

## PROPOSED AGENDA

### Meeting of the Town of Biltmore Forest Board of Commissioners

To be held Tuesday, November 8, 2016 at 4:30 p.m.

#### A. Roll Call by the Clerk

Mayor George F. Goosmann, III  
Commissioner Fran G. Cogburn  
Commissioner E. Glenn Kelly  
Commissioner Doris P. Loomis

#### B. Approval of the Minutes

1. The minutes of the Regular meeting held on October 11, 2016 meeting will be presented for approval.

#### C. Reports of Officers

1. Chief of Skyland Fire and Rescue
2. Chief of Police
3. Public Works Director
4. Town Administrator

#### D. New Business

1. Consideration and Discussion of Harris Software Quote in Conjunction with AMI Water Meter Project
2. Consideration of FY16-17 Budget Amendment for Police Department Grant
3. Consideration of Resolution to Enact the Code of Ordinances for the Town of Biltmore Forest
4. Discussion of Sign Ordinance Amendments
5. Discussion of Accessory Play Uses
6. Presentation of N.C. League of Municipalities Advocacy and Core Goals

#### E. Petitions, Motions, and Other Business

#### F. Public Comment

#### G. Closed Session

1. Preservation of the Attorney-Client Privilege, per N.C.G.S. 143-318.11(a)(3)

#### H. Adjourn

MINUTES OF THE MEETING OF THE MAYOR AND TOWN COMMISSIONERS OF  
BILTMORE FOREST HELD OCTOBER 11, 2016.

Be it remembered by those that follow these proceedings that the Governing Board of the Town of Biltmore Forest met and conducted the following business:

Roll call by the Clerk:

Mayor George F. Goosmann, III, present

Commissioner Fran G. Cogburn, present

Commissioner E. Glenn Kelly, present

Commissioner Doris P. Loomis, present

Mr. Jonathan Kanipe, the Town Administrator, and Mr. William Clarke, the Town Attorney, were also in attendance.

Mayor Goosmann called the meeting to order at 4:30 p.m.

Mayor Goosmann asked for a motion to approve the September 13, 2016 minutes. There were some corrections that should be made regarding spelling and word usage in the minutes. Commissioner Kelly and Commissioner Cogburn requested those corrections be made. Commissioner Loomis made a motion to approve the minutes, and Commissioner Cogburn seconded. The minutes were unanimously approved.

The Mayor asked Mark Dillingham from Skyland Fire Department to give the Town his monthly report. Mr. Dillingham noted there were 18 calls this month and 13 of those were medical related and 2 were construction related. Mayor Goosmann thanked Mr. Dillingham and all the member of the Skyland Fire Department for taking care of the Town. Chief Eric Tinsley was asked to give his monthly report for the Police Department. Chief Tinsley provided an update on the purse snatching in the area. There have not been any more but they are being left on the Town property after the incidents by the perpetrators. Chief Tinsley stated that there is mention of a new gang presence in the area called the "828 Posse" and looking into their activity with other areas

and how they may or may not be tied into the purse snatchings in the Town and at Carolina Day School. Chief Tinsley reported that Detective Lieutenant Mark Allen arrested someone on October 10, 2016 that had drugs and a gun on this person when pulled over for speeding in the Town. Chief Tinsley mentioned working with MAHEC regarding their call volume into the Town and possibly hiring their own police staff to handle their daily needs. Mrs. Toya Hauf asked Chief Tinsley about any patrols that go on if a property is vacant and currently being sold, specifically in reference to 32 Cedarcliff Road. Chief Tinsley said his officers perform property checks for those areas where it is requested and also if they know a home is vacant.

Terry Crouch gave his monthly report detailing the striping project that is taking place now. Mayor Goosmann mentioned to change the color of the striping on the cross walk at the Biltmore Forest Country Club from white to yellow, but it was kept at white due to cost. Paving for storm drains is also occurring on Stuyvesant Crescent as well.

Rob McArthur spoke for Carolina Day School and its request to update and repair the sign at the front entrance of the school. Mr. McArthur presented a rendering of the updated sign. The old sign was hit approximately one year ago. This sign will be located near the new drop off area and Mr. McArthur described how the new sign will look and match the current detail of the Carolina Day School structure. Mr. McArthur also mentioned some additional signage as you come into the property from Hendersonville Road. These were requested to be temporary signs but Carolina Day wants to make them permanent due the improvement of traffic and lessening confusion when students are dropped off. Commissioner Kelly moved for approval and Commissioner Loomis seconded and it was approved. Mr. McArthur asked if there were any comments that the Town had that they would like to pass along to the Carolina Day School. Mayor Goosmann mentioned that there are some students that participate in a track and field events and when they are running inside the Town please make sure that they are running facing traffic. Mayor Goosmann stated that he has seen at times students going with traffic and that could cause injuries to the students. Carolina Day School is also in the process of clearing some debris from their property that meets Barn road and some landscaping that needs to be completed.

Town Attorney Billy Clarke and Town Administrator Jonathan Kanipe provided a report on the new Tree Ordinance and some changes that are needed to the Ordinance to finalize. Mr. Clarke mentioned grammar and punctuation changes that were made to sections 19.3, 19.4, 19.11, and 19.12. Mr. Kanipe brought up some changes to the application fee stated with a cost per tree to be listed in section 19.4. Commissioner Kelly's thoughts were to add a \$5.00 per tree fee to cover the costs of the town arborist's services that are usually needed when there are a number of trees slated to be removed in a given property. Commissioner Cogburn and Commissioner Loomis approved adding the \$5.00 fee to all protected trees that are requested to be removed. Commissioner Cogburn brought up section 19.11 in the proposed ordinance regarding appeals and asked that changes be made to reflect that the Board of Commissioners decision is final. Mayor Goosmann asked for a motion to approve the Tree Ordinance with the above mentioned changes. Commissioner Cogburn made a motion and Commissioner Kelly seconded. All approved and the ordinance was amended and adopted as recorded below.

AN ORDINANCE TO AMEND CHAPTER 19 OF THE TOWN CODE  
OF THE TOWN OF BILTMORE FOREST

TREE PROTECTION

Section 19-1 Purpose

In order to maintain the unique characteristics of the Town of Biltmore Forest as a residential neighborhood with a history beginning as part of the Vanderbilt Estate, it is necessary to preserve the quality and flavor that form so much of the traditional appearance of Biltmore Forest as a true forest. This is particularly true of trees along the roads and around the perimeter of lots. Reference is hereby made to Section 1109 of the Town Zoning Ordinance relating to removal of natural vegetation, which section is routinely involved when residences or other structures are placed on a lot. Trees provide shade, cooling, noise and wind reduction, prevent soil erosion, produce oxygen, filter dust and absorb carbon dioxide. Trees also provide natural habitat and aesthetic enhancement in the Town. Trees provide buffer and a natural canopy, and are a hallmark of the Town requiring protection. Damage to and removal of protected trees requires regulation and control.

Section.19-2. Identification

For purposes of this Ordinance, a protected tree ("Protected Tree") is any tree six inches

or more in diameter at a height of 4 ½ feet from the ground (DBH-Diameter at Breast Height), that is in sound, healthy condition. Preservation of Protected trees is the intent of this Ordinance. This Ordinance shall apply to all properties within the Town of Biltmore Forest except properties owned, leased or controlled by the Town.

#### Section.19-3. Permits

No person shall remove or in any way damage any Protected Tree on a property without first filing an application for said removal, receiving approval from the Town Administrator or his designee for the removal, and paying the applicable fee. The Town Administrator, in his or her discretion, may allow the removal of up to three Protected Trees on the perimeter of a property or lot within the front, side or rear yard setbacks, as such setbacks are defined in the Town's Zoning Ordinance. Within the remaining central portion of a property or lot, and the portion on which structures or improvements may be located, the Town Administrator, in his or her discretion, may allow up to ten Protected Trees to be removed.

If the Town Administrator concludes that the removal of the number of trees requested would be undesirable, and not within the letter or intent of this Ordinance, he may refuse to approve such removal, or permit the removal of a lesser number of trees. Further, in his or her discretion, the Town Administrator may require that the applicant provide a survey showing the location, size and type of Protected Trees on a property, including common scientific names. The survey shall clearly indicate which Protected Trees are indicated for removal and which will be left undisturbed. In the case of new construction, the site plan must show the location of building, driveways, terraces and other structures on the property. All Protected Trees must be clearly tagged as to retention or removal. An Applicant has the right to appeal a decision of the Town Administrator to the Board of Adjustment.

#### Section 19-4. Applications for Removal of Protected Trees in Excess of Ten (10)

An application for a permit to remove more than ten (10) Protected Trees on a property must be presented directly to the Board of Adjustment. Fees of \$ 25.00 shall accompany the application.

An application for the removal of thirty (30) or more Protected Trees on a property must be submitted to the Board of Commissioners for review and approval. A non-refundable fee of \$ 100.00 plus \$5.00 for each Protected Tree requested for removal shall accompany the application. Such applications will be considered on case-by-case basis. The cumulative removal of thirty (30) or more Protected Trees from a single property in one year will result in a formal review and must be approved by the Board of Commissioners. As a part of its review, the Board of Commissioners shall have the authority to require replacement and replanting of trees as the Board determines is necessary, including the specific location of replacement trees. The decision of the Board of Commissioners shall be final.

Section 19-5. Removal of Dead, Diseased, and Hazardous Trees.

A tree that is dead, produces no foliage during normal growing season, or a tree that is diseased or storm damaged to the extent that it is structurally compromised and, thus, poses a safety hazard, or a tree that, for any other reason, poses a safety hazard may be removed by the property owner after notifying the Town Administrator of the plans to remove said tree(s) and receiving approval to do so from the Town Administrator. The Town Administrator or the Board of Adjustment may require the property owner to retain a certified arborist to render an opinion as to the health and structural integrity of the tree(s) in question and report said findings, in writing, to the Town before final approval is given. The Town reserves the right to consult with its own tree specialist to confirm the health and condition of any tree(s) prior to removal.

Section.19-6. Pre-Construction Conference & Supervision

Prior to the commencement of any pre-construction land-clearing or soil disturbance, a pre- construction conference will take place between the responsible representative of the Town and the applicant to review procedures for protection and management of all Protected Trees and other landscape elements identified in the approved landscape plan. The applicant will designate one or more persons responsible for ensuring the protection of new or existing landscaping elements to be preserved. The responsible person shall be present on site whenever activity is taking place that could damage or disturb such landscape elements, and will notify the town Administrator that such activity is taking place.

The Town Administrator shall have developed sites inspected frequently to ensure work is conforming to the approved landscape plan and the applicable sections of this ordinance.

Prior to the commencement of any pre-construction land-clearing or soil disturbance, the developer / contractor shall be required to sign a document agreeing to abide by the conditions stipulated in this ordinance. At the option of the town, a compliance bond may be required

Section.19-7. Enforcement

If any unauthorized removal, cutting or damage to Protected Trees takes place, the Town Administrator may issue a Stop-Work Order which shall remain in effect until all corrections are made to bring the Property in compliance with this Chapter.

Section.19-8. Dip Line Protection

The health of Protected Trees requires the prevention of soil disturbance within the drip line of the trees. Covering this area with pavement or other materials, including excess soil, can affect the health of the tree. Landscape plans, to the extent feasible, shall protect

this area around the tree.

#### Section.19-9. Replacement of Trees

Any Protected Trees removed must be replaced in that particular area of the property at a replacement ratio of 2 to 1 (inches in diameter); that is, the diameters of the young trees (measured one foot from the ground level) used in replacement of each removed tree must total at least one half the diameter at breast height of the removed tree. Any replacement tree must be in the ground within eighteen (18) months of removal of original trees.

Depending on extenuating circumstances related to proximity of other trees and/or structures, lesser quantities of replacement trees may be authorized by the Town Administrator or by the Board of Adjustment (in the case of an appeal from the Town) or the Town Administrator may authorize the replanting or replacement of trees in a location or locations where such replacement trees are more likely to survive."

#### Section.19-10. Inspections

All Protected Trees designated to remain, pursuant to a tree survey, plus any replacement trees, shall be inspected by the Town Administrator or his designee one year following any construction and/or replacement trees, to ensure the trees are in a healthy condition. The Town Administrator can require replacement or replanting of replacement trees.

#### Section.19-11. Appeals

Any person aggrieved by the a decision made under this Ordinance by the Town Administrator or his designee may file, within five days after the date of such decision, a petition to have such decision reviewed and acted upon by the Board of Adjustment. The decision of the Board of Adjustment shall be final, subject only to review by the Board of Commissioners.

#### Section.19-12. Penalties and Enforcement

A violation of this Ordinance is a Class 3 misdemeanor under North Carolina law. The penalty for violating this ordinance shall be \$250 per day. . Each day of continued violation shall be a separate offense. The Town shall also have the right to pursue civil remedies for a violation of the Ordinance including injunctive relief, and a civil penalty of \$250.00 for each day's violation of the ordinance pursuant to N.C.G.S. 160A-175.

Upon determining that a violation has occurred, the Town Administrator shall record the nature of the violation, and send a Notice of Violation to the responsible person or entity by regular and certified mail. The responsible person or entity shall have 30 days from the date of the letter to correct the violation. If the violation is not corrected within 30

days, the Town Administrator may proceed with criminal charges pursuant to N.C.G.S. 14-4, or may take such other enforcement action as may be necessary to carry out the purposes of this Ordinance.

#### Section.19-13. Bond

At the option of the Town, a bond or other type of guarantee can be required of the property owner when initiating new construction, to ensure that all permits and agreements are met, to the satisfaction of the Town.

Mayor Goosmann moved on to the sale of a surplus vehicle from the Town's public works department. The 2005 Ford Ranger was recently replaced by a new Nissan truck. The Ford Ranger will be sold via the Govdeals website . The motion to sell the 2005 Ford Ranger was made by Commissioner Loomis and seconded by Commissioner Cogburn. All were in favor and the motion was approved.

Mayor Goosmann updated those present on the water meter AMI project and the improvements that will be provided to Town water customers. Mr. Kanipe provided the update on the water meter project. Mr. Kanipe indicated that the AMI unit made by Badger meters had to work with the Town's utility billing software, Smart Fusion. Harris, the owner of the Smart Fusion software, has to create a new software program to integrate this equipment and their billing software. The quote from Harris to integrate the two software systems is approximately \$13,000.00. Mr. Kanipe mentioned that he has requested Harris to provide a reimbursement to the Town if other similarly situated customers utilize this technology in the future. A Harris executive is reviewing this request, and as of yet, the Town has not received any information about their decision. The project is expected to begin late January 2017. Mr. Kanipe suggests that we wait on moving forward with this quote until the decision on the reimbursement comes from Harris. There is a possibility of a work around with Badger meters to temporarily have the two software systems communicate until a decision is made with Harris software.

Mayor Goosmann asked to table the AMI Water project until next month when more information is available and there is more communication from Harris Software. All commissioners were in agreement with this being tabled.

Mayor Goosmann stated that there was a request last month from resident Tucker Veach to change the current animal control ordinance. Mayor Goosmann announced that he has asked Commissioner Loomis, Town Attorney Billy Clarke, and Town Administrator Jonathan Kanipe to review this request and provide an update to the Board on any potential changes.

Mr. Kanipe provided an update on Town business starting with the Public Works Building renovation. Mr. Kanipe met with Steve Ayres, Terry Crouch and the Town Architect Chad Roberson. There are some current issues with the building having many lines of utilities going through it and organizing how a building would fit into the specific area near the storage building. Mr. Roberson will make a proposal of those changes and renovations and get back with the Town for next month's Board of Commissioners meeting. Mayor Goosmann asked Mr. Kanipe if there was a possibility that the current gas lines could be buried underground while the project is being constructed. Mr. Kanipe will ask Mr. Roberson about this. Mr. Kanipe also mentioned that the Board has not made a decision on the Public Works building or any renovations thus far, and that the architectural work is still in the initial stages. Commissioner Kelly asked if there were other spaces in consideration for the building, and Mr. Kanipe replied that the current building is the only other viable place, and referred to the report by the structural engineer that renovations on the present site would be difficult. Commissioner Kelly inquired about the existing Public Works building and the space if it were used as additional parking. Mr. Kanipe said that this was an option but there has been no decision made at this time.

Mr. Kanipe provided an update on the phone project. A conference call will occur next week regarding the time frame on how long the process will take to port all of the phone numbers over to the new system. The Board of Adjustments approved a new residence at 35 Hilltop Road and setbacks were all up to code. The MAHEC project was tabled until next meeting on October 17, 2016. The Town History meeting held on October 2, 2016 was a great success and the Town

is planning a formal thank you for the volunteers. Photos and video will be available on the website soon.

Commissioner Cogburn mentioned an idea to have the social room capacity changed from 60 occupants to possibly 80 occupants and the process needed to do so. Mr. Kanipe mentioned that he could ask the architect the Town has hired to see if that is possible. Mr. Kanipe reminded the Board that the NCLM meeting will occur at the end of October in Raleigh, and that he will be attending along with Commissioner Loomis and Commissioner Cogburn. Mayor Goosmann verified with the Board that they would continue with their regular Board meeting next month on November 8, 2016 at 4:30 p.m. One last item was mentioned from Chief Tinsley regarding the body cameras. Chief Tinsley has the choice narrowed down to the GoPro and Taser line. The software is comparable on both; there is a slight change in cost between the two brands. The cost is still being worked out and the final decision on which will be made at next month's meeting when all the figures are in from the Police Department and Mr. Kanipe in conjunction with the vendors.

There being no further business, Mayor Goosmann adjourned the meeting at 5:20 pm. The next Board of Commissioners meeting is scheduled for Tuesday, November 8th at 4:30 p.m.

ATTEST:

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Jonathan B. Kanipe  
Town Administrator

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George F. Goosmann, III  
Mayor

# Call Log Call Type Summary

## Biltmore Forest Police Department

10/01/2016 - 10/31/2016

<No Call Type Specified>	2	Abandoned Vehicle - 10-39	1
Accident - 10-50	5	Accident - PI - 10-50/PI	1
Alarm - 10-90	36	Assist EOC - 10-77	3
Assist Motorist - 10-85	10	Assist Other Officer or Agency - 10-78	9
Assist Resident - 10-86	11	Bear Report - 10-89/Bear	14
Bicyclist Violation - Bicyclist Violation	1	Busy - 10-6	7
Crime Prev. - 10-108	8	Distressed Animal - Distressed Animal	1
Disturbance - 10-79	1	Dog Complaint - 10-89	11
Domestic - 10-80	1	Drug Check - 10-95	1
Escort - 10-59	1	Extra Check - 10-116	12
Fire - 10-88	4	Improper Parking - 10-70	2
In Court - 10-105	2	Injured Deer - Injured Deer	2
Investigation - 10-63	3	Larceny - 10-103	2
License Checkpoint - License Checkpoint	2	Missing Person - 10-115	2
Noise Disturbance - 10-79/N	2	Ordinance Violation (Other) - Ordinance Violation	8
Out of Town - 10-110	1	Pedestrian Violation - Pedestrian Violation	1
Power Outage - Power Outage	1	Radar Operation - 10-38R	8
Reckless Veh. - 10-49	1	Report - 10-118	2
Road Blocked - 10-53	4	Service of Car - 10-36	1
Sign Ord Violation - 10-118	5	Special Assignment - 10-107	3
Speed Enforcement - 10-38	14	Speeding/Reckless Vehicle - 10-49	1
Suspicious Person - 10-113	8	Suspicious Vehicle - 10-60	31
Traffic Counter - Traffic Counter	1	Vehicle Registration - 10-28	21
Vehicle Stop - 10-61	17	Warrant Service - 10-104	1
Well-being Check - 10-117	2		

Total Number Of Calls: 288

# Activity Detail Summary (by Category)

Biltmore Forest Police Department

(10/01/2016 - 10/31/2016)

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## Incident/Investigations

0410 - Aggravated Assault	1
0640 - Larceny - From Motor Vehicle	1
0690 - Larceny - All Other Larceny	1
1150 - Fraud - Credit Card/Automated Teller Machine	1
1190 - Fraud - All Other Fraud	1
8010 - Missing Persons	1

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Total Offenses	6
Total Incidents	6

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## Arrests

0411 - Aggravated Assault of an Officer	1
0600 - Larceny	1
1500 - Weapons Violations	1
2690 - All Other Offenses	4
4010 - All Traffic (except DWI)	1

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Total Charges	8
Total Arrests	4

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## Accidents

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Total Accidents	4
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## Citations

Possess/Consume Alcohol - Passenger	1
Speeding (Infraction)	1
Secondary Charge	0

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Total Charges	2
Total Citations	2

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# Activity Detail Summary (by Category)

Biltmore Forest Police Department

(10/01/2016 - 10/31/2016)

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## Warning Tickets

Total Charges 0

Total Warning Tickets 0

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## Ordinance Tickets

Total Ordinance Tickets 0

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## Criminal Papers

Total Criminal Papers Served 0

Total Criminal Papers 0

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## Civil Papers

Total Civil Papers Served 0

Total Civil Papers 0

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# Call Log Action Taken Summary

Biltmore Forest Police Department

10/01/2016 - 10/31/2016

<No Action Taken Specified>	4	A - Report	9
C - Written Warning	1	D - Unable to Locate Suspect	14
E - Unable to Locate	10	F - No Police Attention Needed	23
G - Problem Settled	21	H - Advised Proper Action	14
I - Vehicle Checked OK	12	J - Person Checked OK	13
K - Property Checked OK	35	L - Verbal Warning	16
M - Citation	3	N - Arrest	4
O - Made Contact Report	2	P - Assisted/Backed Up Officer	4
Q - Other Agency Handled Call	8	R - Other	34
S - Message Delivered	1	Z - Mission Completed	60

**Total Number Of Calls: 288**



MEMORANDUM  
NOVEMBER 8, 2016

To: Mayor and Commissioners  
From: Jonathan Kanipe, Town Administrator  
Re: Town Administrator's Report  
Date: November 1, 2016

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#### Board of Adjustments

The Board met in October and approved a conditional use permit for a fence to be located in the rear yard at 6 Deerfield Road. The approval included a slight variance of the side yard in order to allow the protection of the root system of several significant hardwood trees. The Board also approved a tree removal plan for the Harmans at 333 Vanderbilt Road. This request included the removal of sixteen (16) protected trees, all of which were eastern white pine species. The Harmans plan to replant with a mix of hardwood, understory trees, and some smaller species trees. The Board approved a variance for Jill Hulsing at 12 Forest Road to allow a detached garage to be constructed in the front of the home. The garage is not in the front yard setback and due to power lines and severe topographical issues this garage could not be located in the side or rear yard. This location also presented the most obscured site for the detached garage. The Board also approved a conditional use permit to allow construction of a detached garage at 6 Southwood Road.

#### FY 16-17 Audit Report

The FY 16-17 audit has been completed by Carter, P.C. and we are awaiting final review of the proof before copies are printed and developed. We anticipate Carter, P.C. being at our next regular meeting in December to provide the final presentation to the Board. From the draft, the Town is in a good financial position with a sizeable fund balance through cautious spending and excess revenues over the past several years. We do have to account now for our law enforcement officers' separation allowance, and new governmental accounting standards require us to procure an actuarial to determine the potential impact to the Town. You may remember this from last year's audit as well, as we had an actuarial performed regarding the Town's contributions to the pension system. As a result, this ends up impacting the Town's available fund balance, but even with this figure, the Town's fund balance remains in good shape.

#### Drought Monitoring

As you know, Buncombe County and the larger Western North Carolina area is now designated as in a severe drought. We have been in contact with the State Department of

Environmental Quality and are monitoring the drought along with the City of Asheville. The Town generally follows the restriction policies as set by our water provider, the City of Asheville, and at present there are only voluntary restrictions in place.

#### New Recycling Truck

The Town's new recycling truck was delivered on Monday, October 31<sup>st</sup>. We will have the truck in service as soon as we get it registered and all other administrative hurdles squared away.

#### Body Camera Update

The Town received final quotes and specifications from both Taser and Intrensic during the last month. We are awaiting Taser's most recent body camera to test and hope to have a final recommendation to the Board at the December meeting. The current body cameras are working well and the Town is covered while we are working quickly to make a final decision.

#### Christmas Bonus for Employees

Last year, the Board elected to provide a \$350 bonus for each employee at Christmas. There was some discussion last year that it would be nice to distribute these earlier than at the Town's Christmas party in the middle of December. To that end, I wanted to verify that you were comfortable with the amount of the bonus this year as well as with the Town putting it into the employees' checks toward the end of November. Funds were budgeted for the bonus for each employee this year in the event that the Board did elect to provide the bonuses once more.



# Biltmore Forest Public Works Department

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**Terry Crouch**  
**Director Of Public Works**  
**355 Vanderbilt Road**  
**Biltmore Forest NC, 28803**

**Phone: 274-3919**  
**Fax: 274-3921**  
**Mobile: 777-4466**  
**Email: [tcrouch@biltmoreforest.org](mailto:tcrouch@biltmoreforest.org)**

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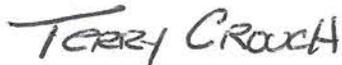
## **PUBLIC WORKS MONTHLY REPORT** **OCTOBER 13, 2016 TO NOVEMBER 8, 2016**

- Completed all of the normal routine services to the residents on schedule.
- Completed repairs to a storm drain on the upper side of no. 8 East Forest and dug up below the lower driveway and constructed a catch basin and reworked the road shoulder to try and control the erosion problem.
- We have begun leaf collection for the year and have collected a total of 15 loads leaves and transported them to the new leaf dump in Swannanoa.
- Repaired several minor potholes throughout the Town.
- We have trimmed several intersections to make it more visible for traffic.
- We are continuing to use the tractor mounted blowers to clean leaves and debris off of the roads.
- Completed 35 special requests from the residents, extra garbage collection, meter rereads, house no. signs, recycling request, etc and completed 20 utility locate request.
- Completed the 2 monthly bacteriological water samples for October and both were in compliance with the state.
- We repaired 2 streetlights (General Repairs).

- A total of 379 hours were spent maintaining the Town's roads and road shoulders.
- Collected a total of 27 loads of brush that have been transported to Asheville Stump and Dump and we also completed an entire run through the Town before we began the leaf collection.
- Completed the monthly oil changes to the Police vehicles
- Mowed and weedeated all of the road shoulders and parks as needed.
- Spent 32 hours in the Town's parks mowing and weedeating.
- I have requested that the NCDOL (OSHA) do a Safety and Health Consultative Survey for the Town. They are several months behind but this will put the Town in a status of not being seen by a Compliance Officer until they complete the inspection.
- Lowered the storm drain lid seed and straw the entire area at 128 Stuyvesant road.

Good news, the new Recycling truck has arrived and should be put in to service as soon as possible.

Sincerely

A handwritten signature in black ink that reads "Terry Crouch". The signature is written in a cursive style with a prominent underline for the first letter of the first name.

Terry Crouch  
Director of Public Works



MEMORANDUM  
NOVEMBER 8, 2016

To: Mayor and Commissioners  
From: Jonathan Kanipe, Town Administrator  
Re: Consideration of Revised Quote from Harris Software  
Date: November 1, 2016

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During last month's meeting, the Board discussed a recent proposal by Harris Software to create an integrative software for our new water meter project. In short, this software development would allow the Town's new cellular receivers to interact with the Town's utility billing software. The Town is the first utility to install this cellular receiver and pair it with the Smart Fusion utility billing software which requires new software development by Harris Software.

The Town requested that Harris consider a reimbursement or cost sharing program as other entities purchase the system. Harris did agree to this, and has provided the attached, revised quote which shows a potential total reimbursement of \$8,000.00. They have agreed to provide a reimbursement of \$4,000 per entity that uses the software with a maximum of two reimbursements.

I believe this is an acceptable proposal from Harris and represents the Town paying a fair market value for the software development and implementation. The net fee, after all reimbursements, would be approximately \$5,075.00 which is in line with normal software implementation and licensing fees. If agreeable, the Town will be on schedule to have this software integration package developed as soon as possible and the AMI program put into place. My recommendation is to approve the revised proposal from Harris software.



# Purchase Agreement

Date: 10/28/2016  
 Contract#: NLB-T9C0H2  
 Effective To: 11/28/2016  
 Prepared By: Natossha Baird

This understanding between **Biltmore Forest, Town of** at 355 Vanderbilt Rd., Biltmore Forest NC 28813-5352 ("Purchaser") and **Computer Software Innovations, Inc.** at 2429 Military Road Suite 300, Niagara Falls, NY 14304 ("Harris") confirms the purchase of the following licensed software products and/or services:

Qty	Item	Price	Ext Amount
<b>SOFTWARE LICENSES:</b>			
1	Utility Handheld Interface - SF Beacon AMI Meter Reading System SmartFusion Interface Required	\$2,500.00	\$2,500.00
<b>Total SOFTWARE LICENSES:</b>			<b>\$2,500.00</b>
<b>PROFESSIONAL SERVICES:</b>			
<b>Application Consulting</b>			
4	Virtual Training - SF	\$175.00	\$700.00
<b>Subtotal</b>			<b>\$700.00</b>
<b>Development</b>			
55	Custom Development - SF Integrate SmartFusion Utility Billing System with Beacon AMI Meter Reading System Includes Automated Daily Export Utility & manual reading file import Import / Export Specifications are based on file specifications submitted by Beacon Development JIRA # CSWISFUB-1947	\$175.00	\$9,625.00
<b>Subtotal</b>			<b>\$9,625.00</b>
<b>Infrastructure</b>			
1	Installation of Additional Module - SF	\$250.00	\$250.00
<b>Subtotal</b>			<b>\$250.00</b>
<b>Total PROFESSIONAL SERVICES:</b>			<b>\$10,575.00</b>
<b>TOTAL:</b>			<b>\$13,075.00</b>
<b>ANNUAL MAINTENANCE &amp; SUPPORT:</b>			<b>\$550.00</b>

If a SmartFusion client purchases the Beacon AMI Interface under the guidance of Biltmore Forest, Harris SmartFusion division will provide development services reimbursement to Biltmore Forest at the rate of \$4000 per client with a limit of two clients for a maximum reimbursement of \$8000. The reimbursement amount will not be credited to Biltmore Forest until the Beacon AMI implementations are completed and the clients' invoices are paid in full.

Immediately thereafter the 1st Years Annual Maintenance Fee Period, subsequent Annual Maintenance Fees will be calculated at the then current Harris rate.

All charges are exclusive of out-of-pocket expenses for services performed. Charges for actual and reasonable out-of-pocket expenses, including but not limited to travel and lodging expenses, will be billed monthly as accrued.

Quote does not include applicable sales tax. If the Purchaser is Tax Exempt, a Tax Exemption Certificate (or other documentation) must be provided with this signed Contract. Otherwise, applicable sales tax will be applied at the time of billing.

## AGREEMENT TERMS AND CONDITIONS:

### 1. Definition

**a. Software Applications** "Software Applications" are the computer programs explicitly listed above in the section titled "Software Products" and those indicated using initials by the Purchaser in the section titled "Software Options."

### 2. Payment Terms

Order will be processed with the return of signed contract and an initial payment of 50% of the total software, professional services, hardware, and customizations as outlined above. Orders will not be processed until both of these two requirements are satisfied.

The remaining fees for the Software Applications shall be invoiced after delivery (CD-ROM or Electronic Transfer) to Purchaser and due thirty (30) days from the date of invoice.

License Transfer Fees, if applicable, shall be invoiced at the start of the project and due in thirty (30) days.

Professional Services and any applicable travel and lodging expenses, shall be billed monthly as the work is performed.

State Taxes are applicable on prices listed. If the Purchaser is Tax Exempt, a Tax Exemption Certificate must be provided with this signed Contract.

**3. Delivery Media Type:** CD-ROM or Electronic Transfer

### 4. Delivery Schedule

The parties will agree upon an appropriate training, project, and delivery schedule based on, among other things, the modules in respect of which training is required and the skills and availability of both the Purchaser and Harris staff members.

### 5. Data Conversion

The success of a data conversion is based on the format and quality of the input data. Unless otherwise indicated, conversion is strictly limited to non-dollar amounts. A typical utility billing conversion includes information such as names, addresses, phone numbers, and services. Only information explicitly listed in this document will be converted. Initial cost estimates for conversion are included in system pricing proposals but these are only estimates until inspections or sample data can be examined to verify data formats and data integrity. Only then can accurate conversion costs be established. Any costs associated with obtaining the data from the existing vendor are the responsibility of the Purchaser. Sample data shall be provided in standard fixed length format with ASCII display characters only. Data must be on a media formats readable by Harris. File layouts must include: record size, field length, field starting and ending points, field name, field type, data field description. Our acceptable file formats are listed below:

- Microsoft SQL Server database
- Microsoft Access database
- Visual FoxPro/DBase (DBC/DBF)
- Excel Spreadsheets - with flat data (one record per row/CSV)
- Delimited ASCII files (pipe "|" delimited preferred)

Where ever possible, the data extraction shall be done twice. The first extraction is to test and create the conversion tools. The second extraction is done when the implementation is ready to go live.

In the event a data re-conversion is required, for whatever reason, Purchaser will be billed at the original rate quoted above in the Conversion section of the Agreement.

60 Day Integrity Window - it is our goal to get your data right, thus you as a Client have 60 days from the first day of their Go Live to review data for any discrepancies. Items not contained within their source data are excluded. All items found after this 60-day window will be changed at a minimum charge of \$350.

## **6. Maintenance and Support Fees**

Maintenance and Support fees ("MSF") include all program updates, enhancements and general releases that Harris makes available to the Purchaser as part of its regular software maintenance program. MSF does not include fees for any third party licenses or Harris services that may be necessary to perform a third party license upgrade. MSF also includes access to the Harris support hot line.

The initial maintenance amount will be billed on Discovery, which represents the start of services and the ability to obtain support. Payment is due upon receipt of invoice. Harris reserves the right to change maintenance and support fees..

Subsequent years' MSF shall be rendered at the beginning of each year in which services are to be furnished. Lapses in annual MSF and/or balances not paid over sixty (60) days will be monitored and will lead to denial of support, and upgrade privileges. In the event of a lapse, Purchaser will be subject to reactivation fees not to exceed 40% of the current annual MSF applied to each year of the lapse including partial year lapses plus the amount representing "the lapsed" MSF. The specific services provided by the technical support staff are outlined in the Harris Software Support Agreement Standard Guidelines.

## **7. Additional Customization(s)**

The Purchaser and Harris have jointly reviewed the Software Applications and have determined that all items are adequate except as noted in the CUSTOMIZATIONS section. Additional customization(s) or report modifications not identified in this Agreement will be quoted as requested and billed at the hourly rate of \$175.00. Customizations and/or report modifications requested one year or more from the date of this agreement will be billed at the then current Harris hourly rate. No additional customizations will be undertaken without prior agreement by both parties on cost, scope of functionality, and the impact on the project schedule.

Twenty-two percent of any fees associated with any customization services will automatically be added to the Purchaser's MSF.

## **8. Forms**

Purchaser agrees to use standard forms unless otherwise indicated. If purchaser does not order forms from Harris, forms must be approved by Harris Project Manager (named below in Section 15) before ordering. A Change Order may be issued to purchaser by Harris for any report modifications, which will be billed at a rate of one hundred-seventy-five dollars (\$175) per hour.

## **9. Professional Services**

Additional professional services are available on-site or virtually. Virtual work is billed at \$175.00 per hour. On-site work is billed at \$1225.00 per day plus travel, travel time, lodging and per diem expenses. Work performed one year or more from the date of this agreement will be billed at the then current Harris rates. Help line support does not include training. New employees must be trained by Purchaser or by making arrangements with Harris.

In the event, Purchaser wishes to schedule any professional services on a Saturday; there is a \$250 surcharge. Application consulting and setup services may include but are not limited to: software installation, configuration, data validation, system setup, system balancing, interface setup, interface testing, process training, application training and business requirements gathering.

Scheduling: Harris will use its best efforts to select a mutually agreeable date for services. Cancellation or rescheduling of services must be done five business days or one calendar week prior to scheduled service date. A five hundred dollar (\$500) cancellation fee will be assessed for cancellations/rescheduling done outside of the time frame specified.

## **10. Travel and Lodging Expenses**

Travel and lodging expenses will be billed in conjunction with any services work performed at the Purchaser's offices by Harris personnel. Lodging expenses will include hotel expenses and will only be charged if an employee is required to spend the evening. Travel expenses may include airfare if the employee is required to travel by air to reach the Purchaser's offices. Travel may include the cost of a rental car. If an employee uses his/her personal vehicle, mileage will be charged at the currently published IRS reimbursement rate. Travel time will be charged for all onsite work at a rate of three hundred dollars (\$300) for up to three days and six hundred dollars (\$600) for four days or more onsite. When an employee is at or traveling to the Purchaser's offices, fifty-five dollars (\$55) per day will be charged to cover meals and incidentals. If an employee must travel on Saturday, Sunday, or a holiday, or is at the purchaser's office on a holiday, one hundred-ten dollars (\$110) per day will be charged to cover meals and incidentals.

Harris will use its best efforts to minimize all travel and lodging expenses. Only actual travel and lodging expenses will be billed to the Purchaser.

### **11. Grant of License**

Harris hereby grants Purchaser a nontransferable, nonexclusive, nonrefundable license under the terms of this Agreement to use the Software Applications on its equipment subject to the following:

- a. The Purchaser may not sublicense, rent, lease or assign the Software Applications.
- b. No license is given to Purchaser for the source code to the Software Applications. The Purchaser is expressly prohibited from reverse engineering, decompiling, or disassembling the Software Applications or from creating a derivative or modified copy of the Software Applications.
- c. Initial delivery of the Software Application shall be COTS ("Commercial off the shelf"). Purchaser is not relying upon any future product availability or functionality upon entering into the payment obligations under this Agreement

### **12. Performance by Customer**

- a. Co-operation by Purchaser The Purchaser acknowledges that the success and timeliness of the implementation process shall require the active participation and collaboration of the Purchaser and its staff and agrees to act reasonably and co-operate fully with the Consultant to achieve the Completion of Services.
- b. Required Programs The Purchaser acknowledges that if the use of the Software requires that the Purchaser obtain and install additional software programs, then the Purchaser agrees that the acquisition of the additional software programs shall be at its sole cost and that the cost thereof is not included in the fees herein. The Purchaser further acknowledges that the operation of the Software requires the Purchaser's hardware to be of sufficient quality, condition and repair, and the Purchaser agrees to maintain its hardware in the appropriate quality, condition and repair at its sole cost and expense, in order to facilitate the achievement of Completion of Services.
- c. Project Manager The Purchaser shall appoint a project manager who shall work closely with Harris Staff to facilitate the successful completion of the implementation process and who shall be responsible for supervising the staff of the Purchaser and their co-operation with and participation in such process.

### **13. Warranty Disclaimer**

Harris does not make, and hereby disclaims, any and all express and/or implied warranties regarding the services or any material provided by Harris to Purchaser pursuant to this agreement, including, but not limited to, warranties of merchantability, fitness for a particular purpose, and non-infringement, and warranties arising from a course of dealing, usage or trade practice. Further, Harris does not warrant that the Software Licenses will meet any exact user requirements, and that the software will operate error free or uninterrupted. In the event an error is discovered in one of the Software Applications currently covered by MSF, and the error is confirmed, Harris will make reasonable efforts to provide Purchaser with a correction.

It is acknowledged by the parties hereto that the Hardware provided by Harris to Customer pursuant to this Agreement was manufactured and delivered to Customer by a third party manufacturer and Harris is reselling it to Customer. As such,

Harris makes no warranties, express or implied, with respect to the Hardware, including, without limitation, their merchantability or fitness for a particular purpose. Any warranty Customer has with respect to the Hardware shall be solely provided by the manufacturer(s)."

**14. Limitations on Liability**

Purchaser agrees that Harris' liability hereunder for damages, regardless of the form of action, shall be limited to actual direct damages and shall not exceed the charges hereunder paid by Purchaser to Harris. Purchaser further agrees that Harris will not be liable for any other damages including consequential, incidental, special, exemplary damages, lost profits, failure to realize anticipated savings, data loss, loss of goodwill, business opportunities or reputation, economic loss or for any claim or demand by any third party, except a claim for patent or copyright infringement with respect to Licensed Software.

**15. Change Order Process**

With respect to any proposed changes to the Services defined by this Agreement, the parties will cooperate in good faith to execute Change Orders in respect thereof, and will not unreasonably withhold approval of such proposed changes. If either party causes or requests a change in the allocation of the resources of Harris applied to a task, changes in completion schedules for individual tasks or for overall implementation, and changes in staffing that require Harris to provide additional work hours, Harris may propose a change to cover the additional work effort required of it. Approval of any such proposed changes will not be unreasonably withheld (it being acknowledged that any such material changes may require modifications to the consideration paid, and timelines governing, the Services), and any disputes regarding changes shall be handled initially by discussions between the parties which will be convened in good faith by the parties to resolve any such matters in dispute.

The following individuals are authorized to sign off on change orders on the Purchaser's behalf:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

The following individuals are authorized to sign off on change orders on Harris's behalf:

Jennifer Hartley - Director of Professional Services  
Marcus Myers – Professional Services Manager  
Scott Thomas – VP of SmartFusion

**16. Cancellation Policy**

In the event of cancellation of the Agreement by either party for any reason, Purchaser agrees to pay for all Software Applications delivered, any Professional Services rendered and T&L expenses incurred prior to the cancellation. Initial down payment of deposit is non-refundable. Purchaser must provide written notification to Harris if it wishes to cancel the Agreement.

Cancellation of any on-site Services by Purchaser is allowed for any reason if done in writing more than fourteen (14) days in advance of such Services. Cancellation by Purchaser with fourteen (14) days or less of scheduled on-site Services will be billed at fifty percent (50%) of the on-site fee, plus any non-recoverable costs incurred by Harris due to advance scheduling of travel. Additionally, Purchaser hereby acknowledges that cancellation of on-site Services means that such on-site Services will be rescheduled as Harris' then current schedule permits. Harris is not responsible for any delay in Purchaser's project resulting from Purchaser's cancellation of consulting. If additional services are required because the Purchaser was not adequately prepared for the on-site services, Harris will provide a Change Order to the Purchaser for the additional services.

**17. Governing Law; Venue**

This Agreement shall be governed by the substantive and procedural laws of the State of New York. Purchaser hereby

agrees to submit to the exclusive jurisdiction of, and venue in, the courts in the State of New York in any dispute arising out of or related to this agreement.

**18. Entire Agreement**

This Agreement shall constitute the entire agreement between the parties hereto with respect to the matters covered herein. Any modification or waiver of this Agreement is effective only if it is in writing signed by an authorized representative of the party to be charged. Provisions of a Customer purchase order or similar document are not applicable if they conflict with or add to the terms of this Agreement.

Purchaser: **Biltmore Forest, Town of (NC)**

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

Title: \_\_\_\_\_

<p><b>Purchaser's Project Leader:</b></p> <p>Contact Name: _____</p> <p>Contact Title: _____</p> <p>E-mail address: _____</p> <p>Phone #: _____</p>
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<p><b>Purchaser's Accounts Payable Dept Information:</b></p> <p>Billing Address: _____</p> <p>_____</p> <p>Accounts Payable Contact: _____</p> <p>Email Address: _____</p> <p>Phone &amp; Fax #: _____</p> <p>Alternate Contact: _____</p>
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MEMORANDUM  
NOVEMBER 8, 2016

To: Mayor and Commissioners  
From: Jonathan Kanipe, Town Administrator  
Re: Consideration of FY16-17 Budget Amendment for Police Department Grant  
Date: November 1, 2016

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The Police Department has procured a grant from the N.C. Department of Public Safety for the purchase of handheld radio units. These units would allow the Town to communicate more effectively with neighboring jurisdictions and provide a much stronger signal for a greater distance. A significant benefit of these radios is that it will allow the Town to utilize our existing tower and equipment with a VHF frequency. This will allow us to remain self-reliant and not dependent on another jurisdiction's equipment.

The total grant award is for \$23,682.50. The Town will allocate a portion of its already budget radio line item to this project in the amount of \$8,000.00. The budget amendment as attached will demonstrate the receipt of the grant funds and the disbursement in the Police Department's budget. Please let me know if you have any questions.



FY 16-17 Budget Ordinance Amendment

BE IT ORDAINED by the Governing Board of the Town of Biltmore Forest, North Carolina, that the following amendment be made to the annual budget ordinance for the fiscal year ending June 30, 2017.

**Section 1.** To amend the General Fund Revenues as follows:

<u>Account #</u>	<u>Account Description</u>	<u>Increase</u>	<u>Decrease</u>
10-3350-0000	Miscellaneous	\$23,685.00	-0-

**Net Increase in General Fund Revenues: \$23,685.00**

This will result in a net increase in the General Fund Revenues of \$23,685.00. To appropriate these funds, and to serve as reallocations within the budgeted line items, the following amendments to the FY 16-17 budget are provided.

**Section 2.** To amend the General Fund Expenditures as follows:

<u>Account #</u>	<u>Dept</u>	<u>Account Description</u>	<u>Increase</u>	<u>Decrease</u>
10-5100-7400	Police	Equipment Purchases	\$23,685.00	-0-

**Net Increase in General Fund Expenditures: \$23,685.00**

Copies of this budget amendment shall be furnished to the Clerk, to the Governing Board, and to the Finance Officer for their direction.

Adopted this 8<sup>th</sup> day of November, 2016.

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Mayor George F. Goosmann, III



MEMORANDUM  
NOVEMBER 8, 2016

To: Mayor and Commissioners  
From: Jonathan Kanipe, Town Administrator  
Re: Consideration of Resolution to Enact the Revised Code of Ordinances  
Date: November 1, 2016

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As you know, the Town has worked for over a year on a recodification of our Town Code, including the Zoning Ordinance. American Legal Publishing provided hard copies of the recodified code last month and our up to date code and zoning ordinance are being housed on their web server now as well.

In order to establish this newly revised Code of Ordinances as our governing document, the Board must approve a resolution formally accepting and adopting these changes. A resolution to that effect is included for your review and consideration.

Please note that future supplements will be delivered to the Town once every six months. These supplements will be automatically included in our online Code of Ordinances, which will be updated more frequently, and the supplemental pages will be sent to the Town and distributed to the Board of Commissioners, staff, and others once available.

**RESOLUTION OF THE  
TOWN OF BILTMORE FOREST**

**ENACTING AND ADOPTING A CODE OF ORDINANCES FOR THE TOWN OF BILTMORE FOREST REVISING, AMENDING, RESTATING, CODIFYING AND COMPILING CERTAIN EXISTING GENERAL ORDINANCES OF THE POLITICAL SUBDIVISION DEALING WITH SUBJECTS EMBRACED IN SUCH CODE OF ORDINANCES**

**WHEREAS**, the present Code of Ordinances of the Town of Biltmore Forest ("Town") has been developed over a number of years, and, as a result is inadequately arranged and classified;

**WHEREAS**, a reorganization and rearrangement of the Code of Ordinances will facilitate the management of the affairs of the Town, and promote and preserve the public health, safety and welfare of the Town and its residents; and

**WHEREAS**, the Town is authorized, pursuant to North Carolina General Statutes 160A-174 and 175 and other provisions of Article 8 of Chapter 160A, to adopt and enforce ordinances, and to revise, amend, restate, recodify and recompile any existing ordinances and all new ordinances not heretofore adopted or published and to incorporate such ordinances into one ordinance in book form ; and

**WHEREAS**, the Town has authorized and had prepared, with the assistance of American Legal Publishing, a general compilation, revision and recodification of the ordinances of the Town in book form entitled *Town of Biltmore Forest, North Carolina Code of Ordinances*; and

**WHEREAS**, the adoption and recodification of the *Town of Biltmore Forest, North Carolina Code of Ordinances* is necessary to provide for the daily operation and management of the Town and for the preservation and promotion of the public health and general welfare of the Town.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF BILTMORE FOREST, NORTH CAROLINA that:**

Section 1      The general ordinances of the Town of Biltmore Forest as revised, amended, restated, codified, and compiled in book form by American Legal Publishing and entitled, *Town of Biltmore Forest, North Carolina Code of Ordinances* are hereby adopted as and shall constitute the "Town of Biltmore Forest, North

Carolina Code of Ordinances" (hereinafter sometimes referred to as "Code of Ordinances").

Section 2 The Code of Ordinances as adopted in Section 1 shall consist of the following Titles:

Title I. General Provisions  
Title III. Administration  
Title V: Public Works  
Title VII: Traffic Code  
Title IX: General Regulations  
Title XI: Business Regulations  
Title XIII: General Offenses  
Title XV: Land Usage

Section 3 All prior ordinances pertaining to the subjects treated in such Code of Ordinances shall be deemed repealed from and after the effective date of this Resolution except as they are included and readopted in whole or in part in such Code of Ordinances; provided, such repeal shall not affect any offense committed or penalty incurred or any right established prior to the effective date of this ordinance, nor shall such repeal affect the provisions of ordinances levying taxes, appropriating money, annexing or detaching territory, establishing franchises, or granting special rights to certain persons, authorizing public improvements, authorizing the issuance of bonds or borrowing of money, authorizing the purchase or sale of real or personal property, granting or accepting easements, plat or dedication of land to public use, vacating or setting the boundaries of streets or other public places; nor shall such repeal affect any other ordinance of a temporary or special nature or pertaining to subjects not contained in or covered by the Code of Ordinances.

Section 4 Such Code of Ordinances shall be deemed published as of the day of its adoption, and the Clerk of the Town of Biltmore Forest is hereby authorized and ordered to file a copy of such Code of Ordinances in the Office of the Clerk.

Section 5 Such Code of Ordinances shall be in full force and effect as provided in Section 6, and such Code of Ordinances shall be presumptive evidence in all courts and places of the ordinances of the Town and all provisions, sections, penalties and regulations therein contained and of the date of passage, and that the same is properly signed, attested, recorded, and approved and that any public hearings and notices thereof as required by law have been given.

Section 6 This ordinance is declared to be a measure necessary for the preservation and promotion of the public health, safety and general welfare of the people of this Town, and shall take effect immediately.

PASSED AND ADOPTED by the BOARD OF COMMISSIONERS OF THE TOWN OF  
BILTMORE FOREST on this 8<sup>th</sup> day of November, 2016.

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George F. Goosmann, III, Mayor

ATTEST:



MEMORANDUM  
NOVEMBER 8, 2016

To: Mayor and Commissioners  
From: Jonathan Kanipe, Town Administrator  
Re: Discussion of Sign Ordinance Amendments  
Date: November 1, 2016

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During the political season, the Town received several questions from citizens regarding policies on political signs and location. The Mayor has asked that we review the Town's existing regulations regarding political signs and consider the possibility of allowing political signs closer to the road than the twenty (20) feet per our existing regulations, but in any event not within the Town right of way. I have included the political sign regulations as a standalone document attached to this memorandum.

In my review of the sign ordinance, however, I recalled a Supreme Court ruling issued in June 2015 regarding ordinances that regulate content-based signs. The attached UNC School of Government blog post discusses the impact of the *Gilbert* decision and may result in the need for the Town to amend our sign ordinance regardless to be in full compliance with the Court's decision. Per Mr. Lovelady's research and article, it appears that towns which distinguish among non-commercial sign types are doing so in an unconstitutional manner. The Biltmore Forest sign ordinance explicitly creates an exception for political signs and, to my interpretation, does not identify requirements for other noncommercial signs. As a result, I am not entirely certain the political sign requirements would fall into line with the *Gilbert* decision, but with the Town allowing some noncommercial signs by request (i.e. signs for town sponsored events) it is certainly worth reviewing in greater detail to ensure we are in compliance with *Gilbert*.

My recommendation at present is for Mr. Clarke and I to review the *Gilbert* decision and provide information to the Board related to this decision. Please provide guidance as to your thoughts regarding whether political signage should be less regulated, specifically in terms of proximity to the road, or if there are any other potential changes that need to be addressed.

Town of Biltmore Forest Political Sign Regulations

**Chapter 93.03 – Signs and Posters; Requirements**

(C) Political signs are allowed on any residential lot prior to a primary election, general election,

or referendum provided the signs are erected as follows.

(1) Signs may be posted 30 days prior to the day of an election and removed within five days after the day of the election.

(2) Four signs are permitted per lot, with each sign representing one candidate, or one issue if a referendum.

(3) Each sign shall not exceed four square feet in size and not contain any electrical component or lighted in any way.

(4) Wording shall be the same on both sides of the sign if both sides are exposed to the roadway.

(5) The sign shall be set back at least 20 feet from the nearest edge of the pavement of all public roads on which the house borders, and in no way shall signs be located within the public right-of-way.

(6) No portion of the sign is to extend more than four feet above the ground.

(7) A sign located on private property requires the owner's approval.

(8) The property owner shall be fined if the signs are not removed within five days of an election or referendum.

### **§ 93.01 PROTECTION OF PARKWAYS.**

(A) It shall be unlawful for any person to willfully destroy, injure, mutilate, carry away, break, or in any manner deface any tree, shrub, plant, grass, or other property of any kind within or upon any of the roads, streets, public grounds, or parkways of the town, nor shall any person allow any animal or pet belonging to him or her or in his or her charge to injure any such property.

(B) It shall further be unlawful for any person to allow any animal or to drive any vehicle upon any of the grass or grass-plots along the roadways and streets.

(2013 Code, § 15-1) Penalty, see § 93.99

### **§ 93.02 SIGNS AND POSTERS GENERALLY.**

Except as set forth herein, no sign of any kind, including posters, advertisements, billboards, announcements, and the like, shall be erected by any person in any district zoned R-1, R-2, R-3, R-4, or R-5 unless prior approval of the sign and its intended location are first obtained from the Board of Commissioners. Any sign erected in violation of this section shall be promptly removed by the Police Department. Also, any sign allowed to remain for an unreasonable length of time may be removed by the Police Department.

(2013 Code, § 15-2)

### **§ 93.03 SIGNS AND POSTERS; REQUIREMENTS.**

(A) No person, either as owner or real estate agent, shall post any sign on any residential lot to advertise the same for sale or rent or for any other purpose, except as follows:

(1) One sign per lot, not to exceed six square feet in size, not to contain any electrical component and not to be lighted in any way;

(2) If the sign is posted by a real estate agency, the wording shall be limited appropriately to indicate that the property is for sale or rent and the name and telephone number of the agency, the listing firm website, the multiple listing service number, texting code, or individual website assigned to the home for sale;

(3) If the sign is posted by an owner, the wording shall be limited to appropriately indicate that the property is for sale or rent, the name of seller, if so desired, and a telephone number, and individual website assigned to the home for sale;

(4) Wording shall be the same on both sides of the sign if both sides are exposed to the roadway;

(5) The only sign, per division (A)(1) above, shall be set back at least 30 feet from the nearest edge of the pavement of the public road on which the house fronts or faces and in no event shall the sign be located within any public road right-of-way;

(6) No portion of the sign shall extend more than four feet above the ground;

(7) The sign shall be removed no later than three days after a sales contract is signed on the property advertised for sale by such sign; and

(8) If a sign is for commercial use in the R-4 or R-5 Residential Zoning District and does not comply with the regulations above, application is to be made to the Board of Commissioners for approval.

(B) (1) On any residential lot on which construction has begun by a general contractor, neither the general contractor nor the owner of the residential lot shall post nor permit to be posted more than one sign in addition to any sign required by law to be posted (i.e., building permits and the like).

(2) The general contractor may place one sign on the residential lot on which construction has begun which sign shall not exceed six square feet in size and shall be limited in wording to the street number or address of the property and the name, address, and telephone number of the general contractor. The general contractor's sign shall also be subject to divisions (A)(1), (A)(4), (A)(5), and (A)(6) above. The general contractor's sign shall be removed from the property not later than three days from the completion of construction by the general contractor or occupancy by the owner of the property being constructed, whichever comes first.

(C) Political signs are allowed on any residential lot prior to a primary election, general election,

or referendum provided the signs are erected as follows.

- (1) Signs may be posted 30 days prior to the day of an election and removed within five days after the day of the election.
- (2) Four signs are permitted per lot, with each sign representing one candidate, or one issue if a referendum.
- (3) Each sign shall not exceed four square feet in size and not contain any electrical component or lighted in any way.
- (4) Wording shall be the same on both sides of the sign if both sides are exposed to the roadway.
- (5) The sign shall be set back at least 20 feet from the nearest edge of the pavement of all public roads on which the house borders, and in no way shall signs be located within the public right-of-way.
- (6) No portion of the sign is to extend more than four feet above the ground.
- (7) A sign located on private property requires the owner's approval.
- (8) The property owner shall be fined if the signs are not removed within five days of an election or referendum.

(D) (1) On any lot occupied by a business in the R-4 and R-5 Districts, on-premises signs are allowed provided the following definitions and permit requirements are met.

(2) For the purpose of this division (D), the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ATTACHED SIGN.** Any sign attached to, applied on, or supported by the front wall or wall facing street of a building.

**CLEARANCE.** The vertical distance from the established finished grade to the lowest edge of the sign.

**DEVELOPMENT IDENTIFICATION SIGN.** A sign bearing only the name of the multiple tenant development.

**ERECT.** To construct, build, raise, assemble, install, place, replace, locate, affix, attach, display, alter, use, create, paint, draw, illuminate, or in any other way bring into being or establish.

**FREESTANDING POLE SIGN.** A sign which is permanently affixed to the ground by a pole or other structure and which is not part of the building.

**GRADE.** The lowest point at which a sign is attached to the ground.

**GROUND SIGN.** A freestanding sign flush to the ground and not elevated upon poles or stanchions and not attached to the building.

**HEIGHT.** The vertical distance between the highest part of the sign or its supporting structure, whichever is highest, and the base of the sign at grade.

**INTERNALLY ILLUMINATED.** Any sign designed to provide artificial light either through exposed lighting on the sign face or through transparent or translucent material, from a light source within the sign.

**LOT.** A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use.

**MULTIPLE TENANT DEVELOPMENT.** A development in which there exists a number of individual or separate activities and in which there are appurtenant-shared facilities (such as parking areas).

**NONCONFORMING SIGN.** Any sign, which was allowed when, erected or displayed but which does not conform with the standards of this division (D) and any sign, which was not allowed, but was nonetheless impermissibly created or displayed before the effective date of this division (D).

**ON-PREMISES SIGN.** Any sign used for the purpose of displaying advertising, identifying, or directing attention to a business, products, operations, or services sold or offered on the lots where the sign is located.

**SETBACK.** The horizontal distance between the leading face of the curb of a street and the closest point of a sign or sign structure on such lot. Where there is not a curb, the measurement shall be made from the edge of the pavement.

**SIGN.** Any words, lettering, numerals, parts of letters or numerals, figure, phrases, sentences, emblems, devices, designs, trade names, or trademarks by which anything is known, made of any material, except live vegetation, including any surface, fabric, or other material background structure designed to carry such devices, as are used to designate or attract attention.

**SIGN STRUCTURE.** Any structure, which supports, has supported or is capable of supporting a sign.

**SINGLE TENANT.** A single business establishment, activity or use.

**WALL SIGN.** Any sign painted or attached flat against and parceled to the exterior wall or surface of a building or other structure and/or which projects from the wall or surface.

(3) *On-premises single-tenant signs.*

(a) Allowed within the R-4 and R-5 Zoning District may be either:

1. *Freestanding.* Pole or ground; or
- 2.. *Attached.* Wall.

(b) Two business identification signs are allowed per lot, only one of which shall be a freestanding or ground sign. For freestanding or attached signs, the total allowable area per face of selected sign(s) shall not exceed 40 square feet per face, with two faces per freestanding or ground sign allowed. In the event the freestanding sign is less than the 40 square feet per face allowed, the size of the attached sign erected may be increased by that difference. Signs may be internally or externally illuminated.

(c) Additionally, the following requirements must be met based on the type of sign selected:

1. If freestanding pole or ground, then the sign shall be a maximum of eight feet in height with a minimum setback of ten feet; and
2. If wall, then the maximum projection from a wall shall be six inches.

(4) *On-premises multiple-tenant development signs.*

(a) On-premises multiple-tenant development signs allowed within the R-4 and R-5 zoning district may be either:

1. Freestanding; pole or ground attached; or
2. Wall.

(b) For a multiple-tenant development, the development itself is allowed one identification sign. For a freestanding sign, the total allowable area per face of selected sign shall not exceed 60 square feet with two faces per freestanding or ground sign allowed. If freestanding pole or ground, the sign shall be a maximum of 20 feet in height and minimum setback of 15 feet. Individual tenants within the development shall be allowed one attached wall sign not to exceed ten square feet, and at the due discretion of the Board of Commissioners, not more than two, not to exceed ten square feet. The maximum projection from a wall shall be six inches.

(E) The owner of a residential lot and the real estate agent placing a real estate sign on the residential lot shall each be responsible for any violation of division (A) above and the owner of the residential lot and the general contractor shall be responsible for any violation of division (B) above. The owner of the business establishment erecting a sign shall be responsible for violation of division (C) above.

(F) Any sign removed by the Police Department for violation of this section shall be disposed of by the Police Department within ten days from the date the sign is removed from the residential lot unless the residential lot owner, real estate agent or general contractor, as the case may be, claims said sign within the ten-day period.

(G) This chapter was duly adopted by the Town Board of Commissioners on the September 15, 1987 and shall become effective on the October 1, 1987. This section as amended on December 18, 1990, shall become effective on the January 1, 1991. This section as amended on July 9, 2002, shall become effective on September 1, 2002.

(2013 Code, § 15-2) (Ord. passed 9-15-1987; Ord. passed 12-8-1990; Ord. passed 9- -2002)

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## Coates' Canons Blog: Sign Litigation: A Brief Analysis of Reed v. Town of Gilbert

By Adam Lovelady

Article: <http://canons.sog.unc.edu/sign-litigation-a-brief-analysis-of-reed-v-town-of-gilbert/>

This entry was posted on July 21, 2015 and is filed under Constitutional & Statutory Limitations, General Local Government (Miscellaneous), Land Use & Code Enforcement, Zoning

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Temporary yard signs are springing up all around town. Town council wants to reduce the clutter, but also wants to respect the free speech rights of the community. Council is considering new rules that will allow *campaign signs* during election season, *event signs* within a day of the event, and *ideological signs* anytime. It seems like a reasonable balance—allowing the signs but limiting them to a relevant time-frame. Can the town's regulations distinguish among signs this way?

A recent U.S. Supreme Court decision says no. Such distinctions are unconstitutional content-based regulation of speech.

To be clear, every sign ordinance distinguishes among signs. Ordinances commonly distinguish between locations (commercial property, residential property, public property, etc.), between types of signs (free-standing, wall signs, electronic signs, etc.), and between messages on the signs (commercial, safety, political, etc.). Reasonable distinctions concerning *location* and *types* of signs remain permissible.

The *Reed* decision, though, clearly invalidated some distinctions based on the message content of signs, and it will require adjustments to many local ordinances and some state statutes. The decision, with its four separate concurring opinions, also left open several legal questions.

This blog considers the decision of [Reed v. Town of Gilbert, 576 U.S. \\_\\_\\_ \(2015\)](#), and its impact on local sign ordinances.

### **Context of Free Speech Caselaw**

In thinking about the *Reed* decision it is helpful to recall a few key points about Constitutional protections of free speech and local government sign regulation. This area of the law is complex—far beyond the scope and space of this blog—but some context is helpful in understanding the impact of the new decision.

**Content-Neutral Sign Regulations.** Some sign regulations concern the form and nature of the sign, not the content of the message. These regulations—called *reasonable time, place, or manner restrictions*—include regulation of sign size, number, materials, lighting, moving parts, and portability, among other things. These regulations are allowed, provided they are “[1] justified without reference to the content of the regulated speech, [2] that they are narrowly tailored to serve a significant governmental interest, and [3] that they leave open ample alternative channels for communication of the information” (*Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S. Ct. 2746, 2753, 105 L. Ed. 2d 661 (1989)). Over the years the courts have allowed a variety of content-neutral sign regulations.

**Content-Based Sign Regulations.** Some sign regulations, however, restrict the content of the message. The Supreme Court requires that content-based regulation of noncommercial signs must meet strict scrutiny. As phrased in the *Reed* majority opinion, a regulation is content-based if the rule “applies to a particular [sign] because of the topics discussed or the idea or message expressed” (slip op., at 6). The strict scrutiny standard demands that the local government must show that the regulation is (i) designed to serve a *compelling* governmental interest and (ii) *narrowly tailored* to achieve that interest. That is a steep hill to climb, and in practice few, if any, regulations survive strict scrutiny review.

It is worth noting that commercial speech is subject to yet another test—a version of intermediate scrutiny outlined in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1987). That test is described in David Owens' blog on [Offensive Signs](#), and as discussed below, the impact of the *Reed* decision on the *Central Hudson*

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test is unclear.

### **Case Summary**

The Town of Gilbert, Arizona, had a sign code requiring permits for signs, but outlining a variety of exemptions. The *Reed* decision focused on the exemptions for three types of signs: Political Signs, Temporary Directional Signs, and Ideological Signs. Under the local code, Political Signs were signs designed to influence the outcome of an election; they could be up to 32 square feet and displayed during political season. Temporary Directional Signs were defined to include signs that direct the public to a church or other qualifying event; they could be up to six square feet and could be displayed 12 hours before and 1 hour after the qualifying event. Ideological signs were defined to be signs that communicate a noncommercial message that didn't fit into some other category; they could be up to 20 square feet.

A local church—after being cited for violation of the rules for Temporary Directional Signs—challenged the sign code as abridging their freedom of speech. The Town argued (and the lower courts found) that its regulations were content-neutral. The distinctions among types of signs, they said, were based on objective factors not the expressive content of the sign. The distinctions did not favor nor censor a particular viewpoint or philosophy. And, the justification for the regulation was unrelated to the content of the sign.

Justice Thomas, writing for the Court, disagreed. He found that the distinctions were plainly content-based and thus subject to strict scrutiny. The distinctions—between Political Signs, Temporary Directional Signs, and Ideological Signs—“depende[ed] entirely on the communicative content of the sign” (slip op., at 7). “Regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints with that subject matter” (12). And, “an innocuous justification cannot transform a facially content-based law into one that is content neutral” (9).

In its failed attempt to meet the strict scrutiny standard, the Town offered two governmental interests to support its distinctions: aesthetic appeal and traffic safety. Even if these were considered compelling governmental interests (which the Court assumed without ruling), the Town's distinctions were not narrowly tailored. Justice Kagan noted in her own opinion (concurring in the judgment only) that the Town's distinctions did “not pass strict scrutiny, or intermediate scrutiny, or even the laugh test” (slip op., at 6, Kagan, J., concurring in judgment).

### **Impact of Local Ordinances**

So what does this decision mean for local ordinances? In the end, some distinctions among signs clearly are allowed and will withstand judicial review. Some code provisions, though, must be revised. And then, there are the open questions.

The Court was unanimous in judgment: The particular provisions of the Town of Gilbert's sign code violate Constitutional protections for free speech. The Court was fractured, though, in the opinions, making it harder to discern the full scope of the decision. Justice Thomas offered the majority opinion of the court with five justices joining. Justice Alito offered a concurring opinion to further clarify the impact of Justice Thomas' opinion. He was joined by Justices Kennedy and Sotomayor. Three justices concurred in judgment only, and they offered two separate opinions to outline their legal reasoning and their concerns with the majority's reasoning.

So we have a split court. Three joined the majority only; three joined the majority, but also joined an explanatory concurrence; and three disagreed with the majority's legal reasoning. This three-three-three split, unfortunately, causes even more head-scratching for an already complex topic.

**Content-Based Distinctions.** In thinking about your sign ordinance, ask this: Does this regulation apply to a particular sign because of the non-commercial content on the sign? If yes, the regulation must meet strict scrutiny under *Reed*. The government must show that the regulation is designed to serve a *compelling* governmental interest and *narrowly tailored* to achieve that interest.

If your ordinance distinguishes among noncommercial sign types—political v. ideological v. religious—those distinctions are unconstitutional and must be changed.

Justice Thomas did offer some content-based regulations that may survive strict scrutiny if they are narrowly tailored to address public safety. These include warning signs for hazards on private property, signs directing traffic, or street

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numbers associated with private houses.

**Content-Neutral Distinctions.** The several opinions of the court outline some valid distinctions for regulation. In his majority opinion, Justice Thomas noted that local governments still have “ample content-neutral options available to resolve problems with safety and aesthetics” (slip op., at 16). These include regulation of, among other things,

- size
- building materials
- lighting
- moving parts
- portability

Moreover, “on public property the Town may go a long way toward entirely forbidding the posting of signs, so long as it does so in an evenhanded, content-neutral manner” (slip op., at 16). A local ordinance or state statute can prohibit all signs in the public right-of-way. But, if signs are allowed, the regulations must not distinguish based on the content of the message. Regulations that allow some, but not all, noncommercial signs run afoul of the *Reed* decision.

For example, NCGS § 136-32 allows for “political signs” (as narrowly defined) in the public right-of-way of state highways during election season. That statute and similar ordinances will need to be revised to either, prohibit all signs in the right-of-way, or allow compliant signs with any noncommercial message in the right-of-way during election season.

Justice Alito, in his concurring opinion, provided further explanation (although not an exhaustive list) of what distinctions may be valid, content-neutral distinctions. He included:

- Size (including different sizes for different types of signs)
- Location, including distinguishing between freestanding signs and attached signs
- Distinguishing between lighted and unlighted
- Distinguishing between fixed message and electronic signs
- Distinguishing between signs on public property and signs on private property
- Distinguishing between signs on commercial property and signs on residential property
- Restricting the total number of signs allowed per mile of roadway
- Distinguishing between on-premises and off-premises signs\*
- And time restrictions on signs advertising a one-time event\*

\* These last examples—distinguishing between on-premises/off-premises and restricting signs for one-time events—seem to conflict with the majority opinion in *Reed*. Here, we get back to the issue of the fractured court and multiple opinions (discussed below).

## **Open Questions**

### ***Content-ish Regulations***

Justice Alito’s concurrence (discussed above) listed many regulatory distinctions that are clearly authorized. He listed two distinctions that do not clearly square with the reasoning of the majority opinion. But, if you consider the three justices concurring with Alito plus the three justices concurring in judgment only, there are six justices that took the question of content neutrality with more practical consideration than Justice Thomas’ hard line. Thus, Alito’s opinion may in fact hold the greatest weight of this case. Only time will tell—time and more litigation.

First, Justice Alito listed signs for one-time events. This seems to be precisely what the majority stuck down in this case. It is unclear how a local regulation could structure such regulation without relying on the content of the message itself. But the inclusion on Justice Alito’s list points to some room for defining signs based on function.

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And second, Justice Alito listed the distinction between on-premises and off-premises signs. The enforcement officer must read the sign in order to determine if a sign is off-premises or on-premises. As such, these would seem to be facially content-based and subject to strict scrutiny. But, prior Supreme Court caselaw has upheld the on-premise/off-premise distinction and that precedent is not overruled by the majority opinion.

**Commercial and Noncommercial Speech.** In past decisions the Supreme Court has treated commercial speech to slightly less protection than noncommercial speech. Commercial speech regulation needs to meet a version of intermediate scrutiny, not the strict scrutiny applied to regulation of non-commercial speech (See, generally, *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1987)).

Arguably, the *Reed* decision opened the door to challenge a sign ordinance that distinguishes between commercial and noncommercial speech. Justice Alito's concurring opinion noted that distinguishing based on the *type of property*—commercial or residential—would be valid. Regulating based on the *content of the sign*—commercial or noncommercial—arguably is undermined by the *Reed* decision.

Notably, though, the majority in *Reed* did not overrule its prior decisions. The *Reed* decision was focused on the Town code's distinctions among types of noncommercial speech. Presumably the long-held standards for regulation of commercial speech still apply.

### **Conclusion**

In the wake of *Reed*, some things are clear. Governments still have an array content-neutral regulations to apply to signs. But, content-based distinctions such as the ones in the Town of Gilbert's code must survive strict scrutiny to stand. Because of mix of opinions from the Court, there are several open questions. We will not know the full scope and meaning of *Reed v. Town of Gilbert* until the federal courts begin to apply this decision to other sign litigation.

### **Links**

- [www.supremecourt.gov/opinions/14pdf/13-502\\_9olb.pdf](http://www.supremecourt.gov/opinions/14pdf/13-502_9olb.pdf)



MEMORANDUM  
NOVEMBER 8, 2016

To: Mayor and Commissioners  
From: Jonathan Kanipe, Town Administrator  
Re: Discussion of Accessory Play Uses  
Date: November 1, 2016

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Recently, the Town has received questions regarding zip lines at several homes in Biltmore Forest. My interpretation of the Town's zoning ordinance, which governs accessory uses and structures, is that the zip line which is attached at each end to a tree is not a structure. Certainly, if there are other structures which allow the zip line to be used (a platform, play house, etc.) then that would be required a structure per our ordinance and would need to be permitted.

As a means to clarify the situation, Mayor Goosmann has asked that the Board consider zip lines and whether they need to be more formally distinguished and listed as an accessory structure or accessory use in the Zoning Ordinance for purposes of regulation. The Town's existing ordinance considers play houses and play sets as accessory structures.

There is no proposed amendment before you at this time; rather, discussion and your thoughts and guidance on the matter is requested. If specific changes are requested to regulate these and any other tree based apparatuses, the Planning Board would review and make a recommendation prior to any public hearing on the matter by the Board of Commissioners.



MEMORANDUM  
NOVEMBER 8, 2016

To: Mayor and Commissioners  
From: Jonathan Kanipe, Town Administrator  
Re: 2016 NCLM Annual Conference and Advocacy Goals Report  
Date: November 1, 2016

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This year's N.C. League of Municipalities Annual Meeting included the League's biannual Advocacy Goals Conference. Commissioner Cogburn, Commissioner Loomis, and I attended the event on behalf of the Town. The League's Core Principles and Advocacy Goals for the 2017-18 Legislative Biennium are below for your review and discussion. While some of these goals are not as germane to Biltmore Forest, the vast majority of these goals are important to the Town. The Town's specific advocacy goal regarding liability and governmental immunity was incorporated into the League's core principles that are presented to legislators.

If agreeable to the Board, my recommendation is to draft a resolution of support for the goals that can be distributed to our legislative delegation and other elected officials. This can be presented at the December meeting and be delivered them prior to the Session opening in January.

Please let me know if you have any questions or concerns.

#### Fiscal Health and Economic Growth

- Seek legislation to provide municipalities with additional locally-controlled revenue options.
- Seek legislation to allow room occupancy tax revenues to be used to fund municipal service and infrastructure costs in order to support travel and tourism.
- Seek legislation to alter the current statutes governing distribution of local sales taxes by requiring a one-year delay in implementation when a county or the legislature changes its method of distributing sales tax revenue.
- Support legislation that will provide sufficient funding at the state level for incentive programs such as a competitive film incentive program, robust state historic preservation tax credits, and the Main Street Solutions fund necessary to grow jobs and the economy.

- Support legislation to revise the tier method of measuring levels of economic distress to focus on the causes of distress and taking sub-county data into account.
- Support legislation to bolster the state's mental health and intellectual/developmental disabilities (I/DD) treatment resources, including resources and solutions to lessen the strain on sworn law enforcement officers when providing custody of individuals in crisis.
- Support legislation which defends the fiscal integrity of the Local Government Employees' Retirement System and its defined benefit structure, promotes reasonable pension reforms that are prospective in nature, and meets the needs of local employees, employers, and retirees.

#### Municipal Authority

- Support municipal authority over municipal personnel issues
- Support legislation that provides for municipal elections to be determined by local municipal authority.
- Oppose legislation that interferes with local management or ownership of local assets.

#### Public Infrastructure

- Seek legislation eliminating municipalities' repayment of water- and sewer- growth related fees that have been previously collected, and providing municipalities with the authority to assess the level of fees and charges necessary for continued growth and economic development in the future.
- Seek legislative and administrative changes to the STIP process that give local priorities increased weight in the allocation of transportation funds.
- Seek legislation to increase state-level funding for municipal infrastructure needs.
- Support legislation that recognizes that management of a public utility is best determined by the local owning entity due to their consideration of financing, engineering, and regulatory responsibilities.

#### Federal Legislation

- Seek opportunities to support the passage of the federal e-fairness legislation.