN UHF DEVELOPMENT GROUP, LLC AND LANCASTER COUNTY RELATING TO THE COLLINS ROAD SITE DEVELOPMENT AND AUTHORIZING CERTAIN COUNTY OFFICIALS TO EXECUTE AND DELIVER THE DEVELOPMENT AGREEMENT.

BE IT ORDAINED BY THE COUNCIL OF LANCASTER COUNTY, SOUTH CAROLINA:

Section 1. The Council finds and determines that:

(a) Lancaster County is authorized by the South Carolina Local Government Development Agreement Act, codified as S.C. Code Ann. §§ 6-31-10 to -160 (2004) (the "Act"), and by the Development Agreement Ordinance for Lancaster County, South Carolina, Ordinance No. 663 (the "Ordinance"), to enter into development agreements with developers;

(b) UHF Development Group, LLC seeks to enter into a development agreement with Lancaster County relating to the Collins Road Site development; and

(c) the Act and Ordinance require a development agreement to be approved by the county governing body by the adoption of an ordinance.

Section 2. A. The Council Chair and Council Secretary are individually authorized, empowered and directed to execute, acknowledge and deliver a Development Agreement between UHF Development Group, LLC and Lancaster County relating to the Collins Road Site development (the "Development Agreement") in the name and on behalf of Lancaster County. The form of the Development Agreement is attached hereto as Exhibit A and all terms, provisions and conditions of the Development Agreement are incorporated herein by reference as if the Development Agreement were set out in this ordinance in its entirety. By adoption of this ordinance, the Lancaster County Council approves the Development Agreement and all of its terms, provisions and conditions. The Development Agreement is to be in substantially the form as attached to this ordinance and hereby approved, or with such minor changes therein as shall be approved by the officials of Lancaster County executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Development Agreement attached to this ordinance. Prior to the execution of the Development Agreement, the parties to it may be changed to reflect the current legal and equitable owners of the property and their respective obligations under the Development Agreement.

B. The Council Chair and Council Secretary are authorized to execute and deliver any related instruments, documents, certificates and other papers as are necessary to effect the delivery of the Development Agreement. The Council and its duly elected or appointed officers and any other County official are authorized to take any and all further action as may be necessary to effectuate the purposes of this ordinance.

Section 3. If any section, subsection or clause of this ordinance is held to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

Section 4. To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Lancaster County Code or other County ordinances, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

Section 5. This ordinance is effective upon third reading.

AND IT IS SO ORDAINED THIS 1st DAY OF DECEMBER, 2008.

LANCASTER COUNTY, SOUTH CAROLINA

By: 
Rudy L. Carter
Chair, County Council


Wesley Grier
Secretary, County Council

Approved as to form:


J. Michael Ey, County Attorney

Attest:


Christopher S. Karres
Deputy Clerk to County Council

Planning Commission Public Hearing:

Council Public Hearing:

1st reading:

2nd reading:

3rd reading:

October 21, 2008

November 3, 2008

October 27, 2008 (title only) PASSED 7-0

November 24, 2008 PASSED 7-0

December 1, 2008 PASSED 7-0

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STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER) **DEVELOPMENT AGREEMENT**
)
) **COLLINS ROAD SITE**

This **DEVELOPMENT AGREEMENT** (the "Agreement") is made and entered into as of the 1st day of December, 2008 ("Effective Date"), by and between **UHF DEVELOPMENT GROUP, LLC** ("Developer"), a North Carolina Limited Liability Company, and the **COUNTY OF LANCASTER** (the "County"), a body politic and corporate, a political subdivision of the State of South Carolina.

RECITALS

WHEREAS, Developer is developing certain real property, consisting of four hundred eleven (411) acres, more or less, located in the County and known as the Collins Road Site development and zoned Planned Development District (PDD-26).

WHEREAS, Developer and County have determined that it is in the best interests of the County and Developer to enter into this Agreement to set forth the terms and conditions of the development in order to more fully protect the Developer's development rights, thereby providing certainty and predictability to the Developer of those rights and providing certainty and predictability to the County on the scope and terms of the development.

WHEREAS, the Developer desires to obtain from the County in connection with the development, and the County is willing to provide, assurances: (1) that the property will be appropriately zoned for the duration of this Agreement; (2) that upon receipt of its development and construction permits it may proceed with the planned development and construction; and (3) that the development rights will be vested for the duration of this Agreement.

WHEREAS, in connection with the proposed development, Developer and County recognize that the scope and term of the planned development under this Agreement accomplish

DEDICATIONS AND FEES AND RELATED AGREEMENTS

Section 4.01. Purpose of Article. The Parties understand and agree that Development of the Property imposes certain burdens and costs on the County, including those for certain services and infrastructure improvements. Eventually, ad valorem taxes collected from the property may meet or exceed the burdens and costs placed upon the County, but certain initial costs and capital expenditures are now required that are not to be funded by any increase in taxes paid by existing residents of the County. The purpose of this article is to identify the matters agreed upon to be provided by the Developer to mitigate such burdens and costs.

Section 4.01A. Payment to Lancaster County. (A) Developer agrees to pay County one million dollars (\$1,000,000.00) the earlier of either July 1, 2018 or the time when the application is filed for a building permit for the first residential dwelling unit to be built in the development.

(B) Payment of the amount provided in Section 4.01A.(A) entitles the Developer to receive not more than eight hundred and ten (810) building permits for constructing residential dwelling units on the Property and as set forth in Ordinance No. 959. At the time of payment of the amount provided in Section 4.01A.(A), the County shall provide to the Developer a document indicating the Developer: (i) has paid the amount; (ii) is entitled to a specified number of building permits for residential dwelling units for the Property; (iii) will receive building permits upon meeting all ordinary requirements for the issuance of building permits including, but not limited to, any then applicable county-wide building, housing, electrical, plumbing, and gas codes adopted by County Council; (iv) will receive the building permits notwithstanding any applicable moratorium, limit on the issuance of building permits, or any other restriction on development rights in effect at the time of application or time of issuance for the building permit; and (v) that the County considers the issuance of the document entitling the Developer to building permits pursuant to this Section 4.01A.(B) to be a "building permit" as used in Section 13.6.2.6.5 of the UDO, as added to the UDO by Ordinance No. 673, and relating to vesting of construction projects.

(C) Developer acknowledges and agrees that the expenditure and use of the monies received by the County from the payment provided in Section 4.01A.(A) is at the sole discretion of the County Council.

Section 4.02. Payment of Costs. Upon submission of appropriate documentation of the expenditure, Developer agrees to reimburse the County, not later than May 31, 2009, for the County's reasonable unreimbursed actual costs related to this Agreement. The foregoing cost reimbursement is capped at ten thousand dollars (\$10,000) and is limited to County payments to third-party vendors and service providers that have not been otherwise reimbursed from the fee paid by Developer pursuant to Section 10 of Ordinance No. 663.

~~**Section 4.03. Other Charges or Fees.**~~ (A) Nothing in this Agreement shall be construed as relieving Developer from the payment of any fees or charges in effect at the time of collection as may be assessed by entities other than the County.

(B) Developer is subject to the payment of any and all present or future fees enacted by the County that are of County-wide application and that relate to the County's costs of

March 24, 2015

John L. Weaver

Lancaster County Attorney

Post Office Box 1809

Lancaster, South Carolina 29721

Summary of Mistakes and Delays for PDD-26

- 12/1/2008 Lancaster County Council 3rd Reading and Approval of PDD-26 (Ordinance 959) and Development Agreement (Ordinance 960).
- 1/29/2009 Development Agreement Recorded, PDD-26 was NOT recorded by Lancaster County.
- 5/29/2012 Due to UHF Development, LLC agreeing to convey land to Lancaster County Water and Sewer District along Collins Road to provide sewer for the Publix Shopping Center, it was determined Lancaster County had not recorded PDD-26.
- 8/27/2012 Lancaster County recorded PDD-26 (Ordinance 959) through a Scrivener's Error. It will later be found that Lancaster County recorded the wrong version of PDD-26.
- 1/16/2014 Based on Pulte's submittal and review at the January 2014 Planning Commission Workshop for Queensbridge providing a 40 disturbed buffer along Gary Holland's Property Line, it was determined that the wrong version of PDD-26 had been recorded. The correct version provides for a 40 foot undisturbed buffer along Mr. Holland's property line only.
- 1/21/14 Lancaster County Planning Commission conditionally approve Pulte's plan by requiring a 50 foot undisturbed buffer along both Mr. Holland's and his neighbors property line. This condition was inconsistent with the 40 foot undisturbed buffer that was agreed to by all parties in PDD-26.
- 4/18/14 Pulte files lawsuit against Lancaster County Planning Commission to appeal the Planning Commission Condition of a 50 foot undisturbed buffer for Mr. Holland and his neighbor with a goal of providing a 40 foot undisturbed for Mr. Holland only as provided for in PDD-26 Version 2.
- 6/30/2014 Pulte lawsuit withdrawn after UHF Development, LLC intervenes between Pulte, Mr. Holland and his neighbor and agrees to absorb certain additional costs Pulte will incur to provide Mr. Holland and his neighbor a 50 foot undisturbed buffer.
- 1/20/2015 Michael Wren completes revisions to the improperly recorded PDD-26.
- 3/17/15 Lancaster County Planning Commission Approves 7-0 revised PDD-26.

The above mistakes have delayed the development of Queensbridge and an adjoining 234 unit apartment community 12 months and counting as of March 2015.

Summary of Financial Impacts

1. Re-design of site plan based on 50 foot undisturbed buffer improperly conditioned by Planning Commission of \$10,000.
2. Retaining walls and increased site work to accommodate the above of \$150,000.
3. UHF Development, LLC interest carry for 12 months of \$300,000.
4. Water and sewer off-site construction cost increases of \$350,000.
5. Pulte and UHF Development, LLC legal fees associated with the Planning Commission lawsuit of \$50,000.
6. Construction costs increases for the above referenced apartment community of \$2,500,000.
7. Ongoing travel and other expenses incurred by UHF Development, LLC for various meetings with engineers, county staff, planning board and county council meetings.
8. Significant risk that the Pulte land purchase for Queensbridge may not close due to the delays and increased costs.

Agenda Item Summary

Ordinance # / Resolution#: I&R Committee Meeting
Contact Person / Sponsor: Steve Willis
Department: Admin
Date Requested to be on Agenda: May 12, 2015

Issue for Consideration:

Change order for Airport Taxiway grant.

Points to Consider:

This would be a change order associated with the Airport Taxiway grant. This just came in today (agenda deadline) and an analysis is ongoing.

The return on investment makes this a good idea; the unknown is in being able to utilize the savings from the reduction in asphalt quantities.

We don't have all of the pieces in place now for a firm recommendation but we do have a proposal for the Committee.

Funding and Liability Factors:

Best case scenario is shown at \$3,000, which is within the grant budget.

Worst case scenario is \$40,000 additional local dollars. This still yields a positive return on investment over the life cycle of the equipment; however, it is a larger upfront outlay.

LED installation would lower potential liability from light failure issues.

Council Options:

Approve or reject the change order; or approve a conditional proposal as shown below

Recommendation:

Wait and see if the FAA will allow us to recoup the cost with 90% grant funding using the cost savings from the lower asphalt quantities. If so, I will approve the change order administratively as we would also save our portion on the asphalt and stay within the overall budget. If the FAA says "no", come back to Council for consideration of moving forward with a 14 year ROI scenario.

Steve Willis

From: Ken Holt <kholt@holtconsultingco.com>
Sent: Tuesday, May 05, 2015 6:57 AM
To: Steve Willis
Cc: Paul Moses; Kevin Morris
Subject: Lancaster County Airport

Steve,

When I was at Lancaster County's 230th Birthday Party, I mentioned a possible change order relative to the taxiway lights but that I needed to assemble some relevant data before discussing such with you. I believe I now have all the data for a decision to be made.

Background:

The current plans call for quartz lights due to a few taxiway lights that were replaced during the runway rehabilitation project as a result of the FAA prohibiting the mixing of quartz and LED technologies within a system. Since this project will be replacing all of the taxiway lights except for the few that were replaced during the runway rehabilitation project, Paul Moses suggested we explore changing all taxiway lights to LED due to the potential reduced power usage and the reduced maintenance costs associated with replacing bulbs, these costs being encumbered totally by the County.

Additional Costs: The electrical contractor, Matt Bragg (Southeast Site Services), has provided a cost to make the change of \$40,000.

FAA's Position:

Anna Lynch (FAA Atlanta ADO) wrote on 4/17/15 - I understand there has been a request to upgrade the taxiway lights to LED at an estimated cost of \$40k, and I support this change but cannot commit to the extra funding right now. Ideally there will be an underrun somewhere else in the project where this can be funded within the existing grant amount, but if not, I will look for the additional funding at grant close out.

Potential Underrun:

Kevin Morris (Holt Consulting Co.) wrote on 4/20/15 - Brett, for the overlay areas I used the two digital surfaces and ran a surface-to-surface calculation to come up with actual volume of asphalt. I then converted to 150lbs/CF (which is conservative) to get tonnage. For the other areas I used a surface based approach and calculated based on a target or average thickness. I again used the 150lb/CF to convert to tonnage. I came up with a total of 6,100 tons of asphalt, with rounding. The bid quantity is 7,200 total tons. That is 1,100 tons less, which would result in savings of around \$175,000, if my calculations are accurate. We would like you to check and see if you come up with similar quantities.

Brett Murray (Lane Construction Corp.) wrote on 4/20/15 - Yes, I'm comfortable with these calculations.

Return on Investment:

Based upon data (power bills) provided by the County, discussions with Randy Harris (Duke Energy), and input from Paul Moses, an analysis was conducted by Mark Morley (The Ohmega Group), an electrical engineer that specializes in airfield electrical design. This analysis estimated the costs savings associated with reduced power consumption and bulb replacement over time with an assumed annual power cost increase of 4%. The result is that the breakeven point should occur within 14th year. This analysis is based upon the assumption that the taxiway lights will be on an average of 3 hours a day, a conservatively reasonable estimate. Obviously, the longer the duration the sooner the breakeven point. Assuming an average LED bulb life of 20 years (according to industry data), the return on investment would be approximately \$25,000.

Bottom Line:

Change Order: \$40,000

Percent Eligible for FAA Funding: 90%

FAA Commitment Should Project not Underrun: Supportive but Tentative

Potential Underrun: \$175,000

County's Financial Commitment:

- Best Case - Reduced from original if Potential Underrun results plus an estimated average reduction per year in power bill and bulb replacement costs of \$3,000
- Worst Case - \$40,000 with Breakeven at 14th year and a return on investment of \$25,000

Steve, I believe I mentioned that this decision is on the critical path of the current taxiway rehabilitation project. Therefore, please let me know if you have any questions or need additional information. Also, Paul and I are available to meet with you and the Infrastructure and Regulation Committee if necessary. If so, please provide the date and time of this meeting.

Thanks,

Ken

Ken Holt | Principal | Holt Consulting Company, LLC.
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Agenda Item Summary

Ordinance # / Resolution#:

Contact Person / Sponsor: Penelope G. Karagounis

Department: Planning

Date Requested to be on Agenda: On May 12, 2015 Infrastructure and Regulation Committee meeting

Issue for Consideration:

This is a Development Agreement by Sinacori Builders, LLC for the Covington development located near the intersection of Harrisburg Road and Barberville Road (adjoining the NC/SC state line (Tax Map 3, 40.02, 40.04, 40.06, 40.09, and portion of 40 and Tax Map 4, Parcels 1 and 2). The property is currently zoned R-15P, Moderate Density Residential/Agricultural Panhandle District and the applicant is rezoning the properties to R-15P, Moderate Density Residential/Agricultural Panhandle District with a Cluster Subdivision Overlay District.

Points to Consider: On March 2, 2015, Debbie Hardin, County Clerk received the proposed Development Agreement for Covington/Sinacori Builders, LLC and hand delivered the draft development agreement to the Lancaster County Planning Department. I then emailed the development agreement to the following individuals: Steve Willis, County Administrator, John Weaver, County Attorney (Information Purposes); Mike Ey, McNair Law Firm; Morris Russell, Emergency Management; Clay Catoe, EMS Director; Sheriff Barry Faile; Kenneth Cauthen, Zoning Administrator; Jeff Catoe, Public Works Director; and Hal Hiott, Parks and Recreation Director to receive comments on the draft Development Agreement. Attached are the comments from the various departments (April 10, 2015). Please review to identify the concerns of the department heads for this Development Agreement.

The density requested by the applicant for this development agreement is 2 units per acre. The current allowable density for the R-15P zoning district is 1.5 units per acre. They are proposing to develop 328 lots. There will be 136 single-family lots that are age-restricted and 192 traditional single-family lots.

Funding and Liability Factors: N/A

Council Options: The Infrastructure and Regulation Committee will make a recommendation to the County Council. Department Heads will be at the Infrastructure and Regulation Committee to answer any questions that the Committee might have in regard to their comments for the Development Agreement.



Memo

To: Lancaster County Council

From: Penelope G. Karagounis, Planning Director

Date: April 10, 2015

Re: Development Agreement Staff Recommendations for Covington Development/Sinacori Builders

Message:

On Monday, March 2, 2015, Debbie Hardin, County Clerk received the proposed Development Agreement for Covington Development/Sinacori Builders, LLC and hand delivered the draft development agreement to the Lancaster County Planning Department. I then emailed the development agreement to the following individuals: Steve Willis, County Administrator, John Weaver, County Attorney (Information Purposes); Mike Ey, McNair Law Firm; Morris Russell, Emergency Management; Clay Catoe, EMS Director; Sheriff Barry Faile; Kenneth Cauthen, Zoning Administrator; Jeff Catoe, Public Works Director; and Hal Hiott, Parks and Recreation Director to receive comments on the draft. Below are the comments I have received:

Steve Willis Comments: My only concern is letting them know that subsequent to the earlier agreement Council has taken a hard line on \$1,000 per home for public safety (section 4.01C). That part may be amended. I would think they would grant some consideration for the land but on a dollar for dollar basis.

Mike Ey Comments:

NOTES

JME – March 11, 2015

Initial Review

**Development Agreement -- Covington Development
Sinacori Builders, LLC**

- **General Editing.** Some minor general editing is needed throughout the document. This editing would have little or no substantive effect.
- **Recitals and Elsewhere.** The Planning Department needs to confirm the zoning district designation that the developer is seeking for the property. It is identified throughout the document as "R-15P with a Cluster Subdivision Overlay District." In other development agreements, the full zoning district description is used, for example, "R-15P, Moderate Density Residential / Agricultural Panhandle District, with a Cluster Subdivision Overlay District."
- **Sec. 1.02. Definitions.**
 - o **(8) Laws and Land Development Regulations.** The following sentence should be added to the definition: "A copy of the Laws and Land Development Regulations, as of the Agreement Date, is on file in the office of the County Planning Department."
 - o **(15) UDO.** The following sentence should be deleted from the definition: "A copy of the UDO has been signed by the Parties and is on file in the office of the County Planning Department."
 - o The two changes above will better reflect current practice concerning the compilation of the Laws and Land Development Regulations and will simplify the process for the preparation and filing of the material.
- **Sec. 104. Property.** Tax map numbers have been provided for the property covered by the agreement. The legal description for the property is needed. The developer should be asked to confirm that the parcel with Tax Map No. 0003-00-040.13 is not part of the Covington Development (the parcel was a part of the M / I Homes (Southstone) development).
- **Sec. 1.05. Zoning.** See above bullet captioned "Recitals and Elsewhere."

- Sec. 3.01. Vested Right to Develop. Future Laws. Are there any ordinances that are in the “pipeline” that the County will want to apply to the property? If so, they need to be specifically identified.
- Sec. 3.01A. Connectivity; Sec. 4.05. Maximum Density; and Sec. 4.06 Vinyl Siding. These sections appear to involve variances or deviations from the development standards contained in the UDO. If these variances or deviations are acceptable, the specific sections of the UDO need to be referenced. In addition, given the number of variances or deviations, it may be advantageous to place them together in Exhibit B and Section 1.06 or in another place in the agreement.
- Sec. 4.01A. School Payments. The payment structure should be changed to reflect a lump sum payment within a short period after the approval of the agreement. The most recent development agreements have provided for lump sum payments.
- Sec. 4.01B. Fire and EMS Station. Can the property proposed for the location of the station be specifically identified at this time? If not, when?
- Sec. 4.01C. Funds for Public Safety. The payment structure should be changed to reflect a lump sum payment within a short period after the approval of the agreement. In addition, the dollar amount should be set at \$1000 per dwelling unit. The most recent development agreements have provided for lump sum payments based on \$1000 per unit.
- Sec. 4.04(A)(4). Roads. This section states that the County will not accept any of the development’s roads into the County road system. The most recent development agreements have included language requiring the Developer to provide the County, prior to final plat approval, documentation that a mechanism, such as a property owners’ association, is in place for the perpetual maintenance of all roads within the development. This language should be included in the agreement.
- Sec. 4.05A. Final Plat Approval. Is there a conflict or inconsistency between this section and the amendment made to the UDO by Ordinance No. 2014-1314? Is this a variance or deviation?

- Sec. 4.07. Age-Restricted. This section acknowledges that a portion of the development will be age restricted. Is there a reason that this section should be included in the agreement?
- Sec. 4.08. Road Widths. This section can be deleted. Council passed Ordinance No. 2014-1285 and it provides for the specified road width.

Morris Russell and Darren Player, Emergency Management Comments:

Morris and I have discussed the following items that need clarification in the proposed development agreement:

Section 3.01A. – It appears from the estimated numbers provided on the bubble plan, Villages 4, 5, 6, 7 could end up with more than 150 lots. This section of the bubble plan has only one way in and out, and would be in violation of recent decisions requiring more than one ingress/egress point in a development area. This particular planned entrance/exit is over what may be a bridge or culvert type roadway. The Developer must be made aware of recent decisions regarding this issue.

Section 3.03. (B) – This sections speaks to codes adopted by Lancaster County. Since most of the codes are actually legislated by SC, would SC not need to be added to alleviate confusion from Developers who are used to operating in NC where individual jurisdictions adopt their own codes and SC where the State Legislature passes statutes adopting codes over which the county has no control. In the last sentence, codes are listed but Fire is not listed as one of them, please add the Fire Code to the list of codes.

Section 4.01B. – Two acres is listed as the amount of land for the Fire/EMS Substation Property. Two acres is not sufficient for the dual use for the Substation Property. A more suitable number would be four to five acres. The cost of an acre of land should be considered when figuring the payout figure listed as \$50,000 should land not be donated for the Substation Property and that should be based on the cost of five acres. There also needs to be stipulation of fact the land donated will be buildable land without substantial grading, fill, or wetland mitigation needed. Suitable soil is beyond the control of the developer and would be a cost incurred by the county when building on the property.

Section 4.01C. – The figure used for the fee per lot should be based on \$1000 per lot. The delayed payment time frame can be problematic when planning on uses for the funds as well.

Section 4.03 (B) – It mentions the developer would be responsible for any future fees of county-wide application. This could be problematic if a fee were to be added in this section of the county such as Fire Fee change or Law Enforcement Fee that is not applied county-wide but only in a specific fire district or a defined fee district of any

type. These fees would not be of county-wide application and could cause confusion as to whether or not they could be made to apply to this development based on this language.

Section 4.06. – Vinyl siding on homes is prohibited with the exception of eaves, soffits and corners. Based on what the allowable distance between structures ends up, it would be less confusing to exclude vinyl in total and use a flame resistant material (for example “Hardy Plank” or some similar material).

Darren Player, Deputy Director
Lancaster County Fire Rescue / Emergency Management
PO Box 1809
Lancaster, SC 29721
111 Covenant Place
Lancaster, SC 29720
Office: 803-283-8888 / 803-285-7333
Fax: 803-283-6333 / 803-289-2933
Direct: 803-313-8051
dplayer@lancastercountysc.net

Sherriff Barry Faile's Comments:

I've looked over the agreement and the only questions I have is can we write it to say that the first \$25000.00 of the funds (Sec. 4.01c) go to law Enforcement since Fire/Ems are getting \$50,000.00 up front (Sec. 4.01B), and will the remaining monies collected be competitive money for emergency services or go to where council wants it to go?

Kenneth Cauthen, Zoning Administrator Comments:

Went to the community meeting. The design is very similar with the previous plans. Going to be hard for me to comment without seeing construction drawings in order for me to comment on the extent that the floodplain will be impacted. Since this area is in an unstudied A Zone a detailed Flood Study will be required to establish Base Flood Elevations and if fill is placed within 100 ft. of the stream bank we must receive technical data from a registered engineer demonstrating that encroachments will not result in an increase if flood levels. This is covered in Sec. 9-43 in our Flood Damage Prevention Ordinance.

Thanks,
Kenneth

Jeff Catoe, Public Works Director Comments: These roads will be private.

Penelope Karagounis, Planning Director:

Active-Adult residential should be age restricted because of the overcrowding of the schools in the Indian Land area. Also it should not be capped in the "active-adult" cluster can be up to 80%. It should be **up to 100% in the "active-adult" cluster of single-family homes**. Please check the consistency of using the term age-restricted vs. active adult residential between your site plans and development agreement. These homes will all be single-family homes?

County adopted the Comprehensive Plan in December 2014. The subject is area is now classified as Neighborhood Mixed Use on the Future Land Use Map, which is included in the new Comprehensive Plan. This area is portrayed as the community type of "walkable neighborhood". Sidewalk connectivity throughout the neighborhood and on Harrisburg and Barberville Road should be a requirement for the Cluster Subdivision Overlay District referenced in the development agreement. I understand from topographic and wetland issues an access road can not be built to connect the age

restricted and traditional neighborhood. However, a walkable pedestrian path should be created to connect the two neighborhoods to enjoy the open space. This area has also been identified as a historical revolutionary campground site, which needs to have pedestrian access to the open space.

Developer and all associated parties need to be aware of Section 3.04 Development Permits. For example, if comments are made during the DRC process by a local agency reviewing the preliminary plan, those changes should be made by the developer. This process has been identified and is in place for staff to review preliminary plans even after a development agreement is signed.

We are grateful for the school payment and for the public safety payment. However, these fees are one time fees that can not be used for operational costs for the County. Staff has brought this concern many times in the past to Administration that the County needs to look into impact fees to help pay for the growth. The collection of these specific fees will not be able to be used for operational costs which this County desperately needs to accommodate all the new population living in Lancaster County.

Private Roads need to cite new Ordinance that County Council passed.

Village 2, Village 3 and Village 4 needs to have a second internal connection. Fire Marshall has Issue with one internal spine road serving a large amount of single-family lots.

The exhibit with the Cluster Subdivision Overlay District Plan submitted in March needs to be revised. ESP Associates brought staff a new copy of the plan but this needs to be reflected with the revisions of the development agreement as it goes through the process. It is responsibility of the applicant to provide new transmittals with updated records for the Planning Staff to have in their development agreement folders and Rezoning folders for the Covington Development. The wording of "Cluster Subdivision Overlay District Rezoning Plan" needs to read "Cluster Subdivision Overlay District Schematic Plan" because in South Carolina the rezoning application is not contingent with a rezoning plan. Staff believes this may cause confusion to both the applicant and citizens who inspect these documents. The submittal is a schematic plan which will have to go through a Preliminary Plan process with the Lancaster County Planning Commission. The plan submitted with the rezoning application for a Cluster Subdivision Overlay District is NOT the final document and may change during the preliminary plan process.

Hal Hiott, Parks and Recreation Director's Comments:

Anything recreational we do not have the funds to maintain.

Lancaster County Planning Department

101 N. Main St., Ste. 108

P.O. Box 1809

Lancaster, South Carolina 29721-1809

Telephone (803) 285-6005

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LANCASTER COUNTY PLANNING COMMISSION

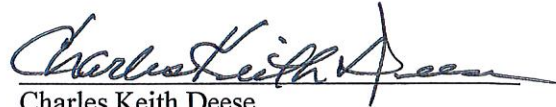
REPORT TO COUNTY COUNCIL

DEVELOPMENT AGREEMENT – SINACORI BUILDERS, LLC

Pursuant to Sections 23.5d and 23.5e of the Unified Development Ordinance of Lancaster County, the Planning Commission has reviewed as received from Sinacori Builders, LLC the proposed Development Agreement – Sinacori Builders, LLC/Covington development

At its meeting on Tuesday, April 21, 2015, the Planning Commission conducted a public hearing on the proposed Development Agreement – Sinacori Builders, LLC. In addition, by a 6-0 vote, the Planning Commission voted to recommend to County Council approval of the Development Agreement – Sinacori Builders, LLC/Covington development.

Respectfully submitted,



Charles Keith Deese

Chair, Lancaster County Planning Commission

DEBBIE C HARDIN

From: Ey, Mike <MEy@MCNAIR.NET>
Sent: Tuesday, May 05, 2015 1:19 PM
To: DEBBIE C HARDIN
Cc: Steve Willis; Penelope Karagounis; John Weaver
Subject: Sinacori Builders -- Covington Development Agreement Documents
Attachments: COLUMBIA-#1211361-v1-Ordinance_No__2015-____approving_development_agreement.DOC; COLUMBIA-#1211370-v1-Ordinance_No__2015-____rezoning_Sinacori_Builders__LLC_property.DOC; COLUMBIA-#1211356-v1-Council_Committee_Report_RE_Development_Agreement.DOCX; DN18 - Covington - CSOD Schematic Plan - Exhibit G_REV 05-04-2015.pdf

I am and will be sending you some documents concerning the above referenced development agreement for use at the Infrastructure and Regulation Committee meeting scheduled for Tuesday, May 12. The documents from me include, all of which are "drafts":

1. Development Agreement. A clean and redlined version of the proposed development agreement. The changes identified in the document are based on input of County staff. *I will send this document by the end of the day.*
2. Ordinance to approve the proposed development agreement. See attached.
3. Ordinance to approve the rezoning of the Covington development property. See attached.
4. Report to Council by the Infrastructure and Regulation Committee. See attached.
5. Exhibit G, Rezoning Plan, to the development agreement. See attached.
6. Exhibit F, Substation Property, to the development agreement. I have not included anything for this exhibit. I understand the Developer and County need to have more discussion on this.

Penelope may have some papers for you to include in the material, for example, a copy of the Planning Commission's report to Council.

I will send a set of these papers to the Developer's legal counsel after I have sent all of the documents to you. Note that as this time, neither the County nor Developer have signed off on any of these documents. I would expect the Developer to have some items that they will want to discuss, change, etc.

Please contact me if you have any questions or need additional information. Thanks, Mike.



J. Michael Ey

Shareholder

mey@mcnair.net | 803 753 3268 Direct | 803 513 7852 Mobile

McNair Law Firm, P.A.

Columbia Office 1221 Main Street | Suite 1800 | Columbia, SC 29201
803 799 9800 Main | 803 933 1539 Fax

Mailing Post Office Box 11390 | Columbia, SC 29211

[VCard](#) | [Bio URL](#) | [Web site](#)

------(Space above this line for recording use)-----

STATE OF SOUTH CAROLINA)	DEVELOPMENT AGREEMENT
)	
COUNTY OF LANCASTER)	COVINGTON DEVELOPMENT

This **DEVELOPMENT AGREEMENT** (the “Agreement”) is made and entered into as of the —13th day of MayJuly, 2015 (“Agreement Date”), by and among **SINACORI BUILDERS, LLC** (“Developer”), a North Carolina limited liability company, and the **COUNTY OF LANCASTER** (the “County”), a body politic and corporate, a political subdivision of the State of South Carolina.

R E C I T A L S

WHEREAS, Developer has obtained the right to acquire certain real property consisting of approximately 165 acres, more or less, located in the County and known as the Covington development.

WHEREAS, Developer has submitted an application to the County requesting that the Covington development property be rezoned to R-15P, Moderate Density Residential / Agriculture Panhandle District, with a Cluster Subdivision Overlay District.

WHEREAS, Developer and County have determined that it is in the best interests of the County and Developer to enter into this Agreement to set forth the terms and conditions of the development in order to more fully protect the Developer’s development rights, thereby

providing certainty and predictability to the Developer of those rights and providing certainty and predictability to the County on the scope and terms of the development.

WHEREAS, the Developer desires to obtain from the County in connection with the development, and the County is willing to provide, assurances: (1) that the property will be appropriately zoned for the duration of this Agreement; (2) that upon receipt of its development and construction permits it may proceed with the planned development and construction; and (3) that the development rights will be vested for the duration of this Agreement.

WHEREAS, in connection with the proposed development, Developer and County recognize that the scope and term of the planned development under this Agreement accomplish the statutory aims of comprehensive, orderly planning and development within the County, thus providing benefits to the citizens of the County and providing public benefits through, among other things, the donation of funds or financing of those public facilities and services described and identified in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set forth in this Agreement, the receipt and sufficiency of such consideration being acknowledged by the parties, and pursuant to the South Carolina Local Government Development Agreement Act, codified as Sections 6-31-10 to -160, Code of Laws of South Carolina 1976, as amended (the “Act”) and the Development Agreement Ordinance for Lancaster County, South Carolina (“Ordinance No. 663”), the parties to this Agreement, intending to be legally bound to a development agreement in accordance with the Act and Ordinance No. 663, agree as follows:

ARTICLE I

GENERAL

Section 1.01. Incorporation. The above recitals are incorporated in this Agreement as if the recitals were set out in this Agreement in its entirety. The findings contained in the Act are incorporated into this Agreement as if it were set out in this Agreement in its entirety.

Section 1.02. Definitions. (A) As used in this Agreement:

(1) “Act” means the South Carolina Local Government Development Agreement Act, codified as Sections §§ 6-31-10 to -160, Code of Laws of South Carolina 1976, as amended.

(2) “Agreement” means this Development Agreement.

(2A) “Agreement Date” means the date of this Agreement as set forth above.

(3) “County” means the County of Lancaster, a body politic and corporate, a political subdivision of the State of South Carolina.

(4) “County Council” means the governing body of the County.

(5) “Developer” means Sinacori Builders, LLC, a North Carolina limited liability company, and its successors in title to the Property who undertake Development of the Property or who are transferred Development Rights.

(6) “Development Rights” means the right of the Developer to develop all or part of the Property in accordance with this Agreement.

(7) Reserved.

(8) “Laws and Land Development Regulations” means the County’s applicable rules and regulations governing development of real property as set forth on Exhibit E hereto. A copy of the Laws and Land Development Regulations, as of the Agreement Date, is on file in the office of County Planning Department.

(9) “Ordinance No. 663” means Ordinance No. 663 of the County which is cited as the Development Agreement Ordinance for Lancaster County, South Carolina.

(10) “Ordinance No. 2015-____” means Ordinance No. 2015-____ of the County zoning the Property R-15P, Moderate Density Residential / Agriculture Panhandle District, with a Cluster Subdivision Overlay District.

(11) “Ordinance No. 2015-____” means Ordinance No. 2015-____ of the County approving this Agreement.

(12) “Parties” means County and Developer.

(13) “Property” means the land, and any improvements thereon, described in Section 1.04.

~~(14) Reserved.~~

(14) “Sinacori Related Entity” means (i) an entity that is owned or controlled by Developer, or is owned or controlled by any entity that owns at least a fifty percent (50%) membership interest in Developer; and (ii) any entity that is the successor in interest to Developer via merger or operation of law.

(15) “UDO” means Ordinance No. 309, as amended, as of the Agreement Date and which is cited as the Unified Development Ordinance of Lancaster County. The UDO includes Ordinance No. 328, as amended, as of the Agreement Date and which is cited as the Land Development Regulations of Lancaster County. ~~The UDO also includes Ordinance No. 2014-1314, relating to final plats and installation of improvements.~~ A copy of the UDO has been signed by the Parties and is on file in the office of the County Planning Department.

(B) Unless the context clearly indicates otherwise, terms not otherwise defined in this Agreement have the meanings set forth in the Act and Ordinance No. 663.

Section 1.03. Parties. The parties to this Agreement are County and Developer.

Section 1.04. Property. This Agreement applies to the land described in Exhibit A, attached hereto and incorporated herein by reference as if the exhibit were set out in this Agreement in its entirety. The Property is generally known as the Covington development.

Section 1.05. Zoning. The Property is zoned R-15P, Moderate Density Residential / Agriculture Panhandle District, with a Cluster Subdivision Overlay District, pursuant to Ordinance No. 2015-____.

Section 1.06. Permitted Uses. (A) The UDO provides for the development uses on the Property, including population densities, building intensities and height.

(B) All lots for the Development must meet all of the standards contained in this Agreement and if no specific standard is contained in this Agreement, then the standards contained in the UDO apply.

Section 1.07. Development Schedule. (A) The estimated development schedule for the Property is set forth on Exhibit C, attached hereto and incorporated herein by reference as if the exhibit were set out in this Agreement in its entirety.

(B) County and Developer acknowledge that the development schedule is an estimate. The failure of the Developer to meet a commencement or completion date does not, in and of itself, constitute a material breach of this Agreement, but must be judged based on the totality of the circumstances. The development schedule is a planning and forecasting tool only. County and Developer acknowledge that actual development is likely to take place at a different pace than set forth in the development schedule because of future market forces.

(C) County agrees that if Developer requests an adjustment to the development schedule, including commencement dates and interim completion dates, then the dates must be modified if the Developer is able to demonstrate and establish that there is good cause to modify those dates. “Good cause” includes, but is not limited to, changes in market conditions.

(D) Periodic adjustments to the development schedule do not require a formal amendment to this Agreement and are not considered a major modification. To adjust the development schedule, the Developer shall submit a proposed adjustment to the Clerk to Council who shall forward copies of the proposed adjustment to each member of County Council. The proposed adjustment must be accompanied by an explanation and justification. The proposed adjustment is effective sixty (60) days from receipt by the Clerk to Council unless the County Council has disapproved the proposed adjustment by passage of a resolution to that effect within the sixty (60) day period.

Section 1.08. Relationship of Parties. This Agreement creates a contractual relationship among the Parties. This Agreement is not intended to create, and does not create, the relationship of partnership, joint venture, or any other relationship wherein any one of the parties may be held responsible for the acts of any other party. This Agreement is not intended to create, and does not create, a relationship whereby any one of the parties may be rendered liable in any manner for the debts or obligations of any other party, to any person or entity whatsoever, whether the debt or obligation arises under this Agreement or outside of this Agreement.

Section 1.09. Benefits and Burdens. (A) The Parties agree that the burdens of this Agreement are binding upon, and the benefits of this Agreement shall inure to, all successors in interests to the Parties to this Agreement.

(B) Except for the owners and lessees of completed residences on individual lots who are the end users and not developers thereof and the owners and lessees of individual lots, who are not developers and who intend to build a residence on the lot for the owner or lessee to occupy, any purchaser or other successor in title is responsible for performance of Developer’s obligations pursuant to this Agreement as to the portion of the Property so transferred. Developer must give notice to the County of the transfer of property to a developer in the manner prescribed in Section 3.05.

(C) Developer acknowledges and agrees that it (i) is responsible for the development of the Property when Developer acquires title to or development rights for the Property, and (ii) will develop the Property in accordance with the terms and conditions of this Agreement. It is the express intention of the Parties that the obligations of this Agreement are intended to run with the Property. If the Property is sold, either in whole or in part, and the Developer's obligations are transferred to a purchaser or successor in title to the Property as provided herein and in Section 3.05 below, Developer shall be relieved of any further liability for the performance of Developer's obligations as provided in this Agreement as it relates to the portion of the Property sold if the Developer is then current with its obligations pursuant to this Agreement.

Section 1.10. Term. The term of this Agreement commences on the Agreement Date and terminates five (5) years thereafter.

Section 1.11. Required Information. Ordinance No. 663 requires a development agreement to include certain information. Exhibit D contains the required information or identifies where the information may be found in this Agreement. Exhibit D is incorporated herein by reference as if the exhibit were set out in this Agreement in ~~it~~its entirety.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations and Warranties of County. (A) The County represents that it finds the development permitted by this Agreement is consistent with the County's comprehensive plan and land development regulations.

(B) The County represents that it has approved this Agreement by adoption of Ordinance No. 2015-_____ in accordance with the procedural requirements of the Act, Ordinance No. 663 and any other applicable state law.

(C) The County represents that prior to the final reading of Ordinance No. 2015-_____ that at least two public hearings were held after publication of the required notice and the publication of a notice of intent to consider a proposed development agreement.

Section 2.02. Representations and Warranties of Developer. (A) Developer represents that the number of acres of highland contained in the Property is twenty-five (25) or more, the same being approximately one hundred and forty (140) or more acres.

(B) Developer represents that, as of the Agreement Date, it has contractual rights to acquire the Property and that, following acquisition, Developer shall be the only legal and equitable owner of the Property.

(C) Developer represents and warrants that the execution, delivery and performance by the individual or entity signing this Agreement on behalf of the Developer has been duly authorized and approved by all requisite action on the part of Developer.

ARTICLE III

DEVELOPMENT RIGHTS

Section 3.01. Vested Right to Develop. (A) County agrees that the Developer, upon receipt of its development permits as identified in Section 3.04, may proceed to develop the Property according to the terms and conditions of this Agreement. The right of Developer to develop the Property as set forth in this Agreement is deemed vested with Developer for the term of this Agreement when the Developer has complied with all of the requirements of Section 5.19.

(B) County agrees that the specific Laws and Land Development Regulations in force as of the Agreement Date as set forth in Exhibit E to this Agreement, attached hereto and incorporated herein by reference as if the exhibit were set out in this Agreement in its entirety, shall govern all aspects of the development of the Property, according to the terms and standards as stated in this Agreement, for the term of this Agreement.

(C) The Developer has a vested right to proceed with the development of the Property in accordance with the zoning classification set forth in Ordinance No. 2015-____ and the UDO and the terms of this Agreement when the Developer has complied with all of the requirements of Section 5.19.

(D) Except as may be otherwise provided for in this Agreement, the Act or Ordinance No. 663, no future changes or amendments to the Laws and Land Development Regulations shall apply to the Property, and no other local land development legislative enactments shall apply to the development, the Property, or this Agreement which have a direct or indirect adverse effect on the ability of the Developer to develop the Property in accordance with the Laws and Land Development Regulations.

(E) To the extent that this Agreement may contain zoning and development standards which conflict with existing zoning and development standards, including zoning and development standards contained in the UDO, the standards contained in this Agreement supersede all other standards and this Agreement is deemed controlling.

(F) For purposes of Subsection (D) of this Section 3.01 and Section 3.03(A)(3), the Laws and Land Development Regulations are anticipated to be amended subsequent to the Agreement Date to provide for requirements and standards applicable to storm water runoff conveyance systems and drainage improvements. The anticipated amendments are expected to include, but not be limited to, minimum standards for the design and sizing of storm drainage piping systems and access easements. These amendments to the Laws and Land Development Regulations will apply to the Property.

Section 3.01A. Connectivity; Sidewalks. (A) Notwithstanding the provisions of Sections 2.1.5.6(i), 13.7.10.3 and 13.7.9.1 of the UDO, all relating to connectivity, links and nodes, Developer and County agree that the Developer is not required to provide a stubbed out street for any adjacent undeveloped parcel or a parcel used for a single family home that contains a minimum of five (5) acres, except that a stubbed out street shall be provided to that parcel identified as Tax Map No's. 0003-00-042.00, 0003-00-040.11, and 0005-00-002.00. Further, due to inherent constraints associated with the Property, including, without limitation, topographic and environmental constraints, Developer and County agree that the subdivision shall have a connectivity index of not less than 1.0.

(B) Developer agrees to include sidewalks on Harrisburg Road, Barberville Road and within the development. The purpose for including sidewalks is to promote the walkability of the development.

Section 3.02. Effect on Vested Rights Act and County Ordinance No. 673. The Parties agree that vested rights conferred upon Developer in this Agreement are not affected by the provisions of the Vested Rights Act, codified as Sections 6-29-1510 to -1560, Code of Laws of South Carolina 1976, as amended, or the provisions of Ordinance No. 673, the County's ordinance relating to the Vested Rights Act.

Section 3.03. Applicability of Subsequently Adopted Laws and Land Development Regulations. (A) County may apply laws adopted after the execution of this Agreement to the development of the Property only if the County Council holds a public hearing and determines:

(1) the laws are not in conflict with the laws governing this Agreement and do not prevent the development set forth in this Agreement and "laws" which prevent development include, but are not limited to, a moratorium, or any other similar restriction that curtails the rate at which development can occur on the Property;

(2) the laws are essential to the public health, safety, or welfare and the laws expressly state that they apply to the development that is subject to this Agreement;

(3) the laws are specifically anticipated and provided for in this Agreement;

(4) that substantial changes have occurred in pertinent conditions existing at the time this Agreement was approved which changes, if not addressed by County, would pose a serious threat to the public health, safety, or welfare; or

(5) that this Agreement was based on substantially and materially inaccurate information supplied by the Developer that materially affected the terms and provisions of this Agreement.

(B) Developer agrees to comply with any county-wide building, housing, electrical, plumbing, fire and gas codes ~~adopted by County Council~~ required to be enforced pursuant to the laws of South Carolina after the Agreement Date and in force at the time plans for buildings are submitted to the County for review. Nothing in this Agreement is intended to supersede or contravene the requirements of any building, housing, electrical, plumbing, fire or gas code adopted by County Council.

Section 3.04. Development Permits. (A) Developer agrees to obtain all local development permits for the development of the property. Local development permits, approvals and processes, some of which may have been obtained or complied with as of the Agreement Date, include, but are not limited to:

- (1) Development Review Committee process;
- (2) Preliminary plan approval;
- (3) Final plat approval;
- (4) Zoning permits;
- (5) Building permits; and
- (6) Sign permits.

(B) The failure of this Agreement to address a particular permit, condition, term, or restriction does not relieve the Developer of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions.

Section 3.05. Transfer of Development Rights. Developer may, at its sole discretion, transfer its Development Rights to other developers. The transferring Developer must give notice to the County of the transfer of any Development Rights. The notice to the County must include the identity and address of the transferring Developer, the identity and address of the acquiring Developer, the acquiring Developer's contact person, the location and number of acres of the Property associated with the transfer and the number of residential units subject to the transfer. If the acquiring Developer is an entity, then, at the request of the County, the acquiring Developer shall provide the County the opportunity to view a listing of the names and addresses of the entity's officers and owners. Any Developer acquiring Development Rights is required to file with the County an acknowledgment of this Agreement and the transfer of Development Rights is effective only when the County receives a commitment from the acquiring Developer to be bound by it. This provision does not apply to the purchaser or other successor in title to the Developer who is the owner or lessee of a completed residence and is the end user and not the developer thereof or who is the owner or lessee of an individual lot, who is not a developer and who intends to build a residence on the lot for the owner or lessee to occupy.

ARTICLE IV

DEDICATIONS AND FEES AND RELATED AGREEMENTS

Section 4.01. Purpose of Article. The Parties understand and agree that Development of the Property imposes certain burdens and costs on the County, including those for certain services and infrastructure improvements. Eventually, *ad valorem* taxes collected from the property may meet or exceed the burdens and costs placed upon the County, but certain initial costs and capital expenditures are now required that are not to be funded by any increase in taxes paid by existing residents of the County. The purpose of this article is to identify the matters agreed upon to be provided by the Developer to mitigate such burdens and costs.

Section 4.01A. School Payments. Developer agrees to pay to the County for the benefit of the Lancaster County School District ~~Five Hundred and No/100 dollars (\$500.00) for each lot created from the Property for residential dwelling units (the "School Payment"). Except as otherwise provided in this section, from the Agreement Date until the end of the fifty-seventh (57th) month of the Agreement, the School Payment is due and payable at the same time that the County building permit fees for the lot are due and payable. Payment of the School Payment is a condition for the issuance of a building permit. For the period after the fifty-seventh (57th) month, Developer agrees to pay County by the end of the fifty-eighth (58th) month for the benefit of the Lancaster County School District an amount equal to Five Hundred and No/100 dollars (\$500.00) times the number of lots for which a building permit has not been issued. If the Developer sells a portion of the Covington development, whether subdivided or not, the Developer shall pay not later than closing on the sale an amount equal to Five Hundred and No/100 dollars (\$500.00) times the number of lots associated with the~~ One Hundred Sixty-Five

Thousand and No/100 dollars (\$165,000.00) the earlier of either June 30, 2016 or the closing on the sale of any portion of the Covington development ~~that is sold. The School Payment is separate and distinct from any fees or amounts payable to the County for a building permit. Monies received from the School Payment shall be remitted by the County to the Lancaster County School District by the end of the month following the month in which the School Payment is received by the County~~ to an individual or entity other than a Sinacori Related Entity (the "School Payment"). Developer acknowledges and agrees that County is responsible only for the remittance of the School Payment to the Lancaster County School District and that the County has no other obligation or responsibility for the School Payment. As used in this section, "Developer" means Sinacori Builders, LLC, a North Carolina limited liability company, and does not include its successors or assigns but does include a Sinacori Related Entity that holds title to the Property.

Section 4.01B. Fire and EMS Station. Developer agrees to donate to County, by the time of final plat approval for the first phase of the Covington development, either approximately two (2) acres of land to be identified by mutual agreement of the parties on Exhibit F (the "Substation Property"), attached hereto and incorporated herein by reference as if the exhibit were set out in this Agreement in its entirety or Fifty Thousand and no/100 dollars (\$50,000.00). If the Developer chooses to donate the Substation Property and the County agrees to accept the donation of the Substation Property, then Developer will convey fee simple title to the Substation Property to County by general warranty deed. The deed will include appropriate restrictions on the Substation Property to ensure that the Substation Property will continue to be used for either fire and/or public safety related uses, or both uses, for at least ten (10) years from the date of transfer. Title to the Substation Property shall be insurable. Developer is responsible for the costs and expenses of transferring title to the Substation Property, except County is responsible for any title insurance premiums if County chooses to purchase title insurance. If the Developer chooses not to donate the Substation Property or the County chooses not to accept the donation of the Substation Property, then Developer agrees to donate Fifty Thousand and no/100 dollars (\$50,000.00), ~~then to the monies shall~~ County to be used by the County for acquisition of a site for a station for the Pleasant Valley Fire Protection District or for capital improvements for the Pleasant Valley Fire Protection District.

Section 4.01C. Funds for Public Safety. Developer agrees to pay County ~~Two Hundred Fifty Thousand and no/100 dollars (\$250,000.00) by July 1, 2016 to be used for public safety purposes~~ Three Hundred Thirty Thousand and No/100 dollars (\$330,000.00) the earlier of either June 30, 2016, or the closing on the sale of any portion of the Covington development to an individual or entity other than a Sinacori Related Entity (the "Public Safety Payment"). ~~The Public Safety Payment shall be reduced if the total number of lots approved in the preliminary plan for the entire Covington development is less than three hundred thirty (330). The reduction of the Public Safety Payment shall be an amount equal to Seven Hundred Fifty Eight dollars and no/100 (\$758.00) times the difference between three hundred thirty (330) and the number of lots approved in the preliminary plan for the entire Covington development. For example, if the total number of lots approved in the preliminary plan is 288, then the Public Safety Payment will be reduced by the difference between 330 and 288, or 42, times \$758.00 which equals \$31,836.00 and yields a Public Safety Payment of \$218,164.00 (\$250,000.00 minus \$31,836.00 equals~~

~~\$218,164.00). If the preliminary plan has not been approved by the date the Public Safety Payment is due, then the Public Safety Payment shall remain at \$250,000.00 and shall not be reduced.~~ Upon receipt of the Public Safety Payment, the monies must be accounted for separate and distinct from other monies of the County. The Public Safety Payment must be used for non-recurring purposes for law enforcement, fire and emergency medical service in the panhandle area of the County. The determination of the specific uses for the Public Safety Payment is at the discretion of the County Council. As used in this section, "Developer" means Sinacori Builders, LLC, a North Carolina limited liability company, and does not include its successors or assigns but does include a Sinacori Related Entity that holds title to the Property.

Section 4.02. Payment of Costs. Upon submission of appropriate documentation of the expenditure, Developer agrees to reimburse the County, not later than August 30, 2015, for the County's reasonable unreimbursed actual costs related to this Agreement. The foregoing cost reimbursement is capped at ten thousand dollars (\$10,000.00) and is limited to County payments to third-party vendors and service providers that have not been otherwise reimbursed from the fee paid by Developer pursuant to Section 10 of Ordinance No. 663.

Section 4.03. Other Charges or Fees. (A) Nothing in this Agreement shall be construed as relieving Developer from the payment of any fees or charges in effect at the time of collection as may be assessed by entities other than the County.

(B) Developer is subject to the payment of any and all present or future fees enacted by the County that are of County-wide application and that relate to the County's costs of processing applications, issuing development permits, reviewing plans, conducting inspections or similar type processing costs.

Section 4.04. Infrastructure and Services. The Parties recognize that the majority of the direct costs associated with the Development of the Property will be borne by Developer, and many necessary infrastructure improvements and services will be provided by Developer or other governmental or quasi-governmental entities, and not by the County. For clarification, the Parties make specific note of and acknowledge the following:

(A) **Roads.** (1)(a) Developer is responsible for the construction and costs of all roads, whether for public or private use, within the Property including but not limited to any necessary entrance and intersection improvements as required by the South Carolina Department of Transportation related to the development of the Property. All roads must be constructed in accordance with the County's road standards. The road improvements are expected to be implemented on a schedule consistent with the development of the Property as contained in the development schedule and as necessary to serve the development.

(b) Developer shall cause to be prepared a traffic impact analysis conducted and sealed by a licensed South Carolina professional engineer. Any road improvements, which are determined to be necessary, based on the results of the traffic impact analysis, shall be incorporated into the final site plan prior to County approval and the Developer is responsible for all costs of the road improvements. The traffic impact analysis shall be reviewed by the County and in conjunction with the South Carolina Department of Transportation. If a County-level traffic planner is not available to review the traffic impact analysis at the time of submittal, the County may choose to hire a third-party consultant to assist in this review. The cost of the traffic

impact analysis, including any additional reviews requested by the County, shall be paid by the Developer. Improvements set forth in the traffic impact analysis may be installed based on a phasing study prepared by a licensed South Carolina professional engineer at the expense of Developer. The installation of new traffic signals or improvements to existing traffic signals shall be based on warrant studies conducted by a licensed South Carolina professional engineer at established specific times and at the expense of Developer.

(c) If a signalized intersection is required by the traffic impact analysis, or additional poles are required at an existing signalized intersection, a mast-arm traffic signal shall be installed. At a minimum, the standard metal mast-arm poles used by Duke Energy Corporation shall be installed. Complete cost of the installation of the mast-arm traffic signal shall be paid by Developer. Developer shall furnish a financial guarantee, acceptable to the County in its discretion, to cover future repairs and replacement of the mast-arm traffic signal. Developer may transfer its obligation for future repairs and replacement for the mast-arm traffic signal to a homeowners' or property owners' association, or similar organization.

(2) Developer is responsible for all construction and maintenance, and the costs thereof, associated with the roads within the Property. Developer may transfer the ownership of the roads and its obligations for the roads to a homeowners' or property owners' association, or similar organization.

(3) Developer agrees to maintain the landscaping at the entrance to the Property and obtain any necessary easements therefor from the South Carolina Department of Transportation. Developer's obligation to maintain the landscaping is limited to mowing and planting of grass, trimming and planting of shrubs, trees and other vegetation, and maintenance and operation of any associated irrigation system. County agrees to cooperate with Developer in obtaining an easement or other related approvals. Developer may transfer its maintenance obligation to a homeowners' or property owners' association, or similar organization.

(4) County is not responsible for any construction, maintenance, or costs associated with the roads within the Property. Developer acknowledges that County will not accept the roads within the Property into the County road system for any purpose, including, but not limited to, maintenance. Developer agrees to provide County prior to final plat approval documentation that a mechanism, such as a property owners' association, is in place for the perpetual maintenance of all roads with the Property.

(B) Potable Water. Potable water will be supplied to the Property by the Lancaster County Water and Sewer District. Developer will construct, or cause to be constructed, all necessary water service infrastructure within the Property and the water service infrastructure will be maintained by the provider. County is not responsible for any construction, treatment, maintenance, or costs associated with water service or water service infrastructure to or within the Property. The water service infrastructure is expected to be implemented on a schedule consistent with the development of the Property as contained in the development schedule and as necessary to serve the development. Developer acknowledges that County has no authority or responsibility for providing potable water services in the County and that the Lancaster County Water and Sewer District is a governmental entity separate and distinct from the County.

(C) Sewage Treatment and Disposal. Sewage treatment and disposal will be provided by the Lancaster County Water and Sewer District. Developer will construct, or cause to be constructed, all necessary sewer service infrastructure within the Property and the sewer service infrastructure will be maintained by the provider. County is not responsible for any construction,

treatment, maintenance, or costs associated with sewer service or sewer service infrastructure. Sewer service infrastructure is expected to be implemented on a schedule consistent with the development of the Property as contained in the development schedule and as necessary to serve the development. Developer acknowledges that County has no authority or responsibility for providing sewage treatment and disposal services in the County and that the Lancaster County Water and Sewer District is a governmental entity separate and distinct from the County.

(D) Storm Water Management. Developer will construct or cause to be constructed all storm water runoff conveyance systems and drainage improvements within the Property required by the development of the Property ~~and such infrastructure~~. All inlets, piping within a system, associated swales or other conveyance system shall be designed for a minimum twenty-five (25) year storm event. Individual culvert crossing shall be designed for a minimum twenty-five (25) year storm event. Developer agrees to construct or cause to be constructed permanent water quantity and water quality systems and improvements in accordance with best management practices. The applicable requirements and standards shall be the more stringent of either the requirements and standards contained in the Laws and Land Development Regulations as may be modified pursuant to Section 3.01(F) or the requirements and standards set by the South Carolina Department of Health and Environmental Control or its successor agency. All storm water systems and improvements will be maintained by Developer or a homeowners' association. County is not responsible for any construction, maintenance or costs associated with the storm water runoff and drainage for the Property. Storm water management improvements are expected to be implemented on a schedule consistent with the development of the Property as contained in the development schedule and as necessary to serve the development.

(E) Solid Waste Collection. The County shall provide solid waste collection to the Property on the same basis as is provided to other residents and businesses within the County. It is understood and acknowledged that the County does not presently provide solid waste disposal for single, multi-family or commercial developments. Residential units shall be served by a private waste hauling company.

(F) Law Enforcement Protection. The County shall provide law enforcement protection services to the Property on the same basis as is provided to other residents and businesses within the County.

(G) Recycling Services. The County shall provide recycling services to the Property on the same basis as is provided to other residents and businesses within the County.

(H) Emergency Medical Services (EMS). Emergency medical services shall be provided by the County to the Property on the same basis as is provided to other residents and businesses within the County.

(I) Fire Services. The Property is located in the Pleasant Valley Fire Protection District and fire services will be provided by the Pleasant Valley Fire Department, or successor entities.

(J) Library Service. The County shall provide library services on the same basis as is provided to other residents within the County.

(K) School Services. Public school services are now provided by the Lancaster County School District. Developer acknowledges that County has no authority or responsibility for providing public school services in the County.

(L) Parks and Recreation. The County shall provide parks and recreation services on the same basis as is provided to other residents within the County.

Section 4.05. Maximum Density. Notwithstanding the maximum density set forth in the UDO, the maximum density for residential use for the Property is two (2) dwelling units per acre.

Section 4.05A. Final Plat Approval. Notwithstanding any other provision of this Agreement or any provision of the UDO, Developer agrees that prior to seeking final plat approval: (i) all water and sewer infrastructure for the area that is the subject of the final plat shall be installed by the Developer and subsequently tested, inspected, and found to be in acceptable condition by the applicable water or sewer provider, and (ii) the appropriate permits from the South Carolina Department of Health and Environmental Control (DHEC) have been obtained by the Developer for storm water management and the Developer shall provide proof that DHEC has issued the appropriate permits.

Section 4.06. Vinyl Siding. The use of vinyl siding on the homes constructed on lots within the development is prohibited, except that vinyl eaves, soffits and corners are allowed on all homes.

Section 4.07. Age-Restricted Development. County acknowledges that Developer intends to develop the portion of the Property shown as Villages 8, 9, 10 and 11, consisting of approximately fifty-five (55) acres, located south of Clem's Branch Creek on the Cluster Subdivision Overlay District Rezoning Plan, attached hereto as Exhibit G and incorporated herein by reference as if the exhibit were set out in this Agreement in its entirety, into an age-restricted community where ~~at least eighty one hundred~~ percent (~~80~~100%) of the residential dwelling units within Villages 8, 9, 10 and 11 must be occupied (not owned) by at least one person fifty-five (55) years of age or older as permitted under the Fair Housing Act, as amended. The reason for including Exhibit G in this Agreement is solely for the purpose of identifying generally the area within the development where the age-restricted Villages will be located.

Section 4.08. Historic Site. Developer agrees to preserve an approximately three acre area identified as an American Revolutionary War campsite, located generally north of Village 7 and immediately south of Clem's Branch Creek, for possible future connection to a greenway corridor to be established by the Mecklenburg County Park and Recreation Department.

~~**Section 4.08. Road Widths.** Notwithstanding the provisions of Section 26-61 of the Lancaster County Code of Ordinances, the standard for pavement width for local (closed drainage) and local (open drainage) roads in the Covington development is twenty-two feet (22').~~

ARTICLE V

MISCELLANEOUS

Section 5.01. Notices. Any notice, election, demand, request or other communication to be provided under this Agreement shall be in writing and shall be effective (i) when delivered to the party named below, (ii) when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, or (iii) when deposited in Federal Express (or any other reputable national "next day" delivery service) addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where

the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

To the County: County of Lancaster
Attn: County Administrator
101 N. Main St. (29720)
P.O. Box 1809 (29721)
Lancaster, SC

With Copy to: County of Lancaster
Attn: County Attorney
101 N. Main St. (29720)
P.O. Box 1809 (29721)
Lancaster, SC

And to Developer: Sinacori Builders, LLC
Attn: Russ Sinacori
P.O. Box 471785
Charlotte, NC 28247

With Copy to: Sinacori Builders, LLC
Attn: John H. Carmichael
Robinson Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28246

Section 5.02. Amendments. (A) This Agreement may be amended or cancelled by mutual consent of the parties to the Agreement. An amendment to this Agreement must be in writing. No statement, action or agreement made after the Agreement Date shall be effective to change, amend, waive, modify, discharge, terminate or effect an abandonment of this Agreement in whole or in part unless such statement, action or agreement is in writing and signed by the party against whom the change, amendment, waiver, modification, discharge, termination or abandonment is sought to be enforced.

(B) An amendment to this Agreement must be processed and considered in the same manner as set forth in Ordinance No. 663 for a proposed development agreement. Any amendment to this Agreement constitutes a major modification and the major modification may occur only after public notice and a public hearing by the County Council.

(C) This Agreement must be modified or suspended as may be necessary to comply with any state or federal laws or regulations enacted after the Agreement Date which prevents or precludes compliance with one or more of the provisions of this Agreement but only to the extent necessary to effectuate compliance with the state or federal law.

Section 5.03. Periodic Review. At least every twelve (12) months, the Chief Zoning Officer for the County or the designee of the Chief Zoning Officer for the County, or the

successor to Chief Zoning Officer for the County, must review compliance with this Agreement by the Developer. At the time of review the Developer must demonstrate good faith compliance with the terms of the Agreement.

Section 5.04. Breach of Agreement. (A) If, as a result of the periodic review provided in Section 5.03 of this Agreement or at any other time, the Chief Zoning Officer for the County finds and determines that the Developer has committed a material breach of the terms or conditions of this Agreement, the Chief Zoning Officer for the County shall serve notice in writing, within a reasonable time after ~~the periodic review~~making the finding and determination of a material breach, upon the Developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the Developer a reasonable time in which to cure the material breach.

(B) If the Developer fails to cure the material breach within a reasonable time and is not proceeding expeditiously and with diligence to cure the breach, then the County Council may unilaterally terminate or modify this Agreement. Prior to terminating or modifying this Agreement as provided in this section, the County Council must first give the Developer the opportunity (i) to rebut the finding and determination, or (ii) to consent to amend the Agreement to meet the concerns of the County Council with respect to the findings and determinations.

Section 5.05. Enforcement. The Parties shall each have the right to enforce the terms, provisions and conditions of this Agreement, if not cured within the applicable cure period, by any remedy available at law or in equity, including specific performance, and the right to recover attorney's fees and costs associated with enforcement.

Section 5.06. No Third Party Beneficiary. The provisions of this Agreement may be enforced only by the Parties. No other persons shall have any rights hereunder.

Section 5.07. Recording of Agreement. The Parties agree that Developer shall record this Agreement with the County Register of Deeds within fourteen (14) days of the date of execution of this Agreement.

Section 5.08. Administration of Agreement. County is the only local government that is a party to this Agreement and the County is responsible for the Agreement's administration.

Section 5.09. Effect of Annexation and Incorporation. The Parties agree that this Agreement remains in effect if the Property is, in whole or in part, included in a newly-incorporated municipality or is annexed into a municipality. The Parties acknowledge that upon incorporation or annexation the application and duration of this Agreement is controlled by Section 6-31-110 of the Act. County reserves the right to enter into an agreement with the newly-incorporated municipality or the annexing municipality for the administration and enforcement of this Agreement after the date of incorporation or annexation.

Section 5.10. Estoppel Certificate. Any of the Parties may, at any time, and from time to time, deliver written notice to the other party requesting the party to certify in writing (i) that this Agreement is in full force and effect, (ii) that this Agreement has not been amended or

modified, or if so amended, identifying the amendments, (iii) whether, to the knowledge of the party, the requesting party is in default or claimed default in the performance of its obligation under this Agreement, and, if so, describing the nature and amount, if any, of any such default or claimed default, and (iv) whether, to the knowledge of the party, any event has occurred or failed to occur which, with the passage of time or the giving of notice, or both, would constitute a default and, if so, specifying each such event.

Section 5.11. Entire Agreement. This Agreement sets forth, and incorporates by reference all of the agreements, conditions, and understandings among the Parties relative to the Property and its Development and there are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among the Parties relative to the matters addressed in this Agreement other than as set forth or as referred to in this Agreement.

Section 5.12. Covenant to Sign other Documents. County and Developer acknowledge that consummation of the transactions contemplated by this Agreement may require the execution contemporaneously with the execution of this Agreement and thereafter of certain documents in addition to this Agreement and County and Developer agree to cooperate with the execution thereof.

Section 5.13. Construction of Agreement. The Parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits to this Agreement.

Section 5.14. Assignment. The rights, obligations, duties and responsibilities devolved by this Agreement on or to the Developer are assignable to any other person, firm, corporation or entity except that the assignment must conform to the requirements of Section 1.09 and Section 3.05. County may assign its rights, obligations, duties and responsibilities devolved by this Agreement on or to the County to any other person, firm, corporation, or entity.

Section 5.15. Governing Law; Jurisdiction; and Venue. (A) This Agreement is governed by the laws of the State of South Carolina.

(B) The Parties agree that jurisdiction and venue for disputes relating to this Agreement is the Sixth (6th) Judicial Circuit of the State of South Carolina.

Section 5.16. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same instrument.

Section 5.17. Eminent Domain. Nothing contained in this Agreement shall limit, impair or restrict the County's right and power of eminent domain under the laws of the State of South Carolina.

Section 5.18. Severability. If any provision in this Agreement or the application of any provision of this Agreement is held invalid, the invalidity shall apply only to the invalid

provision, and the remaining provisions of this Agreement, and the application of this Agreement or any other provision of this Agreement, shall remain in full force and effect. However, if the invalid provision would prevent or materially impair Developer's right or ability to complete performance of this Agreement, the Parties agree to use their best efforts to renegotiate that provision in order for Developer to complete performance of this Agreement.

Section 5.19. When Agreement takes Effect. This Agreement is dated as of the Agreement Date and takes effect when (i) the County and Developer have each executed the Agreement, and (ii) the Developer has delivered to the County Administrator clocked-in copies, with book and page numbers, of the recorded deeds conveying the Property to Developer. If the County Administrator has not received clocked-in copies of the deeds conveying the Property to Developer by 5:00 p.m., Thursday, December 31, 2015, then this Agreement is automatically terminated without further action of either the County or Developer. The obligation of the Developer pursuant to Section 4.02 is effective on the date the last Party to sign this Agreement executes this Agreement and the obligations imposed on Developer pursuant to Section 4.02 survives the termination of this Agreement pursuant to this Section.

SIGNATURES FOLLOW ON NEXT PAGE.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date below found.

WITNESSES:

DEVELOPER:

SINACORI BUILDERS, LLC,
a North Carolina Limited Liability Company

By: _____

Name: _____

Title: _____

Date: _____

STATE OF _____)

COUNTY OF _____)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Sinacori Builders, LLC, by its duly authorized officer/s sign, seal and as its act and deed deliver the within written instrument and that (s)he with the other witness above subscribed, witnessed the execution thereof.

First Witness Signs Again Here

Seal

SWORN to before me this
____ day of _____, 2015.

Notary Public Signs AS NOTARY

Notary Public for the State of _____

My Commission Expires: _____

COUNTY SIGNATURES FOLLOW ON NEXT PAGE.

Exhibit A
Property Description

Covington Development

Tax Map No. 3, Parcel 40.00 (portion), 40.02, 40.04, 40.06 and 40.09 [and referred to as 0003-00-040.00 (portion), 0003-00-040.02, 0003-00-040.04, 0003-00-040.06 and 0003-00-040.09]

Tax Map No. 4, Parcel 1 and 2 [and referred to as 0004-00-001.00 and 0004-00-002.00]

LEGAL DESCRIPTION SHOULD BE INSERTED WHEN AVAILABLE.

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Exhibit B

THIS EXHIBIT IS INTENTIONALLY LEFT BLANK.

**Exhibit C
Development Schedule**

	<u>Begin</u>	<u>End</u>
Engineering and Permitting	Aug. 1, 2015	Feb. 1, 2016
Phased Land Development	Mar. 1, 2016	Dec. 1, 2020
Home Construction Starts	Dec. 1, 2016	Aug. 1, 2021
Year 1 Home Closings – Approx. 60 per year	Jan. 1, 2017	Dec. 31, 2017
Year 2 Home Closings – Approx. 60 per year	Jan. 1, 2018	Dec. 31, 2018
Year 3 Home Closings – Approx. 60 per year	Jan. 1, 2019	Dec. 31, 2019
Year 4 Home Closings – Approx. 60 per year	Jan. 1, 2020	Dec. 31, 2020
Year 5 Home Closings – Approx. 60 per year	Jan. 1, 2021	Dec. 31, 2021

This Development Schedule is an estimate. The provisions of Section 1.07 of this Agreement apply to this exhibit.

NOTE: County and Developer acknowledge that development of the Property is limited to three hundred thirty (330) residential units.

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Exhibit D
Required Information

The Act and Ordinance No. 663 require a development agreement to include certain information. The following information is provided in conformance with the Act and Ordinance No. 663.

(A) *a legal description of the property subject to the agreement and the names of the property's legal and equitable owners.* The legal description of the Property is set forth in Exhibit A. As of the Agreement Date, Developer has contractual rights to acquire the Property and, following acquisition, Developer shall be the only legal and equitable owner of the Property. As of the Agreement Date, the legal owners of the Property are Acts Retirement – Life Communities, Inc. (Tax Map No. 0004-00-001.00), Sauer Properties, Inc. (Tax Map No. 0004-00-002.00), Mike and Jennifer Knabenshue (portion of Tax Map No. 0003-00-040.00), Janice Patterson Poston (Tax Map Nos. 0003-00-040.02 and 0003-00-040.04), Mamie B. Patterson Revocable Living Trust (Tax Map No. 0003-00-040.06), Shirley Patterson MacKenzie (Tax Map No. 0003-00-040.09).

(B) *the duration of the agreement which must comply with Code Section 6-31-40.* See Section 1.10.

(C) *a representation by the developer of the number of acres of highland contained in the property subject to the agreement.* See Section 2.02.

(D) *the then current zoning of the property and a statement, if applicable, of any proposed re-zoning of the property.* See Section 1.05.

(E) *the development uses that would be permitted on the property pursuant to the agreement, including population densities, building intensities and height.* See Section 1.06 and Section 4.05.

(F) *a description of the public facilities that will service the development, including who provides the facilities, the date any new facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development construction timeline for those facilities. If the agreement provides that the County shall provide certain public facilities, the agreement shall provide that the delivery date of the public facilities will be tied to defined completion percentages or other defined performance standards to be met by the developer.* See Article IV.

(G) *a description, where appropriate, of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property as may be required or permitted pursuant to laws in effect at the time of entering into the agreement.* Developer agrees to comply with all applicable environmental laws.

(H) *a description of all local development permits approved or needed to be approved for the development of the property together with a statement indicating that the failure of the*

agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions. See Section 3.04.

(I) a finding that the development permitted or proposed is consistent, or will be consistent by the time of execution of the agreement, with the County's comprehensive plan and land development regulations. See Section 2.01(A).

(J) a description, where appropriate, of any provisions for the preservation and restoration of historic structures. Developer agrees to comply with all laws applicable to the preservation and restoration of historic structures within the Property.

(K) a development schedule including commencement dates and interim completion dates at no greater than five year intervals. See Section 1.07 and Exhibit C.

(L) if more than one local government is made party to the agreement, a provision stating which local government is responsible for the overall administration of the agreement. See Section 5.08.

(M) a listing of the laws and land development regulations that will apply to the development of the property subject to the agreement, including citation to specific ordinance numbers or portions of the County Code of Ordinances or both. See Section 3.01(B) and Exhibit E.

(N) a provision, consistent with Code Section 6-31-80, addressing the circumstances under which laws and land development regulations adopted subsequent to the execution of the agreement apply to the property subject to the agreement. See Section 3.03.

(O) a provision stating whether the agreement continues to apply to the property or portions of it that are annexed into a municipality or included in a newly-incorporated area and, if so, that the provisions of Code Section 6-31-110 apply. See Section 5.09.

(P) a provision relating to the amendment, cancellation, modification or suspension of the agreement. See Section 5.02.

(Q) a provision for periodic review, consistent with the provisions of Section 8 of Ordinance No. 663. See Section 5.03.

(R) a provision addressing the effects of a material breach of the agreement, consistent with the provisions of Section 9 of Ordinance No. 663. See Section 5.04.

(S) a provision that the developer, within fourteen days after the County enters into the agreement, will record the agreement with the County Register of Deeds. See Section 5.07.

(T) *a provision that the burdens of the agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.* See Section 1.09(A).

(U) *a provision addressing the conditions and procedures by which the agreement may be assigned.* See Section 1.09(B), Section 3.05 and Section 5.14.

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Exhibit E
Laws and Land Development Regulations

1. Ordinance No. 2015-____ zoning the Property R-15, Moderate Density Residential / Agricultural District, with a Cluster Subdivision Overlay District.
2. Ordinance No. 2015-____, approving this Development Agreement.
3. The Development Agreement Ordinance for Lancaster County, South Carolina: Ordinance No. 663.
4. Unified Development Ordinance of Lancaster County (UDO): Ordinance No. 309, as amended as of the Agreement Date. The UDO includes Ordinance No. 328, as amended, as of the Agreement Date and which is cited as the Land Development Regulations of Lancaster County. ~~The UDO also includes Ordinance No. 2014-1314, relating to final plats and installation of improvements. A copy of the UDO has been signed by the Parties and is on file in the office of the County Planning Department.~~
5. Land Development Regulations of Lancaster County: See Unified Development Ordinance of Lancaster County.
6. Article V, Chapter 26, Lancaster County Code of Ordinances, Road Construction Standards.

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Exhibit F
Substation Property

To be determined.

Exhibit G
Rezoning Plan

Comparison Details	
Title	pdfDocs compareDocs Comparison Results
Date & Time	5/6/2015 12:46:42 PM
Comparison Time	0.93 seconds
compareDocs version	v4.0.3.1

Sources	
Original Document	[#1198912] [v1] Development Agreement -- Covington Development (Sinacori)
Modified Document	[#1198912] [v5] Development Agreement -- Covington Development (Sinacori)

Comparison Statistics	
Insertions	23
Deletions	8
Changes	17
Moves	0
TOTAL CHANGES	48

Word Rendering Set Markup Options	
Name	Standard
<u>Insertions</u>	
Deletions	
<u>Moves</u> / Moves	
Inserted cells	
Deleted cells	
Merged cells	
Formatting	Color only.
Changed lines	Mark left border.
Comments color	By Author.
Balloons	False

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after Saving	General	Always
Report Type	Word	Formatting
Character Level	Word	False
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Include Moves	Word	True
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Show Reviewing Pane	Word	False
Update Automatic Links at Open	Word	False
Summary Report	Word	End
Include Change Detail Report	Word	Separate
Document View	Word	Print
Remove Personal Information	Word	False
Flatten Field Codes	Word	True

**AS RECOMMENDED FOR APPROVAL
BY THE
INFRASTRUCTURE AND REGULATION AGREEMENT COMMITTEE
For First Reading Consideration at the June 8, 2015 Council Meeting**

STATE OF SOUTH CAROLINA

)

ORDINANCE NO. 2015-____

COUNTY OF LANCASTER

)

AN ORDINANCE

TO APPROVE A DEVELOPMENT AGREEMENT BETWEEN SINACORI BUILDERS, LLC, AND THE COUNTY OF LANCASTER RELATING TO THE COVINGTON DEVELOPMENT; TO AUTHORIZE CERTAIN COUNTY OFFICIALS TO EXECUTE AND DELIVER THE DEVELOPMENT AGREEMENT; AND TO PROVIDE FOR OTHER MATTERS RELATED THERETO.

Be it ordained by the Council of Lancaster County, South Carolina:

Section 1. Findings and Determinations

The Council finds and determines that:

(a) Lancaster County is authorized by the South Carolina Local Government Development Agreement Act, codified as Sections 6-31-10 to -160, Code of Laws of South Carolina 1976, as amended (the "Act"), and by the Development Agreement Ordinance for Lancaster County, South Carolina, Ordinance No. 663 (the "Ordinance"), to enter into development agreements with developers;

(b) Sinacori Builders, LLC, seeks to enter into a development agreement with Lancaster County relating to the Covington development; and

(c) the Act and Ordinance require a development agreement to be approved by the county governing body by the adoption of an ordinance.

Section 2. Approval of Agreement; Authorization to Act.

A. The Council Chair and Council Secretary are each authorized, empowered and directed to execute, acknowledge and deliver a Development Agreement between Sinacori Builders, LLC, and the County of Lancaster relating to the Covington development (the "Development Agreement") in the name and on behalf of the County of Lancaster. The form of the Development Agreement is attached hereto as Exhibit A and all terms, provisions and conditions of the Development Agreement are incorporated herein by reference as if the Development Agreement were set out in this ordinance in its entirety. By adoption of this ordinance, the Lancaster County Council approves the Development Agreement and all of its terms, provisions and conditions. The Development Agreement is to be in substantially the form as

attached to this ordinance and hereby approved, or with such minor changes therein as shall be approved by the officials of Lancaster County executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Development Agreement attached to this ordinance.

B. The Council Chair and Council Secretary are each authorized to execute and deliver any related instruments, documents, certificates and other papers as are necessary to effect the delivery of the Development Agreement. The Council and its duly elected or appointed officers and any other County official are authorized to take any and all action as may be necessary to effectuate the purposes of this ordinance.

Section 3. Severability.

If any section, subsection or clause of this ordinance is held to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

Section 4. Controlling Provisions.

To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Lancaster County Code or other County ordinances, orders and resolutions, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

Section 5. Effective Date.

This ordinance is effective upon third reading.

And it is so ordained, this 13th day of July, 2015.

LANCASTER COUNTY, SOUTH CAROLINA

Bob Bundy, Chair, County Council

Steve Harper, Secretary, County Council

Attest:

Debbie C. Hardin, Clerk to Council

Planning Commission Public Hearing:	April 21, 2015	
First Reading:	June 8, 2015	Tentative
Second Reading:	June 22, 2015	Tentative
Council Public Hearing:	July 13, 2015	Tentative
Third Reading:	July 13, 2015	Tentative

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Exhibit A to Ordinance No. 2015-_____

**Development Agreement
Between
Sinacori Builders, LLC, and the County of Lancaster
Covington Development**

See attached.

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**AS RECOMMENDED FOR APPROVAL
BY THE
INFRASTRUCTURE AND REGULATION COMMITTEE
For First Reading Consideration at the June 8, 2015 Council Meeting**

STATE OF SOUTH CAROLINA)

COUNTY OF LANCASTER)

ORDINANCE NO. 2015-____

AN ORDINANCE

TO AMEND THE OFFICIAL ZONING MAP OF LANCASTER COUNTY SO AS TO REZONE PROPERTY FOR SINACORI BUILDERS, LLC, LOCATED ON OR NEAR BARBERVILLE ROAD AND HARRISBURG ROAD, FROM R-15P, MODERATE DENSITY RESIDENTIAL / AGRICULTURAL PANHANDLE DISTRICT TO R-15, MODERATE DENSITY RESIDENTIAL / AGRICULTURAL DISTRICT WITH A CLUSTER SUBDIVISION OVERLAY DISTRICT; AND TO PROVIDE FOR OTHER MATTERS RELATED THERETO.

Be it ordained by the Council of Lancaster County, South Carolina:

Section 1. Findings and Determinations.

The Council finds and determines that:

(a) Sinacori Builders, LLC, applied to rezone property located on or near Barberville Road and Harrisburg Road, from R-15P, Moderate Density Residential / Agricultural Panhandle District to R-15, Moderate Density Residential / Agricultural District with a Cluster Subdivision Overlay District for its Covington development.

(b) On April 21, 2015, the Lancaster County Planning Commission held a public hearing on the proposed rezoning and, by a vote of 6-0, recommended approval of the rezoning.

Section 2. Rezoning.

The Official Zoning Map is amended by changing the zoning district classification from R-15P, Moderate Density Residential / Agricultural Panhandle District to R-15, Moderate Density Residential / Agricultural District with a Cluster Subdivision Overlay District, for the following property(ies) as identified by tax map number or other appropriate identifier:

Tax Map No. 3, Parcel 40.00, 40.02, 40.04, 40.06, 40.09 and 40.13

Tax Map No. 4, Parcel 1 and 2.

Ordinance No. 2015-____

Page 1 of 2

As Recommended for Approval by the Infrastructure and Regulation Committee -- For First Reading Consideration

Section 3. Severability.

If any section, subsection or clause of this ordinance is held to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected.

Section 4. Conflicting Provisions.

To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Lancaster County Code or other County ordinances, orders and resolutions, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

Section 5. Effective Date.

This ordinance is effective upon third reading, *provided, however*, the rezoning provided for in Section 2 of this ordinance is effective when Sinacori Builders, LLC, delivers to the County Administrator clocked-in copies, with book and page numbers, of the recorded deeds conveying the property identified in Section 2 of this ordinance to Sinacori Builders, LLC, or a Sinacori Related Entity. If Sinacori Builders, LLC, or a Sinacori Related Entity has not delivered to the County Administrator recorded deeds conveying the property identified in Section 2 of this ordinance to Sinacori Builders, LLC, or a Sinacori Related Entity by 5:00 p.m., Thursday, December 31, 2015, then the rezoning provided for in Section 2 of this ordinance shall not become effective. As used in this section, "Sinacori Related Entity" means (i) an entity that is owned or controlled by Sinacori Builders, LLC, a North Carolina limited liability company, or is owned or controlled by any entity that owns at least a fifty percent (50%) membership interest in Sinacori Builders, LLC; and/or (ii) any entity that is the successor in interest to Sinacori Builders, LLC via merger or operation of law.

And it is so ordained, this 13th day of July, 2015.

LANCASTER COUNTY, SOUTH CAROLINA

Bob Bundy, Chair, County Council

Steve Harper, Secretary, County Council

ATTEST:

Debbie C. Hardin, Clerk to Council

First Reading:	June 8, 2015	Tentative
Second Reading:	June 22, 2015	Tentative
Third Reading:	July 13, 2015	Tentative

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INFRASTRUCTURE AND REGULATION COMMITTEE

_____, 2015

Report to Council

Proposed Development Agreement with Sinacori Builders, LLC – Covington Development and An Ordinance to Rezone Covington Development Property

Background

On March 2, 2015, the Lancaster County Planning Department received from Sinacori Builders, LLC, an application to rezone approximately 164.5 acres located near the intersection of Harrisburg Road and Barberville Road from R-15P, Moderate Density Residential / Agricultural Panhandle District to R-15P, Moderate Density Residential / Agricultural Panhandle District with a Cluster Subdivision Overlay District designation. Sinacori Builders, LLC, refers to this property as its Covington development. At the April 21, 2015, meeting, the Planning Commission held a public hearing on the proposed rezoning. By a 6-0 vote, the Planning Commission approved the rezoning of the property to R-15P, Moderate Density Residential / Agricultural Panhandle District with a Cluster Subdivision Overlay District designation.

Also, on March 2, 2015, the County received a proposed development agreement from Sinacori Builders, LLC, concerning its Covington development. At its meeting on April 21, 2015, the Planning Commission conducted a public hearing on the proposed development agreement. In addition, the Planning Commission reviewed the proposed development agreement and by a 6-0 vote is recommending approval of the development agreement. A copy of the Planning Commission's report to Council is attached.

Recommendations

The Infrastructure and Regulation Committee has reviewed the proposed development agreement and proposed rezoning and makes the following recommendations to Council:

1. Approve an ordinance to rezone the Covington development property as requested and in the ordinance include a provision stating the rezoning is effective when Sinacori Builders, LLC, takes title to the Covington development property. A copy of an ordinance with the recommended provision is attached to this report.
2. The Committee recommends approval of a development agreement between Sinacori Builders, LLC, and Lancaster County for the Covington development. A copy of a proposed development agreement is attached to this report. As a part of this recommendation, the Committee recommends passage of an ordinance to approve the proposed development agreement, a copy of which is attached.

--XXX--



Vicinity Map

Not To Scale



Site Data:

Tax Parcels: 0004-00-002.00, 0004-00-001.00, 0003-00-040.06, 0003-00-040.04, 0003-00-040.02, 0003-00-040.09, and portion of 0003-00-040.00

Total Acreage: +/- 164.74 Acres

Location: Lancaster County, SC

Zoning:
Existing: R15P
Proposed: R15P - CSOD

Total Potential Lots: +/- 328 Lots

Single Family Lots: +/- 192 Lots

65' x 135' Lots: +/- 75 (23%) (Traditional)

75' x 135' Lots: +/- 95 (29%) (Traditional)

90' x 140' Lots: +/- 22 (7%) (Traditional)

Age-Restricted Lots: +/- 136 Lots

55' Lots: +/- 98 (30%) (Age-Restricted)

65' Lots: +/- 38 (11%) (Age-Restricted)

Potential Density: +/- 2 DU/AC

R15P CSOD Lot Standards:

Minimum Lot Area: 5000 SF

Minimum Lot Width: 50'

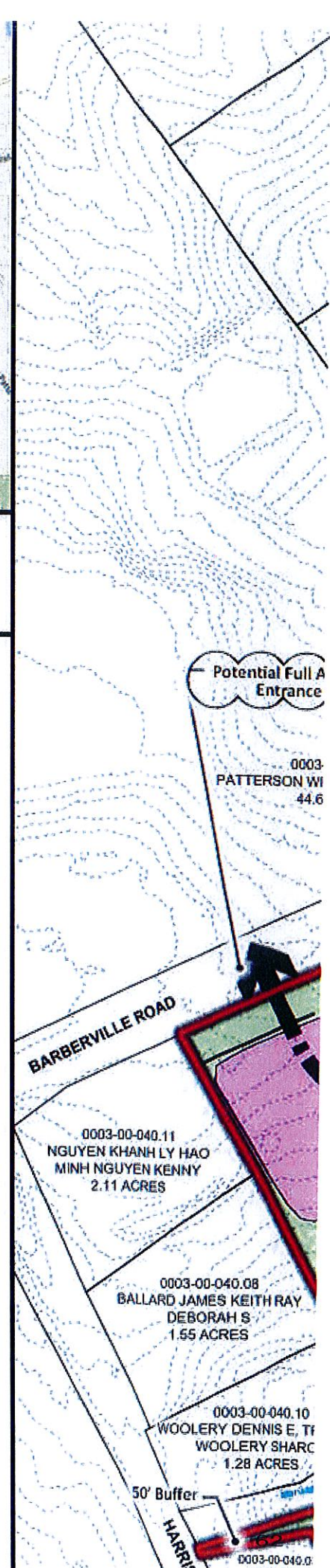
Setbacks:

Front: 20'

***Side:** 7'/5'

Rear: 30'

***Note:** Side yard setback may be reduced to 5' provided that architectural building material conditions are consistent with requirements specified in Section 1, Item E - Setbacks of Ordinance #2013-1251.



Agenda Item Summary

Ordinance # / Resolution#:2015-1351

Contact Person / Sponsor: John Weaver & Penelope Karagounis

Department: County Attorney & Planning Department

Date Requested to be on Agenda: May 11, 2015

Committee: Infrastructure & Regulation Committee (May 12, 2015)

Preliminary Statement: Pursuant to SC Code Section 30-4-70 (a)(2), an Executive Session will be requested by the Administrator for the purpose of the County Attorney offering legal advice to the Council that is covered by the attorney-client privilege.

Issue for Consideration: As you know, Lancaster County staff and the Catawba Regional Council of Governments are in the process of rewriting Lancaster County's Unified Development Ordinance (UDO). As was reported recently, the County's population growth proportionately was the highest of any county in the state. The requirements and regulations that are in place now are not sufficient to insure smart growth for residential, commercial and industrial development in Lancaster County. The rewrite is intended, not only to promote a visionary, higher standard for growth, but also the rewrite is intended to reflect modern standards and practices and be more efficient to use and understand.

Points to Consider: Council previously has been given a timeline for the completion of this project. An additional copy is provided following this Summary. An update/rewrite of a local government's UDO is an undertaking that every rapidly developing county in, not only the greater Charlotte area, but also within many other South Carolina counties, is finding to be necessary.

The Council surely recognizes that a quality end-product of an updated UDO cannot be accomplished with an ever-expanding development base. Estimates show that there are in excess of 18,000 parcels that have been rezoned and are ready for development today in the Indian Land area alone. The proposed moratorium will not impact those previously approved projects and the associated building permits will be issued as requested. The logic dictates that there must be a starting point for the implementation of the new UDO guidelines and to have a starting point of something new, there must be a stopping point of the old. Council is being asked to consider a **moratorium on new zoning applications within a specified area as described in the ordinance** and depicted on the accompanying map so as to preserve the status quo until the Planning Commission and staff have completed their work and come forward with recommendations for Lancaster County.

Funding and Liability Factors: N/A

Council Options:

- 1) Approve the moratorium on new zoning applications north of Highway 5 and the UDO rewrite continues.
- 2) Deny the moratorium on new zoning applications north of Highway 5 and the UDO rewrite continues.
- 3) Approve the current moratorium and consider adopting a future moratorium for the remainder of the County for approximately two to three month timeframe during the UDO adoption process.

Recommendation: #1 above.



Unified Development Ordinance Update - Phases I & II

WORK ITEM	2015												2016	
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB
Planning Staff Review Meetings														
UDO Review Committee Meetings														
Staff UDO Update for Phase One Chapters and Zoning Concept Map														
Staff an Administrative Manual on Application Submittal Process														
Planning Commission Update														
County Council Update														
Staff the Remaining Chapters for the UDO Update														
Staff Proposed Zoning Map														
Finalize Administrative Manual on Application Submittal Process														
Coordinate and Conduct Community Meetings and/or Focus Groups														
Planning Commission Public Hearings on Updated UDO														
Revisions to Final Updated UDO As Needed														
County Council Adoption of Updated UDO														
Complete Updated Zoning Map														
Planning Commission Public Hearings on Updated Zoning Map														
Revisions to Final Zoning Map As Needed														
County Council Adoption of Updated Zoning Map														

Phase I - UDO Update and Zoning Concept Map (January 2015- June 2015) -----
 Phase II - Final UDO Update and Zoning Map (July 2015 - Feb 2016) -----



STATE OF SOUTH CAROLINA

)

COUNTY OF LANCASTER

)

ORDINANCE NO. 2015-1351

AN ORDINANCE

TO IMPOSE A NINE (9) MONTH MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF APPLICATIONS FOR DISTRICT BOUNDARY AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE OF LANCASTER COUNTY IN THE AREA OF THE COUNTY NORTH OF HIGHWAY 5; AND TO PROVIDE FOR OTHER MATTERS RELATED THERETO.

WHEREAS, Lancaster County Council has observed a substantial increase in development throughout the County, but particularly in the unincorporated Indian Land area of the County; and

WHEREAS, as evidence of that development and growth, the following statistics have been recognized: Lancaster County is the fastest growing county in the state between 2013 and 2014 with a 3.3% population increase during that year; there is at present in excess of 18,000 parcels that have been rezoned and are ready for development today in the Indian Land area alone; and

WHEREAS, Council is concerned about the rapid growth of the County and protecting the existing rural areas north of Highway 5 in Van Wyck, not only now, but also in future years and the potential for conflicts between residential, commercial and industrial development; and

WHEREAS, the present Unified Development Ordinance (UDO) of Lancaster County was presented and passed by Council on September 28, 1998 and, over the past seventeen (17) years, the UDO has proven to be in need of rewrite and update as a result of the growth noted herein; and

WHEREAS, Council adopted a Comprehensive Plan 2014–2024 on December 8, 2014 which includes a Future Land Use Map with flexibility for appropriately mixing land uses and shaping the current development pattern of the County to protect each community's natural and cultural assets while balancing the demands for growth; and

WHEREAS, Lancaster County is currently developing a new Unified Development Ordinance and Zoning Map to implement the Comprehensive Plan Guiding Principles, Plan Implementation and provide recommendations as to the appropriate land use, zoning district designations and development regulations for all properties; and

WHEREAS, the development of the new Unified Development Ordinance will require adequate time to prepare the new UDO and Zoning Map necessary to adequately manage growth in both the urban and rural areas in Lancaster County, and

WHEREAS, in order to accomplish the stated goal of an updated Unified Development Ordinance with the development of new zoning district designations and development regulations, Council deems it necessary and appropriate to impose a Moratorium, effective Monday, May 18, 2015, on the County's acceptance and processing of applications for district boundary amendments to the UDO for **all real properties located in Lancaster County north of the following boundary: from a point at the western boundary with York County along Highway 5 until its intersection with Highway 521, then preceding in a northeastern direction along Old Church Road until its intersection with the Union County, NC state line, then further northward to the North Carolina state line** for a nine (9) month period so as to preserve the status quo until the Planning Commission and Planning Department staff have completed their work and come forward with the recommendations called for in this ordinance.

NOW THEREFORE, by the power and authority granted to the Lancaster County Council by the Constitution of the State of South Carolina and the powers granted to the County by the General Assembly of the State, it is ordained and enacted:

1a. **New UDO and Zoning Map Initiated Provision for Recommendations.** The Lancaster County Planning Commission and Planning Department staff shall review and consider a new UDO and Zoning Map and make recommendations to County Council for new zoning district designations, development regulations and appropriate zoning necessary to adequately manage growth throughout the County.

1b. **Nine (9) Month Moratorium Adopted.** Effective May 18, 2015, no applications for district boundary map amendments to the UDO shall be accepted and processed by the Planning Department staff for **all real properties located in Lancaster County north of the following boundary: from a point at the western boundary with York County along Highway 5 until its intersection with Highway 521, then proceeding in a northeastern direction along Old Church Road until its intersection with the Union County, NC state line, then further northward to the North Carolina state line** for a period of nine (9) months (the "Moratorium"). The Moratorium is imposed in order to allow the Lancaster County Planning Commission and Planning Department staff time to conduct the work specified in Section 1a. above. The Moratorium shall not affect development in progress that has already received approval from County Council and shall not affect rezoning applications and development agreements submitted to the Planning Department as of Second Reading of this Ordinance. In the event of a natural disaster, the County Administrator may suspend the Moratorium to the extent necessary to protect and preserve the public health, safety and general welfare.

1c. **Extension of Moratorium by Resolution.** No earlier than thirty (30) days prior to the expiration of the Moratorium, should the County Administrator determine that there is insufficient time for the Council to consider the repeal of the existing UDO and the adoption of a new UDO and Zoning Map and related recommendations, then, in that event, the County Administrator shall so notify Council of this time constraint and, thereafter, Council may by Resolution extend the Moratorium expiration by up to an additional ninety (90) day period.

2. **Severability:** If a Section, Sub-section, or part of the Ordinance shall be deemed or found to conflict with a provision of South Carolina law, or other pre-emptive legal principle, then that Section, Sub-section, or part of the Ordinance shall be deemed ineffective, but the remaining parts of this Ordinance shall remain in full force and effect.

3. **Conflict with Preceding Ordinances:** If a Section, Sub-section or provision of this Ordinance shall conflict with the provisions of a Section, Sub-section or part of a preceding Ordinance of Lancaster County, then the preceding Section, Sub-section, or part shall be deemed repealed and no longer in effect.

4. **Effective Date:** This Ordinance shall become effective on Third Reading.

AND IT IS SO ORDAINED

Dated this _____ day of _____, 2015.

LANCASTER COUNTY, SOUTH CAROLINA

Bob Bundy, Chair, County Council

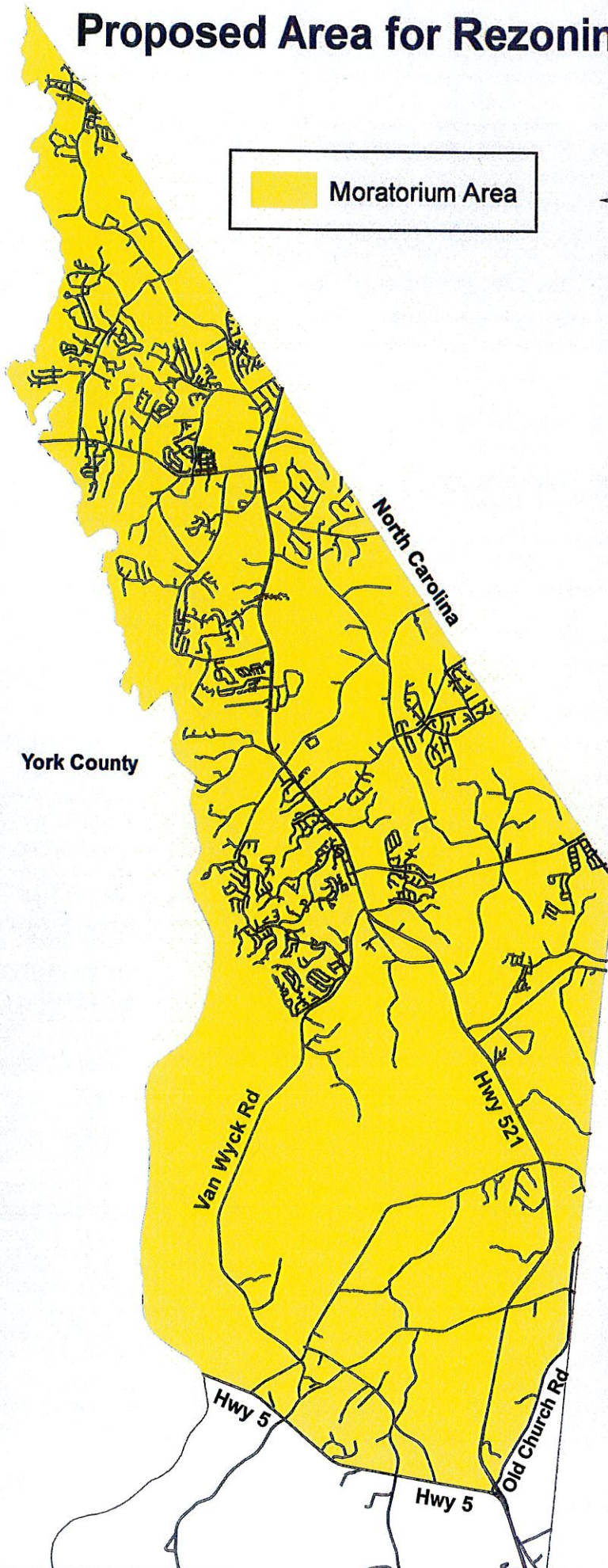
Steve Harper, Secretary, County Council

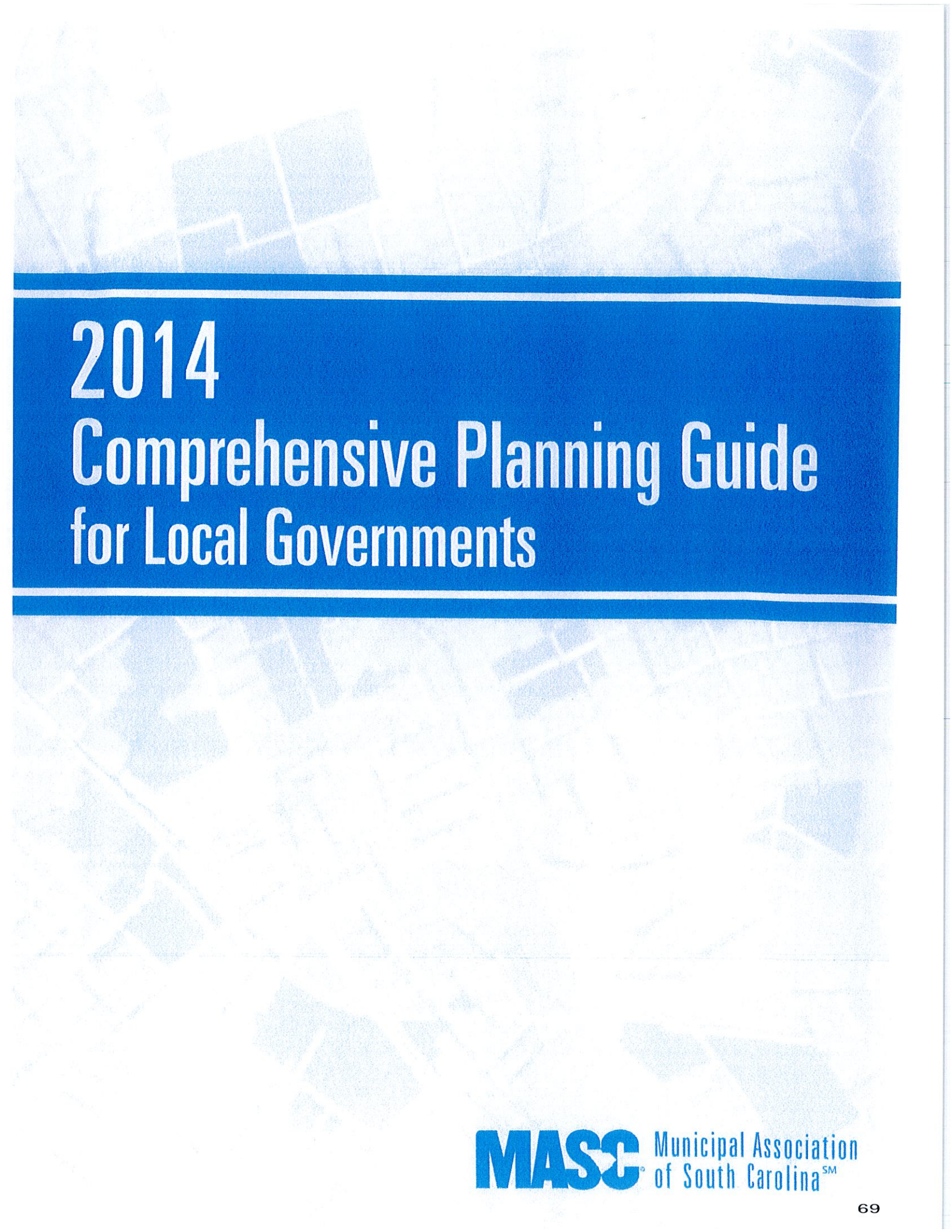
ATTEST:

Debbie C. Hardin, Clerk to Council

First Reading:	May 11, 2015	Tentative
Second Reading:	May 18, 2015	Tentative
Public Hearing:	June 8, 2015	Tentative
Third Reading:	June 22, 2015	Tentative

Proposed Area for Rezoning Moratorium



The background of the entire page is a light blue map of South Carolina, showing its various counties. A solid blue horizontal band runs across the middle of the page, containing the title text in white.

2014 Comprehensive Planning Guide for Local Governments

(4th Cir. 1988); *Naegele Outdoor Advertising, Inc. v. City of Durham*, 803 F. Supp. 1068 (M.D.N.C. 1992). The zoning ordinance may provide for termination of nonconforming uses within a specified time without regard to lack of intentional abandonment of the use by the landowner. *Gurganious v. City of Beaufort*, 317 S.C. 481, 454 S.E.2d 912 (Ct. App. 1995).

Abandonment. Abandonment of a nonconforming use for a time specified in the zoning ordinance can terminate the right to continue the use. *Maguire v. City of Charleston*, 271 S.C. 451, 247 S.E.2d 817 (1978). In the absence of an objective time frame for abandonment, the common law definition of abandonment applies and requires an intent to relinquish the right to use the property. *City of Myrtle Beach v. Juel P. Corporation*, 344 S.C. 43, 543 S.E.2d 538 (2001), citing *Conway v. City of Greenville*, 254 S.C. 96, 173 S.E.2d 648 (1970).

Pending Ordinance Doctrine/Moratorium

The "pending ordinance doctrine," which is recognized by state case law, gives local governments the authority to refuse a permit for a land use when the use is not allowed under a then-pending and later-enacted zoning ordinance. A zoning administrator has the authority to refuse a permit for a use which is repugnant to the terms of a proposed zoning ordinance or amendment pending at the time of application for the permit. An ordinance is legally pending when the governing body has resolved to consider a particular scheme of rezoning and has advertised to the public its intention to hold public hearings on the rezoning. *Sherman v. Reavis*, 273 S.C. 542, 257 S.E.2d 735 (1979); *Continental Southeastern Group v. City of Folly Beach*, 290 S. C. 206, 348 S. E. 2d 837 (1986); *Stratos v. Town of Ravenel*, 297 S.C. 309, 376 S.E.2d 783 (Ct. App. 1989); *Covenant Media of South Carolina, LLC v. City of North Charleston*, 493 F.3d 421 (4th Cir. 2007) (also distinguishing the "time of application" rule in the absence of evidence of reliance by the applicant). In *Scott v. Greenville County*, 716 F. 2d 1409, 1419 n. 10 (4th Cir. 1983), the court panel suggested that, under South Carolina law, an ordinance would not be considered as "pending" under the pending ordinance doctrine at the time when a governing body merely first announced an intention to consider rezoning and simply referred the matter to the planning commission.

In *Simpkins v. City of Gaffney*, 315 S. C. 26, 431 S.E.2d 592 (Ct. App. 1993), the court held that a resolution of city council setting a moratorium on construction of multi-family dwellings was not a pending "ordinance" and did not suspend an existing valid zoning ordinance. A zoning ordinance must be amended by an ordinance, not by a resolution.

A request for a permit should be denied when a pending ordinance would allow a use then prohibited by the existing ordinance. The pending ordinance doctrine protects the public interest by preventing a change in use. Allowing a use under a pending ordinance that may not be adopted is contrary to the public interest.

A related legal concept is the "moratorium." A local government can enact an ordinance suspending further permitting under a zoning or land development ordinance while it considers whether to amend or repeal the suspended ordinance. A local government cannot adopt an ordinance imposing a moratorium "on a construction project" for which a permit

has been granted unless it gives two weeks' notice by newspaper publication in the county in which the project is located. S.C. Code § 6-1-110. No moratorium may be imposed without at least two readings, which are a week apart. Section 6-1-110 provides express statutory authorization for a moratorium on construction projects by ordinance.

However, the moratorium should be uniformly applied, and the moratorium period must be of a reasonable duration. A temporary moratorium is not a *per se* taking of property requiring compensation under the Takings Clause of the Fifth Amendment of the U. S. Constitution. *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U. S. 302, 122 S. Ct. 1465, 152 L. Ed. 2d 517 (2002).

Spot Zoning

Zoning a small parcel as an island surrounded by a district with different zoning may be spot zoning. The Supreme Court stated that invalid "spot zoning" is the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area to benefit the owners of such property and to the detriment of other owners. *Bob Jones University, Inc. v. City of Greenville*, 243 S.C. 351, 133 S.E.2d 843 (1963). The mere fact that business property adjoins residential property does not mean that the commercial zoning is invalid spot zoning. See *Talbot v. Myrtle Beach Board of Adjustment*, 222 S.C. 165, 72 S.E.2d 66 (1952); *Knowles v. City of Aiken*, 305 S.C. 291, 407 S.E.2d 639 (1991).

Small areas may be rezoned as long as the action is not arbitrary or unreasonable. To help avoid the problem of spot zoning, many zoning ordinances include a provision prohibiting some types of free standing zoning districts of less than two acres.

Takings/ Eminent Domain/ Inverse Condemnation/ Regulatory Takings

Property owners often challenge governmental zoning actions, zoning ordinances and other land use regulations with the claim of "taking," "inverse condemnation" or "regulatory taking" of their property without just compensation.

The Takings Clause of the Fifth Amendment to the U.S. Constitution and Article I § 13 of the South Carolina Constitution both provide that private property shall not be taken for public use without just compensation. These constitutional provisions do not prohibit the government from the taking of private property. Instead, it places a condition of just compensation on the exercise of that power. *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304, 107 S.Ct. 2378, 96 L.Ed 2d 250 (1987).

Under the analysis applied by the courts, takings may be direct or indirect, total or partial, physical or regulatory, and permanent or temporary. The takings analysis under South Carolina law is the same as the analysis under federal law. *Westside Quik Shop, Inc. v. Stewart*, 341 S.C. 297, 534 S.E.2d 270 (2000).

Eminent Domain. The federal and state constitutional takings provisions clearly require governments to pay landowners just compensation when the government undertakes a "classic" (direct, physical and permanent) taking such as the direct physical appropriation,