

PROPOSED AGENDA

Meeting of the Town of Biltmore Forest Board of Commissioners

To be held Tuesday, July 9, 2019 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 June 11, 2019 will be considered for approval.

C. Reports of Officers

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

D. New Business

1. Presentation on Targeted Underground Program – Duke Energy Representatives
2. Tree Protection Ordinance Discussion
3. Public Works Building Project Update & Open House

E. Petitions, Motions, and Other Business

F. Public Comment

G. Adjourn

MINUTES OF THE MEETING OF THE MAYOR AND THE TOWN COMMISSIONERS OF
BILTMORE FOREST HELD JUNE 11, 2019.

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 Doris P. Loomis, present

Commissioner E. Glenn Kelly, present

Commissioner Fran Cogburn, present

Mr. Jonathan Kanipe, the Town Manager was also present. Mr. William Clarke, the Town Attorney was also present.

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

Mayor Goosmann asked for a motion to approve the May 14, 2019 minutes. A motion was made by Commissioner Cogburn. The motion was seconded by Commissioner Loomis and unanimously approved.

Chief Chris Beddingfield gave the report for the Police Department. Mayor Goosmann asked Chief Beddingfield about the recent “hit and run” call. Commissioner Kelly asked where the bear sightings occur. Chief Beddingfield said the bears are everywhere and there is not one specific location. Mayor Goosmann thanked the Chief for all the hard work from the Police Department.

Mr. Terry Crouch gave the monthly report for Public Works. Mr. Kanipe said there has been a great deal of vehicle maintenance for the Public Works vehicles. Mayor Goosmann thanked Mr. Crouch.

Chief Ryan Cole gave the report for Skyland Fire Department. Chief Cole said there has been an increase in medical calls. Chief Cole also stated they participate in community care to determine if there are other resources to assist residents. Mayor Goosmann asked about the hail storm issues. Mayor Goosmann thanked Chief Cole for all the hard work the Fire Department provides.

A motion was made by Commissioner Loomis to go into Public Hearing regarding the Budget. Commissioner Kelly seconded motion and was unanimously approved.

Mr. Kanipe discussed the Budget and said there were no changes since the May presentation. The public meeting was properly noticed in the Asheville *Citizen-Times*. Mr. Kanipe said the proposed tax rate increase for 2019 will be 34.5 cents per \$100 valuation. This is an increase of 1.5 cents. This will cover stormwater infrastructure improvements and increase police coverage, including adding two new police officers.

Commissioner Kelly made a motion to leave the Public Hearing. Commissioner Cogburn seconded the motion. The motion was unanimously approved.

The consideration of the Budget Ordinance was presented by Mr. Kanipe. A motion was made to approve the FY 2019-20 Budget by Commissioner Kelly. Commissioner Loomis seconded the motion. The motion was unanimously approved.

The fee schedule for 2019-20 was presented by Mr. Kanipe. There is a 2.5 percent water and sewer increase. Commissioner Kelly asked how long the zoning permit fee has been \$25 for the first \$2,000 worth of construction. Mr. Kanipe said approximately two years. Commissioner Kelly asked how many zoning permits are issued per year. Mr. Kanipe said approximately 40 permits issued per year. Commissioner Kelly made a motion to approve the fee schedule for 2019-20. Commissioner Cogburn seconded the motion. The motion was unanimously approved.

The next topic of discussion was Consideration of Ordinance 2019-01 to amend the Town Code of Ordinances. This ordinance reduces the speed limit on Vanderbilt Road to 25 miles per

hour north of the intersection with Busbee Road as posted. The speed limit will take effect July 1st. A motion was made by Commissioner Cogburn. Commissioner Loomis seconded the motion. The motion was unanimously approved. Mr. Kanipe stated there will be signage and residents will also be notified of this change before it occurs.

The next topic discussed the Consideration of Resolution 2019-05 – the surplus of Town equipment. Mr. Kanipe said this was for a 2014 Ford Interceptor that has a blown engine. This will be listed on GovDeals. Commissioner Cogburn made a motion to approve the Resolution. Commissioner Kelly seconded the motion. The motion was unanimously approved.

The Consideration of Budget Amendment for the current year (FY19) Budget was discussed. This budget amendment was a to recognize the transfer from fund balance for the Public Works building project. A motion was made by Commissioner Loomis. Commissioner Cogburn seconded the motion. The motion was unanimously approved.

The Board then considered an amendment to the Capital Project Ordinance. This will allow the Town to fund furniture and equipment for the new Public Works building which is currently under construction. The proposed budget amendment is \$80,000. A motion was made by Commissioner Cogburn. Commissioner Kelly seconded the motion. The motion was unanimously approved.

The Board then discussed changes to the accessory structure ordinance. Commissioner Kelly asked about Section 153.049 and, specifically, verbiage stating “shall” or “may”. Mr. Clarke said there was quite a bit of discussion regarding “must” versus “may” and “shall.” Mr. Clarke also said the Board started this process to get public input. Commissioner Cogburn said one topic that came up is that adjacent property owners should be notified and emphasized the importance of this notification. Mr. Clarke said it may require looking further into this matter. Mr. Clarke said the Planning Commission would most likely be open to further discussion regarding this matter.

PUBLIC COMMENT

Ms. Diane Zimmerman discussed the 25 mph speed limit. She noted an obstruction of plantings at Cedarcliff and Vanderbilt Roads that she considered a hazard. Mrs. Judith Pigossi also commented on a traffic matter and asked what the set up will be like for the all way stop.

Mr. Paul Zimmerman updated the Board about the four carved columns and explained the restoration process.

Ms. Mary Goodkind suggested reminding people on how to drive safely through the all way stop.

Mayor Goosmann adjourned the meeting at 5:15 p.m.

The next Board of Commissioners meeting is scheduled for Tuesday, July 9, 2019 at 4:30 p.m.

ATTEST:

Jonathan B. Kanipe
Town Manager

George F. Goosmann, III
Mayor



Biltmore Forest Public Works Department

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

PUBLIC WORKS MONTHLY REPORT **JUNE 13, 2019 TO JULY 9, 2019**

- Completed all of the normal routine services to the residents on schedule, garbage collection, recycling and brush removal.
- Everyone attended the Defensive Driver course instructed by the North Carolina League of Municipalities.
- We have collected a total of 26 loads of brush for the residents and transported them to Asheville Stump and Dump.
- We had to take down the streetlight at Stuyvesant and Frith due to a vehicle hitting it and almost knocked it down. We will have to do some major repairs to the light before it can be reinstalled.
- We had to remove a very large oak tree that fell from 384 Vanderbilt property and landed in the park .
- Completed 68 special requests from the residents, extra garbage collection, meter rereads, house no. signs, recycling request, etc and completed 49 utility locate request.
- Completed the 2 monthly bacteriological water samples for June 2019 and both were in compliance with the state.
- Charles has inspected 40 trees for the residents.
- Completed repairs to several pieces of Public Works equipment.

- We collected a total of 25 tons of garbage and 13 tons of recycling for the month of June.
- Installed the new 25 MPH signs on Vanderbilt road on July 1st as instructed for the new 4 way stop at Cedarcliff.
- We assisted Fisher Hydraulics to install the vehicle lift in the new Public Works Building.
- We are still working on the annual inspections of the residents RPZ devices (backflow)
- A total of 535 hours were spent maintaining the Towns roads and road shoulders.
- 85 hours were spent maintaining the Town's parks and pond.
- Repaired 3 streetlights (general repairs).
- We are continuing to repair road shoulder ruts and road shoulders all over the Town due to vehicles.
- Setup and cleaned up for the 4th of July.
- We are continuing to clean up the fallen debris out of the woods off Brookside road when time allows.
- Completed all of the daily chlorine samples for the month of June and sent to the state as required.
- Mowed all of the road shoulders and parks as needed.
- We are continuing with our annual Fire hydrant maintenance and inspections during the month of May and June and we have completed about 100 hydrants. We hope to be finished by the end of July.
- I have a meeting set up with Mark Teague from J.M. Teague Engineering & Planning to look at the options for striping the crosswalk at the Country Club.

Sincerely

TERRY CROUCH

Terry Crouch
Director of Public Works

BILTMORE FOREST POLICE DEPARTMENT

Department Head Report

July 9th, 2019 Board of Commissioners Meeting

Chris Beddingfield, Police Chief

Police Dept. Monthly Report 06/01/19 to 06/30/19

Calls for Service:614

Officers responded to the following calls for service:

Accident -5	Accident - PI -1
Alarm - 30	Animal Carcass - 1
Assist EOC – 9	Assist Motorist - 16
Assist Other Agency - 8	Assist Resident - 21
Bear Report - 4	Business Check -99
Busy - 9	Crime Prev. - 1
Chase- 0	Direct Traffic -4
Distressed Animal - 1	Disturbance - 3
Dog Complaint -20	Domestic disturbance- 0
Fire – 0	Fight- 0
Hit and Run - 1	House Check - 75
Improper Parking-1	Incomplete 911-0
Investigation – 1	Intoxicated Driver-0
Mental Patient - 0	Missing Person - 0
Noise Disturbance – 3	Ordinance Violation - 7
Out of Service - 0	Out of Town - 6
Person Down – 0	Power Outage -2
Radar Operation – 28	Road Blocked -6
Service of Car -5	Sign Ord Violation -8

Special Assignment – 0	Special Check - 2
Speed/Reckless Driving- 1	Suspicious Person - 10
Suspicious Vehicle - 35	Vandalism - 0
Vehicle Stop – 72	Well-being Check - 1

Total Number Of Calls: 614

Arrests:

0-Felony Arrests

2-Misdemeanor Arrests -- 3 Charges (2 Second degree trespass, one possession of stolen goods)

Time Consumption Summary:

Approximations

Business Checks- 10 hours

House Checks- 5 hours

Radar Operation- 12 hours

Vehicle Crash Investigation- 10 hours

Notable Calls and Projects:

Road closure/major power outage-Stuyvesant at Holly Hill. A tree fell and took down three power poles, lines and transformers closing the road and causing power loss for a significant amount of time

Several calls for homeless, panhandlers and door to door begging. One call resulted in arrest of two individuals camping on Vanderbilt Rd behind the Double Tree hotel.

Continuing to prepare for National Night Out-August 6th

Numerous animal complaints for the month-multiple dogs running at large, lost dog and found dog calls

Had a meeting with the NCLM on their “Shield Service”-A program similar to accreditation, and League would approve policies and operations and in return we get a reduction in insurance cost. Still investigating if we are going to attempt to qualify.

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

Jonathan B. Kanipe,
Town Manager

MEMORANDUM

To: Mayor and Board of Commissioners

From: Jonathan Kanipe, Town Manager

Re: Town Manger's Report

Date: July 3, 2019

FY19 Budget Re-Allocations

Budget re-allocations for the conclusion of fiscal year 2018-2019 are included for the Board's review. These re-allocations occur at the conclusion of the fiscal year to reflect where funds were spent. All re-allocations are made within each department and not across departments. Please let me know if you have questions.

Traffic Pattern Change Update

The first phase of the traffic pattern changes along Vanderbilt Road were enacted on Monday, July 1. Public Works staff installed new 25 mph speed limit signs along Vanderbilt Road and installed advisory signage per the engineer's recommendations. A representative from J.M. Teague was present to oversee the installation of the signage and ensure that it met all federal and state safety requirements. The large, electronic message board signage will be installed Monday, July 8 with additional temporary signage to be erected over the course of the following three weeks. The all-way stop implementation date is scheduled for Monday, July 29. The engineer will be involved in each step of this process to ensure that all safety requirements are met. The Police Department has increased patrol and visibility in this area after the speed limit reduction, and will have a heavily visible presence on the day of the all way stop implementation and successive days.

NC DEQ Green Infrastructure Loan Program

The Greenwood Park Stream Restoration project has been recommended for funding by DEQ staff. The project goes before the State Water Infrastructure Authority Wednesday, July 10. As you recall, this portion of the total Greenwood Park project is focused on improving the stream banks and riparian buffers in Greenwood Park. The green infrastructure loan program is a zero percent interest loan for the Town over 20 years. If approved by the SWIA, the Town would then enter into an agreement with the State for this project and debt repayment. I will keep you informed once we receive word regarding the SWIA's final decision.

Stormwater Plan Update

The Town's storm water master plan is nearing completion. Staff held a conference call with the engineers to discuss the preliminary master plan and review Town financial details. The financial details will be utilized to create a recommended Capital Improvement Plan (CIP) for stormwater infrastructure improvements. This will be included within the final master plan.

Volkswagen Clean Diesel Grant Program

The Volkswagen Clean Diesel and electric vehicle charging station grants were released in late June. The application period opened July 1 and closes September 30. Staff is working with Bill Eaker and the Clean Vehicles Coalition from Land of Sky Council of Governments to create an application. The Town hopes to receive a grant for at least one new heavy duty dump truck to replace an older model diesel engine heavy-duty truck.

Eastwood Road Traffic Light Update

The base for the mast arms has been constructed along Eastwood Road. The poles should be installed sometime within the next month or so with the traffic light being operational afterward. Once firm dates are known, I will pass these on to the Board and ensure that we send out alerts to our citizens about this traffic change as well.

GovDeals Surplus Sale

The Board approved selling an inoperable 2014 Ford Interceptor police vehicle last month. As of this writing, the vehicle has a bid of just over \$1,000. The auction will close on July 7. The Police Department also placed a quantity of old lighting equipment up for sale. The sale on these items is not anticipated to exceed \$500. That is the dollar threshold for the Board to approve the surplus sale. Once this auction closes, I will inform you how much these items sold for as well.

BUDGET REALLOCATIONS 06/28/2019

ADMINISTRATION		CHANGE	FROM	TO
4200-3300	Supplies & Equipment	2,000	5,000	7,000
4200-1000	Accounting & Taxes	10,000	35,000	45,000
4200-0200	Salaries	(4,000)	228,184	224,184
4200-1200	Postage, Printing, & Stationary	(4,000)	8,000	4,000
4200-5700	Miscellaneous	(4,000)	5,000	1,000
NET CHANGE ADMINISTRATION		-		

POLICE		CHANGE	FROM	TO
5100-0200	Salaries	(37,216)	806,975	769,759
5100-1500	Maint/Repair - Bldg Grounds	(6,900)	10,000	3,100
5100-1600	Maint/Repair - Equipment	(9,700)	12,000	2,300
5100-7400	Equipment	(18,000)	55,000	37,000
5100-0900	Short Term Disability	(5,000)	5,000	-
5100-1700	Maint/Repair Vehicles	(4,500)	22,500	18,000
5100-3100	Motor Fuels	(4,000)	21,000	17,000
5100-5700	Miscellaneous	(900)	8,000	7,100
5100-3300	Supplies	(1,800)	10,000	8,200
5100-6500	Staff Development	(2,000)	15,000	13,000
5100-0600	Health Insurance	(9,684)	126,684	117,000
5100-0650	Dental, Vision, Life Insurance	(2,800)	18,333	15,533
5100-0675	HRA Health Reimbursement	(1,000)	21,000	20,000
5100-0500	FICA	5,000	60,433	65,433
5100-0700	LGERS Retirement	5,500	114,593	120,093
5100-0800	401k Supplement	1,500	39,499	40,999
5100-3100	Uniforms	5,000	10,000	15,000
5100-3700	Technology	4,500	15,000	19,500
5100-0300	Overtime	82,000	15,000	97,000
NET CHANGE POLICE		-		

PUBLIC WORKS		CHANGE	FROM	TO
5600-0650	Dental, Vision, Life Insurance	250	5,220	5,470
5600-3300	Supplies	5,000	8,000	13,000
5600-3400	Street Signs & Street Numbers	250	1,000	1,250
5600-5900	Miscellaneous	500	3,000	3,500
5600-0200	Salaries	(6,000)	319,958	313,958
NET CHANGE PUB WKS		-		

STREETS & TRANSPORTATION		CHANGE	FROM	TO
5700-2500	Storm Water Drainage	14,441	75,000	89,441
5700-7400	Equipment	(11,000)	20,000	9,000
5700-2200	Contracts - Paving/Striping	(3,441)	83,344	79,903
NET CHANGE STREETS		-		

SANITATION & RECYCLING		CHANGE	FROM	TO
5800-1700	Maint Repairs Vehicles	2,000	10,000	12,000
5800-3100	Motor Fuels	3,000	15,000	18,000
5800-0200	Salaries	(5,000)	121,891	116,891
NET CHANGE SANITATION		-		

GENERAL GOVERNMENT		CHANGE	FROM	TO
6600-1100	Technology	14,000	72,000	86,000
6600-1300	Utilities	2,000	16,000	18,000
6600-1500	General Repairs & Maintenance	10,000	20,000	30,000
6600-5400	Insurance	1,000	77,000	78,000
6600-6100	Miscellaneous	2,000	10,000	12,000
6600-0400	Outside Professional Services	(26,978)	100,000	73,022
6600-6000	Contingency	(2,022)	2,022	-
NET CHANGE GEN GOV		-		

WATER DEPARTMENT		CHANGE	FROM	TO
8100-0200	Salaries	11,000	29,371	40,371
8100-0400	Professional Services	5,435	-	5,435
8100-0600	Medical Insurance	5,000	838	5,838
8100-0650	Dental, Vision, Life Insurance	100	750	850
8100-0700	LGERS Retirement	2,400	1,469	3,869
8100-4900	Sewer Purchases	55,000	280,000	335,000
8100-5000	AMI Transmitter Fees	500	7,000	7,500
8100-0300	Overtime	(2,247)	2,247	-
8100-0500	FICA	(3,435)	5,435	2,000
8100-0675	HRA Health Reimbursement	(3,250)	4,053	803
8100-0800	401k Supplemental Retirement	(13,400)	14,600	1,200
8100-1200	Postage	(2,500)	5,000	2,500
8100-1500	General Repairs	(15,500)	20,000	4,500
8100-3300	Supplies & Equipment	(16,300)	20,000	3,700
8100-7400	Capital Improvement	(22,803)	97,081	74,278
NET CHANGE WATER		-		

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

Jonathan B. Kanipe,
Town Administrator

PLANNING AND CODE ENFORCEMENT
JUNE 2019

- Staff completed 64 site inspections for potential ordinance violations or for active zoning permits.

- § Three code violations were issued to property owners in violation of ordinance provision §92.04 Cleanliness of Premises. Two of those violations are now in compliance.

- § One violation notice was issued for violation of ordinance provision §153.038 Off-Street Parking. This violation is now in compliance.

- § Three zoning permits were issued this month after approval from the Board of Adjustment and/or the Design Review Board.
 - New Single Family Residence – 19 Eastwood Road
 - Interior remodeling, screen porch and detached garage addition – 17 Forest Road
 - Renovations and Remodel – 33 Hilltop Road

- § The Board of Adjustment will meet on July 15th at 4:00 p.m. at Town Hall. The agenda will include three variance requests and three conditional use permit requests. A copy of this agenda is attached to this memo.

- § The Design Review Board will meet on July 18th at 5:30 at Town Hall.



To: Members of the Board of Adjustment, Applicants & Neighboring Property Owners
From: Jonathan B. Kanipe, Zoning Administrator
Date: July 1, 2019
Re: **Board of Adjustment Meeting – July 15, 2019**

Applicants:

You or your representative **MUST** be present at this meeting or your application will not be reviewed.

Members of the Board of Adjustment & the Zoning Administrator may visit the property prior to the meeting.

You or your representative **must** also attend the Design Review Board meeting on **Thursday July 18, 2019 at 5:30pm** to complete the approval process.

Certificates of Zoning Compliance will be issued after review and approval from the Board of Adjustment & Design Review Board.

Neighbors:

You are receiving this notice because your property is adjacent to an applicant on this month's agenda.

You may review applications & plans for the projects on this agenda at Town Hall M-F 9am-5pm or online at <http://www.biltmoreforest.org/board-of-adjustments>.

You are invited to attend the scheduled meeting and make comment.

The following items of business are scheduled to be addressed by the Biltmore Forest Board of Adjustment on Monday, July 15, 2019 at 4:00 pm in the Town Hall Board Room.

- 1) The meeting will be called to order and roll call will be taken.
- 2) The minutes of the June 17, 2019 regular meeting will be considered.
- 3) Hearing of Cases (Evidentiary Hearings, Deliberations & Determinations):

Case 1: A Conditional Use Permit is requested for property located at 9 Holly Hill Road for a detached accessory building. A Variance is requested for location of the accessory building in the front yard.

Case 2: A Conditional Use Permit is requested for property located at 61 Forest Road for deer fencing replacement and construction of retaining walls. A Variance is requested for extension of the deer fencing into the side yard setback.

Case 3: A Conditional Use Permit is requested for property at 31 Stuyvesant Road for improvements to an existing swimming pool and accessory buildings, and relocation of a tennis court. A Variance is requested for location of accessory structures within the front yard setback.

- 4) Adjourn

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Jonathan B. Kanipe,
Town Manager

MEMORANDUM

To: Mayor and Board of Commissioners

From: Jonathan Kanipe, Town Manager

Re: Presentation on Targeted Underground Program – Duke Energy Representatives

Date: July 3, 2019

Background

The Town has discussed burying power lines throughout the Town for several years. Representatives from Duke Energy will be present to review a target underground program. The goal of this program is to have all power lines buried throughout the Town.

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Doris P. Loomis, Commissioner

Jonathan B. Kanipe,
Town Manager

MEMORANDUM

To: Mayor and Board of Commissioners
From: Jonathan Kanipe, Town Manager
Re: Tree Protection Ordinance Discussion
Date: July 3, 2019

Background

Town staff and the Board of Commissioners have discussed methods of reforesting the Town, including provisions that require property owners to replant if taking down unprotected trees. The existing Tree Protection Ordinance is attached to this memorandum. *(Note, the numeration on the attached ordinance is not consistent with the Town's current ordinance numeration).*

Previous amendments allowed discretion from the Town Manager when replanting was required in an already heavily wooded area. The changes to the Town's Tree Protection Ordinance made in 2017 included provisions requiring approval from the Board of Adjustments for the removal of 10-30 trees protected trees and approval from the Board of Commissioners for the removal of more than 30 protected. Note, the Board of Adjustments still reviews and approves landscape plans including tree removal when they are presented as part of an application. The question before the Board is whether to consider an ordinance amendment requiring replanting or a comprehensive plan when trees that are not protected – deemed dead, diseased, or hazardous – are removed.

Other Municipal Ordinances

The information below is not an exhaustive review of tree protection ordinances statewide, but represents common provisions found throughout my review. Several municipalities with tree protection ordinances are now using "tree canopy" coverage as their method of ensuring reforestation takes places when trees are removed, as opposed to a tree-by-tree review. Several municipalities now include payments made in lieu of replanting to the town's tree mitigation fund. This is a fee schedule developed and approved by the elected Board of each jurisdiction. Most municipal ordinances differentiate between trees that are protected and unprotected – those that are generally deemed dead, diseased, or hazardous for safety purposes. The Town has this provision in our existing ordinance. However, the Town of Boone does not differentiate between protected and not protected trees. The Boone ordinance allows the Town Manager or designee

discretion when requiring that trees be replanted after removal, but notes that replacement trees must be a minimum 2 inches in caliper at 4 ½ feet tall. The Town of Cary requires replanting with a minimum 2 inch caliper tree with the total caliper width being equivalent to the trees that were removed. The Town interprets our replacement requirement for trees that are protected similarly.

Further Review and Information

The Town Attorney is reviewing state law in regards to tree protection ordinances and whether Town's may require replanting for any tree that is removed. The State General Assembly has been engaged on this topic recently, and the Board drafted a resolution in opposition to a Senate bill earlier this year that would have stripped municipality rights from enacting tree ordinances. That bill has not passed and appears to be abandoned at committee level at present.

Staff Recommendation

Please let the Town Attorney and me know how to proceed and whether the Board is interested in moving forward with changes to the existing Tree Protection Ordinance.

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.

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

Jonathan B. Kanipe,
Town Manager

MEMORANDUM

To: Mayor and Board of Commissioners

From: Jonathan Kanipe, Town Manager

Re: Public Works Building Project Update & Open House Schedule

Date: July 3, 2019

Construction Update

The Town's Public Works building project is nearing the final stage of construction. We hope to have a temporary certificate of occupancy for the building within the next two weeks and should have the final certificate of occupancy at the end of July. The Town purchased furniture and equipment for the building that should arrive in late July.

The bulk of Town equipment and inventory will be moved over to the building in August, and we will likely have some outdated or unusable inventory that will be placed on GovDeals within that timeframe. The construction budget is currently projected to finish under budget and the funds approved by the Board for furniture and equipment were also 25 percent under budget.

Open House

Last year, the Town held our first open house event to discuss the Public Works project as well as other items of interest to the Town. I would like to hold an Open House event this year allowing citizens to walk through and see the new building. If the Board agrees, I would recommend one of the following dates for this event. Please let me know how you would like to proceed.

Tuesday, September 10 (regular Board meeting date)

Tuesday, September 17

Tuesday, September 24